

# Presidential Address, IFLA Jerusalem Conference, August 2000

## **Christine Deschamps**

Christine Deschamps, IFLA's President, has been the Director of the Library of the University Paris V (René Descartes) since 1993. From 1989 until 1993 she was Chef de Bureau in the Ministère de l'Éducation Nationale, in charge of all academic libraries' automation, networking, interlibrary loan and union catalogues. In 1988 she was Director of the ISSN Centre. She spent 13 years working as a medical librarian in the largest medical library in France, first as a reference librarian and then as Director of the Library of the University of Paris VII (Denis Diderot). Ms Deschamps serves on the Board of Directors of OCLC. In 1998 she was awarded the Insignia de Chevalier de l'Ordre National du Mérite, because of her international commitment within IFLA, but also because of her work with OCLC. Ms Deschamps may be contacted at Bibliothèque de l'Université Paris V (Rene Descartes), 49, rue des Saints-Pères, 75005 Paris, France (fax: (+33-1) 45449545; e-mail: [deschamps@bu.univ-paris5.fr](mailto:deschamps@bu.univ-paris5.fr)).

*[Madame Deschamps delivered her address in French during the 66th IFLA General Conference and Council, Jerusalem, Israel, 13-18 August 2000. The French version may be found at <[www.ifla.org/](http://www.ifla.org/)>. The English translation was prepared by Winston Roberts, former Coordinator of Professional Activities at IFLA Headquarters.]*

I would like to begin by quoting the following parable from the Talmud. One day, King Solomon called over his chief Counsellor and told him, "I read in the stars that everyone who eats from this year's crops will be stricken with madness. What do you suggest we do about it, my friend?"

"Your majesty, please order that some of what is left over from last year's harvest be kept for us, and we will not touch anything that is grown this year."

"What would be the result, my friend?", asked the king. "We alone would remain with a sound mind, amongst all these men stricken with madness. They would say that we are the crazy ones and not them. Besides, there is not enough left over from last year's crops to feed the entire population!"

"So what can we do, Your Majesty?" asked the Counsellor. King Solomon answered: "We have no other solution than to be mad along with everybody else. But I would like us to be different in this: that we should be aware of our folly."

"How is that possible?" asked the Counsellor.

"You and I will put the sign of madness on our foreheads. Every time I look at you and every time that you look at me, we will both be aware that we are mad, that there was a time when we were not so, and that maybe the time will come when we are not so any more..."<sup>1</sup>

As every year, the time has come to sum up the various activities that I have been able to accomplish as President of IFLA.

Before speaking of my visits to librarians around the world, I would like to emphasize two essential lines of research and debate

during the past year. The first, entirely internal to IFLA, was of course the work carried out on the revision of the IFLA Statutes, and the revision concerning the Core Programmes. However I would not want to claim credit that was not due to me: it is clear that the excellent drafting of the new Statutes submitted to you is primarily the work of our Secretary General, Mr Ross Shimmon.

But naturally the general outlines were drafted on the basis of the work of an ad hoc Consultative Group, and were discussed by both the full Professional Board and the Executive Board, before being sent to you.

The major idea underlying these Statutes is undoubtedly to give IFLA a structure both more democratic and better adapted to the needs of the 21st century. Organizations, like individuals, grow old. They also need, at regular intervals, a facelift, a new garb, a complete rejuvenation. That which was quite suitable in the 1970s is no longer suited to the year 2000, and the development of IFLA's membership requires better representation, a broader management structure, and better supported and stronger executive authority. We hope that the new structures will appear to you to be more appropriate.

Regarding the Core Programmes, our Treasurer, Derek Law, already informed us some time ago about the need to review our core activities in the light of declining financial support and changing priorities. At the usual rate of spending, this year is the last in which we can fund these programmes in their present form. Things cannot continue like this.

Let us be clear: IFLA does not have the means to continue these programmes, and we would have gone "into the red" as from next year. It

is true that these programmes are partly funded by certain national or university libraries, whose generosity, year after year, I want to publicly acknowledge. But that is not enough, and IFLA cannot provide the balance of the total cost. This situation, which is forcing us to look again at the structures of the Core Programmes, is also therefore the opportunity to go back to basics and think about the content of these programmes as much as their method of operation and funding.

Some libraries pay, and in addition host a programme, and provide one or more professional staff; some pay without hosting a programme; and some do not pay at all. Therefore, having determined the situation by a report on the contribution of national libraries (only the library of the University of Uppsala, Sweden, which hosts the ALP Programme, falls outside this category), we thought it necessary to cooperate with the Conference of Directors of National Libraries (CDNL) to try and propose a programme of contributions (in terms of budget, staffing, or other) which would be shared more equally among these libraries.

Mr van Drimmelen, Director of the Royal Library of the Netherlands, chaired the "Group of Seven" members of the Conference of Directors of National Libraries to help us come to an acceptable solution, based on preliminary proposals presented to them at last year's conference. I am delighted to say, that with the Group's help, we are very close to agreement.

Some Core Programmes will be able to stay as they are, as they are the only actors in their specific field. We are only starting to reflect on this question. Some programmes feel themselves directly threatened. I believe I can clearly say here that it is not a question of getting rid of some programmes at any cost, or of denying the importance of the role of the libraries which host and/or fund them. On the contrary, thanks are due to all these programmes and libraries for their outstanding work, their unfailing generosity and

their continuing commitment. But there again, times are changing, and technical progress requires us to re-examine the content of our activities in order to help libraries as best we can to rise to new challenges in a constantly changing environment. In this context, not to change is to stagnate, and thus to die. Libraries must prove their capacity to change, and the body that represents them, IFLA, must be the first to organize change. I want to reassure you that we will not change everything all at once for the sake of changing, and jettison achievements and successes. But we cannot continue indefinitely to work according to old patterns, or else we will become slow and inflexible.

As for the more delicate problem of the future of Division 8, we are well on the way to finding a solution which will allow the developing countries to continue to work together, in accordance with their wishes, while at the same time - so far from marginalizing them by confining them in a separate structure - will integrate them into the work of the Sections and core activities.

At last year's conference, the Working Group on the Revision of IFLA's Statutes made a number of recommendations. All except one found favor and have now been incorporated in the proposed new Statutes. However, the proposal to abolish the Division of Regional Activities (Division 8) was withdrawn, in the light of the debates during the conference. Instead, a new Advisory Group, ably chaired by Marjorie Bloss, was set up to explore the issues surrounding that recommendation and its withdrawal. That group has now produced a very helpful discussion paper, which I hope will result in firm proposals, following discussions at this conference and the wider consultation exercise. As the paper says, we are aiming at a "structure in which people can participate regardless of their geographic location. We want to reduce the barriers to such participation, recognizing that we can all learn from each other. We recog-

nize the need and the value of IFLA's regional structure while, at the same time, enabling people in those regions to participate in the overall professional programmes of IFLA".

That is our ambition. I hope that everyone interested will contribute to the consultation so that we can come up with workable proposals.

As for my work dealing with IFLA's external relations, I would say the main theme this year has been consideration of the training of new information professionals, these "knowledge workers" as they are often called. Librarians, documentalists, archivists, museum specialists, all have common and overlapping competencies. To acquire these, common training should be envisaged, with specialized options according to different career paths. The development of the information society and relevant new technologies is closing the gaps between these professions. The management of records of archives and particularly of electronic archives of commercial firms and private societies, the management of image banks in museums, the notion of preservation and conservation, the storage and indexing of electronic or traditional objects, and searching for these data, are tasks common to all these professions. New methods of description - metadata / numerical identifiers - form the basis of the work of codification that librarians call cataloguing, but also of the daily work of related professions. New competencies are appearing in step with the evolution of our professional tasks. In particular I took part this last northern winter, in discussions with the Council of Europe on cultural work in the new information society - after which a recommendation on the new professional profiles was drafted. It is to be hoped that this will be the harbinger of collaboration with all the professions related to libraries, not only for training more appropriate to the needs of a dramatically changing society, but also in the hope that this "rapprochement" might enable the building of a new force in the infor-

mation professions, to give us more weight, visibility and power, by improving our representation to the political decision-makers. We hope to continue our discussions in order to move in this direction.

Still in the area of training, this year will see the realization of a project already announced last year. The first IFLA/OCLC Fellows from developing countries will be enabled to travel to the United States to undertake training in the practical applications of new technologies and visit numerous American establishments. Those fortunate enough to be granted this opportunity to improve their knowledge while discovering the libraries of the USA will then have to pass on their knowledge to their own countries, and we hope this will contribute to the improvement of training courses on the new information and communication technologies. More training, more standardization, more compatibility and interoperability - this is the aim of my work for developing countries, as well as for others who may be further ahead in the use of technological equipment but who are not necessarily more effective due to wrong use of their resources. To work together with librarians ready to confront the difficulties of international cooperation, in order to help all countries find points of agreement and common programmes, that is our goal in improving professional training courses. IFLA sees this as a prime obligation.

Over and above this work of principle, I have also undertaken some professional visits. This year it was the turn of Senegal and Morocco, with special attention paid to their training organizations. I was welcomed in turn by EBAD (Ecole de Bibliothécaires et d'Archivistes de Dakar - the School of Library and Archive Studies in Dakar) which provides training for professionals

from many French-speaking countries of sub-Saharan Africa, and ESI (Ecole des Sciences de l'Information) in Rabat which also runs many cooperative regional projects for the Arab countries of the Maghreb and possible a future regional office. In these two countries, librarians have an enlightened vision of their mission to provide training, and of the role of libraries in their respective regions. These relationships between IFLA and the main training centres in various regions of the world must continue to develop. The future of the profession depends on it.

Parallel to those visits, I also visited countries which are working on the preparation of future IFLA Conferences. Argentina, the USA, and Germany gave me a warm welcome (literally in the case of Argentina where it was 25 degrees Celsius hotter than in Paris!) and demonstrated quite remarkable efficiency and organization. I met there some important local personalities, and also association members of IFLA who will be asked to contribute to the preparation of the conference. Each country has its difficulties, its particular local situation, but also its treasures to be discovered, its commitment and its enthusiasm. Believe me when I say this augurs well for our future Conferences!

Before concluding, I would like to add that I have also, as each year, worked in liaison with UNESCO, the International Council of Archives, the International Federation for Information and Documentation, the International Council of Museums, and the International Organization for Standardization. This year, we have pursued our discussions with the publishers, and I have set up links with the International Book Agency, while the Committee on Copyright and other Legal Matters has continued its work representing libraries in institutions working on copyright, and

the FAIFE (Free Access to Information and Freedom of Expression) Committee has played an extremely active role in supporting librarians working in countries where freedom of expression is not always respected. FAIFE also took part in a UN-sponsored mission to evaluate the reconstruction of library collections in Kosovo. We fulfil our commitments at all levels, for the greater good of libraries and librarians around the world.

I would like to conclude here on an optimistic note. For the first time since the payment system for IFLA's membership fees was set up, we have succeeded in finding a budget solution which allows us to announce here today a significant reduction in fees for institutional members in the least developing countries. At the same time, we are proposing to apply small changes to reflect increases in costs every two years, so as to avoid sudden drastic increases at irregular intervals. From now on, the least developed countries will pay a membership fee nearly 60% lower than other countries. This is real progress toward real democracy within IFLA, which will, I hope, allow countries in difficulty to continue in membership of IFLA and to benefit from all the advantages of membership. Despite their financial problems, they will be able to remain members of the library community and the greatest benefits of solidarity will be gained.

Those then were the main aspects of my work over the past year. I wish you all a useful and enjoyable conference, that brings together the guardians of books in the country of the book, at the beginning of a new millennium...

## Reference

- <sup>1</sup> In *Comtes du Yiddishland. Paroles do peuple juif*. Paris: Ed/ du Seuil, 2000.

# The Outsider as Insider: Speaking Earnestly about the Rushdie Case

## Arne Ruth

Arne Ruth is a Swedish journalist and visiting professor at Stockholm University. He was born in Berlin and came to Sweden in 1945 via Bernadotte Aid. He studied philosophy, English and political science at Gothenburg University and journalism at the University of South Florida. Mr Ruth worked for several Swedish daily newspapers and the Swedish Radio and Television Corporation. In 1977 he became cultural editor at the daily, *Expressen* and in 1988 he became editor-in-chief for culture at the leading liberal daily newspaper, *Dagens Nyheter*. Mr Ruth left *Dagens Nyheter* in 1988, and since then he has published works on European culture and politics. He is the author of *Trans Europe Express* with essays on cultural and political trends in Europe, and co-author of *Samhället som teater* (Society as Theatre), which analyzes the aesthetics of Nazism as a means of social persuasion. During the Balkan wars he was strongly engaged in writing about and supporting cultural activity in solidarity with Sarajevo. Arne Ruth is an internationally known advocate for freedom of expression and was the Chair of the Swedish Rushdie Committee. He may be contacted via the IFLA FAIFE Office at Islands Brygge 37, DK-2300 Copenhagen S, Denmark (fax: +(45) 33667064; e-mail: faife@ifla.org).

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Speaking in a city which is the site of David's kingdom and of the Jewish temple, of the crucifixion of Jesus, and of Muhammad's ascent to heaven, and where history is relentlessly evoked to fuel support for some particular vision of the future, is deeply symbolic for me. I am an agnostic, which means that I am an outsider to all arguments based on religion. Yet, as a secularist, I recognize that art inspired by religion is part of my identity as a human being. You don't have to be a believer to be inspired by the beauty and mystery of visions of the sacred formed by artists rarely known by name. Jerusalem, regardless of conflicting religious claims, belongs to that universal heritage. Sharing Jerusalem is surely the only way of uniting it. Even as an outsider, I want my part of its universality.

I count on your profession as allies in a never-ending effort: making knowledge, including artistic visions, accessible to every human being as part of a universal heritage.

I don't have to tell you that such a vision is still utopian. And the Rushdie case, of course, is a case in point. I will start by quoting from a British novel, published two years ago, *Fatima's Scarf*, indicative of several aspects of the problems we are now facing in the cultural field. The scene is a public square in Bruddersford, an imaginary English town with a large Muslim population:

The silence of three thousand tongues is awesome as the satanic book is held aloft by Mustafa Jangar. Intently the all-male crowd observes the fastening, the pinning (as if a wild animal has been trapped), the dousing of fuel - the sudden spurt of flame which brings a vast exhalation from six thousand lungs.... As the flames take hold and the devil's oily

smoke rises from the blackening pages, so the breath of the crowd grows hotter. God is great, Allah akhbar!

Does this ring a bell? In the early 1990s, a novel was burned by militant British Muslims in Bradford, a real town in the north of England, as part of an ideological battle started by a dictator proclaiming to have a direct line of communication to heaven. Through a strange sequence of events, its author was projected onto the world stage, seemingly drawn into the centre of a "clash of civilizations", described as inevitable by a political scientist-turned-apocalyptic, Samuel P. Huntington.

The author of *Fatima's Scarf*, former literary editor of the New Statesman, David Caute, makes no bones about the fact that he's written a satirical *roman à clef*. *The Satanic Verses* is reinvented as *The Devil: An Interview* in his novel, and elements of the plot clearly link the main character, the Egyptian-born author Gamal Hamel, to the real-life Salman Rushdie. In both cases, books are burnt, a *fatwa* is delivered, and the author goes into hiding. Gamal Hamel has a vision of himself as a writer-turned-superstar. His conceited, talented and provocative presence dances in and out of the plot.

The title is taken from another character, a troubled, anorectic 15-year-old schoolgirl staging her own protest against the book by wearing a Muslim headscarf, a *hijab*, in defiance of her school's regulations. Symbolically, this is central to Caute's perspective: the paradox that an act of acquiescence to the norms of a minority culture, performed in support of the banning and burning of a novel, could also be regarded as a liberating manifestation of protest against a brand of racism masquerading as emancipation.

And in a strange way, by satirizing the hypocrisy of Western liberal permissiveness, *Fatima's Scarf* unintentionally presages its own publishing fate. According to the accompanying publicity material, this book is "the novel no British publisher would print". Twenty-five publishing houses turned it down, and Caute had to publish it himself.

That seems to be only the tip of the iceberg. British writer Jenny Taylor has made a study of unofficial censorship affecting books dealing with Islam. It is doubly depressing: tacit submission to religious pressure on the part of publishing houses and university departments, and no public outcry over their lack of commitment to the principles of open discussion.

I'll make no bones about my own position on the issues raised by *Fatima's Scarf*, both by its content and its fate. I've been Chair of the Swedish Rushdie Committee until all the committees were dissolved in late 1998. Symbolically, I am among the targets of David Caute's satire: a member of the smug liberal-establishment circle trying to elevate its status by appearing morally committed while neglecting the concerns of the downtrodden minority. Yet, I am perfectly willing to read *Fatima's Scarf* as a novel of the times. It deals with a hidden malaise in late 20th century democracies: the idea of emancipation turning in on itself. Its fate in the publishing industry proves the relevance of its subject. The Enlightenment has begun to vacillate and its liberation perspective to dim.

Part of that is the result of social changes in the Western world. Increasingly, traditional material motivations intermingle with newly formed ethical, religious and aesthetic attitudes connected to differences in sex, ethnicity, age and social appearance - all of them far less stable than ideologies based on the class divisions of the traditional industrial society. Especially in the Nordic countries, the emergence of a spectrum of minority positions, only partially connected with the

normal political process, is a confusing new phenomenon. The logic of social and political behavior based on the idea of similar motivations is becoming more and more nebulous. These changes are now very influential in defining the aesthetic field.

The number of styles seems to be constantly increasing, innovation and relinquishment appearing almost simultaneously. Even the most dominant of the post-religious mythologies has evaporated: the sense of historical progression. Punks and skinheads spotlighted the social phenomenon of reconstituting the loss of conventional identity by a provoking personal style. Their attitudes were poles apart, but they shared the method of aesthetic invention. Styles within the youth culture arise on the spur of the moment, changing and disappearing in ways that cannot be anticipated. Their network spans the world, regardless of distance. And the inventions very often become the rallying cry of some part of the fashion industry, rapidly destroying any challenge originally present. Commercially, even the middle class has been infected by the lifestyle germ. In this entire field, confusion is surely the only stable tendency.

What has been lost in this muddle is the core of the modernist project: the idea of creating art of universal significance. If aesthetics is nothing more than a myriad of personal identity characteristics, the concept of guarding its free development becomes irrelevant.

Commercial art, now increasingly handled by globally based multimedia empires, has no problem about being defined in strictly instrumental terms. André Schiffrin, the American publisher who left the once legendary Pantheon Books when Random House, the new owners, requested a very high profit level as the set basis of operations, has told an illuminating story. In 1997, he lunched with the New York editor of *Playboy* magazine. They discussed the success of *Playboy* ventures in Communist China. The

"bunny", *Playboy's* visual image, was now a marker on a range of products from T-shirts to condoms. Of course, the editor told Schiffrin, in order to develop the market, *Playboy* would be very careful not to offend Beijing's old men. Sure enough, a week after their lunch, *Playboy* cancelled a contract to print an excerpt from author Paul Theroux's outspoken book about Hongkong.

Rupert Murdoch's infamous decision not to broadcast BBC on his Chinese cable television network and the extravagant launching of an unreadable book by Deng Xiaoping's daughter by his American publishing house Bantam Books - a hundred thousand dollars were invested to bring her to the United States - prove the dangers of book publishing becoming part of global media empires. Controlling the market also means reducing choice. The mechanism of Retail Display Allowance, the money paid by American publishers in order to have their presumptive bestsellers prominently exposed by giant bookstore chains like Barnes & Noble, effectively eliminates the chances of readers choosing from a large range of titles. André Schiffrin's new publishing house, The Free Press, continues to publish translations of high quality world literature. On average, Barnes & Noble, with approximately 1000 stores, used to order 300 copies and sell about one tenth of them. When Schiffrin publicly pointed to this absurd situation, Barnes & Noble stopped ordering his line of books altogether.

They also blocked the sale of *The Satanic Verses* for a while after the *fatwa* was issued, ostensibly to guard employees and customers (two more US book chains did the same). And in Europe, several publishing houses bowed to pressure. The worst case is Kiepenheuer & Witsch in Cologne, Rushdie's traditional German publisher. When the German edition finally emerged, it was the result of a collective author's publishing effort, led by Hans Magnus Enzensberger and Günter Grass.

William Nygaard, director of the Aschehoug publishing house in Oslo, is a model contrasting case. A fortnight after the *fatwa*, he was publicly threatened, following a mass demonstration by militant Muslims on the streets of Oslo (Norway has a large Pakistani community). His home, office and staff were placed under police surveillance after continued threats. Yet, within two months, Aschehoug launched *The Satanic Verses* in Norwegian translation, six weeks ahead of schedule. When the book was launched, two Norwegian bookstores were set on fire and a third received a bomb threat. Muslim organizations in Norway then brought the matter to court, using a blasphemy paragraph still to be found in the Norwegian constitution. The matter was dismissed by a civil court two and a half years later. In the meantime, a year after the *fatwa*, Aschehoug had published the first paperback edition in the world (US readers had to wait another year and British readers three more years for their paperback editions). In 1995, Nygaard narrowly escaped an assassination attempt. He never bowed one inch in his support for his threatened author.

Viewed against the wider tendencies in the publishing world, Nygaard seems to represent a threatened species. He acts in accordance with a very special tradition: regarding literary innovation as the core element of his trade, to be guarded against both political and commercial pressures. And the second kind of threat may be more insidious than the first one, because it's rarely admitted.

One of the short stories in Salman Rushdie's collection, *East/West*, deals with the relationship between finance and serious art in the late 20th century, in East and West alike. It tells how the magic of the fairy-tale is transformed into a financial product and thereby loses its power to liberate. A pair of red slippers are to be sold at an auction in New York. They possess a magical power straight out of *The Arabian Nights*. Whoever wears them can

be whisked home in an instant. But the slippers have long been inaccessible except as an investment for the super-rich. They are forever locked away behind glass and armor plating. The magic of the fairy tale is transformed into a commercial product and thereby loses its power to liberate.

This story is a striking metaphor for present-day commercial realities. According to Souren Melikian, arts correspondent for the *International Herald Tribune*, the targeting of paintings and art objects by investors, including funds, means that traditional connoisseurs are being driven out of the market. Objects are rarely bought out of desire, and handling them has nothing to do with estimating their quality. In Melikian's words:

The consequences for the living culture are incalculable. Whether the talk is about paintings, sculpture or objects, a certain form of intimate acquaintance with the art that can only develop from tracking objects and assessing them out of personal desire is vanishing... The end of spontaneous collecting is not just sapping the foundations of traditional connoisseurship. It will alter the relationship of those brought up within Western culture to the heritage of the past, which will seem infinitely more remote.

This pessimistic message has been pointedly illustrated by a surrealist train of events culminating in Japan last year.

In the spring of 1990, at the peak of the art market boom, Vincent van Gogh's *Portrait of Dr Gachet* was sold to a Japanese paper magnate by the name of Ruoei Saito, then 75 years old. He paid a cool USD 82.5 million, which is still a record for any work of art.

Mr Saito passed away in 1996. Before he died, he made a public statement declaring that he wanted the canvas to be cremated with him. On hearing this, a representative of Amsterdam's van Gogh museum, while conceding that

there was no legal way of blocking the wish of the owner, appealed to Mr Saito's conscience, declaring that "a work of art remains the possession of the world at large, even if you have paid for it".

Mr Saito's creditors were probably more narrow-minded in their definition of the matter, but they decided to keep the asset to safeguard their interests. The canvas was left in the warehouse where it had been kept wrapped in cotton ever since Mr Saito bought it. It had, of course, been purchased as an investment, not for display.

A year ago, however, while dozing to the BBC World Service's morning news bulletin, I heard an item that instantly brought me awake. The BBC reported that the painting had apparently disappeared, and there was now speculation that the inheritors might, after all, have followed the wish of the deceased.

Luckily, this proved unfounded. A few days later, it turned out that *Dr Gachet* is alive and well. And it's not the first time that he has been resurrected. The former *Wall Street Journal* reporter, Cynthia Saltzman, has traced the painting's history in a book named after it. In 1933 it was, it seems, owned by Frankfurt's Städtische Gallerie, and the directors hid it in the museum attic to save it from being burned by Nazi leaders. Eventually, Göring got hold of it and used it to fund his collection of tapestries. It was sold in Amsterdam in 1938 for what at the time was a staggering sum of USD 53,000, and it finally escaped to the United States with the new owner, Jewish financier Siegfried Kramarsky. It was his heirs who sold the work to Mr Saito at Christie's 1990 auction.

Had the news of the final destruction of the painting proved correct, I would have had second thoughts about my general revulsion to harsh punishment. My desire for revenge, however, would have been in vain. The destruction of art works should have been on the list of the Nazi leaders' crimes against humanity. Morally, they are. But

capitalism is a different matter. Owners may do whatever they like with their legal possessions, with the very limited exception of the buildings classed as belonging to a common heritage.

On the national level, pride and shame would block the kind of arrogance shown by Mr Saito. A Dutch or Flemish financier might think twice before declaring that he wants to bring a van Gogh painting with him into heaven. To me, the problems inherent in globalization do not lie in the process as such. The interlinking of the economies of the world is an inevitable process, driven onwards by the technological leap of electronic communication which we are all benefiting from. The real danger is the reductionism used to legitimize the emerging global power constellations.

The logic of accumulation inherent in the dominant school of economics has no ethical basis except existing legal formalities, varying from country to country. The ideology presently defining the rules of the game says that only the market can judge the true value of anything, including art.

I have this on the best authority. Deirdre McCloskey is an American economist deeply indebted to the so-called neoclassical Chicago School, the founding institution of the economic approach that presently holds sway in the world. She has, however, recently changed her position. In a brilliant essay, *Missing Ethics in Economy*, she makes the following observation of her former line of thought: "In policy questions the ethical position that economics recommends is that of the social engineer, who provides plans indifferently for full employment or extermination camps. The social engineer will protest that he would have nothing to do with extermination camps. But then he must ask where he draws the line, an ethical deliberation that economists are reluctant to undertake." McCloskey makes a strong case for reviving the original bourgeois virtues, enlightenment ideals of dis-

cussion, openness and fairness far beyond the reduction of every decision to market procedures.

McCloskey is one of several economists who have started to confront the orthodoxies presently held by our establishment as eternal truths. The role of culture in relation to the economy is a crucial aspect of this way of thinking. I got an inkling of what's going on by staying in Amsterdam for three weeks last August. Arjo Klammer is the world's only Professor of the Economy of Art and Culture, holding this chair at Amsterdam University. And he seems to be a driving force in a concerted effort to remove the arts from the present grip of reductionists.

Klammer has published an anthology on this entitled *The Value of Culture - On the Relationship between Economics and the Arts*, where, among others, McCloskey's essay can be found. The cover is fittingly covered by Van Gogh's *Portrait of Dr Gachet*.

Klammer's book introduced me to one of the most interesting attempts recently made to define the interaction between the material and creative aspects of aesthetic innovation. Drawing, among others, on Dutch historian Johan Huizinga's theory of human play, outlined in his book *Homo Ludens* from 1938, the German economist Michael Hutter points out that economic activities can be regarded as a game, given meaning and structure by a general compliance with a firm set of rules. The apparent objectivity of the game is ended whenever a crucial element ceases to function. Money is such an element. The inflation present in the Weimar Republic meant that regardless of what may have been printed on the banknotes, people had to learn bartering in a pre-capitalist fashion. This predicament has reappeared in present-day Russia.

The arts are a different sort of game, very much what Huizinga defined as the essence of play. Huizinga suggested a number of basic criteria for a game: it should

be unnecessary and thus involve free action; it should be outside of ordinary life; it should involve the instant gratification of needs and desires; and it should be closed and limited, running its course and thus having a meaning in itself, but also embodying rules for its actual execution; and it should contain an element of tension and chance.

Truly innovative art, the aesthetic discoveries which might eventually influence the commercial sector as well, has to be based on a different set of criteria than market expectations. It should be regarded as a game in which a sense of quality is generated among those taking part. And they have to be risk-takers. The innovative artist puts his or her career on the line in developing specific artistic forms, which means changing established rules. Obviously, this process is never totally independent. If the artist is to reach an audience, market forces, benefactors and/or authorities will have to be involved. But the crucial question is to what extent the *Homo Ludens'* definition of the act of creating can be supported by social institutions.

The orthodoxies which lack concern for posterity - the Saito type of attitude - and are now eliminating playfulness in the arts field will have to be combated with the kind of energy shown over the past 40 years by those involved in the environment movement. A new, heretical way of thinking among economists is probably a sign that a seemingly impermeable structure of thought is beginning to crack.

In my opinion, the concept of universality has to be rediscovered. It is closely linked to quality. And there is no other way of judging the significance of a work of art than making it the subject of public discussion. This has been a major element in advancing artistic freedom in the post-war period. Media conventions, however, work against serious reflection on such issues once the controversies spread beyond the national realm.

The Rushdie case is a vivid illustration of the failure of international media to come to grips with occurrences that defy classification in traditional news terms. CNN-style television creates and destroys events on a minute by minute basis. Its shroud of objectivity is based on the assumption of immediacy, instantly leaving behind what was last reported and leaving the audience with little chance to check the records. The quality dailies, once the main coordinators of the public agenda, cannot escape the same predicament. The ever-narrowing time frame of TV-dominated news increasingly leave hindsight and analysis out of the picture. Rushdie was an early victim of this game.

When he had evaded the death threat for a thousand days, he described his predicament in a tongue-in-cheek essay entitled *A Thousand Days in a Balloon*. He was, of course, living underground, constantly forced to move from place to place. At the same time, he felt suspended high above reality, unprotected and constantly under scrutiny.

Rushdie the human being and author had vanished from sight. What remained was a symbolic figure by the same name, saint to some, devil to others, protagonist in a global drama.

The first time he broke his isolation, on 12 December 1991, his imprisonment had lasted for 1032 days. Rushdie turned up in New York, and addressed the students at the graduate school of journalism at Columbia University on the occasion of the 200th anniversary of the US Bill of Rights.

For this particular audience, he extended the metaphor of his life one more step in the direction of playful absurdity: the balloon that had kept him shut away had actually been a soap bubble. Now he was bursting the bubble, stepping forward anew as a visible figure, an author with a tongue-in-cheek attitude to his strengths and weaknesses who refused to play the part of the living legend.

In November the following year, Rushdie visited Stockholm and received Swedish PEN's Kurt Tucholsky Award for exiled authors from Bengt Westerberg, deputy prime minister and leader of the Liberal Party. At the award ceremony, Rushdie wore a button portraying Franz Kafka. When I asked him what it stood for, he replied that he had always regarded Kafka as the greatest humorist of them all. Laughter, he said, deserves to be taken seriously.

Two and a half year later, in 1995, nothing about the terms of Rushdie's imprisonment had changed. But his laughter bubbled up just as readily. Salman transformed a May evening in Copenhagen to a surrealistic happening, making members of the Rushdie Committees let go, as if we had been fifth graders on a school outing.

We rode the big dipper at the Tivoli fairground, yelling in unison on the bends and the steep inclines. It was a giddy, hair-raising experience. The glow of the colored lights made the early summer twilight magical. The air was mild and saturated with the scent of flowers.

Salman was at the centre of the party. He whooped louder than anyone as the dipper rushed down from the heights, crashed his dodgem head-on into all and sundry, wearing a fiendish grin, and took his seat in the big wheel with an utterly infectious smile of delight. For once, we were all able to laugh at ourselves. Giving ourselves up to play we were totally in the present.

Security was governed by Danish pragmatism. The bodyguards allowed us to improvise in our enjoyment of the place's attractions. They themselves remained discreetly in the background. Anyone not in the know would never have guessed their true role.

This was eminently human. Who would have expected to bump into Salman Rushdie in a dodgem car at the Copenhagen Tivoli? It did not

matter particularly if someone recognized him - the important thing was whether people knew in advance when and where he would be popping up. Salman enjoyed three hours' leave from the prison of the *fatwa*.

The following day, we were to meet with three Danish ministers who it was hoped would be willing to plead his cause with the EU as part of the new strategy. His liberation was still nothing more than a distant ray of hope.

As the big dipper slowed to a halt on that evening in Copenhagen, Carmel Bedford - coordinator of the international campaign - turned and whispered in my ear: "This is a bit like our struggle against the *fatwa*. Twists and turns that no one can foresee. A long slow haul and then everything happens at lightning speed. And suddenly we're back where we started".

Neither she nor anyone else could have known that, though beset with unpredictable developments, the campaign was about to turn a corner. It would take another 760 days before the Joint Rushdie Defence Committees could issue their final statement. We met at the Voksenåsen Conference Centre in Oslo, run by the Swedish Ministry of Culture. After consultation with Salman on the phone, we agreed to dissolve the network.

Three weeks earlier, on 25 September 1998, I had watched a smiling Salman Rushdie raise his fist in front of more than a hundred journalists and photographers at the Article 19 offices in Islington High Street in London. It was a gesture of victory but also of defiance. During two chaotic and exuberant hours facing the media he redefined the terms of his existence. The room was packed, but the only guards in sight were the two police officers positioned at the entrance. Symbolically, Salman defused the impact of the *fatwa*. Having been very much present as a writer during the *fatwa* decade, he now reappeared in person.



The day before, Iranian Foreign Minister, Dr Kamal Kharazzi, and his British counterpart, Robin Cook, had addressed a press conference at the UN General Assembly in New York. In an official declaration, issued jointly with a statement by the British government, Dr Kharazzi promised that the Iranian government had "no intention nor is going to take any action whatsoever to threaten the life of the author of *The Satanic Verses* or anybody associated with his work".

The International Rushdie Defence Committee had been formed in London a week after the fatwa, since then using the Article 19 offices as its campaign centre. In 1992, the Norwegians had started the process of forming nationally-based committees. Now, in our final statement, we told the world that "the aims of the campaign had been fulfilled".

We all realized that taking this position was a gamble. It was the end result of a redefinition of the conflict that had increasingly influenced our strategy from 1994 onwards. Rather than focusing on the fatwa as a religious edict, we had targeted its political implications. Expert consultants from the Muslim world had told us that we could possibly force the Iranian government into issuing a political declaration that it would abstain from implementing the fatwa, but we would never succeed in making it formally revoke it in religious terms. It is normal Islamic practice to let the power of a religious edict dissipate over time. By settling the issue politically we could start to de-escalate the symbolic confrontation and hope that the religious malediction would fade.

In 1997, Benoît Mély, a member of the French Rushdie Committee, drew our attention to a book recently published in France, *La fatwa contre Rushdie*, by Ramine Kamrane, an Iranian-born political scientist at Paris University. Distinguishing between the theological, political and strategic aspects of Khomeini's thinking, Kamrane claimed that it had been a major

mistake in the Western world to accept religious terms as the defining elements in the conflict. Rather than relating the fatwa and the ensuing acts of violence against the Italian and the Japanese translators of *The Satanic Verses* and its Norwegian publisher, William Nygaard, to the theology of Khomeini, we should see it as a result of his concept of state.

In Kamrane's view, Khomeini's "sacralization of the game" should be viewed as traditional political power play using unconventional means. The Iranians could argue that the conflict emanated from an attack on Islamic sacred values, incomprehensible to any outsider, rather than from a position taken by a totalitarian government using religion to legitimize its hold on power. As a result, the defense of Rushdie and the principle of freedom of expression were deadlocked into an issue where arguments based on international law could be dismissed as irrelevant by the Iranians. And many Western intellectuals fell into the trap of seeking to solve the conflict by means of dialogue with supporters of the fatwa, in the false hope of some kind of compromise eventually emerging.

In Khomeini's political theory, the power to govern rests on a direct relationship with divinity, making religious authority the only legitimate source of leadership. According to Kamrane, it is a mistake to view this as a traditional Islamic concept. Rather, Khomeini's political theory mirrors traditions of Western Enlightenment while claiming to represent the opposite. In its acceptance of formal elements of modern constitutionalism, like the establishment of a representative parliament, while at the same time leaving the ultimate political decision-making to a religious leadership, including the choice of who is allowed to enter the political arena, it should be viewed as a declaration of war on secularization as an aspect of modernity.

The campaign eventually left the sacralized version of the conflict to one side, accepting only secular

terms of argument as relevant to a political solution. While the Thatcher government vacillated by half applying the concept of a sacred religious space, the Norwegian government initiated the political change at state level in 1992 by allowing government ministers to meet Rushdie and, through diplomatic channels, by consistently opposing the fatwa with arguments based solely on international law. In Britain, the Blair government eventually made this approach the core of the British position. In doing so, it finally forced the Iranians into formally recognizing the secular element of the conflict, while symbolically preserving the purely religious definition.

In political terms, the leadership of a theocratic state had finally been forced to accede to international rules, no longer able to use a different concept of universality, the binding force of religion, as its source of legitimacy in foreign relations.

The fact that this meant a distancing of the political sphere from religious prescriptions was noted in Iran as well. Three weeks after the declaration by the Foreign Ministers the Union of Hezbollah Students, a leading bastion of orthodoxy in Iran, issued a statement defining the British-Iranian declaration as an illegitimate separation of religion and politics, causing "deep regret and sorrow among Iranians and all the Muslim world". The Hezbollah Students accused the Khatami government of overstepping a crucial boundary, taking a decision which "belongs exclusively" to the spiritual leader, Ayatollah Khamenei, who, it was declared, "hasn't retreated a single step from (the late) Ayatollah Khomeini's decree".

This position may enjoy support in parts of the Iranian power structure. But in formal terms, it seems to be based on an illusion. Ayatollah Khamenei's total silence on the matter indicates that the separation of religion and politics in relation to the fatwa has been acceded to by Khomeini's successor. If this situa-

tion holds - and it has now done so for almost two years - it seems to indicate a fundamental change in the Iranian definition of state and religion. In their recently published book, *Iran: comment sortir d'une révolution religieuse*, Islamologist Olivier Roy, and political scientist, Fhrad Koshrokavi, interpret the official statement as a definite sign of the emergence of an autonomous political sphere in Iran.

Looking back now at our playful excursion with Salman to the Copenhagen Tivoli, we in fact, without realizing it, had started to reduce the impact of the *fatwa*. We claimed the right to have fun regardless of the weight of authority. Play and fiction are two related ways of using the imagination. Throughout history, they have been anathema to monolithic structures.

One day before the campaign ended, on 18 October 1998, the Rushdie Committees hosted a seminar entitled "The Fatwa Decade - An Acid Test of Universal Values" at the Voksenåsen Cultural Centre in Oslo, established as a gift from the Norwegian government to the people of Sweden in recognition of Swedish support during the years of occupation.

Among the speakers at the seminar were the German author Hans Magnus Enzensberger - who, as I stated earlier, was instrumental in launching a collectively backed German edition of *The Satanic Verses* when Rushdie's publisher Kiepenheuer & Witsch backed down in 1989 - the Syrian philosopher, Sadik Al-Azm, the Iranian author, Faraj Sarkoohi, now in German exile, and the Iranian literary scholar, Haideh Daragahi, living in Sweden and a consultant to the Swedish Rushdie Committee. The playful role of literature as a universal value regardless of national borders and religious and ethnic differences figured prominently in the discussions.

Throughout the *fatwa* decade, starting in his 1990 essay *The Importance of Being Earnest about Salman Rushdie*, Al-Azm held that

the main reason why *The Satanic Verses* caused such violent reactions was its literary sophistication in treating its theme. Al-Azm reminds us that James Joyce's *Ulysses* was prosecuted for blasphemy, obscenity and subversion, and was banned in the United States until 1933, and in Britain until 1936. He makes the case for a universal definition of aesthetic modernism as an integral part of the Enlightenment project.

By using religious mythology as elements in a powerful piece of fiction, appropriating a canonical Muslim story for his own creative, artistic and literary purposes, Rushdie started a process of literary emancipation in the Muslim world. He pointed to a door opened a century ago by literary modernists in the West, but up until now largely inaccessible in Muslim countries. In Al-Azm's view, this modernist avenue will never be closed again, regardless of the *fatwa*.

Authors with a Muslim background will, inspired by Rushdie and without asking for permission, use the history and symbols of Islam as fictional ingredients, as Western authors have done for centuries, many of them prosecuted until recently. The Finnish author Hannu Salama's novel *The Midsummer Dance* was banned for blasphemy and sentenced to be burned by Finland's Supreme Court as late as 1968. It was released only by a special decision from Finland's President Kekkonen.

Haideh Daragahi offered an argument related to Al Azm's perspective in another essay written in 1990, *Reclaiming The Satanic Verses as Literature*. In her view, *The Satanic Verses* can be read as a configuration of the process by which humans are faced with "the knowledge that truth is not unitary and eternal, but time-bound and contentious within itself - the truth not of religions, but of art." Since every reader will interpret it differently, a work of fiction is an invented vision which can never pretend to be anything but transient. By establishing fiction as an alternative method of interpretation, authors raise the

perspective that even sacred books can be read as invented visions of human existence, created collectively at specific points in history. This quality of transience makes sophisticated literature anathema to authorities that base their power on singular interpretations of religious texts.

At one point in *The Satanic Verses*, Rushdie deals jokingly (and preciently) with the risks involved in using religious mythology in a work of art. The actor, Gibreel Farishta, who has miraculously recovered from a fatal disease, is to appear in another Indian "theological" film, this time exploiting core ingredients of a sacred text. The two producers involved try to assess the risks:

It would be set in an imaginary and fabulous city made of sand, and would recount the story of the encounter between a prophet and an archangel; also the temptation of the prophet, and his choice of the path of purity and not that of base compromise...It is a film...about how newness enters the world. But would it not be seen as blasphemous, a crime against..."Certainly not"...Fiction is fiction; facts are facts.

The idea of creating a work of art defined according to its inner laws means taking all sorts of risks. When Hannu Salama made his speech of defense at the mid-1960s Helsinki trial, he defined the core of this position: that art should be judged in relation to its inner qualities.

As I see it, the outcome of any creative process leading to a work of art is by no means dependent on whatever my intentions may have been when I took up my pen, but on what that work of art - which pursues its own course - may require in order to assume the shape demanded by my sense of form and my capabilities, a shape from which the slightest deviation in one direction or another would necessitate changes in other parts of the work as well. In my per-

sonal opinion, I managed to write a work that corresponded to the demands placed on it by my sense of form. The fact that this work may not be of the highest quality is not due to any lowering of artistic standards on my part, for instance by interrupting the narrative to give free play to any blasphemous motives I may have had, but to my limitations as a human being.

Salman Rushdie has made exactly the same point: "you have the sense that the universe is writing your book. The idea of pragmatism simply doesn't feature on the scale of what you are doing". He stated this in reference to his latest experience of the consequences of practicing artistic freedom. Amongst other things, his novel *The Moor's Last Sigh* has caused one of India's most colorful political entrepreneurs - a man who has established mafia rule in Bombay by playing the xenophobia card - to explode in fury at what he views as a malicious portrait of himself in the novel (nowadays, it is hard to get hold of it in the very city where its main events are set).

Rushdie has said that he took the trouble to make the character as unlike this Mr Thackeray as possible. To make absolutely sure that no one should take the satire seriously, he chose to make the character an impassioned lover of cricket. He could not imagine anything that might be further from Mr Thackeray's domain. But it was precisely this that infuriated Bombay's mafia boss more than anything else. Rushdie, verily a man of sound literary instincts, had unwittingly hit him where it hurts most. Cricket, it turned out, was Mr Thackeray's secret passion.

This illustrates very clearly what is so special about the imaginative talents of a truly gifted author. Without realizing it in advance, he touches the most sensitive spots in contemporary life. In Europe, only a handful of people know who Mr Thackeray is. And - outside Britain and Ireland and possibly Malta - who cares about cricket on our con-

tinents? But we read the portrait of Mr Raman Fielding in the novel as an intimate study of the archetypal villain; and we shudder at the thought of what can happen when politics becomes a business approach using the exploitation of prejudice as its marketing concept.

Conventional British wisdom holds that Rushdie was driven to challenge fate by arrogance and hubris rather than by artistic vision (a suggestion made by thriller writer John le Carré in 1997). Public comment in Britain has had an accusatory undertone, even from the lips of supposedly radical intellectuals. To me, however, Rushdie's main problem seems to be that he has mastered the British style of writing better than most natives. He can be mistaken for an insider. This makes him an even more dangerous outsider. The general lack of support for his case from the English literary elite and the revulsion among Britons with a nostalgic feeling for the Empire, like Mrs Thatcher, seem to prove my point.

Imagine for a moment that a thoroughly British author like Graham Greene or William Golding had suffered the same kind of fate as Rushdie. I suspect that this would have been ranked a national disaster. From this perspective, the attempted satire of David Caute's novel *Fatima's Scarf* - the one I referred to at the beginning of this lecture - turns in on itself.

Sadik Al-Azm's choice of title for his essay on the Rushdie affair, *The Importance of Being Earnest about Salman Rushdie*, should be viewed against this background. By using the title of an Oscar Wilde play as a metaphor for Western double standards, Al-Azm points to the potentially liberating role of the outsider among us.

To understand his point, one should look at Wilde's Christian names: Oscar Fingall O'Flahertie Wills, born and raised in Dublin.

His mother, Jane, who used the pen-name "Speranza" (from the world of Dante, her idol), set the tone and

pointed the way. She defied all imaginable conventions, including the golden rule that the English were divinely entitled to Ireland.

Wilde the Irishman was the very incarnation of the artist as heretical outsider. His true crime was to have outshone every native Englishman in the art of being English. He so mastered the social conventions that he could make them appear ridiculous. He raised the mannered chatter of the English upper classes to the level of near-absurdity. By seeming to focus on the surface plot, he made his real theme society's double standards. The ruling classes constantly tempt fate by flouting their own conventions. Time and again, Lady Bracknell in *The Importance of Being Earnest* reiterates her inflexible system of rules, only to violate it in the next instant. To make life endurable, Algernon and Jack use double identities. And Gwendolyn and Cecily raise superficiality to new heights by refusing to marry anyone who is not called Ernest.

The Irish had been denied access to their own language. They avenged this by cultivating sarcasms about the "mother country" and using the English language as dynamite. Swift, a Dubliner by birth, had set the satirical tone back in the 18th century.

Wilde and Yeats and Joyce and Beckett all belong to this community of outsiders. In time, the circle has widened. The quarter of the world that the British suppressed is now exacting its tribute from the suppressor. Talented writers from the former colonies are ridiculing the conventions in the same way as their Irish predecessors did. Like Wilde, Salman Rushdie is an immigrant who has mastered the English style better than the natives. That is why a satire like *The Satanic Verses* scourges Thatcher's and Major's Britain at least as hard as Khomeini's Iran.

The heart of the paradox lies in the language and the diction. Rushdie attended Eton and Cambridge and assimilated the tone of the upper

classes. Wilde arrived at Oxford as a 21-year-old and rapidly suppressed his Dublin accent. And he absorbed the style so totally that with his extravagant flourishes in both language and dress he was able to provoke the fury of "real" Englishmen. His appearance and behavior constituted a permanent satire on the circles to which he belonged, including the shadow world of the homosexuals.

But there was also a more profound reason for playing the dandy. During his years in Oxford, he perpetually ridiculed the university's religious rituals. At an exam where he had said something particularly offensive he was ordered by way of punishment to do an impromptu translation of the story of Judas and the 30 pieces of silver from the Greek. He accomplished the task with such panache that the professor wanted to let him go after only a couple of verses. "Hush, hush," replied Wilde, "let us continue so that we may know what befalls the poor fellow".

To treat the Bible as a fascinating book of stories rather than god-given truth, as Wilde did, bordered on blasphemy. But Wilde stood his ground to the end. In *De Profundis*, the long, harrowing letter he wrote from prison to his former lover, Lord Alfred Douglas, there is a passage about how he views Christ. Whether or not this saviour figure was holy was unimportant. Christ was above all a pioneer of artistic freedom, a free man in all things who would not let his actions be governed by any conventions whatsoever. And in his remarkable essay, *The Soul of Man under Socialism*, in which he rejected the idea of the right of ownership as a basis for society - an extremely provocative position to take in England in those days - Wilde advocated the right of the free development of the individual irrespective of class. The goal of history was to make the artistic freedom that Christ had been the first to achieve available to all.

In the same way, Rushdie provoked the *fatwa* by describing the prophet Muhammed as a free-thinker strug-

gling with all the paradoxes of human existence. It was no almighty god who determined his worth but his own actions. The lives of both Christ and Muhammed gave rise to narratives that defined historical eras.

Most of us Europeans had forgotten the controversies over blasphemy in our own history and thus were utterly surprised when the Rushdie case came along. But there is a distance between myth and reality when it comes to real freedom of the arts. Right now, there is a battle going on not only in Egypt - where the Syrian author Haydar Haydar has been accused of insulting the Prophet Mohamed with his novel *A Banquet for Seaweed* - but in Greece as well (the fact that a number of prominent Egyptian intellectuals have taken a strong stand in support of Haydar proves the relevance of Al-Azm's perspective). The novel *M to Nth Degree*, by Greek former left-wing MP Mimis Androulakis, has been banned by a local court.

In 1993, the European Court of Human Rights upheld a decision made seven years earlier by an Austrian court to stop the film *Das Liebeskonzil* (The Council of Love). The original judgment clearly reveals a religious bias: "The public projection...of *Das Liebeskonzil*, in which God the Father is presented both in image and in text as a senile, impotent idiot, Christ as a cretin and Mary Mother of God as a wanton lady with a corresponding manner of expression came within the definition of the criminal offence of disparaging religious precepts as laid down in section 188 of the Penal Code".

There is an historic irony in the fact that such a decision has been upheld at the European level. The film is based on a play by the Bavarian author, Oscar Panizza, a rediscovered turn-of-the-century modernist who made religious and political hypocrisy his main target. In Kaiser Wilhelm's Germany, he found no lack of inspiration. His play was banned by a Munich court in 1895, and Panizza was sentenced

to a year in prison for blasphemy. In the Austrian film version, the director Werner Schroeter used a performance of the play by Teatro Belli in Rome as a basis and set it in the context of a reconstruction of the writer's trial.

The fact that the court's decision passed almost unnoticed shows the lack of a European perspective on such issues. In support of its ruling, the European Court applied the principle of giving national definitions of human rights a certain latitude, regardless of the symbolic implications of upholding outright censorship at a European level. In the case of blasphemy, this increases the danger of a broader definition in the future. As long as the act of satirizing Christian symbols can be regarded as an offense, there is no valid argument against giving other religions the same kind of protection. The US Supreme Court provided a classic explanation of why this trap must be avoided in its 1952 decision to free Roberto Rossellini's film, *The Miracle*, for showing in the United States:

In seeking to apply the broad and all-inclusive definition of "sacrilegious" given by the New York courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies... Under such a standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority...It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches or motion pictures.

In this respect, The United States is more deeply modern than Europe, despite the fact that religious attitudes there are more closely related to politics. The Supreme Court deci-

sion was influenced by the fact that to be an American also means to be a member of a minority. European Nation States were largely shaped by a concept of homogeneity, often both in terms of ethnicity and religion. But we have now reached a stage where parts of the American experience are relevant in defining European social and cultural issues.

In his essay, *Is Nothing Sacred?*, about images of divinity as at once inhibiting and liberating metaphors - published soon after the *fatwa* - Rushdie writes:

Literature is the one place in any society where, within the secrecy of our own heads, we can hear voices *talking about everything in every possible way*. The reason

for ensuring that privileged arena is preserved is not that writers want the absolute freedom to say and do whatever they please. It is that we, all of us, readers and writers and citizens and generals and godmen, need that little, unimportant-looking room. We do not need to call it sacred, but we do need to remember that it is necessary.

The essence of modernism in the arts is really a redefinition of the idea of a sacred space. And it's exactly this aspect which fuels the anger of religious powerholders, fearing the emergence of an inevitable plurality, incompleteness and contradictoriness in modern interpretations of the human condition.

In Salman Rushdie's book for children, *Haroun and the Sea of Stories*, written for his son while the *fatwa* kept them separated, the boy asks his father: "What's the use of stories that aren't even true?" The best answer to that question lies in the act of creation, which doesn't end with the writer, but includes the reader as well. Utopia still rests where it has always been found - in people's imaginations and powers of creativity.

In order to be truly liberating, works of art have to be accessible to all, guarded against commercial, political and religious infringements. Librarians can have a key role in making this possible in East and West, North and South.

# The Role of Word and Book in Covering History

## G. Y. Baklanov

Mr G. Y. Baklanov, a Russian writer and public figure, is the author of many novels and novellas published in 36 countries. He is a Laureate of the State Literary Prize, which he received in 1982 and in 1998. For many years he was the Chief Editor of the literary journal *Znamya*. Since 1998 he has been a member of the Board of Pushkin Library Megaproject (Open Society Institute, Russian Federation) engaged in supplying 5,000 Russian libraries with books from Russian publishers. At present Mr Baklanov is an active public figure, whose life is devoted to creating and establishing a new democratic society in his country. His ideas on the activities aimed at the development of libraries as informational, cultural and community centres are well-known and popular among Russian libraries. Mr Baklanov may be contacted at Lomonosvsky prospect 19, apt. 82, Moscow 117311, Russian Federation.

[Mr Baklanov delivered his paper at the 66th IFLA General Conference and Council, Jerusalem, Israel, 13-18 August 2000.]

My subject is "The Role of Word and Book in Covering History". However isn't it by the word that history is violated? Bread is cut by the knife. But how many people have been cut by that same knife?

In the beginning there was the word. And the word was God. Apparently believers would understand this in a similar way: God is the creator and the beginning of all that exists. For non-believers, the atheists, the message of this statement is the absolute power of the word in the first place, because every deed is preceded by thought and the thought is expressed in word. The thought that cannot be expressed in simple words is nothing; it must be thrown away.

I know the history of my country, Russia, better than any other; that's why I will mainly use examples from Russian history, obviously expressed by word. We had been told generation after generation for more than 70 years that the October Revolution of 1917 was the greatest event in world history, the greatest achievement for ourselves and for mankind. Tons of books were written about it, and indeed our schools and universities, even though they were ideologically biased, gave our students a good education. It is not accidental, therefore, that today the scholars of our country are working in many universities throughout the world and they are valued and appreciated, while we, after the Iron Curtain broke down and the frontiers were opened, are having a painful sensation of a permanent "brain drain".

In fact, the problem of "brain drain" is not new for Russia. There were quite a few bright people, who, because of different forms of discrimination, had left Russia under the Emperors Alexander III and Nicholas II soon after the Revolution. Streptomycin, which saved millions of lives from tuberculosis, was first discovered by the Russian emigre, Selman Waksman. At the Nobel Prize reception he told peo-

ple about a present he had received from a little girl from Sweden. "This morning I received from her the award which is even greater than the Nobel Prize: five flowers, each for every year of her life which she owes to streptomycin". There are, of course, many others: the paragon of Russian literature, Ivan Bunin; and the world-famous economist Vasily Leontiev. Russia and Denmark share the ninth and tenth place as far as Nobel laureates are concerned. But is the population of Denmark comparable with that of Russia? However, there are eight Nobel laureates in Denmark and eight in Russia. And yet there are nearly twice as many more Nobel laureates who are emigres from Russia.

Nevertheless, the first man who went to space was a Russian citizen. These are the scientists' gifts, the highly qualified work and high technology behind this feat. In fact, even before the Revolution Russia exported bread even though the harvests were worse than in Germany or in England. But there was space, a lot of open space, to our benefit. And now we have been importing bread for many decades. I wish all could be measured by bread alone! At the fronts of both civil war and the Great Patriotic War of 1941-1945, in the Stalin labor camps, there was hunger after "the collectivization" when bread was also exported in order to buy tools, when it was taken away from those starving to death. All of these calamities, were described as good and righteous deeds in the history textbooks and in the so-called current fiction. For example, take Mikhail Sholokhov's *The Plough Soils Upturned* written in the glory of collectivization. In all of those calamities no one knows how many millions perished. Some say there have been as many as 100,000,000 victims. Dostoevsky warned that such things might happen.

And what about the word in this respect? In the camps where "ene-

mies of the people" were sent, political prisoners bitterly called criminals "friends of the people". During the French Revolution there had also been "enemies of the people" and "friends of the people", and it was not infrequently that "friends of the people" were soon to become "enemies of the people" and went to the guillotine. An interesting coincidence, isn't it? And the words remained the same.

Sometimes in order to change the message of historical events only one letter, not even one word, was enough. For decades it had been said and written that *the victory of revolution in Russia was the greatest achievement*. Recently I saw a documentary film on World War I, about everything that preceded the Revolution in Russia. "Documentary" does not necessarily mean irrefutable, genuine, etc. The difference between a documentary film or a documentary book and a feature film or a book of fiction is not that large. Do you know the blocks with letters with which children compose words? You can make different words out of the same blocks. Now, out of authentic documents each of which is absolutely doubtless, in a similar way you can compose this or that historical picture. A book of fiction, a film for which the author's imagination is quite important, the fictitious characters with the prototypes or without them, will ultimately express what the author meant to say, his attitude of the world, of the event. In the same way, a documentary film or a documentary book, express the same thing. They are truly dependent on the author's intention. Consequently, this or that world picture is composed of documents similar to those of the children's blocks. The only difference is that a documentary work of art is more to be trusted. Why? It is not invented. The documents are authentic, it was not for nothing that they had been kept secret all this time...

To return to the film I mentioned, the last words of the film are: "The allies triumphed over Germany and *the revolution triumphed over Russia*". Quite a different message. A

few letters were enough to express it; there it was "triumphed in Russia", and here it was "triumphed over Russia".

As another example, the Emperor Nicholas II was declared guilty of many Russian misdeeds. And indeed, entering the First World War was an act of pure madness for Russia; it would not need nor would it profit from war victories either in Europe or in Africa. We sold our own Alaska for practically nothing, and that was not so stupid after all, because in case of a military conflict it would have been too far away to defend. It was really absurd to enter the world slaughter, to kill in the battlefields five million Russian soldiers and officers for the sake of the Dardanelles and the Bosphorus. Today the pendulum has swung back: the emperor-martyr is likely to be canonized before long, as he had really been assassinated together with his whole family. However, his life and that of his family could have been spared; they could have left for abroad, for at that time there were countries to go to; in many European countries his relatives, the representatives of the House of Romanov, still reigned. No one, however, expressed any wish to receive the abducted emperor. The words, the same words were used both for destroying and for refusing to receive, that is, to save. And the more horrible the event is, the more solemn are the clothes made of words that were supposed to cover the nakedness of history.

Here, in Israel it is appropriate to remember that before taking the decision about the final solution, the total extermination of all the Jews, part of the Jews had been exiled from Germany. The steamer with the exiles on board was accepted by no country; neither the USA, nor Canada, nor Australia wanted the Jews. And this encouraged Hitler. The steamer came back, and the captain who had seen all eventually shot himself. Of course the Jews were not told, "Go back to die, we don't care!" The words were decent; this is what diplomacy is for.

The historic era has lasted no more than five or seven thousand years. More than 300,000 years ago our ancestors learned to use fire. About 35,000 years ago they learned how to cook and to sew. More than 6,000 years ago they learned how to grow their own food. As for writing and consequently written historical sources, these are only 5,000 years old. It is but natural, however, that all those figures reflect our current knowledge about the past, but no more than that. In Africa not so long ago the remains of two creatures were discovered in the evening light, and as a result of this discovery mankind became at once 1.5 million years older. Those were man's ancestors, and scholars even managed to calculate that they were "he" and "she" and she was shorter, and that she turned around ...

Wasn't there history *before writing*? Wasn't there knowledge? Weren't there encyclopedias? There were no libraries, that's for certain. And yet, there were encyclopedias. Old people were the oral encyclopedias of their time. They were keepers of memory and experience, they were scientific manuals in all or separate branches of knowledge. They must have been people of no more than 30; life at that time was brief but they knew what youth could not know, what the men of their tribe would have had to learn by themselves, to gain the knowledge anew. They knew what plants were poisonous, which of them were not fit for food, which plants could be used to heal wounds; they knew how to keep and make fire, how to make clothes, raise babies, and so on. Kipling's aphorism, "No one except grandmothers should raise a child, for mothers are only able to make children", has its historic origins. Respect for old men is not just a cultural tradition, sympathy for the weak, or the result of deliberate upbringing - here historical, and, what is even more important, genetic roots are observed. It is not unlikely that the tribes' survival depended more upon the old men possessing knowledge and experience than on the hunters who were physically stronger and younger but

inexperienced. Of course there were tribes who treated old men as pariahs and killed them, for hunger at that time constantly accompanied people. They might be left somewhere in the woods, by the fire and without food. As a result the development of those tribes came to a standstill, they degenerated and perished. On the contrary, the tribes that added to their own experience and knowledge, the newly acquired experience and knowledge of the new generations, did survive. Just imagine what would happen if we - so powerful, for whom both easy and hard work is done by electricity, machines and all kind of equipment which will soon become as clever as we are - were deprived, quite suddenly of all our knowledge, books, the ability to read and invent, to build houses. Just imagine if we were taken naked and brought back to the times of antiquity, left all alone to face storms, floods, diseases, cold weather. And we cannot even light a match, we do not know how to make fire ... Being quite untrained, we would have perished even faster than those wild tribes. Since I have already mentioned "genetic roots", I would like to say something about the work of our late geneticist Efroimson; I used to know him while he was alive; I mean his most intricate work *The Origins of Altruism*. Nearly 30 years ago, with a lot of fears supplied by the necessary after-word of a distinguished academician, it was eventually published in the journal, *Novi Mir*. Efroimson brought it to Tvardovsky, and Tvardovsky accepted it and liked it, but it was published only after Tvardovsky's expulsion from *Novi Mir*. By the way, the *Novi Mir* of today and the *Novi Mir* whose editor was Tvardovsky have nothing in common except for the color of the cover and its title. One of its critics recently wrote to the *Novi Mir* editorial staff in the following way, "You're but wasting what Tvardovsky has left you". But this is apropos.

Why then did it take courage to have this work published? The point is, everyone still remembered how genetics had been beaten in

Stalin's time; the word "gene" was not to be uttered, and Efroimson was one of those geneticists who were persecuted. A second point, no less important, is that this theory was considered "ideologically harmful". According to the official doctrine, our method of education creates a completely new human being. It was not so primitive, not so straight forward, of course. But this doctrine was strongly supported by official propaganda; it was devised by philosophers, kindergarten nurses and school teachers. Certainly education, provided it is consistent enough, can achieve a great deal.

The times change as fast as the wind. Each time period creates books that belong to it. However, there are eternal books which have already survived centuries, and they will last for many more centuries. These are by Euripides, Shakespeare, Pushkin and Tolstoy. As different as they are, these books have one thing in common: they appeal to man's good intentions. Let's take Pushkin's lines: "I woke up good feelings with my lyre". Pushkin doesn't speak of the abstract *good* and *evil* but what is inherent in man, what should and could be awakened.

We inherit the color of our eyes, our features, our voice, even our gestures - and this is clear to us, this does not surprise us. And what about our character, our moral traits? Can these vague, obscure things be inherited?

In his *Ethics* Kropotkin, prince and Russian revolutionary, theoretician of anarchism, wonders, "Why should a man, on the strength of some mental or emotional process, refrain of his own free will from what can bring him pleasure? Why does he frequently bear all kinds of deprivations, lest he be not unfaithful to his moral ideal?"

Why really? After the Ashkabad earthquake which destroyed the entire city at the end of the 1940s, the men were found dead in the windows and the women were found huddled over their children. Well, what made them not spare

their lives but hide their children behind themselves, save them? This is the subject of research in Efroimson's *The Origins of Altruism*. He explores all these "whats" and "whys" from the point of view of a geneticist. "There is every reason to believe", he writes, "that in the nature of man there is something inherent to it to inspire him to justice, to heroism..."

How had it been happening for millions of years? The mechanism is approximately the same. For many thousands of years, a little baby had always been the most helpless, the most defenseless creature on earth. He had neither claws, nor fangs, nor warm skin. Along with brain growth, with the increase of man's power, this period became longer and longer. Only those babies who were protected by their parents, by the whole pack, were able to survive. This is precisely how natural selection was made, although in many situations the survivors were those who had the strong instinct of self-preservation, who were egotists. And yet those most likely to survive were those babies who were protected by their packs, kin, tribes which had developed strong instincts and emotions to defend not themselves but their children, the whole team, to defend quickly, both consciously and unconsciously. This is how the system of instincts, emotions on which conscious altruism is based, had strengthened and increased. And it is this group of emotions which urges man today to take actions which are not profitable and are even dangerous for himself, but from which others can profit.

"Biologically based", the geneticist writes, "the natural essence of man manifests itself in different social fields. One social structure may further its appearance, while another social field may suppress or distort it." People of the 20th century know those social structures only too well. Fascism, totalitarianism, racism, and extreme nationalism are not based on altruistic feelings, and they caused instead the greatest tragedies of today and yesterday.



Let me give you one more final quotation from *The Origins of Altruism*, a work which is very dear to my heart, to my perception of the world and man: "One can, with conviction, affirm that humane attitude, kindness, chivalry towards women, sympathy to old men, children, aspiration for knowledge are those qualities that inevitably and directly developed under the pressure of natural selection and were part of the features which man inherited".

Great books - from the parchments of which Roman soldiers cut their

sandals, from the old manuscripts, up to the books of today - had preserved all the best things that man had done for many centuries. And what about Word? "By Word the sun was stopped, the cities were destroyed by poets", Nickolay Gumilev wrote. An exaggeration? Perhaps. But wasn't it the poet who wrote it?

We are entering the age when machines made by man become stronger than their maker in many fields that formerly were ruled by man only. The computer already beats the greatest chess player, and

very soon pulp fiction, detective novels, will be written by computers, not man. The programmer will devise a programme one day, and there will be no Agatha Christie, no George Simenon who can be compared with it; the computer will more quickly find the way from the labyrinth of the detective plot and will, in a moment, spit out the ready-made novel.

Let us hope, however, that in the future art will be made by artists only.

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# Information, Commodification and the World Trade Organization

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Steven Shrybman is a lawyer in private practice in Ottawa, Canada. For the past 12 years his work has focused on international trade and investment law, a subject about which he has written and published extensively. Many of his articles have been translated into several languages, and published in the United States, Europe and Asia. His most recent work, *A Citizen's Guide to the World Trade Organization*, was co-published by James Lorimer and the Canadian Centre for Policy Alternatives. Mr Shrybman has been retained to provide advice and representation to citizen groups, trade unions, and government with respect to international trade issues as these concern the environment, health care, public services, natural resources policy, and intellectual property rights. He currently serves on the Board of the Institute of Agriculture and Trade Policy, is a research associate of the Canadian Centre for Policy Alternatives and is one of three Canadian members of the International Forum on Globalization, an international alliance of activists, writers and scholars who are working together to address the challenges raised by the globalization of the World's economy. Mr Shrybman may be contacted at <sshrybman@sympatico.ca>.

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## From WIPO to the WTO

Until the launch of the Uruguay Round trade negotiations, multilateral rulemaking in the IPR area had been dominated by the World Intellectual Property Organization (WIPO) which still has administrative responsibility for most important conventions in the area of intellectual property protection. But by the mid-1980s, US frustration with the failure of WIPO to provide for the effective enforcement of those treaties and conventions had grown to the breaking point. Its domestic film, pharmaceutical, and agric-chemical corporations were adamant about the need to provide their intellectual property more than hortatory protection. Thus, as the USA continued in vain to build credible enforcement mechanisms into the WIPO framework, it decided to pursue its objectives in other venues as well.

Accordingly in 1986, among US proposals for a new Round of trade negotiations to reform the GATT, was the novel idea of negotiating within the framework of a new trade regime - an international agreement for intellectual property protection. That Round, which got underway at Punta del Este, Uruguay in September 1986, would ultimately culminate in the founding of the World Trade Organization almost a decade later. Among more than a dozen multilateral agreements housed within the framework of that new global trade institution would be the realization of many US ambitions, but none more important, than the Agreement on Trade-Related Aspects of Intellectual Property Rights (The TRIPs Agreement).

From the outset of those negotiations, there existed very different views between industrialized countries, that wished to achieve a comprehensive coverage of all intellectual property rights and developing

countries who wanted to limit any agreement about IPR to the trade in counterfeit goods. A critical element of the US strategy was the establishment of a domestic regime<sup>1</sup> authorizing the unilateral imposition of trade sanctions against nations that it regarded as being engaged in unfair trade practices. Moreover the majority of the cases to invoke these unilateral sanctions asserted the interests of US-based pharmaceutical and media corporations.

Naturally US unilateralism was resented, and particularly by those who accused it of ignoring the copyright violations of its own companies. Nevertheless, the coercive effect of these sanctions, even when only threatened, soon produced the desired result. Thus, as was the case so often when the views of developed and developing countries diverged, those of the former prevailed and the TRIPs Agreement was born as an integral part of comprehensive international trade regime under the auspices of a newly founded WTO.

As the US had insisted, the TRIPs Agreement provided a broad framework for IP protection, and incorporating by reference the most important WIPO conventions. However, by far the most significant accomplishment engendered by this dramatic expansion of the world trading system was making the newly minted and powerful enforcement mechanisms of the WTO available to ensure compliance with international agreements established to protect intellectual property.

It is unlikely that even to this day many concerned about the issues of IP protection fully appreciate the radical nature of the transformation of international trade regimes that occurred in 1995. Prior to that date, trade agreements were no more enforceable than WIPO conventions or international agreements to pro-

tect workers rights of preserve biodiversity. But with the birth of WTO a truly effective global enforcement regime has been established to compel adherence to all WTO requirements. When confronted with an adverse ruling from the Appellate Body of the WTO, the losing party has two options: shed the offending policy, programme, practice, law or regulation - or pay the price in trade sanctions. Moreover, because of the principle of cross-retaliation, those sanctions can be applied to any aspect of the offending nations international trade economy - in other words, where they would be felt most.

The two WTO decisions I describe here reveal just how influential this international regime will be in determining the policies and practices of nations when it comes to intellectual property protection. The first of these involved a challenge to Canadian cultural measures intended to protect its domestic magazines and periodicals from being entirely swept away by a torrent of US-based publications. This was the first challenge to invoke WTO rules in service of a large transnational media corporation (Time Warner before the merger with America Online) and elicited from the WTO some rather disturbing pronouncements about culture as a tradable commodity.

The second case to expose the importance of WTO disciplines concerning intellectual property involved a challenge to US copyright laws. This case provides the first opportunity to observe WTO rules in action with respect to the enforcement of the Berne Convention for the Protection of Literary and Artistic Works (hereafter the "Berne Convention"). Again a great deal is revealed about the biases of the WTO when it is challenged to recognize the non-commercial aspects of intellectual property policy and law. Because both decisions are likely to have an enormous impact on the cultural and intellectual property rights policies of all nations, they are worth considering in some detail.

## Canadian Periodicals and Other Cultural Goods

For Canadians and many others, it is easy to understand the global dominance of US-based media, as a contest between the USA and other cultures, and in many ways this is precisely what they are. But it is also true that these dynamics represent a struggle between increasingly monolithic media corporations and communities determined to maintain some modest opportunity for their own forms of cultural expression. In fact, concerns about the pernicious influence of large media corporations have also been raised in the US itself.

No less an American cultural icon than *The New York Times* has sounded the alarm about "growing threats to the nation's cultural heritage." But, when President Clinton received the recommendations of the special committee he had established to consider the problem, he evinced little interest in acting on its recommendations to revitalize public and private support for culture in the US.

In fact, not only did his administration do nothing to rein in the power of such media empires as Time-Warner, but it actually took up the cudgel on its behalf to assail efforts by other nations to resist the tsunami of US corporate culture.

Given the power of the large media corporations, it is not surprising that the US Executive Office has shown little enthusiasm for trying to hold back the tide of increasingly concentrated corporate control of cultural expression. But there is another and more important reason for the US administration to ally itself with the AOL-Time Warners of the world, and this has to do with importance of cultural and information services trade to the US economy.

For example, the US balance-of-trade surpluses in cultural products and services are enormous, and particularly important given the

even larger trade deficits that the US runs. For example in 1996 US trade deficits of USD 183 billion were offset by trade surpluses of USD 74 billion in the area of services.

To ensure that its cultural trade surpluses continue to grow, the US has seized on international trade rules to enforce the continued domination of global markets by US corporations. In the first three years after the advent of the WTO, seven trade cases have been brought concerning cultural products, all but one by the US on behalf of its media giants.

The first of these cases to be resolved involved the challenge to Canadian cultural measures intended to protect its domestic magazines and periodicals. Thus Canadian cultural programmes have the dubious distinction of being the first to fall victim to WTO rules.<sup>2</sup> Given Canada's long-standing efforts to deal with its particular vulnerability to the hegemony of US culture, it is not surprising that Canada would be the first target of US efforts to promote its agenda for establishing greater IPR protection internationally.

The domination of Canadian magazine markets by US-based publications is not a recent phenomenon; in fact, it has existed since the first decades of this century. (In 1925, for example, US magazines sold in Canada outnumbered Canadian publications by a margin of 8:1.<sup>3</sup> And, for just as long, Canadian governments have sought, with varying degrees of determination, to prevent Canadian publications from being entirely swamped in a sea of US print media.

In the mid-1960s, the Liberal government of the day, firmly committed to strengthening Canadian cultural institutions, established import tariffs under the Customs Act to ensure the viability of at least a small number of Canadian magazines. The tariffs were specifically designed to address the problems created by "split-run" US-based magazines.

A "split-run magazine" is a spin-off of a parent publication designed for a particular regional or niche market. As spin-offs recycle much of the editorial content of the parent, they are relatively inexpensive to produce, so advertising space in the typical split-run can be offered at a substantial discount. This is obviously a bargain for advertisers seeking to reach that particular regional or niche market, but a disaster for local publishers competing for those advertising dollars, while covering the higher cost of producing original publications.

In an attempt to level the playing field for Canadian publishers, the federal government effectively imposed an import ban on split-run magazines. To reinforce this prohibition, amendments to the Income Tax Act were also made, prohibiting Canadian companies from deducting the costs of advertising in non-Canadian publications. By all accounts, the measures worked: Canadian publications grew substantially in number and circulation, and the regulations created a truce between US and Canadian publishers that endured for nearly three decades.<sup>4</sup>

This is not to say that US magazines were denied an ongoing and prominent presence in Canada. In 1992-93, for example, US magazine exports to Canada were worth more than USD 600 million; Canada provided 80% of the foreign market for these publications. However, by the early 1990s, US publications had been consolidated under the control of a handful of very large media corporations. As US media markets had long been saturated, new growth opportunities had to come through global expansion.

This in part explains why one of the world's largest media conglomerates, Time Warner, announced in April 1993 that it would be publishing six "special editions" of *Sports Illustrated* in Canada, electronically transmitting the content from the US to Canada, where it would be printed and distributed. Canadian advertisers in these edi-

tions could purchase a full-page ad for roughly half the cost of comparable space in editions prepared for regional US markets.

Faced with a direct challenge to the ban on split-run magazines, the federal government scrambled for a response. Thus in June 1996 the government tabled legislation, which would impose an 80% excise tax on the gross advertising revenue of split-run magazines. To counter charges that it was discriminating against US publishers, the excise tax would be applied to magazines distributed outside Canada, including those published by Canadian publishers.

Not unexpectedly, Time Warner took a dim view of the bill, and warned the federal government of its proposed legislation. But, when Canada proceeded anyway, the US government galloped to the rescue of one of its most influential corporate citizens and filed a complaint under the WTO. Casting aside the putative support for Canadian cultural sovereignty, the US invoked the new and powerful dispute processes of the WTO to assail all Canadian programmes covering split-run magazines, including some that had been in place for decades.

While several technical issues were argued, the essential thrust of the US complaint was that Canada was discriminating against US split-run magazines in favor of its own domestic magazine and periodicals industries. Canada, it argued, was in breach of WTO obligations to provide "national treatment" to Time Warner products under GATT Article III.

To win the case, the US would have to succeed with an argument that it had been unsuccessfully advocating in the international arena for decades - that information and other forms of cultural expression are essentially commodities and should be treated just like other goods or products. In this particular instance this meant persuading the WTO dispute panel that magazines should be subject to the trade in

goods provisions of the GATT.<sup>5</sup> A magazine was a magazine regardless of its origin, content or perspective. As the Office of the United States Trade Representative put it, the case had "nothing to do with culture. This is purely a matter of commercial interest."<sup>6</sup>

Of course Canada protested: surely a magazine's content should be considered a distinguishing feature. A magazine developed specifically for a Canadian readership, published by a Canadian company, and written from a Canadian point of view could not, it argued, be considered "like" one developed in and for another cultural, political, and social context.

To support its case, Canada stressed the importance of advertising revenues to Canadian periodical publishers, and described the direct correlation between circulation, advertising revenue, and editorial content: the larger a magazine's circulation, the more advertising it could attract. With greater advertising revenue, a publisher would be able to spend more on editorial content. The more the publisher spent, the more attractive the magazine would be to its readers, the greater its circulation, and so on. Conversely, the loss of advertising revenue would produce a virtual death spiral: declining editorial content, reduced readership, and a further reduction in the ability to attract advertising.

Not only was the WTO's Appellate Body (AB) unmoved by Canada's arguments, but it actually used them to buttress its conclusion that US and Canadian magazines were in direct competition and therefore "like goods" within the meaning of Article III of the GATT. The AB made repeated reference to earlier trade decisions concerning alcoholic beverages and beer, in which trade panels had dismissed the notion that differential treatment of goods might be justified because of a beverage-particular characteristic. Adopting a purely market-oriented approach to the issues before it, the AB took pains to explain: "The GATT is a commercial agreement, and the WTO is concerned, after all,

with markets." Thus, what was true for beer is true for cultural "goods": if they compete, they are alike.

Thus under WTO rules, a news magazine is a news magazine, regardless of its character, orientation, or national perspective. One can only assume that the same principles would apply to other forms of cultural expression: a newspaper is a newspaper, what difference could national orientation and subject matter make? As has now become the norm for WTO decision making, the court of last appeal under the WTO demonstrated a stunning ability to keep its focus on trade policy objectives, no matter how skewed its reasoning might appear in the larger view.

By so clearly treating magazines as tradable commodities rather than forms of cultural expression, the WTO also set the stage for further trade challenges to other forms of cultural protection. Moreover, in rejecting the argument that editorial content is a distinguishing feature of periodical publications, the WTO ignored the significance of the full play of diverse opinions in democratic societies. The implications are chilling.

It is not necessary to delve into the esoterica of trade dispute resolution to appreciate what this case was actually about. Or perhaps, more appropriately, what it *wasn't* about, because the periodicals dispute was not about the world's largest media corporation adding a few points to the circulation figures of one of its numerous publications. Rather the US saw in this parochial dispute over the regulation of magazine advertising revenues, an opportunity to win two much bigger prizes. The first was the treatment of intellectual property as just another commodity under international law. The second, was the deployment of an effective enforcement regime to guarantee proprietary, and inevitably corporate, claims to this new commodity.

Thus, 75 years after Canada first adopted measures to protect Canadian magazines, the onslaught of

WTO disciplines finally defeated its efforts to preserve these important cultural programmes. But viewed from an international perspective, the Canadian periodicals case really must be seen as a watershed in the establishment of an international regime to provide for the protection of intellectual property in precisely the same way as it would any other good or commodity.

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## United States Fairness in Music Licensing Act

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The first WTO case to consider issues of copyright protection involved a challenge by the European Communities (EC) to provisions of the US Copyright Act establishing certain limitations to the exclusive rights of copyright holders.<sup>7</sup> Ss. 110(5) of the Act, as amended by the Fairness in Music Licensing Act, created exemptions for small commercial establishments that were not", so the US claimed, "of sufficient size to justify, as a practical matter, a subscription to a commercial background music service".<sup>8</sup>

However, the exemptions would apply to a reasonably diverse community which ranged from individuals who merely turned on a radio or television in a public place, to a significant number of commercial establishments including bars, shops and restaurants, none of which would be liable to pay royalty fees as long they fell within certain size restrictions.

The European Community disagreed with the US that the likely economic impact of such exemptions for its right holders would be minimal. In fact the extent to which this exemption represented a significant economic cost for the complainants varied dramatically depending on which whose estimates you preferred. The same disparity existing between EC and US estimates about the extent of US market share that EC rights holders might claim to have.

For example: according to US estimates the actual losses to EC rights

holders were very modest - by its account less than USD 500,000 annually - an impact radically smaller than the USD 53.65 million annual price tag the EC pegged its revenue losses at.<sup>9</sup>

It is also worth noting the irony, or perhaps justice (given the accusations of double standards levelled at the US), of the world's foremost promoter of IPRs being on the defensive with respect to its own copyright laws. But whatever the motivation or merits of the EC complaint, the most important consequences of this trade dispute devolve from what the panel had to say, or didn't say, when for the first time copyright issues were considered within the framework of the TRIPs Agreement. Before I examine how the panel addressed these issues, however, I need to set the stage.

### *The Legal Framework*

The substantive provisions for the protection of copyright are set out in Articles 9-14 of the TRIPs Agreement. Article (9)1 of the TRIPs Agreement obliges WTO Members to comply with Articles 1 to 21 of the Berne Convention. It also reiterates the basic principle of copyright protection, i.e., protection extends only to expressions and not to ideas, methods of operation or mathematical concepts.

Article 11bis(1) of the Berne Convention grants the authors of literary and artistic works, including musical works, the exclusive right of authorizing not only the broadcasting and other wireless communication of their works, but also the public communication of a broadcast of their works by loudspeaker or any other analogous instrument. Article 11(1) of the same Convention grants the authors of musical works the exclusive right of authorizing the public performance of their works, including such public performance by any means or process, and any communication to the public of the performance of their works.

Article 12 of the TRIPs Agreement provides minimum standards for the term of protection of copyrighted works: for many works this is the life of the author plus 50 years.

Article 9(2) of the Berne Convention bans the imposition of limitations on, or exceptions to, the reproduction right except in special cases when such limits or exceptions do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. Article 13 of the TRIPs Agreement, makes this provision applicable to all other exclusive rights in copyright and related rights.

The US asserted that Article 13 clarified and articulated the "minor exceptions" doctrine applicable under certain provisions of the Berne Convention, and that the Fairness in Music Licensing Act fell within these parameters. The European Communities argued they did not.

The WTO panel decision - which ran to more than 250 pages - offers a detailed review of these and other elements of US copyright law against the benchmark of WTO and Berne obligations. When the smoke of this lengthy and esoteric analysis finally clears, we learn that the panel has created a saw-off, finding some, but not all, of the exceptions set out in US copyright law to be in breach of US obligations under the WTO. While the panel found the most important and commercial exemptions of this US law to be in breach of WTO rules it also concluded that: "the playing of dramatic works through homestyle apparatus the panel failed to see how these would acquire such economic or practical importance that it could cause an unreasonable prejudice to the legitimate interests of rights holders."<sup>10</sup>

However, the most significant aspects of the case are not its conclusions, but rather how the panel arrives at them. Of particular concern are the panel's views about the issue of non-commercial use within the TRIPs Agreement. There are

two preliminary issues that are also noteworthy, because they consider the rights of third parties, and the burden of proof when allegations are made about non-compliance with WTO obligations. I will briefly touch on these before examining how the panel dealt with the difficult and complex issues of resolving the competing policy goals that underlie all intellectual property protection.

#### *Third Party Interventions and WTO Panel Practice*

As had occurred once before in *United States - Import Prohibition of Certain Shrimp and Shrimp Products*,<sup>11</sup> (the Shrimp Turtle dispute), the panel was confronted with unsolicited submissions from a third party. In this case the suppliant was the American Society of Composers, Authors and Publishers, whose clientele obviously had a rather considerable interest in the outcome of the trade dispute.<sup>12</sup> ASCAP didn't concur with the position being taken by its government and wanted to make its position known to the panel.

The EC objected, arguing that the authority of panels is limited to the consideration of factual information and technical advice by individuals or bodies alien to the dispute and thus did not include the possibility for a panel to accept any legal argument or legal interpretation from such individuals or bodies. While the United States supported the right of private parties to make their views known to WTO dispute panels in principle - it was not keen to have ASCAP's views considered in this particular instance.

As it had in the Shrimp Turtle dispute, the Panel decided to skirt the issue by indicating that it would "not reject outright the information contained in the letter from the law firm representing ASCAP," but discounting its probative value, goes on to conclude that "while not having refused the copy of the letter, we have not relied on it for our reasoning or our findings". Conscious of concerns about the secrecy of WTO processes, panels have been

somewhat circumspect in dealing with third party submissions, but to this date have steered clear of actually taking them into account.

#### *The Burden of Proof in WTO Cases*

The other preliminary issue that the Panel addressed concerned where the burden of proof would lie for establishing whether the US was in breach of its obligations.

The EC contended that it merely had to establish that US copyright reforms were inconsistent with any provision of the TRIPs Agreement (including those of the Berne Convention (1971) incorporated into it). Once such inconsistency was established (or admitted), the burden would rest with the US to invoke and prove the applicability of an exception.<sup>13</sup>

Following earlier precedent, the Panel readily agreed, and placed the burden of proof on the EC for establishing a *prima facie* violation of the basic rights that have been provided under the copyright provisions of the TRIPs Agreement. Once having succeeded, the burden then rested with the United States to establish that any exception or limitation was applicable and that the conditions, if any, for invoking such exception were fulfilled.

However, quite apart from allocating the burden of proof in this way, a review of panel jurisprudence suggests less than even-handedness when it comes to judging whether these respective burdens have been discharged. As for purported violations of WTO requirements, panels have been quick to judgment, often demonstrating a liberal and expansive interpretation of WTO rules. But the same can't be said of the approach panels have taken to the exclusionary provisions of this trade regime that might otherwise have allowed nations some latitude in fashioning their national policies and laws. This explains why it has been virtually impossible for countries to claim the benefit of any exception to WTO requirements.<sup>14</sup> The US copyright case would be no exception.

## *Non-commercial Purposes and the Public Interest*

However what may be the most important aspect of this WTO decision barely consumed a moment of the panel's attention, because in the 250+ pages of this judgment, very little is said about the scope for making non-commercial use of intellectual property. And yet it is the need to balance private proprietary claims and the broader public interest - or, in other words, to reconcile commercial and non-commercial values, that lies at the heart of public policy concerning the protection of intellectual property.

Having quickly found the US to be in breach of its obligations under Article 9 of the TRIPs Agreement, the panel turned its attention to US claims that its copyright reforms should be considered a minor and permissible exception under both the rules of the Berne Convention and WTO disciplines. The EC objected, arguing that any exceptions to the copyright claims of authors and composers would have to be of a non-commercial nature. As it submitted, minor reservations should be:

limited to public performances of works for religious ceremonies, military bands and the needs of the child and adult education. All these uses are characterized by their non-commercial character... But even if one were to argue that these three instances were only illustrative, their common features consist in being for non-commercial activities and for a well-defined social purpose. Given that Section 110(5) Copyright Act is directly intended to serve commercial interests by the use of the copyright works in commercial establishments for the enjoyment of customers with the objective to enhance turnover and profit neither of these common characteristics can be found in Section 110(5) Copyright Act.

In support of its argument, reference was made to WIPO materials that offered guidance to developing countries about how to provide for

free and non-voluntary licenses within the limits of the Berne Convention.<sup>15</sup> According to this model free uses could include:

- use of a work for one's own personal and private requirement;
- quotations compatible with fair practice and to the extent not exceeding that justified by the purpose;
- the use of a work for illustration in publications, broadcast or sound or visual recordings for teaching, provided that such use is again compatible with fair practice and that the source and the name of the author are mentioned by the user;
- the reproduction in the press or communication to the public of articles on current economic, political or religious topics published in newspapers or periodicals and broadcast works of the same character, provided that the source is indicated by the user and such uses were not expressly prohibited when the work was originally made accessible;
- the use of a work that can be seen or heard in the course of a current event for reporting on that event;
- the reproduction of works of art and architecture in a film or television broadcast, if their use is incidental or if the said work is located in a public place;
- the reprographic reproduction of protected work, when it is made by public libraries, non-commercial documentation centres, scientific institutions and educational establishments, provided that the number of copies made is limited to the needs of their activities and the reproduction does not unreasonably prejudice the legitimate interest of the author;
- the reproduction in the press or communication to the public of political speeches, speeches delivered during legal proceedings, or any lecture or sermon delivered in public, etc., provided that the use is exclusively for the purpose of current information and does not mean publishing a collection of such works.

Unfortunately the panel expressed little interest in this crucial point,

dealing with it almost summarily and concluding that it was:

... not in a position to determine that the minor exceptions doctrine justifies only exclusively non-commercial use of works and that it may under no circumstances justify exceptions to uses with a more than negligible economic impact on copyright holders. On the other hand, *non-commercial uses of works, e.g., in adult and child education, may reach a level that has a major economic impact on the right holder. At any rate, in our view, a non-commercial character of the use in question is not determinative* provided that the exception contained in national law is indeed *minor*.<sup>16</sup>

While it may have had a point with respect to the significance of economic impacts associated with certain non-commercial uses - there are some obvious questions, and answers, which should have followed:

- At what point would economic impacts for a copyright owner be so great as to negate the societal benefits associated with making information freely available for such non-commercial purposes as adult and childhood education?
- Should the balance of these competing interests shift with the character of either the rights holder, or the beneficiaries of making certain IP freely available. For example should the line be drawn in the same place when the rights holder is a large media corporation and the users, students in a developing country, or conversely where the rights holder is an individual author and user a wealthy US university?
- Do the types of users suggested by the Tunis Model Law reflect those, that at least for developing countries - the WTO would be willing to accept?

At the heart of these questions is the balance that must be preserved between private right and public interest - a balance so fundamental to the basic character of a civil soci-

ety that they have been given expression in the UN Universal Declaration of Human Rights:

27(i) Everyone has the right freely to participate in the cultural life of the Community, to enjoy the arts and to share in scientific advancement and its benefits.

27(ii) Everyone has the right to protection of the moral and material interests resulting from scientific, literary and artistic production of which he is an author.

EC submissions clearly invited the panel to address the challenge of balancing the competing claims of proprietary rights and the public interest. Regrettably the panel showed scant awareness of the policy framework which should have at least informed, if not guided, its deliberations. Rather it ignored the public interest dimension of arguments made by the EC and supported by other intervening nations, choosing instead to simply reduce the issues before it - to those involving the competing claims among private commercial users. Thus less than two paragraphs of its very lengthy decision are devoted to addressing the issue of non-commercial use.

Thus the WTO's first opportunity to consider trade disciplines incorporating one of the most important WIPO conventions devolved quickly to a technocratic exercise of measuring the physical characteristics of the environment and the loud-speaker technology used in the unlicensed broadcasts that were at issue. As has now become the pattern with trade dispute resolution under the WTO - panels have shown a remarkable and myopic preoccupation with the trade liberalization goals of the regime to the exclusion of all other competing policy perspectives.

Beyond missing a critical opportunity to demonstrate some sensitivity to the broader policy context within which WIPO conventions reside, the specific implication of the panel's approach is that any exemptions to the rights of copyright holders will be resolved by the WTO entirely on the basis of the

economic impact such unlicensed use may have. Once that use reaches a certain economic threshold, no exemption will be permitted to the exclusive rights of a copyright holder. It will not matter whether that use is being offered as a public service by a not for profit provider, or for entirely commercial reasons. Neither would the relative needs or wealth of the parties enter the equation.

As we know, judicial institutions play a fundamental role in shaping the policies and laws of most societies. What we are observing in the US copyrights case is a dramatic shift in decision-making authority from WIPO to the WTO with respect to matters of intellectual property protection. As can be seen from the panel's response to this challenge, a great deal of the public policy complexity that should inform decisions about intellectual property protection is likely to be lost in the transition. In their stead will be the dollars and cents of competing commercial interests as increasingly large corporations consolidate their dominion over global information resources.

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### Conclusion

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I have taken the time to relate the details of these two WTO disputes because they provide the most persuasive evidence of the enormous influence this regime will have in shaping national and international policies and law as these relate to intellectual property protection. WTO rulings will not be ignored, because the costs of doing this, even for the wealthiest nations, will be too high.<sup>17</sup>

Unfortunately the rules of the TRIPs and other WTO Agreements were the product of highly secretive negotiations processes informed almost exclusively by the views of large corporations with a significant stake in global markets. Not surprisingly trade rules often reflect an unleavened corporate agenda, which in the area of intellectual property protection are these: 1) the establishment of a comprehensive,

universal and enforceable regime for the protection of intellectual property rights in accordance with US legal norms; and 2) the elimination of competing (read "public") information service delivery systems.

Of these two objectives, the first has to a significant degree already been accomplished. This is clear from the cases I have described. In the "Split-Run Magazine Case" we have seen how WTO rules have been invoked to transform information and forms of cultural expression into commodities to be regulated like any other product or good. In the case of US copyright law we see the WTO dispute process reveal the same indifference to non-commercial values or policy perspectives other than those of trade liberalization.

As the goal of privatizing the delivery of information services, which will obviously be of great interest to public libraries, work is still in progress and now being pursued as one aspect of efforts to complete the rudimentary framework of the General Agreement on Trade in Services (the GATS) which has already been incorporated within the WTO framework. In choosing a topic for my lecture, I was torn: should I talk about the damage already done by WTO rules, or talk about the challenges which are now only unfolding. I chose the former, on the assumption that many of you might still be unfamiliar with the WTO, or know little of the trade disputes I described.

For some time I have considered these disputes a blessing, because without this tangible evidence a critique of WTO policies and disciplines often seems far-fetched. How could nation states willingly cede sovereignty to the extent WTO rules require? Why would they empower unaccountable international tribunals staffed by experts in international trade (but with few if any other qualifications), to sit in judgment of a diverse array of domestic policies that may only tangentially effect international trade? Why would WTO rules take precedent when conflicts arise with other



international conventions and protocols, such as those dealing with basic human rights?

There is no better proof of these admittedly astonishing propositions than to recount the decisions of WTO trade dispute bodies. While the cases I relate here have attracted less notoriety than challenges to US marine mammal protection laws or European food safety standards, their implications are obviously just as profound.

The TRIPs and GATS Agreements represent the embodiment of a corporate vision of globalization that offers no space for communal or public ownership, that regards diversity as unwanted competition that must either be acquired, or eliminated, and that dismisses the notion of public service delivery as a quaint anachronism that must give way to the corporate imperatives of growth and the consolidation global empires.

The GATS Agreement represents a critical dimension of this corporate enterprise and is only now in the works. Because the GATS defines services in such an expansive way to include almost anything you can't drop on your foot, and because its essential objectives are to de-regulate and privatize all services - current GATS negotiations must become a priority for everyone with doubts about the wisdom of this corporate agenda.

It seems to me that there is particular role for librarians to play as well, and not just as the defenders of public libraries, although without your determined intervention I fear the era of such public institutions, which as you know began only a little over a century ago, will not survive very much longer. But there is another and equally important service you can provide, which would be to provide effective public access

to the complex, obscure and often secretive reports, submissions, studies, and negotiating texts which comprise the record of contemporary trade negotiations and dispute resolutions. There is great need to find ways to expose information that too often has been shrouded from public view.

We need international agreements about intellectual property, culture, trade, biodiversity, human rights, climate change and several other global and pressing priorities. But these agreements must reflect the views and interests of all in society, and not simply the priorities of the world's largest corporations. It is up to all of us to impress upon our governments that the dynamics of international trade negotiation and dispute resolution must now be fundamentally overhauled.

## References

- 1 Section 301 of the US Trade and Commerce Act.
- 2 Canada - Certain Measures Concerning Periodicals, Report of the Appellate Body, 30 June 1997 - WT/DS31/AB/R.
- 3 Magder, Ted. "Franchising the Candy Store: Split-Run Magazine and a new International Regime for Trade in Culture in Canadian-American Public Policy". *Canadian American Center* 34: 49 (1998).
- 4 Ibid.
- 5 The General Agreement on Tariffs and Trade (1994) (the GATT) reproduces the essential elements of the GATT 1947, and comprises the framework upon which other WTO agreements are built.
- 6 "Raising the Stakes over Magazines: Washington Threatens Trade War". *Macleans*, 25 January 1999.
- 7 United States - Section 110(5) of the US Copyright Act - WT/DS160/5 of 16 April 1999.
- 8 Conference Report of the House Committee of the Judiciary Subcommittee on Courts and Intellectual Property, H.R. Rep. No. 94-1733, 94th Congress,

2nd Session (1976) as reproduced in Exhibit US-2. In their first written submissions, the European Communities and the United States expressed their views on the background and subsequent application of the original homestyle exemption.

- 9 Note 2, p. 65.
- 10 Ricketson. *Berne Convention*
- 11 Appellate Body Report on United States - Import Prohibition on Certain Shrimp Products adopted on 6 November 1998, WT/DS58/AB/R, paragraphs 99-110.
- 12 In the case the letter from a law firm representing ASCAP was actually written to the United States Trade Representative and only copied to the Panel, a point it notes.
- 13 First written submission by the European Communities, paragraph 74; the second written submission by the European Communities, paragraph 34.
- 14 The cases that illustrate this apparent bias involve attempts by nations to rely upon the exceptions set out in Article XX of the GATT concerning the protection of animal, plant and human life, and the conservation of natural resources. There is as yet no reporting decision sustaining such a defense.
- 15 "Tunis Model Law on Copyright" which has been adopted in 1976 (i.e., after the last reference to "minor reservations" at the diplomatic conference in 1967).
- 16 In the literature it has been argued that such exceptions to the rights protected under the relevant provisions of the Berne Convention must be concerned with minimal use, or use without significance to the author. See Ricketson. *Berne Convention*, op. cit., p. 532-535.
- 17 It is not unusual for the WTO to assess trade sanctions in the hundreds of millions of dollars. In the split-run magazine case, when Canada was too slow to implement the WTO ruling, the US threatened to impose retaliatory sanctions in the order of USD 300 million, applied strategically to exports from key Canadian political constituencies such as steel from the riding of its Minister of Culture and Heritage.

