Intellectual Property Rights and the Cultural Industries in CARICOM

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Presentation Outline

- The Creative Economy and the Value of Cultural Industries
- Global Trends in the Development of Cultural Industries
- Caribbean Cultural Industries
- International and Regional Context for the Development of Cultural Industries
- Regional Task Force on Cultural Industries
- National and Regional Initiatives in IP
- CARIFORUM-EU Economic Partnership Agreement
- Conclusions
The Creative Economy

- Creative, Digital, Knowledge Economy
- Creativity is a powerful engine of economic growth & wealth creation
- Profound impact on trade and development
- Foster income generation, job creation & export earnings as well as social cohesion, cultural diversity, human development
- Creative content is driving the new technologies & sales (30 - 50%) in computers, internet, iPods, cell phones, ecommerce (IFPI Music & Internet, 2006)
- Cultural and creative industries at the core
Defining the Cultural & Creative Industries

The term creative or cultural industries refers to the production, distribution and consumption of

*copyrightable, identity-related & aesthetic*

goods, services, and intellectual property embodied in film, television, books, music, theatre, dance, visual arts, works of *mas*, fashion, multimedia, animation etc. (CRNM Study, 2006)
Defining the Cultural & Creative Industries

Cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs.

They comprise a set of knowledge-based activities that produce tangible goods and intangible intellectual or artistic services with creative content, economic value and market objectives

(UNCTAD 2008)
Typology of Creative Industries

Partial Copyright Industries

Interdependent CI

Creative Core

- Music instruments and equipment
  - Music & video players, blank recording material

- Fashion design
  - Jewelry design
  - Costume production
  - Advertising
  - Architecture

- Music
- Book publishing
- Audio-visual
- Festivals
- Performing arts
- Visual arts
- Copyright collective mgt
Income Streams in the Creative Industries

**GOODS**
- Books
- CDs
- DVDs
- Paintings
- Music instruments
- Garments & jewelry
- Craft

**SERVICES**
- Live performances
- Design services
- Audio & audio-visual production services
- Management and technical support services

**INTELLECTUAL PROPERTY RIGHTS**
- Royalty income
- Licensing fees
- Collective administration
- Digital rights management
Synergies between the Creative Economy & Other Sectors
Global Trends and Prospects in the Creative & Cultural Industries

- The cultural/creative industries sector is one of the fastest growing sectors of the world-economy.

- In the period 2000 to 2005 trade in cultural goods and services grew at an average of 8.7% per annum (UNCTAD 2004)

- The value of world exports of creative goods and services was US$424.4 billion in 2005, representing 3.4% of world trade (UNCTAD 2008)

- Best estimates value the sector at 7% of the world’s gross domestic product and forecast are put at 10% growth per annum (UNCTAD 2004)
Global Trends and Prospects in the Creative & Cultural Industries

- Leading sector in more developed countries: In Europe in 2003, creative industries were valued at EUROS 654 billion, and were growing 12% faster than overall economy;

- USA in 2003: sector contributed 6% of GDP and accounted for 4.7 million jobs (UNCTAD 2007)

- The value of world exports of creative goods and services was US$424.4 billion in 2005, representing 3.4% of world trade (UNCTAD 2008)

- Brazil: creative industries represented 6.7% of GDP and 5% of employment; Mexico – 4.77% of GDP and 11% employment; Jamaica – 5.1% of GDP and 3% of employment (WIPO, 2006)
Global Trends and Prospects in the Creative & Cultural Industries

- Presents an opportunity for developing countries to make quantum leap into new value-added areas

- Not currently benefiting from the potential of their creative economies despite the richness of the cultural expressions, talents and diversity in developing countries

- Out of 132 developing countries, 85 have never produced one commercial film

- In 2004, UNCTAD estimated that developing countries accounted for only 3% of world markets for paintings and approximately 4% for sculptures
Prospects for Caribbean Creative Industries

- The global demand for Caribbean creative industries is growing and provides good returns on investment (literary works, fashion, festivals, world music)

- Growth in the diasporic economy is generating demand for domestic & regional content and provides a bridge to mainstream and international markets

Emergence of new markets:
- Electronic communities
- Diasporic exports
- Intra-regional markets
- South-South markets
- Cultural/heritage tourism
Caribbean Festival Tourism: Comparative Economic Impact in 2000

<table>
<thead>
<tr>
<th></th>
<th>Trinidad Carnival</th>
<th>St. Lucia Jazz</th>
<th>Barbados Cropover</th>
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<tbody>
<tr>
<td>Visitor Arrivals</td>
<td>42,646</td>
<td>11,041</td>
<td>3,485</td>
</tr>
<tr>
<td>Visitor Exp. (US$m)</td>
<td>17.7</td>
<td>14.8</td>
<td>3.2</td>
</tr>
<tr>
<td>Benefit-cost ratio</td>
<td>4.1:1</td>
<td>7:1</td>
<td>2.9:1</td>
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Economic Contribution of Diasporic Caribbean Carnivals

<table>
<thead>
<tr>
<th>FESTIVAL</th>
<th>ATTENDANCE</th>
<th>VISITOR/ AUDIENCE EXPENDITURE</th>
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<tbody>
<tr>
<td>Notting Hill - London</td>
<td>2 million over two days</td>
<td>£93 mn.</td>
</tr>
<tr>
<td>Labour Day – New York</td>
<td>3.5 million</td>
<td>$300 mn.</td>
</tr>
<tr>
<td>Caribana – Toronto</td>
<td>1 million</td>
<td>Cnd$200 mn.</td>
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</table>
Prospects for Caribbean Creative Industries

- The value of the international music market in 2002 was US$40 billion; even 1% for CARICOM would be US$400 million in revenue.

- The estimated size of the international market for reggae is US$60-75 million (Witter, 2002).

- Shaggy’s MCA 2000 *Hot Shots* album sold in excess of 10 million copies (@ $14.00 = US$140M; $14M for Shaggy and other domestic creative contributors).

- Other significant successes in Kevin Lyttle, Rihanna, Rupee.
Top Selling Caribbean Artists in the US Market

Source: RIAA.com

* The RIAA®s certification levels are based on unit shipments (minus returns) from manufacturers to a wide range of accounts, including non-retail record clubs, mail order houses, specialty stores, units shipped for Internet fulfilment or direct marketing sales, such as TV-advertised albums.
“New” Focus on Cultural Industries: International Context

- More attention to culture and trade in light of trade negotiations in WTO and with the EU
- Shift in development thinking on culture in last 10 years
- Culture and sustainable development, cultural diversity and identity contribute to international peace and security
- Tremendous economic value of culture
UNESCO Convention (Oct 2005)

- UNESCO Convention on the Promotion and Protection of the Diversity of Cultural Expressions
- Cultural diversity as necessary for human race as bio-diversity in natural realm
- Diversity a global public good that deserves protection & promotion
- Right of all persons to create, disseminate and benefit from culture
- Dual nature of cultural goods and services – special treatment in trade
Other International Fora

- UNCTAD XI & XII – high level panel on Culture; Creative Economy Report (2008)
- Culture included as a priority area for Small Island Developing States in the Mauritius Strategy for Implementation (2005)
- EU Colloquium “Culture and Creativity as Vectors for Development” (March 2009)
Regional Context

- Advocacy by artistic community, academics and administrators
- Regional Cultural Committee (20 years)
- Erosion of preferential trading arrangements; decline in traditional industries
- Many success stories from the Caribbean in international markets
- Comparative advantage in CI
- Indigenous, sustainable & renewable industries
Regional Context

- National and regional studies and projects
  - 7th EDF Regional Culture Project, 1998-2002 (1.8 M Euros)
  - UNDP, Caribbean Export, IDB, UNESCO, EU funded studies and projects
Regional Task Force on Cultural Industries

- Task Force established in October 2008 (20 members from govt, industry and regional organizations)
- Funded by EU Hub and Spokes Regional Trade Project and UNESCO
- Prepare a Regional Development Strategy and Action Plan
- Make recommendations for an appropriate incentives regime and financing mechanism for the cultural industries,
Regional Task Force Mandate

1. Prepare a Regional Development Strategy and Action Plan

2. Make recommendations for an appropriate incentives regime and financing mechanism for the cultural industries, including an approach to providing relief from tariffs and other duties and charges on products that are inputs to cultural industries
Regional Task Force Mandate

- TF to complete report by August 2010
- Conduct consultations
- Report to Ministerial Councils of CARICOM and Heads of Government
National and Regional Initiatives in IP Management

- Ratification of international treaties
- Copyright Laws
- Article 66 or Revised Treaty of Chaguaramas
- Collective Management Organizations
- Caribbean Copyright Link
- Importance of Intellectual Property Rights
Ratification of International Treaties on Intellectual Property

- Berne Convention for the Protection of Literary and Artistic Works (1886)
  - In force in all Member States

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)
  - In force in Barbados, Dominica, Jamaica and St. Lucia

- The Madrid Agreement (1891) and Madrid Protocol (1989) concerning the International Registration of Trademarks
  - In force in Cuba (both) and Antigua (Protocol)
Copyright Legislation in CARICOM

- **Comprehensive Amended Legislation in:** Antigua and Barbuda (2003); The Bahamas (2004); Barbados (1998); Belize (2000); Jamaica (1993); St. Lucia (2005); Trinidad and Tobago (1997)

- **Some Amendments:** Haiti (2005); St. Vincent and Grenadines (1989); Suriname (1981)

- **Out dated legislation in:** Dominica (1919), Grenada (1919), Guyana (1966) St. Kitts and Nevis (1919)
Article 66 of Revised Treaty of Chaguaramas

- The protection of Intellectual Property (IP)
- The promotion of IP Rights within the Community
- The strengthening of regimes for the protection of IPRs and the simplification of registration procedures in Member States
- The establishment of a regional administration for IPRs except copyright
- Measures to prevent the abuse of IPRs
- Participation of MS in international regimes for the protection of IPRs
Indigenous Collective Management Organizations in CARICOM

For Music and Related Rights:
- Copyright Organization of Trinidad and Tobago (COTT), 1984
- Jamaica Association of Composers, Authors, and Publishers Ltd. (JACAP), 1998
- Copyright Society of Composers Authors and Publishers Inc. (COSCAP), Barbados, 2000
- Eastern Caribbean Copyright Organisations for Music Rights Inc. (ECCO), St. Lucia, 2009; replaced Hewananorra Music Society (2001)
Indigenous Collective Management Organizations in CARICOM

- Stichting Auteursrechten Suriname (SASUR)
- Belizean Society of Composers, Authors and Publishers (BSCAP)
- Jamaica Music Society (JAMMS) – public performance and broadcast rights
- Jamaica Copyright Licensing Agency (JAMCOPY) – Reproduction Rights
- Barbados Copyright Agency (BCOPY) - RRO
Public IP Institutions

- Jamaica Intellectual Property Office
- Trinidad and Tobago Intellectual Property Office
- Barbados Corporate Affairs and Intellectual Property Office
Regional umbrella organisation to provide data mgt services to national CMOs and represent/promote/defend their interests regional and international matters

Established in 2000 with assistance from WIPO, requested by IP Ministers

Founding Members: JACAP, COTT, COSCAP, ECCO

Other Members: ACDAM (Cuba), SASUR, BSCAP, JAMMS, JAMCOPY
Non profit company incorporated in Trinidad and Tobago

Office in Trinidad funded by subscriptions from CCL societies

Combine small catalogues, share common costs, increase efficiency, stronger negotiating position, increase remuneration to CCL members

CCL Members represent approx 5,300 writers, performers, producers and publishers of music

Royalty collections increased from US$1.2M in 1999; $2.3M in 2004; $4M in 2008
The Importance of IPRs

- Innovation and creativity are fundamental to development and present in all cultures.
- The debate about IPRs is how best to formulate, apply and enforce the laws protecting these rights for the benefit of mankind, with an equitable balance between right holders and users of the IP-protected products and services in ways that do not stymie innovation and creativity.
- IP is now widely perceived as an important economic asset, the value of which should be enhanced by proactive and strategic policies.
The Importance of IPRs

- An effective IP system is indispensable to technological and cultural development which is in turn indispensable to economic growth and social welfare.

- Progress of Caribbean societies rest on its capacity for new creations in areas of technology and culture.

- Promotion and protection of creations lead to further creativity, economic growth, creation of new jobs and industries and enhances the quality and enjoyment of life for the Region’s people.
The CARIFORUM-EC EPA

- Ended the trade regime of preferential market access of CARIFORUM countries to Europe (Lome and Cotonou)
- EPA commits CARIFORUM to open their markets to European exports
- EPA Implementation Unit established in March 2009 at the CARICOM/ CARIFORUM Secretariat, Guyana
Objectives of the EPA

- To promote regional integration, development and sustainable economic growth
- To promote the smooth and gradual integration of ACP economies into the World Economy
- To enhance supply capacity, competitiveness and economic growth in CARIFORUM
- To ensure full conformity with the WTO provisions
Culture and the EPA

- CARIFORUM suppliers of cultural services granted market access in 27 European states for entertainment services (some limitations by Germany and Austria)
- Governed by the rules of the Services and Investment chapter and the general provisions of the EPA
- Must be a registered entity and have a contract to supply the service
- Temporary stay for a cumulative period of up to 6 months or the duration of the contract
## Trade in Services - Four Modes of Supply

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<tr>
<th>Mode of Supply</th>
<th>Description</th>
<th>Caribbean exports</th>
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<tbody>
<tr>
<td>Cross-border supply (I)</td>
<td>Sound engineering or fashion design services supplied via Internet.</td>
<td>Low</td>
</tr>
<tr>
<td>Consumption abroad (II)</td>
<td>Activities like cultural, festival, heritage tourism.</td>
<td>High</td>
</tr>
<tr>
<td>Commercial presence (III)</td>
<td>Establishment of a branch, subsidiary to provide services.</td>
<td>Low</td>
</tr>
<tr>
<td>Movement of natural persons (IV)</td>
<td>Travel abroad by artist or band to provide services, e.g. tour.</td>
<td>High</td>
</tr>
</tbody>
</table>

There are no data on creative services exports outside of festival and heritage tourism earnings.
A special Protocol on Cultural Cooperation is a part of the EPA.

Provisions for non-commercial activities.

Builds on the principles of the UNESCO Convention.

Aims to promote cultural diversity, heritage, cooperation and the development of cultural industries.

Aims to redress the structural imbalances and asymmetrical patterns which may exist in such exchanges.
Protocol III on Cultural Cooperation

Articles with provisions for:
- Cultural exchanges and dialogue
- Technical Assistance
- Performing Arts
- Publications
- Protection of sites and historic monuments
- Temporary movement of artists
- Audiovisual productions (film, TV etc)
Protocol III on Cultural Cooperation

- Artists engaged in visual and performing arts, festival managers, mas performers and designers (carnival)
- Temporary stay for up to 90 days in one year
- For training, exchange of expertise, technology transfer, trade fairs, seminars, co-publishing, policy development, legislation
- Promotes public-private partnerships
Audio Visual Cooperation

- Encourages the signing of co-production agreements between EU and CARIFORUM states.
- Co-produced works qualify as European works in the EU and as CARIFORUM works where preferential schemes for the promotion of local and regional content exist.
- Subject to ownership and nationality requirements and 80/20 ratio in financing by the Parties.
Audio Visual Cooperation

- Jamaica earned US$858M from location filming in 2003

- Dominica earned US$18M from the filming of Disney’s Pirates of the Caribbean – Dead Man’s Chest over 6 months in 2005
Issues to be addressed

- Great disparity in development between culture sectors between the Parties
- Financing to support the development of CARIFORUM culture sector
- Strengthening the enabling environment in policy, legislation, intellectual property, incentives, trade & export facilitation
- Visa regimes pose an obstacle
- Market access subject to qualification requirements and economic needs tests
Issues to be addressed

- Private sector and cultural creators, industry professionals to be enabled to play a stronger role in the implementation of the EPA.

- The need to assist the cultural sector in the CARIFORUM region to build capacity, increase competitiveness and enhance its export potential.
Other challenges

- Inadequate policy framework and no incentives regime
- Inadequate legislation and enforcement of intellectual property laws (piracy)
- Inadequate data – economic value largely undocumented
- Not seriously regarded as an economic sector
Other challenges

- Inadequate business support services
- Difficulties in obtaining financing from traditional banking sector
- Underdeveloped infrastructure – venues, training institutions etc.
- Weak marketing and distribution channels
- Key stakeholders need stronger industry associations
### EPA Possible Benefits

- Greater market access in Europe for CARIFORUM cultural goods and services
- Creative sector galvanized: new alliances, regional industry associations, links with organizations in the Caribbean diaspora in Europe
- Platform for cooperation, advocacy, and professional development
The IP-Empowered Society (WIPO)

Is one in which there is:

- Political will that recognizes the value of IP and the IP system
- An IP legislative framework for copyright, patents, trademarks, geographical indications, industrial designs etc.
- Vital institutions such as Intellectual Property Offices, Cultural & Research institutions; and other regulatory agencies such as those dealing with taxation, consumer affairs, collective management, industry associations are established and or supported
The IP-Empowered Society (WIPO)

A culture in which IP is valued and respected, used as a tool for economic growth, and in which the private sector recognizes the value of IP in their business endeavours and ventures and

Research and Development in science and technology and cultural institutions are valued and adequately funded.
Paradigm Shift on Culture

Culture is our Business – intersectoral approach education, tourism, ICT, finance, trade

Viable and diverse sectors

“Spending on culture is not an expense, it is an investment”

Dr. Enrique Iglesias, Former President of the Inter-American Development Bank
The National Dance Theatre Company of Jamaica at CARIFESTA IX, Trinidad and Tobago, 2006