

International Literary and Artistic Association (ALAI)
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Opening speech
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Learned Colleagues,

Ladies and Gentlemen:

It is a great honor for me to be speaking on behalf of the Director General of the World Intellectual Property Organization (WIPO), Dr. Kamil Idris, at the opening of the 2001 ALAI Congress.

Directly and indirectly, we talk a lot about borders these days. Leaving quickly aside the border measures dealt with under TRIPS, we see the Internet as a borderless cyberspace, and the word “globalization” presupposes, if not the disappearance of, then at least the diminishing importance of, national borders. Certainly, there are realities behind this, but national boundaries will continue to exist as legal realities, and therefore we shall have to cope with increasingly difficult questions related to private international law, international enforcement of rights and, of course, in the long run, increased global harmonization of some essential aspects of copyright protection.

Still, there is another kind of border which also seems to be waning, or perhaps just hiding—or moving around—a bit in the landscape, and here I have in mind the frontiers of copyright as a legal discipline in the landscape of intellectual property. There

are those who think that the frontier moved in the mid-eighties when copyright protection of computer programs became generally recognized. I do not think that that was the case, but maybe none of us had quite realized where exactly it was and so, at the time, a bit of surveying was called for.

The program of this Congress also has something to do with the borders of copyright. In the hectic days of December 1996 when the WCT and the WPPT were adopted, the frontiers were moved. From dealing with rights in the use of works: reproduction; distribution; performance; communication to the public, etc., copyright protection expanded into the protection of the technological measures used to establish a *de facto*, not a legal, protection. This was a significant step in the right direction, but exploration and surveying of this new territory are, indeed, called for. In particular, we need to discuss how copyright will function here, and how we will maintain respect for the limitations and exceptions traditionally incorporated into copyright law while at the same time providing adequate legal protection and effective legal remedies, as laid down by Article 11 of the WCT. Maybe this will bring us to other interesting territories, such as that of competition law. Discussions on this issue have already taken place at WIPO, and I am sure that we shall find the discussions of this Congress an inspiration for our future work.

It is also timely to take a walk along the borders between copyright and its good neighbor, trademark law. Theoretically, of course, we have all known for a long time that this borderline does not have the sharpest of boundaries: the graphic designer

making a figurative mark is probably an author, and the mark is a work of art, at least until it is transformed into a trademark through registration and/or use. In practice, however, there have been very few cases where such distinctions played a significant role, or were difficult to handle. But things will not remain that way. Whether or not general goods also become works, for example, through the adornments and texts on their packaging, or works become trademarks, for example, when cartoon characters are registered as marks, we will continue to experience overlaps, and we will need to decide whether to define the borders more clearly, or accept that some areas are common territories or, maybe, are even no man's lands. Here also, WIPO is following the issues closely, and may very well take them up for further study.

So, all in all, and, I am happy to say, as usual, ALAI is addressing difficult, important and practically relevant issues and I expect, and I am happy to repeat, as usual, that the discussions at this Congress will be an inspiration to all of us. I convey to you Dr. Kamil Idris' best greetings and his wishes for a successful and memorable Congress.

Thank you.