In order to revitalize the industrialized countries' economy
and enhance the developing countries' commercial growth
one must democratize access to intellectual property

Controversy about articles 64 and 64.1 (1) of the Canadian Copyright Act

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Law is supposed to serve Justice

Comment: The internal laws of Nations and the International Conventions on Copyright acknowledge that:

1) Any original graphic creation is first and foremost a work of art;

2) Any creative artistic work is the natural property of its author;

3) Ownership of such a work is non-transferable, inalienable and imprescriptible;

4) Copyright naturally results from ownership of the work;

5) Copyright is comparable to a title of world-wide exclusivity;

6) Copyright is valid for the author's lifetime and several decades after his death;

7) After the author's death, his rights are held by his heirs and/or his legatees and/or his beneficiaries.

Question: Given the author's natural property of his work and the resulting Copyright, why should one in addition file a registration application payable country by country, obligatorily published *(hence loss of secrecy)*, the monopolistic title of which is valid for only five years, renewable once?

Answer: From the point of view of ethics, nothing justifies the registration of such a title, since Law is supposed to serve Justice which in turn Copyright respects.

Question: In whose interest have the States enacted laws on registered designs *(and models)*, since such designs are already covered by Copyright?

Answer: It is in the sole interest of multinationals. A design filing *(description of a utilitarian and/or functional object)* is a State-granted title, procuring any predator with the latitude to misappropriate it without risking civil proceedings *(lengthy and costly)* that the author or his SME can almost never afford.

It is thus to organize a methodical segregation aimed at authors based on their lack of money that filings and registrations of designs *(or models)* were conceived. Under the pretexts that only industrial titans have the financial means and scope required to internationally extend and defend a title, every effort was put toward preventing the author from equitably negotiating exploitation rights transfers related to his creation with his potential predator.

Conclusion: The reader of the present publication will find out in the following pages the strategies proposed to the author for avoiding the disadvantages of registered designs *(or models)*, by opening up a way that is accessible to him for the development of his project.

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How can one escape the Canadian Copyright Act's ambiguity

1 - 64. (1) In this section and section 64.1,*"article" means any thing that is made by hand, tool or machine; "design" means features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye;* . **Reply:** it appears to be a design representing an isolated object. Akin to **Salvador Dali**'s *"*melting watches "; it cannot be the design of an object intrinsic to a work of art, from which the indivisibility of its totality guarantees the artist's world Copyright *(Author's Rights)...* **64.1** (1) continued: *"useful article" means an article that has a utilitarian function and includes a model of any such article;* **Reply:** by the mere fact that the work is indivisible, any design representing an object intrinsic to a work of art has no other function than that of its support on a medium… **64.1** (1) continued: *"utilitarian function", in respect of an article, means a function other than merely serving as a substrate or carrier for artistic or literary matter.* **Reply:** whether the object drawn in two dimensions can be functional or not in three dimensions, the reproduction of its design for commercial purposes still requires the **titleholder's authorization**, according to Article **64.1** (1) of the current Canadian law. The mandatory authorization from the titleholder of the Copyright *(Author's Rights)* stipulated in the Canadian law is the absolute proof of its validity. **Conclusion:** Akin to world-famous artists, some objects drawn by **Hergé** in one book of the Tintin and Milou series has already set a legal precedent to that effect. The same applies to Walt Disney, etc.

1 - Article 64 of the Canada Copyright Act: *" (2) Where copyright subsists in a design applied to a useful article or in an artistic work from which the design is derived and, by or un- der the authority of any person who owns the copyright in Canada or who owns the copyright elsewhere, (a) the article is reproduced in a quantity of more than fifty, or (b) where the article is a plate, engraving or cast, the article is used for producing more than fifty useful articles, it shall not thereafter be an infringement of the copyright or the moral rights for anyone (c) to reproduce the design of the article or a design not differing substantially from the design of the article by (i) making the article, or (ii) making a drawing or other reproduction in any material form of the article, or (d) to do with an article, drawing or reproduction that is made as described in paragraph (c) anything that the owner of the copyright has the sole right to do with the de- sign or artistic work in which the copyright subsists.".* **Reply: 1) What characterizes a useful article?** The useful article stipulated in Article **64.1** (1) must be identically reproducible in several copies from a board, an engraving or a cast. If it is not identically reproducible, one can therefore not possibly make several copies thereof from a board, an engraving or a cast. **2) What kind of article can be classified as not useful?** *A priori,* an article that cannot be identically reproduced. Example: a prosthesis is not a useful article; it is a "**device**" adjusted to each individual's specific morphology and anatomy. Is not *a priori* useful: a set of parts constituting a mechanism, an appliance or a machine. Whether or not an object is useful, according to Article **64.1** (1), no one has the right to reproduce an original drawing or the object resulting therefrom *"without the titleholder's **authorization**"*. By stipulating the need for the titleholder's "explicit" **authorization**, the Law tacitly acknowledges the Author's sovereign ownership of his work, in contradiction of the aforementioned principles of non-violation of Copyright. **3) When negotiating an international contract,** parties can select a legal system other than that of Canada. **4) When the work is unpublished**, it is through a confidentiality and non-disclosure covenant that a third party gains access to the secrets contained therein, by forcing the third party to acknowledge the author's property in the contract's preamble. Such a contract allows the author to negotiate more equitably a cession or license with an interested party, who, subsequent to a mutual agreement, can opt to file a monopolistic title. **5) Moreover, according to the principle,** "**contract is Law**", feasible agreements between contractors can be reached, akin to Coca Cola or Walt Disney, which grants license rights under the seal of **Secrecy** or **Copyright**.

2 - Article 64.1 (1) **continued** - *Exception (3) Subsection (2) does not apply in respect of the copyright or the moral rights in an artistic work in so far as the work is used as or for (a) a graphic or photographic representation that is applied to the face of an article; (b) a trade-mark or a representation thereof or a label; (c) material that has a woven or knitted pat- tern or that is suitable for piece goods or surface coverings or for making wearing apparel; (d) an architectural work that is a building or a model of a building; (e) a representation of a real or fictitious being, event or place that is applied to an article as a feature of shape, configuration, pattern or ornament; (f) articles that are sold as a set, unless more than fifty sets are made; or (g) such other work or article as may be prescribed by regulation* (**AM*:** re reply no. 1) hereinabove)*; (4) Subsections (2) and (3) apply only in respect of designs created after the coming into force of this subsection, and section 64 of this Act and the Industrial Design Act, as they read immediately before the coming into force of this subsection, as well as the rules made under them, continue to apply in respect of designs created before that coming into force. R.S., 1985, c. C-42, s. 64; R.S., 1985, c. 10 (4th Supp.), s. 11; 1993, c. 44, s. 68; 1997, c. 24, s. 39. *Author's message (suggestion).*

3 - Article 64.1 (1) of the Canada Copyright Act: *"The following acts do not constitute an infringement of the copyright or moral rights in a work:* ***a)*** *applying to a useful article features that are dictated solely by a utilitarian function of the article.* **Answer:** this is not about a work of art, but strictly a useful object and a utilitarian function. ***b)*** *by reference solely to a useful article, making a drawing or other reproduction in any material form of any features of the article that are dictated solely by a utilitarian function of the article etc.".* **Answer:** This restriction is normal, since **creation** *~ of the texts and drawings making up the description of the useful object ~* in **2** dimensions must precede the making of the related object in **3** dimensions, in order that there may be an unquestionable artistic **creation** covered by Copyright. *; (c) doing with a useful article having only features described in paragraph (a), or with a drawing or reproduction made as described in paragraph (b), anything that the owner of the copyright has the sole right to do with the work.* **Reply:** since the law in question concerns **exclusively** the titleholder of a Copyright, there fatally is copyright violation by a third party who performs such a deed. **64.1 (1) continued:** *and (d) using any method or principle of manufacture or construction. (2) Nothing in subsection (1) affects (a) the copyright, or (b) the moral rights, if any, in any sound recording, cinematograph film or other contrivance by means of which a work may be mechanically reproduced or performed. R.S., 1985, c. 10 (4th Supp.), s. 11; 1997, c. 24, s. 40.* **Reply:** provided one does not plagiarize the text that makes up the principle or method required to create the work.

4 - Article 64.1 (2) allows one to avoid Article 64.1 (1): *(2) Nothing in subsection (1) affects (a) the copyright, or (b) the moral rights, if any, in any sound recording, cinematograph film or other contrivance by means of which a work may be mechanically reproduced or performed.* **Reply:** by having an (audio-visual) video made of his work, the author enjoys the provisions of article **64.1 (2)** which free him from article **64.1 (1)**'s constraints.

5 - Article 64.2 (1) *This Act does not apply, and shall be deemed never to have applied, to any topography or to any design, however expressed, that is intended to generate all or part of a topography.*

6- Article 64.2 (2) *For greater certainty, the incorporation of a computer program into an integrated circuit product or the incorporation of a work into such a computer program may constitute an infringement of the copyright or moral rights in a work.*

7 - Article 64.2 (3) *In this section, "topography" and "integrated circuit product" have the same meaning as in the Integrated Circuit Topography Act. 1990, c. 37, s. 33.*

Objections from Jurist
on the content of this document

Notwithstanding the jurisprudences identified in Michel Dubois' book entitled, "**An opportunity for SMEs**", validating Copyright on an industrial product and, in spite of the legal opinion from lawyers who strictly stick to **"serving Justice"** according to their professional oath; should other lawyers, in the name of other principles, still deem it necessary to contradict any part of this document, they can do so hereinafter **by committing their professional accountability**. They must write their objections on the dotted lines below, followed by their signature and coordinates. *(Given the commercial stakes related to the marketing of innovations that the objections of detractors may raise, we do not need the recurring verbal criticism from some of their peers that are purely a propagation of unfounded rumors)*.

Additional pages reserved for the annotations of Jurist on the subject matter of this entire document

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Lawyer's Full Name **Signature**

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Address, Telephone number and email address:

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Should the lawyer require more space than this page allows,
he may use additional pages to write his answer.

Very important!

In order to publicly certify his opinion, each lawyer must go to the tab
"Press documentation"
on the USD System International Editions Consortium's site
www.sosinvention.com
The lawyer will find a copy of the present document entitled:
"Canadian Copyright Art 64"
The lawyer will register the document to include his answer that he will send to
info@sosinvention.com

The Consortium undertakes to leave on its Site for one year
the objections that each lawyer will have accepted to publish

Michel Dubois reserves the right to publish his answers to the lawyers
if he deems it necessary

In the event that the lawyers' opinion exceeds the spaces hereinabove, would they please add more pages to the present document.