

**INTERNATIONAL SEMINAR ON COPYRIGHTS  
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***PANEL “CULTURAL DIVERSITY AND COPYRIGHT”***

We live at a time of extraordinary change and technological progress, especially in the fields of communication and media, which is moving us forward to an ever more interdependent, even borderless world. Globalization is a process which has introduced a whole new dimension to the management of the problems of our daily life, in all our countries.

But if, as Jean-Marie Le Clézio tells us: “*L’artiste est celui qui nous montre du doigt une parcelle du monde*” how can we, in this globalized world, create an environment which gives artists and creators the opportunity to show us their part, their vision, of the world? In other words, how can cultural diversity be preserved and enhanced?

**The Convention on the protection and promotion of the diversity of cultural expressions** was adopted on 20 October, 2005 at UNESCO.

It establishes some basic principles:

- The recognition of the distinctive nature of cultural goods and services which must not be considered for their mere economic value, but also as factors of identity, value and sense.
- The right of the States to adopt and implement the cultural policies they deem necessary to preserve and enhance the development of all cultures.
- The support to cultural industries in developing countries.
- The fact that this convention is not subordinated to other international treaties and thus to commercial international treaties.

Even if this text does not specifically deal with Authors’ rights (however it recognizes “*the importance of intellectual property right in sustaining those involved in cultural creativity*”), it is consistent with the protection of these rights, which are essential to the development of abundant, diversified and high level contents. This is why the adoption of this convention was supported by creators, often joint together in

coalitions, among which the French and Canadian coalitions played a major role. Moreover, the will to preserve authors' rights and cultural diversity often go hand in hand. Indeed, culture thrives on creation, and creation requires that authors be protected and fairly remunerated for their work. Hence, Authors' rights favour cultural diversity while the struggle to uphold cultural diversity contributes to defend Authors' rights.



### **Authors' societies are fosters of culture and cultural diversity in many ways.**

Authors' rights societies are in the best position to offer a secure, simple framework to licence the rights they need to the users and to distribute fairly and accurately to creators in a cost effective manner.

Users themselves, whether DSPs (digital service providers), broadcasters, cable operators, movie theaters...agree that the collective management system benefits the market as it facilitates rights clearance for a wide variety of works where these rights clearance would otherwise be very difficult: a TV general oriented programme generally uses between 40% and 60% music. A radio music oriented programme, whether traditional radio or a multi channel webradio, may use up to 80% to 100% music. All these users need a system which brings them the legal safety of offering to the consumer the most varied and broad repertoire, and collective rights management is the best system to cope with this need.

As for creators, they also recognize this role of Authors' rights societies. For instance, I would like to quote Mrs Nana Mouskouri, the world famous author, composer and performing artist, Greek native and a member of SACEM, who expressed herself (in Greek and in French) at the WIPO Seminar on Copyright that took place in Brussels just a few days ago: *"Linguistic and cultural diversity in the European Union is a driving force and a source of creativity. Collective rights management societies, by offering access to the widest possible repertoire, contribute to enhance this diversity. My society in particular develops very important culture supporting programmes. I do appreciate that my society plays such an active role in the discovery of new talents."*

Indeed, SACEM cultural action supports creation of music and texts, production and distribution of works, in particular some of those which cannot find an easy return on investment. SACEM cultural action supports specific repertoires (serious music, poems) as well as musical works created by young professionals which are not broadcasted on major radios and TVs. Training for authors and performing artists also exist. Finally, SACEM cultural action is not only national, but also European and international. Thus, Authors' societies also provide funds for projects that may otherwise not be viable, helping up and coming creators get an outlet for their art and thus contributing to a thriving and diverse cultural offer in the future.

**However, Authors' societies are the weakest link in the chain going from the creation of the work to its distribution to the consumer and hence need to be protected.**

Collective rights management is the best way to offer one-stop shops where licensees can quickly get clearance to exploit all the works that they need for their operations with the highest degree of legal certainty. This is a big benefit for licensees, because they can get a license covering the entire repertoire represented by an Authors' society, which through reciprocal representation agreements is the world repertoire. This means that licensees do not need to negotiate with each and every rights holder to get the repertoire they intend to use. Therefore, collective management of rights greatly facilitates the rights clearance process.

However, users often challenge the existing system, arguing that Authors' rights societies would be too costly, or would not make an accurate distribution of the monies they collect, or would not offer a sufficient legal certainty to users. Whatever the arguments, the final goal is always the same: to challenge the tariffs of collective rights management societies in order to obtain a decrease in the level of the remuneration to be paid to authors, composers and publishers.

In the European Union, we are now confronted to a situation of great chaos due to the difficulties that we have encountered in the past few years with the European Commission, especially in the field of the management of rights for on line exploitation, first with the Recommendation of 18 October, 2005 (DG Internal Market), second with the Decision of 16 July 2008 (DG Competition). Indeed, following the 2005 Recommendation of the EU Commission, some major publishers decided to withdraw their mechanical rights in the so called "Anglo-American" repertoire for on line exploitations from the network of EU societies and to manage them directly for the whole European territory, eventually with the help of one or some collective rights management society (e.g. Universal Music Publishing Group in cooperation with SACEM-SDRM), or to a specific entity (e.g. CELAS for EMI Publishing, in cooperation with MCPS and GEMA). On the other hand, the 16<sup>th</sup> July 2008 Decision of the EU Commission accused EU Authors' rights societies' reciprocal agreements to be anti competitive, because the territorial limitations they provide for would constitute a concerted practice. EU Authors' rights societies are now conducting bilateral negotiations in order to amend their reciprocal representation agreements in the fields of cable, satellite and Internet exploitations (without sometimes knowing precisely what are the exact requirements of the European Commission...).

Finally, all interested parties - whether authors, authors' societies or users - are highly dissatisfied with the situation prevailing now in Europe, which also proves to be very detrimental to cultural diversity since :

- there are no more one stop shops for the world repertoire, which makes it more complicated for users to obtain a licence. Some users could decide to focus on the "big" repertoires and to do without the repertoires of smaller Authors' societies;
- some small and medium sized EU Authors' societies could have difficulties in the future to continue to carry out their activity if they are deprived from managing certain kinds of rights or users.

EU Authors' societies are now seeking from EU public authorities a framework that:

- Acknowledges the major role played by Authors' Societies both in economic and cultural terms;
- Does not regard competition as an end in itself;
- Recognises that a robust copyright framework is a key to the development of the information society. In fact, attractive content is the main driver of the information society. Without the protection granted by copyright, there would be no incentives to create and invest in creativity;
- Addresses the problem of online piracy, which is the single most important threat to the cultural industries, notably by adopting or amending legislation, in order to introduce ISP cooperation in the fight against online piracy. Awareness raising campaigns are also needed, in order for consumers to realise the harm that online piracy causes to the creative community. New thriving online services that meet the demands of consumers while ensuring an adequate remuneration for creators can only flourish if online piracy is eradicated.

**Concerning fight against on line piracy, it has to be noted that, today, most of the content available on the Internet comes from unauthorised sources:**

According to IFPI, 20 billion illegal downloads take place every year. Today, not only musical works, but also videos and films are concerned.

- On line piracy affects physical sales very negatively. According to IFPI, music sales have decreased by 50% in France between 2002 and 2007. French DVD market has already lost one third of its value. This drop in CD and DVD sales has obviously had an impact in income collected by Authors' societies.
- On line piracy also affects the development of legitimate online services, and ultimately significantly reduces the potential income of rights holders. Worldwide, one music title is downloaded legally for 20 illegally.
- On line piracy negatively impacts the cultural industry as a whole. According to a study conducted in France, on line piracy would have destroyed 5000 jobs last year and generated a loss of 1.2 billion Euros for cultural industries (music, cinema, TV, books).

This has caused significant losses for rights holders in general and for Authors in particular and might have even worse consequences in the future: a lack of adequate protection today is the lack of quality and diverse content tomorrow.

Under these circumstances, a draft law, "CREATION ET INTERNET" is being discussed in France

This draft law is the result of long discussions amongst the interested parties with the aim to find a compromise between the freedom to create and to be remunerated for

this creation on the one hand and the freedom to listen to music and to surf on the Internet on the other hand.

This draft law provides for a progressive and pedagogic system: the “graduated response”.

CREATION ET INTERNET provides for the creation of a High authority, placed under the control of the judge (*Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet*, “HADOPI”), which would function as follows:

Seized by rights holders, HADOPI will:

- Send a mail to the Internet user to inform him that he is infringing copyright
- In case of a new infringement within 6 months, send an official letter, with acknowledgement of receipt;
- In case of a new infringement within 1 year, HADOPI, under the control of the judge, may put an end to the Internet subscription for a period varying from 3 to 12 months.

Such a system of graduated response has proved effective in other countries: in the UK, a survey showed that 70% of Internet users stop downloading illegally after the first message and 90% after the second one. In the US, 70% of Internet users would stop downloading illegally after the first message, 85% to 90% after the second one and 97% after the third one.

SACEM and other rights holders’ organizations support this draft law. However, we do not believe that it will enable creators to be fairly compensated for the decrease of the physical market. Hence, there should be a step forward for creating alternative sources of remuneration for creators.

### **Education is a major issue.**

Awareness-raising and education campaigns on intellectual property rights have taken place in almost all European countries. Authors’ societies are indeed very involved in these campaigns, which are in most cases organised through common platforms with other rights holders. The aim is raising awareness amongst users, most notably youngsters, that the creative endeavours of authors and composers need to be protected, that file-sharing of copyright protected material is an illegal act and that other legal alternatives are available.

However, awareness and education campaigns targeted at consumers have had, for the time being, a limited effect. They have proved effective in making people understand that unauthorised downloading of copyright protected content is illegal. But changing illegal behaviours of consumers takes time. Therefore these campaigns need to continue.

### **Reassessing the value of content is a major need for the development of the digital market.**

It is true that the Internet in itself could eventually become a very useful tool to promote cultural and linguistic diversity. For instance, with the Internet, the costs of distribution have become less significant, which would make it possible to sell less popular products. This is the so called “long tail” phenomenon where these less popular products generate significant revenues in the long term, also contributing to cultural diversity. The development of Web 2.0 could also lead to the emergence of new forms of creation.

However, looking at business models, the huge development of P2P systems enabling consumers to access works for free makes it difficult for legitimate online music services to compete in a market where content has no more value.

Service providers have to test new business models, from unlimited streaming services against subscription or for free, financed by advertising revenues, or even music downloads financed by advertising. All those business models have one thing in common: they offer a huge content for very little money. Just one example: ORANGE’s Music Max service offers to download permanently up to 500 titles per month against a subscription fee of 12 Euros.

The idea that content should be free on the Internet, that creative commons offer a real opportunity for the development of creative contents on line, is not realistic. To quote once more one of our members, Bruno Bénabar: *“Il faut tordre le cou à cette idée assez tordue de gratuité”*.

Moreover, it is sometimes said that Authors’ rights societies are completely unable to adapt to this “digital age” and that the whole system should be destroyed so that a new one could emerge.

This is totally wrong. SACEM for example was the first music rights society to be created in the world, as early as 1850, and has ever since adapted to all changes, whether technological or economic, to the benefit of its members.

We do not know exactly what will be the technologies of tomorrow, we do not know if there will still be Internet in 100 years from now, but for sure there will still be music, and creators to write that music, who will expect to be fairly remunerated and possibly to make a living out of their work.

To conclude, I would like to thank you once again for giving me the opportunity to speak during this forum and especially on that subject of cultural diversity. I think that indeed France and Brazil have a lot to say to each other, French and Brazilian creators have a lot to say to each other. It is not only because of the historic links that do exist between France and Brazil, but it is also a question for our future. I am sure that 2009, which will be the year of France in Brazil, will vividly demonstrate our mutual commitment in favour of cultural diversity, our will and our pleasure to work and to create together. Muito obrigado.

