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SMES AND THE COPYRIGHT SECTOR — SUCCESS STORIES

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INTRODUCTORY REMARKS

1. Those who are not closely involved in the development and application of copyright and related rights (that is, rights related to copyright: the rights of performers, producers of phonograms and broadcasting organizations) may not see easily what kinds of opportunities the ownership and/or the exploitation of such rights may offer to SMEs, and what kinds of challenges and dangers they may be faced with if their activities take place in fields where these rights may be relevant.

2. In order to recognize the challenges, potential dangers and opening opportunities, it is, however, sufficient to refer to certain economic and trade figures, and to consider the impact of new technologies, first of all computer and digital technology and the networked environment. Recent studies have revealed that the contribution of the so-called copyright industries to the GDP in many countries is about 3-6 %, and that this contribution is frequently more important than certain traditional industries, and, in some countries, the entire agriculture; also the growth rate in this sector is much higher than in many other sectors.

3. A further important reason for which it is worthwhile for SMEs paying more attention to copyright and related rights is the special role of these rights in electronic commerce. Electronic commerce is categorized in different ways. For example, among the buzzwords, we can hear and read now quite frequently such as BtoB (business to business), BtoC (business to consumers (or clients)), PtoP (peer to peer or person to person, with Napster as flagship, although it cannot be seen clearly what kind of flag is waving on it) as forms of electronic commerce. It seems, however, that the most fundamental categorization that may be made is between two kinds of electronic commerce; namely, on the one hand, indirect or partial electronic commerce and, on the other hand, direct or full-fledged electronic commerce.

4. In the case of indirect electronic commerce, many commercially relevant activities are carried out through the Internet, such as advertizing, negotiating, concluding contracts, and transferring payments, but the products themselves to which all this relates are not delivered through the network; they are delivered in the "real", physical word, in tangible form, and, if they have been ordered from another country, they cross natural borders with the possibility of customs control. In the case of direct electronic commerce includes all these elements, but, in addition to them, also the products themselves are transmitted through the digital network. For this, the products must be in digital format, expressed in zeros and ones, and it is well known that the great majority of works protected by copyright and recordings and programs protected by related rights may be – and, ever more frequently, are – transformed into such format, and made available through the Net.

5. All this is important to be kept in mind by those SMEs which carry out copyright-related activities, either as creators and producers or distributors and users. There are many SMEs – in fact more and more – that may fall in this category: niche publishers, smaller record producers, software makers, Internet start-ups, and so on. Under the conditions of the present rapid and dynamic technological and economic changes, and the globalizations trends, the criteria themselves for regarding an enterprise as an SME may also change. The megamergers that have taken place recently or that are just under negotiation, concern, to a great extent, economic and trade activities where copyright and related rights are very much

relevant. Media empires are emerging with global impact extending also to the fields of telecommunication, network operations and electronic manufacturing. In comparison with such titans, what has been regarded so far as being bigger than what might fit into the SMEs category may have to be reclassified as a MEs, what has been considered to be MEs may become SEs, and some SEs may be simply swept away if they are not sufficiently cautious. We are here certainly to discuss what measures are necessary in order that at least the latter development may be avoided wherever possible and that success stories may be more typical for SMEs.

6. In this paper, we try to outline what seems necessary in the fields of legislation and the application of law, as well as of the exercise and enforcement of rights, to maintain and increase the chance for SMEs to succeed.

OBJECTIVES, CHALLENGES, DANGERS AND OPPORTUNITIES

Objectives: success stories through well-balanced copyright and related rights protection; some positive examples

7. We may refer to many examples to prove that an appropriate, well-balanced copyright regulation may contribute both to the survival and to the success – sometimes spectacular success – of smaller and medium-sized enterprises. Here we will use only three; they are, however, quite typical. One is an old story, the other two are more recent; one is from a country which is now a leading industrialized country – in fact, the biggest economy of the world – but the example is from an early period of its history when, on the basis of the present criteria, it still could have been regarded a kind of developing country: the United States of America; one is from a developing country, and quite a huge one, which just as a consequence of the success story involved, is emerging as one of the most important players in the field concerned: India; and one is from a country which, at the time of the story was still a reluctant member of the group of the so-called socialist countries (although, as the Western press put it, the merriest barrack in the camp), which then happily became a "transition country", and which now is in the front line of candidates countries impatiently drumming at the gates of the European Union: Hungary. The latter is a far less important economy than the former two, but the story from there is quite interesting, and attractive for the author of this paper, since he participated in it as the then Director General of the Copyright Bureau of the country.

8. Let us take then the example from the Unites States. The story is from the period when it had just obtained its independence and was in the stage of establishing its own economic, social and legal system. As far as copyright was concerned the first idea – which, at the first sight, perhaps seemed to be attractive and clever – was to promote local culture and creativity through granting copyright protection for the works of domestic authors, leaving, however, foreign works – first of all works published in England – unprotected. The results proved to be catastrophic from the viewpoint of what the isolationist approach to copyright was believed to serve; from the viewpoint of national culture and creativity. Those publishers – according to our present comparative scale, certainly small or, at least, medium-sized ones – that had chosen to invest in the publication of some still less well-known American authors were

unable to compete with the others which achieved easy and safe success by publishing unprotected works of famous and popular English writers and poets without any need whatsoever for bothering with obtaining authorization and paying remuneration to them. The then "SME" publishers supporting local creativity either went bankrupt or changed publishing policy in abandoning their patriotic extravaganza.

9. This negative effect of the introverted copyright policy was recognized quite early at the other side of the big water. Copyright legislation was changed, updated and – through appropriate agreements – extended to English works. The result of this step is well known: the dying "SME" publishers specialized in publishing works of domestic authors received a huge doze of new opportunities for competing in the market and succeed. This wise decision to change copyright policy might even be regarded the beginning leading to the enormous success story of the U.S. cultural industries (about which, of course, it would be difficult to say that they are now dominated by SMEs).

10. The stories about India and Hungary are much newer. At the end of the 70s and the beginning of the 80s, there were still a lot of vehement debates at the international level on what kind of intellectual property protection might be adequate for computer programs, the growing importance of which at that time was becoming evident. During those debates, patent protection – which now, in certain countries, has started a spectacular, although in some aspects controversial, carrier – was, in general set aside and rejected as a major option. The possibility of a *sui generis* system was considered more or less seriously (of which still there are some very much articulate *arrière-guard* advocates), but copyright was emerging as the most ready-made and most easily applicable option. The breakthrough towards copyright as a generally accepted option took place in February 1985, at a meeting organized in Geneva at the WIPO headquarters. It was due to the excellent working paper prepared by Michael Keplinger from the USPTO (who is still a leading figure of the international copyright scene), to the thorough discussion at the meeting, but also to the existing positive examples to which the working paper had been able to refer. At that time, in addition to some hesitating positive development in the case law of some countries, there were already five countries where statutory law explicitly recognized the copyright protection of computer programs.

11. It may not be seen as a surprise that the United States of America was among the first five. In the case of that country, the contribution of copyright protection might not be so easily and evidently identified as the single key factor for the enormous success of the software industry, although its important role could hardly be neglected. However, India and Hungary were also among those first five countries, and, in the case of these countries it is easier to identify what kind of impact copyright protection had made.

12. It seems needless to describe the extremely great success of the Indian software industry which has even started its dynamic extension also to the European and U.S. markets (and not only through "exporting" its excellent experts). There is general agreement that, in the success story of the numerous software SMEs of that huge country – some of which, of course, in the meantime, have grown out this category – in addition to certain other factors (such as a well-thought governmental development strategy and an advantageous educational structure), the early introduction of a well-balanced copyright protection for computer programs played a decisive role.

13. The same was the case in Hungary where – after a big battle with some rigid bureaucrats and in the crossfire of the criticism of the "experts" of some orthodox "brothers" in the "socialist" camp ("it is a shame; you are following the example of the dirty imperialists!") – copyright protection was recognized in the statutory law (the first time in Europe) in 1983. This alone would not have been sufficient in a so-called socialist country to become the basis for an SMEs success story. By that time, however, certain economic and political changes – resulting in the somewhat less rigid "goulash communism" – allowed the establishment of small private enterprises (or sometimes even medium-sized ones). The carrier of the small software houses established in that period became truly a great success story, bringing Hungary into the frontline of software development in Central and Eastern Europe and contributing – along with many other factors – to a smooth transformation of the (ever less) centrally planned economy into a full-fledged market economy.

Dangers for SMEs by overprotection of copyright: the example of decompilation of computer programs

14. There is no need to elaborate on some very well known examples where the breathtaking success of certain software enterprises – which at the beginning were born even not just as small or medium-sized ones but as *micro*-enterprises – has led. They have obtained quite an extensive market dominance with the possibility of their proprietary products obtaining the status of *de facto* world-wide standards relegating by this their potential competitors (among them all software SMEs) into the depending status of simple clients.

15. This evolving scenario was recognized and – after a sharp and animated debate and legal battle – duly taken into account in the European Community in the framework of the preparation and adoption of the directive on the legal protection of computer programs. The directive (Council Directive No. 91/250/EEC of 14 May 1991) contains certain provisions to protect users of computer programs against the dangers of overprotection in favor of software developers: such as the ones guaranteeing for the lawful owners of copies of computer programs to be able to use it for the intended purpose, including error protection (Article 5(1)), to make back-up copies (Article 5(2)) and to observe, study or test the functioning of the program in order to determine the ideas and principles underlining any element of the program (Article 5(3)).

16. The latter provision has already quite a substantial relevance also for the possible competitors – among them many SMEs – in the software markets. However, what is particularly important for them – especially for the more vulnerable SMEs of the field – is the regulation of the issue of "reverse engineering" or "decompilation" of programs in Article 6 of the directive.

17. This regulation became necessary in order to eliminate the possibility of some extreme anti-competitive practices of owners of certain widely used computer programs based on the exclusive right of reproduction and/or the exclusive right of adaptation (and translation) granted to them by Article 4 of the directive. In the absence of an appropriate regulation, owners of rights in such programs would have been able to prohibit the transformation of the programs (only made available by them in object code form) into source code form (this transformation is called "decompilation" – or "reverse engineering" of the program). And

without such decompilation, the potential competitors would not have been able to develop and make any computer programs that would have been able to function together – "interoperate" – with the existing and widely used, quasi standard programs. Such a consequence would have been, of course, particularly disastrous for SMEs of the software development sector.

18. The regulation was not easy. There was quite an important resistance against any specific rules authorizing decompilation, since some major software houses were afraid that the new norms may be used also for simple piratical activities. It seems, however, that the provisions in Article 6 of the directive have established an appropriate balance between conflicting legitimate interests and eliminated the possible dangers as much as possible.

19. The said Article of the directive provides that the authorization of the rightholder is not required where reproduction of the code and "translation" of its form are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that certain conditions are met. These conditions serve as guarantees that the limited freedom granted in this field does not prejudice the legitimate interests of owners of rights. (The conditions are as follows: (a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to do so; (b) the information necessary to achieve interoperability has not previously been readily available; (c) these acts are confined to the parts of the original program which are necessary to achieve interoperability; (d) the information obtained must not be used for goals other than to achieve the interoperability of the independently created computer program; (e) it must not be given to others except when necessary for the interoperability of the independently created computer program; and (f) must not be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.)

20. This well-balanced and precise regulation has made it possible – not only in the European Community but also in other countries where this model has been taken over and applied – for software-developer SMEs to continue and extend their creative activities with a chance to succeed, and many of them have used this opportunity with great efficiency.

<u>Dangers of absence of adequate protection: the menace to SMEs dealing with folk art creation and manufacture</u>

21. The questions concerning the necessity to protect folklore by some kind of intellectual-property-type system are quite old and very complex.

22. The protection of expressions of traditional culture is not supposed to be a "South-North" issue since each nation has valuable and cherished traditions with corresponding cultural expressions, but it may not be a surprise that the need for intellectual property protection of expressions of folklore is more strongly perceived in developing countries. Folklore is an important element of the cultural heritage of every nation. It is, however, of particular importance for developing countries, which recognize folklore as a means of self expression and social identity. All the more so since, in many of those countries, folklore is truly a living and still developing tradition, rather than just a memory of the past.

23. Improper exploitation of folklore was also possible in the past. However, the spectacular development of technology, the newer and newer ways of using both literary and artistic works and expressions of folklore (audiovisual productions, phonograms, their mass reproduction, broadcasting, cable distribution, Internet transmissions, and so on) have multiplied abuses. Folklore is frequently commercialized without due respect for the cultural and economic interests of the communities in which it originates. And, in order to better adapt it to the needs of the market, it is often distorted or mutilated. At the same time, no share of the returns from its exploitation is conceded to the communities who have developed and maintained it.

24. As far as SMEs are concerned, it is, in particular, the absence of some kind of adequate protection for the creators and manufactures of objects of genuine folk arts that is particularly relevant. Without such protection, markets are frequently inundated by falsified and low-quality counterfeit "folk-art" products manufactured by mass-production technology and distributed through aggressive marketing methods. This kind of piratical activity is a serious attempt against the very phenomenon of folk art, it seriously prejudices the legitimate moral and economic interests of the communities concerned and, as one of the consequence, it undermines the chance for survival of those indigenous artisan SMEs without which the very existence of a given kind of folklore is endangered.

25. The issue of the intellectual protection of folklore has been on the agenda time and again since the 1967 Stockholm revision of the Berne Convention, where a provision was included in the Convention (Article 15(4)) which was said to settle this issue. This provision reads as follows: "In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union"

26. Since 1967, a number of developing countries have provided in their statutory law for "copyright" protection of folklore (mainly in Africa, where there are nearly 30 countries whose copyright laws contain provisions to this effect). Nevertheless, it seems that copyright is not the right means for protecting expressions of folklore. The problem is, of course, not with the forms, the esthetic level or the value of folk creations. Just the opposite, their forms of expression do not differ from those of literary and artistic works enjoying copyright protection, and they are frequently even more beautiful than many creations of identifiable authors. The basic difference may be found in the origins and the creative process of folklore. Many folklore expressions were born much time before copyright emerged, and they went through a long-long chain of imitations combined with step-by-step minor changes as a result of which they were transformed in an incremental manner. Copyright categories, such as authorship, originality or adaptation simply do not fit well into this context. (It cannot be said that the creator or creators of artistic folklore is an unknown author or are various unknown authors. The creator is a community and the creative contributions are from consecutive generations. In harmony with this, many communities and nations regard their folklore as part of their common heritage and being in their ownership, rightly so. It is obvious that it is not an appropriate solution to protect these creations as "unpubIished works" with the consequence that, 50 years after publication, their protection is over. The nature of folklore expressions does not change by the incidental factor that they are "published"; they remain the same eternal phenomena. And, if they deserve protection, it should be equally eternal.)

27. The legislators of the above-mentioned developing countries seem to have recognized this, and the provisions adopted by them are in harmony with this recognition. Sometimes their regimes are characterized as special domaine public payant systems. In the reality, however, “works of folklore" are not necessarily in the domaine public in the sense that they could be used without authorization just against payment; authorization systems exist and are operated on behalf of some collective ownership (the collectivity or the nation concerned). Neither are these systems necessary *“payant”*. In fact, although these regulations are included in copyright laws, they represent specific *sui generis* regimes.

28. Since it turned out that the copyright model offered by the Berne Convention is not suitable for the international protection of folklore, attention turned towards some possible *sui generis* options. A series of meetings were held under the aegis of WIPO and UNESCO between 1978 and 1982, and finally in June 1982 a big UNESCO/WIPO Committee of Governmental Expert meeting – of which the author of this paper happened to be the Chairman – adopted “Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Acts”. The Model Provisions, *inter alia,* foresaw a *sui generis* system with a certain authorization procedure for any utilization made both with gainful intent and outside the traditional or customary context of folklore (which means that, for example SMEs established within the given communities to create and manufacture artistic folklore objects in harmony with folklore traditions and customs do not need authorization according to the Model Provisions even if they are working for market use with gainful intent) Among the acts against which adequate protection is requred, the Model Law indicated (i) use without authorization, (ii) violation of the obligation to indicate the source of folklore expressions, (iii) misleading the public by distributing counterfeit objects as folklore creations (a kind of “passing off”), and the public use of distorted or mutilated folklore creations in a manner “prejudicial to the cultural interests of the community concerned” (violation of a kind of collective “moral right”).

29. In December 1984 a WIPO/UNESCO Group of Experts considered a draft treaty for the international protection of expressions of folklore based on the provisions of the Model Provisions. This idea, however, was rejected by industrialized countries (which raised two realistic problems; namely the absence of any reliable source of identification of folklore creations in many countries; and the thorny question of “regional folklore”, that is, folklore shared by more than one – or sometimes many – countries).

30. The issue of international protection for folklore creations was raised during the preparatory work of the so-called WIPO “Internet treaties” mentioned below. Several developing countries proposed that a new attempt should be made to try to work out some kind of *sui generis* system. This request was repeated at the UNESCO/WIPO World Forum on the Protection of Folklore held in Phuket, Thailand, in April 1997.

31. The above-mentioned suggestions were, of course, taken into consideration during the preparation of WIPO's program for the 1998-1999 biennium. That was the first program in which the visions of the new Director General, Dr. Kamil Idris, how to lead the Organization and the international intellectual properly system into the third millennium were already reflected and developed.

32. The program contained responses to the issues raised concerning the intellectual property aspects of the protection of the expressions of traditional culture. It had taken into account the experience of the inefficient solution included in the Berne Convention and of the fiasco of the 1984 draft treaty, and reflected the recognition that any international settlement

might only have a chance for success and be workable if it was preceded by a truly thorough preparatory work.. The relevant sub-program provided for a number of fact-finding missions and thorough studies, for regional consultations and for active contribution to the establishment of adequate databases and regional cooperation schemes. All this was built in a more general program extending to all possible intellectual property issues of "traditional knowledge, innovation and culture".

33. The current biennial program of WIPO for 2000-2001 follows the same objectives and even extends them; for example, it also provides for a pilot project "on the possible role of intellectual property in electronic commerce relating to the commercialization of cultural heritage" an issue with outstanding importance for the protection of expressions of folklore – and the interests of folklore-related SMEs in indigenous communities -- in the context of the general globalization trends and the global information network.

34. The ambitious program of WIPO in this field has brought about the first positive tangible results. In July 2000, a very thorough study was published by the International Bureau of WIPO on "Intellectual Property Needs and Expectations of Traditional Knowledge Holders" containing a report on a number of fact-finding missions in various parts of the world. It reviews in detail also the different legal means applied for the protection of folklore, which extend beyond copyright or copyright-type *sui generis* protection also to certain industrial property means particularly relevant from the viewpoint of the creation, manufacture and distribution of tangible folklore creations (where SMEs are mainly interested), such as collective trademark, protection of geographical indication and the protection against unfair competition.

35. What is especially promising is that, at the September 2000 sessions of the Assemblies of Member States of WIPO, a new permanent body was established: the Standing Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Its first session will be held in Geneva from April 30 to May 3, 2001.

36. WIPO's recent activities and the dynamic continuation of fulfilling its projects outlined in its program, *inter alia*, with the assistance of this new important body, deserve great attention for SMEs. All this offers them a well-founded hope for receiving all possible useful information as well as legal guidance and support for surviving and succeeding in this traditional field also in the age of information networks and electronic commerce.

Dangers of piracy: SMEs as candidates to become the first victims

37. Piracy may have a number of possible negative and even disastrous consequences: such as completely neglecting copyright and related rights which, if not duly countered, may not only deny rights to creators and producers, but now, with the teeth these rights have obtained through the TRIPs Agreement, eventually may also lead to serious trade sanctions against the country concerned, or such as the distribution of low-level quality products without any follow-up service whatsoever, tax evasion and contribution to financing other forms of organized crime or subversive activities.

38. A further – and, from the viewpoint of national culture, the most detrimental – consequence is that the commercial activities of pirates undermine the chance on the market for those who publish and distribute works in a legitimate way, and take the risk to invest into the promotion of new, still less known talents, mainly national authors. They have no real chance to succeed since the market is inundated with cheap pirated publications (cheaper for

at least three reasons: first, because pirates do not take any risk; they simply publish those works and recordings which have turned out to be great success; second, because they do not have administrative costs emerging in connection with obtaining authorization from the right owners; and, third, of course, because they do not pay remuneration) with which they are unable to compete. In general, SMEs operating in copyright-related fields are among the first enterprises to lose and go bankrupt as a result of wide-spread piracy.

39. The great problem from the viewpoint of national culture is that pirates tend to publish and distribute foreign works having proved to be successful and gotten famous on the ever more globalized world market. National creativity and local authors are promoted by lawful publishers – many of them in the SMEs category – and it is just that category which is on the losing side. This may very much result in poorer and stagnant national culture and the fading away of the diversity of national identities.

40. Therefore, it should be seen clearly that an appropriate enforcement mechanism and an efficient system to fight piracy are necessary not only in order to respect the important values represented by copyright and related rights protection, and not only because the TRIPs Agreement prescribes this, but at least as much, and perhaps even more, in order to avoid these dangers to national culture and identity. And it should also be seen that SMEs are among those who gain the most from the existence and application of such a mechanism and such a system.

Opportunities offered by collective management of rights: special benefits for SMEs

41. The exclusive right of the author to exploit his work or authorize others to do so is the basic element of copyright, and such a right, where recognized, is also important for the beneficiaries of related rights. An exclusive right can be enjoyed to the fullest extent if it may be exercised individually by the owner of the right himself. In such a case, the owner maintains his control over the dissemination of his work, can personally take decisions on the economic conditions of its exploitation and can also closely monitor whether his rights are duly respected. As early as at the time of the establishment of the international copyright system, there were, however, certain rights that their owners were unable to exercise individually, and later, with the ever newer waves of new technologies, the field in which individual exercise of rights was impossible or, at least, impractical, became constantly wider.

42. The reason for which, in a number of cases, copyright and related rights cannot be exercised individually is that the works and/or the objects of related rights are used by a great number of different users. An individual author or other rights holder, in general, does not have the capacity to monitor all the uses, to negotiate with users and to collect remuneration. In such a case, collective management of rights is the appropriate solution. It is obviously a great advantage also for users since it decreases their administrative costs and facilitates lawful use.

43. In view of the increasing importance of collective management, WIPO devoted growing attention to it (in an earlier period, in English, the expression “collective administration” was used). In May 1986, a WIPO International Forum took place on this topic; between 1986 and 1989, model provisions on the establishment and operation of collective management organizations were discussed; and, in 1990, the preparatory work culminated in the publication of a comprehensive WIPO study (the author of which is the author of this paper) on “Collective Administration of Copyright and Related Rights” (WIPO publication No. 688 (E)) which described the main fields of collective management, analysed the most

important issues of this form of exercising rights, and, at the end, offered some basic principles for the establishment and operation of collective management organizations.

44. The principles and practical details worked out in the above-mentioned period have been applied in WIPO's activities for advising governments, in particular governments of developing and "transition" countries, and for "institution building" in such countries. In the meantime, however, with the ever more widespread application of digital technology, and with such new developments as the advent of "multimedia" productions and the spectacular increase in the use of copyright-related material on the Internet, the conditions of protection and enforcement of rights have changed. New challenges emerged for the exercise and management of rights, and, at the same time, using the same technology, also some new solutions (encryption, digital "fingerprints," "watermarks" and identification numbers) were worked out in response to those challenges. As a result, a new situation arose in the field of exercising and managing rights which seemed to concern a number of aspects.

45. In response to these developments, WIPO convened, in May 1997 in Seville, an International Forum on the Exercise and Management of Copyright and Neighboring Rights in the Face of the Challenges of Digital Technology to review what changes may be needed in the principles and practical aspects of the establishment and practical operation of collective management systems (the material of the Forum is available in WIPO publication No. 756(E)).

46. The Seville Forum agreed that the 1990 principles should not be changed, and that they could be applied appropriately also in the digital environment. At the same time, the Forum identified the challenges raised by this environment to the collective management systems, and outlined those directions in which adequate responses may be found. WIPO was requested to establish a more permanent forum where the representatives of all interested parties – sometimes with, at least partly, conflicting interests – may come together, may exchange information, and, where appropriate, may agree on joint action. WIPO, in response, set up its Advisory Committee on Management of Copyright and Related Rights in Global Information Networks, which had its first, very successful session in December 1998 and hold its second session in December 1999. The 2000-2001 program of WIPO foresees its convocation twice or three times also in the new biennium (with a slightly modified name: the words "and Enforcement" have been inserted after the word "Management").

47. It would be impossible to describe in this paper all the details of the discussions at, and the results of, the Seville Forum and the first sessions of the Advisory Committee. What seems, however, indispensable to underline are the following aspects.

48. First, the role of collective management will not necessarily decrease, just the opposite: it will probably increase, in the digital world. There are some new fields already identified where collective management may, and certainly will, have an important role, such as the licensing of "multimedia productions" (which quite frequently are created of a great number of works and contributions of different categories) and the authorisation of use of at least certain categories of protected material on the Internet.

49. Second, owners of rights have greater freedom to choose between individual exercise and collective management of rights, since they may exercise their rights directly on the Internet (through using technological measures and electronic rights management information systems). This does not mean, however, that it is necessarily in the interest of owners of rights to make use of this opportunity. The reasons for why, in certain fields – such as the

exercise of the rights of communication to the public and broadcasting – collective management is the best solution in the analog world also exist in the digital environment. It is, in principle, possible for some exceptionally well-known and popular authors and performers and successful publishers and producers to chose the individual way. Experience shows, however, that, at least, in the case of traditional forms of collective management, this kind of "dissidence" and denial of the principle of solidarity may backfire and may be counter-productive not only for the community of owners of rights concerned but, at the end of the day, also for such kinds of "individualists."

50. Third, new forms of management of rights are emerging which are able to combine individual and collective elements of exercising rights, such as copyright clearance centres (for example, the way established by reprographic rights organisations) which serve as a centralised source of licensing but apply different tariffs and licensing conditions individually determined by the owners of rights.

51. Fourth, due to the phenomenon of "multimedia" – both in the form of off-line productions and in the way the different categories of works and objects of related rights are used together in the global digital network – there is a growing need for establishing "coalitions" of various collective management organisations to offer a centralised source of authorisation ("one-stop shops") or participating in an even more general co-operation which may extend also to individual owners of rights joining the "coalition" either just through including their licensing information or through also authorising the "coalition" as an agent to issue authorisations on their behalf in harmony with their individual licensing conditions and tariffs. This does not mean that in such a coalition all the various licensing sources merge together. Member societies may preserve their autonomy.

52. To reflect these and other new developments having taken place in the last ten years, a new, updated version of the above-mentioned WIPO study is under preparation, and it will be published this year.

53. It seems obvious for what reasons it is indispensable for SMEs to know about the advantages offered to them by collective management schemes and to follow the above-outlined developments in this field quite closely.

54. Collective management is advantageous to SMEs no matter whether they participate in collective management organizations as owners of rights and, thus, are members thereof, or they use the services of such organizations as users of works and objects of related rights. For SMEs as owners of rights in certain fields it is simply indispensable to join the competent collective organization, since otherwise they could not exercise and enforce their rights, but also, in cases, where there is a certain room for freedom of decision between collective management and individual exercise of rights, SMEs should see that collective bodies may help them in, at least three important ways: first, they may enjoy the know-how and experience accumulated in the collective administration organization, something which is rarely available at the same level in a small or medium-sized organization trying to act alone; second, through collective licensing, they may substantially decrease their administrative costs, and, third, the joint power of the owners of rights regrouped in the collective body may guarantee a better position in negotiations with bigger uses.

55. WIPO has recognized the importance of collective management, and under the last two programs it has increased its activities to give assistance in the establishment and further development of collective management organizations, first of all in developing and

"transition" countries, on the one hand, and in new fields where technological development has led to the need for new collective schemes, on the other hand.

Challenges posed, and opportunities offered, by the digital networked environment and electronic commerce: SMEs at the crossroads of galloping changes

56. At present, there are roughly 150-200 million persons around the globe connected to the Internet. In just one year, between 1998 to 1999, it is reported that the number of users worldwide increased by 55 percent. The global online population is predicted to exceed 250 million users in 2002, and to reach the range of 300-500 million by 2005. There are more than 100 and 35 million users in the United States of America and Europe, respectively, and the fastest rate of growth in the next several years is expected to take place in Asia and Latin America. In China, for example, it is reported that the number of Internet users is expected to grow from 2.1 million in 1998 to 33 million in 2003.

57. For the time being, it may be calculated that the traffic on the Internet doubles in volume every 100 days. The number of registered domain names now is around 16 million. In various regions, Internet usage has reached critical mass proportions such that businesses can no longer afford to remain off the network, particularly if they wish to maintain their market presence. Some commentators believe this growth will continue apace for the next twenty years, driven in particular by the technology advances and the falling costs of computing and telecommunications.

58. There are some up and downs in the online business, but the growth in revenue has been equally impressive. A review of leading estimates indicates that, starting from basically scratch in 1995, total electronic commerce grew to US$26 billion in 1997 and US$43 billion in 1998; is expected to reach US$330 billion by 2001-02; and projected to attain a remarkable US$2-3 trillion in 2003-2005. The vast majority of this growth stems from business-to-business transactions, whereas the growth of consumer transactions is still affected by widely held perceptions concerning security of payments, potential for fraud, and privacy issues associated with the collection of personal data.

59. These impressive figures have been taken from the study published by WIPO in May 2000 under the title of "Primer on Electronic Commerce and Intellectual Property Issues" (WIPO document WIPO/OLOA/EC/PRIMER). The study, however, also remarks that so far, the global benefits of this new form of commerce have been dampened by the disparity in access among geographic regions.

60. A report of the International Labor Organization (ILO) released in advance of the 2001 World Economic Forum in Davos (which focused on the so-called "digital divide") confirmed this. It stated that employment gains in recent years had been concentrated almost exclusively in the industrialized member countries of OECD, and indicated as one of the main reasons of this that many developing countries remain "technologically disconnected" from the benefits of the digital revolution. Only 5-6 % of the world-wide population have access to the Internet, and 90 % of them are in industrialized countries. By contrast, Africa and the Middle East account for just 1 % of Internet users. (The report also mentioned some "bright spots" in the developing word; first of all India where, over the past decade, the average annual growth rate of the software industry has been around 50%; and it has attracted major international investment.)

61. The Internet and electronic commerce offer great opportunities for SMEs in the various sectors, since, through the network, they may have access relatively easily, and at low cost, to the market – or at least to its certain segments – of the quickly growing Internet population. For this, however, they need adequate information about these opportunities, along with the possible pitfalls; and they also need appropriate policy orientation and training. It is obvious that the SMEs of those developing counties that are on the negative side of the "digital divide" deserve special attention and support.

62. Intellectual property also has quite an important role in the emerging "Information Society" and in electronic commerce. It is, therefore, understandable that, when Dr. Kamil Idris, was appointed to the post of Director General of WIPO in September 1997, in his acceptance speech, he also highlighted the Organization's increasing focus on the developments in information technology and the protection of intellectual property on the Internet. The first two biannual programs of WIPO (for 1998-1999 and 2000-2001) adopted and carried out since his appointment duly reflect this recognition and intention, and the vision of Director General on how to bring WIPO fully into the information age to the benefit of its Member States was further developed in the "WIPO Digital Agenda" announced by him in September 1999 in conclusion of the successful WIPO International Conference on Electronic Commerce and Intellectual Property.

63. In the ten-point "WIPO Digital Agenda" several points relate exclusively or *inter alia* to copyright issues. The special importance of copyright in the context of the Internet and electronic commerce is, to a great extent, due to what is discussed in the introductory part of this paper; that is, to the fact that works protected by copyright and objects of related rights are frequently transmitted and distributed in digital form through the Internet (and, in fact, mainly such works and objects are among those products in respect of which "direct", full-fledged electronic commerce takes place).

64. SMEs are interested in this kind of electronic commerce both as owners of rights and as users of works and objects of related rights. On the owners of rights side, due to the easy market access and low distribution costs offered by the digital network, the opportunities for those SMEs which are involved in the creation and distribution of such works and objects are, in fact exceptional. They may be able to do many things through the Internet with a reasonable chance for success in the case of which, in the "real world" of tangible products, they do not have any possibility to compete with more powerful, sometimes world-wide level, enterprises. They may be particularly successful in the distribution of local creations, more closely related to the specific needs of national markets and in certain niche-oriented fields. Such SMEs are particularly interested in an adequate well-balanced copyright regulation of the Internet-related activities, since they cannot, in general, afford the same as what the bigger, richer enterprises can, namely making available material regularly free of charge (what, in the case of the latter, may only represent a fraction of their repertoires).

65. The guarantee for appropriate copyright and related rights regulation of the issues related to digital technology and the Internet is the adherence, implementation and application of the so-called WIPO Internet treaties – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). These treaties are well-balanced, flexible and do not represent any real legislative and economic burden to the Contracting Parties. At the same time, they clarify how the existing norms should be applied in the digital, networked environment; adapt those norms somewhat to this environment, and include provisions to ensure the applicability of technological protection measures and electronic rights management information (such as digital identifiers) without which it would not be possible

to exercise and enforce copyright and related rights on the Internet. Therefore, it is in the interests of all countries which wish to benefit from the great opportunities offered by the Internet to accede to these WIPO treaties and duly apply them. And, for the reasons mentioned above, it is very much in the interest of SMEs that their countries do so.

66. The "WIPO Digital Agenda" indicates as one of the objectives of the Organization that the WCT and the WPPT enter into force by the end of 2001. This was a sufficiently cautious indication of the foreseeable entry into force of the treaties, since for this 30 instruments of ratification or accession are needed.

67. This is quite a high figure; however, considering the number of instruments already deposited, and the number of countries close to ratification or accession, there is good hope that WIPO will succeed in obtaining this important task as foreseen in the Digital Agenda.

68. SMEs as users of protected material are interested in a mechanism that facilitates obtaining authorization for the material required by them (for example, for multimedia productions which are to include a number of preexisting elements protected by copyright and/or related rights) in a relative simple way, at low administrative cost and against a reasonable remuneration.

69. In the case of certain categories of works and objects of related rights, this is only possible if adequate collective management schemes are available. The WIPO Director General's Digital Agenda also contains a point to take care of this task. It reads as follows: "Promote adjustment of the institutional framework for facilitating the exploitation of intellectual property in the public interest in a global economy and on a global medium through administrative coordination and, where desired by users, the implementation of practical systems in respect of the interoperability and interconnection of electronic copyright management systems and the metadata of such systems."

70. The WIPO Digital Agenda reflects the recognition that specific measures are needed also in the field of intellectual property to ease – and as a long-term objective, to eliminate – the "digital divide". Without this, the "Global Information Network" may not become "global" and may not function in a way in which it is supposed to. It is the very first point of the Agenda that indicates the Organization's objectives in this field:

71. "Broaden the participation of developing countries through the use of WIPOnet [WIPO's Internet network] and other means for

- access to IP information,
- articipation in global policy formulation,
- opportunities to use their IP assets in E-comerce.

72. There is a point in the Agenda which is particularly relevant for those SMEs of developing countries (but also of other countries): it indicates as an objective to facilitate "the online licensing of the digital expression of cultural heritage.

73. The program of WIPO contains a number of concrete projects in harmony with these objectives, and it is advisable for SMEs to follow the application thereof, since they may highly benefit from them either directly or indirectly.

CONCLUSIONS

74. As we have seen, there are a number of different challenges, dangers and opportunities in copyright-related activities that are relevant for SMEs. SMEs frequently carry out activities that are important or even indispensable for maintaining, protecting and promoting cultural diversity, national identity and traditional artistic creativity. Therefore, it is particularly desirable that they be aware – along with other aspects of intellectual property – also of the copyright implications, and may obtain the necessary information, knowledge and practice for meeting the challenges, avoiding dangers and fully benefiting from the opportunities in this field. This is particularly true in the context of the global digital network and electronic commerce.

75. WIPO's program with the new SME-related projects duly reflects this recognition and opens new perspectives for small and media-sized enterprises in due harmony with the interests of their respective countries

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