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WORLD INTELLECTUAL
PROPERTY ORGANIZATION

REGIONAL WORKSHOP FOR COUNTRIES OF ASIA AND THE PACIFIC ON THE WIPO INTERNET TREATIES AND ELECTRONIC COMMERCE

organized by
the World Intellectual Property Organization (WIPO)
in cooperation with
the Intellectual Property Office of the Department
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PANEL DISCUSSION ON THE EXERCISE AND THE ENFORCEMENT OF
COPYRIGHT AND RELATED RIGHTS ON THE INTERNET

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1. The International Federation of Musicians (FIM) has represented for more than 50 years most of the trade unions of musicians, world-wide, with unfortunately, at this stage, a weak representation of the countries of Asia and the Pacific because of the low number of trade-unions created by the musicians in this part of the world.

The FIM took part since its creation in various work which led to the recognition and the development of performers rights in the music field.

The Regional Workshop of Manila is significant because it intervenes during a period of strong progression of the types of digital uses of the music.

2. The WIPO Performances and Phonograms Treaty (WPPT) is a modern and easily comprehensible instrument of protection of performers rights in the music field. One can note that it is ratified by no country of the Asia/Pacific region, whereas it is already ratified by nearly 30 States, and the 15 Member States of the European Union will certainly ratify it into 2002.

The opinion of the FIM is that the States of the Asia/Pacific region, and their performers, have much to gain to carry out such a ratification without delaying, in order to benefit the WPPT from its entry into force.

3. The exploitation of the music on the Internet, from phonograms, or by the direct transmission of concerts or radio programs, constitutes:

- (a) a whole of mass uses;
- (b) not easily controllable; and
- (c) without territorial limits

(a) The musicians, including those living in Asia, are not able individually to face such an enormous quantity of digital uses of their work.

One can already note that with regard to the traditional distribution of phonograms, the piracy of cassettes and CDs as developed in most of the countries of the Asia/Pacific region.

A similar situation has developed concerning the payment of royalties to authors and performers by the radios and televisions, that is to say another traditional mode of exploitation.

It is therefore quite obvious that the exercise and the enforcement of copyright and related rights on the Internet, in the countries of this particular Region, will be extremely difficult and will suppose a total co-operation between the various organizations representing the rightowners, on an international scale.

(b) The rules on liability and choice of the applicable national law, are not codified at the international level with regard to Internet uses. They are comprehensible today only by one handle of very specialized lawyers, and remain random on the legal level because of their complexity, particularly in the developing countries.

Hopefully, we may consider that such rules will be codified and thus harmonized in the short or medium term at the international level, because of the other issues or fields of liability which are involved in.

Some may consider that technical measures can make it possible to limit or prevent the exploitation from the Internet of the sound recordings.

Others doubt about it, in particular because only the technological “formats” which are known can be “protected “ through such measures.

Indeed, it is created almost each month new “formats” intended to replace the famous MP3. The new formats (MP3 Pro, Ogg Vorbis, etc.) are increasingly powerful with regard to the rate and the numerical quality of compression of the music recordings, which facilitates their transmission and their storage.

In addition, it is known that the technology of exchange of files between private individuals, without going through a central server (technology called “peer to peer”), is subject to a strong development.

This technology rests on the use of specific software by the private individuals.

This will be the source of significant difficulties with regard to:

- The implementation of measures of control;
- The exercise of legal action against non professionals;
- The choice of the applicable national law and even, in certain cases, the determination of the contents of the rights.

(c) The absence of territorial limits is finally a very significant element, because it is that which fully justifies the action taken by the World Intellectual Property Organization (WIPO) and the need for ratifying the WIPO Copyright Treaty (WCT) and the WPPT Treaties.

The performers of the Asia/Pacific region must be represented everywhere in the world, since the uses on and from the Internet are on a planetary scale.

They need to be protected by and consequently profit from the same rights everywhere in the world concerning the exploitation of their performances on the Internet.

That also supposes that they can be represented in possible international negotiations with the users or owners of Internet services, such as AOL or VIVENDI.

4. The performers are very seldom in a bargaining position which enables them to negotiate balanced individual contracts, particularly about questions as complex as the rights relating to Internet uses.

Furthermore, there is not actually, in the countries of the Asia/Pacific region, a legal tradition of the written contracts between performers and producers.

In addition, many questions are raised concerning the contracts which were concluded, by written or not, at a time when the right of making available on the Internet did not exist.

We think that a right which did not exist could not be transferred.

That means that the vastness of the sound recordings produced before the entry into force of the right of making available should not be exploited on the Internet without preliminary and written authorization of the related performers.

5. A main type of exploitation of the music on the Internet is the downloading on a computer by the public, which makes it possible to carry out digital copies of phonograms.

As we mentioned already, this can be done either from a server or directly from private individual to private individual.

The FIM thinks that the well-known system of remuneration for private copying should apply to all the processes of copying, including the copying on computer hard disks.

This means that it would be necessary to generalize the exercise of such right of remuneration on any sale or importation of computers.

6. A type of use which will probably strongly develop is the simulcasting of radio and TV programs.

We think that this type of exploitation should be covered by article 12 of the Rome Convention and article 15 of the WPPT; i.e. right to equitable remuneration, generally divided equally between performers and producers of phonograms.

7. We shall stress that collective agreements concluded by musicians trade unions with the producers of phonograms are reached little by little (for example recently in the United States of America and in Finland) to fix at the moment of the employment of the musicians the conditions according to which such Internet uses of a recording will be authorized by them.

In certain countries, these agreements can directly refer to the intervention of a collecting society charged to collect and distribute remunerations due to the musicians.

In other countries, the collecting societies are under by laws entitled to intervene directly with the users, when they are identified on their territory, in order to enforce the performers rights: exclusive right of making available and right to remuneration on the simulcasting of phonograms.

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