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## **PERMANENT COMMITTEE ON COOPERATION FOR DEVELOPMENT RELATED TO INTELLECTUAL PROPERTY**

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PROMOTION AND DEVELOPMENT OF COLLECTIVE  
MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

*prepared by the International Bureau*

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## **I. Introduction and Background**

1. A new division called the Copyright Collective Management Division (hereinafter abbreviated to "CCMD") has been created in the Sector of Cooperation for Development, under the direct supervision of Deputy Director General Mr. Roberto Castelo.
2. Since the last meeting of the WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights, held at WIPO headquarters from September 9 to 12, 1997, a restructuring of the sector has taken place, with industrial property and copyright being merged within each of the four regional Cooperation for Development Bureaux, for Africa, Arab Countries, Asia and the Pacific, Latin America and the Caribbean respectively. In this period of transition, each Bureau implemented the restructuring according to its needs, either by merging copyright and industrial property or by maintaining a dedicated focal point for copyright and related rights issues, including collective management.

## **II. Major Developments Relevant to Collective Management**

3. The experience of recent years has increasingly confirmed that the individual exercise of rights is impractical; there are cases in which users need rapid access to a vast mass of works. Collective management is an essential tool for the efficient exercise of rights; collective management societies therefore play an important and very useful role, both for authors/creators and for users. This is definitely why they have experienced considerable development in parallel to the increased use of works made possible by new technology. The importance and usefulness of collective management is such that many national legislators have taken that aspect into account in the drafting of laws.
4. With the ever more widespread application of digital technology, including the advent of multimedia productions and the use of digital networks like the Internet, the conditions, the exercise and the management of rights are facing new challenges. New technological solutions (encryption technology, digital identification numbers, rights management information systems, etc.) have been worked out in response to those challenges, and are still being developed. The freedom of owners of rights to choose between individual and collective management of their rights and among various possible forms of collective management ("traditional" collective management, "clearing houses," "one-stop-shop" systems, etc.) seems to have grown. New methods of licensing and monitoring use and collecting and distributing remuneration have been introduced. It should be mentioned that the International Bureau of WIPO convened the WIPO International Forum on the Exercise and Management of Copyright and Neighboring Rights in the Face of the Challenges of Digital Technology to consider and examine those new developments; the Forum took place in Seville, Spain, from May 14 to 16, 1997.
5. The collective management of copyright and related rights has acquired an additional dimension. New data and new challenges will be put in the hands of authors' societies of developing countries, which tomorrow will be confronted with the same wave of new technologies as the authors' societies of more advanced and industrialized countries are facing today. Strategic developments are already taking place to enable collective management organizations to offer effective protection and management of rights to the owners of rights in the electronic commerce environment. Technical machinery embodying the latest in digital technology is being developed to form the infrastructure for electronic copyright management. Some non-governmental organizations are already working very hard on the establishment of a new global system for managing information about works, creators and

owners of rights. The collective management of copyright and related rights in developing countries is set to benefit from these emerging technical applications of digital technology.

6. Information management systems are raising questions of adaptation of the present basic structure of collective management, if there is one. The problem is different when there is no existing structure, as it is directly concerned with policy decisions on the creation of such a structure on an appropriate legal and administrative foundation.

7. Another important development has to do with the new subject matter introduced with the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPS Agreement). The TRIPS Agreement contains general provisions whereby Members should comply with Article 1 to 21 of the Berne Convention (with the exception of Article 6*bis*) and the Appendix to it, as well as affording the specific protection provided by the TRIPS Agreement itself. By acceding to the TRIPS Agreement, Members undertake to give effect to the provisions of the Agreement. That means granting the minimum protection provided for in the substantive provisions of the Berne Convention and also complying with the specific provisions on copyright and related rights of the TRIPS Agreement.

8. It follows from the above that certain rights that will be introduced by national legislation (such as the right of representation or the right of broadcasting) would for all practical purposes remain meaningless and ineffectual if a collective management system were not properly put in place in such countries for their exercise. It is most likely therefore that, in the very near future, national legislators and policymakers will be confronted with the practicalities of the exercise of the rights by means of collective management.

9. While many developing countries have already taken steps towards the legal implementation of the TRIPS Agreement, it is clear that work remains to be done on the collective management of copyright and related rights. Governments may have been aware of the importance of this area of concern, but it has not always been possible, at least for some of them, to put in hand specific action to build up or develop the proper copyright infrastructure desired by national creators. Certain countries have had to give priority to other areas of activity on account of economic constraints; others have had to deal with the legal adjustments required by the TRIPS Agreement in order to meet the obligations under it by the year 2000 deadline; still others are not yet ready to tackle the issue for a variety of reasons, especially the least developed countries (LDCs).

10. What is more, the development of an intellectual property culture in an LDC needs to be assiduously and deliberately promoted in order to encourage innovative and inventive activity linked to market needs and help establish and modernize intellectual property infrastructures and administrations, both private and public, attuning them more and more to the changes that are taking place internationally. Much more awareness-building on the social-economic impact of strong intellectual property systems is essential. Here it is in the interest of authors, composers of music and creators of literary and artistic works and also performers from LDCs to set up collective management organizations, which will help them by collecting and distributing the royalties due to them. New and improved copyright legislation in LDCs should include provisions on the establishment of such organizations.

### **III. Ways and Means of Further Supporting the Development of Collective Management**

11. The International Bureau of WIPO has a variety of means at its disposal for the continued promotion and strengthening of collective management in developing countries in anticipation of the challenges of the next millennium. Those means range from legal assistance to capacity building, both at the institutional level and by human resources development, and include more specific technical and administrative assistance, such as automation projects.

#### Legal Assistance

12. At the request of governments or regional intergovernmental organizations, the Copyright Law Section of the Cooperation for Development (Law and Industrial Property Information) Department gives legal assistance to national authorities by preparing draft legislation or by commenting on laws and regulations containing the provisions on the basis of which adequate collective management systems can be established. Draft model provisions may be offered as guidelines or just information on how to achieve the objectives of developing an efficient copyright and related rights protection system in harmony with the international conventions administered by WIPO; they could also serve as model statutes to facilitate the operation of authors' societies. In this legal field, the WIPO assistance provided takes into account the prevailing legal-conceptual approach and the cultural, social and economic requirements of the countries concerned. In addition to the drafting of national legislation and commentaries on such legislation, the cooperation may take the form of missions undertaken by WIPO for consultations with government representatives, in some cases including study visits by government officials for discussions in Geneva.

#### Capacity Building; Human Resources Development and Institution Building

13. The main objective of training programs on the collective management of copyright and related rights is to professionalize the trade through the establishment or further development of authors' societies in developing countries. The training activities are intended for the owners of rights, the users of protected material, the staff of authors' societies and the public in general. They take the form of either national or regional seminars, at an advanced as well as an introductory level, or practical courses intended for specialized management staff of authors' societies. Individual higher-level training programs are also worked out in response to the specific needs of national authorities that so request.

14. It is highly desirable to bring a certain level of copyright and related rights awareness to the public in general, and the governmental authorities in particular, in developing countries. The exercise of those rights, which can be done through collective management organizations, depends for its legitimacy not only on adequate copyright national legislation, but also on public understanding of the justification and the objective grounds for collective management systems. Both owners of rights and users of works and protected other material should be informed on their rights and obligations. The public should also be aware of the benefits that creators can derive from a modern, efficient and cost-effective copyright collective management system, and also of the contribution that such a system can make to the attainment of the social and economic goals forming part of an integrated national development strategy.

15. Under a collective management system, owners of rights authorize a collective management organization to administer their rights, which entails monitoring the use of the works concerned, negotiating with prospective users, granting them licenses against appropriate fees and on specific conditions, and collecting the fees and distributing them among the owners of rights. If the collective management system functions properly, the rights will retain their exclusive nature. Although such systems primarily serve the interests of the owners of copyright and related rights, they also offer advantages to users, who are given access to works and other protected material in an easy and fairly inexpensive manner.

16. As far as the specialized training courses are concerned, they are intended mainly for the staff of authors' societies. Whatever the stage of development of an authors' society in a given developing country, the impact of emerging technologies - one need only mention the progress made in the computerization of royalty distribution to the owners of rights - means that the specialists involved in the use of the new technologies have to be trained accordingly. The ever-improving quality of the technology may in addition call for an updating of the specialists' knowledge; this is done mainly in the form of tailor-made training programs with technicians from authors' societies.

17. As for institution building, there is no doubt that this is the only way to sustain collective management capacities. Indeed, a well-established and widely respected collective management organization, which takes charge of safeguarding the rights and interests of authors, and collecting and distributing their royalties, and which can also contribute to the promotion of education and culture and further international cultural exchange, in a nutshell a successful service provider, is the cornerstone of a copyright system. The value and importance of the technical and administrative assistance aspect can be fully appreciated in this connection.

#### Technical and Administrative Assistance

18. This aspect needs to be increasingly addressed as the modern technical means made available to collective management organizations evolve. The necessary infrastructure has to be adapted to the operation of authors' societies as soon as they are set up. Appropriate computerized tools should be used to create the necessary databases and to handle the distribution of royalties and the conduct of other work, and also to deal with users and with bookkeeping activities.

19. The International Bureau of WIPO has contributed towards facilitating the acquisition of computer equipment and software by authors' societies of developing countries. Its program of activities took that need and also the training program on computer use and maintenance into account. The new global concept of information management, with systems for identification of owners of rights, works and related rights subject matter, which is being developed under the auspices of certain non-governmental organizations, will be of assistance to all authors' societies throughout the world.

20. Basing themselves on the various layers of support described above, the relevant entities within the Cooperation for Development Sector, namely the Copyright Law Section and the relevant regional Bureaux, undertook a series of activities which are summarized in the Annex to this document.

#### **IV. Challenges and New Perspectives of the CCMD**

21. The overriding goal of the new Division is to ensure that the collective management of copyright and related rights makes a full contribution to the economic and social development of member States, and offers tangible benefits to creators. To pursue this goal the Division, in collaboration with the existing Development for Cooperation Bureaux and other sectors concerned in WIPO, will cooperate actively with the governments of developing countries on the establishment or strengthening and modernizing of authors' societies.

22. In addition to the benefits that owners of rights would derive from the collective management of their rights, such systems would encourage them to create and contribute to the creation process and to the development of culture not only at the national but also at the international level. By considering efficient collection of royalties and their distribution to the owners of rights to be part of national economic development, developing countries would place themselves in a position to put collective management systems to effective use by all sectors as a tool for economic and cultural growth.

23. Over and above the legal assistance given by WIPO to national legislators, the CCMD will examine each developing country's policy developments and assessment of administrative and technical needs at its request; in doing so it will use all possible means of continuing to work towards its main goal on the one hand and, on the other, of facilitating cross-fertilization between regions by ensuring information flow, the exchange of experience and the identification of the best practices and solutions to similar problems.

24. In view of the need to convey to policy-makers the importance and relevance of collective management to economic development and the continuous promotion of creativity, and also to the preservation of cultural rights, including folklore traditions, the necessary support for capacity building will be provided through the strengthening of capacities at national, regional and subregional levels, through the organization of national and regional seminars or other meetings and through study visits. The setting up of a roster of expertise will be undertaken to assist the Bureaux, using regional expertise, but also calling on expertise available in industrialized countries and referring to international experts.

25. The CCMD is willing, in collaboration with the respective Bureaux, to undertake the necessary work of helping authors' societies build up their documentation data bases, their distribution rules and their computer equipment, including the matter of software, their social and welfare system and their relation to sister societies. To that end it will cooperate very actively with the specialized non-governmental organizations, such as CISAC, AEPO, IFRRO, LATINAUTOR, etc., which play a crucial role in the field of collective management of copyright and related rights. It is planned that such cooperation will be reinforced. The CCMD will create a network with partner non-governmental organizations and make the necessary arrangements to use their expertise as possible implementing partners when required. It plans to organize periodical meetings with the organizations involved in collective management of copyright and related rights in order to assess progress and identify constraints in the development of collective management capacities.

26. As already mentioned above, the new digital technology has a major effect on the collective management of copyright and related rights. WIPO is working on the development of technical standards for the dissemination of intellectual property information via digital networks, such as the WIPO's Global Information Network, better known as the WIPOnet. This network would provide a number of services and information if certain topics related to

collective management systems could be included to assist developing countries in implementing their own systems.

27. The CCMD will make the best use of information technology in each context by looking ahead, anticipating needs as much as possible, building on existing tools and assessing the feasibility of adapting models from one region to another when suited. It will also maintain close cooperation with the sector concerned with electronic commerce so that the CCMD, together with other partners, can create a forum for reflection on how best to strike a balance between the countries that can afford electronic means and those that cannot for the time being.

28. Within the framework of the training activities, the CCMD will also assist in strengthening the programs intended for the policymakers, directors and other staff of authors' societies. Special courses covering all aspects of collective management will be organized with the assistance of specialized non-governmental organizations. The CCMD intends to produce, jointly with the WIPO Academy, an overview module devoted specifically to the collective management of copyright and related rights, which could serve as a common base for all partners to use in introducing the subject to a variety of audiences. At a later stage, additional specialized modules will deal with related rights, national concerns and regional particularities in the context of collective management. The development of an attractive, user-friendly brochure for policymakers is also planned.

29. With a view to meeting these challenges and bringing genuine added value to the work of the Cooperation for Development Sector, the CCMD will ensure horizontal interaction between the relevant entities within WIPO; in particular it will establish or reinforce the required synergies between information technology, norm-setting, the transfer of know-how and the Bureaux. It will also endeavor to maintain a network linking external organizations at national and regional levels and also non-governmental organizations.

## **V. Main Future Orientations and Conclusions**

30. After the Cooperation for Development Sector has taken stock of what has already been implemented, its approach to the collective management of copyright and related rights will be need-driven on the basis of an overall assessment of the situation, and tailored to the specific requirements of each country and context. It will work in coordination with the Copyright Law Section of the Law and Industrial Property Information Department and the regional Bureaux of the Cooperation for Development Sector and other relevant entities within WIPO to examine new strategies and develop practically and technically oriented activities with a view to the establishment or strengthening and modernizing of authors' societies for the benefit of authors, performers and other owners of rights in developing countries.

*31. The Permanent Committee is invited to take note of the establishment of the CCMD and its projected activities.*

[Annex follows]



ANNEX

Achievements in 1997 (second half), 1998 and 1999 (first quarter)

The Copyright Law Section

1. The Copyright Law Section provides advice with a view to ensuring that national legislation is compatible with the relevant provisions of the TRIPS Agreement, the Berne Convention and the conventions on related rights, and contains provisions conforming to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) adopted in Geneva in December 1996. It is on the basis of appropriate national legislation that the development process for the creation or strengthening of national institutions for the collective management of authors' rights and related rights can be initiated.
2. Between January 1998 and the end of the first quarter of 1999, the following 35 countries and one intergovernmental organization (the African Intellectual Property Organization (OAPI)) received assistance from WIPO in the field of copyright legislation: Bahamas, Barbados, Benin, Bolivia, Botswana, Brunei Darussalam, Burkina Faso, Chad, Dominica, Egypt, Ethiopia, the Gambia, Grenada, Haiti, Indonesia, Jordan, Kuwait, Malaysia, Maldives, Morocco, Namibia, Nepal, Nicaragua, Oman, Papua New Guinea, Qatar, Saint Lucia, Saudi Arabia, St. Kitts and Nevis, Tanzania, Togo, United Arab Emirates, Vanuatu, Zambia, Zimbabwe.

The Cooperation for Development Bureaux

Africa

3. In the field of training activities in Africa, four workshops took place at a regional level in Cotonou (Benin), Lilongwe (Malawi), Lomé (Togo), Lusaka (Zambia) and at a national level in Niamey (Niger). The workshops in Benin, Lilongwe and Togo were organized in cooperation with the Association of European Performers' Organizations (AEPO), the International Confederation of Societies of Authors and Composers (CISAC) and the International Federation of Reproduction Rights Organizations (IFRRO). A joint regional symposium was organized in Tunis (Tunisia) in cooperation with the Cooperation for Development Bureau for Arab Countries (see below). These meetings were attended by the following countries: Benin, Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Gabon, Ghana, Guinea, Lesotho, Madagascar, Malawi, Mali, Niger, Nigeria, Senegal, South Africa, Swaziland, Tanzania, Togo, Zambia, Zimbabwe. Representatives of the Union of National Radio and Television Organizations of Africa (URTNA) and of the Southern Africa Development Community (SADC) also participated in the meetings in Tunis and Lusaka respectively.
4. As regards specialized training courses related to the development of copyright offices, attorneys-at-law and legal advisers from Benin, Mali and Togo were received in Paris (France).
5. Practical training courses were organized for one official each from Madagascar and Côte d'Ivoire and for two officials from the Gambia in Accra (Ghana) and Lilongwe (Malawi).

6. With regard to the computerization of authors' societies (the automation project), various missions were undertaken by a specialist from Burkina Faso to Benin, Côte d'Ivoire, Malawi, Mali, Niger and Togo. He also visited Paris (France) and received a special training course at the Society of Artistic Property and Designs and Models (SPADEM). Computer equipment was supplied to copyright offices and/or authors' societies of the Central African Republic, Congo, Côte d'Ivoire, Ghana, Madagascar and Namibia. WIPO developed Nationally-Focused Action Plans (NFAPs) under which equipment was provided and expert missions and training organized for the collective management organizations of Burkina Faso, Chad, Niger and Togo. Other expert missions were organized to Botswana, Ghana, Lesotho, Madagascar, Malawi and Niger.

### Arab Countries

7. National seminars on copyright and related rights, which included topics on collective management of copyright, were organized in Khartoum (Sudan) and Sana'a (Yemen). In addition, a Seminar on Copyright in the Arab Region, jointly organized by WIPO and the General Federation of Arab Publishers and the Egyptian Group of the World Council for Children's Books, was held in Cairo (Egypt).

8. Two interregional seminars were organized, the first in Tunis (Tunisia) on Copyright and Related Rights for Arab and African countries. The seminar was hosted by the Tunisian Ministry of Culture and attended by the Director General of WIPO. The second, on Copyright and Related Rights and the Cultural Industries, was held in cooperation with the Islamic Educational, Scientific and Cultural Organization (ISESCO) in Rabat (Morocco). Officials from the following Arab countries participated in both meetings: Algeria, Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen; the Palestinian National Authority also took part.

9. Four study-visits to copyright offices and collective management organizations were organized for officials from Djibouti, Qatar, Sudan and Tunisia, the visits being to Algeria, France, Switzerland and Tunisia. The practical training provided covered various fields of copyright, including collective management.

10. Five expert missions on copyright and related rights were undertaken by WIPO consultants and officials to Bahrain, Lebanon, Oman, Tunisia and Yemen. The advice given concentrated mainly on the strengthening of copyright legislation and administration, and included collective management issues. During the period under review, two WIPO missions were undertaken to Morocco to assess its needs in the field of intellectual property and to implement a workplan of activities, including the modernization of the national structure responsible for the collective management of copyright.

11. Three NFAPs for the modernization of the copyright system have been prepared and are being implemented for the benefit of Morocco, Tunisia and Yemen.

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### Asia and the Pacific

12. National seminars on intellectual property issues, including the collective management of copyright and related rights, were organized in Suva (Fiji), Seoul (Republic of Korea), Port Moresby (Papua New Guinea), Manila (Philippines) and Hanoi and Ho Chi Minh City (Viet Nam).
13. Regional seminars were also organized by the regional Bureau in Apia (Samoa), Islamabad (Pakistan), Kuala Lumpur (Malaysia) and Tokyo (Japan). The seminars in both Pakistan and Japan received assistance from the Japan Copyright Office (JCO) of the Agency for Cultural Affairs of the Government of Japan. Participants from the following countries attended the seminars: Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Democratic People's Republic of Korea, Federated States of Micronesia, Fiji, India, Indonesia, Iran, Laos, Kiribati, Malaysia, Maldives, Mongolia, Myanmar, Nauru, Nepal, Niue, Palau, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Sri Lanka, Thailand, Tonga, Turatu, Vanuatu and Viet Nam.
14. In addition to the above seminars, study visits to the United Kingdom and Switzerland were arranged for government officials from China and Viet Nam.
15. In the framework of the modernization of collective management organizations, equipment for computerized activities was supplied to the Copyright Society of Nepal.

### Latin America and the Caribbean

16. Two national seminars on collective management of copyright and related rights were organized in Panama and in Santo Domingo (Dominican Republic). Two regional seminars on the protection of copyright and related rights, including collective management, and on the collective management of reprographic rights for Latin American countries were organized respectively in Havana (Cuba), in cooperation with the Spanish authors' society SGAE, and in Buenos Aires (Argentina), in cooperation with IFRRO, the Directorate of Copyright and the Argentine Chamber for Books. Another regional seminar on collective management of copyright and related rights was held in San Salvador. The following countries participated in these seminars: Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.
17. At the July 1997 WIPO Ministerial-Level Meeting on Intellectual Property for Caribbean Countries, Ministers representing 12 Caribbean governments requested that WIPO, "in liaison with governments of the region, undertake a study regarding a regional approach to the collective management of copyright in the Caribbean region, based on minimizing operating costs at the national level." Following that meeting and in preparation for this study, WIPO undertook fact-finding missions to Antigua and Barbuda, the Bahamas, Barbados, Dominica, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.

18. As far as study visits are concerned, officials from the authors' society of Bolivia participated in a one-week special training course at the authors' society of Uruguay in Montevideo.

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