



WORLD  
INTELLECTUAL  
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ORGANIZATION

# WIPO MAGAZINE

GENEVA - FEBRUARY 2008

**Special Edition** for the Fourth Global Congress on Counterfeiting and Piracy

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## HOUNDING OUT PIRACY

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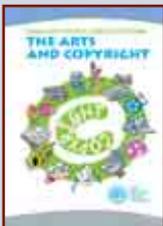
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## *Note from the Editor:*

The WIPO Magazine team is pleased to offer delegates to the Fourth Global Congress on Combating Counterfeiting and Piracy this compilation of articles on counterfeit, piracy and enforcement-related themes, drawn from recent editions of the WIPO Magazine.

# COMBATING COUNTERFEITING AND PIRACY – A Global Challenge

By Michael Keplinger, Deputy Director General, WIPO

The protection of property rights is one of the keystones of a free and flourishing society. Protecting intellectual property (IP) from unauthorized use and ensuring that creators, rights holders and governments reap the full benefits offered by the IP-based industries is a top priority at both national and international levels. And never before, in WIPO's 35-year history, has IP occupied such a central position in economic, cultural and political life.

Rapid technological developments, increased global market integration and the advent of the knowledge economy have transformed the economic environment, spawning new business models and revolutionizing the way we create and share information. In the knowledge economy, value lies in intellectual, as opposed to physical, capital. Brand values today constitute on average 18 percent of the total business value of top companies;<sup>1</sup> while the contribution to national economies made by copyright-based, such as film, television, publishing, music and software, is significant in all countries at varying stages of development.

## Economic contribution of the core copyright-based industries

	Value added (% of GDP)	Employment (% of national employment)
<b>Canada</b> (2004)	<b>3.3</b>	<b>4.11</b>
<b>Hungary</b> (2002)	<b>3.96</b>	<b>4.15</b>
<b>Latvia</b> (2000)	<b>2.9</b>	<b>3.7</b>
<b>Singapore</b> (2001)	<b>2.85</b>	<b>4</b>
<b>USA</b> (2005)	<b>6.56</b>	<b>4.03</b>

Source: WIPO National Studies on Assessing the Economic Contribution of the Copyright-Based Industries - [www.wipo.int/ip-development/en/creative\\_industry/economic\\_contribution.html](http://www.wipo.int/ip-development/en/creative_industry/economic_contribution.html)

However, IP rights are only valuable if they can be protected, and enforced: "a right without a remedy is not a right." While digital technologies have revolutionized the way in which we create and do business, those same technologies have fuelled a dramatic escalation in IP-crime. Combating IP infringement, especially in the serious forms of counterfeiting and piracy, is now a major challenge for many countries and regional institutions.

## Damage on multiple levels

These IP crimes undermine the economic sustainability of many fields of commerce. Some 20 billion songs were illegally downloaded in 2005,<sup>2</sup> while the worldwide motion picture industry lost US\$18.2 billion in the same year as a result of piracy.<sup>3</sup> The consequences on all those who derive their livelihood from the music and film industries are severe. Broadcasting is another area in which piracy is a growing phenomenon, where signal theft and unauthorized retransmission of signals over the internet is rampant, particularly for sports programming.

The preliminary findings of a major OECD report show an alarming expansion of the types of products being infringed, from luxury items to basic household products and items that have a direct impact on health and safety, such as food and drink, medical equipment, toys and car parts.<sup>4</sup> Life-threatening counterfeit drugs have been estimated to account for some 30 percent of sales in some parts of Africa, Asia and Latin America. Sales of fake drugs are estimated to climb to a value of US\$ 75 billion globally by 2010, an increase of over 90 percent from 2005.<sup>5</sup>

As companies rely increasingly on IP as a key component, or value-added, to their products, IP-crime has become a major concern for all business sectors in all countries. These crimes smother local industry, reduce employment, create links to organized crime, discourage international trade and foreign direct investment, and place a heavy burden on enforcement authorities. The effects are felt at all levels of society.

1. BrandFinance250 annual report on the world's most valuable brands January 2007

2. IFPI, The Recording Industry 2006 Piracy Report: [www.ifpi.org/content/library/piracy-report-2006.pdf](http://www.ifpi.org/content/library/piracy-report-2006.pdf)

3. Motion Picture Association: [www.mpa.org/2006\\_05\\_03leksumm-Revised.pdf](http://www.mpa.org/2006_05_03leksumm-Revised.pdf)

4. [www.oecd.org/dataoecd/13/12/38707619.pdf](http://www.oecd.org/dataoecd/13/12/38707619.pdf)

5. Data from the Center for Medicines in the Public Interest (US) reported by the WHO at

6. [www.who.int/medicines/services/counterfeit/impact/ImpactF\\_S/en/index.html](http://www.who.int/medicines/services/counterfeit/impact/ImpactF_S/en/index.html)

The enforcement of IP rights is a collective duty. Rights holders themselves have a key role to play in cooperating with enforcement authorities to uphold the rule of law and to institute criminal proceedings. In fact, in most circumstances we do not need new laws, as governments can achieve a great deal in combating IP crime by implementing effectively the existing legislative frameworks, and by giving real meaning and adequate support to the enforcement mechanisms already at their disposal.

Little can be achieved, however, without raising awareness among members of the judiciary of the destructive consequences of IP crimes, and the need to mete out effective and deterrent penalties under national laws. Similarly, members of police and customs authorities need to be made aware of the scale and character of the problem, and given adequate resources to address it effectively. In this respect, rights holders also have a key role to play, in particular to ensure proper product identification.

## WIPO – Promoting global cooperation

Counterfeiting and piracy are global problems that require global solutions. WIPO plays a proactive role in the field of international enforcement of IP, identifying problems and working with global partners to reach practical solutions. Together with diverse stakeholders, WIPO's Enforcement and Special Projects Division is cooperating in the development of effective government and industry anti-counterfeiting and piracy strategies, focusing on awareness-raising, legislative assistance, improved coordination and capacity building.

WIPO's active participation as a co-organizer of the Global Congress on Combating Counterfeiting and Piracy – together with Interpol, the World Customs Organization and major industry groups – is another important example of its activities aimed at coordinating efforts at the international level and strengthening cooperation between the public and private sector. Events such as this Fourth Global Congress offer valuable opportunities to raise awareness of the widespread impact of counterfeiting and piracy crime, to share information between stakeholders and to develop more effective strategies to combat the problems.

On the day-to-day operational level, WIPO provides a number of IP services which are designed to help businesses around the world obtain international protection for their trademarks, patents and designs, and to better guard themselves against illegal uses. WIPO's international filing and registration systems

offer a timely and cost-effective means of obtaining IP protection in multiple countries. Through its Advisory Committee on Enforcement (ACE), WIPO provides its 184 Member States with a forum for international review and discussion of IP enforcement issues. WIPO also provides countries, at their request, with legal advice on the protection and enforcement of IP rights; as well as tools and training programs for judges, customs officers, police, prosecutors, administrative authorities and attorneys.

*While digital technologies have revolutionized the way in which we create and do business, those same technologies have fuelled a dramatic escalation in IP-crime.*

## Growing political awareness

While the challenges remain great, the growing number of major national and regional anti-counterfeiting initiatives launched in recent years point to increased awareness, political will and readiness for cooperation. These include, to name but a few, the European Commission's 2004 launch of strategies to address the enforcement of IP rights both within and beyond the European Community; the Strategy Targeting Organized Piracy (STOP) in the U.S.; measures endorsed by trade ministers of the Asia Pacific Economic Community (APEC) in 2005 to increase their capacity to deal with counterfeiting; and the inclusion since 2005 of piracy and counterfeiting in the political agenda of successive G-8 Summits. Such initiatives encourage greater attention by government ministries and law enforcement agencies and stimulate the allocation of increased resources to combat IP-crime. They reflect a growing recognition by all countries of the pivotal importance to their own national interests of effective enforcement of IP rights.

It is heartening to see a growing, deep-rooted concern to uphold and respect IP rights. Just as in today's knowledge-based economy achieving sustainable economic growth depends on effective use of the IP system, so too, the credibility of the IP system depends on the enforceability of IP rights and on those who carry out this important task.

A longer version of this article by Michael Keplinger was first published in the *World Commerce Review* in June 2007

# CULTURE SHOCK

## Comparing Consumer Attitudes to Counterfeiting

Counterfeit in the fashion industry is rife the world over. Industry associations and governments spend millions on campaigns to deter consumers from buying fakes. But a message which works in one part of the world may fall flat elsewhere. Understanding consumer attitudes and cultural influences is critical to developing an effective campaign. Journalist **JO BOWMAN** has worked with market researchers in Hong Kong and in Italy in surveying consumer attitudes. In this article, she takes a look at contrasting attitudes in these two very different cultures, and the implications for developing effective messages.

Take two identical Louis Vuitton bags. Both are counterfeit, and both were picked up by fashion-savvy shoppers out for a bargain. Yet for the buyer of one of them, their designer fake is a badge of honour; for the other it's a tightly held secret.

What's the difference? One was bought in Italy, where looking good is *numero uno* and breaking the rules is often seen as harmless fun. The other in Hong Kong, where consumerism and Confucianism fuel a desire for luxury goods which bring their owners dignity and respect.

Photo: J. Bowman



**Peddlers of fake designer bags appeal to bargain hunters in the stylish shopping streets of Venice.**

Stereotypes certainly. But which reflect two very different markets, and two very different consumer mindsets to work with if you're trying to determine what sort of message would convince one or other of them not to buy fakes.

### Shopping "smart"

In Italy, home of countless world-leading luxury design houses, fashion is a mainstay of the national economy – and a way of life.

"Fashion is very, very important to Italians," says designer Gabriella Tinelli from Milan. "It's in our blood to want to look good." The traditional evening *passeg-*

*giata* down the main street of even the smallest of Italian towns is all about dressing to impress; throwing on an old tracksuit to drop the kids at school is a definite no-no.

What consumers are prepared to pay to look stylish is another matter, complicated by the notion of being *furbo*, or cunning, an attribute that is admired. A perceived bargain, therefore, is a magnet for "smart" shoppers, hence the brisk trade for beach-side peddlers of copycat bags and belts.

So how do you deter the bargain hunters? Buyers of counterfeit goods in Italy are liable for a fine of up to Euro10,000. But no-one believes they will ever face it. Nor do messages that counterfeit is a crime hold much sway. For many Italians – as for other Europeans – buying a fake is seen as providing the same "harmless" kick as speeding or under-declaring on a tax return.

"We park where there are 'No Parking' signs," Silvio Paschi, secretary-general of the Italian anti-counterfeit trade association Indicam, says of his countrymen. No one wants to buy what they think is the real thing and discover it's a fake. But knowingly buying a cut-price designer knock-off can make people feel clever. "They know the quality is poorer, but it's a way of pretending. That's not particularly different from other parts of Western Europe."

Price is only part of it. A Prada spokesman says while some people buy fakes simply because they can't afford the originals, in Italy it's also seen as fun. "You're on the beach, bored, and here comes a guy with a fake Rolex. You bargain a bit and it's a game," he says. "You go home and say 'look at my new E30 Rolex'. There's a playfulness about it." Sometimes the well-heeled will even mix in a fake with their originals for a laugh.

Re-educating consumers, so that such playfulness is outweighed by an awareness of economic consequences, is no small challenge. The Italian Govern-

ment has appointed a High Commissioner for Anti-Counterfeiting and has been strengthening the laws protecting IP. Laurent Manderieux, IP law professor at Milan's Bocconi University, says the police, customs and IP offices have been doing a "remarkable" job to counter the industry in fakes.

## Losing face

In Hong Kong, meanwhile, big-name European luxury brands are similarly sought after. The city is known for having the highest *per capita* consumption of Rolls Royces and cognac. Former Chinese leader Deng Xiaoping said famously that "to get rich is glorious," and while Hong Kong was only reunited with the mainland 10 years ago, its people have always taken this message to heart. Displaying the trappings of wealth is to win the approval of the community.

"It ties in with conformity and conspicuous consumption," says Gerard P. Prendergast, Professor of Marketing at Hong Kong Baptist University and author of numerous research studies into consumer attitudes and anti-counterfeit campaigns. "It's the desire to be seen with the right brand, and the right brand is the one that others have."

There's also pride in being smart with money, so a bargain appeals here as much as anywhere. What's different is that no-one wants to be found out – not for fear of the law – in fact, there is no penalty for individuals buying counterfeit goods – but for fear of losing face.

"In Hong Kong people show their success by showing they can buy Mercedes cars and Louis Vuitton bags ... and if you're found to be faking your sign of success, you're not successful," says Doris Wong, Hong Kong Director of market research company, Synovate.

It is not a problem of awareness. Public opinion surveys conducted by the Intellectual Property Department of the Government of the Hong Kong Special Administrative Region show that 95 percent of people believe it is necessary to protect IP rights. Yet almost half of them at least occasionally buy pirated or counterfeit goods.

What's revealing is that nearly three-quarters of the people buying fakes tend to buy CDs, DVDs and software – things that no one else will see. Only 12 percent say they buy counterfeit clothes and accessories, and less than 1 percent a replica watch.

Ben Houston, Deputy Trade Marks Manager at Manchester United football club in the U.K., says that fakes seem to be less in demand in the more developed Asian economies. The club seized more



Courtesy of Hong Kong Customs and Excise Dept.

**Fashion police. Hong Kong's custom officers search for fake brands.**

than £500,000 (US\$ 1 million) worth of counterfeit ManU replica shirts and other merchandise during the team's tour of Asia this summer; only about 4 percent of that was from Hong Kong.

"In Hong Kong there's kudos associated with having something authentic that's come from the club itself," he says. "These fans are thousands of miles away from us but this allows them to have something that's close to the club they support, and they're extremely passionate about the club."

## Tailoring messages

The importance of face is used in Hong Kong's anti-counterfeit campaigns. "People buy fashion and accessories because of peer pressure, so that's a good tool to use in the other direction," says Stephen Selby, Hong Kong's director of IP. "We say 'You are what you wear'; if you wear fake clothes you're a fake person."

Campaigns also appeal to the importance of family in Chinese culture. "People can be sold all sorts of things on the basis that it's good for their children," says Mr. Selby. "We say, Hong Kong is a creative centre and their kids could be working in creative industries in the future. And we could say 'the people who gain from selling counterfeits could be using that money to peddle drugs to your children.'"

In Italy, says Silvio Paschi, messages intended to scare or shame just don't work. Instead, "the focus is on public education, saying 'you're ruining the Italian economy and supporting crime'."

Changing consumers' minds, Mr. Paschi believes, takes more carrot than stick. "They can listen to the slogan and repeat it, but in the end either you scare them or you educate them. People don't really know about how the economy works; it is very possible to educate them, but it's a very long exercise."

# HOLDING THE LANDLORD LIABLE

## New Tools for the Counterfeit Crackdown in China

Groundbreaking decisions issued by courts in Beijing over the past two years, which have been hailed by the Supreme Peoples' Court as among the Top Ten IP cases of 2006, point to new strategies for tackling the problems of counterfeiting in China's retail and wholesale markets. The cases, involving leading fashion brands, confirm the right of trademark owners to pursue civil and administrative liability against the landlords of street markets who provide premises to vendors known to be dealing in counterfeits. In this article for WIPO Magazine, **JOSEPH SIMONE**, a partner with Baker & McKenzie, which assisted the fashion brands, explains the decisions and outlines related developments.



Photo: WIPO/EW  
**Tourists flock to Beijing's Silk Market each day in search of bargains.**

Brand owners in the fashion and clothing industries have for many years been concerned that standard approaches to combating anti-counterfeiting in Chinese markets have not been sufficient in deterring further violations. Working closely with the Chinese authorities, a group of luxury brand owners in the fashion industry have adopted new strategies which aim to encourage landlords to become partners in anti-counterfeiting work, or else risk civil actions for contributory liability.

### Litigation

Trademark legislation in China – and indeed all countries – does not specify the conditions under which landlords may be held liable for contributory infringement. It has therefore been up to the courts to do so.

The first round of test cases in China was filed in September 2005 by the brand owners of Burberry, Chanel, Gucci, Louis Vuitton and Prada against the landlord of the Xiushui Market – also known as the “Silk Market” – together with five individual vendors. Each of these vendors had been identified as selling the plaintiffs' brands on at least two occasions. The plaintiffs issued warning letters to the landlord seeking assistance in stopping the infringements. The landlord had ignored the letters.

The decisions of the Beijing No. 2 Intermediate People's Court in these cases confirmed that, after receiving notice of violations by particular vendors, the landlord must take prompt and effective measures to stop the infringements. The court also ruled that the landlord and vendors should be jointly and severally liable to pay compensation for losses, plus enforcement costs, totalling around US\$2,500.

The landlord appealed. But in final decisions issued in April 2006 the Beijing Higher People's Court rejected the appeals. In April 2007, the Supreme People's Court (SPC) recognized the case as among the “Top Ten” of all IP cases decided in China during the previous year.<sup>1</sup>

While these civil actions were taking place, the Beijing Municipal Administration for Industry and Commerce (AIC) also began to encourage district-level administrations to impose fines against landlords. The first such decisions were issued in Xicheng District in March 2005, and decisions against several other markets have followed. The Silk Market itself was fined by the Chaoyang District AIC in April 2006. Following two appeals filed by the landlord, a final decision issued by the Beijing No. 2 Intermediate Court in December 2006 upheld the AIC's penalty.

Building on the court decisions, the Chaoyang District AIC also sought to regulate the use of trademarks in local markets by issuing regulations in early 2006 to clarify the landlord's responsibility to control counterfeiting. The Chaoyang rules specifically require landlords to monitor which brands vendors are using, require vendors to obtain authorization to use the brands from the trademark owner or its authorized distributor, or failing that, require vendors to maintain written records indicating the source of their goods.

1. [www.court.gov.cn/news/bulletin/release/200704260020.htm](http://www.court.gov.cn/news/bulletin/release/200704260020.htm)  
 (announcement in Chinese only)

## Dialogue

Luxury brand owners and industry associations had since 2004 been discussing with the Beijing municipal government possible measures to combat the problems of counterfeiting in the fashion, jewellery, footwear, and apparel markets in Beijing. The dialogue resulted in the Beijing AIC introducing several new measures during 2004 and 2005.

First, notices were issued to all major fashion markets in the city, putting vendors and landlords on notice that counterfeit sales of 48 brands would be prohibited. The AIC also announced significantly higher fines for vendors who were second offenders. Pressure from these measures led the landlords in several markets, including the Silk Market, to begin actively monitoring the sale of fakes and to deal more sternly with infringers. Landlords reported having suspended or terminated the leases of hundreds of outlets found selling the 48 protected brands.

These positive developments encouraged the original five brand owners to create a coalition with 23 other major apparel brands in order to engage in more cost-effective enforcement work. The Beijing mayor's office encouraged the coalition to liaise with the Beijing Intellectual Property Office to co-ordinate government enforcement efforts aimed at targeting problem markets.

### Landlord partnership

The main goal of the brand coalition has been to establish a co-operative working relationship with landlords as they go about policing their markets. Key to this is a proposed "two-strike" rule for lease agreements, under which landlords would have the explicit right to suspend the operations of an outlet after a first offence and to terminate the lease after a second offence.

Landlords of three Beijing markets, including the Silk Market and the Hongqiao Market, agreed in June 2006 to adopt the two-strike rule, to respond quickly to information supplied by intellectual property owners, and to monitor their markets proactively for violations. This has been relatively successful in the Hongqiao market. In the Silk Market,



Photo: WIPO/EIA

**A "two-strike" rule, under which landlords have the right to terminate a vendor's lease after a second offence, has had success in the Hongqiao (Pearl) Market.**



Photo: Feng Chao

**China's Supreme People's Court included the test case against the landlord of the Silk Market (above) among its 2006 top ten IP cases.**

however, an industry survey conducted in February 2007 still revealed infringements of over 130 well-known brands by two-thirds of the outlets.

## Criminal enforcement

The coalition has begun expanding the program to Shanghai, Shenzhen and Guangzhou, with some results so far. But the experience with the Silk Market demonstrates the continuing limitations of existing civil and administrative enforcement tools in deterring counterfeiting without the police resources needed for criminal enforcement.

Aside from the difficulties of bringing criminal actions against the smaller-scale and more clever vendors of fakes under the current legal requirements, criminal actions against landlords present even greater difficulties. Some experts argue that criminal action can be justified only if there is evidence that a landlord has actively conspired with infringing vendors in promoting trade in counterfeits. Proving this to the satisfaction of prosecutors and judges would require evidence that could best be gathered by local police, rather than private investigators hired by trademark owners.

Notwithstanding the challenges, there is little doubt that the national and local governments are committed to solving anti-counterfeiting problems in the longer term. In the meantime, IP owners, encouraged by the progress to date, are continuing their constructive engagement with the authorities and with landlords in order to expand on the positive momentum generated in the last few years.

# SECOND LIFE -

## Brand Promotion and Unauthorized Trademark Use in Virtual Worlds

Intellectual property (IP) is the basis for the creation and protection of rights in online gaming. But the creators of virtual worlds, such as Second Life, also recognize the new IP developed by the players who interact and evolve in the worlds they have created. This has become the basis for buying and selling creations in such worlds, and has made millionaires in the real world. This article\* discusses the use of trademark rights in Second Life, where IP is a cornerstone for in-world trade. The article was adapted with permission from the INTA Bulletin, (Copyright © 2007 the International Trademark Association).

**Second Life,  
Terms of Service,  
3.2**

**“You retain copyright and other IP rights with respect to content you create in Second Life.”**

An entirely new world is emerging as a hotbed for brand promotion as well as possible trademark infringement – the world of virtual reality. The popular press reports with increasing frequency about business activities taking place in virtual worlds. Gartner, Inc., an information technology research and advisory company, predicted in a recent report that by the end of 2011, 80 percent of active Internet users will have some sort of presence in a virtual world. One of the most popular virtual worlds at present is Second

Life. These residents are online personas, called avatars, created by their users. The strong identification of users with their avatars, together with the ability to create and build virtual businesses that participate in a very real economy, is beginning to capture the attention of major brand owners. This environment offers a new means of brand promotion as well as a new platform for creating and using intellectual property rights and, consequently, for possible infringements of intellectual property rights, including trademark infringements.

### Opportunities and challenges

Linden Lab responds to allegations of copyright infringement in accordance with the process and procedures of the U.S. Digital Millennium Copyright Act. The stated Second Life policy on trademarked material states that “Linden staff generally removes content that uses trademarks without apparent authorization, with or without giving notice to the object’s owner... Any resident may file an abuse report if they see any other resident making unauthorized use of trademarked material in Second Life.” Since there is no case law on point, it is unsettled whether use of a real world trademark by an avatar in a virtual world constitutes trademark use, which is a necessary element of trademark infringement.

**The strong identification of users with their online avatars has captured the attention of big brand owners.**



Photo: Second Life

Life®, an online economy that is growing at a rate of more than 25 percent per month. Second Life is often described as a massive multiplayer online role-playing game (MMORPG, pronounced mor’ peg), but it is certainly not a traditional computer game.

Linden Lab, the San Francisco, California-based company that owns and operates Second Life, describes it as a “3D online world with a rapidly growing population from more than 100 countries around the globe, in which the residents themselves create and build the world, which includes homes, vehicles, nightclubs, stores, landscapes,

Trademark owners should be aware of the opportunities and challenges to their brand in virtual worlds like Second Life. Some brand owners have established an online presence by building retail stores in Second Life to sell products in the real world. All of the attendant concerns of brand reputation and disparagement are present in this new medium, just as they are in the real world. There have been instances of counterfeiting and allegations of copyright infringement for misappropriation of others’ property created and used in virtual worlds. With over 11.5 million transactions reported in recent months, if

*“Any resident may file an abuse report if they see any other resident making unauthorized use of trademarked material in Second Life.”*

only one percent of the transactions involves unlicensed trademarks, that translates to 115,000 actionable cases of infringement in only one month and more than 1.4 million infringements per year.

Assessing the potential of Second Life as a marketing tool is of fundamental importance to brand owners. Because the average age of the virtual world participants is 32 and the ratio of men to women is roughly 1:1, it has become an ideal place for companies to consider marketing their goods to an older and wealthier demographic. This is especially so considering the site’s incredible growth rate. It’s no wonder that companies like Toyota, Dell and Reebok have decided to expand into the “digital marketplace” by opening their own online stores and choosing to make use of the site for advertising purposes.

Created in 2003, Second Life is reported to have more than 9 million registered persons (persons can create more than one avatar) and an active community of 600,000 residents who participate regularly. More than half of Second Life users live in Europe; another third are from the United States. The average user is online between 20 and 40 hours a week. As a testament to the rapid growth in popularity of Second Life, Time magazine included Second Life creator Phillip Rosendale in this year’s list of the world’s 100 most influential people, and media organizations such as Reuters have stationed reporters in Second Life.

The German state of Baden Württemberg has a representation in Second Life and has been joined by embassies from the Maldives and Sweden. Second Life is home to a virtual business incubator, known as Nonprofit Commons, for 30 nonprofits, and the Linden Bar Association, with, at last count, 30 real-life attorneys. The American Cancer Society established a virtual Relay for Life fundraiser that raised US\$82,000 in the months prior to the virtual event.

## Trading virtual IP

Second Life is different from other MMORPGs in two important ways. First, the Terms of Service of Second Life permit the creators of virtual property to own property they create. Specifically, the Terms of Service state: “you retain copyright and other IP rights with respect to content you create in Second Life, to the extent that you have such rights under



The average user is online between 20 to 40 hours a week.

applicable law.” Because Second Life allows residents to retain the rights in their online creations, they are increasingly creating digital objects and inventory to sell to other users for use by their avatars.

Second, the economy of Second Life is driven by an in-world currency, the Linden Dollar, which is exchangeable on the Linden Currency Exchange (known as the LindeX) at the current rate of approximately 270 Linden Dollars per U.S. dollar. There are at least three other currency exchanges that exchange Linden Dollars for real-world currency. Residents collect Linden Dollars by selling digital creations or virtual real estate to other residents and then convert the Linden Dollars to currency.

**“You will comply with the processes of the Digital Millennium Copyright Act regarding copyright infringement claims covered under such Act.”**

Second Life,  
Terms of Service,  
4.3

Rosendale stated at the August 1, 2007, *AlwaysOn* technology conference that 830 residents make more than US\$1,000 a month in Second Life. Some residents’ Second Life business activities have been successful enough to replace their real-life income. The virtual real estate market in Second Life and other MMPORGs has created a market with a collective value estimated to be in the hundreds of millions of U.S. dollars, and the economy in Second Life is 100 percent larger than it was six months ago. *Time magazine* reported that US\$6.8 million changed hands in June 2007 on LindeX and that U.S. Congress is looking into whether to tax this commerce. Companies whose entire business is building virtual property in virtual worlds have been created.



**Dell Computers has established a factory and virtual store in Second Life.**



Courtesy of Dell

## The Virtual Economy

Ailin Graef's avatar, Anshe Chung, cost her an initial investment of just US\$9.95 to set up her Second Life account, but has made her a real life millionaire. Anshe bought Second Life real estate, which she subdivided, developed and landscaped with panache, and put up for rent and resale. Other avatars bought into the lifestyle Anshe created. Two and half years later, Anshe is a virtual real estate mogul with projects that vie with large scale real world models.

Anshe Chung is not the only virtual resident earning a comfortable living for her owner. More and more subscribers are making Second Life their place of business. As of April 2007, economic activity on Second Life averaged over US\$1.5 million per day. Items available for sale include clothing, avatar hair and skin texture, vehicles, furniture and, of course, homes – most sold using in-world brands. As financial and physical barriers to entry are non-existent, the only parameters for success are design quality and brand reputation. Anyone can compete with the biggest, most successful and luxurious real world brands that have in-world presence.

But there are threats to the virtual market place. At the end of 2006, CopyBot, a program put up for sale by the avatar Prim Revolution, caused an uproar among Second Life residents. CopyBot can clone any virtual good without paying for it – threatening the in-world economy and real world revenues. Linden Labs has banned the program and residents can file an Abuse Report and a complaint for infringement under the DMCA, but it is a difficult process.

Ailin Graef's revenues, however, may be safe. She created a real-life spin off corporation, based in China, called Anshe Chung Studios. The company develops immersive 3D environments for applications ranging from education to business conferencing and product prototyping.

\* This article was adapted by the *WIPO Magazine* (Issue 6/2007) from an article which first appeared in the *INTA Bulletin*, Vol. 62, No. 17 – September 15, 2007, written by:  
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## Policing infringement

Second Life's creation ownership policy and its in-world currency exchangeable for real-world money have stimulated a real consumer economy in the virtual world; however, that economy has predictably given rise to many instances of IP infringement. Avatars can, for example, purchase from "enterprising" residents virtual NIKE shoes bearing the distinctive Swoosh Design or virtual IPOD music players loaded with the latest hits, notwithstanding that Nike, Apple and the recording artists may not have consented to the creation and sale of the virtual property exploiting their trademarks, copyright,

designs and other valuable intellectual property. This activity is prohibited by Second Life's Terms of Service; however, as in the real world, policing infringement most often falls to the right holder.

Although many IP owners appear to be taking a wait and see approach in these early days of Second Life's popularity, brand owners should be aware of both the marketing potential and the possibilities of infringement that Second Life presents. And at least one real-world lawsuit has been initiated: Eros, LLC alleges copyright infringement, trademark infringement and misrepresentation for unauthorized reproduction and sale of a virtual adult-themed bed.

# On the Beat

## TAPPING THE POTENTIAL OF KENYA'S MUSIC INDUSTRY

The modern musical landscape of Kenya is one of the most diverse and vibrant of all African countries. But under-investment, ineffective management of intellectual property rights, and rampant piracy have prevented the industry from realizing its economic potential and left its artists struggling to earn a living. Following a recent visit to Nairobi by a team of WIPO's copyright and outreach experts, this article takes a look at what makes Kenya's music great, and at some of the elements which have hitherto stunted its growth.

With more than forty different regional languages, the country's musical panorama is rich and remarkably complex. Driving through Nairobi's streets in your matatu, you will hear songs in Luhya, Luo, Kamba, and Kikuyu on every street corner. Music has traditionally been a distinctive feature of Kenyan ethnic groups, such as the Kikuyu, Kenya's largest ethnic community, and the Luo people of the Lake Victoria region, who have always been particularly well known for their musical culture.

In addition to its entertainment value, Kenyan music has always been, and is still today, a major vehicle for sharing information and educating local populations. Opondo Owenga, a traditional Benga musician, was well known during the colonial era for his use of music to convey the history of the Luo people. Such musical riches are under threat, however, since traditional music rooted in oral tradition is disappearing at an alarming rate.

### A potent mix

The roots of Kenya's popular music can be traced to the 1950s. The most characteristic pop sound is Benga music, which was born on the lakeshore and originates from the Luo community. It is a crossover of traditional rhythms and instruments, such as the nyatiti lyre, the orutu single stringed fiddle, the ohangla drums, and modern dance. Benga became so popular that ethnic groups from six out of Kenya's eight provinces have adapted it to their own style and flavor, while retaining the pulsing beat, high energy bass, interlocking guitar riffs and recurrent voice solos which characterize the Benga genre. The complex

rhythms include indigenous and imported rhythms, notably the Congolese beat. The Shirati jazz band, formed in 1967, was one of the first Benga bands to make a major breakthrough. Others were George Ramogi, Victoria Jazz Band, DK and Joseph Kamaru, who received international exposure in the 70's. Recently, traditional Kenyan music attracted international attention when the songs of the singer Ayub Ogada were featured in the award winning 2005 movie "The Constant Gardener."

Foreign artists and foreign bands, essentially from Tanzania and the former Zaire, have also been a major component in the rich Kenyan musical stew. The entrancing Taarab music is a fusion of Indian, Arab and African motifs that developed in the coastal cities of Kenya and Tanzania. Congolese groups started performing in Nairobi night clubs in the mid 1960s and, as political conditions in the Congo deteriorated in the 70s, more groups made their way to Nairobi. The famous Congolese sound based on rumba, known as Soukous or Lingala, became the mainstream genre of music in the 70's and 80's in music clubs. The popularity of bands, such as Orchestra Virunga and Super Mazembe, spread as far as Europe and the United States.

The last decade has witnessed the mushrooming popularity of hip-hop music in Kenya, with the rise of musicians such as Gidi Gidi Maji Maji and the late Poxi Presha, who, while retaining their African heritage,



Courtesy of Kalebul Music

**Olith Ratego – sweet sounds and sharp social comment. His interest in music came from his mother, a singer of "dodo" traditional Luo music.**



Photo: WIPD/Nicholas Hopkins-Hall



**Abbi is among the new generation of Afro-fusion artists.**

have been influenced by the American music scene. Alongside this trend, a new generation of talented artists is setting the stage in the so called Afro-fusion style, a blend of traditional local sounds mixed with various other influences. Among them, to cite but a few, is the compelling voice of Suzanna Owiyo, the fiercely socially engaged yet witty music of Makadem and Olith Ratego, the sweet Afro-jazz melodies of Eric Wanaima, and the originality of Abbi.

## Obstacles

Despite its vibrant creativity and boom in production, the Kenyan music industry is nowhere near realizing its potential. "Nobody knows about Kenyan music," says Suzanna Owiyo, "and that is because

we lack proper networking in terms of distribution."

Paradoxically, the very diversity of Kenya's musical

scene represents a key challenge to developing a sustainable industry. In particular, its linguistic diversity has fragmented the market and made it more difficult for artists to develop unique and recognizable sounds that can serve as currency for access to mainstream global markets.

The lack of investment in production has also stunted the industry's growth. Training and rehearsing facilities are few and inadequate, recording studios are technically obsolete and CD plants are virtually non-existent. All mastering of recordings has to be done in South Africa, thereby increasing costs. Moreover, it is often very difficult for young musicians to buy

instruments. Abbi expresses the frustration of many of his fellow artists: "If we could get more international investment in music, then truthfully our music would rise to a different level."

## Exploring options

More and more artists are embracing River Road – also

known as Riverwood, the center of the burgeoning Kenyan film industry – for production and distribution of their music. For a long time, Kenyan artists were critical of the production quality of River Road, indeed viewing it as a wellspring of music piracy. But many musicians are now tempted to experiment with the cheaper production options and better distribution networks offered by the film industry. Singer and composer John Katana comments: "Riverwood has great potential. It is going to grow, and I will be very interested to work with producers and makers of River-wood movies because it has taken a big step."

Various other strategies and partnerships are being explored to facilitate the promotion and distribution of Kenyan talent on the world music scene. One of the most innovative is "Spotlight on Kenyan Music," an initiative of the *Alliance Française* of Nairobi, which seeks to identify and promote talented young Afro-fusion musicians all over the country, giving them the opportunity to perform in concerts and participate in album production.

## Blight

However, currently only a handful of famous African artists have been able to make money from the popularity of African music. High piracy rates, poor enforcement procedures and ineffective management of

*Music pirates have a stranglehold on the market, making it nearly impossible for musicians to profit from sales of legitimate recordings.*

## WIPO New Release: Talking Copyright

A short WIPO public outreach film captures the irresistible sounds and colors of the Kenyan music scene, and listens to what the artists themselves have to say about their music and the problems faced by the industry. Afro-fusion and Afro-jazz musicians, singers and composers, including Abbi Nyinza, Achien'g Abura, Suzanna Owiyo, Tom Kodiyo and John Katana, talk about what copyright means to them as artists, and to the future development of the music industry in their country.



"Talking Copyright – The Music Industry in Kenya" can be viewed on the webcast area of WIPO's Public Outreach site at [www.wipo.int/multimedia/en/webcast/](http://www.wipo.int/multimedia/en/webcast/).

intellectual property (IP) rights mean that most musicians struggle to make a living from their music or to achieve social recognition of their status as artists.

Ever since the introduction of cassette tapes in the 70's, piracy has blighted the Kenyan industry. Music pirates, who copy CDs the moment they are released and sell them on the streets, have a stranglehold on the market that musicians cannot break, making it nearly impossible for them to profit from direct sales of legitimate recordings. "That is why we have to slow down so much on making recordings," explains John Katana. "We are more into performing live and doing social functions because of the piracy problem." Another stark reminder of the impact of piracy is that for more than a decade now, international record labels and music companies have abandoned Kenya as a non-viable market for their product.

### Promoting copyright

Kenyan copyright legislation was updated in 2001. A national Copyright Board is entrusted with implementation and monitoring of the new legislation. Stakeholders are working to further improve organizational structures of copyright and provide effective education on IP issues. The economic value of music to the country is beginning to be better understood and promoted. "Music adds value to the GDP and creates employment for the country," says Tom

Kodiyo, vice-chair of the collecting society, the Music Copyright Society of Kenya (MCSK), which operates under the slogan: *Making life better for those who make living beautiful*. "All players have to work hand in hand," says Tabu Osusa, a leading music producer, "but the time has also come to put in place a national strategy to protect and preserve Kenyan creativity, which would create the conditions for music industries to flourish and raise revenues."

WIPO is working hand in hand with governments in Africa, as well as with representatives of the music industry and civil society, to promote the copyright-based industries in the region. WIPO's outreach activities aim to raise awareness – at all levels – of just how copyright helps keep the music coming. And a wide range of WIPO programs assist member governments in building the knowledge, skills and infrastructure needed to put IP to work, so that these industries can deliver to the country's economic development the dynamic charge of which they are capable.

The Kenyan music scene bears out an old proverb in the region that says "seeing is different from being told." A journey through Kenya reveals the pride of the people in their creative traditions, and a growing commitment to developing viable creative industries. While there are challenges, the future for Kenyan music is bright.

This article  
was first published in  
*WIPO Magazine*  
Issue 4/2007

# ROCK 'N' ROLL IN BANGLADESH

## Protecting IP Rights across Borders

This is an abridged version of a case study written by **ABUL KALAM AZAD**, Professor of Economics at the University of Chittagong, Bangladesh, and first published by the World Trade Organization (WTO) in "Managing the Challenges of WTO Participation: 45 Case Studies." Professor Azad presents the case as a successful example of how international intellectual property agreements enabled a rock band in Bangladesh to challenge successfully the unauthorized use of one of their songs by a filmmaker in India.

"It's daylight robbery in *Murder*, screamed a cult Bangladeshi rock band – and its plea has been heard," wrote the Telegraph of Calcutta in its front-page story on the Hindi movie, *Murder* (Telegraph, 20 May 2004). *Miles*, a popular Bangladeshi music band had accused music director Anu Malik, a music-mogul of the Mumbai movie world, of pirating one of its original compositions.

Manam, Hamin and other members of *Miles* were alerted by fans that their song *Phiriye Dao Amar Prem* (Give me back my love) had been copied in the soundtrack of Bollywood block-buster movie, *Murder*. When the song *Jana Jane Jana* was played in the movie, the band members could hardly believe their ears. Only the language was different – Hindi. Otherwise, "the lyrics are a shadow of ours, the tune is the same. Even the beat break-ups, the use of guitar and filler notes are the same," guitarist and vocalist, Hamin, told the Bombay Times.

The band composed the song *Phiriye Dao* in Bengali for their 1993 album, *Prathasa* (Hope). The song was also included in their 1997 album 'Best of Miles, Vol. 1' released by the Asha Audio Co. of Calcutta, and became very popular in both Bangladesh and West Bengal, India. "Just as *Santana* cannot leave a concert without performing 'Black Magic Woman,' we cannot conclude a concert without performing *Phiriye Dao*. We had planned to release the Hindi versions of our songs. The offer should have come to us," said Hamin. The violation of intellectual property (IP) rights in the song hurt the business interests of *Miles*, and, by extension, of Bangladesh.

Commerce. Ministry officials contacted their counterparts in India, who suggested that Miles should seek redress by taking the violators of copyright to court. The main provisions on the international protection of copyright and related rights, the band learned, are contained in the Berne and Rome Conventions and in articles 11 and 14 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). *Miles* decided to go to court.

A Calcutta law firm filed a writ petition on behalf of *Miles* in the Calcutta High Court on 17 May 2004 against the producer, Mahesh Bhat, and the music director, Anu Malik, of the film *Murder*, the singer of the song, Amir Jamal, the recording firm Saregama India Ltd. and the audio company RPG Global Music (London). It was claimed that the defendants had collaborated on copying core elements from *Phiriye Dao Amar Prem* in the soundtrack *Jana Jane Jana* of the movie *Murder*. It was further claimed that the themes of the two songs were similar and their melodies identical. Even the use of chords was the same in both the songs. "This is gross infringement of the international (intellectual) property rights as well as the Copyright Act," stated Pratap Chatterjee, the lawyer for the petitioners (Telegraph, Calcutta, 20 May 2004).

As compensation for the injury caused to the business interests of the petitioners, they demanded 50 million rupees from Anu Malik, Mahesh Bhat, Saregama India Ltd. and RPG Global Music; plus total reimbursement for the expenditure incurred in filing the case. A court order was also sought for appointing a receiver or special officer to seize the entire lot of soundtrack software from Saregama's Dum Dum studio. Besides this, the band's lawyers demanded that the respondents "should be directed to disclose upon oath details of cassettes and CDs distributed by them to various vendors and retailers."

### Seeking redress

The band members contacted lawyers well versed in international IP matters and the Ministry of

1. The complete case study is available on the WTO website at: [http://www.wto.org/English/res\\_e/booksp\\_e/casestudies\\_e/case3\\_e.htm](http://www.wto.org/English/res_e/booksp_e/casestudies_e/case3_e.htm)

## Going the Distance

*Miles* have come a long way. They started out in 1979, playing western hard rock cover versions in hotels around Dhaka, and for twelve years performed only in English. But Bangla pop was rapidly gaining in popularity across Bangladesh. "As a top band, the pressure started mounting on us – from the press, fans, audio companies – to do Bangla pop songs," explained lead guitarist and vocalist, Hamin Ahmed, in an interview for India-today.com. "We knew that we would reach out to a much larger audience once we did songs in Bangla. We decided to do it in a slightly different way and introduced Bangla rock-fusion in our first Bangla album, *Pratisrutti* (1991)." The album was an instant success. The band followed it up with another hit. *Prottasha* (1993) sold around 300,000 copies within a few months of its release, and is still a best selling band album in Bangladesh.

The band has created its own style of music which includes elements of pop, blues, Latino, jazz and techno. "The pop/rock scene in Bangladesh is fantastic," Hamin enthuses. "And the best part is that the audience is mature enough to understand and appreciate each and every instrument played and the intricate vocal works of a good singer. There are 50 to 60 bands in the country, including six or seven very good ones with a huge fan following. So, things are looking up and looking great."

And why the name? "Miles represents distance," explained Hamin. "At the time of naming the band, we knew that our journey through music is going to be a distance that will never end. So, miles and miles of music. You never stop learning, creating and never, ever, stop moving."

Current line-up: Hamin Ahmed (guitar & vocals), Shafin Ahmed (bass guitar & vocals), Manam Ahmed (keyboards & vocals), Iqbal Asif Jewel (guitar & vocals) and Syed Ziaur Rahman Turjo (drums).

Photos: © Onitbaan.com



## The verdict

On hearing the petition, the Hon. Justice S. K. Mukherjee took *prima facie cognizance* of the matter and passed an interim order on 19 May 2004. In his learned judgment, the justice ordered the respondents to remove the song from the soundtrack of the movie *Murder*. The court order further barred the respondents from manufacturing, selling, distributing or marketing any music cassette or disc containing the song.

Pursuing their IP rights in court involved costs and challenges for the copyright owners in Bangladesh, including money, time, lack of information and uncertainty about the outcome. When this article was written, the band had won only the first round of the battle, and had yet to secure a verdict on the nature and amount of monetary compensation for the damage caused to their business prospects. Nevertheless, the band members were very happy

with the decision of the court. "We were impressed by the promptness with which the first hearing in the Calcutta High Court was completed and the injunction order was passed. We proceeded systematically, organizing everything very carefully. We submitted the technical notations of our song and that of the "copied" song," said the band members (Prothom Alo, 26 May 2004).

The verdict was a triumph of international IP rights treaties, which enable the nationals of one country to defend their rights across national boundaries. The case upholds the fact that IP rights, like other property rights, are inviolable. It simultaneously serves as a warning to would-be violators of IP rights, and as an encouragement to creative people all over the world by reassuring them that their creative works can be defended against piracy.

This article  
was published in  
*WIPO Magazine*  
Issue 5/2007

# SHAGGY – DANCEHALL COMES TO WIPO



Photos: Jonathan Mannon

## Biodata

**Born:** October 22, 1968, in Kingston, Jamaica.

**Name:** Orville Richard Burrell. Nicknamed "Shaggy" by childhood friends after the popular Scooby Doo cartoon character.

**Career:** Joined the U.S. Marines c.1988-92.

First hit record was *Oh Carolina* in 1993. Other hits include *Boombastic*, *In the Summertime*, *It Wasn't Me* and *Angel*.

The album *Hot Shot* (2000) sold over 15 million copies and made Shaggy the first reggae artist to top the U.S. Billboard 200 best selling album chart.

**Awards:** Grammy Award, Best Reggae Album for *Boombastic* (1995); Juno Award (Canada), Best Selling Album, 2002. In October 2007, he was awarded Order of Distinction with the rank of Commander for outstanding service to Jamaica.

"Yo, this is Mr. Lover-Lover, boombastic – upfront and personal. Say yea, pay attention! Utter Shaggy."

The greeting, delivered in a baritone growl, was not quite what we were used to hearing from ambassadorial visitors to WIPO. But then, this was not a usual WIPO visitor. Orville "Shaggy" Burrell, Jamaica's self-styled ambassador of reggae, had been invited to join speakers at WIPO's 2007 *International Conference on Intellectual Property and the Creative Industries* in order to share his own perspective as a top-selling artist.

With album sales of over 20 million since his first hit, *Oh Carolina*, in 1993, Shaggy's successful career in the music industry is testimony to his artistic inventiveness, and to his readiness to buck the trend. The hard-hitting rhythms and tongue-in-cheek lyrics of hits such as *Boombastic* (1995) broke through barriers, taking Shaggy's cross-over brand of reggae or dancehall<sup>1</sup> music to the top of R&B, pop and hip-hop charts worldwide. His addictive new release, *Church Heathen*, though aimed at a hardcore dancehall audience, looks set to be another major hit.

Before leaving the Conference, Shaggy took time out to talk to the WIPO Magazine about his music and his personal experience from within the creative industries.

**The WIPO conference has been discussing the economic contribution of the creative industries. How do you see the contribution of the music industry to Jamaica?**

Jamaica will probably benefit more from music than any other country because its whole cultural background is what sells Jamaica, more so than anything else. When you think Jamaica, you think Bob Marley. The minute you land in Jamaica you feel the essence of reggae. And for an artist who's trying to break out in the music business, Jamaica is one of the easiest places to show talent – there are so many outlets, you can just jump on a stage.

**In your own music, what do you aim for when you are creating a new song?**

There are too many six-week hits come out now. They get a lot of hype, but hype doesn't mean it's a good song. As a musician, you want to be more than just a trend. You want to be a part of history. Even the newer generation now are looking back at the older classics. So me, I strive for that song that's going to be a monster record – that lives on forever, forever. I probably have four or five of those. I don't always achieve it. Sometimes these songs choose you instead of you choosing them.

**What does copyright mean to you as a working musician?**

For me copyright law in Jamaica is extremely important. I mean, it is what you could call our "pension," which is what we have been lacking within the reggae fraternity, in my opinion.

1. Dancehall, or ragga, is a derivative of reggae that developed in Jamaica in the 1970s. It is characterized by a DJ rapping (or "toasting") over raw, danceable, electronic "riddims."

*“Copyright... is what you could call our ‘pension,’ which is what we have been lacking in the reggae fraternity.”*

You know, the first time that a copyright law was implemented in Jamaica was around 1993. For an island that survives off its music and its culture, it should have been long before. When I look at so many great artists from Jamaica whose recordings are owned by other people, and probably licensed out by other people, and they get nothing for it, well that saddens me. For the government to set in place certain laws that protect these artists and create our pension – that’s the best we could ask for.

**What, for you, has been the impact of illegal downloading?**

We all are affected by illegal downloading. With technology, music is free. That is the harsh reality of it. But what download does do, is it makes it better for the consumer. I mean, how many times have you bought an album for one song and then when you listen to the rest of the album you hate it? With downloading you could listen before you buy it – it’s a dream for a consumer.

**How about the effect on the artist when people download for free instead of buying the records?**

If you’re an artist that makes great records, you’re still going to make great records. You won’t make a lot of money from them, but you can have a career. One thing you cannot take away is the live performance aspect. So it can actually force the artist not to just be a studio artist, but to be an incredible live artist – to up the notch. The biggest losers are the record companies.

**Though lower record sales also mean less money to invest in new artists?**

You can’t blame that all on downloading. It started a long time ago – when the corporations started owning the record labels. There are no labels owned by music moguls now – no Chris Blackwells.<sup>2</sup> Remember, Chris Blackwell believed enough in Bob Marley to stick with him until he had a hit – that was only after seven albums! It would be hard to sell that now to a bunch of accountants on a company board.



**“You have to reinvent yourself.”**

**You were suggesting that artists have to find a new approach? To stop thinking mainly in terms of record sales?**

If you have a ton of hits you’re somebody – even if you didn’t get paid for them. You’re a brand, a force to be reckoned with. That is worth something. People were surprised when Prince gave away a million records through a newspaper. He knew why he did it. That and 21 nights in England – all sold out. He is using the record as a promotional tool, promoting his “brand.” Madonna is doing the same. Robbie Williams is doing the same. We’ve seen a lot more artists who are using the music as a marketing tool.

I think more artists are going to be moving, like Beyonce, from not just being artists but being celebrities. It is depressing to think that you can’t just make a great composition and that be it. Unless you make that hit work for you – make some deals that can sell sneakers, cologne, clothing lines, whatever else – then that record isn’t going to make a big profit for you because the profit margin is just so diluted at this point.

**That works if you’re already successful. But what about the kind of hurdles faced by new talent?**

As a young artist you don’t have much of a choice. You’re nobody if you have no hits. That’s just how it is! First, you have to get so as you are in a bargaining position. So the main thing for a young artist right now is to somehow get their name out there, become a household name, because you have nothing to lose, so ride the wave, get to a point where you can then make some choices.

2. Chris Blackwell, who founded Island Records in 1959, is largely credited with bringing reggae to international audiences. He signed Bob Marley in 1971.

# AUTHORS, COMPOSERS, ARTISTS

## Nathan East - Jazz Musician



Photos: Courtesy Nathan East

### Biodata

**Born:** 1955, Philadelphia, U.S.A.

**Instrument:** Bass guitar

**Group:** *Fourplay* with Bob James (keyboards), Larry Carlton (guitar), Nathan East (bass), and Harvey Mason (drummer).

**Recorded/toured with:** Anita Baker, Al Jarreau, Barbara Streisand, Eurythmics, Natalie Cole, Elton John, Bob Dylan, George Harrison, Sting, Ray Charles, Eric Clapton – and many others.

**Awards:** Most Valuable Player Award, Bass category, 1991 International Rock Awards; three-time recipient of the National Smooth Jazz Award for Bassist of the Year; U.K. Ivor Novello Award for “Easy Lover,” which he co-wrote with Phil Collins and Philip Bailey

**Also:** Developed his own Yamaha Signature Series 5-String bass guitar, the BBNE-2. Has a private pilot license and holds two World Speed Records in his Lancair IV-P.

“X”, the latest album by American jazz supergroup, *Fourplay*, has had fans and critics purring since its release in August 2006: “The smooth jazz group to top the lot,” says BBC reviewer Peter Marsh. “A softly-funky, superbly crafted album from these masters of smooth,” writes Matt Collar in the All Music Guide. The rave reviews come as no surprise, given that the ten albums released by *Fourplay* since 1991 have all topped the jazz charts, and six have been nominated for Grammy awards. As *Jazz Monthly* puts it: “[From] four of the most talented guys in the business...the new *Fourplay* CD confirms that thought-provoking music never goes out of style. Masters at harmonizing the energy of individual performance with the synergy of ensemble play, the tracks are tight, transitions dramatic and the experience a whole lot of fun!”

One of the four “Masters” is Nathan East, whose successful career as a jazz musician, composer and bass guitarist spans some 30 years. With a reputation extending well beyond jazz aficionados, he has recorded and toured with a star-spangled list of artists, including – to name but a few – Elton John, Lionel Richie, Barbara Streisand, Josh Grobin, Eurythmics, Sergio Mendez, BB King, Kenny Rogers, Quincy Jones, Kenny Loggins and Phil Collins. His long association with Eric Clapton, for instance, included the multi-Grammy Award winning *Clapton MTV Unplugged* CD. Keen to help young musicians who are considering music as a profession, Nathan East has also produced a DVD, *The Business of Bass*, which provides an introduction to the often hard realities of working in the music business.

En route to a concert tour in Japan in January 2007, Nathan East made time for an interview with WIPO



Six of the band's ten albums have been nominated for Grammy Awards – all have topped the jazz charts.

Magazine. In the following extracts, he shares some thoughts about his creative work and his perspective, as a musician, on copyright issues.

### Tell us about how you first started playing bass.

I grew up in a house full of music. I started playing the cello in a junior high school orchestra. But when I was 14, I used to tag along with my brothers to their folk mass rehearsals, and once there was a bass just sitting on the altar. I just picked it up and joined in. That was it!

### And your first big break?

Our band played the club scene around San Diego. Barry White heard us and hired us to go on tour with him as part of the Love Unlimited Orchestra. I was 16 at the time. A few years later I recorded in studio with him. But in-between there was school. I wanted to finish my education. In early 1980, the veteran writer/arranger Gene Page, with whom I had worked on White's recording sessions, called

*“Record companies can’t entirely blame the Internet for music fans’ not wanting to pay 20 bucks for an average CD with maybe two or three good songs on it.”*

me to record a commercial with him. He then included me on recording for Whitney Houston, Madonna, Dionne Warwick and Michael Jackson. I got better known and the jobs came in. I was never short of work after that.

#### **When did you become aware of copyright and related rights?**

The first song I ever wrote that was recorded and published was called “With All My Love” in 1970. It was the title song of an album by trumpeter Bruce Cameron, who took the publishing on that song. That was my introduction to copyright and publishing. I did use that song to join ASCAP (American Society of Composers, Authors and Publishers), and retained my own publishing from then. After that, it was fairly easy to contact ASCAP with questions that I had regarding copyright.

#### **Are there any aspects of the current copyright system that you would like to see changed?**

Anything that not only protects the creators but promotes them as well is essential in keeping the business moving forward. I feel the length of copyright protection for recorded performances could be doubled from what it is currently. Also, a performer’s name should be included on every album in which they perform without exception. There is nothing worse than not getting the credit you deserve for the creative work you have done. I recorded a lot with Barry White, but you wouldn’t know it because he didn’t put the names of the musicians on any of his records because he didn’t want anybody to steal his sound.

#### **Do you have any thoughts on tackling music piracy?**

All groups have suffered from music piracy. We need to educate the public about the impact of piracy on the lives of the people that create the music. There should also be increased use of embedded codes in CD’s that make it more difficult to transfer music from computer to computer. But at this stage in the game, we can’t escape the technology and, unfortunately, I think it will get worse before it gets better. The record business as we have known it is over.

#### **So do you see the Internet more as a threat or an opportunity for musicians?**

Much like when synthesizers and drum machines became widely used, some thought they would put

real musicians out of business which they didn’t. The strong seem to survive. This feels like the same case. The Internet offers an opportunity to reach more people. Provided the consumer can be educated about the artist’s need to make a living, I feel as though it’s opportunity more than a threat. But clamping down on music piracy on the Internet is a good thing, especially if it means that more people will accept the idea of paying for music. We also need to update ways to monitor what is generated from Internet sales.



**Bob James, Nathan, Larry Carleton and Harvey Mason of Fourplay.**

#### **Are you benefiting from revenues from legal downloading?**

These are somewhat early days of downloading in the scheme of things so the standard royalties from CD sales and live performances are still my primary source of income. But I believe the royalties generated from the legal downloading of music could potentially catch up.

#### **As people’s listening habits change, what does this mean for the music industry?**

The bottom line is that people will always love music. It’s like a soundtrack for life and I believe, regardless of the delivery system, humans will continue to have a thirst for good music. That’s one of the keys: *good music!* I don’t think that record companies can put the blame entirely on the Internet for music fans not wanting to pay close to 20 bucks for an average CD with maybe two or three good songs on it. High prices plus low quality equals disaster in any industry. Musicians will have to continue to be creative musically and with the way they manage their careers.

I think there is also some shift toward live performances. Even in the glory days, many artists profited more from touring and live performances than they did from record sales. This just means that you better know how to “hit it” live and not just in the studio.

# TALKING TO THE DOWNLOAD GENERATION

*"I wouldn't steal a car. I wouldn't steal a DVD. But I might borrow a DVD from a friend. And what's the Internet these days, but a big group of friends sharing stuff?" – Hussein,\* aged 17*

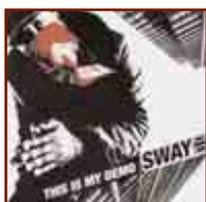
\* The names of the students have been changed.

Hussein was among a group of 16-17 year olds whose views on piracy provided delegates to the 2007 Global Congress on Combating Counterfeiting and Piracy with food for thought. A WIPO team had taken cameras into the classroom of an international school, shown the students a range of anti-piracy publicity materials, and filmed their reactions. With the subject of awareness-raising high on the Global Congress agenda, the film was intended to illustrate the importance of understanding the attitudes of a target audience when designing outreach campaigns.

knew ever been fined or punished for illegal downloading. But as it was, they saw it as a non-crime with no consequences.

But what about the ethical rights and wrongs? Hussein was quick to voice a sense of popular outrage: "Yeah, well how is it moral to charge 25 dollars for a CD that costs 25 cents to produce?" This unleashed a flood of invective against perceived corporate greed, of which the teenagers viewed themselves – and many artists – as innocent victims. "For them to say they're losing millions because of downloading is hypocritical," fumed Ayushi. "The record labels are just *minting* money."

## Out of the Mouths of Rappers



People don't wanna pay for CDs  
Now every other household's got PCs  
They download on mp3s,  
People please be reasonable.  
How am I gonna make my Gs  
If you got the album before the release?  
The quality's rubbish and there ain't no sleeves.  
Do you deem that feasible?

Lyrics from "Download" by U.K./Ghanaian rap artist, Sway.

## Rights and wrongs

A show of hands in the classroom revealed that downloading music illegally was a daily practice among this typical group of bright teenagers. Why, we asked them, did these normally law-abiding citizens have no qualms about breaking the law in this particular area? It was clearly not through lack of awareness of copyright law. The students were well informed. Yet they did not feel that they were doing anything wrong. "Downloading seems kind of unreal compared to other crimes," reflected Elena. "Sure, we know it's illegal," added Harry, "but it's not like you're going to get a knock on the door and find a policeman standing there." They might feel differently, the students agreed, had anyone they

An explanation from the WIPO team as to how record companies use sales profits to subsidize new talent and unprofitable bands, made little impact. One earnest lad in the front row urged his classmates to see "the economic point of view. – It's a business, after all, and businesses have got to make money." But others shot back: "then they should work harder on making us *want* to pay for it." Ricardo argued that the time had come for new business models: "They've got to find ways to make money other than selling CDs, because stopping people from downloading illegally is, well, extremely hard."

## What of the artists?

Surely, though, these music-loving kids would see that taking music without paying for it was unfair to their favorite artists? The WIPO team showed the class a short film, in which Malian world music star Amadou describes about how piracy has affected him. This did leave some of the class pensive. "Yes, I can see that it makes a difference for an artist like that, who doesn't have a lot of money," commented Lucy. Deborah compared a recent interview with mega-star P!nk: "I heard her talking [about piracy], but it didn't affect me at all, because I know just how



Photos: WMO/J.-F. Arrou-Vignod

rich and famous she is." Ali put his finger on the difficulty in finding the right kind of artist to communicate anti-piracy messages: "Trouble is, I'd never heard of the Malian guy. It needs to be someone really famous to catch our attention in the first place – but then we wouldn't believe they need the money."

Ayushi flagged up some cultural differences, describing a successful Bollywood campaign in which popular stars appealed to the public not to buy pirated DVDs. "In India we love our cinema and our film stars. That works for us," she mused. Other kids picked up on a news clipping about a Hong Kong campaign in which boy scouts were used to report instances of piracy. While that might work well in some cultures, smiled Lucy apologetically, "it would just make me hate boy scouts."

Hussein, meanwhile, questioned the premise that downloading is bad for artists, citing bands which become well known as a direct result of their music being "shared" on the Internet. And he railed against what he saw as the hypocrisy of bands such as the heavy metal group, Metallica; "I mean, they sued [P2P file-sharing site] Napster, and yet the whole reason they got so famous was because of the illegal tape trade 15 years ago."

## Tuning out

The students' reactions to the anti-piracy materials we showed them suggested that messages designed to alarm were perhaps the least effective. A poster suggesting that pirated DVD sales funded terrorists was met with disbelief. The notion that the FBI would hunt down illegal downloaders was dismissed as laughable. An advertisement with dramatic music and visuals, which equated piracy with car theft, certainly caught their attention, but left none persuaded by its message.

Several of the kids pointed out that young people are so bombarded by messages and warnings that they tend to tune them out. "We're always being told: 'don't smoke, you'll get caught; don't do this,

you'll get caught'... the messages just don't affect us any more." Others found factual press reporting about the consequences of piracy more persuasive than "fancy" publicity campaigns. "Just give us simple facts and figures."

## Irresistible

Ultimately, they all agreed, downloading music is just too easy, too accessible, too attractive to resist. A click of a mouse and "it's all at our disposal. – Thousands of songs that we can do whatever we want with." Said Caitlin: "It's true there are legal ways too, but the illegal ways are so much simpler." If you really want to stop it, the kids told us, target the technology-providers who make it all so easy and who could, if it was such a bad thing, come up with technological solutions to prevent it. "These campaigns shouldn't be talking to us," argued Ricardo, "they should talk to the corporations that give us all these opportunities, that lead us to do illegal things."

This snapshot of teenage attitudes to piracy resonated with the experiences of many of the organizations at the Global Congress which are actively seeking solutions to tackle piracy – be it through awareness-raising, legal enforcement, technology, or new business models. "I stare at this problem seven days a week," said David Benjamin, head of anti-piracy at the Universal Music Group, "and these kids are just the tip of the iceberg." Benoît Battistelli, director general of the National Institute for Industrial Property (INPI), France, urged delegates not to shy away from repressive measures since – *rien ne vaut la peur d'un gendarme* (nothing beats the fear of a policeman). Others, however, argued strongly against moves to criminalize consumers.

And a last word from the kids? – "The sad truth about our generation," Ayushi concludes, "is that if it's free, we're gonna go for it."

This article was first published in *WIPO Magazine* Issue 2/2007

# HARRY POTTER AND THE IP BONANZA

As the August 2007 edition of the WIPO Magazine began to take shape, Harry Potter fever was sweeping the planet with the publication of the seventh and final book in the wildly popular adventures of the eponymous boy wizard. As midnight struck on the July 21<sup>st</sup> release date for *Harry Potter and the Deathly Hallows*, throngs of black-cloaked figures were seen waiting impatiently outside bookshops from London to Hong Kong. The fate of young Harry, with whom countless children have grown up since his first appearance nine years ago, had been kept a tightly guarded secret by author J.K. Rowling and her publishers. The suspense was spellbinding.

## From rights to riches

The success of her creative works has brought J.K. Rowling enough wealth to pack the vaults of Gringotts Bank. It has, moreover, created huge revenues for license and rights holders throughout the copyright-based industries. The figures are dizzying:

- The first six books sold over 325 million copies worldwide. The seventh made publishing history in the U.K., selling over 2.6 million copies within the first 24 hours for publisher Bloomsbury. First day sales in the U.S. topped 8.3 million. According to U.S. publisher Scholastic, during a Harry Potter release year, sales of the book account for 8 percent of the company's revenue. The translations in over 65 languages include Icelandic, Swahili, Serbian and ancient Greek.
- Five Hollywood **film** adaptations of the books have earned some US\$4 billion in ticket sales for Warner Bros., who hold the film rights, and have shot a new generation of young actors to fame. The first film, *Harry Potter and the Philosopher's Stone* (or *Sorcerer's Stone* in U.S.), ranked fourth on the worldwide list of all-time highest grossing films. When the ABC **television** network broadcast *Harry Potter and the Sorcerer's Stone* in April this year, it still netted approximately 4.2 million U.S. viewers. The haunting **music** soundtracks from the first four movies, composed by John Williams, sold over 1.1 million copies in the U.S.
- Warner Bros. also own the worldwide merchandising rights to the Harry Potter **trademarks**, including characters, themes and other elements. The company divided the rights among its licensees for use on some 400 different products,

so mutually reinforcing the brand: Toymakers Hasbro, for example, are licensed to distribute Harry Potter sweets – such as Cockroach Clusters, Chocolate Frogs and Fizzing Whizbees – on which U.S. consumers have spent more than US\$11.8 million since 2001. Mattel acquired the right to make Harry Potter action figures, games and puzzles, and saw the company's shares rise by 13.5 percent. Electronic Arts gained the rights to manufacture Harry Potter computer and video games; and Coca Cola secured rights in marketing the film together with its products. Estimates of the global worth of the Harry Potter brand range from US\$4 billion to twice that figure.

## Defence against the dark arts

Success, however, brings free-riders seeking to profit from – or help themselves to – the creative output of others. J.K. Rowling's lawyers have had their hands full defending her copyright against infringers.

The infringements have taken more different forms than Rowling's shape-shifting boggart. Entire scanned copies of the books have been uploaded and distributed across the Internet. J.K. Rowling launched several legal actions against users of the e-Bay online auction site this year, alleging that they were selling illegal e-books of her work.

In India, legitimate book sellers bewailed the proliferation of pirated print copies in the streets of Mumbai and Bangalore, despite concerted action by police and vigilance officials. "We estimate 50 percent of sales lost due to piracy," Himali Sodhi, head of marketing for Penguin India, told Asia Times Online. Akash Chittranshi of the New Delhi-

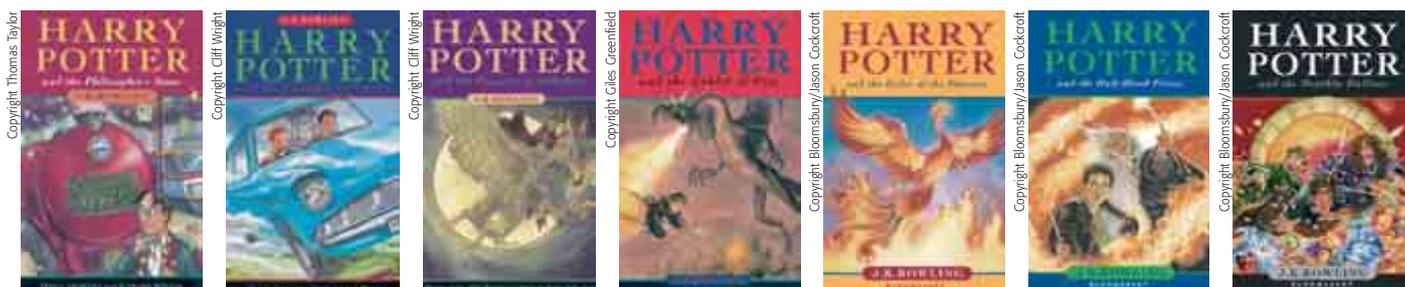
*“We estimate 50 percent of sales lost due to piracy.”*

Himali Sodhi, head of marketing for Penguin India

based firm, ACA-Law, added with a smile: “Some of the pirated books use such cheap paper that they turn into pulp if some water drops on to them.”

Infringing versions of the books in China were in a league of their own. From 2002, entire fake sequels – bearing J.K. Rowling’s name, photo and even copyright notices – began *apparating* in book shops under such fantastical titles as “Harry Potter and the Filler of Big” and “Harry Potter and Leopard-Walk-up-to-Dragon.” Readers of the latter were less than enchanted to find their young hero apparently more preoccupied by personal hygiene than by the fight against the Evil Lord, (“Harry wipes sticky cake from

following in Russia. J.K. Rowling and her publishers brought a successful legal action in the Dutch courts in 2003 to prevent the distribution outside Russia of a Dutch translation of *Tanya Grotter and the Magical Double Bass*. The Dutch courts rejected the arguments put forward by Mr. Yemets and his Moscow-based publishers, who claimed that the books constituted a parody, permissible under copyright law exemptions. A number of Harry Potter parodies are, however, currently in circulation, and have not faced legal injunction, including Michael Gerber’s *Barry Trotter and the Shameless Parody*, which has sold over 700,000 copies.



his face... For a civilised young man, it is disgusting to have dirt on any part of his body”); before being teleported into J.R. Tolkien’s *The Hobbit*, with the names changed to Harry Potter characters. Prompt legal action by J.K. Rowling’s lawyers saw the infringing book removed, with a fine and an apology from the Chengdu-based publishing house.

A French teenager was detained by police in August this year, having translated all 759 pages of the final book just days after its release and posted it on the Internet. Apparently not having sought commercial gain, he was released without charge, having learned a sharp lesson about copyright.

## Parody and plagiarism

The books have spawned a range of other unauthorized derivative works and imitations. The Tanya Grotter books by Russian author Dmitry Yemets, featuring a magical teenager with round glasses at the Abracadabra school for witches, have gained a loyal

J.K. Rowling’s creative talents have made her one of the wealthiest women in the world. Yet it was through the international system of IP rights that she was able to plug that creativity into the global publishing and entertainment networks which propelled her from poverty to plenty. Harry Potter is not just a children’s story. It is a magical tale of the transformative powers of creativity and intellectual property.

This article was first published in *WIPO Magazine* Issue 5/2007

# CAMERA, ACTION, COPYRIGHT

*“It is not only about economics, it is about dreaming.”*

**Dr. Ajay Dua, Indian Ministry of Commerce and Industry.**



As stars and hot-shot directors set the paparazzi spinning at the 60<sup>th</sup> Cannes Film Festival, the film industry appeared as the very essence of glamour. The same could never be said of copyright. But beneath the glitz and the box office hits, a solid foundation of copyright and related rights is what allows movie-makers to earn a return on their investment, and enables the film industry to thrive.

And thrive it does. In India, the Rs. 85 billion (US\$2 billion) film industry is projected to grow at a compound annual rate of 16 percent for the next 5 years.<sup>1</sup> In the U.S., the motion picture and television industry provided jobs for more than 1.3 million people in 2005.<sup>2</sup> South Korean blockbusters with ticket sales of over 10 million<sup>3</sup> have fueled the explosion of “Kim Chic” popular culture in the region. Film production in Morocco and Iran is flourishing. The list goes on...

Films are highly collaborative works. In developing a film from original concept to final cut a filmmaker invests in the works of numerous other creators – scriptwriters, song writers and score composers, computer animation artists, set and costume designers – not to mention performers. Contractual agreements which define the ownership and use of the multiple creative inputs are necessary to protect the interests of all concerned, to avoid costly disputes, to facilitate financing and distribution, and to defend against illegal copying.

## Threat

There lies the rub. Dizzying advances in digital technology are proving both boon and bane to the film industry. While video did not kill the movies, as the film studios of the 1980s feared it would, the massive scale of digital piracy today is widely perceived as the greatest single threat to those whose livelihoods depend on the industry. Technical protection mechanisms, such as digital rights management (DRM), have not proven a panacea, and industry groups in developed and developing countries alike are petitioning for tightened copyright legislation and for more effective enforcement mechanisms.

One novel approach to enforcement, which the Malaysian government is pursuing in cooperation with the Motion Picture Association, is featured in our article, *Hounding Out Piracy* (page 25).

Meanwhile, governments and industry associations continue to develop publicity campaigns, deploying different sorts of messages aimed at deterring consumers from buying pirated DVDs. The latest, multi-million pound anti-piracy initiative by the Industry Trust for IP Awareness Trust in the U.K., where almost one in three people are said to watch illegal content, marks a departure from previous messages that concentrated on enforcement and the criminal nature of those involved

in piracy. Instead, the campaign aims to stigmatize the consumption of pirated goods by poking fun at “Knock-off Nigels” – the kind of individuals who avoid buying a round of drinks at the pub, give their girlfriend a fake watch, and buy pirate DVDs.

## Stakeholders speak

WIPO’s own public outreach activities in this area seek to let the creators and stakeholders speak for themselves. In the interviews that follow, an Indian film producer and a leading figure in the Nigerian film industry reinforce the message that, while IP helps encourage creativity, inadequate enforcement only discourages creators and undermines the economic potential of creative industries.

This article was first published in *WIPO Magazine* Issue 3/2007

1. FICCI – PricewaterhouseCoopers Annual Report on Indian Entertainment and Media Industry 2007
2. Motion Picture Association of America 2006 Report, *The Economic Impact of the Motion Picture and Television Production Industry on the United States*
3. Korean Film Council, Summary of the Korean film industry in 2006

# HOUNDING OUT PIRACY

## Operation Double Trouble

Malaysia's new champions in the fight against film and music piracy are only three years old, but are already making their mark. Meet Flo and Lucky.

The two black Labradors, believed to be the first dogs ever trained to detect polycarbonate and other chemicals used in the manufacture of optical discs, are being deployed by Malaysian enforcement officers at border crossings and cargo storage centers to uncover consignments of pirated CDs and DVDs. While they cannot distinguish by scent between a legitimate disc and a pirate copy, the dogs are proving highly successful at sniffing out discs in hidden compartments or unregistered shipments.

Nick-named Operation Double Trouble, Malaysia's ground-breaking project is backed by the Motion Pictures Association (MPA), which groups six of the big Hollywood movie companies. The MPA has invested US\$17,000 in the dogs, including eight months training in Northern Ireland with a handler who usually teaches sniffer dogs to find bombs.

### Seizing headlines

The doggy duo has already gained celebrity status. At a press briefing in March 2007 at Malaysia's biggest air cargo hangar, the dogs showed off their skills to assembled journalists, winning wide coverage in the international media. The dogs

continued to make headlines over the next few weeks, as they led raids in Johor Bahru and in Kuala Lumpur, resulting in 14 arrests and the seizure of 1.3 million pirated DVDs.

Flo and Lucky began an initial month long trial in March to evaluate the effectiveness of introducing dog units into Malaysia's enforcement divisions. "It's cost-effective, and in terms of time, it's very effective too," Malaysia's Minister of Domestic Trade, Shafie Apdal, commented, as he described how the dogs took a mere ten minutes to check the contents of containers which enforcement officers would need all day to search.

The MPA's senior vice president and Asia-Pacific regional director, Mike Ellis, highlighted the discovery in recent raids of child pornography alongside pirated movies. "Piracy is frequently linked to other insidious activities," he said. "Consumers should be aware that their purchases of pirated movies fund the ongoing illegal operations of the movie pirates."

### Syndicates bite back

Local crime syndicates lost little time in seeking to neutralize the crack canine team. The Malaysian government reported threats that syndicate bosses had put a RM 100,000 (US\$29,000) bounty on the dogs' heads. Flo and Lucky are now kept closely guarded.



**Flo (right) and Lucky, trained to sniff out hidden consignments of pirated DVDs. In 10 minutes they can search a container which would take their human counterparts all day.**

Crime groups have failed to outwit the dogs through ploys such as spraying pirate DVDs with chemicals or wrapping them in soap parcels. One illicit stash uncovered by the dogs in April was packed with charcoal, apparently in the belief that this would absorb the scent of the polycarbonate.

Following the success of the initial trial period, the Malaysian government has decided to extend Operation Double Trouble indefinitely. Neighboring countries are also watching with interest. Lucky and Flo have already made a flying visit to the Philippines, where they helped law enforcement officials seize an estimated 300,000 pirated DVDs from three malls in Manila notorious for the sale of pirated movies and music.

Says the dogs' trainer: "This is nothing more than a big game to them. They are just doing the job so that they can get their reward." And what is their reward when they find the discs? "They get to play with a chewed tennis ball."

This article was first published in *WIPO Magazine* Issue 3/2007

# THE NOLLYWOOD PHENOMENON



**"In Nollywood we don't count the walls, we learn how to climb them." – Director Bond Emerua in "This is Nollywood."**

Nigeria's burgeoning film industry, now considered the world's third largest after Hollywood and India's "Bollywood," is in a league of its own.

Dubbed Nollywood, the industry is characterized by its prolific output of ultra-low budget films, shot with digital cameras, produced straight to video/DVD format, and sold directly to customers for two or three dollars. For 15 years, largely ignoring the external cinema world, Nollywood has fuelled an insatiable appetite in Africa's most populous country for homegrown films made by Nigerians, about Nigerians. The market is expanding as the popularity of the films spreads across Africa, supplying the needs of local television stations and audiences for low-cost entertainment content.

It is an industry made possible by affordable digital technology, and driven by the ingenuity, resourcefulness and keen business sense of Nigeria's people. Production time for an average video-film is often less than two months, from casting through to distribution. Films are shot under conditions that professionals elsewhere would consider impossible, with budgets as little as US\$15,000. A film can expect to sell about 50,000 copies, or several hundred thousand if it is a hit. The returns on investment attract ever more hopefuls into the industry, which is now a major employer in parts of the country.

Chris Obi-Rapu's *Living in Bondage*, released in 1992, is widely credited with having sparked the Nollywood revival out of the ashes of the country's moribund feature film industry. The film's cheap video format, and the bold narration of family melodrama laced with black magic, made it a smash hit, and provided the hugely successful formula for those which followed.

## Grass-roots revolution

The Nollywood phenomenon has begun to catch the eye of the world's media and cinema pundits: "The raw energy of the movies – and the flurry in which they are filmed and sold – is a kind of grass-roots creative revolution on a continent where stories have been told for generations but rarely committed to film," wrote Neely Tucker in the *Washington Post*, inspired by the rare screening in a U.S. movie theatre of a Nigerian film, *Behind Closed Doors*. The industry has itself become the subject of films. *This is Nollywood*, a film by Franco Sacchi and Robert Caputo, follows director Bond Emerua's quest to shoot a feature length action film in nine days, armed with just a digital camera and two lights.

## "We tell our own stories"

Yet the films themselves remain largely unknown to cinema audiences outside Africa. Among a handful which have become more widely known, is *Osuofia in London*, starring comic actor Nkem Owoh, which satirizes British and Nigerian cultural differences. *Ezra*, from director Newton Aduaka, won top prize at the Pan-African Festival of Cinema and Television (FESPACO) in Burkina Faso this year. But few as yet pass the quality threshold for major international festivals. And the blunt portrayal of popular themes, such as religion, witchcraft, morality and revenge, makes little concession to U.S. or European tastes and expectations. "We tell our own stories," explains actress Genevieve Nnaji, who shot to superstar status in hits such as *Blood Sisters* and *What Women Want*. "That's why a lot of Africans can relate to it, and understand and laugh about it and learn lessons. So the industry does play a huge role in our lives."

## Inside the Industry - Madu Chikwendu



**"We know of more than 1,500 sites pirating Nigerian film products."**

Madu Chikwendu is a leading figure in the Nigerian film industry. A film-maker and producer, he is president of the Movie Producers Association of Nigeria and the regional representative for West Africa of the Pan-African Federation of Filmmakers (FEPACI). In an interview in March 2007 with a visiting team of WIPO copyright and outreach experts, he described how the industry functions, and the issues with which it is grappling. The following extracts are based on his account.

"The Nollywood model is easy to understand. It is a system of production based on the use of digital video equipment. The movies go straight to DVD format for sales and rental. It is highly mobile, highly efficient. The system of distribution is also very informal. The DVDs are replicated in their thousands, and then distributed every two weeks on a Monday in big wholesale markets in Lagos, Kanu and Onitsha. There are about 90 new movies released every month – over 1,000 each year."

### Not one Nollywood

"There is a misconception about Nollywood. It is not actually one film industry but four. The part that the world knows is the English language

industry, which has its production center in Lagos and is dominated by people from the south east of Nigeria. While the language used is English, the stories in these films reflect the ideology of the Igbo people of the region.

"The second industry is much, much older, and consists of the indigenous Yoruba language movies. This can be traced back to the Nigerian feature film industry of the 60's and 70's, up until the economic downturn meant that people could no longer afford to produce feature films anymore and started making videos instead.

"Then you have another industry in the North of the country, by the Hausa population. That is different again. It has a lot of Islamic influences, and is also influenced by the style of Bollywood films, with lots of song and dance. There are also pockets of smaller production, like in the south around the Niger Delta. These are also indigenous, mainly made in the Edo language.

"Each of these has its own associations for the industry professionals, so it is a bit polarized on ethnic lines, which is regrettable. But there some meeting points, such as the Motion Picture Council of Nigeria, in which all the different areas are represented for the purpose of regulating the industry and lobbying the government."

### Transnational piracy

"Nigerian films are being pirated all over the place and no-one seems to care. Perhaps some of the other countries in Africa which don't produce their own movies don't feel they have a stake

in protecting intellectual property. They think that the Nigerian industry is king and doesn't need the money. We have an obligation to promote centers of production in different parts of Africa, which will also be a means of protecting our own intellectual property.

"Within Nigeria, illegal rentals are the biggest form of piracy. There are 40,000 video clubs, which just buy the DVDs and rent them out without paying anything to [the copyright owners]. We petitioned the government, and the Copyright Commission is now setting up a system of royalty payments.

"But the problem goes beyond the Copyright Commission. Some of the major forms of piracy we experience are not local. There is all the illegal broadcasting of Nigerian films by TV stations in other African countries, which just buy a copy of a movie from a shop then play it on their stations. Then there is massive piracy of our movies on the Internet. We know of more than 1,500 sites pirating Nigerian products, including sites domiciled in the U.S., U.K. and Europe, and in developing countries which have mechanisms for enforcement, but are not using them. In the U.S. they are always talking about piracy of their films. But no-one talks about piracy of Nigerian films. We want the world to begin to understand the wider implications. We are trying to assess the level of loss.

"Being a creator in Africa can be so frustrating. That is why I have turned more towards the distribution side. But piracy will not kill our industry. Nigerians are too resolute, too strong to let that happen. Now we are concentrating on trying to license Nollywood content across the world." ■

# MAKING MOVIES

## Close Up on Bobby Bedi, India



### Biodata

**Born:** 1956, New Delhi, India

**Education:** Masters Degree in Management, University of Bombay, BA in Economics, University of Delhi

**Professional Activities:** Film producer; Founder and Managing Director of Kaleidoscope Entertainment in Mumbai; Advisor to the Industrial Development Bank of India and India's

Minister of Information and Broadcasting; Member of the Governing Council of the Film & Television Institute of India; Founder of the "School of Convergence," India's first post-graduate school teaching content creation and management

**Film achievements:** Produced ten feature films, including *Bandit Queen*, *Fire*, *Saathiya*, *Maqbool*, *American Daylight*, *The Rising*; received two National Awards from President of India

Bollywood summons up instant images among movie fans: music, dance, Indian traditions and brilliantly colored costumes. With some four billion tickets sold annually – one billion more than Hollywood – India's film industry is the largest in the world, enjoying immense popularity from Southeast Asia to Africa, from Eastern Europe to the Middle East.

Among the prolific creators in the Indian film industry is Bobby Bedi, a film producer from Mumbai.\* His film, *Bandit Queen*, won critical acclaim at the Cannes Festival in 1994. The film broke the mold of mainstream Bollywood movies, and generated a fair share of controversy, portraying the plight of Phoolan Devi, a real life character who fought against the exploitation of India's poorest. In 2003, he released *The Rising*, a historical epic on the rebellion of native soldiers serving under British rule in the late 19<sup>th</sup> Century. Bobby Bedi is also a strong advocate for the recognition and enforcement of intellectual property rights, as he explains in this interview with WIPO Magazine.

**Your initial training was in the field of finance. What first attracted you to the film industry?**

I had worked with Philips and Sony after my MBA so there had been a fair amount of exposure to the entertainment sector – albeit from the hardware side. Film is an industry where order needs to exist side by side with chaos – and the whole idea of bringing order in the lives of a bunch of "mad" people, and yet be able to create good stuff, was a challenge.

**What highs and lows have you experienced as a filmmaker?**

The success, critical or financial, can be a great high. Sometimes the two go off together. That is easily the best high and we experienced it with *Bandit Queen* and *Saathiya*. The lows are of course deep, long and frequent. As a filmmaker, one has to be "predictably" uncertain about one's next act. It can be great or bad, but irrespective of the artistic quality, it can be rejected by the audience. That is the worst low – failure hitting you in one night after 15 months of work.

**Can you tell us something about the creative process in producing a movie like the *Bandit Queen*?**

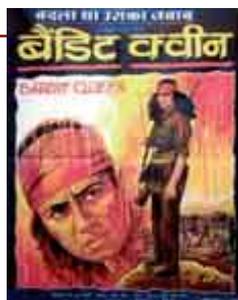
In the *Bandit Queen*, we were very clear about the script. Farrukh Dhondy [the screenwriter] and I had worked on all the material to extract the story and script and to make sure the film was accurately captured in that script and vice versa.

The real treat was the magic that [the director] Shekhar Kapur created by converting a good hard hitting script into a "lethal blow in the solar plexus of the world." It is when you see the film that you realize how many people contribute to converting an idea into a movie. And that it is the perfect harmony of these creative contributions – script, camera, sound, art, performances and direction – that creates a great film. Every time someone contributes to a film, it evolves. It really is in itself a gratifying process.

**You have spoken out as a strong advocate of IP. What does IP mean to you as a filmmaker?**

It is unreasonable to suggest that, just because my property is not made of metal, cement or fabric, but is of a creative kind, it is not worthy of being protected in the same way. Theft of IP is theft, and should be universally condemned.

\* Mumbai was previously called Bombay, from which came the play on words with Hollywood to create the term Bollywood – used as an identifier of the Indian film industry as a whole.



Bandit Queen



The Rising



Illustration of the Battle of Kurukshetra from the Mahabharata epic.



Electric Moon

The abuse of IP prevents the receiving of credit where credit is due, and cash where cash is due. How important is IP to me? Its main manifest is in piracy, which accounts for over 50 percent of the money I never make. It accounts for the money that criminals and terrorists use against me.

#### Tell us about the *Mahabharata* project?

The *Mahabharata* is an ancient Indian epic with over 74,000 verses. There is no conflict or resolution known to mankind that is not reflected in the verses of the *Mahabharata*, no known personality or character trait that is missing, no relationship unexplored and no lesson untaught.

The project will include 150 one-hour long TV episodes, three films, mobile and PC gaming, picture books, animation, [toy] action figures and hopefully a live [theme park] experience. Our *Mahabharata* is a 360 degree vision that tries to engage with world audiences through all of the above.

This is the communication age. We have communication criss-crossing around us as written words, painted or projected images, sounds, data signals, broadband, etc. Most of it is information, some of it is education and some entertainment. In recent years, I have begun to firmly believe that *all* communication can and should follow a fixed order for it to be effective:

- Engage
- Entertain
- Inform
- Educate

The *Mahabharata* is conceived to do all of the above and in that order.

The mere scope of the project reflects why IP is important to me. If my rights as a creator are not respected and enforced, it will be impossible to realize this formidable project.

**India has the largest film industry in the world in terms of volume, but is frequently cited as generating less than 1 percent of global film revenues. What is the problem?**

There are various reasons: purchasing power parity, low per capita income, cultural and linguistic diversity, taxes, lack of development – read this as making films that would be rejected due to problems encountered in the development stage – and a country that has been poor for too long. And finally – piracy.

**What do you see as the reasons for film piracy in India?**

Neither the public, nor the Government and law enforcing agencies genuinely believe this to be theft. It's not lack of the law; it's the frivolous way in which our law enforcers view IP theft.

**What more should be done to promote the exploitation of IP in India's film industry?**

We need to be taught proper rights management and rights monetization.

**Do you have a message for aspiring filmmakers?**

Make movies. Make good movies.

For more, read *Utopia*, Bobby Bedi's address to the WIPO International Seminar on Intellectual Property and Development (2005): [www.fiapf.org/pdf/cannes05/WIPODev\\_BediSpeech.pdf](http://www.fiapf.org/pdf/cannes05/WIPODev_BediSpeech.pdf)

This article was first published in *WIPO Magazine* Issue 3/2007

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The WIPO Magazine is published bimonthly by the World Intellectual Property Organization (WIPO), Geneva, Switzerland. It is intended to help broaden public understanding of intellectual property and of WIPO's work, and is not an official document of WIPO. Views expressed in articles and letters by external contributors do not necessarily reflect those of WIPO.

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