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COLLECTIVE MANAGEMENT IN SUPPORT OF CREATORS IN THE DIGITAL ERA

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* The views expressed in this document are those of the author, and not necessarily those of the WIPO Secretariat or its Member States.

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Collective Management in Support of Creators in the Digital Era

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(Geneva, October 29 and 30, 2007)

It is truly a pleasure for me to have the opportunity of sharing with you my views on the role of collective management and the support it offers to creators in the digital era.

During my presentation today, I will set out the views of creators as Chairman of the International Council of Authors and Composers of Music. CIAM is a creators' forum to address legal and practical issues related to our status within CISAC (the international confederation of 219 authors' societies in 115 countries representing more than 2 million creators and publishers worldwide).

One of the peculiarities of the music accessible on the Internet is that it is all historical material, somehow irrelevant to the new medium -its specific challenges and its extraordinary possibilities. The creative community should not stick its head in the sand but take full advantage of this new communication platform.

Looking back through the history of music this situation is unique. Musicians and composers have always been among the first to embrace and challenge technological innovation; through new instruments or through new ways of presenting and distributing their works.

The Italian Renaissance and Baroque and its musical works are unthinkable without adding to the picture hundreds of busy workshops all over Italy struggling to improve the design of violins, guitars, cembalo, violas and cellos. And unthinkable without taking into account how powerful techniques from the vaults of the monasteries such as polyphony, counterpoint, fugue and others were made to sound fresh again in profane venues and courtly settings earlier devoid of such extreme measures.

The buzz in Vienna around Beethoven's time was comparable to the buzz in Silicone Valley in the nineties and around the games industry today: it was the place to be, it was where new wind instruments and the pianoforte were developed, where new sounds and musical forms were to be found. Technocrats and artists were throwing the ball around, handing each other ideas, and pushing the agenda.

To take another, more recent example: where would the electronic art music of the fifties as well as rock, pop and related genres have been without taking into account the emerging electronic equipment available: Microphones, the music studio, the PA-system, electric guitars, synthesizers, Radio/TV. These new tools and communication platforms changed the way music sounded, how musicians played together, opened up for new combinations of musicians in ensembles, in short it created new musical expressions. And this new music again attracted new listeners filled with excitement. Again the tradition of music was renewed, revitalized.

Changing the sounds changes the music, changing the instruments changes the way musicians interact, changing the communication platform or venue often changes the form of the music. All for the benefit of the listener, everyman, the consumer. Because without the listener partaking, devouring, digesting and bringing the music into his or her life, the whole abundant feast is wasted. Music is all about the listener; it is not before it reaches the listener that music may come to life and be experienced. Changing the history of music is changing the way listeners perceive it, often as much about socio-history as about music itself.

I am not claiming that the Internet is silent, empty of music, far from it. What I am saying is that the musical works on the Internet were never meant for this medium, they were not made in accordance with the possibilities and appropriate aesthetics shaped by a new medium. There are no new standard works, no new forms. There is no new music.

Taking a stroll through what the unofficial on-line world has to offer today it resembles walking through a scrap heap of crumbs and leftovers from the past, with highly compressed files often labelled wrong, offering no information, no guarantee, no quality control. It is the consumer's version of hell. Surely this is the end of the golden recording era we're seeing, not the advent of digital music on-line. Again it is tempting to go back to the history of music, making Arnold Schoenberg's words ring again: "Without order there will be no freedom". Composers and musicians are both painstakingly aware of the fact that total freedom, lack of remuneration, lack of control is a void, a vacuum. And nothing creative has ever come out of a vacuum, despite reports about the opposite.

But new music there will be. Hidden in the jungle of new alternative business models, new ways of mixing artistic platforms, new technology and new ideas lay the seed of the music to come. And it is very exciting to all of us: creators, musicians, intermediaries and listeners alike. One vital ingredient is missing in order for this to happen: an authors' rights regime that brings incentive to the creator and some level of certainty for the consumer. That could be the order that again would allow ideas to flow freely.

Why is this point emphasised so strongly in a speech about Authors' Societies?

I think we should consider the logic in hastily regulating markets that are immature. The danger is that traditional record industry players continue to follow soon to be extinct businesses models and hinder the development of emerging markets and new services.

I refer to the multinational record labels and publishers. I have nothing against them personally, I bear no grudges and I have not had particularly nasty experiences with them throughout my career. On the contrary, I've found them as good as the people they have on their payroll, and they have always been very good to me. But my point is that – and I am not the only one to believe so – if there is a new economy in digital music delivery it is one of diversity in repertoire, niche markets and community-based marketing and distribution. The strength of the Majors has been control over retail and massive marketing power in traditional media. Digital music delivery is closer to broadcasting, another area where the big record labels have performed badly. They have always seen broadcasting as a marketing device for their real market: the sales of physical carriers.

I am not saying that the record labels do not have a future. But they will have to go through big changes and radically alter their business. Instead of market dominance they will have to provide quality repertoire, finance, branding, marketing and more fragmentation in their products and in their work processes.

So who will be the most trusted partners of the creators in the digital era? Who will serve the public's best interest? To me the answer is quite simple: Authors Societies or also called Collective Management Organisations or Copyright Societies.

We creators entrusted our rights to our societies in the off-line world. Let me be very clear: There is no talk for authors of abandoning our societies as our instrument in the on-line world. Authors have always had the possibility to manage their rights directly. But you probably have not heard of that many creators that have taken their rights out of the societies in order to be able to manage them themselves either directly or through a publisher or through some alternative rights regime on-line. Only a hand-full of internationally renowned artists could afford to do so. But I have heard, indeed you have all heard, of hundreds of artists and composers being discontent with the way record labels and publishers handle their rights in the on-line area, therefore seeking a withdrawal of their rights or at least the possibility of renegotiating their contract. There seems to be an unspoken sentiment within the creative community that the authors' societies are becoming our digital agents, even to a greater degree than earlier.

We have faith in our societies, their policies and their practice. Authors' societies have been under scrutiny lately by industry and government representatives, including the European Commission. Some of this criticism is relevant: Authors' societies could be more transparent, distribute faster, update our reciprocal agreements, and be more representative. Like most other businesses we can improve in a number of ways and don't worry we, as authors, members and owners of our societies, are the first to put the pressure on the management of our societies to improve.

But in its main assumption the criticism has hit off the mark. The authors' societies are not to blame for a slow development of the on-line market for music. Authors' societies have always been willing to license on-line services. It is the record labels who have been restrictive in their licensing and transfer of rights. The view from a creator is that where the authors' societies facilitate the usage and exploitation of our music, the multinational record labels for some absurd reason prevent it from happening in the on-line world.

Various departments of the European Commission (DGs Internal Market, Competition, Information Society and of course Culture and Education) have interfered with the pillars of our societies. They have called our societies monopolistic and called for a stronger adoption towards competition in a single market. We on the other hand see the large multinationals acting as monopolies only interested in provoking a "race to the bottom" on the royalties due to creators. Whereas our societies are co-operatives and non-profit organisations that handle our rights internationally in a practical way and offer us, as members, insight into the business as well as the necessary democratic rights.

As creators we also believe that the authors' societies, whatever their size, are useful and profitable. In addition, having authors' society in each territory benefits the creators and cultural diversity. Authors' societies strengthen the general public's understanding of rights, they are effectively monitoring markets, and they provide opportunities for young talent, new repertoire and niche markets. From a narrow perspective it is more costly to have a multitude of societies operating with different back-offices, providing different services for rightsholders. But there is also more income and a guarantee of local distribution. Besides, it is the members who willingly pay the price for these services, not the general public. So why not stop criticising authors' societies and turn our spreadsheets and calculators in the other direction: Whether it be in the off-line world or digital era, authors' societies significantly contribute to the economic, social and cultural development of nations. This is the exact wording of the WIPO website page for the Creative Industries Division which is hosting this

conference. In addition, the European Commission has frequently hailed European culture and cultural diversity as a driving force behind a prosperous and influential EU and as Europe's strongest asset in the digital economy.

As creators we believe in a certain autonomy for the local society, enabling it to adapt to the needs of the particular region. In Poland, Austria and Norway the home markets are around 20%, these markets are almost invaded by foreign repertoire. This calls for societies that render cultural services to their members helping them to finance concerts, recordings etc. In countries like Germany, France and Britain the home markets are very solid (up to 70 %) and they have the export markets to go with it. These countries have a need for a different society operating more on the basis of individual distributions. If all the markets were the same, a single market could be achieved tomorrow. As it stands today, political regulation has to be very careful not to destroy entire cultural ecologies.

There are many non-economic aspects that need to be taken into consideration when dealing with authors' societies: the question of regional and national musical identities, the question of third world economies and their possibilities, the purely cultural aspects of existing and hopefully new music in the times to come, of cultural diversity etc. If we are to have an assessment of the totality of what authors' societies provides today, this calls for a wider democratic process than we have seen so far. It also calls for the creators' voice to be heard, in particular by the European Commission. In my view, bringing together all the European Commission's DGs relevant to this question as well as the legal institutions, the EU parliament as well as the national political institutions, would help avoid the limbo of today's Recommendation and Statement of Objections.

If we have spent so much time here discussing European conditions and problems it is not so much out of Eurocentricity as out of a general concern for the future of all authors rights, all copyrights everywhere in the world. After all, within the CISAC family, European collections contribute 57 % of the global collections. And it is in Europe that our moral rights and the exclusive rights granted to our authors societies have a particularly strong position. So, the outcome of our struggles in Europe will have repercussions globally.

One potential solution that is being discussed widely today is involving Internet Service Providers in the creative value chain considering that massive access to creative works play a significant role in their business model. This model would be similar to the traditional system of remunerating rights-holders for use of their musical works on radio and television once a licence agreement has been signed with the authors' society. Prerequisites for a positive result would be that there is a positive attitude among major ISPs, that there is a common understanding by the public, that we can find support by the authorities as well as a positive attitude among rights-holders.

Private property right is generally accepted by the public, as are author's rights and copyright regimes. Economic progress is based upon respect for ownership and economic growth would slow down considerably if ownership of intellectual property could not be safeguarded. The current situation of the ISPs is that they have, as intermediaries, only limited liability, according to law. However, they risk rights-holders taking legal action against them to stop copyright infringement. I will remind the audience of two recent court cases: The ban against conveying material to individual users – Judgement by the Danish Supreme Court in

2006 and the order to install filtering technology to root out certain content as judged by a Belgian Court of First Instance in 2007.

Why would ISPs agree to a solution of the above-mentioned problem? First of all because it would make their clients happier. Parents would not feel as bad not being entirely sure what their kids are up to and the possible consequences. Secondly, it is the moral duty of the ISPs. Also they and their clients would not risk annoyance, such as legal actions and bad press. But most importantly; such a solution would create new business opportunities for them. Many of these ISPs have problems convincing their investors that their present business models are valid, especially as up to 80% of what is transmitted consists of copyright frauds.

What I am suggesting is that rights-holders and ISPs join forces instead of fighting each other. Judging on our preliminary contacts and meetings with the ISPs and relevant groups of rights holders the signals are very good. The most attractive form of collaboration to both the music industry and the ISPs seems to be a familiar tool: the blanket licence system of extended collective agreements instead of some form of taxation. Again based on the broadcast model from the past.

We are not blind to the challenges ahead of us if we are to realize a project like this. Some amendments to copyright law are necessary as is support from all categories of rights-holders. The agreements between authors' societies and ISPs have to include limitations concerning the use of music.

I have heard that an initiative based in Iceland is well on its way and expected to launch by next year. The Icelandic market is small, easy to monitor, it is modern and open to radical ideas. There is a short distance between the politicians, lawmakers and the music industry. Creators in Iceland are very excited about trying this out, as are the record labels, publishers, performers, politicians, lawmakers and the ISPs. This is not a CISAC project but we should remain open to all new business models.

Regardless of the perils and uncertainty of where we are heading, we are making an effort in order to adapt creative industries to the digital era to the benefit of all: creators, performers, intermediaries and consumers. Perhaps we will also soon hear the new music.

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