

The role of the administrative authorities and collective management societies in promoting creativity and copyright based industries

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Ladies and gentlemen,
Distinguished colleagues,

First, I'd like to thank the World Intellectual Property Organization for inviting me to this Forum. The gathering together for an informal collegial discussion such a high level audience was an excellent idea and is in itself a guarantee of success. I strongly believe that this forum will achieve its goals, serving both the future of WIPO and our countries.

History shows us that as from the enactment in 1709 of the „Queen Ana Statutes” – the first normative act that established the exclusive right of the author on his work, - the copyright has been considered as one of the most efficient mechanism of protecting the results of human creativity and intellectual effort.

An efficient copyright protection represents an indisputable advantage for any society this being proved also by WIPO through the policy promoted by the organization, issue thoroughly explored in many publications, including WIPO editions.

According to these publications, the experience gained during the years proves that enrichment of the national cultural heritage is directly subjected to the level of protection given to literature and artistic works. The higher the level of protection, the more the authors are encouraged to create. On the other hand, an increase in the number of literature and art creations stimulate the auxiliary use of these creations in creative industries, including book publishing, music recording, etc. Indeed, encouragement of intellectual creation represent one of the main conditions for social, economic and cultural development”¹.

The necessity of an efficient copyright protection represents an imperative for the modern society and every country has established its own methods of protection of these rights. There are different governmental policies applied via public associations, including those that act on the principles of collective management of economic

¹ *OMPI, INTRODUCERE ÎN PROPRIETATEA INTELECTUALĂ* / Ediție îngrijită de Pîrvu Rodica. – București: Rosetti. – 2001. – pag.142

authors' rights or the protection ensured by the author itself, when the last one have to monitor the legacy of the exploitation of his own works. This is the case where the author has to undertake himself all necessary measures for preventing and repressing his author's right infringement.

Nevertheless, in the most of the cases, the Governments, declaring the copyright protection a state priority, have delegated the IPR enforcement responsibilities to certain public administration authorities - the Copyright offices having always a distinct role to play.

There are at least four key elements that are essential for ensuring an efficient enforcement of copyright and related rights: (i) an appropriate legal framework; (ii) a strong State administration in place; (iii) a developed collective management system; (iv) and existence of functional Judicial, administrative and customs system.

Lack or weakness of any of these elements could lead to the failure of the whole system.

(i) Moldova has a sufficiently broad legal framework for intellectual property in general and for copyright and related rights in particular, fully complied with the requirements of the TRIPS agreement (including the civil, administrative and penal measures for copyright infringements). This is not a singular case, a lot of countries in transition and developing countries succeeded in, or are in the process of building up modern IP legal systems. Moreover, with the enactment of the new Law on copyright and related rights (expected to be adopted by the end of the year) Moldova will be aligned to the highest EU standards in the field. Thus, an advanced legal framework for IPR protection and enforcement is put in place.

Still the level of piracy and counterfeiting remain high, this meaning that even an appropriate legal system that represents a key issue for ensuring an efficient IP protection, it is not enough. The implementation of the laws is crucial.

(ii) The State administration body is undoubtedly the main actor in ensuring the implementation of the law.

Existence of a copyright public authority in charge of the copyright and related rights protection and enforcement is a prerequisite of a strong and efficient state policy in the field. In Moldova, the State Agency on Intellectual Property (AGEPI) is the state body that plays today an important role in fostering the copyright system development. In countries with the economy in transition and the developing countries, where the IP is not considered to be a high level priority due to other major economic and social problems faced by our governments, the Copyright offices have to deal with all IP related aspects: starting with the legal system development and promotion of an IP culture to the enforcement activities.

To deal with the whole spectrum of copyright issues we need qualified staff and modern technical resources. This is why the WIPO role in building the institutional capacities of copyright offices remains still high, the assistance having to be country-oriented, tailored to the specific needs of a particular country.

(iii) The collective management system.

An important role in building a strong copyright system and promoting creativity and development of copyright based industries belongs to collective management societies that collect author's remuneration for collective capitalization of the author's economic rights.

The establishment and good functioning of such societies serves to the best the interests of public administrations and the authors due to the fact that they are called to ensure the legal interests of the authors with regards to the collection and distribution of the author's remuneration and should be the guarantee of an efficient enforcement of their rights. These societies should be the bridge between the authors and the users of goods protected by copyright.

Unfortunately, within the states that have only recently established collective management systems, the lack of experience and poor technical support make them often incapable of facing the negative tendencies of non-payment for the use of artistic and musical works.

De facto and *de jure*, these organizations have often succeed only to establish some tariffs for IPR uses, finding at the same time a strong opposition from the part of the users that do not want to pay the author's remuneration for public communication of the work or other types of IPR exploitation.

In order to establish a strong fair system of collective administration of economic rights there is a need to give solutions to many strategic problems existent at the moment in many countries in transition. Among these, the lack of an unified approach in collective principle of exploitation of the works is one of the most sensitive.

In our opinion, a broad licensing system (except of the authors that do not want their work to be exploited via the system of collective management) could significantly diminish the illegal exploitation of the works protected by copyright. We do consider that discussions on a common understanding and approach on collective administration of rights might be put on the WIPO Agenda for future debates.

Another negative phenomenon that has to be more seriously addressed within WIPO is the Internet Piracy (e.g. downloading of any movies or protected work from the "net") that is speedily developing at the global level. Illegal downloading and e-commercialization of the protected works through the "net", represent an enormous

risk for development of the national cultural values and cause serious economical prejudices to both local and foreign right holders.

An efficient universal solution in repressing this phenomenon does not exist at the moment. Anyway, it is undoubtedly that the collective management societies could and should have a determinative role in diminishing the illegal exploitation of works on the net. Establishment of an obligatory licensing mechanism for the Internet providers, administrated by the collective societies could be another issue for discussions and research within WIPO. As a matter of fact, any proposals to solve this global problem would be welcomed.

A fair collecting and distribution scheme of the author's remuneration represents another challenge and objective for every society of collective management. We do believe that a key element of improving the system may be the application of an appropriate software package and in this regard the AFRICOS program designed by WIPO, CISAC and the Swiss authors' society could be of a great help for the newly established collective management societies.

Of course, it is not sufficient to obtain the software; in order that it may be used in practice, it is also necessary to duly install it and to train those who are supposed to operate it. WIPO, in the framework of its development cooperation program, is ready to offer the program to the collective management societies in need, including to the Moldovan society, but it seems, however, that there is a delay in completion of the project.

We do consider that WIPO should continue the work in this particular field and do highly recommend the respective WIPO units to closer collaborate with the potential beneficiaries of the program in order to better fit their specific needs.

Another fundamental problem, in our views, is the fact that the existing Collective management societies, and this is the case of Moldova as well, mainly deal with musical performing rights, the right to remuneration for private copying and cable retransmission rights, leaving uncovered the reprographic reproduction right and the resale right - that may only be exercised through a collective management organisation. In Moldova for example no such organisation exists. We do think WIPO could contribute to the promotion and development of collective management of those rights which may only be exercised through the collective management system but in respect of which no such structures exist yet.

A narrow attention has to be paid to the promotion of the knowledge on the necessity of protection of the copyright and neighboring rights by the users. We mostly work with the IPR owners and there is no way to achieve a strong and fair copyright regime without achieving a balance between the interests of both owners and users.

The understanding by users of the advantages of collaboration with the Collective management Societies in order to avoid long lasting and costly judicial

proceedings would make the dialogue between the two parties more efficient. The local copyright authorities could mediate the process at the national level, while WIPO may address this issue in international forums.

At this point, the importance of the right holders' presence and implication is to be outlined. It is worth to mention that in small countries with economies in transition like Moldova, there is a lack of actions from the part of big well known copyright industries.

It's obvious that the enforcement of intellectual property rights and an effective fight against piracy and counterfeiting could be realized only under the condition that all the interested stakeholders are working together, including the right holder that have one of the main roles to play in this. Taking the example of the Republic of Moldova, I could say that till nowadays; there is no company that would act in the interest of big IPR holders, including the movie industry (Walt Disney, Buena Vista, Miramax Films, France Chanel, etc.) or music industry, such as Warner Music, EMI International and others.

One of the biggest software companies - „Microsoft”, has been registered on the market of the Republic of Moldova, in November 2006, although in Romania, it began to act as from 1996, and on the territory of the Russian Federation – as from the year 1994. Despite the fact that the Moldovan authorities have repeatedly notified the Embassy of the United States of America starting with the year 2002, that the legal framework to ensure a proper enforcement of IP rights is being put in place, it took 4 more years for the Microsoft to come to the market.

Also, a lot of confusion is raised by the fact that, although the Microsoft has been acting in Moldova for less then 6 months, the BSA, coming to Moldova in 2007, placed Moldova, in its 2007 Piracy Study, on the second level among the countries with the highest level of piracy, Republic of Moldova counting 92%. At the same time BSA made no comments about this company not being registered on the marketplace before 2007; the consumers having no real legal opportunities to get licensed products. In this way, great prejudices have been brought to the image of the Republic of Moldova.

I do think that in order to avoid such tensions between Governments and big right holders, there is a need of a constrictive and permanent dialogue between the tow parties; the right holders have to be more active in monitoring and promoting their rights on our markets. It is to be understood that the governments in countries of transition and developing countries could not bear the total burden of fighting with piracy and counterfeiting phenomenon.

(iv) Existence of a functional Judicial, administrative and customs system.

Of course, nobody is contesting the role of the state in ensuring the rightholder an equitable and free access to the available enforcement measures. Anyway, although

the Customs Code of the Republic of Moldova provides for measures for protecting intellectual property rights over exported or imported goods (fully complied with the requirements of the World Trade Organization outlined in TRIPs Agreement), till now, there were no any measures undertaken by the foreign right holders as to enforce their right at the Moldovan boarder.

Meantime, the marketplace abounds in counterfeited products, the Republic of Moldova being mostly a consumer (an importer) and a country of transition rather than a country where the counterfeited and pirated goods are produced. So, the customs enforcement is essential.

The presence and active collaboration of the associations representing the interests of the foreign well known companies, such as REACT, IFPI, IFRO, CISAC, and others, with public administration bodies, could be a good start for identifying the best way to ensure the IPR in our countries, regardless of their reduced economic interests in small developing countries.

In the context mentioned above, we do consider that the work of the Advisory Committee for Enforcement is to be continued and even strengthened, welcoming the idea of establishing a new direction in WIPO activity that would approach directly the issues of piracy and counterfeiting. The WIPO may even serve as an information sharing place for the best practices of fighting with piracy and counterfeiting, where the experience and information from all the involved parties could be gathered and analyzed.

My country and I personally are ready to support and to participate in any initiatives called to find new solutions and answers to the pressing problems we are facing today in intellectual property field.

Thank you for your attention!