

**IMMF REPORT ON THE 17TH MEETING OF THE WIPO STANDING
COMMITTEE ON COPYRIGHT AND RELATED RIGHTS HELD IN GENEVA
3-10 NOVEMBER 2008**

In 2007 WIPO member states decided to postpone holding an intergovernmental diplomatic conference to adopt a highly controversial broadcasting treaty, which has been under discussion for over 10 years. This was due to a lack of consensus among member states on fundamental issues such as the definition of the object of protection.

However, this year the broadcasting treaty is back and is being pushed very hard by its main supporters The European Union and Japan, with the support of some other countries notably China. Others took the line supported by the IMMF, that if there is to be a treaty then it should cover the protection of broadcasting signals only and that there should be no exclusive rights. If the treaty did include exclusive rights, it would effectively add another layer of copyright on to the copyrights authors and performers already enjoy in their national legislation. i.e. the broadcasters programmes, which contain music, will have another layer of copyright protection, which may adversely affect the rights our artists currently enjoy. We argue that all broadcasters need is protection of their signals to prevent piracy. Member states that agree with this approach include the Asian Group, the African Group, and the US. Those that spoke strongly about signal protection only were India, Pakistan and South Africa.

Another big issue concerning the broadcasting treaty is whether or not it should extend to the Internet. The Africa Group, China, Nigeria, India, South Africa and Egypt all opposed such an extension. The US, Japan Australia and the Ukraine supported the extension of the treaty to simulcasting and webcasting.

The IMMF and many other NGO's including the consumer organisations, the technology sector (including Intel, Verizon etc) and other stakeholders such as FIM (the international umbrella organisation for musician's unions across the world) have consistently opposed this broadcasting treaty proposal unless it dealt with signal protection only and did not grant broadcasters exclusive rights in their programme content. The consumer organisations are concerned that it will restrict access to knowledge. The technology sector say it will stifle technological innovation.

The week also included two other issues. The first was a possible treaty on limitations and exceptions to copyright and related rights. This would grant certain minimum limitations and exceptions in each member state such as access to reading material for the visually impaired. The World

Blind Union (WBU) put forward a powerful argument for such a treaty. The Library movement were also well represented and in favour of such a treaty.

The second was the resurrection of a treaty for audio-visual performers and this was the treaty that the IMMF pushed forward as a positive move that would establish a degree of equality between audio-only performers and the rights for audio-visual performers. Please see my intervention on this issue.

At the end of the week the SCCR decided on future work. They decided that Limitations and Exceptions, the rights of Audio-Visual performers and the Broadcasting Treaty remain on the agenda.

The IMMF agreed with the European Commission that the issues of collective management and orphan works which should also be added to the agenda.

Please see as follows the three verbal interventions I was able to make during the week.

David Stopps

IMMF Director of Copyright and Related Rights

*Intervention at the WIPO SCCR17 held in Geneva by
David Stopps on behalf of The International Music Managers Forum on
Wednesday 5 November 2008 concerning rights in Audio-Visual
performances.*

I would like to thank the Deputy Director General for the opportunity to speak on this issue.

I've noticed quite a few new faces at this SCCR so for the benefit of those who may not know who we are, I am speaking to you today on behalf of the IMMF, the International Music Managers Forum. We represent featured artist managers and through them, the interests of featured artists (both authors and performers) who are the source of over 95% of the income in the global music industry.

Mr Chairman, some view the failure of the diplomatic conference for an Audio Visual Performances Treaty in 2000 as a dark day for WIPO and I'm sure at the time it must have seemed that way. There is an old English saying of which I'm sure there are many equivalents in other languages that goes 'If at first you don't succeed try try again'. We are therefore very encouraged to see that the WIPO General Assembly has directed that the issue of rights of protection for audio-visual performances remains on the agenda and that several useful regional conferences have taken place concerning this issue....but I ask you Mr Chairman...what is the real intention here?

Of course a cynical person might wonder if this is merely a face-saving cosmetic exercise with no real chance of going anywhere? One particular eminent copyright expert said to me recently that WIPO has become sterile and ineffectual. Mr Chairman I challenge you to prove that particular expert wrong and I encourage member states to grasp the nettle and re-open discussions for a full international treaty on audio-visual performers as soon as possible.

One of the great successes of the WPPT was the right to equitable remuneration for broadcast and public performance between audio performers and phonogram producers. Of course the big disappointment was that the United States which is by far the largest territory for music in the world took a reservation on Article 15 which meant that performers and phonogram producers in the USA were not granted this right for free to air radio. However in the past year there has been considerable progress to establish such a right and I congratulate the US delegation and urge them to continue to support this process to establish this right which is already enjoyed by performers in the vast majority of member states present here today.

Following the success of this audio only equitable remuneration right there is a growing support from performers to get away from exclusive rights and move to unwaivable and in some cases unassignable rights of remuneration or to have exclusive rights that can only be managed by an independent collective management organisation.

In many member states as soon a musical performer makes a video their equitable remuneration rights disappear as the sound recording ceases to be a sound recording but instead becomes part of an audio-visual work. So even though they are now performing twice as much, once in the audio recording and now as actors as well, their rights disappear.

Mr Chairman this is clearly unacceptable. With the exponential media advances taking place on-line, and the growing success of operations such as You Tube the need for audio-visual rights for performers is also growing exponentially.

Following the success of the WPPT equitable remuneration right surely the key to the way forward on the transfer of rights issue for audio-visual performances is to move to ensure that audio-visual performers are remunerated in exchange for the transfer of the exclusive rights. This could be achieved by a combination of an exclusive right with a right to remuneration.

Its time for WIPO and the WIPO member states to get off the fence and finish the process that was almost finished in 2000. Mr Chairman, isn't it time WIPO had another party like the one following the negotiations for the WCT and the WPPT?

We say it is. The consultation period is over.
Let's stop procrastinating and lets start living the dream.
Thank you Mr Chairman

Intervention at the WIPO SCCR17 held in Geneva by David Stopps on behalf of The International Music Managers Forum on Wednesday 5 November 2008 regarding possible international harmonisation of Limitations and Exceptions.

Mr Chairman, the landscape for Copyright and Related Rights has changed radically in the past ten years. If we turn on our computer and we have an on-line connection, we have access to the whole world instantly. With such global access any work that this prestigious committee can undertake to harmonise the laws of copyright and related rights has to be very helpful.

Because a user may have certainty on a limitation or exception in their own country they may have no idea whether the limitation or exception also applies in another country let alone every country in the world. Therefore certain basic minimum levels of limitations and exceptions such as that proposed by the WBU, provided the rights of the legitimate stakeholders are respected, has to be a good idea. Chile's suggestion of a questionnaire to exchange information would seem like an excellent first step.

Mr Chairman, the Berne Three Step Test has proved to be a very sound and useful basis for copyright law concerning limitations and exceptions and we would very much like to see its application more widely used.

By way of example, the lack of accurate adherence to the three step test in UK copyright law is causing the UK music industry considerable difficulties. A company distributing DVDs commercially has found a way through the UK law on fair dealing. The company rip footage by a well known artist such as Pink Floyd or Iron Maiden and employ a commentator to review the audio-visual material at the end of the DVD. By doing this they claim that the entire DVD is a work of criticism and review and therefore is a work of fair dealing.

This company have now commercially released over 100 of these DVD's from different artists, and record shops throughout the UK are devoting considerable retail space to their sale, as they are proving very popular with consumers. I recently went into HMV in London and could see 10 DVDs by the band Genesis. Nine of the ten were fair dealing DVDs where no royalties were being paid to any of the legitimate stakeholders. Also the artist and the artist's phonogram producer has no control over the quality of the material on offer.

Case law in the UK on this issue has all been judged in favour of the would-be infringer so none of the artists, phonogram producers or music publishers involved are feeling confident about a legal challenge.

If the UK Government had adhered more closely to the three step test in their drafting of the laws on fair dealing this problem, which threatens to undermine the entire UK copyright system, could have been avoided.

Thank you Mr Chairman.

*Intervention at the WIPO SCCR17 held in Geneva by
David Stopps on behalf of The International Music Managers Forum on
Thursday 6 November 2008 regarding future work of the SCCR and
specifically on work on a possible treaty for Audio-Visual Performers and a
possible treaty for Broadcasters.*

Mr Chairman as mentioned yesterday I am speaking to you today on behalf of the IMMF. We represent the interests of featured artists, both authors and performers. These are the artists that you hear on the radio or see on your televisions but we also represent featured artists that are just starting out that you might see at your local pub or club.

Quite frankly Mr Chairman we are surprised that the proposed broadcasting treaty is still on the SCCR agenda following the complete lack of consensus following the SCCR S2 special meeting in June 2007. As the US delegation mentioned this morning the chair and the secretariat need to be mindful of the ongoing amounts of time and resources that this issue is liable to take up.

The SCCR has been discussing this issue for 10 years when there are so many other pressing and more important issues that this prestigious committee could have been addressing.

The very urgent need for an audio-visual treaty to protect and compensate audio-visual performers, the long overdue reform of collective management, orphan works and progress on new compensation structures for all copyright stakeholders in the anarchy that is currently going on on the internet, are all important and pressing issues that this expert committee could and should be constructively addressing. Technology is moving at the speed of light and laws are already out of date. We need to catch up fast before the whole system collapses.

Mr Chairman the General Assembly decreed that this committee should look at finding a signal-based conclusion to the proposed broadcasting treaty. Most people take signal based to mean no exclusive rights.

We all know that to avoid piracy all the broadcasters need is protection of their signals. Most member states already have such protection in their national law. However, if this committee wishes to put forward a very narrow treaty dealing with signal protection only with no exclusive rights then so be it.

Mr Chairman the producers of audio-visual works clearly need certainty concerning their investments and therefore quite understandably need the transfer of rights from audio-visual performances contained in their audio-visual works.

The performers on the other hand have exceedingly weak rights in their audio-visual performances which urgently needs to be rectified. They need to be assured that they will be properly compensated for such a transfer.

It seems to me that everyone in this room understands and supports the need for audio-visual performers to have the same level of rights as enjoyed by audio-only performers courtesy of the WPPT.

On that basis I appeal to all parties and member states to engage in this issue in a spirit of compromise and lets fill this huge gap in copyright and related rights that this audio-visual issue represents.

The treaty for audio-visual performers should be a top priority.

In contrast to the proposed broadcasting treaty, we believe a treaty for audio-visual performances is far more achievable in a comparatively short period of time, and indeed far more necessary.

This is an issue where everyone could be winners.

Thank you Mr Chairman.

The International Music Manager's Forum represents featured artist music managers and through them the featured artists (performers and creators) themselves. These featured artists are those that are the source of over 95% of the economic activity in the global music industry. Featured artist music managers are uniquely placed to comment on music industry issues, as they are the only group of professionals that deal with every aspect of the music industry and the copyright system as it applies to music on a daily basis. Music managers are responsible for every aspect of the artist's career including interfacing and negotiating with phonogram producers, music publishers, making arrangements for touring, sponsorship, merchandising, and ensuring that all the available income streams, including those from collection societies, are properly managed. Managers are generally remunerated on a commission basis (usually in the region of 20% of income actually received by the artist) so income streams affecting the artist also directly affect those of the manager. The International Music Managers Forum comprises 15 Music Managers Forums around the world including Australia, Belgium, Canada, Denmark, Finland, France, Germany, The Netherlands, New Zealand, Norway, Poland, South Africa, Sweden, United Kingdom and United States.