

CONCLUSIONS OF THE INTERNATIONAL COPYRIGHT CONFERENCE

« EUROPEAN COPYRIGHT REVISITED »

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PANEL 1 - RIGHTS MANAGEMENT

The first Panel dealt with rights management, described by the Rapporteur Professor Dreier as an area which has been dealt with only marginally, to date, in the *acquis communautaire*.

The Panel and the ensuing discussion considered how an Internal Market in the area of rights management could best be achieved. This is now of particular relevance with the adoption of Directive 2001/29. Articles 6 and 7 of that Directive provide a legal framework for the protection of technological measures. It seems the appropriate moment to tackle rights management, both individual and collective, in order to ensure that rightholders and users are best placed to deal with the new forms of exploitation and delivery whilst continuing to ensure quality content as a fundamental asset of the EU and reflecting its cultural diversity and riches. It was also felt that there is a need to take into account how the increasing call for digital rights management can best be addressed.

There was a consensus that the starting point in the area of rights management is the freedom of the individual rightholder to deal with his or her rights. There was discussion on the role of contract law where the freedom of the parties was seen as paramount. Regarding collective management, various solutions were put forward for collecting societies to adapt to the challenges. It was felt that it would be more appropriate for all aspects of rights management to be tackled by those responsible for the policy framework in the area of copyright and related rights.

PANEL 2 - COUNTRY OF ORIGIN VS TERRITORIALITY

The second Panel addressed the issue of country-of-origin versus territoriality. It was introduced by a report given by Professor Lucas. Whilst the Rapporteur did not question the territorial nature of copyright in general, he highlighted the complexity of its impact on rights clearance and enforcement. It was suggested that the country-of-origin principle should be considered for forms of transborder communication to the public, along the lines of the Cable and Satellite Directive, provided - as an important proviso - certain conditions were met.

This suggestion was welcomed by certain commercial users of copyright protected material, including representatives of broadcasters, as it should, in their view, improve the availability and use of content in the Internal Market.

Such an application of the country-of-origin principle to the network environment was rejected, however, by several groups of rightholders. The reasons given for doing so included difficulties in locating the origin of an act, a risk of displacement and a devaluation of copyright if a single tariff and licence were to apply to the whole of the Internal Market.

Some claimed that there was no reason to modify the existing principle of territoriality or to find legislative solutions to this end, as all legitimate concerns and Internal Market needs were already being addressed through market-led initiatives such as the creation of one-stop-shops to issue multi-territorial licences.

PANEL 3 - UPDATING/CONSOLIDATION OF THE ACQUIS

The third Panel was based on the report of Professor Walter. It was recalled at the outset that copyright protection in the European Internal Market comprises three essential elements on which common ground was necessary, namely: rights and exceptions, enforcement of rights and rights management.

In its first part, the Panel and participants discussed the following three topics: (1) The possible harmonisation of the existing Directives of the *acquis* on copyright and related rights; (2) The possible need for clarifications and corrections; (3) Any gaps in this legislative framework. For each of these sub-items, examples in the various Directives were given. It was generally recognised that considerable harmonisation has been achieved on rights and exceptions. However, several points were identified as "weak spots", such as the public lending right and particular provisions of the Duration Directive. There were also calls by some for a harmonisation of notions such as "non-commercial use", or of the overridability of exceptions by contractual arrangements.

The second part of the Panel focused on the issue of consolidating the *acquis* as well as on the general perspectives for the future. There was a wide ranging discussion. Many considered harmonising the enforcement of rights at European Union level very important. Several participants called for a regulation of collecting societies and stressed the need for more transparency and operational arbitration mechanisms for collective management. Others held that a level playing field was called for on contractual relations in the area of copyright.

Although Panel 3 gave rise to a large number of different observations and suggestions, there seems to have been consensus on two points: Constant scrutiny of the *acquis* is essential, and while the European Union legal framework of the future should be structured on the basis of vision and conceptual imagination, due account should be taken of both the need to be realistic and the principle of subsidiarity.

PANEL 4 - EXPECTATIONS FROM INTERNATIONAL ORGANISATIONS

The fourth Panel addressed expectations from international organisations. It was recognised that WIPO in particular has a crucial role to play in solving unfinished business, such as the protection of non-original databases, audio-visual performances and broadcasting organisations, but also private international law and management of rights. In his presentation, the Rapporteur, Mr. Liedes, reviewed the role of UNESCO, the OECD, the Council of Europe and WTO and stressed the importance of maintaining and enhancing the functioning of intellectual property protection, and in particular the need for awareness building, technical assistance and proper enforcement of intellectual property rights.

There were several comments on the need for the protection of audiovisual performances. While there seemed to be consensus that WIPO should adopt a new international

instrument in this respect, there is a different perception on what can be achieved at the international level.

There was also a call by some for a new instrument on the protection of non-original databases and on the protection of broadcasters, including the protection for pre-programme carrying signals.

As regards new items for the future, some suggested that the term of protection should be further harmonised at international level.