

**The Budapest Dialogue:
Intellectual Property, Creative Economies
And Their Consumers**

*First Plenary Session (September 7, 2007)
“International and European Aspects”*

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A time of change in the international IP system

- The intellectual property (IP) system, including copyright, is in a constant state of evolution both at national and international levels:
 - at the **World Intellectual Property Organization (WIPO)**, the last 10 years have seen a focus on civil society, the development agenda (emphasizing the social, cultural and economic development dimension of IP), a slowing down of normative developments (treaties), and a focus on the commercial management of IP, as well as effective administration of IP systems.
 - the next 10 years will require WIPO to continue to adapt, and work to demonstrate leadership in the field of IP, in all its economic and social dimensions.

- Today, in the so-called “Information Society”, the rate of **evolution in the IP system** and copyright in particular is increasingly rapid, in keeping with developments in technology and ever evolving business models that occur at “Internet speed” and the changes they bring to the creative economy.
- The copyright system maintains a carefully calibrated balance, an equilibrium that is constantly being adjusted at the national level to address creators’ private rights (to encourage creativity and innovation) and the public interest of consumers (in access to information, and in sharing and collaborating in cultural development).
- Both IP industries and consumers need to keep pace with these developments, but the Information Society is characteristically driven by the

uptake of technology at the consumer level, and the reality is that consumers thus far have been able to adapt faster than the creative industries that produce the products they consume.

- Today, the level of interest in IP, including criticism and controversy, is at an all-time high.
 - Partly because **more stakeholders**, from various sectors of society, are involved as creators, rightholders, users and lobbyists, and therefore we find more voices to be heard and, therefore, more interests to be taken into consideration.
 - And also, significantly, because the relative importance of IP in the creative economy has focused attention on the critical **value of copyright** to individuals, business and society as a whole:
 - 80% of S&P 500 companies' value is in intangibles;
 - copyright is now a key factor in trade negotiations both at the international level, and in bilateral and free trade agreements; and
 - at the national level, a survey carried out in Hungary using WIPO guidelines has demonstrated that the copyright-based industries contribute 6.67% of the Hungarian GDP, and 7.10% of local employment. (Similar figures can be found in countries ranging from the Philippines, to Mexico, to Canada).

The impact of digital technologies on IP

- We live in the 'digital age', and **digital technologies** play a uniquely important role in the field of copyright (facilitating creation, distribution, protection and copying of works):
 - (i) In **creation of IP**;
 - enabling remixing and collaborative creativity that challenges rules on fair use/fair dealing, as well as the preservation of moral rights to integrity
 - encouraging amateur and user-generated creativity in the form of blogs, wikis, mobile phone photography, podcasts, and citizen journalism

- spurring the extraordinary growth of sites such as MySpace (purchased by Google in 2006 for US\$1.65 billion) and YouTube (70,000 videos uploaded daily)
 - 57% of all media and entertainment executives consider that user-generated content is among the top 3 threats to their businesses

(ii) In **distribution of IP**;

- new business models for copyright content distribution are emerging that utilize the distributed/dispersed character of the Internet, and the way users have demonstrated that they want to consume content, including:
 - legitimate peer-to-peer (P2P) services, such as BitTorrent's deal to distribute movies with Warner Bros
 - online scientific and medical publishing
 - online video streaming and downloading subscription services
 - online music distribution, whether free of DRM protection (such as EMI) or with DRM (such as iTunes)
 - mobile content, such as ringtones and online gaming

(iii) In **protection of IP**:

- digital rights management (DRM) technologies have been employed to control access to works in digital form in ways that some argue challenge the legislated system of exceptions and limitations to copyright that permit, for example, private use, as well as uses such as for visually impaired persons, study and research.
- But typically, such technological protection measures as DRM are used by rightholders to protect their works from unauthorized uses, thereby giving copyright owners the confidence and security to release their works onto the digital networks, thus increasing the amount of information and culture available to everyone.

(iv) In **copying of IP**:

- enabling piracy at levels that could render some copyright industries unsustainable:
 - 400 to 600,000 unauthorized films downloaded every day; and
 - 1 billion unauthorized music tracks are downloaded from P2P networks every month.
- reducing awareness of copyright, and respect for copyright among users, particularly young technically literate Internet users.
- The consequences of these unauthorized and illegal activities on the music and film industries, in particular, and all those who derive their livelihood from them are severe. The effect is to reduce the willingness of rightholders to make their works available online, and thereby to reduce the amount and quality of creative material available to consumers.

The role of WIPO in international IP policymaking

- What effect does this rapidly changing environment have on **international IP policymaking**?
 - We are witnessing a democratization of IP, where IP issues and concerns touch an increasingly broader spectrum of society, and where the value chains of production, distribution and consumption of IP have changed irrevocably.
 - IP has now entered the policy mainstream and, as a result, we are operating in a more contested, multi-stakeholder environment.
 - We will see continued intense interest and broader participation from consumers and society at large, but with more mature consideration to issues and participation in negotiations to reach the compromises necessary to optimize use of the IP system for the greater good.
- **WIPO's current priorities** are:
 - To continue to maintain the *balance* in the IP system with respect to:
 - private rights and public interests; and
 - rightholders needs and users' expectations.

- To ensure more *equitable access* to the IP system;
 - for individual creators, both in developing and developed countries.
- To make the IP system increasingly more *relevant*:
 - to serve the interests of all Member States equally; and
 - by lowering the costs of entry to the system in both acquiring and exercising IP rights.

- To take up this challenge, we need to strengthen our **technical capacity**, and maintain our neutrality, to weather the increased politicization of IP policymaking.
- In the future, we may focus somewhat less on the conclusion of new treaties, and more on **flexible solutions**, including soft law approaches (such as best practices, and joint recommendations) to deliver practical results to our stakeholders to enhance IP practice and law.
- Increasingly, IP issues are raised and included in the bilateral context, and regional free trade agreements. WIPO will focus on the multilateral framework for IP policy development, as the fairest and most equitable forum for all States to develop appropriate IP policies.
- In the end, WIPO's role is to encourage an informed policy debate on the ways in which IP can best evolve as a tool for our individual and collective benefit, and to provide support to achieve this.

WIPO's activities for the digital agenda:

- In this digital environment, WIPO is working to find a balance between (i) legal solutions, (ii) technological solutions, and (iii) socially equitable solutions. Whereas in the past, our focus was on legal solutions, in the 1990s, focus shifted to technological solutions and, today, the focus is on public interests and socially equitable solutions (e.g., access to medicines and the use of limitations and exceptions to copyright for visually impaired persons).
- Increasingly, we are studying business-oriented solutions that are being developed to solve IP issues, including DRM solutions to protect copyright works from piracy, and public/private partnerships for the development of

new drugs. These new business models use IP in new ways, using a variety of licensing models:

- For example, we witness the daily emergence of new business models for managing, licensing and distributing IP that rely on online distribution (e.g., legitimate peer-to-peer file sharing systems, and user-generated content sites such as YouTube and MySpace).
- And we are exploring ways to assist Member States to use IP as a tool to nurture innovation and creativity, and enable more countries to generate content for the Internet and bridge the 'content gap' (and thereby assist in narrowing the digital divide).

WIPO's activities in the field of copyright

- In the Information Society, copyright provides the content and value of creative assets, and the foundation for transfers of information and works across the digital networks. Copyright law provides creators and the creative industries with the tools to manage their rights in a variety of ways; to restrict access or to make freely available, to prevent misuse, and to be paid for their endeavors if they desire.
- Since 1996, the WIPO Internet Treaties (the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)) have increasingly become international standards for protection of copyright and related rights. With the anticipated accession of the EC and its members, the number of parties to each treaty will rise to over 80. However, WIPO needs to continue its efforts to assist with implementation and use of the treaties by all Member States, particularly with respect to technological measures of protection.
- We will endeavor to provide a productive forum for Member States' discussions on ways to update the rights of broadcasters to meet current needs and challenges, and for discussions on the best possible protection can be granted to audiovisual performers internationally.
- The Organization is also providing resources and a forum to enable proper consideration of limitations and exceptions to copyright, particularly with respect to certain user groups such as visually impaired and libraries.

- We aim to facilitate international consideration of best practices on DRM (technological protection measures) and, in particular, the use of rights management information (RMI) mechanisms to assist rightholders to protect and manage their IP, and at the same time assist users to respect copyright and make best use of material in the public domain:
 - In this respect, WIPO will hold a seminar on Rights Management Information: Accessing Creativity in the Networked Environment, in Geneva, on September 17, 2007. The seminar is free of charge and open to all.

WIPO's activities in the field of enforcement

- While the digital technologies have enabled enormous commercial opportunities, they have also fuelled a dramatic escalation in IP-crime. Counterfeiting and piracy are not victimless crimes, and combating IP-crime is becoming a key priority for many countries and regional institutions, key among them the European Union. Recent developments involving IP and dispute procedures at the World Trade Organization (WTO) are evidence of the importance attached by States to ensuring respect for IP worldwide.
- WIPO continues to engage in its role to protect the interests of governments, rightholders and consumers, to obviate the destructive effects of counterfeiting and piracy on creators, creative industries and national economies.
- WIPO also continues its work in measuring the economic contribution of the creative industries to national GDP and employment, and this has led to an increasing recognition among many countries of the importance of IP to national well being and development. In this creative economy, as businesses rely increasingly on IP as a key component of their assets, IP-infringements have become a major concern for all business sectors throughout the world. Abuses of IP undermine the sustainability of many industries, and threaten the richness of culture and innovation that we enjoy today.
- The global scale and sophistication of IP-crime has a significant economic and social impact, harming national and business interests, reducing employment, innovation, investment, economic growth, tax revenues and the services they support. However, the clandestine nature of these activities means that their

scale is difficult to estimate. At the same time, there is a growing awareness and concern at the damage wrought by IP infringements on national economies. To this end, at our Member States' request, WIPO is cooperating with the OECD in an ongoing study to measure the economic effects of counterfeiting and piracy. The results of the first phase of this study, focusing on the trade in physical counterfeit and pirated goods, have been released in June 2007. The second phase is intended to analyze the impacts of digital piracy.

- The challenges for enforcement of IP are only likely to increase:
 - particularly in developing countries; and
 - in the digital environment, owing to increasingly sophisticated technologies that enable piracy, and facilitate global and largely anonymous distribution.
- WIPO's Enforcement and Special Projects Division continues to play a proactive role, together with key stakeholders, in the field of international enforcement of IP, identifying problems and finding workable solutions. We are working with governments, industry, international and non-governmental organizations to develop effective strategies focusing on awareness-raising, legislative assistance and capacity building.
- In developing countries in particular, WIPO provides assistance to update national IP enforcement legislation. Depending on the particular request, such assistance may embrace a range of issues relating to effective civil and criminal enforcement, as well as border action. While the enforcement-related standards and balances of the TRIPS Agreement are the basis of our assistance, we have observed in the recent past that many developing countries seek to implement additional elements.
- WIPO also provides regular assistance to developing countries to enhance the quality and capacity of sectors responsible for IP enforcement. The judiciary as well as the prosecution, customs authorities and the police of those countries will need to deal with increasingly more complex infringement cases, and policymakers are encouraged to examine the relevant systems from that perspective.

- In January 2007, WIPO hosted the third Global Congress on Combating Counterfeiting and Piracy, together with the World Customs Union and Interpol (the International Criminal Police Organization) and a number of industry groups. The Congress attracted over 1200 participants, and provided valuable information and a basis for future cooperation to put in place and improve enforcement mechanisms, including in the online environment.
- We are committed to follow-up the suggestions made at the Global Congress to coordinate efforts and to explore solutions to the growing challenges of trade in counterfeit and pirated goods. These suggestions emphasize the need for further action and cooperation in various fields, for instance as concerns the enforcement of IP rights by means of *criminal sanctions*; the role of the *Internet* in the distribution of counterfeit and pirated material; and the role of *Free Trade Zones* in the trade in fake goods.
- WIPO's Advisory Committee on Enforcement provides a forum for international review of IP enforcement issues. At its next meeting in November, the Committee will address the theme of international, regional and national cooperation in enforcement, and focus on the criminal enforcement of IP.
- Finally, we see grounds for optimism in addressing the threat posed by global IP-crime. There is a growing recognition of the importance of IP, and political commitment among governments to ensure respect for IP rights, including through public and private sector partnerships. This holds true not only for developed nations, but also for a number of developing countries where we have witnessed such political commitment.
- WIPO is committed to ensuring that all its 184 Member States can realize the value of IP as a tool to create value and economic growth, and promote a vibrant cultural identity and creative economy. One of our key objectives is to help establish an "IP-culture", in which respect for IP rights and improved administration of IP ensure that creators and the creative industries can continue to develop valuable works of creativity that we all, as consumers, can enjoy.

Thank you.

