

"In order to change the world, you have to get your head together first."

Jimi Hendrix (1942 - 1970), American guitarist, singer and songwriter

Europe

COMMISSION MEASURES TO COMBAT COUNTERFEITING AND PIRACY

The European Commission has adopted a Communication on enhancing the enforcement of intellectual property rights (IPR) in the internal market. Emanating from the Commission's IPR Strategy for Europe it builds on the recent Council Resolution on a comprehensive European anti-counterfeiting and anti-piracy plan.

Internal Market and Services Commissioner Charlie McCreevy proposes to complement the existing legal framework with more enforcement and greater collaboration between the private sector, national authorities and consumers. He sets out a series of initiatives to address the negative impact which counterfeiting is having on EU economies and society, including three key actions: the setting up of a new EU Observatory on counterfeiting and piracy; the fostering of cooperation and coordination across Europe through the designation of National Coordinators who will facilitate the exchange of information; the development of collaborative voluntary arrangements that focus on concrete problems and can adapt to evolving markets and technology.

Despite the Commissioner being keen to underline how IPR encourages innovation and creativity which drives the business cycle, the Communication was noticeably void of direction in addressing online piracy of content such as films and music. The document was clearly biased towards patent and trademark infringement and the piracy and counterfeiting of physical goods. Nevertheless, the new Communication does offer some practical solutions for content owners. The Observatory should serve as a forum to develop private enforcement strategies with other stakeholders hopefully leading to enforcement practices that are acceptable to all interested parties.

The Observatory launch takes place against the background of a series of monthly meetings organised by DG Internal Market which are likely to stretch well into 2010 and will examine all aspects of online content piracy including education and awareness, the availability of attractive legal offers on the market and the role of enforcement.

NEW ROAD MAP ANNOUNCED FOR CULTURAL SECTORS IN EUROPE

The Cultural and Creative Industries Platform, which was set up by the European Commission as part of its 2007 Agenda for Culture, has announced a series of recommendations which will now feed into a Green Paper on Cultural Industries currently being prepared by the Commission.

The culmination of an 18-month consultation process which included discussion between almost 40 organisations, the recommendations aim to support all of those working in the culture and creative sector. They include facilitating access to finance for SME's; protecting intellectual property rights; improving market access; recognising that cultural goods and services need to be treated differently from other sectors, and promoting the circulation of artists and works.

The recommendations emphasise the new digital dynamics faced by creative industries such as music publishers and represent an important step in the right direction.

On 29 and 30 September, ICMP will participate in the European Culture Platform which will take stock of progress in implementing the European Agenda for Culture and where the recommendations of the platform will be presented.

10TH ANNIVERSARY OF THE CEEMPC

The Central and Eastern European Music Publishers Conference (CEEMPC) 10th anniversary meeting took place last week in the beautiful surrounds of Rovinj in Croatia. A large gathering of publishers and some Collecting Society guests descended on the pretty seaside village for discussions on Central Licensing Agreements, the Cannes agreement, Digital Licensing including option 3., relations with the Collecting Societies in the region, the implementation of the ICMP/GESAC Agreement and private levies.



"Publishers and Collecting Societies in the region working together"
Péter Tóth, Gusztav Stiedl, Ger Hatton, Nenad Marćec, Jolana Zemanova Roman Strejcek in discussion



On a break-out

Our Croatian hosts – IDM Music – organised a fun party following the day of meetings and there were several notable movers and shakers who couldn't leave the dance floor. The meeting created quite a buzz and with the wonderful sunshine on Day one and the animated debates on Day two it's onwards to Riga in September 2010.

All documents from the meeting will be posted on the ICMP website under the CEEMPC page. Many thanks to the Committee who put it all together: Tomo in der Muhlen, Jane Dyball, Miriam Westercappel, Ger Hatton, Peter Gyorgy, Jolana Zemanova; and to Sarah Coppens and Ana Starcevic for the excellent coordination.

"ICMP is very happy to be involved with this event that brings together such a large number of publishers to talk about issues of particular relevance to the region." Ger Hatton, ICMP Secretary General

"We hope the discussion panel of societies and publishers remains a standing item proving that our region is developing fast in this respect and that all of us societies and publishers have an important role to play." Peter Gyorgy, co-founder CEEMPC

Washington

PUBLISHERS SEEK ROYALTIES FOR SONG SAMPLING

US publishing associations are seeking performance fees from the use of 30-second samples downloaded from stores such as iTunes, Amazon MP3 and eMusic.

The associations, who include ASCAP and BMI, are taking their case to the US Congress in an attempt to push through wide-ranging legislation to compensate songwriters for samples downloaded in store.

They claim that songwriters are not sufficiently compensated for music used online and argue that these short clips constitute a “public performance” and hence should be subject to royalties.

The move has been criticised by the head of the Digital Media Association Jonathan Potter who argues that the emergence of online stores has generated millions in royalties for songwriters and rejects the suggestion that a download is a “public performance”.

Global

GOOGLE BOOK SETTLEMENT – LATEST UPDATE

It has been a busy few weeks for the Google Settlement with the opt-out deadline on 4 September, the European Commission Information Hearing on the 7th and the US Congressional hearing before the House Judiciary Committee on the 9th. In addition, the US Justice Department finally issued its opinion on the Settlement on 19 September. Both supporters and detractors are getting more vocal in anticipation of the Fairness Hearing scheduled for 7 October, which will decide whether or not the Settlement is to be approved.

The opinion issued by the US Justice Department, following its investigation, is perhaps the biggest blow to the Settlement to date. While welcoming Google's efforts to breathe new life into millions of works, the Justice Department says that the proposed settlement raises “significant legal concerns” and that it is not “fair, reasonable and adequate”. It also fears that the Settlement violates antitrust law and shuts off competition in digital distribution of works by giving Google a de facto exclusive right of orphan works. It concludes by asking the Court to reject the Settlement in its current form and encourages the parties to continue negotiations to address the concerns raised.

Europe has also seen growing opposition with formal objections from France, Germany and numerous book publishers being filed with the Court in the run up to the opt-out deadline. A range of opinions were heard from different stakeholders at the EC Information Hearing. While there was support for Google's efforts in reinvigorating out-of-print books and a general recognition that Europe must embrace the digital age, many felt these initiatives should come from government, not private business. Concerns were raised that the settlement would set a precedent for digitalisation in Europe and Google agreed that the EU would need a different approach, perhaps including legislation. Misgivings were also aired in relation to antitrust issues, orphan works, the lack of representation for European class members and the potential linguistic problems for non-English speakers. Google confirmed it would ensure proper representation in the EU and pledged that at least one non-US author and non-US publisher would sit on the Board of the Registry.

Issuing a joint statement following the Hearing, Commissioners Reding and McCreevy stressed the need to “fully respect copyright rules to ensure fair remuneration for authors”, and welcomed public-private partnerships as a means to boost digitisation of books. Along with many contributors at the Hearing, the Commissioners endorsed Europe’s digital library “Europeana” as a better solution and possible response to digitisation efforts.

Finally, the hearing before the House Judiciary Committee in the US was attended by a variety of interested parties including US Register for Copyright, Marybeth Peters. The US copyright office opposes the settlement on the grounds that it creates a virtually compulsory license for books. Ms. Peters explained how her Office’s initial support of the agreement had quickly changed when it saw that the class action settlement covered further behaviour instead of just redressing past actions. She claimed that the settlement bound authors, publishers and their heirs to these rules even though their works had not yet been scanned – and indeed may never be. In particular she objected to the fact that Google would be allowed to put out-of-print books on Google Books without the permission of rights holders, adding that this was “indisputably an act of copyright infringement.”

UPDATE ON COUNTRY INITIATIVES AGAINST COPYRIGHT INFRINGEMENT

France: The French National Assembly has approved a redrafted version of the “three strikes” law (HADOPI law) allowing judges to order persistent file-sharers to have their internet disconnected for up to one year. Having already received approval in the French Senate, the Assembly passed the bill by 285 votes to 225.

However it will not become law immediately. It must now go through a parliamentary commission, and there is still the potential for legal appeals which would see the law sent back to the Constitutional Court where it was rejected back in June of this year.

Japan: In Japan the government is considering plans to clamp down on music piracy on mobile handsets. Potentially coming into force in early 2010, the issue is on the agenda for this month’s meeting between the Recording Industry Association of Japan (RIAJ) and the Japanese mobile operators’ association.

It is understood that the plan will involve checking song IDs when users download them over the air to ensure that they have been distributed legitimately. In cases where they have not, the user will receive a warning and the download will either be terminated or made unplayable on the handset. The initiative is looking to reduce the 400 million songs illegally downloaded onto Japanese mobiles each year and harnesses a brand new technology.

UK: Industry bodies, among them MPA UK, have come out in support of recent government plans to tackle online piracy and enable a commercial environment where sustainable, licensed digital services can prosper.

WIPO HOLD CONSULTATIONS ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES

The 7-9 September WIPO meeting on the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, held informal and open-ended consultations on the protection of audiovisual performances.

The meeting, which took place in Geneva, discussed problematic issues including the definition of audiovisual fixation and whether it should include music incorporated in audiovisual works; the moral rights of performers; transfer of rights from performer to producer; national treatment and the “no collection without distribution” issue and lastly, whether an audiovisual work should apply retrospectively.

The issue will be discussed at the December meeting of the Standing Committee on Copyright and Related Rights, and is also expected to be addressed by the WIPO General Assemblies from 22 September to 1 October.

Other News

LICENSING COMPLAINTS PROMPT TELECOM ITALIA TO PULL STREAMING MUSIC SERVICE

Telecom Italia has suspended its recently launched streaming music service Next Music. Apparently many of the millions of tracks on offer from the service had not been licensed. Italian labels body FIMI, notified the ISP that the service, which only went live in July and was available for PC and mobile users, contained a large number of both Italian and International artist tracks that had not been authorised by record labels. It was pleased that Telecom Italia acted so swiftly in suspending the service.

Upcoming meetings and events

14 & 15 October 2009

ICMP General Meeting on 14 October from 12:00 until 18:00 and ICMP Board Meeting on 15 October from 9:00 until 13:00 in Geneva, Switzerland

20 & 21 October 2009

The CISAC/IMPA/ICMP societies-publishers Working Groups meeting in Budapest

Next ICMP Board Teleconferences on 16 November, 21 December at 17:00CET

Next ICMP Policy Committee Teleconferences on 12 November, 10 December at 17:00CET

January 2010 - MIDEM

ICMP Board meeting from 9:30 until 13:30 and General Assembly from 14:00 until 17:30 on Sunday 24 January

The International Publishing Summit, co-hosted by ICMP & MIDEM, on Tuesday 26 January from 10:00 until 12:00

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