

**The changing © balance in the
digital era:**

**Evolving business models and
the role of collecting societies**

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Development of ©

- Introduction of the printing press 1450s
- Sovereign claimed sole right to authorise printing – stationer's guild, privileges and censorship
- Statute of Anne UK 1710 authors rights to control publication
- Parallel development of civil law authors' rights – Kant, link between author and work - moral rights
- C19 performing rights legislation, visual arts, longer protection
- C19 Bilateral reciprocal protection in Europe

Berne Convention 1886

- multi-lateral (now 160+ signatories) – “literary and artistic works”
 - Minimum standards
 - Principle of national treatment
 - Works originating in one Contracting State A to be accorded same level of protection in Contracting State B as Contracting State B grants to its own nationals
 - Principle of automatic protection
- Administered by WIPO
- Same standards in TRIPS (WTO)
 - © now the subject of trade negotiations
 - Developing countries
 - WTO Disputes panel :– US, China

The copyright balance

- Limited monopoly - duration, idea/expression dichotomy
- Ownership & Control vs access – exceptions to infringement – free/compulsary licence eg ‘Mechanical’ licence, educational use, libraries, private copying levies.
- Berne 3 step test: 1 Certain special cases;
2 Not conflict with normal exploitation of a work
3 Not unreasonably prejudice legitimate interest of copyright owner

The internet changes everything

- New technology alters © balance: mechanical devices, sound recordings, broadcasts, (neighbouring rights), analogue copying
- Digitisation alters creation, dissemination and access to works
- Sampling, mashups, downloading, file sharing, digital broadcasting, time and format shifting, webcasting, podcasting
- Fall in sales of physical product, new business models involving all rights, “one stop shops”
- Borderless – impact on territorial organisation of administration

Responses

- WIPO Copyright Treaties – new rights and existing exceptions to digital - ISP and telco lobby
- Technological protection measures (TPM),
- Digital Rights Management (DRM)
- ISP liability – notice and take down
- US trade policy – TRIPS plus
- Cases against file sharing developers (and users in the US)
- European Harmonisation and single market policy – duration, on-line rights

Responses

- WIPO Development Agenda
- WIPO Model Law on Protection of Expressions of Indigenous culture
- Orphan works provisions in US, Canada
- Consumer lobbying
- Competition and privacy issues
- Open content “licensing” regimes – eg Creative Commons
- EC Recommendations on on-line licensing and the Statement of Objections
- Revision of private copying regimes in the digital context in Europe

Collective management - works

- Rights that cannot be administered individually
- Beaumarchais 1777 - theatres in France
- SACEM 1850 France – public performance of music, GEMA Germany 1903; PRS UK & ASCAP 1914, APRA 1926 (radio in Australia)
- International Confederation of Authors and Composers Societies CISAC 1926
- Cooperation between societies, network of reciprocal representation agreements, territoriality, national treatment, international tools, Common Information Systems. 50% distribution rule.

Function of collective admin

- Enforcement - rights unable to exercise individually
- set rates - negotiation/arbitration.
- Assist USER – providing access to repertoire via blanket licence - world wide repertoire
- Solidarity between national and intl repertoire
- educate - govt/members/users - lobby
- social and cultural; promotion of repertoire, cultural diversity, local industry support and development
- Universal representation, transparency, governance, lowest possible transaction costs



- Common Information Systems (CIS)
- CISNet – network of databases
- Interested Party Information IPI
- Works Information Database
- Audio-visual index
- Territory Information System TIS
- International Standard Work Code ISWC
- International Standard Audio-visual Number ISAN – with AGICOA

Music Industry Integrated Identification Project (MI3P) DDEX



- Standard sales data from iTunes and other DSPs
- Metadata - Identifiers
 - Global Release Identifier (GRid)
 - Musical Work License Identifier (MWLI)
 - Party identifier (MPid)

