



**FIAPF Members' Briefing**  
**WIPO Developments and Implications for Audiovisual Producers**  
**May – June 2010**

**20<sup>th</sup> Standing Committee on Copyright & Related Rights [SCCR20]**

**Geneva – June 20<sup>th</sup>-24<sup>th</sup>, 2010**

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The 20<sup>th</sup> session of WIPO's Standing Committee on Copyright and Related Rights (SCCR20) was held in Geneva, June 20<sup>th</sup>-24<sup>th</sup>. During this Committee, the three following issues of concern to worldwide producers were addressed :

- Audio visual Performers' Rights,
- Exceptions and Limitations to copyright (e.g. proposals for an International agreement on access to copyright works by the visually-impaired and 'print-impaired'),
- Broadcasters' Rights.

**1. Audio visual Performers Treaty – Brazil wants to re-open discussions on all articles**

On Audio visual performers' rights, you will recall that WIPO Secretariat and many delegations were anxious to push forward for a Treaty; they had been arguing during recent consultations for the need not to re-open discussions on the 19 articles of the draft Treaty proposal which had been formally pre-agreed at the failed Diplomatic Conference in December 2000. They said that to do so would jeopardize any chance of reaching a positive conclusion on the proposed Treaty by focusing exclusively on the unresolved issue of the transfer of screen performers' rights to the audio visual producer.

However, some of the broadly anti-copyright countries, led once again by Brazil, see the re-opening of discussions on an AV Performers' Treaty not as a chance to provide this community of audio visual talent certain exclusive rights, but as an opportunity to undermine the existing WIPO Copyright Treaties by weakening some of the articles which the proposed Treaty would have in common with the existing ones. At SCCR 20, Brazil confirmed (openly, for the first time) that it was its intention

to consider making proposals for new language on some of the 19 articles. Their justification is that much has changed in markets and technologies over the past 10 years and these changes need to be reflected in substantive provisions. Although they have not named them specifically their specific objectives are not difficult to identify, namely:

- to curtail - or get rid of - provisions relating to technical protection measures (TPMs and DRMs) which allow producers and distributors of audio visual content to secure their content against online and other forms of piracy;
- to expand exceptions and limitations to copyright;
- to downgrade the right-of-making-available (the right covering online on-demand uses) to a mere remuneration right, which would push Member States to adopt compulsory licensing and would remove contractual freedom from producers of content;

Should Brazil and its allies be successful in imposing a discussion on the 19 Articles, we can expect negotiations to drag on for another decade and produce no tangible results. International performers' organisations had a very high profile presence at SCCR20 and fielded high-ranking executives. However, their calls for a rapid resolution of the rights' transfer issue may come to nothing if Brazil goes ahead with plans to unravel the pre-agreement of 2000 on the other 19 articles. Furthermore, the European Union still has no position on the transfer: at least two of its most senior delegations - Germany and France – appeared to be undecided as to whether or not to allow any language on the transfer (or 'consolidation') of rights in the producer.

Although SCCR20 failed to agree on formal conclusions by the end of the WIPO week session, WIPO subsequently agreed that Member States will be given until **September 15<sup>th</sup>** to table new proposals in Treaty language on any aspects of the draft Treaty. Open-ended consultations will also take place on **October 4<sup>th</sup> and 5<sup>th</sup>**, during which NGOs will have the opportunity to speak. This schedule shows the principle that any part of the Treaty may be open to negotiation is now established and it is difficult to see how WIPO's bid to limit discussion to the unresolved transfer issue has any chance of success.

## **2. A Stalemate on Exceptions and Limitations to Copyright**

Four different proposals on exceptions and limitations ('e&ls' thereafter) were tabled at the start of SCR20.

The EU and US proposals converged in supporting a Joint Recommendation to deal with the issue of access to print material for the print-disabled (e.g. blind, visually-impaired and people with reading difficulties). However, the content of each proposal differs, with the US focussing exclusively on the trans-border circulation issue, while the EU also provides for the possibility of an exception to the right of reproduction right.

Both proposals were severely criticised by Brazil and many other Latin American proponents of a binding treaty approach for the visually-impaired and print-disabled. Brazil said that for the US and EU proposals to envisage remuneration for rights

holders through licensing somehow defeated the purpose of an exception which - they believe - should by definition result in no charges to the end user! Throughout the week, Brazil, which has now been joined by Mexico in its campaign for an exception treaty on the print-disabled, attempted to suggest that the best of the EU and US proposals should be used to add to a consensus text that would then form the basis for a binding treaty.

Without exception, the civil society NGOs, were supportive of a Treaty approach, with leading anti-copyright campaigner Jamie Love turning in a particularly aggressive performance against the US proposal which he described as "18 months of hard work in order to state what's already there and will not resolve the problem". It seems the United States had pinned high hopes on the effect of their taking a new leadership on this difficult issue and edging Brazil towards compromise. However, little of the good faith and political will we observed at SCCR19 (December 2009) was present during SCCR20, during which positions on the issue of access by the print-impaired, became more entrenched.

The African proposal, described by African Group as a more "holistic" approach to the e&l issues, opened a fourth front in the E&L wars. The proposal encompasses both print-disability issues and wider exceptions for education and access to knowledge. The proposal - which is also for a Treaty format - was greeted with polite responses from all corners, but it is very clear it is a thorn in Brazil's side and consecrates their failure over the past 5 years to make any serious inroads into the politics of the African Group. The Africans are worried that a single focus on an instrument for the blind/print-disabled will exhaust the political will to go further, once an international instrument has been agreed on. They believe the Access to Knowledge ('A2K') and education issues are of an equal level of priority with access by the print-disabled and that any international agreement should contain both.

At the end of the week, Member States were working towards an agreement that the Secretariat of WIPO will be requested to prepare a comparative document on all four e&l proposals in order to "facilitate negotiation" at SCCR21 in November. Consideration of other areas of exceptions and limitations will be kept on the agenda.

### **3. The socio-economic aspects of broadcast piracy**

On the issue of the rights of broadcasters, the London-based consultancy Screen Digest presented the first part of a study commissioned by WIPO on the "socio-economic aspects of broadcast signal piracy", a result of demands from Development Agenda countries during the first SCCR of 2009.

The presentation by Screen Digest left no room for doubt that signal piracy, especially in the developing world, is detrimental to both broadcasters and rights holders. Unsurprisingly, some delegations (Brazil and Egypt in particular) found the evidence ran contrary to their political agendas and attacked the credibility of the consultants' methodology and sources. The Egyptian delegate (pay-TV piracy rate in Egypt is at pandemic levels) reproached the authors of the study with having mostly consulted with the industry itself with the result that the data on piracy were bound to be overestimated! It is obvious that what Egypt and Brazil were hoping to demonstrate through a study on the "socio-economic aspects of broadcast piracy" is that it is the rights holders and broadcasters' fault for supporting encryption and charging poor people who are then left with no alternative than to "steal" a programme-carrying signal that should be theirs by right...

SCCR20 registered no new development on the Broadcasters' rights' front, in spite of their being noticeably more engagement from the broadcasters and some member states who remain committed to moving forward.

#### **4. FIAPF activities during SCCR 20**

FIAPF Delegation was pleased to welcome Mr. Supran Sen, Secretary General of the Film Federation of India, member of FIAPF, to SCCR20 and wishes to acknowledge his contribution. Mr. Sen delivered a short presentation to Member States on behalf of FIAPF, covering all three of the key issues under discussion (the full text of Mr. Sen's intervention is attached).

FIAPF also organised an evening screening for WIPO delegates of the Oscar-winning Argentinean film *The Secret In Their Eyes* (El Secreto de sus Ojos) in a well known city-centre art house cinema. The screening, which was introduced by the UN Argentinean Ambassador who is as well Chairman of the WIPO Assemblies, was very successful, with some 50 WIPO delegates in attendance. Bertrand Moullier presented the film and talked briefly about how it had been financed through a mixture of State funding and rights' pre-sales and licensing, emphasising the fact that the film would not have happened had it not been for the pre-sales of certain rights and a strong copyright environment.

FIAPF also participated in a dinner with heads of delegations from Nigeria, Senegal and Uganda as part of an ongoing effort to develop the awareness of these WIPO members of the need to avoid making any decisions at WIPO which may result in a weakening of creative and economic opportunities for their film authors and producers.

**SCCR 20 - Intervention by Mr. Supran Sen, Secretary General of the Film Federation of India, on behalf of FIAPF (June 23<sup>rd</sup>, 2010)**

Thank you Mr. Chairman and please accept our warmest congratulations on your re-election as Chair of these important proceedings. It is a great honour for me to be here today representing the International Federation of Film Producers Associations and to make a contribution to the important issues under consideration.

Mister Chairman: film producers are practical people; we deal with the art of the possible and are constantly reminded of the difficulties of developing, financing and disseminating audio visual works in the context of changing technology and markets. In this regard, whilst we are entirely supportive of the important goal of securing access to copyright works by the visually-impaired communities, we are concerned that the process here at WIPO should be driven by what is practically achievable. Some Member States have usefully pointed out that an international instrument - whatever its nature - will not in and of itself - build capacity and guarantee access to a greater range of works on fair terms to the visually-impaired. In this respect, we would like to share a methodological concern: the best norms - be they national or international - are based on the painstaking gathering of evidence and best practice as observed in the real world. The Stakeholders Platform has proven a very effective tool in accelerating the cooperation between the copyright sectors and the visually-impaired community. The resulting work is generating useful methodological models within which printed works could be securely circulated to visually-impaired people in future without generating a disincentive for creators to create. We believe it would be wise for Member States to allow the stakeholders' process to be further advanced before deciding:

a) if an international norm is indeed necessary and;

b), if so, which type of international instrument would be best adapted to the all important social and humanitarian objective which we all agree with.

Our Federation, as ever, is entirely disposal of Member States, should they wish to receive evidence of actions developed by the audio visual industries worldwide to facilitate access to audiovisual works by the visually-impaired and other people with disabilities.

On the issue of audio visual performers' rights, my Federation notes with concern the new approach adopted by this committee of opening up fresh discussion on all aspects of the draft treaty, including those articles that were painstakingly pre-agreed in 2000. We are concerned that doing so will make the process more complex and more fraught with the potential for failure – we would prefer, therefore, if discussions would focus instead on the issue of the consolidation of the rights, over which encouraging progress had been achieved in recent months.

Finally, and very briefly, FIAPF continues to support the move towards a Treaty to protect broadcasters. We are encouraged by the clarity of many delegations about the need to limit those rights to those relating to broadcasting signal only, in order to ensure that rights in content itself remain under the control of content producers and other creative participants.

I thank you all for your attention.