

"ARTIST RIGHTS IN A EUROPEAN CULTURAL SPACE"

WORKSHOP SESSION
DURING THE 3RD SESSION OF THE EUROPEAN CULTURAL PARLIAMENT
GENOA, ITALY - DECEMBER 2004

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Context in Brief

In 2003, the 2nd Session of the European Cultural Parliament passed a Resolution which called for an independent examination of “outdated legal and economic frameworks which do not necessarily meet their original objectives to recognise and remunerate creative artists for their work”.

Intellectual property rights legislation has been one of the main tools public policy makers have used to define the economic relationship between creators (as authors), distributors, producers and receivers (the public) of an artistic work; the basic tenets of which are founded on the principle of individual exclusive (original) authorship. Results from a recent study¹, show that this relationship is becoming more complex as “artistic creativity in Europe is no longer exclusively a trait or talent of an individual artist, but as a collective stock of intangible assets that are accumulated, used and re-used, created and re-created by other artists, cultural producers and the creative public at large”. Herein lies a dilemma between a centuries old system and more recent trends in the culture industries such as:

- *Changing working practices of independent professional artists.* Studies show that artists are part of project teams which are comprised of visual artists, engineers, programmers etc., who are collectively producing or are associated with a final result². In this context, it is clearly very difficult to determine one “original” author. For example, most digital or multi-media works produced today are not the creation of one artist or author but are the product of many actors, sometimes even a “Gesamtkunstwerk”³.
- *Technological progress* has also provided unprecedented opportunities to create, copy and distribute artists works in an easier and less expensive means than ever before. Estimates showing billions of dollar losses to the global music industry with the introduction of Mp3 technology and peer-to-peer file sharing proves the potential for radical change in the economic relationship among the main actors making up the culture value chain (artists-producers-distributors-audience).
- On the other hand, multinational culture industry companies maintain their position as *legal rights holders and managers* of works which predominate in the global marketplace. In this context, intellectual property legislation is frequently seen as a tool to protect the interests of large scale players of the culture industries and their “stars”⁴. New business and contract models to help artists obtain revenues directly – without intermediaries such as publishers, distributors or copyright licensing bodies – from the distribution of their work are being implemented (e.g. “payback for playback”). Only recently, some of the collecting societies and their international organisations (e.g. CISAC) acknowledge and try to address this developing trend.
- Systems which empower *artists to manage their own rights* according to their own terms are currently emerging. They are based on the principle that authors/artists should define their own conditions for granting users the right to copy, distribute or transform their work. This could take many forms from “free-use”, “pay-per-use” or “rights-exchanges”.

¹ Danielle Cliche, Ritva Mitchell, Andreas Wiesand in co-operation with Ilkka Heiskanen and Luca Dal Pozzolo, *Creative Europe: On the Governance and Management of Artistic Creativity in Europe*. Arcult Media, Bonn, 2002.

² It has been suggested that new working practices of artists in, for example, project groups have been partly fuelled by the introduction and wide-spread use of new communication technologies as well as the new economics and practices within the Information Network Society.

³ Traces of which can be found in some of the present day copyright laws, but mainly to the benefit of producers, e.g. in the case of cinematographic works.

⁴ According to Bernhard Günter, MICA Austria, the space for experimentation and cultural innovation is disappearing in a field where 80% of the recording industry market share goes to only five multinational companies. He estimates that only 15-20% of the composers receive copyright royalties which make up more than half of their income (in a market which is fully controlled by collecting societies).

Such challenges are confronted with a persisting *incoherence in the present regimes of rights management and remuneration practices across different fields and countries*. Usually, this incoherence is attributed to the differences between the industry-friendly "copyright" system (e.g. in the USA) and the more elaborate "droit d'auteur" system in most European countries. However, even in the case of the latter, a supposedly iron-cast principle which give individual authors full ownership over his / her work and the financial benefits derived from its use, seems more like an antiquated dogma if confronted with the reality today. Looking at different sectors, we find disparities among the systems such as:

- Compulsory licensing via copyright collecting societies in the field of *music* with a share of revenues also being paid to music publishers many of which are associated with distributors;
- In the field of *film/television* contracts of producers/TV-stations include full control over the work and allocate fixed, "all inclusive" fees for creative staff;
- There is a mixed model in the *literature* field comprised of authors contracts with publishers plus agreements with collecting societies for parts of the rights which many generate additional revenues;
- There is no established model in the field of *media arts* (sometimes characterised as "relative anarchism"). Such works are often the result of collective authorship.

In addition, distribution models for some of the royalties, collected from e.g. public lending rights, also differ from country to country, ranging from individual fees per use to lump sums and "collective" models where the revenues are channelled into funding programmes administered by artists organizations or public agencies within the framework of cultural policy.

The Genoa Workshop

The purpose of this workshop is to begin mapping the main issues concerning intellectual property rights regimes within the context of the current practices and conditions of artists who are working with the new technologies either as a means of distribution or as a main tool for contemporary creation. It has been organised by ERICarts in partnership with the ALTERNE Project at the Wimbledon School of Arts and the European Cultural Parliament. The results will be presented in a report to be published in 2005. The recommendations presented in this report will form the basis of a proposal for a larger conceptual and empirical study to be designed in Spring 2005.

The workshop will be opened by a presentation and discussion of three different propositions in the context of artists rights, legislation and new technologies:

- a) efforts to preserving the existing system(s);
- b) a new "flexible model" of copyright giving artists and authors the possibility to determine the conditions upon which their works can be used/copied; and
- c) creating a world without copyright.

The second part of the workshop will engage the participants in a dynamic survey based on real life working practices of artists/project groups and the experiences they have in trying to either deal with the current copyright regime or in trying to implement alternative models - whether their projects are aimed at commercial and/or non-commercial exploitation. The projects deal with the interface not only of different artistic forms (text, sounds, visual images) but of different copyright and legal instruments attached to them. Main questions could be:

- a) What are the main difficulties you have encountered vis-à-vis the existing copyright system in the course of creating or distributing your work?

- b) How do you negotiate between the different forms of copyright protection over text, sounds, visual images etc.
- c) Are new models (e.g. open source, pay per use etc) emerging which better meet the needs of your work?
- d) Are there specific software and/or technological solutions which are available to help you implement these alternative models?
- e) What do you know about the user behaviour or response to new and emerging models of rights management?

The hoped result of the workshop is to begin to document the breadth and depth of the challenges facing the different projects regarding copyright and/or distribution rights; to gain insight into the intricate nature of the problems, but also provide a forum to “learn from each other“. A copyright specialist will be invited to attend the workshop as a resource person. He/she could offer potential solutions to the challenges presented during the workshop.

Artists Rights in a European Cultural Space

Workshop Programme

Palazzo Ducale
2nd floor, Room “Società di Letture e Conversazioni Scientifiche”
Piazza Matteotti 9
Genova, Italy

This workshop has been organised by the European Institute for Comparative Cultural Research (ERICarts) in partnership with the European Cultural Parliament and the Wimbledon School of Arts (London) and is supported by the Riksbankens Jubileumsfond (Stockholm).

Suzanne Capiou, Lawyer and Director of the European Institute for Copyright will participate as the workshop's legal resource person

Organisers/Workshop Chairs: Andreas Wiesand and Danielle Cliche (ERICarts)

Friday 3rd December 2004
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17h10: **Workshop Presentation in Plenary Session of the ECP**

- *Andreas Wiesand*, Executive Director, ERICarts

18h30: Reception, City Hall

Saturday 4th December 2004
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10h00 **“Models, Laws and Alternatives”**

- *Suzanne Capiou* “Latest Debates and Discussion in EU and WIPO”
- *Roland Honekamp*, “Customising Copyright: CC Licensing”
- *Marieke van Schijndel*, “Imagining a World Without Copyright: the USUFRUCT Model”

Discussion, Questions and Audience Participation

13h00 Lunch together with European Cultural Parliament

- 14h30 **“Case Studies and Comments”**
- *Woody Vasulka*, “Public Domain as a Market for Electronic Art”
 - *Mathias Fuchs*, “Managing Rights in Multi-Platform, Mixed Reality Projects”
 - *Marcell Mars*, “EGOBOO.bits Project: From the GNU-GPL to CC License”
 - *Don Foresta*, “MARCEL as an Expression of the Creative Commons”
 - *Egle Rakauskaite*, Video Artist, Lithuania⁵
- 16h15 Coffee Break
- 18h00 Reception followed by visit at the Villa Pallavicino

Sunday 5th December 2004
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- 09h00 **Unanswered Questions and Planning a European Transnational Dialogue
2005-2006**
- 12h30 Presentation of Main Conclusion and Recommendations in ECP Plenary
- 13h30 Lunch

⁵ **Saturday 4th December 09h00, viewing of video by Eglė Rakauskaitė “My America. 2003”.**
After having travelled to the Mecca of most new emigrants, America, Egle Rakauskaite examines issues most popular among the emigrants: the care of seriously ill, handicapped people, and records this on video tape. The artist questions the myth of dreams, infinite possibilities, the country of ultimate Western welfare by revealing the suppressed, unadvertised aspects of its economical and social structure.