LEGAL DEVELOPMENTS

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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THE RIGHT OF EVERYONE TO BENEFIT FROM THE PROTECTION OF THE MORAL AND MATERIAL INTERESTS RESULTING FROM ANY SCIENTIFIC, LITERARY OR ARTISTIC PRODUCTION OF WHICH HE OR SHE IS THE AUTHOR (ARTICLE 15, PARAGRAPH 1 (C), OF THE COVENANT)

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I. INTRODUCTION AND BASIC PREMISES

1. The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author is a human right, which derives from the inherent dignity and worth of all persons. This fact distinguishes article 15, paragraph 1 (c), and other human rights from most legal entitlements recognized in intellectual property systems. Human rights are fundamental, inalienable and universal entitlements belonging to individuals and, under certain circumstances, groups of individuals and communities. Human rights are fundamental as they are inherent to the human person as such, whereas intellectual property rights are first and foremost means by which States seek to provide incentives for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary and artistic productions for the benefit of society as a whole.

2. In contrast to human rights, intellectual property rights are generally of a temporary nature, and can be revoked, licensed or assigned to someone else. While under most intellectual property systems, intellectual property rights, often with the exception of moral rights, may be allocated, limited in time and scope, traded, amended and even forfeited, human rights are timeless expressions of fundamental entitlements of the human person. Whereas the human right to benefit from the protection of the moral and material interests resulting from one’s scientific, literary and artistic productions safeguards the personal link between authors and their creations and between peoples, communities, or other groups and their collective cultural heritage, as well as their basic material interests which are necessary to enable authors to enjoy an adequate standard of living, intellectual property regimes primarily protect business and corporate interests and investments. Moreover, the scope of protection of the moral and material interests of the author provided for by article 15, paragraph 1 (c), does not necessarily coincide with what is referred to as intellectual property rights under national legislation or international agreements.[1]

3. It is therefore important not to equate intellectual property rights with the human right recognized in article 15, paragraph 1 (c). The human right to benefit from the protection of the moral and material interests of the author is recognized in a number of international instruments. In identical language, article 27, paragraph 2, of the Universal Declaration of Human Rights provides: “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” Similarly, this right is recognized in regional human rights instruments, such as article 13,

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[1]Relevant international instruments include, inter alia, the Paris Convention for the Protection of Industrial Property, as last revised in 1967; the Berne Convention for the Protection of Literary and Artistic Works, as last revised in 1979; the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention); the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty (which, inter alia, provides international protection for performers of “expressions of folklore”), the Convention on Biological Diversity; the Universal Copyright Convention, as last revised in 1971; and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement) of WTO.

paragraph 2, of the American Declaration of the Rights and Duties of Man of 1948, article 14, paragraph 1 (c), of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (“Protocol of San Salvador”) and, albeit not explicitly, in article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1952 (European Convention on Human Rights).

4. The right to benefit from the protection of the moral and material interests resulting from one’s scientific, literary and artistic productions seeks to encourage the active contribution of creators to the arts and sciences and to the progress of society as a whole. As such, it is intrinsically linked to the other rights recognized in article 15 of the Covenant, i.e. the right to take part in cultural life (art. 15, para. 1 (a)), the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)), and the freedom indispensable for scientific research and creative activity (art. 15, para. 3). The relationship between these rights and article 15, paragraph 1 (c), is at the same time mutually reinforcing and reciprocally limitative. The limitations imposed on the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions by virtue of these rights will partly be explored in this general comment, partly in separate general comments on article 15, paragraphs 1 (a) and (b) and 3, of the Covenant. As a material safeguard for the freedom of scientific research and creative activity, guaranteed under article 15, paragraph 3 and article 15, paragraph 1 (c), also has an economic dimension and is, therefore, closely linked to the rights to the opportunity to gain one’s living by work which one freely chooses (art. 6, para. 1) and to adequate remuneration (art. 7 (a)), and to the human right to an adequate standard of living (art. 11, para. 1). Moreover, the realization of article 15, paragraph 1 (c), is dependent on the enjoyment of other human rights guaranteed in the International Bill of Human Rights and other international and regional instruments, such as the right to own property alone as well as in association with others,[2] the freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds,[3] the right to the full development of the human personality,[4] and rights of cultural participation,[5] including cultural rights of specific groups.[6]

5. With a view to assisting States parties’ implementation of the Covenant and fulfilment of their reporting obligations, this general comment focuses on the normative content of

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[2] See article 17 of the Universal Declaration of Human Rights; article 5 (d) (v) of the International Convention on the Elimination of All Forms of Racial Discrimination; article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); article 21 of the American Convention on Human Rights; and article 4 of the African Charter on Human and Peoples’ Rights (Banjul Charter).

[3] See article 19 of the Universal Declaration of Human Rights; article 19, paragraph 2, of the International Covenant on Civil and Political Rights; article 5 of the European Convention on Human Rights; article 13 of the American Declaration on Human Rights and article 9 of the African Charter on Human and People’s Rights.

[4] See article 26, paragraph 2, of the Universal Declaration of Human Rights. See also article 13, paragraph 1, of the Covenant.

[5] See article 5 (e) (vi) of the Convention on the Elimination of All Forms of Racial Discrimination; article 14 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and article 17, paragraph 2, of the African Charter on Human and Peoples’ Rights.

[6] See article 27 of the International Covenant on Civil and Political Rights; article 13 (c) of the Convention on the Elimination of all Forms of Discrimination against Women; article 31 of the Convention on the Rights of the Child and article 31 of the International Convention on the Rights of All Migrant Workers and Members of their Families.

article 15, paragraph 1 (c) (Part I), States parties' obligations (Part II), violations (Part III) and implementation at the national level (Part IV), while the obligations of actors other than States parties are addressed in Part V.

II. NORMATIVE CONTENT OF ARTICLE 15, PARAGRAPH 1 (C)

6. Article 15, paragraph 1, enumerates, in three paragraphs, three rights covering different aspects of cultural participation, including the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (art. 15, para. 1 (c)), without explicitly defining the content and scope of this right. Therefore, each of the elements of article 15, paragraph 1 (c), requires interpretation.

Elements of article 15, paragraph 1 (c)

"Author"

7. The Committee considers that only the "author", namely the creator, whether man or woman, individual or group of individuals,[7] of scientific, literary or artistic productions, such as, inter alia, writers and artists, can be the beneficiary of the protection of article 15, paragraph 1 (c). This follows from the words "everyone", "he" and "author", which indicate that the drafters of that article seemed to have believed authors of scientific, literary or artistic productions to be natural persons,[8] without at that time realizing that they could also be groups of individuals. Under the existing international treaty protection regimes, legal entities are included among the holders of intellectual property rights. However, as noted above, their entitlements, because of their different nature, are not protected at the level of human rights.[9]

8. Although the wording of article 15, paragraph 1 (c), generally refers to the individual creator ("everyone", "he", "author"), the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary or artistic productions can, under certain circumstances, also be enjoyed by groups of individuals or by communities.[10]

"Any scientific, literary or artistic production"

9. The Committee considers that "any scientific, literary or artistic production", within the meaning of article 15, paragraph 1 (c), refers to creations of the human mind, that is to "scientific productions", such as scientific publications and innovations, including knowledge, innovations and practices of indigenous and local communities, and "literary and artistic productions", such as, inter alia, poems, novels, paintings, sculptures, musical compositions, theatrical and cinematographic works, performances and oral traditions.

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7 See also paragraph 32 below.

8 See Maria Green, International Anti-Poverty Law Centre, "Drafting history of article 15 (1) (c) of the International Covenant on Economic, Social and Cultural Rights", E/C.12/2000/15, paragraph 45.

9 Committee on Economic, Social and Cultural Rights, twenty-seventh session (2001), "Human Rights and Intellectual Property", Statement by the Committee on Economic, Social and Cultural Rights, 29 November 2001, E/C.12/2001/15, at paragraph 6.

10 See also paragraph 32 below.

“Benefit from the protection”

10. The Committee considers that article 15, paragraph 1 (c), recognizes the right of authors to benefit from some kind of protection of the moral and material interests resulting from their scientific, literary or artistic productions, without specifying the modalities of such protection. In order not to render this provision devoid of any meaning, the protection afforded needs to be effective in securing for authors the moral and material interests resulting from their productions. However, the protection under article 15, paragraph 1 (c), need not necessarily reflect the level and means of protection found in present copyright, patent and other intellectual property regimes, as long as the protection available is suited to secure for authors the moral and material interests resulting from their productions, as defined in paragraphs 12 to 16 below.

11. The Committee observes that, by recognizing the right of everyone to “benefit from the protection” of the moral and material interests resulting from one’s scientific, literary or artistic productions, article 15, paragraph 1 (c), by no means prevents States parties from adopting higher protection standards in international treaties on the protection of the moral and material interests of authors or in their domestic laws,[11] provided that these standards do not unjustifiably limit the enjoyment by others of their rights under the Covenant.[12]

“Moral interests”

12. The protection of the “moral interests” of authors was one of the main concerns of the drafters of article 27, paragraph 2, of the Universal Declaration of Human Rights: “Authors of all artistic, literary, scientific works and inventors shall retain, in addition to just remuneration of their labour, a moral right on their work and/or discovery which shall not disappear, even after such a work shall have become the common property of mankind.”[13] Their intention was to proclaim the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations.

13. In line with the drafting history of article 27, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1 (c), of the Covenant, the Committee considers that “moral interests” in article 15, paragraph 1 (c), include the right of authors to be recognized as the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such productions, which would be prejudicial to their honour and reputation.[14]

14. The Committee stresses the importance of recognizing the value of scientific, literary and artistic productions as expressions of the personality of their creator, and notes that protection of moral interests can be found, although to a varying extent, in most States, regardless of the legal system in force.

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[11] See article 5, paragraph 2 of the Covenant.
[12] See below, at paragraphs 22, 23 and 35. See also articles 4 and 5 of the Covenant.
[13] Commission on Human Rights, second session, Report of the Working Group on the Declaration on Human Rights, E/CN.4/57, 10 December 1947, page 15.
[14] See article 6 bis of the Berne Convention for the Protection of Literary and Artistic Works.

"Material interests"

15. The protection of "material interests" of authors in article 15, paragraph 1 (c), reflects the close linkage of this provision with the right to own property, as recognized in article 17 of the Universal Declaration of Human Rights and in regional human rights instruments, as well as with the right of any worker to adequate remuneration (art. 7 (a)). Unlike other human rights, the material interests of authors are not directly linked to the personality of the creator, but contribute to the enjoyment of the right to an adequate standard of living (art. 11, para. 1).

16. The term of protection of material interests under article 15, paragraph 1 (c), need not extend over the entire lifespan of an author. Rather, the purpose of enabling authors to enjoy an adequate standard of living can also be achieved through one-time payments or by vesting an author, for a limited period of time, with the exclusive right to exploit his scientific, literary or artistic production.

"Resulting"

17. The word "resulting" stresses that authors only benefit from the protection of such moral and material interests which are directly generated by their scientific, literary or artistic productions.

Conditions for States parties' compliance with article 15, paragraph 1 (c)

18. The right to the protection of the moral and material interests of authors contains the following essential and interrelated elements, the precise application of which will depend on the economic, social and cultural conditions prevailing in a particular State party:

(a) *Availability*. Adequate legislation and regulations, as well as effective administrative, judicial or other appropriate remedies, for the protection of the moral and material interests of authors must be available within the jurisdiction of the States parties;

(b) *Accessibility*. Administrative, judicial or other appropriate remedies for the protection of the moral and material interests resulting from scientific, literary or artistic productions must be accessible to all authors. Accessibility has four overlapping dimensions:

(i) Physical accessibility: national courts and agencies responsible for the protection of the moral and material interests resulting from the scientific, literary or artistic productions of authors must be at the disposal of all segments of society, including authors with disabilities;

(ii) Economic accessibility (affordability): access to such remedies must be affordable for all, including disadvantaged and marginalized groups. For example, where a State party decides to meet the requirements of article 15, paragraph 1 (c), through traditional forms of intellectual property protection, related administrative and legal costs must be based on the principle of equity, ensuring that these remedies are affordable for all;

(iii) Accessibility of information: accessibility includes the right to seek, receive and impart information on the structure and functioning of the

legal or policy regime to protect the moral and material interests of authors resulting from their scientific, literary and artistic productions, including information on relevant legislation and procedures. Such information should be understandable to everyone and should be published also in the languages of linguistic minorities and indigenous peoples;

(c) *Quality of protection*. Procedures for the protection of the moral and material interests of authors should be administered competently and expeditiously by judges and other relevant authorities.

Special topics of broad application

Non-discrimination and equal treatment

19. Article 2, paragraph 2, and article 3 of the Covenant prohibit any discrimination in the access to an effective protection of the moral and material interests of authors, including administrative, judicial and other remedies, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right as recognized in article 15, paragraph 1 (c).[15]

20. The Committee stresses that the elimination of discrimination to ensure equal access to an effective protection of the moral and material interests of authors can often be achieved with limited resources through the adoption or amendment or abrogation of legislation or through the dissemination of information. The Committee recalls general comment No. 3 (1990) on the nature of States parties' obligations, paragraph 12, which states that even in times of severe resource constraints, the disadvantaged and marginalized individuals and groups of society must be protected by the adoption of relatively low-cost targeted programmes.

21. The adoption of temporary special measures taken for the sole purpose of securing de facto equality for disadvantaged or marginalized individuals or groups, as well as those subjected to discrimination is not a violation of the right to benefit from the protection of the moral and material interests of the author, provided that such measures do not perpetuate unequal or separate protection standards for different individuals or groups and are discontinued once the objectives for which they were adopted are achieved.

[15] This prohibition, to some extent, duplicates the national treatment provisions contained in international conventions for the protection of intellectual property, the main difference being that articles 2, paragraph 2 and 3 of the Covenant apply not only to foreigners but also to a State party's own nationals (see articles 6 to 15 of the Covenant: "everyone"). See also Committee on Economic, Social and Cultural Rights, thirty-fourth session, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, 13 May 2005.

Limitations

22. The right to the protection of the moral and material interests resulting from one's scientific, literary and artistic productions is subject to limitations and must be balanced with the other rights recognized in the Covenant.[16] However, limitations on the rights protected under article 15, paragraph 1 (c), must be determined by law in a manner compatible with the nature of these rights, must pursue a legitimate aim, and must be strictly necessary for the promotion of the general welfare in a democratic society, in accordance with article 4 of the Covenant.

23. Limitations must therefore be proportionate, meaning that the least restrictive measures must be adopted when several types of limitations may be imposed. Limitations must be compatible with the very nature of the rights protected in article 15, paragraph 1 (c), which lies in the protection of the personal link between the author and his/her creation and of the means which are necessary to enable authors to enjoy an adequate standard of living.

24. The imposition of limitations may, under certain circumstances, require compensatory measures, such as payment of adequate compensation[17] for the use of scientific, literary or artistic productions in the public interest.

III. STATES PARTIES' OBLIGATIONS

General legal obligations

25. While the Covenant provides for progressive realization and acknowledges constraints based on limits of available resources (art. 2, para. 1), it also imposes on States parties various obligations that are of an immediate effect, including core obligations. Steps taken to fulfil obligations must be deliberate, concrete and targeted towards the full realization of the right of everyone to benefit from the protection of the moral and material benefits resulting from any scientific, literary or artistic production of which he or she is the author.[18]

26. The progressive realization of that right over a period of time means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 15, paragraph 1 (c).[19]

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[16] See paragraph 35 below. The need to strike an adequate balance between article 15, paragraph 1 (c), and other rights under the Covenant applies, in particular, to the rights to take part in cultural life (art. 15, para. 1 (a)) and to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)), as well as the rights to food (art. 11), health (art. 12) and education (art. 13).

[17] See article 17, paragraph 2, of the Universal Declaration of Human Rights; article 21, paragraph 2, of the American Convention on Human Rights and article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

[18] See general comment No. 3 (1990), at paragraph 9; general comment No. 13 (1999) on the right to education, at paragraph 43 and general comment No. 14 (2000) on the right to the highest attainable standard of health, at paragraph 30. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Limburg Principles), at paragraphs 16 and 22, Maastricht, 2-6 June 1986.

[19] See general comment No. 3 (1990), paragraph 9; general comment No. 13 (1999), paragraph 44; general comment No. 14 (2000), paragraph 31. See also Limburg Principles, paragraph 21.

27. As in the case of all other rights contained in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to the protection of the moral and material interests of authors are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after careful consideration of all alternatives and that they are duly justified in the light of the totality of the rights recognized in the Covenant.[20]

28. The right of everyone to benefit from the protection of the moral and material benefits resulting from any scientific, literary or artistic production of which he or she is the author, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil*. The obligation to *respect* requires States parties to refrain from interfering directly or indirectly with the enjoyment of the right to benefit from the protection of the moral and material interests of the author. The obligation to *protect* requires States parties to take measures that prevent third parties from interfering with the moral and material interests of authors. Finally, the obligation to *fulfil* requires States parties to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of article 15, paragraph 1 (c).[21]

29. The full realization of article 15, paragraph 1 (c), requires measures necessary for the conservation, development and diffusion of science and culture. This follows from article 15, paragraph 2, of the Covenant, which defines obligations that apply to each aspect of the rights recognized in article 15, paragraph 1, including the right of authors to benefit from the protection of their moral and material interests.

Specific legal obligations

30. States parties are under an obligation to *respect* the human right to benefit from the protection of the moral and material interests of authors by, inter alia, abstaining from infringing the right of authors to be recognized as the creators of their scientific, literary or artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be prejudicial to their honour or reputation. States parties must abstain from unjustifiably interfering with the material interests of authors, which are necessary to enable those authors to enjoy an adequate standard of living.

31. Obligations to *protect* include the duty of States parties to ensure the effective protection of the moral and material interests of authors against infringement by third parties. In particular, States parties must prevent third parties from infringing the right of authors to claim authorship of their scientific, literary or artistic productions, and from distorting, mutilating or otherwise modifying, or taking any derogatory action in relation to such productions in a manner that would be prejudicial to the author's honour or reputation. Similarly, States parties are obliged to prevent third parties from infringing the material interests of authors resulting from their productions. To that effect, States parties must prevent the unauthorized use of scientific, literary and artistic productions that are easily

[20] See general comment No. 3 (1990), at paragraph 9; general comment No. 13 (1999), at paragraph 45 and general comment No. 14 (2000), at paragraph 32.

[21] See general comment No. 13 (1999), at paragraphs 46 and 47, and general comment No. 14 (2000), at paragraph 33. See also Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht Guidelines), paragraph 6, Maastricht, 22-26 January 1997.

accessible or reproducible through modern communication and reproduction technologies, e.g. by establishing systems of collective administration of authors' rights or by adopting legislation requiring users to inform authors of any use made of their productions and to remunerate them adequately. States parties must ensure that third parties adequately compensate authors for any unreasonable prejudice suffered as a consequence of the unauthorized use of their productions.

32. With regard to the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of indigenous peoples, States parties should adopt measures to ensure the effective protection of the interests of indigenous peoples relating to their productions, which are often expressions of their cultural heritage and traditional knowledge. In adopting measures to protect scientific, literary and artistic productions of indigenous peoples, States parties should take into account their preferences. Such protection might include the adoption of measures to recognize, register and protect the individual or collective authorship of indigenous peoples under national intellectual property rights regimes and should prevent the unauthorized use of scientific, literary and artistic productions of indigenous peoples by third parties. In implementing these protection measures, States parties should respect the principle of free, prior and informed consent of the indigenous authors concerned and the oral or other customary forms of transmission of scientific, literary or artistic production; where appropriate, they should provide for the collective administration by indigenous peoples of the benefits derived from their productions.

33. States parties in which ethnic, religious or linguistic minorities exist are under an obligation to protect the moral and material interests of authors belonging to these minorities through special measures to preserve the distinctive character of minority cultures.[22]

34. The obligation to *fulfil* (provide) requires States parties to provide administrative, judicial or other appropriate remedies in order to enable authors to claim the moral and material interests resulting from their scientific, literary or artistic productions and to seek and obtain effective redress in cases of violation of these interests.[23] States parties are also required to *fulfil* (facilitate) the right in article 15, paragraph 1 (c), e.g. by taking financial and other positive measures which facilitate the formation of professional and other associations representing the moral and material interests of authors, including disadvantaged and marginalized authors, in line with article 8, paragraph 1 (a), of the Covenant.[24] The obligation to *fulfil* (promote) requires States parties to ensure the right of authors of scientific, literary and artistic productions to take part in the conduct of public affairs and in any significant decision-making processes that have an impact on their rights and legitimate interests, and to

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[22] See article 15, paragraph 1 (c), of the Covenant, read in conjunction with article 27 of the International Covenant on Civil and Political Rights. See also UNESCO, General Conference, nineteenth session, Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It, adopted on 26 November 1976, at paragraph I (2) (f).

[23] See Committee on Economic, Social and Cultural Rights, nineteenth session, general comment No. 9 (1998) on the domestic application of the Covenant, at paragraph 9. See also article 8 of the Universal Declaration of Human Rights and article 2, paragraph 3, of the International Covenant on Civil and Political Rights.

[24] See also article 22, paragraph 1, of the International Covenant on Civil and Political Rights.

consult these individuals or groups or their elected representatives prior to the adoption of any significant decisions affecting their rights under article 15, paragraph 1 (c).[25]

Related obligations

35. The right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions cannot be isolated from the other rights recognized in the Covenant. States parties are therefore obliged to strike an adequate balance between their obligations under article 15, paragraph 1 (c), on one hand, and under the other provisions of the Covenant, on the other hand, with a view to promoting and protecting the full range of rights guaranteed in the Covenant. In striking this balance, the private interests of authors should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due consideration.[26] States parties should therefore ensure that their legal or other regimes for the protection of the moral and material interests resulting from one's scientific, literary or artistic productions constitute no impediment to their ability to comply with their core obligations in relation to the rights to food, health and education, as well as to take part in cultural life and to enjoy the benefits of scientific progress and its applications, or any other right enshrined in the Covenant.[27] Ultimately, intellectual property is a social product and has a social function.[28] States parties thus have a duty to prevent unreasonably high costs for access to essential medicines, plant seeds or other means of food production, or for schoolbooks and learning materials, from undermining the rights of large segments of the population to health, food and education. Moreover, States parties should prevent the use of scientific and technical progress for purposes contrary to human rights and dignity, including the rights to life, health and privacy, e.g. by excluding inventions from patentability whenever their commercialization would jeopardize the full realization of these rights.[29] States parties should, in particular, consider to what extent the patenting of the human body and its parts would affect their obligations under the Covenant or under other relevant international human rights instruments.[30] States parties should also consider undertaking human rights impact assessments prior to the adoption and after a period of implementation of legislation for the protection of the moral and material interests resulting from one's scientific, literary or artistic productions.

International obligations

36. In its general comment No. 3 (1990), the Committee drew attention to the obligation of all States parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant. In the spirit of Article 56 of the Charter of the United Nations, as well as the specific provisions of the Covenant (arts. 2, para. 1, 15, para. 44 and 23), States parties should recognize the essential role of international cooperation for the achievement of

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[25] See Committee on Economic, Social and Cultural Rights, twenty-seventh session (2001), "Human Rights and Intellectual Property", Statement by the Committee on Economic, Social and Cultural Rights, 29 November 2001, E/C.12/2001/15, at paragraph 9.
[26] Ibid., at paragraph 17.
[27] Ibid., at paragraph 12.
[28] Ibid., at paragraph 4.
[29] Cf. article 27, paragraph 2, of the WTO TRIPS Agreement.
[30] See article 4 of the UNESCO Universal Declaration on the Human Genome and Human Rights, although this instrument is not as such legally binding.

the rights recognized in the Covenant, including the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions, and should comply with their commitment to take joint and separate action to that effect. International cultural and scientific cooperation should be carried out in the common interest of all peoples.

37. The Committee recalls that, in accordance with Articles 55 and 56 of the Charter of the United Nations, well-established principles of international law, and the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States parties and, in particular, of States which are in a position to assist.[31]

38. Bearing in mind the different levels of development of States parties, it is essential that any system for the protection of the moral and material interests resulting from one's scientific, literary and artistic productions facilitates and promotes development cooperation, technology transfer, and scientific and cultural cooperation,[32] while at the same time taking due account of the need to preserve biological diversity.[33]

Core obligations

39. In general comment No. 3 (1990), the Committee confirmed that States parties have a core obligation to ensure the satisfaction of minimum essential levels of each of the rights enunciated in the Covenant. In conformity with other human rights instruments, as well as international agreements on the protection of the moral and material interests resulting from one's scientific, literary or artistic productions, the Committee considers that article 15, paragraph 1 (c), of the Covenant entails at least the following core obligations, which are of immediate effect:

(a) To take legislative and other necessary steps to ensure the effective protection of the moral and material interests of authors;

(b) To protect the rights of authors to be recognized as the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be prejudicial to their honour or reputation;

(c) To respect and protect the basic material interests of authors resulting from their scientific, literary or artistic productions, which are necessary to enable those authors to enjoy an adequate standard of living;

(d) To ensure equal access, particularly for authors belonging to disadvantaged and marginalized groups, to administrative, judicial or other appropriate remedies enabling

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31 Committee on Economic, Social and Cultural Rights, fifth session, general comment No. 3 (1990), at paragraph 14.

32 Committee on Economic, Social and Cultural Rights, twenty-seventh session, Human Rights and Intellectual Property, Statement by the Committee on Economic, Social and Cultural Rights, 29 November 2001, E/C.12/2001/15, at paragraph 15.

33 See article 8 (j) of the Convention on Biological Diversity. See also Sub-Commission on the Promotion and Protection of Human Rights, 26th meeting, Resolution 2001/21, E/CN.4/Sub.2/Res/2001/21.

authors to seek and obtain redress in case their moral and material interests have been infringed;

(e) To strike an adequate balance between the effective protection of the moral and material interests of authors and States parties' obligations in relation to the rights to food, health and education, as well as the rights to take part in cultural life and to enjoy the benefits of scientific progress and its applications, or any other right recognized in the Covenant.

40. The Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide "international assistance and cooperation, especially economic and technical", which enable developing countries to fulfil their obligations indicated in paragraph 36 above.

IV. Violations

41. In determining which actions or omissions by States parties amount to a violation of the right to the protection of the moral and material interests of authors, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations under article 15, paragraph 1 (c). This follows from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions is in violation of its obligations under article 15, paragraph 1 (c). If resource constraints render it impossible for a State to comply fully with its obligations under the Covenant, it has the burden of justifying that every effort has been made to use all available resources at its disposal to satisfy, as a matter of priority, the core obligations outlined above.

42. Violations of the right to benefit from the protection of the moral and material interests of authors can occur through the direct action of States parties or of other entities insufficiently regulated by States parties. The adoption of any retrogressive measures incompatible with the core obligations under article 15, paragraph 1 (c), outlined in paragraph 39 above, constitutes a violation of that right. Violations through acts of commission include the formal repeal or unjustifiable suspension of legislation protecting the moral and material interests resulting from one's scientific, literary and artistic productions.

43. Violations of article 15, paragraph 1 (c), can also occur through the omission or failure of States parties to take necessary measures to comply with its legal obligations under that provision. Violations through omission include the failure to take appropriate steps towards the full realization of the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary or artistic productions and the failure to enforce relevant laws or to provide administrative, judicial or other appropriate remedies enabling authors to assert their rights under article 15, paragraph 1 (c).

Violations of the obligation to respect

44. Violations of the obligation to *respect* include State actions, policies or laws which have the effect of infringing the right of authors to be recognized as the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be

prejudicial to their honour or reputation; unjustifiably interfering with the material interests of authors, which are necessary to enable those authors to enjoy an adequate standard of living; denying authors access to administrative, judicial or other appropriate remedies to seek redress in case their moral and material interests have been violated; and discriminating against individual authors in relation to the protection of their moral and material interests.

Violations of the obligation to protect

45. Violations of the obligation to *protect* follow from the failure of a State to take all necessary measures to safeguard authors within their jurisdiction from infringements of their moral and material interests by third parties. This category includes such omissions as the failure to enact and/or enforce legislation prohibiting any use of scientific, literary or artistic productions that is incompatible with the right of authors to be recognized as the creator of their productions or that distorts, mutilates or otherwise modifies, or is derogatory towards, such productions in a manner that would be prejudicial to their honour or reputation or that unjustifiably interferes with those material interests that are necessary to enable authors to enjoy an adequate standard of living; and the failure to ensure that third parties adequately compensate authors, including indigenous authors, for any unreasonable prejudice suffered as a consequence of the unauthorized use of their scientific, literary and artistic productions.

Violations of the obligation to fulfil

46. Violations of the obligation to *fulfil* occur when States parties fail to take all necessary steps within their available resources to promote the realization of the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary or artistic productions. Examples include the failure to provide administrative, judicial or other appropriate remedies enabling authors, especially those belonging to disadvantaged and marginalized groups, to seek and obtain redress in case their moral and material interests have been infringed, or the failure to provide adequate opportunities for the active and informed participation of authors and groups of authors in any decision-making process that has an impact on their right to benefit from the protection of the moral and material interests resulting from their scientific, literary or artistic productions.

V. IMPLEMENTATION AT THE NATIONAL LEVEL

National legislation

47. The most appropriate measures to implement the right to the protection of the moral and material interests of the author will vary significantly from one State to another. Every State has a considerable margin of discretion in assessing which measures are most suitable to meet its specific needs and circumstances. The Covenant, however, clearly imposes a duty on each State to take whatever steps are necessary to ensure that everyone has equal access to effective mechanisms for the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.

48. National laws and regulations for the protection of the moral and material interests of the author should be based on the principles of accountability, transparency and independence of the judiciary, since these principles are essential to the effective implementation of all human rights, including article 15, paragraph 1 (c). In order to create a favourable climate for the realization of that right, States parties should take appropriate steps to ensure that the

private business sector and civil society are aware of, and consider the effects on the enjoyment of other human rights of the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions. In monitoring progress towards the realization of article 15, paragraph 1 (c), States parties should identify the factors and difficulties affecting implementation of their obligations.

Indicators and benchmarks

49. States parties should identify appropriate indicators and benchmarks designed to monitor, at the national and international levels, States parties' obligations under article 15, paragraph 1 (c). States parties may obtain guidance on appropriate indicators, which should address different aspects of the right to the protection of the moral and material interests of the author, from the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other specialized agencies and programmes within the United Nations system that are concerned with the protection of scientific, literary and artistic productions. Such indicators must be disaggregated on the basis of the prohibited grounds of discrimination, and cover a specified time frame.

50. Having identified appropriate indicators in relation to article 15, paragraph 1 (c), States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure, the Committee will engage in a process of scoping with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks, which will then provide the targets to be achieved by the State party during the next reporting cycle. During that period, the State party will use these national benchmarks to monitor its implementation of article 15, paragraph 1 (c). Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and any difficulties that may have been encountered.

Remedies and accountability

51. The human right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author should be adjudicated by competent judicial and administrative bodies. Indeed, effective protection of the moral and material interests of authors resulting from their scientific, literary and artistic productions would be hardly conceivable without the possibility of availing oneself of administrative, judicial or other appropriate remedies.[34]

52. All authors who are victims of a violation of the protected moral and material interests resulting from their scientific, literary or artistic productions should, consequently, have access to effective administrative, judicial or other appropriate remedies at the national level. Such remedies should not be unreasonably complicated or costly, or entail unreasonable time

[34] Cf. Universal Declaration of Human Rights, article 8; general comment No. 9 (1998), at paragraphs 3 and 9; Limburg Principles, at paragraph 19; Maastricht Guidelines, at paragraph 22.

limits or unwarranted delays.[35] Parties to legal proceedings should have the right to have these proceedings reviewed by a judicial or other competent authority.[36]

53. All victims of violations of the rights protected under article 15, paragraph 1 (c), should be entitled to adequate compensation or satisfaction.

54. National ombudsmen, human rights commissions, where they exist, and professional associations of authors or similar institutions should address violations of article 15, paragraph 1 (c).

VI. Obligations of Actors Other than States Parties

55. While only States parties to the Covenant are held accountable for compliance with its provisions, they are nevertheless urged to consider regulating the responsibility resting on the private business sector, private research institutions and other non-State actors to respect the rights recognized in article 15, paragraph 1 (c), of the Covenant.

56. The Committee notes that, as members of international organizations such as WIPO, UNESCO, the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), and the World Trade Organization (WTO), States parties have an obligation to take whatever measures they can to ensure that the policies and decisions of those organizations are in conformity with their obligations under the Covenant, in particular the obligations contained in articles 2, paragraph 1, 15, paragraph 4, 22 and 23 concerning international assistance and cooperation.[37]

57. United Nations organs, as well as specialized agencies, should, within their fields of competence and in accordance with articles 22 and 23 of the Covenant, take international measures likely to contribute to the effective implementation of article 15, paragraph 1 (c). In particular, WIPO, UNESCO, FAO, WHO and other relevant agencies, organs and mechanisms of the United Nations are called upon to intensify their efforts to take into account human rights principles and obligations in their work concerning the protection of the moral and material benefits resulting from one's scientific, literary and artistic productions, in cooperation with the Office of the High Commissioner for Human Rights.

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[35] See general comment No. 9 (1998), at paragraph 9 (with regard to administrative remedies). See further article 14 (1) of the International Covenant on Civil and Political Rights.

[36] See general comment No. 9, at paragraph 9.

[37] Cf. Committee on Economic, Social and Cultural Rights, eighteenth session, Globalization and Economic, Social and Cultural Rights, Statement by the Committee on Economic, Social and Cultural Rights, 11 May 1998, at paragraph 5.

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LEGAL DEVELOPMENTS

THE WCT AND THE KAZAKHSTAN COPYRIGHT LAW: PUTTING THE CART IN FRONT OF THE HORSE?

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I. Introduction

The famous contemporary Kazakh poet Mukhtar Shakhanov construed the "Formula of a Modern Man-Like Person" as follows: "And nowadays a know-all young generation, especially the one that lacks high spiritual and moral ideals, with its mercantile talent, is becoming frighteningly unprincipled, cynically smart, purposefully adroit, as if it has a computer with a shining display-eye instead of the head on its shoulders" (from "Delusions of Civilisation"). This is a fear, which threatens to materialise in the age of information technologies, and copyright law is one of the primary areas where this threat is imminent.

Therefore, "recognising the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works",[1] Kazakhstan ratified the WIPO Internet Treaties in early 2004 and half a year later implemented them in the national copyright legislation.

What was the purpose of this harmonization of the national copyright law with the Internet Treaties? Did the implementation of the WCT and WPPT achieve the desired "harmony"? What is the perspective for further developments of copyright law and practice with regards to the digital agenda?

To answer these questions (albeit solely with respect to the WCT), we will first look at the history of copyright protection in Kazakhstan dating back to the Soviet times. Then we shall turn to the analysis of copyright law as it is currently in force. Finally, we shall scrutinize the WCT-related amendments themselves and examine the adequacy of such changes relating to the law.

II. Copyright Law in Soviet Kazakhstan: a Nexus with Mother Russia

Before Kazakhstan joined the USSR in 1920, many works created by legendary Kazakh composers and poets had only occasionally been fixed due to the nomadic lifestyle of the Kazakhs. Songs and poems were composed with the sole aim to disseminate ideas throughout the vast territories of the Kazakh steppe — those ideas pertaining to social injustice, idealisation of khans, appeal to unity, urge for education, hatred of the enemy, etc. Thus, earnings of a material nature had never been a motivation for creation. "Pirate" intentions did not appear in anyone's mind even with relation to scientific and literary works, which were embodied in a material form, as, in that time, there was no widespread demand of the industry for those works.

The notion of authorship was first brought to Kazakhstan during the time of the Russian empire but was mostly developed in the Soviet period. Before the Soviet times, education in Kazakhstan was of a religious Islamic nature, while the Soviet period brought European and civic knowledge to the country. Among these was the concept of authorship. Therefore, the Russian influence on the emergence of copyright protection in Kazakhstan could not be underestimated.

[1] WCT Preamble, the third recital.

The history of Soviet copyright law can be traced back to 1917-1919, the period of the Bolsheviks' establishment of power.[2] In those times, several governmental decrees declared that all scientific, artistic, literary and musical works, including unpublished ones, belonged to the State. Furthermore, these decrees terminated all previously concluded contracts between authors and publishers.[3] The idea behind this "expropriation" was the education of soldiers and peasants, the main force of the 1917 Revolution.

The next stage of this copyright law development was the adoption of the "Fundamentals of Copyright Law" in the 1925-1928 period. The Fundamentals contained basic provisions, along the lines of which the Soviet Republics were to draft their own laws. Obviously, national laws were mainly merely an echo of the Fundamentals. The Russian Republic adopted its Copyright Law in 1928. The Kazakh Autonomous Soviet Socialistic Republic (Kazakh ASSR) at that time was part of Russia and, thus, the 1928 Law was directly applicable in Kazakhstan as well.

The 1925 Fundamentals granted a 25-year term of protection after the publication of the work, while the 1928 Fundamentals instituted a life-long protection, except for certain categories of works. The scope of rights was extremely limited, and the list of free use cases was very broad. Nevertheless, both the 1925 and the 1928 Fundamentals were still much more progressive than the "expropriation" acts of the previous period.

The 1960s were the period of codification of the Soviet legislation. In December 1963 the Kazakh Soviet Socialistic Republic (Kazakh SSR) adopted its Civil Code, which contained a chapter on copyright law and followed the principles established by the 1961 "Fundamentals of the Civil Legislation of the USSR and the Union Republics". In brief, the provisions of the Kazakh Civil Code set forth the following:

1) works created by foreign authors were protected only on the basis of international treaties to which the USSR was a party;
2) the sole economic rights expressly granted to authors were reproduction, publication, distribution and translation rights. The right to remuneration was a separate right which implied that no presumption of payment existed;
3) the list of exceptions to author's rights was very broad;
4) the term of protection was fixed at 15-year *post mortem auctoris* and later, in 1973, extended to 25 years;
5) the state had the right to carry out a forced buy-out of any economic right of the authors.

The last Soviet copyright act was the "Fundamentals of the Civil Legislation of the USSR and Union Republics" adopted by the USSR President on May 31, 1991. Its provisions were

[2] In this article, we do not consider the history of Russian pre-revolutionary copyright law.

[3] Resolution of the Council of People's Commissioners dated November 26, 1918 "*On Recognition as State Domain of Scientific, Literary and Musical and Artistic Works*", Decree of the All-Russia Central Executive Committee dated May 21, 1919 "*On State Publishing*", Decree of the Council of People's Commissioners dated July 29, 1919 "*On Abolishing the Private Ownership on Archives of Deceased Russian Writers, Composers, Artists and Scientists Whose Archives are Stored in Libraries and Museums*", Resolution of the People's Commissariat on Enlightenment dated August 16, 1919 "*On Nationalisation of Musical Works of Certain Authors*", Decree of the Council of People's Commissioners dated October 10, 1919 "*On Abolishing the Contracts for Acquisition of Literary and Artistic Works*", Resolution of the People's Commissariat on Enlightenment dated January 18, 1923 "*On Announcement of the State Monopoly over Publication of Works of Certain Writers*".

applied directly in the Kazakh SSR. The most progressive provisions of the 1991 Fundamentals were the following:

1) computer programmes and databases were expressly mentioned as protected subject matter;
2) term of protection was extended to 50 years *post mortem auctoris*;
3) the list of economic rights was augmented and made non-exhaustive;
4) the wide-encompassing nature of free-use cases was abolished and a free use exception for private purposes was introduced;
5) a presumption of remuneration for the authors was established;
6) provisions on neighbouring rights were included;
7) a provision, though limited in scope, on collective management of rights was included.

As far as international treaties are concerned, the USSR had only joined the Universal Copyright Convention (the text of 1952[4]) on May 27, 1973, which was also the date of entry into force of this Convention in the Kazakh SSR.

To sum up, Kazakhstan copyright law emerged and developed under the direct influence of Russia and the Soviet Union. Therefore, even after the collapse of the Soviet Union, it seemed somehow natural that, when drafting its own new copyright legislation, the Kazakhstan legislator followed the example of the Law of the Russian Federation "On Copyright Law and Neighbouring Rights" dated July 9, 1993.

III. Current Copyright Legislation: Fitting and Right on Paper, yet Untested in Practice

1. Digital Agenda in the Pre-WCT Copyright Law: Adequate for Domestic Purposes

The Law on Copyright and Neighbouring Rights (hereinafter Copyright Law) that is currently in force in Kazakhstan, was adopted on June 10, 1996.[5] Prior to its adoption, Kazakhstan was applying the 1991 Fundamentals. Kazakhstan ratified the Berne Convention on November 10, 1998.

The Copyright Law has been amended only once, on July 9, 2004. The change of the national legislation was necessitated by Kazakhstan's adherence to the WIPO Internet Treaties, which were ratified by Parliament on April 16, 2004. It is worth noting that no discussion had preceded both the ratification and implementation of the WCT and WPPT, except for some brief reports in the printed media.

We will first look at what the Kazakhstan copyright landscape was like before the WCT-generated amendments were introduced. After that we shall try to analyse whether these amendments were well implemented. The basic provisions of the Copyright Law stipulate the following:

[4] A.P. Sergeyev. *Law of Intellectual Property in the Russian Federation*. Moscow, 2001, p. 401.

[5] Although the legislative work on drafting the Copyright Law started already in 1993, some members of the working groups and experts took the view that, to avoid contradictions, the Copyright Law could not be enacted until the Civil Code (Special Part) setting out the general principles of copyright law was adopted. Finally, the working group managed to persuade the Parliament that no contradictions would be made since the same people were drafting both the Copyright Law and the chapter of the Civil Code on intellectual property.

1) national treatment of works which are located in a material form in Kazakhstan;
2) term of protection: 50 years *post mortem auctoris;*[6]
3) open-ended list of protected subject matter, including, *inter alia*, computer programmes (independent from literary works) and databases;
4) criteria for protection: originality and fixation;
5) moral rights include right of paternity, right to protection of author's reputation and right of withdrawal (The July 2004 amendments added the right of disclosure);
6) economic rights include reproduction, distribution, importation, public display, public performance, communication to the public, communication for broadcasting, communication by cable, translation and adaptation, and right of rental belonging to authors of musical works in the form of sheet music, works embodied in phonograms, audiovisual works, databases and computer programmes. The amendments of July 2004 made the list of economic rights non-exhaustive;
7) free use cases cover:
    - reproduction for private use (except for certain subject matter such as computer programmes, databases or reprographic reproduction of whole books or sheet music);
    - quotations;
    - reproduction for teaching purposes;
    - reproduction, broadcasting and other communication to the public for information purposes;
    - reproduction by special methods for the disabled;
    - reprographic reproduction by libraries and archives;
    - display of works;
    - reproduction for official ceremonies, administrative or court proceedings;
    - adaptation and decompilation, and making of back-up copies of computer programmes and databases;
    - short recording of authorised works by broadcasting organisations.

As far as the digital agenda is concerned, it has not raised much practical concern in Kazakhstan so far. There are at least several reasons for that. *First*, national rightholders are still not much involved in creation, treatment of or dealing with their works by means of the Internet, and thus they do not seem to be much aggrieved by Internet users. As a result, Kazakhstan courts do not hear cases relating to infringement in a digital context. *Second*, the number of Internet users in Kazakhstan is still relatively small. The approximate figures are as follows: 10000 in 1996,[7] 70,000 in 2000[8] and 250,000 by the end of 2002.[9] Although the growth may seem to be dramatically rapid, it should be mentioned that 250,000 people constitute only 1.7 to 2 % of the Kazakh population.[10] *Third*, collective administration is not well developed in Kazakhstan's history and tradition and therefore the country lacks a powerful instrument for the enforcement of authors' rights. Taking the above into

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[6] Neighbouring rights of performers, phonogram producers and broadcasting organisations last for 50 years after the first performance, publication and broadcasting respectively.

[7] http://www.bisnis.doc.gov/bisnis/bisdoc/030220KzEcommerce.htm

[8] http://www.internetworldstats.com/asia.htm

[9] At http://www.internetworldstats.com/asia.htm 250,000 people are quoted as of December 2002, and, at http://www.internetworldstats.com/stats3.htm#asia, 250,000 people are again referred to as of February 5, 2005. We believe that the updated information on regular Kazakhstan visitors of the Internet is still not available.

[10] http://www.internetworldstats.com/asia.htm, http://www.indexmundi.com/g/g.aspx?c=kz&v=118, http://66.102.9.104/search?q=cache:I8eZFcEMCAcJ:hdr.undp.org/statistics/data/cty/cty_f_KAZ.html+internet+users+in+kazakhstan&hl=en.

consideration, one could ask the legitimate question whether the ratification and implementation of the 1996 WIPO treaties were necessary, if at all, or at least at this particular moment in time.

At the same time, prior to the WCT-related amendments, there had been some theoretical concerns about certain issues arising in connection with the Internet and the digital environment in general. These concerns included (1) whether caching and browsing were subject to the author's consent; (2) which authors' rights granted by the Copyright Law could qualify for the right to authorise the use of works on the Internet; (3) what the effect of "internetisation" would be on free use cases; and (4) whether new measures were needed to counter piracy in the Internet.

(1) With respect to the first question, the Copyright Law recognised any temporary storage in an electronic (including digital) format as reproduction. Therefore, already before the "Internet" amendments were introduced, the Copyright Law appeared to have given the answer that caching and browsing were subject to the author's consent, save for the free use cases.

(2) Regarding the second issue, the situation was the following. On the one hand, the definition of "publication" in the Copyright Law expressly covered "granting an access to the work or phonogram by means of electronic information systems." Thus, it seemed that "publication" included the use of works on the Internet. "Communication" was defined as including any act which made the work "available for aural and (or) visual perception regardless of whether it was actually perceived by the public". Therefore, it could be concluded that the right of communication to the public either directly covered the right to authorise the use of works on the Internet, or it covered the right of publication which in turn included "granting an access to the work or phonogram by means of electronic information systems".

(3) As for the limitations and exceptions in the Internet context, the biggest concerns were the free use cases provided for libraries, archives and educational institutions. The exception was granted only with respect to reprographic reproduction. Therefore, digitisation and document delivery services by and for the said establishments would not be covered by the said exception. As a result, a specific exception in relation to digital reproduction of works by libraries, archives and educational institutions was truly needed.

(4) In relation to legal remedies, the Copyright Law provided for a non-exhaustive list which contained remedies of a compensating nature only: recognition of rights, restitution, termination of infringing acts (or acts threatening to infringe rights), compensation for damages, recovery of profits obtained as a result of infringing acts and payment of compensation at a fixed rate. The Copyright Law did not provide for preventive measures and the rightholders could not apply other measures different from those specifically introduced by the law. As such, the existing measures against "digital" counterfeiting seemed insufficient and, theoretically, new measures of counteracting Internet 'free-riders' appeared to be necessary.

It should however be taken into consideration that these concerns were of a more theoretical than practical nature. Therefore, it could be assumed that, for Kazakh purposes, the digital agenda was already adequately addressed, but for a few exceptions, by the Copyright Law

prior to the amendments. However, it is difficult to assess said adequacy in the current circumstances given that cases involving Internet users have not yet been officially reported in Kazakhstan.

Therefore, the fair answer to the question whether the "Internet" amendments were needed at this particular moment in time should imply that the need came more from the international pressure and Kazakhstan's will to align its laws with the international standards, than from the practical necessity to protect Kazakh authors.

2. WCT-aligned Copyright Law: for the Sake of Foreign Rightholders?

Let us now look at some of the amendments of July 9, 2004 to see how the situation with respect to the digital agenda has changed.

(1) Temporary Reproduction

Although, as it has been discussed above, temporary reproduction was already dealt with in the original version of the Copyright Law, the amendments have rendered the definition of "reproduction" "timeproof" (or, "futureproof", as Reinbothe and von Lewinski put it[11]). The definition has been modified in a way as to remove the limitation to certain kinds of media and to introduce the expression "any material form". According to the current Copyright Law, "reproduction" means "making one or more copies of a work or subject matter of neighbouring rights by any means or in any form whatsoever, entirely or partly, directly or indirectly. Types of reproduction shall include the making of sound or visual recording; the recording of one or more samples of two- or three-dimensional work *as well as any permanent or temporary storage of works or subject matter of neighbouring rights in any material form*" [emphasis added].

If we compare the way the EU Information Society (InfoSoc) Directive[12] and the Kazakhstan Copyright Law address the issue of temporary reproduction, we will notice that the Directive exempts temporary acts of reproduction from the reproduction right and sets out the conditions for that exemption, while the Copyright Law includes temporary reproduction in the reproduction itself, but all free use cases still apply to temporary reproduction. The result is that temporary reproduction under the Kazakhstan Law is not subject to the "technological" test like in the InfoSoc Directive.

The only test of the Copyright Law would be whether a temporary reproduction falls under a free use exception. This approach seems reasonable: if an act of temporary reproduction is done and falls into one of the exceptions, no "technological" test is needed. However, if the act is done in commercial interests, a freerider will not only reproduce but will definitely proceed with either communication, distribution, rental or other act with the work. Therefore, when the freerider will be found violating the relevant right, no sophisticated discussion of the technological process of the reproduction will be needed. Such solution proposed in the

[11] Jörg Reinbothe and Silke von Lewinski. *The WIPO Treaties 1996. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Commentary and Legal Analysis.* Butterworths 2002. p. 39.
[12] Directive of the European Parliament and of the Council 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (*OJ* L 167/10 of June 22, 2001).

Copyright Law might seem simplified but at least it will not let technical arguments encroach the public interest or personal use exemptions.

(2) Making Available Right

The 2004 amendments have introduced the "making available right" and defined it as "communication of the subject matter of author's rights and (or) neighbouring rights by wire or wireless means in such a way that the public may access them from any place and at any time individually chosen by it (in an interactive regime)." Nonetheless, for some unknown reason, the making available right has been expressly granted only to holders of neighbouring rights but not to authors. In addition, the definition of "communication", referred to above, has been deleted. This definition included any act that makes the work "available for aural and (or) visual perception regardless of whether it was actually perceived by the public." As such, it allowed to interpret the right of communication to the public as including the right to authorise the use of the work on the Internet. The definition of "publication" has also been modified to the effect that it no longer includes "granting access to the work or the phonogram by means of electronic information systems."

However, the problem has to be solved somehow, as the authors may not be left without a relevant right. Therefore, we believe that the right of communication to the public has to be interpreted in such a way as to include a right similar to the making available right. This seems to be possible also because the new amendments have made the list of economic rights open-ended by providing authors with the right "to carry out any other acts which do not contradict the laws of the Republic of Kazakhstan."

(3) Free Use Cases

Unfortunately, no amendments were introduced with regard to free use exceptions although that had been one of the theoretical issues discussed prior to the adoption of the July 2004 modifications. While this does not seem to affect the interests of the beneficiaries of other exceptions, it considerably harms the public interest as far as the exceptions related to libraries, archives and educational establishments are concerned. These free use cases are still limited to reprographic reproduction. The failure to adapt the exception to the needs of the digital environment will not allow libraries and archives to restore lost or damaged copies of works or deliver electronic copies of works to readers for the latter's studying or research purposes.

This situation is in contradiction with the spirit of the WIPO Treaties urging to recognise "the need to maintain a balance between the rights of authors and the large public interest, particularly education, research and access to information".[13] At the same time, given the current situation and looking at the near future, it does not seem that Kazakhstan libraries, archives and educational institutions will soon be affected by the aforementioned omission, simply because of the poor technical conditions of the vast majority of these establishments, which makes the discussions on digitisation of works quite premature.

[13] WCT Preamble, last recital.

(4) Preventive Legal Remedies

a) Obligations Concerning Technological Protection Measures

A technological measure is defined as "any device, product or its component being a part of the technology, device or product intended for prevention of infringement or obstructing the infringement of any author's or neighbouring rights protected hereunder" The amended definition of the "counterfeit copy" qualifies acts against technological measures as unlawful: "counterfeit copies shall mean the subject matter of copyright and neighbouring rights which contain removed or altered rights management information, without the rightholder's consent, *or which are manufactured with the help of unlawfully used devices enabling to circumvent the technological measures for protection of the subject matter*" [emphasis added]. It follows from the part of the provision in italics that it is unlawful to use, for circumvention purposes, the device which, even if not specifically designated for circumvention, can be used for such purpose.

At the same time, the provision concerning technological protection measures will be applied in Kazakhstan mainly with regards to foreign works and other protected subject matter because technological protection measures are too expensive a remedy for national rightholders. However, it is more important to ensure that this newly introduced provision does not overshadow the exceptions and limitations allowed by the law. Hence, it maybe desirable to clearly stipulate in the law that the free use provisions prevail over the provisions on protection of technological protection measures that may have been applied by the author. In other words, circumvention of the technological protection measures must be permitted if the circumvention is done in the context of one of the free use cases enshrined in the Copyright Law.

b) Obligations Concerning Rights Management Information

Rights management information is another novelty in the Copyright Law and is defined as "the information which identifies the work, its author, performer, its performance, producer of the phonogram, the phonogram, the rightholder of any right on the work, performance or phonogram or the information concerning the terms and conditions of use of the work, performance or phonogram". "The rights management information shall also include any number or code which represents such information when any of these items is attached to the copy of the work, recorded performance or phonogram or appears in connection with communication of the work or communication and (or) making available the recorded performance or phonogram." The acts considered as manipulation with the rights management information are found in the definition of the "counterfeit copy" cited above. Such manipulations are the removal or alteration of the rights management information without the rightholder's consent, and distribution or any other use of the subject matter with the removed or altered rights management information on it.

In contrast to Article 12 of the WCT where liability is imposed for removal and alteration of only *electronic* rights management information, the Copyright Law covers any rights management information. Such a difference with the WCT is needed indeed in the Copyright Law for the benefit of national rightholders who would not have the possibility to put electronic rights management information on their works.

IV. Conclusions

The reader should not be left with the impression that the author is not in favour of Kazakhstan complying with its international obligations or is against the enforcement of the rights of foreign righholders. Nonetheless, in practical terms, the WCT-related amendments are looking more into the future of Kazakhstan than responding to the current needs of the Kazakhstan people. Certainly, the incorporation of the WCT is today a question of our country's international prestige, which is of itself a valid reason for the incorporation.

Since harmonisation has already taken place, it may be worth asking whether harmony has been achieved. The results should be assessed from two sides: first, whether the WCT's letter and spirit have been complied with, and, second, whether the letter and spirit of the national law have not been violated. As to the first question, the 2004 amendments, brought, on the whole, consistency of the Copyright Law with the WCT. Concerning the integrity of the Copyright Law, the latter does not seem to be much affected by the amendments. However, public interests do not seem too well ensured against abuse in the digital environment and the Copyright Law may, to a certain degree, look disbalanced, as long as the limitations and exceptions remained untouched by the digital agenda, whereas the brand-new provisions on technological protection measures and management rights information "stick out" by their applicability in the new environment.

The last question to be answered is whether the Copyright Law, as far as its latest amendments are concerned, would not remain a "dead letter"- law and whether it would represent an adequate legal framework for new developments. Apart from the number of factors of material and legal nature, required for the stability and efficiency of any law, let us look at the specificities of the material circumstances in Kazakhstan with respect to copyright legislation. The first difficulty for the effective operation of the law in the digital environment is the under-use of new technologies, including the Internet in all spheres and for all purposes, be it research and study, e-commerce or banking. The reasons behind that are the lack of computers and Internet connection in research and educational institutions, absence of laws securing participants from fraud, state control over access to certain web-sites or encryption technologies. At the same time, the state is undertaking steps to facilitate the use of the Internet in different fields. For instance, in 2003, the Kazakhstan Government issued an action plan for 2003-2005[14] according to which modern lines of communication should be introduced throughout Kazakhstan. As per the enthusiastic estimate of the Government, the number of Internet users should reach 500,000 in 2005. All these facts suggest that the adaptation of the Copyright Law is anticipating the prospective developments rather than satisfying vital current problems of society, which in itself is an objective which should be respected and commended. Thus the renewed Copyright Law is unlikely to remain a 'dead' or inadequate law.

[14] Resolution of the Government of the Republic of Kazakhstan dated February 18, 2003 No. 168 "*On Approval of the Programme for Development of Telecommunications of the Republic of Kazakhstan for 2003-2005*".

LEGAL DEVELOPMENTS

CASE LAW

AUSTRALIA

Federal Court of Australia

Copyright—Secondary Infringement—Peer-to-peer System—Injunctive Relief

On 5 September 2005 the Federal Court of Australia rendered a decision concerning the Kazaa Internet peer-to-peer file sharing system. Available worldwide free of charge, Kazaa enabled users to share any material, mostly copyright-protected musical works. Kazaa was being sued by companies from the music industry for copyright infringement, for failing to take action against its users, whom it knew were infringing. Kazaa was found to infringe, and a provisional order was made to restrain future infringements, yet without unnecessarily intruding on freedom of speech and communication. The continuation of the Kazaa system will not be regarded as a contravention of the order if the system is modified, in a manner agreed by the applicants or approved by the Court.

Decision of the Federal Court of Australia, Wilcox J. – Sydney, 5 September 2005
(Excerpts taken from the summary of the decision by the Federal Court of Australia)

Universal Music Australia Pty Ltd v. Sharman License Holdings Ltd.
[2005] FCA 1242

The case concerns the operation of the Kazaa Internet peer-to-peer file-sharing system. This system operates world wide. The Kazaa system is available to users free of charge. Any person with access to the Internet can become a Kazaa user. It enables one user to share with other users any material the first user wishes to share, whether or not that material is subject to copyright, simply by placing that material in a file called ‘My Shared Folder’. The respondents claim the Kazaa system is an example of ‘peer-to-peer’ technology. Counsel for the applicants did not accept that Kazaa is truly a P2P system. They said that, ‘while the software has P2P characteristics, it is now clear that it has many features in common with client/server and centrally indexed systems.’

Original : English

There are 30 applicants in this case. They include companies associated with the world's major distributors of sound recordings, mostly in the form of compact discs. They distribute sound recordings in Australia. They claim copyright in their respective sound recordings. It is clear that a major proportion of Kazaa's shared blue files are works (mostly musical works) that are subject to copyright. The files are shared without the approval of the relevant copyright owner. It follows that both the user who makes the file available and the user who downloads a copy infringes the owner's copyright.

The applicants overstated their case. It cannot be concluded, as the applicants claimed in their pleadings, that the respondents themselves engaged in communicating the applicants' copyright works. They did not do so. The more realistic claim is that the respondents authorised users to infringe the applicants' copyright in their sound recordings. Section 101 of the Australian *Copyright Act* provides that copyright is infringed by a person who, not being the owner of the copyright and without the licence of the copyright owner, authorises another person to do in Australia an infringing act.

Realistically speaking, the applicants' copyright infringement claim depends entirely on the question whether the respondents, individually and/or jointly, authorised Kazaa users to infringe the applicant's copyright.

Counsel for the applicants tendered documentary material that, they said, demonstrated the respondents' knowledge that the Kazaa system was being used extensively for the purpose of transmitting copyright material. They also said the documents showed the respondents' intended it should be so used; or at least, that they had no wish to curtail that use.

By the end of the trial there was no real dispute about knowledge. I have no doubt that, at all material times, each of the respondents was aware that a major use of the Kazaa system was the transmission of copyright material. Nonetheless, there is dispute about intention.

In short, I find that all the respondents knew the predominant use of Kazaa was for the sharing of copyright-infringing material. None of them had an interest to prevent or curtail that predominant use; if anything, the contrary. Each of the respondents was at least acquiescent in the use of Kazaa for copyright-infringing activities.

It is understandable that the respondents would wish to increase file-sharing. Kazaa is apparently sustained by advertising revenue. It is a fundamental of advertising marketing that price is sensitive to the exposure likely to be achieved by the advertisement. The more shared files available through Kazaa, the greater the attraction of the Kazaa website.
[Respondents] have included on the Kazaa website exhortations to users to increase their file-sharing and a webpage headed 'Join the Revolution' that criticises record companies for opposing peer-to-peer file-sharing. The site went on the extol the advantages of peer-to-peer distribution of data and to argue it was good for 'consumers, artists, producers and developers, labels production companies, libraries and owners and peer-to-peer companies.'

Despite the fact that the Kazaa website contains warnings against the sharing of copyright files, and an end user licence agreement under which users are made to agree not to infringe copyright, it has long been obvious that those measures are ineffective to prevent, or even substantially to curtail, copyright infringements by users.

Counsel for the applicants criticised the fact that, although they knew many users habitually infringed copyright, the respondents have never taken action to enforce the relevant terms of the licence agreement. Perhaps the occasional legal proceeding might be useful '*pour encourager les autres*', if the necessary information could be obtained. However, it is not realistic to believe legal action against individual infringers will stamp out or even slightly reduce, file-sharing infringements of copyright.

There are technical measures [which] would enable the respondents to curtail – although probably not totally to prevent – the sharing of copyright files. The respondents have not taken any action to implement those measures. It is in the respondents' financial interest to maximise, not to minimise, music file-sharing.

From time to time during the hearing of this case, counsel or a witness commented that Kazaa could be used in a non-infringing way. However, it seems unlikely that non-infringing uses would sustain the enormous Kazaa traffic claimed by the respondents. The explanation of that volume of traffic must be a more populist use. The evidence indicates that use is popular music. There is evidence that the Kazaa blue files routinely include a high proportion of the most currently popular sound recordings.

However, I have had to bear in mind the possibility that, even with the best will in the world, the respondents probably cannot totally prevent copyright infringement by users. There needs to be an opportunity for the relevant respondents to modify the Kazaa system in a targeted way, so as to protect the applicants' copyright interests (as far as possible) but without unnecessarily intruding on others' freedom of speech and communication.

The applicants' copyright claim succeeds against six respondents. The six respondents have infringed copyright by first, authorising Kazaa users to make a copy of the said recording and to communicate the recording to the public, in each case without the licence of the relevant applicant; and, second, by entering into a common design to carry out, procure or direct that authorisation. The six respondents threaten to infringe the copyright of the applicants in other sound recordings in the same way.

I have formed some views about the appropriate form of injunctive relief. It is convenient immediately to make the orders. However, I will do so on a provisional basis, in the sense that I will be prepared to reconsider the form of the orders, if so requested by any party.

Subject to that comment, I think it is appropriate to grant an injunction to restrain future infringements of the applicants' copyrights. This injunction should be couched in general terms, reflecting the relevant respondents' general obligation not further to infringe the applicants' copyright. However, I am anxious not to make an order which the respondents are not able to obey, except at the unacceptable cost of preventing the sharing even of files which do not infringe the applicants' copyright. There needs to be an opportunity for the relevant respondents to modify the Kazaa system in a targeted way, so as to protect the applicants' copyright interests (as far as possible) but without unnecessarily intruding on others' freedom of speech and communication. The evidence indicates how this might be done. It should be provided that the injunctive order will be satisfied if the respondents take either of these steps. The steps, in my judgment, are available to the respondents and likely significantly, though perhaps not totally, to protect the applicants' copyrights.

Accordingly, I propose to make an order restraining the infringing respondents from further infringing the applicants' copyright in any sound recordings by authorising the doing in Australia by Kazaa users of any infringing acts, in relation to any sound recording, the copyright of which is held by any of the applicants, without the licence of the relevant copyright owner.

There will be orders providing, in effect, that continuation of the Kazaa Internet file-sharing system will not be regarded as a contravention of the general injunctive order if the system is first modified, in a manner agreed by the applicants or approved by the Court. To allow this to happen, the operation of the injunction will be stayed for two months.

LEGAL DEVELOPMENTS

CASE LAW

CANADA

Court of Québec

Copyright —Fair dealing—Infomercial

On 30 August 2005 the Court of Québec rendered a judgment in a case regarding the question whether the publication of a photography in an infomercial constituted fair dealing according to the *Copyright Act*. The court ruled in favor of the author and sentenced the defending corporation to pay compensation for having published the photography without his authorization.

Decision from the Court of Québec, Marc Gagnon, J.C.Q. - 30 August 2005 *(Excerpts from the decision from the Court of Québec)*

Roger-Luc Chayer c. Corporation Sun Media, 125-32-001527-058, 2005

The facts revealed to the court clearly and unequivocally demonstrate that a copyright-protected photography taken by the plaintiff was used by some medias under the control of the defendant. Representative for the defendant argues before this court that the two newspapers that have reproduced the photography in question have done so under the fair dealing exception according to the Act.

The Act provides that the private use of a work for purposes of study or research, or even to criticize a work or to summarize it, or even turn it into news and make it public, all constitute « fair dealings », acts that are allowed without authorization.

The defendant contends that the reports found in his two weekly publications accompanied by the plaintiff's photography were news of general interest, and that therefore the defendant could publish them without prior consent.

Original : français

It is probably true that the event mentioned in the report could in itself constitute news worthy of public interest. But what causes a problem and also violates the law is truly the fact of having accompanied the news report with a photography protected by copyright.

The summary of the event in question takes on the features of an infomercial. In this court's humble opinion, the fact of inviting readers of a newspaper to go on a certain day, at a certain time, in a well-identified bar to be offered drinks by a celebrity passing by, constitutes an infomercial and not a report.

The defendant also argues that by indicating the photographer's name, it fulfilled its duties according to the law. Yet in the case at hand, this has not been done, since the precise origin of the photography is not revealed. In short, the only mention of the photographer's name does not meet the requirements, nor does it respect the spirit or the letter of the *Copyright Act*.

In brief, what is most overwhelming in this whole story is that the defendant, under a false pretext, allowed itself to take a photography from the files of a more modest enterprise. What is more despicable in this whole story is to see this same defendant shield itself behind the Act to try to redeem itself or to get a bargain.

For all these reasons, the Court sentences the defendant to pay to the plaintiff the amount of $2,200.00 with legal fees in the amount of $116.00 plus interests at the legal rate starting from the date of the summons and the additional indemnities provided by the law.

UNESCO ACTIVITIES

THE CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE HERITAGE ENTERS INTO FORCE

The Convention for the Safeguarding of the Intangible Heritage will enter into force on 20 April 2006.

On 20 January 2006, Romania deposited with the Director-General of UNESCO its instrument of acceptance to the Convention for the Safeguarding of the Intangible Cultural Heritage thus bringing to 30 the number of States that have ratified the Convention. Therefore, in accordance with the terms of its Article 34, the Convention will enter into force on 20 April 2006, that is to say three months after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, namely, with respect to the following States that have deposited their respective instruments on or before that date: Algeria, Belarus, Bhutan, Central African Republic, China, Croatia, Dominica, Egypt, Gabon, Iceland, India, Japan, Latvia, Lithuania, Mali, Mauritius, Mexico, Mongolia, Nigeria, Oman, Pakistan, Panama, Peru, Republic of Korea, Romania, Senegal, Seychelles, Syrian Arab Republic, United Arab Emirates and Viet Nam.

The Convention for the safeguarding of Intangible Cultural Heritage was adopted on 17 October 2003 by the General Conference of UNESCO at its 32e session, further to the consultations of the Member States which stated that a legally binding instrument was needed to safeguard intangible heritage and to promote cooperation and solidarity at regional and international levels in this field.

For additional information, please consult the Intangible Heritage Portal in UNESCO Culture Website

Original: French
Author: CLT/ACE

UNESCO ACTIVITIES

COPYRIGHT SEMINAR IN INDONESIA
Jakarta, 23-26 January 2006

The seminar was organised by the Asia/Pacific Cultural Centre for UNESCO (ACCU), in collaboration with the Indonesian Publishers' Association (IKAPI), the Copyright Office of Japan and UNESCO. Its main purpose was to raise awareness about the importance of copyright protection among representatives of the national authorities, representatives of the cultural industries and academia. It aimed also to promote the "Asian Copyright Handbook" published by ACCU and to discuss the production and utilization of the Indonesian version of the handbook. The handbook represents a useful tool for writers, illustrators, editors and publishers which aim to provide information about the basics of copyright to all stakeholders in Asia. The seminar in Jakarta was the third one of a series of workshops in Asian countries, after Viet Nam and Myanmar, organised with the purpose of promoting the handbook, organizing the production of national language versions and setting up a scheme for their dissemination and use.

More than 100 participants, representing the national authorities, the private sector and the academia, attended the first part of the seminar, which focused on the essentials of copyright protection and the international copyright protection rules and addressed other issues of concern for Indonesia, such as conducting of successful awareness campaigns and copyright-related digital issues. The second part of the seminar took the form of group work and focused on elaborating the basis of the Indonesian version of the Asian Copyright Handbook. The small number of participants in each group, between 10 and 15, allowed for a rich and intensive discussion of specific copyright issues of interest to the Indonesian stakeholders. The conclusions of the work will serve as a basis of the Indonesian version of the book, which is expected to be published by IKAPI later this year. In the end, the participants discussed the strategy for disseminating the handbook, as well as the possible strategies for copyright awareness-raising in Indonesia.

Original: English
Author(s): CLT/ACE

SELECTED WORKS

MEFE, Guy-Marc Tony. Droit d'auteur et droits voisins – Guide d'initiation pour l'Afrique francophone. Editions Interlignes / P@ges / Scène d'Ebène, Yaounde, 2005, 68 pp.

This guide is the second of a series of thematic works published by Scène d'Ebène, an association for dissemination of information, training and promotion of culture which has been created by the author with the objective to assist the creation and artistic development in Africa.

Written by an African artist, this introductory guide provides basic information relating to creativity, as well as to the general principles of copyright and neighbouring rights and the application of these rights, notably through collective management.

Addressed to authors and artists, the guide endeavours to make them understand the importance of being informed about the rights they have, so that they could protect them more effectively. It also contains a clear explanation of the different forms of remuneration which could be claimed.

The guide is a user-friendly tool, as the author has made a deliberate choice of using a simple and concise vocabulary. This choice allows him to reach a wide audience and to raise its awareness about the fundamental issues that Africa is facing today in the area of copyright and neighbouring rights. The guide is also intended for those, who exploit and use literary and artistic works, both professionals and the public at large. Thus it contributes to a better understanding of copyright and neighbouring rights in Africa, to the fight against piracy and to the protection and promotion of creativity in Africa. It also includes the Annex 7 of the Bangui Agreement.

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Original: French