
2. UNESCO Copyright Activities

Ms. Petya Totcharova

Legal Advisor, Cultural Enterprise and Copyright Section, Division of Arts and Cultural Enterprise, Sector of Culture, UNESCO

A traditional tool for encouraging creativity, copyright nowadays, in the beginning of the 21st century, has even greater potential to encourage creativity and to assist in the establishment and flourishing of the cultural industries, which can broadly be defined to include the film, music, audiovisual and publishing industries. Committed to the promotion of the copyright protection since the wake of its existence, UNESCO is carrying out, though with a smaller reach and more modest means than in the beginning, a large palette of activities in the area of copyright, such as information and awareness-raising, training and teaching, studies and research, enforcement and management of rights.

Why does UNESCO have activities in the copyright field?

People may sometimes wonder why UNESCO should deal with copyright, commonly considered an exclusive WIPO competence. However, a rapid look into copyright history explains why these two UN Organizations share in fact concerns on this issue of paramount importance for creators and the creative industries.

The **Berne Convention**, the very first international instrument for copyright protection, was adopted in 1886 in a Diplomatic Conference convened at the initiative of the Swiss Federal Government, attended by a small group of countries, namely Belgium, France, Germany, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia and the United Kingdom with Japan and the U.S.A. as observers. The Berne Union Office, established in Berne 1887, soon merged with the Office of the Paris Convention on Industrial Property (1883) forming the BIRPI (Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle). BIRPI moved to Geneva in the early 60s and operated under the authority of the Swiss government till 1967. The Berne Convention was long time perceived as a

European initiative since its extension to other continents could only be achieved through the so-called “colonial clause”. Several Inter-American Conventions (Montevideo, Mexico, Rio, Buenos Aires, Caracas, Havana and Washington Treaties) were adopted between 1889 and 1946, the USA only having signed the Mexico Treaty in 1908 and the Buenos Aires one in 1911. The future of the Berne Convention seemed further compromised since the newly independent States (former European colonies in Asia and Africa) were not anymore bound by the “colonial clause”, the Soviet Union did not intend to adhere and the US national legislation was not adapted to adhere to the non—formality regime established by the Berne Convention.

Under these circumstances, the pressing need of universality of copyright was more and more strongly felt. The creation of UNESCO immediately after World War II, with the mandate of promoting free flow of information through word and image, provided an appropriate forum to address copyright protection worldwide. In 1952, a Diplomatic Conference, convened by UNESCO in Geneva, adopted the **Universal Copyright Convention (UCC)**, administered by UNESCO. Its text closed the existing gap, and established the world-known symbol © as the international copyright notice. The UCC was soon ratified by the USA, by the Soviet Union, by virtually all Berne Convention members and an important number of newly independent states. A strong cooperation UNESCO/BIRPI was maintained and UNESCO was instrumental in the creation of WIPO (successor of BIRPI) as a specialized agency of the UN system in 1967. The creation of WIPO took place in coincidence with the Stockholm revision that added a Protocol for Developing Countries both to the Berne Convention and to the UCC. The last joint revision of Berne and UCC convention took place in 1971.

Since then, UNESCO and WIPO worked in

tandem and jointly elaborated - and still co-administer - a number of copyright related conventions (the Rome Convention, the Phonograms Convention, the Satellite Convention, etc.). Both organizations also contribute to the advancement of the copyright doctrine in fields such as the protection of computer software, of folklore, etc. This cooperation was, however, gradually reduced along the eighties, a period when the United States decided to sign the Berne Convention (1989) (Notwithstanding that, the USA is still an active member of the Intergovernmental Committee of UNESCO's Universal Copyright Convention) The fact that the WTO made adherence to the Berne Convention compulsory for copyright protection under TRIPS in 1995, led a large majority of countries to join the Berne Convention. To this date, 159 State parties have ratified the Berne Convention and 99 are States parties to the UCC.

Although both organizations still cooperate and participate in each other's meetings, a repartition of tasks has been tacitly established: WIPO has been basically dealing with normative action and UNESCO's copyright programme has mainly focused on copyright teaching, information and awareness as well as promoting copyright enforcement and piracy eradication.

What does UNESCO do in the copyright field?

1. Information and awareness-raising

1.1. Electronic Copyright Bulletin in six languages: Arabic, Chinese, English, French, Russian and Spanish versions.

UNESCO's Copyright Bulletin was first published in 1948, soon after the setting up of the UNESCO. It has accompanied generations of copyright lawyers since its first edition and assisted them in studying and understanding the complex and ever-evolving copyright landscape. At first, the Copyright Bulletin started as a traditional quarterly legal revue, initially published in French and English languages. At a later stage, a Spanish version was added to the already existing French and English-language ones. The publishers of the Bulletin had the

ambitious idea to increase the number of language versions and, by publishing the Bulletin in all six official languages of UNESCO, to make the Copyright Bulletin a genuinely international legal revue in the field of copyright. The task was complex and challenging one, both in terms of financing and coordination. It took some time to prepare and launch all initially foreseen language versions. The Russian version was born in 1984, the Chinese one – ten years later, in 1994. The Arabic version was launched in 2004.

Having been published traditionally as a quarterly printed edition for more than 50 years, in the beginning of the 21st century, the Copyright Bulletin has answered the challenges of the digital environment. Since 2002 all language versions have gradually abandoned the printed format and have passed on-line. The change started with the French, English and Spanish versions and continued with the Russian and Chinese ones. The Arabic language version was launched directly as an electronic edition in December 2004 without having ever existed in paper format. All versions could be consulted through the following link:

www.unesco/culture/copyrightbulletin.

The Copyright Bulletin contains doctrine articles in the field of copyright and related rights, as well as information about legal developments, of both general and specialised interest. This makes the Copyright Bulletin a precious tool for students, teachers, professors, collecting societies, researchers, practising lawyers – i.e. for all those, who are interested by the theoretical or practical issues relating to copyright protection. Furthermore, the Copyright Bulletin is quite unique in its genre, not only because it's published in six language versions and has thus a wide international readership. It is international not only because of the language versions, but mainly because of its content and the diversity of its information, sources and authors who include scholars, academics and practitioners from all regions of the world, both industrialised and developing countries.

1.2. Publications in the field of copyright and neighbouring rights.

The time will not be enough to speak about all UNESCO publications in the field of copyright which have been published and distributed since the start of UNESCO's activities in this field. The complete list of publications can be found on our web page:

www.unesco.org/culture/copyright

It may be worth, however, to give more details on one of our publications and throw some light to other two publications when presenting the activities to which they are closely related.

The *ABC of Copyright* is intended to provide to all who are concerned with the creation, circulation and dissemination of knowledge - authors, educators, researchers, librarians, journalists, broadcasters, producers of phonograms, producers and distributors of films, publishers, as well as readers among the public at large - replies to certain questions they may have on the subject of copyright.

This booklet attempts to respond to the need of a very large audience to know more about copyright and has no other objective than to clarify this complicated subject by translating sophisticated legal language and terminology into a language that can be easily understood by everyone. Of course, hundreds of academic works have been written on the subject. But in the beginning of the 1980's a need has been felt for a copyright background reading material that would provide an overall view and sum up the essentials of copyright. This explains the approach taken in writing of the book. It is not a legal or scientific study on copyright but an attempt to provide practical answers to questions that are daily asked in this area.

The book is currently being updated with view to take into account the technological changes that have taken place in the world in the last two decades and accordingly, the changes introduced in the legal regulation of copyright at an international level.

1.3. On-line tools for copyright experts and the general public.

UNESCO's Collection of National Copyright Laws allows free access to national legislations on author's rights and related rights. The texts of the laws and their official translations are communicated to UNESCO by the official copyright authorities of its Member States. The collection is constantly being supplemented and updated.

<http://www.unesco.org/culture/copyrightlaws>

2. Training and teaching

2.1. Support for teaching of copyright by setting up UNESCO Copyright Chairs in universities throughout the world.

The great (and sometimes total) lack of qualified personnel in the developing countries to work in all infrastructures concerned with copyright (governmental bodies, magistrates and courts, cultural enterprises, etc) is the main reason why UNESCO has taken this activity at heart and started to develop its teaching programmes and establishing Copyright Chairs in universities in different regions in the world, mainly in developing countries. The objective is to develop teaching of copyright in order that a certain number of educated specialists comes to work in the national economy on a regular basis, which will assist for a copyright law enforcement and would thus benefit the creators and other copyright owners

Up to date, 21 UNESCO Chairs on Copyright were created at the universities in various regions. A first network of 10 Chairs (RAMLEDA) was created in Latin America. Chairs currently exist in China, Russia, Jordan, Egypt, Morocco etc. The Copyright Chair in Cameroon has just recently been approved by the respective UNESCO authorities, a chair is prepared also in Moldova and Nigeria.

An international *Network of UNESCO Chairs* to promote cooperation and the transfer of knowledge in a fair and equitable context has been planned and will be set up as soon as all chairs have been established and their performance reinforced in the various regions of

the world, in particular in the developing countries, French- and English-speaking Africa, Asia and the Arab region.

2.2. Development of study programmes and instructional and teaching materials.

As mentioned above, from 1988 onwards, the Organization's efforts have been concentrated in particular on the promotion of the teaching of this subject in the university context. Indeed, experience has shown that in the contemporary life of societies, the adoption of legislation in defence of copyright and neighbouring rights is not sufficient in itself. Accompanying measures are called for, which will ensure appropriate knowledge of this specific legislation in the cultural life, and more especially, the legal environment of the nation. Respect for the rights vested in authors and other holders of rights and their soundly based application means that lawyers, judges, magistrates and other legal authorities responsible for the application of the law must be familiar with every aspect of this discipline. It is through wide-ranging knowledge of the rules governing copyright and neighbouring rights that nations can most effectively provide a secure basis for the relationships between the different parties involved in cultural life and mobilize their efforts to create and produce works which will enrich the cultural heritage.

UNESCO started to develop this activity in 1988 following the recommendations formulated by the participants of the World Congress on Teaching of Copyright held by UNESCO in September 1987.

In view of the above, UNESCO elaborated a **special teaching programme**, discussed it with committees of law professors in all regions of the world to adapt it to the realities prevailing in the regions and circulated the adapted programmes to the Ministries of Higher Education of the States and universities in those regions. This teaching programme is currently being updated.

In relation to this, UNESCO commissioned the first international manual "Copyright and Neighbouring rights" (according to the structure of the programme) and published it initially in

Spanish (1993) and then translated and published in French (1997) English (1999) and Chinese. The Russian version of **UNESCO's Manual on Copyright and Neighbouring Rights** was published in 2002. The Manual now has been translated in Chinese and Arabic languages as well.

The Manual is not just another monograph on copyright and neighbouring rights. It represents a fundamental contribution to study of this discipline made the eminent specialist on the subject, Professor Delia Lipszyc.

Set out as a university manual, it presents, with its clear and comprehensive approach, the many and varied aspects of this important legal discipline as reflected in the different laws throughout the world, the relevant international conventions and current international thinking on the subject, in the light of technological progress in the methods of creation, production and dissemination of works of the mind. It offers appropriate clarification of legal concepts and makes them more readily understood. This work is, in short, a precious resource with which students and specialists in copyright and neighbouring rights can be provided, and an invaluable tool in aiding the various parties involved in cultural activity to organize their professional relationships on a sound and equitable basis.

Judging by the opinions of law teachers in various regions, the manual is highly appreciated because, on one hand, is written in a detailed manner, it is very extensive (over 900 pages) and therefore greatly helpful in view of the lack of legal literature and lack of funds for purchase and, on the other hand, it allows self specialisation in the matter of law teachers from the neighbouring disciplines which is very important given the great lack of law teachers specialised in copyright and neighbouring rights.

3. Studies and research

3.1. Activities in conjunction with the administration of the Universal Copyright Convention and the 1961 Rome Convention.

UNESCO provides for the Secretariat of the Intergovernmental Committee of the Universal Copyright Convention (adopted under the aegis of UNESCO) and, jointly with ILO and WIPO, of the Rome Convention (for the protection of performers, producers of phonograms and broadcasting organisations).

At the 13th ordinary session of the **Intergovernmental Committee of the Universal Copyright Convention** (adopted under the aegis of UNESCO in 1952 and revised in 1971), 22-24 June 2005 at UNESCO Headquarters, the Committee studied the following legal issues on the protection of copyright in the digital environment:

- Certain legal problems related to the making available of literary and artistic works and other protected subject matter through digital networks: P2P file-sharing
- Applicable law in cross-border cases of copyright infringement in the digital environment
- Report on piracy: current trends and rates and consequences for creativity and sustainable development

Further to the Committee's discussion on issues related to the fight against piracy, UNESCO has been invited to take a lead in anti-piracy activities, in the field of training, as well as by assembling and disseminating information about best practices, forms of fight against piracy, and new instruments in this field.

UNESCO provides also for the Secretariat of the Intergovernmental Committee of the **Rome Convention** for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961), jointly with ILO and WIPO. The last 19th session of the Committee took place on 27 and 28 June 2005 at UNESCO headquarters in Paris. Along with other operational issues, the Committee had extensive discussions on the necessity of developing a new international instrument on the protection of broadcasters and the new technologies.

3.2. Studies and analyses/ Contribution to the international debate on evolution of copyright in the digital environment

In the light of the ever more evolving digital environment and the challenges it poses to copyright, UNESCO has undertaken recently a study on the exceptions and limitations to copyright protection in the digital era, particularly in the field of scientific research, education and culture. Based on regional studies on the subject and on the replies to a questionnaire sent out to right owners, users of protected works and national authorities, the study has been finalised in 2003.

4. Enforcement and management of rights

4.1. Legal and technical assistance to Member states

UNESCO provides legal and technical assistance concerning the elaboration (revision) or application of national laws on copyright and neighbouring rights, when requested by the respective Member States. Just as an example, it has in the recent years provided assistance to the Governments of Burkina Faso, Georgia, Burundi etc.

4.2. Prevention and fight against piracy through training of copyright enforcement officials in the framework of UNESCO Global Alliance for Cultural Diversity.

ANTI-Piracy Training for Trainers is a concept for a series of regional or sub-regional seminars for copyright enforcement officials. *Development objective* is to contribute to reduction of intellectual piracy rates. *Immediate objective*: to provide knowledge and expertise in the field of copyright law and intellectual piracy, at a first stage, to the participants in the session, and, at a second stage - to a much larger circle of national authorities which have to be involved in the anti-piracy activities – law-makers, government, police, customs, magistrates etc.

The first advanced seminar for copyright enforcement officials was organised by UNESCO Copyright Programme for the countries of South Eastern Europe, it took place in Sofia, Bulgaria.

Developed in the light of UNESCO's strategy in the field of copyright and related rights in conjunction with governments, private sector and civil society, the project was funded by the Government of Norway and positioned within the framework of the UNESCO Global Alliance for Cultural Diversity.

Partners in the implementation of the project were the Bulgarian Copyright Directorate at the Ministry of Culture, the International Federation of the Phonographic Industry (IFPI), the Motion Picture Association (MPA), the IPR Group of the World Customs Organisation (WCO), BULLACT (Bulgarian video anti-piracy association), BAMP (Bulgarian association of Music Producers), BSA-Bulgaria (Bulgarian Studies Association), ARSIS Consulting (law office specialising in IPR), and the Bulgarian National Commission for UNESCO.

The participants comprised about 20 representatives of national authorities responsible for the enforcement of copyright protection, notably second-instance court judges specialising in intellectual property, high level prosecutors and police officers. The countries addressed were Albania, Bosnia & Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro and Romania. South Eastern Europe had been chosen as target area with a view, on the one hand, to the very high rates of intellectual piracy in this region and, on the other hand, to the ongoing efforts of legal restructuring in these countries.

The objective of the course was to draw the attention of national authorities and enforcement officials to the importance of enforcement of copyright laws and the detrimental consequences of intellectual piracy by providing theoretical knowledge and practical training to selected representatives of the national authorities of each of the beneficiary countries.

The 3,5-days training course focused, at an advanced level, on intellectual property protection and piracy, the different forms of piracy, mechanisms for detecting and measuring piracy, investigation of piracy and mechanisms for prevention and reducing the rates of piracy. The lessons provided the participants with comprehensive knowledge about the topic, structured in such a way as to serve as a model

course for further training, adapted appropriately to each particular national regulatory and judicial framework. Along with the theoretical part, the course addressed practical aspects and included a visit to a lawful CD manufacturing site, as well as the presentation of illegal products and methods in order to distinguish these from the original ones, by professionals with hands-on experience. A case study exercise at the end of the session, allowed testing the acquired knowledge in close-to-real-life situations.

Conceived as a "Training for Trainers" course, the seminar aimed at a multiplying effect. As a follow-up, the participants are expected to act as trainers themselves by organising national seminars in order to bring the knowledge and expertise acquired to a much larger circle of national authorities involved in anti-piracy activities – law-makers, government, police, customs, magistrates etc. UNESCO contributes to those national events with methodological, technical and financial assistance.

The evaluation of the programme shows its important effect in the beneficiary countries. This is illustrated by the statistics, according to which for every three trained national experts in the APTT regional seminar, there are around 50 trained national copyright law professionals in each country.

Further to this pilot project, UNESCO intends to continue its anti-piracy 'training for trainers' activities in other regions of the world.

4.3. Assistance to the States in collective administration of authors' rights

UNESCO has regularly encouraged the Member States, notably the developing countries, to organize and develop the collective administration of rights by authors and other rights holders as an essential element in the construction of a modern national system of protection of copyright which would effectively promote a dynamic cultural development. UNESCO assistance has borne particularly on the creation of structures adapted to the administration of rights, the training of professional personnel and the provision of expertise leading to a competent organization of

the various technical activities related to the administration of rights. The training of specialists was a regular activity undertaken in cooperation with the International Confederation of Societies of Authors and Composers (CISAC) whose vocation is to promote the secure and efficient administration of authors' rights.

The collective administration of authors' rights is generally intended to facilitate the effective exercise of these rights by the authors themselves and to assist the lawful exploitation of works and cultural productions. It is seen in modern society as one of the most appropriate means of assuring respect for exploited works and a fair remuneration for creative effort of cultural wealth, while permitting rapid access by the public to a constantly enriched living culture.

The industrialized countries have used it widely, particularly in the field of music, and the developing countries, and those in transition to a market economy, are attaching more and more importance to its establishment and promotion.

The "*Guide to the Collective Administration of Authors' Rights*" was published by UNESCO in 2001. Written by Ms Paula Schepens from the Belgian collecting society SABAM and developed by UNESCO in collaboration with CISAC (the International Confederation of Societies of Authors and Composers), the Guide is a useful and practical tool for copyright professionals.

The purpose of the Guide is to provide assistance on a continuous basis. It aims at contributing to the improvement of the technical administration of rights while throwing light on the relations between the different public services and other social partners in the domain of cultural development. It provides useful information for members of statutory organs and professional administrators of young authors' societies on the conditions which favour the statutory creation of authors' societies, according to the type of rights to be administered and the realities of local cultural activity. It explains to the technicians the mechanisms for organizing different types of activities for the collection, documentation, distribution, administrative and accounting management of the technical means of achieving

them. The Guide also resumes the political, cultural, economic and social functions of collective administration and its role in cultural development. In this regard, it opportunely provides inspiration with regard to public administration policies on the legal framework of this activity and the setting of rules for the supervision and control of the different functioning mechanisms of the administration of rights.

The Guide provides information on the conditions for communicating protected works to the public. The producers and disseminators of cultural goods and services are informed on the conditions for the lawful exploitation of protected works. Close cooperation with the services of collective administration would appear to be a useful and effective means to reinforce the security of their investment against piracy in addition to the effective protection of their own rights when they become the legitimate owners of the administered rights.

It is hoped that with a wide distribution, this Guide will help, in particular the developing countries and the countries in transition towards a market economy, to organize their system of collective administration of copyright with the required performance.

Guide to the collective Administration of authors rights, Paula Schepens

Printed by UNESCO, 2000, CLT-200/WS/4

<http://unesdoc.unesco.org/images/0012/001206/120677e.pdf>