

**The Future Digital Economy
Digital Content – Creation, Distribution and Access**

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**Presentation by Giorgio Assumma, President of the Italian Society of
Authors and Publishers (SIAE),
31 January 2006**

Session 8b: Content diffusion, IPR, DRM, licensing, content security, standards

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It is more than natural that authors' societies heighten the crucial role of authors and publishers in the dissemination of culture through their activity and their investments. It is obvious too that they reassert the necessity of reducing the impact of piracy and counterfeiting and of any other illegal exploitation of protected works. This reduction is a prerequisite for the flourishing of legitimate digital services.

Here, I would like to repeat what I said a few days ago during the International Market of the Music and Record Industry in Cannes on the possible introduction of a legal license for P2P in France, a country which has traditionally been in the forefront of authors' rights defence: "Though the present form of digital exploitation has changed the conditions of the protection of authors' moral and economic rights, it is not acceptable to envisage technical/legal mechanisms reducing the rights and the expectations of the authors of the works when they are used in the web. On this point, our defence of authors' rights will be strong, univocal and determined in order to prevent any expropriation thereof."

The option of the so called "global license", paid by a sum fixed by State order, introduces an expropriation of authors and other rightholders' intellectual property. By means of a "global licence" regulating file sharing, copyright would be completely overridden and in practice it would abdicate its function in the market; as well as its task as a safeguard of the freedom of expression and culture. In fact, the French proposal completely neglects the existence of moral rights: music might become a *commodity*, which can be freely shared by all and through which everything can be sold.

The role of the author is undeniably crucial, both in the off-line and in the on-line field, since he creates the essential material for any cultural expression, even though this role is not always fully acknowledged.

It should be remembered that a work embodies its author's personality. Because of the inseparable intellectual relationship with his work, the author is not only granted an economic right, but also a moral right, which is inalienable. Moral rights are crucial against the reasons of those who fears drifts of intellectual property towards monopoly and prohibition. Therefore, I agree with those who maintain that copyright - provided that the moral right is not deleted - is a key element in the protection of creativity and in the cultural development.

Though some new forms of access to the market are now available, facilitating a more immediate contact between authors and their public (as it is the case of the Creative Commons and of the direct distribution of works through authors' and artists' own web sites with an advertising purpose), up to now digitization has substantially modified only the distribution of musical contents, while the most costly phases, that is to say research, development and promotion of new talents, have not been affected. Therefore, only safeguarding its economic interests, the music industry will keep its structure alive and continue to support the creation and dissemination of music works.

Under this aspect, the most recent awareness-raising campaigns aim at shifting the attention of the public opinion towards the defence of the contents, in order to warn the young against the danger of behaviours likely to jeopardize the future of the music they love so much.

Moreover, the legitimate interests of the music industry must not and can not conflict with the legitimate interests of the authors and of their societies. On this point, I must say that I deeply dislike the expression "collecting societies". It is a reductive expression, as it does not properly describe the manifold functions and activities they carry forward and which are not at all limited to the collection of rights.

For various reasons, the authors' societies are now in the focus of the debate on the on-line licensing policy. Before examining some of the main issues thereof, we have to objectively consider the reasons which have so far determined the success of the collecting societies. These societies were established by the authors

themselves in order not only to keep under control the exploitation of their works and to facilitate their dissemination, but also to strengthen the authors' bargaining power in relation to users. This because the negotiating power of the single author, at least for a large part of the protected contents market, is not strong enough to obtain a fair level of royalties.

Unlike in countries where legal licences are established, the authors' societies manage the rights of their members, negotiate general licences and specific licensing conditions, maintain the value of works and attract right holders thanks to the quality of the services they offer to them, as their purpose is to obtain the better conditions for the exploitation of the repertoire entrusted to them. This is one of the reasons why the legislator refrained from a larger application of legal licences. The societies share the same concern about the future of the authors' rights with their members.

The authors' societies allow their members to keep the exclusive right on their works and to resist the temptation to give away their rights to the first interested user for just a little money. It is thanks to their society's activity that authors with low contractual power or working for niche markets can efficiently manage their rights and have a full control on them, always keeping their right to withdraw their repertoire from the society's management. Therefore, the collecting management offered by societies, run by the representatives of right holders, is certainly closer to the individual management than the management by third parties, which are not able to give enough guarantees as to the impartiality and transparency of their activity.

The authors' societies have been working for the benefit of rightholders for over a century, they have adjusted to the media developments, demonstrating that they can keep timely up with the fast innovations and changes of business models even in the on-line environment. They create value for the authors, who want to be compensated according to their talent and work and therefore keep on using the societies' manifold services. Even users know that the market can not do without the collecting societies, and this for many reasons. Far from hindering the development of new technologies, they have always been facilitating the licensing of new exploitations. Actually, many users are worried about the possible move from the *one-stop-shop* system in the music sector to the individual management system.

I would like to mention the pros of the collective management of rights, just as they have been set out by a major international user on the occasion of a recent public meeting:

- simpler and faster access to repertoire, with no need to contact every single right-owner
- lower costs of transaction
- access to works on the basis of non-discriminatory conditions, in compliance with the principle of granting the same treatment when applicants possess same conditions
- possibility for new business initiatives to overcome entry barriers when launching new legitimate services
- certainty of law, transparency and equality of conditions, accountability of the licensor as to the repertoire exploitation
- possibility of a rapid legal access to foreign market
- finally, the collective management is also a safeguard against market distortions deriving from unauthorized exploitation of music, that threatens the success of legitimate services.

I will not linger upon the Recommendation of the European Commission published in October 2005 defining the guidelines of a possible intervention on the collective management of rights for musical services; on this recommendation, authors' societies are actively working with the aim of maintaining the *one-stop-shop* system for multi-territorial-multi-repertoire licensing, in the interest of both users and rightholders.

Today there is concern that the options indicated by the Commission can jeopardize the traditional system of collective management, whose purpose is to maximize the offer of cultural products. Among others, there is the fear that the smallest authors' societies of the Community could be seriously weakened and the negative consequences could affect the whole system and the European policy in favour of cultural diversity. Anyway, the Commission has taken note of the collective management societies' function in on-line musical

services and has limited its intervention to providing some guidelines for a correct carrying out of their activity.

I need to stress that other solutions have satisfied neither authors, nor users; on the contrary, alternatives have shown that collective management societies are the most reliable and efficient means to ensure the proper balance between demand and supply of rights, also within the new digital environment. This is not the case with the individual management, that would follow the disintermediation process fostered by the Internet. A full disintermediation is proving to be quite unlikely and we have experienced that the old intermediaries are replaced by new ones which are neither cheaper nor more efficient.

As to *Digital Rights Management* (DRM), they do not constitute a real alternative yet, although some assert that DRMs can replace collective management societies, facilitating the way back to the individual management of rights. In fact, even if they were actually effective, DRMs would not be operated by individual authors but, again, authors should rather rely on *assignees*, like publishers or record producers. Apparently a suggestive and market-focused solution, DRMs could in practice give rise to serious problems at practical and legal level, in addition the possible failure of the technical protection measures.

I would like to remind you that the real individual management takes place only when an author manages his rights directly on his own, without any third parties who would manage those same rights in the framework of a business relationship and most likely to their own profit. Moreover, as I have already said, the negotiation of remuneration is the main task of authors' societies and the DRM systems cannot increase the feeble contractual power of authors facing the mass-media groups. Moreover, DRMs are totally neutral as to their use and collective management societies themselves use them in order to improve their efficiency and to provide better services to their members.

The administration of rights via DRMs is, under certain aspects, the opposite of the "global statutory licence" under discussion in France. Nonetheless, while it is excessive to think that DRM systems may cause the obsolescence of the societies of authors, doubtlessly these societies have to re-organize themselves in order to remain competitive, following a design of effectiveness which does not prevent less famous authors to access the market.

The societies have to keep on giving added value to their members and to safeguard their income by granting licences consistent with the emerging business models, while avoiding operational burdens on users as well as on rightholders.

Societies of authors are facing the new scenarios, adapting their methods to the digital environment, without fears and complexes; through their joint venture FastTrack, they have already created an advanced tool enabling the sharing of information contained in their databases via Internet.

While the effective protection of copyright on a worldwide basis lies on the co-operation among societies, the competition among them has to be focussed on the quality of their services, including monitoring, control and surveying activities as well as on the prompt distribution of revenues.

As to the future perspectives, the CD sales decrease does not depend only on piracy, but also on other factors (firstly, the outstanding development of competing markets, such as videogames, mobile phone services and DVDs), which have drastically reduced the dimension of audio carriers market. Thanks to the exponentially increasing use of digital contents, from the present 5% the on-line music market is expected to reach 25% of the total market of recorded music within 2010.

The consumers' demand is enormous and a worldwide market, continuously fed by new technologies, can be adequately monitored only by a network of collective management societies. At present, the main problem for the market development is the incompatibility of the various DRM systems, multiplied by the diversification of digital media. Nonetheless, DRMs must comply with market needs and the lack of interoperability is a serious disadvantage for consumers, whose access to legitimate services is thus limited. Even billing systems should be standardized since the different systems of payment presently in use do not facilitate the access of youngsters, who are more easily inclined to turn to the illegal market.

Finally, I would like to reassert that the respect for the intellectual property rights is a key factor even in the on-line environment and that the culture of legality is an advantage and not a hindrance to the development of the global market of digital contents. We all agree that new technologies and the market cannot be obstructed, but we all have to recognize that “copyright free” areas would impede the development of legitimate services and an excessive tolerance of copyright abuses, likely to destroy the market, mortifies creativity and, in the long term, impoverishes cultural diversity and musical heritage.