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THE PRIVATE BROADCASTER AS A CREATOR AND PRODUCER OF CONTENT

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Once again I would like to thank you for the opportunity given me to share some words, in this very important event - the World Electronic Media Forum.

The proposed theme, copyright and related rights, is divided in two different parts, but in a way they converge if analyzed in terms of their relationship to broadcasting.

It is to our knowledge that works and creations are protected by copyright laws, including the exclusive right to authorize or to prohibit the use of the work or creation thereof. For example, the proprietors of these rights can authorize or prohibit: its reproduction in various forms, such as printed publication or sound recording; its public performance, as in a play or musical work; its recordings, for example, in the form of compact discs, cassettes or videotapes; its broadcasting, by radio, cable or satellite; its translation into other languages, or its adaptation, such as from a novel into a screenplay.

In our case, we specifically analyze the reproduction and the irradiation of the works protected by author's right - specifically, by the broadcasting stations. The great majority of works, to be truly known by the public and consequently intellectually and economically valued, needs distribution through the communication media.

In the case of the phonograms and the audiovisual products, its true dissemination and recognition is reached thanks to the mass media communication, such as the radio and the television. For that, the creators of the copyrighted works, or owners of these rights, authorize this dissemination be it for a sale, for a transfer of these rights, or for an agreement that makes its irradiation possible by means of the royalty's payment, as if it were being rented. Of course temporary limitations exist and should exist for these rights that touch on economic exploration. It cannot be permanent because of the risk of them never becoming public domain. However, even as the treaty organized by World Intellectual Property Organization defines a 50-year maximum lapse after the creator's death, for these economic rights, the national legislations can establish longer time limits.

On the other hand, we cannot deny that Copyright and its related rights are essential to human creativity, by giving creators incentives in the form of recognition and fair economic rewards. Under this system of rights, creators are assured that their works can be disseminated without fear of unauthorized copying or piracy. This in turn helps increase access to and enhances the enjoyment of culture, knowledge, and entertainment all over the world. Radio stations, for example, use phonograms as part of their programming, also adding value to informative, educational, and sports programming, etc

and, as a counterpart, as a retribution for the use of the copyrighter works - the phonograms - the radio stations pay certain quantities to the collective administration organizations that on behalf of the retainers of the rights make this collection and, in principle, distribute the paid values.

This system of right authorization appears to be rational and correct, but in fact, some distortions do exist. . Most of the time, in many countries, be they developed or not, abuses exist on the part of the organizing entities of these rights, in terms of the amounts collected for the so called blanked licenses, which are paid monthly, in an indiscriminate way by the number of phonograms, so long as they are in the repertoire represented by the entity.

We have discovered, for example, in United States, in many part of Central and South America, including like for example, Brazil, that judicial disputes exist contesting not only the values and readjustments, but also the forms and formula of economic collection of these rights, by the organizing entities. In no moment, did we see an intention of the radio stations in not paying these rights, but perhaps it is we do so and a form of balancing these rights and values should also be studied.

We already had the time when broadcasting radio stations challenged the obligation of paying for the use of the phonograms with argument that the radio stations were actually the ones who contribute so that the artists and interpreters may become known and famous, through the dissemination of their works by means of the mass media.

We know that this argument cannot subsist because it is contrary to the premises of author property and right. However, this apparently retrograde argument begins to gain weight due to the intransigence of the collecting bodies that increase their fees without any justification or economic or juridical plausibility, generating increases and real income incompatible with the current economies.

This growing disputes may reach nowhere, but the visible tendency in the South and Central American countries is the non-subsistence of a system or of a rational that does not take into account the great contribution that the mass media communication bring to the artistic circle, to the authors, interpreters and phonogram and audiovisual producers. Will the composers and interpreters have the same prestige, fame, money, invitations for shows and the great sale of their CD's if they didn't approach the mass media like the radio and the television? We know that it would not be so!

Personally, I am an untiring defender of the copyrights, where I make a pact with the need of payment of the blanked licenses or per program licenses as economic compensation for the use and irradiation of the phonograms. However, I cannot agree with the discrepancies, abusive and unjustified financial increases that are happening in some countries practiced by entities that seek to have as hostages the broadcasting radio stations, in a system that suffers from disequilibrium.

Let's move on to related rights in broadcasting. We cannot refrain from referring as the main theme, the so-called related rights of the broadcasting organisms, which resulted from the 1961 Rome Convention.

Here, the broadcasting radio stations are owners of the rights, because once a radio station has irradiated its programming, it also takes the risks of having its signal pirated by people or companies that can economically benefit from this irradiation, and of course the irradiated content.

Rights granted to broadcasting organizations were also limited. Until 1961, such rights were essentially granted at the national level, and not all countries provided for such protection. At the international level, the main rights granted to broadcasting organizations were laid down.

in the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention), which were adopted on October 26, 1961. It came into force on May 18, 1964, and today about 70 countries are party to it. The Rome Convention reflects the technological development of the time when it was negotiated. It defines broadcasting as "the transmission by wireless means for public reception of sounds, or of images and sounds" and confines broadcasting to over the air transmissions, excluding coverage for cable transmissions, for example. Protection for cable transmissions has, however, in a number of countries been granted at the national level. An article 13 and 14 of the Rome Convention lay down the minimum rights goes broadcasting organizations and ensures the exclusive right to authorize or prohibit the number of activities in the realm of broadcasting.

The minimum rights granted to broadcasting organizations under the Rome Convention are the rights to authorize or prohibit:

- (a) the re-broadcasting of their broadcasts;
- (b) the fixation of their broadcasts;
- (c) the reproduction of fixations of their broadcasts; and
- (d) the communication to the public of television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 14 states that the term of protection shall last at least until the end of a period of twenty years computed from the end of the year in which the broadcast took place. The Rome Convention allows for exceptions and limitations in respect of:

- (a) private uses;
- (b) it uses of short excerpts in connection with the reporting of current events;
- (c) ephemeral fixation by the broadcasting organization by means of its own facilities and for its own broadcasts; and
- (d) use solely for the purposes of teaching or scientific research. In addition, Contracting States may apply the same kind of limitations that they provide for, in connection with the protection of copyright in literary and artistic work, however with the reservation that compulsory licenses may be provided up only to the extent to which they are compatible with the Convention (Article 15).

The types or forms of organizations are protected, as broadcasting organizations under the 1961 Rome Convention is not expressly clarified. Although there is no definition in that Convention of "broadcasting organization", it was and is generally accepted that these are organizations which provide their broadcasting services to the general public over Hertzian (wireless) waves.

In face of this technological evolution, and of the need to clarify the concepts and the true object of the protection, the World Intellectual Property Organization has been working jointly with its member countries and the others participants of its Standing Committee on Copyright and Related Rights to update Rome Convention, concerning the rights of the broadcasting organizations.

Some concepts have been defined and debated, in the ambit of WIPO, such as prebroadcasting, traditional broadcasting; cable casting, web casting as well as the forms of piracy made possible with the technological progress. As "pre-broadcast", the new definition and protection that has received unanimous "unanimous" acceptance in the discussions of the Standing Committee, can be referred to as "point-to-point" transmissions accomplished within a radio station, when, for example, a report or content is transmitted to the station so that it in turn, publishes and prepares the collective work, the final content, for future free transmission.

Piracy in the "pre-broadcast" is quite common in journalism, especially, for example in images of disasters, which are practically identical. A signal's content is intercepted for simultaneous or future use, by other broadcasting organization. As we have seen, in "pre-broadcast" piracy interception can take place in three instances:

first inside of the ambit of transmission from the radio station itself, in other words, among external crew that send the signal to the main radio station;

(it) second, between the radio station and the satellite that transmits to several antennas in the place; (in) finally, the transmission between the satellite and the antenna by a repeater or relay to begin decoded "point-to-area" distribution.

Another typical example of transmission piracy happens during sporting events. In soccer, for example, quite a traditional sport in Latin America and Europe, and now well-known in the whole world, a lot of times, we come across with the theft of the signal on the part of organizations that don't possess the transmission rights given by the retainers of the image rights such as the FIFA. They take the advantage of distributing the content of this signal including its commercials; therefore, creating profits and dividends through an undue appropriation of content that doesn't belong to them. This piracy type can happen in the "prebroadcast" as well as in broadcast

In "Traditional" Broadcasting, or simply broadcasting, "point to area" emission is when an open signal can be captured freely by those who possess a receiver, is transmitted, or retransmitted from an origin to a number of unidentified and undetermined receivers.

Piracy, in this case, happens during interception of the signals, either in the "prebroadcast" or "broadcast" phase. In other words, in the final and free distribution, regardless of whether we are talking about analogical or digital signals, because the main innovation of digital television, for purposes of analyzing piracy, is that the signal can also carry telecommunications services and not only broadcasting.

Therefore, broadcasting piracy can take place:

- a) between the emission of the signal between reporting and the radio station;
- b) between the emission of the signal among the radio station and the satellites;
- c) between the emission of the signal of the satellites to the receivers, or for relay antennas and;
- d) the free transmission of the relay antennas to the receivers

CableTV, on the other hand, is a form of television by subscription where the contents of the programming suppliers and the encrypted signals of the broadcasting companies are received by the cable companies for encoded distribution to its subscribers. Some companies distribute the signal of the broadcasting organizations by option or by authorization, summing the content of open televisions to the package of contents offered to the subscribers. Others are obligated by legislation of certain countries, or by judicial decision and interpretations, referred to as must-carry.

After receiving in its central the various programming and contents from various channels, these are then forwarded in encrypted form to the subscribers, who pay in order to receive the contents. So the users or subscribers are identifiable and sure, different from those of the signals of the broadcastings which are sent to unidentified and undetermined users. It is a form of "point to point" distribution by physical means - coaxial cables or fiber optics.

The great advantage of this system is the possibility to provide the viewers a great amount of programs, received through terrestrial broadcast bases, satellites and sometimes specifically produced for distribution in cable television, with a superior technical quality than the traditional broadcasting transmission.

In cable, piracy happens:

- a) between "pointto point" emission among the broadcasting organization to the contents distributor - the cable company;
- b) between the physical "pointto point" distribution of the cable company and the decoders of the subscribers.

We also have MUMDS - Multichannel Multipoint Distribution System, which is different from cable only in distribution form, once distributed wireless and not by physical means. This means that the signals bearing the contents are transmitted encrypted to the subscribers, who in turn, possess in its receivers the decoders which decode these encrypted signals. Although it is wireless, it is a "point to multipoint" distribution, and its subscribers are identifiable.

Another technology that we can mention is DTH - Direct-To-Home, which is very similar to MDS in its form of signal distribution; however, it is accomplished by means of satellites where the subscriber possesses a satellite receiver and decodes the encrypted signal. Also a "point to multipoint" distribution.

Moving on to the polemic Internet, a lot is discussed about this powerful distribution tool of information and contents, by means of a completely anarchical net. Actually, the Internet is nothing else than a tool of access and distribution, backed by infinity of web sites produced by people who most of the time use it for illicit purposes, like for example, the distribution of copyrighted contents or even spread of pornography and pedophile. In the field of signal or contents distribution, we have quite an interesting peculiarity, in which it is not the Internet supplier that distributes the "point to point" or "point to multipoint" signal. Whoever has a decoder or website subscription may access its content. The process, in fact, is the opposite way, because it is the user who accesses and searches in the server or content provider the information, downloads the material contained in the signal, which is beyond an unauthorized object or copy; or by streaming, where the content is offered in real or deferred time.

In streaming, a certain web site stores the contents of the broadcasting organizations. These can be captured by several forms, made available to its subscribers in real or deferred time, without the need for a [re]transfer that bears the content; however, there is no avoiding that. The subscriber also copies this content. '---'

In downloading on the other hand, the website makes available the content captured to be copied by the subscribers, for them to view as and when desired. In the Internet we can also mention the case where the television and radio stations themselves, more so with radio, distribute by means of the Internet, their programming in their official websites in real or deferred time. In this case, if we had another provider that wants to pirate this content, it can either store the same for future transmission, or viabilizes the unauthorized programming in real time.

Piracy in the Internet is possible in many forms and phases of the distribution and preparation for distribution of the signal to the broadcasting organizations. In all the possibilities of piracies analyzed, the signals and/or the contents of the broadcasting organizations can be accessed by the subscribers simultaneously or in deferred time. Thus, in principle, we can compare the Internet to a form of signal distribution, because if the websites had their respective authorizations for distribution of the signals, these are then subject to have its "transmissions" or its "accesses" pirated; but this is far from a definition if there could be a comparison to the broadcasting organizations, for purposes of signal protection.

Many countries have criticized the insistence in discussing the proposal presented by United States of America in comparing webcasting to the traditional broadcasting organizations. In the weight of importance of the theme, I believe we are not sufficiently ready to incorporate the Internet in this list of protection of rights, in a form as to create a

new way of signal distribution where any creative person and web site owner could be considered as a broadcasting organization, by the Rome Convention.

Piracy, as we saw, is inevitable, but it should be punished.

Even if the signs were encrypted, we should recognize that the technological evolution for the piracy of coded transmissions moves forward at the same rate and speed as that of cryptography technologies. .'-...-

The natural process of signal cryptography of the broadcasting organization is of the encoded signal while in the "pre-broadcasting" phase and, upon reaching the satellite and/or the antenna of the transmitter or relay, the signal is then decoded and transmitted in an open form, as in the case of traditional broadcasting. On the other hand, in the case of the satellites, Cable, MMDS and other technologies, the signal is also transmitted coded, to its subscribers that possess the decoders.

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The problem is that the technological industry also develops products capable of decoding the encrypted signals. There are also those who are advanced users that use their knowledge to decode the signals and to receive them in an unauthorized manner. Unfortunately there is no other technology at the moment that allows total safety in cryptography or one that identifies when these signals are being pirated.

Going back to the WIPO discussions, personally I believe that the Rome Convention would be sufficient for the traditional broadcasting organizations, if we didn't have so many other forms of signal distribution, and had the necessary protection against piracy during the "pre-broadcasting" phase. However, I believe that the discussions towards a future treaty should evolve in order to confer rights of signal protection to the other forms and technologies, like Cable, Dill, MMDS, because, independent of the technology, they are also subject to piracy of transmissions, be they "point to area", "point to point" or "point to multipoint" transmissions.

On the other hand, the use of the Rome Convention itself should be accompanied by other piracy deterrent mechanisms, to be implemented by the signatory countries. In some countries, for example, piracy is considered a crime, which, perhaps, is not the best solution, but certainly it is a good coercion mechanism for the execution of the international agreements, whose main problem is always the enforcement of the rights and obligations generated by these treaties.