REPUBLIC OF TURKEY
BAHCESEHIR UNIVERSITY

THE COPYRIGHTS PROTECTION IN RESPECT OF COLLECTIVE SOCIETIES AND DIGITAL RIGHT MANAGEMENTS AND THE PROBLEMS ARISING FROM THE NEED OF LEGAL REGULATION IN THE EUROPEAN UNION

Master Thesis

LALE TÜRKOĞLU

İSTANBUL, 2009

REPUBLIC OF TURKEY

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EUROPEAN UNION PUBLIC LAW AND EUROPEAN INTEGRATION PROGRAMME

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ABSTRACT

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Türkoğlu, Lale

European Union Public Law and European Integration

Supervisor: Prof. Dr. Dionyssia Kallinikou

May, 2009, 140 pages

This thesis deals with the collective societies in all aspects within the EU. First of all the concept of copyrights is explained according to the international treaties, such as Rome Convention, TRIPS Agreement or WIPO Treaties. The reason for this explanation is that copyrights are defined differently in national legislations. International treaties aim to harmonize all these definitions. It is also necessary to give some information on the field of copyrighted works. Copyrights and of course related rights are protected in audio fields, audio-visual fields, digital fields and other industrial fields. Taking into account the broad array of these fields, some limits and exceptions are set to protect right of information of people, disabled people and libraries.

International treaties and the EU directives regulate legal framework for copyrights and related rights in the EU. This thesis concludes that there is no special regulation or directive concerning collective societies. The European Commission has an intention to adopt a directive in order to harmonize the formation and the administration of collective societies. After the information on the revenues stated by collective societies, the need for harmonization on collective societies can be seen clearly. The contribution rate of copyrights to national economies has reached up to 6 percent in some countries.

On the other hand, technological developments and the DRMs affect collective rights administration. DRMs provide authors individual rights management which may bring the end of collective societies. Some commentators draw attention to the disadvantages of DRMs. Digital protection systems hinders the use of limitations and exceptions set by international treaties for the exploitation of copyrights and related rights. Even this reason is enough to explain the need for legislation regarding collective administration.

The other important aspects of collective societies are competition rules set by The EC Treaty and human rights. The activities of collective societies are under the revision of the ECJ. Collective societies established in the EU have to comply with the articles concerning competition rules. The case law has set the framework that collective societies have to abide. Unfortunately human rights are not protected as well as competition rules. Even some human rights are protected according to competition rules, but competition rules are only applicable for economic problems.

This thesis underlines the need for harmonization through legislative action in the field of collective administration. The historical background of collective societies proves the importance of the copyright protection for both authors and users. The revenue collected by collective societies and the money distributed to authors are the best indications what can be achieved with the intended legislation.

Keywords: Copyrights, Collective societies, DRMs

ÖZET

FİKRİ HAKLARIN MESLEK BİRLİKLERİYLE KORUNMASI VE DİGİTAL HAK YÖNETİMİ VE AVRUPA BİRLİĞİNDE YASAL DÜZENLEMELERDEN DOĞAN SORUNLAR

Türkoğlu, Lale

Avrupa Birliği Kamu Hukuku ve Entegrasyonu

Tez Danışmanı: Prof. Dr. Dionyssia Kallinikou

Mayıs 2009, 140 sayfa

Bu tez telif haklarının korunması amacıyla Avrupa Birliği içerisinde kurulmuş olan sanatçı meslek birliklerini her açıdan incelemektedir. Bu konuda öncelikle üzerinde durulması gereken husus fikir eseri kavramı ve fikir eserlerinin yaratıcısına sağladığı hakların içeriğidir. Fikir eseri ve fikir eserinden doğan haklar Roma Anlaşması, TRIPS Anlaşması ve WIPO Anlaşmaları gibi uluslarası anlaşmalarla düzenlenmiştir. Fikir eseri ve doğurduğu hakların uluslarası anlaşmalarla tanımlanmaya çalışılmasının ana nedeni, bu kavramın ülkelerin ulusal hukuk sistemlerinde son derece farklı olarak tanımlanmasıdır. Ayrıca fikir eserlerinin sıkça kullanıldığı alanlar hakkında da temel bilgilerin verilmesi gerekliliği hissedilmiştir. Fikri haklar ve ilgili haklar görsel alanda, görsel-işitsel alanda, dijital alanda ve diğer sanayi alanlarında korunmaktadır. Bu alanların kapsadığı genişlik dikkate alındığında ınsanların bilgi edinme hakkının, engelli kişilerin ve kütüphanelerin korunması için bazı sınırların ve muafiyetlerin gerekli olduğu kabul edilmiştir.

Uluslararası anlaşmalar ve Avrupa Birliği Direktifleri, Avrupa Birliği sınırları içinde fikri hakların hukuki çerçevesini çizmektedir. Bu tez göstermektedir ki, Avrupa Birliği hukuk düzeni içinde meslek birliklerine yönelik özel bir direktif ya da düzenleme bulunmamaktadır. Avrupa Komisyonu, Avrupa Birliği üye devletlerindeki meslek birliklerinin kuruluşu ve yönetiminde birliğin sağlanması için bir direktifin kabul edilmesi eğilimindedir. Meslek birlikleri tarafından toplanan telif bedelleri dikkate alındığında, bu hususstaki uyumun önemi açıkça görülmektedir. Meslek birliklerinin milli ekonomiye katkıları bazı ülkelerde yüzde altıyı bulmaktadır.

Bununla beraber, teknolojik gelişmeler ve dijital hak yönetimi (DHY) fikri hakların toplu olarak yönetimini olumsuz olarak etkilemektedir. DHY fikri hak sahiplerinin bireysel olarak haklarının takibini sağlar ki bu da bazılarına gore meslek birliklerinin sonu demektir. Bazı eleştirmenler DHY'nin olumsuz

etkilerine dikkat çekmektedir. Dijital koruma uluslararası anlaşmalarla fikri haklar ve ilgili hakların kullanımına getirilen sınırlamaları ve muafiyetleri engellemektedir. Sadece bu sebep bile fikri hakların toplu yönetimi için yasal düzenleme yapılması gereğini açıklamaktadır.

Meslek birlikleri ile ilgili diğer önemli bir husus ise Avrupa Topluluğu Anlaşması'nın rekabet hukuku alanında koyduğu kurallardır. Meslek birliklerinin aktiviteleri Avrupa Adalet Divanın denetimi altındadır. Avrupa Birliği sınırları içinde kurulmuş olan meslek birlikleri Avrupa Topluluğu Anlaşmasının rekabet hakkındaki maddelerine uymak zorundadır. Avrupa Adalet Divanın içtihatlari meslek birliklerinin uymak zorunda oldukları yasal çerçeveyi çizmektedir. Ne yazık ki insan hakları rekabet kuralları kadar korunmamaktadır. Her ne kadar bazı insan hakları rekabet kuralları ile korunsa da, rekabetin korunması amacıyla yapılan düzenlemeler daha çok ekonomik sorunlara uygulanmaktadir.

Bu tez toplu hak yönetimi alanında kanuni düzenleme ile farklı kanunların uyumlaştırılması ihtiyacının altını çizmektedir. Meslek birliklerinin tarihi geçmişi fikri hakların korunmasının hem fikri eserlerin hak sahipleri hem de fikri eserlerin kullanıcıları açısından ne kadar önemli olduğunu ispatlamaktadır. Meslek birlikleri tarafından toplanan ve hak sahiplerine dağıtılan gelirler de yapılması planlanan yasal düzenlemeler sayesinde sağlanacak başarının en iyi göstergesidir.

Anahtar Kelimeler: Fikri Haklar, Meslek Birliği, DHY

ABSTRACT

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On the other hand, technological developments and the DRMs affect collective rights administration. DRMs provide authors individual rights management which may bring the end of collective societies. Some commentators draw attention to the disadvantages of DRMs. Digital protection systems hinders the use of limitations and exceptions set by international treaties for the exploitation of copyrights and related rights. Even this reason is enough to explain the need for legislation regarding collective administration.

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Keywords: Copyrights, Collective societies, DRMs

CONTENTS

ABBREVIATIONS

Artists' Collecting Society	: ACS
Authors' Licensing & Collecting Society	: ALCS
British Equity Collecting Society	: BECS
Broadcasting Data Services	: BDS
Collective Management Societies	: CMS
Collective Management Organizations	: CMOs
Collective Rights Management	: CRM
Common Information System	: CIS
Confederation of Collective Societies of Authors and Composers	: CISAC
Confederazione Generale Italiana del Lavoro (Italian General Confederation of Labor)	: CGIL
Confederazione Italiana Sindacati Livoratori (Confederation of Italian Workers' Trade Unions)	: CISL
Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms	: The 1971 Phonogram Convention
Convention Relating To the Distribution Of	
Crown Prosecution Service	: The CPS
Copyright Licensing Agency	: CLA
Copyright management information	: CMI
Council Directive 91/250/EEC of 14 May 1991 On The Legal Protection of Computer Programs	: Software Directive
Design and Artistic Copyright Society	: DACS
Digital Rights Management	: DRM
Digital Object Identifier	: DOI
Directive 2001/29/EC of the European Parliament And Of The Council of 22 May 2001 on the Harmonization Of Certain Aspects of Copyright and Related Rights In The Information Society	: Infosoc Directive Or EU Copyright Directive
Educational Recording Agency	: ERA
Electronic Frontier Foundation	: EFF
European Community	: EC
European Court of Justice	: ECJ
European Economic Community	: EEC
European Economic Interest Grouping	: EEIG
European Grouping of Societies of Authors and Composers	: GESAC
European Union	: EU
Extensible Rights Mark-up Language	: XrML
German Patent and Trade Mark Office	: GPTO
Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte	: GEMA
Or Society for Musical Performing and Mechanical Reproduction Rights	: GEMA

Gesellschaft zur Verwertung von Leistungsschutzrechten	: GVL
Gross Domestic Product	: GDP
Industry gross product	: IGP
Institute for the Protection of Performing Artists	: IMAE
Intellectual Property	: IP
International Covenant on Economic, Social and Cultural Rights	: ICESCR
International Federation of the Phonographic Industry	: IFPI
International Federation of Reproduction Rights Organisations	: IFRRO
Internet Enforcement Group	: IEG
Internet Service Providers	: ISP's
Motion Picture Licensing Company	: MPLC
Newspaper Licensing Agency	: NLA
Open University Worldwide	: OUW
Palo Alto Research Center	: PARC
Peer to Peer	: P2P
Performing Artists' Media Rights Association	: PAMRA
Performing Right Society	: PRS
Phonographic Performance Limited	: PPL
Publishers' Licensing Society	: PLS
Private Technical Protection Measures	: TPMs
Programme-Carrying Signals Transmitted By Satellite	: Brussel Satellites Convention 1974
Reproduction Rights Organisations	: RROs
Rights Language Technical Committee	: RLTC
Sociedad General de Autores y Editores is Spanish Society of Authors and Publishers	: SGAE
Scientific and Cultural Organization	: UNESCO
Socite des Auters et Compositeurs et Editeurs de Musique	: SACEM
Societe des Gens Des Letters	: SGDL
Società Italiana degli Autori ed Editori	: SIAE
The Act on the Supervision of Collective Management Societies	: ASCMS
The Agreement on Trade-Related Aspects of Intellectual Property Rights	: TRIPS Agreement
The Content Scrambling System	: CSS
The Bern Convention for the Protection of Literary and Artistic Works	: Bern Convention
The Broadcasting, Entertainment, Cinematograph and Theatre Union	: BECTU
The Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique	: BIEM
The Digital Millennium Act of 1998	: DMCA
The Directors' Guild of Great Britain	: DGGB
The Directors'&Producers' Rights Society	: DPRS
The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	: Rome Convention
Technical & Medical Publishers	: STM
The Mechanical Copyright Protection Society	: MCPS

The Performing Right Society	: PRS
The Societe des Auteurs et Compositeurs Dramatiques	: SACD
The UK's Copyright, Designs and Patents Act 1988	: CDPA
The Universal Copyright Convention	: UCC
The WIPO Copyright Treaty	: WCT
The WIPO Performances and Phonograms Treaty	: WPPT
The World Wide Web	: WWW
Union Italiana dei Lavoratori (Italian Workers Union)	: UIL
United Kingdom	: UK
Unites States of America	: US
Universal Declaration of Human Rights	: UDHR
Uruguay Round of the General Agreement on Tariffs and Trade	: GATT
Verwertungsgesellschaft Werbung und Musik mbH	: VGWM
Verwertungsgesellschaft Bild-Kunst	: VG Bild-Kunst
Verwertungsgesellschaft Musikedition	: VG Musikedition
Video Performance Limited	: VPL
World Intellectual Property Organization Copyright Treaty of 1996	:WIPO Treaties
World Intellectual Property Organization Performances and Phonograms Treaty of 1996	: WIPO Treaties
World Intellectual Property Organization	: WIPO
World Trade Organization	: WTO

1. INTRODUCTION

This thesis aims to investigate the organisation of the collective management and economic, social and cultural functions of collective management societies (CMS) and the effect of the Digital Rights Management (DRM) on the collective management. Moreover, the application of the competition rules is also examined in the light of the decisions of the ECJ.

Examining the history of development of copyright law, it has constantly broadened by impacts of new technology. Greek philosophers and Roman writers claimed recognition for moral rights. Since Ancient Greece and Rome, the concept of copyrights has forced states to adopt copyrights legislations first national level and then international level.

The English Act of 1709 was the first step to provide legal protection for rights of authors which also was followed by different legislation in different countries. Hence authors such as Balzac, Alexandre Dumas, Victor Hugo, established collective societies to fight against infringements by third parties. The Bern Convention was signed in 1886 as a first international convention. This convention could be defined as the birth of the modern copyrights. Even if some countries did not agree with the some provisions of the Berne Conventions, they were all agreed to provide international protection for copyrighted works. From the Berne Convention to the TRIPS Agreement and WIPO Treaties, every international treaty and the modifications of the previous treaties concerning copyrights and related rights provided more and more protection. This thesis explores all these international treaties to explain the basic principles in the field of copyrights and related rights. In addition, this thesis investigates the legal framework in the European Union. Although there is not a specific provision concerning copyrights in the treaty establishing the EC, the European Council adopted several directives to provide efficient protection for copyrights and related rights within the European Union. All

these directives were regulated by taking into account the technological developments and its effects on copyrights.

The concept of copyright still differs from country to country. For this reason, this thesis investigates the concept of copyright as the first step in chapter one. Multilateral international treaties made definitions to explain the concept of copyright. The writers of the treaty which established WIPO defined copyrights as literary, artistic and scientific works; and neighbouring rights as performances of performing artists, phonograms and broadcast. Therefore copyright includes every production related to the artistic, literary, and scientific works, related rights provide protection to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts. Besides technological development has created new fields which should be protected by copyrights law. Expansion of copyrights concept seems never ends. On the other hand this addresses a question of whether classic copyright protection way has to be changed or not.

The broad definition of the copyrights and related rights provides the growth of economic contribution rate to national economies. The broader the definition of copyrights concept, the bigger economic contribution rate to national economies. Investigating the studies on the economic contribution of copyrights and related rights in different countries to national economies underlines the importance of copyrights in respect of national economies and employment. Consequently, this importance force countries to make legal regulations to provide adequate protection in the field of copyrights. According to economic contribution rate of copyrights, it should be examined that whether legal regulations are effective and efficient enough to protect authors' rights. Besides the second question concerning copyrights arises from the activities of collective rights management organizations.

The historical background of collective societies is explained in detail. From the first step taken by Beaumarchais and his friends in 1777, the development of collective societies shows that collective societies have a very important role for the protection of authors' rights. Examining the different organisation structures of collective

societies varies from county to country. Taken into account that there are twenty seven countries in the EU, the disparities between the foundation, the structure and the supervision of collective societies causes many problems. These problems bring the question into light whether harmonisation of legal ground for collective societies is essential or not. The other question which depends the answer of the first question needs to be answered that which way should be followed for harmonisation.

The decisions of ECJ which drew the framework in the field of copyrights are examined to explain the legal ground of collective societies. As known, the ECJ declared that the activities of collective societies fell under the Article 81 of the EC Treaty. The result of this decision was significant. By this way the activities of collective societies can be reviewed by ECJ in respect of competition.

This thesis examines the application of the competition rules to collective societies. In order to outline the effects of competition rules, this thesis evaluates the relationships of collective societies between its members, its users and other collective societies, both at national and international aspect. Taking into account that formation of collective societies is mainly subject to national laws of member states, the thesis also investigates the disparity between the national regulatory systems of the EU countries concerning collective management societies. Also the thesis draws attention to the different supervision systems over collective societies in different countries.

In the EU, there is a tendency to harmonise the formation of collective societies. The reasons for the harmonisation and the discussions over the way to harmonisation are explored in detail. The main issue for the harmonisation is, of course, the question on which way to be followed for regulation concerning collective societies. As some commentators take the view that regulation is the best way, the others support the idea of issuing directive. The principles of the regulations are explained in respect of collective administration of authors' rights. The reasons should be satisfactory with the attribution principle, the subsidiarity principle and proportionality principle. Protocol on the application of the principles of subsidiarity and Proportionality, which is annexed to the EC Treaty by the Treaty of Amsterdam 1997, forces

European Commission to prefer directive to regulations and framework directives. Thus in the near future the European Commission may adopt a directive regarding collective administration of copyrights.

This thesis investigates the functions of collective societies. Especially as a result of technological developments, individual rights management is impossible, or at least very difficult. Moreover authors should spend their time to create. That means they need organizations to monitor the uses of their work, such as collective societies. Public and private organizations or associations collectively administer copyright and neighbouring rights on behalf of creators and rights owners. They operate under the conditions of contracts, laws, and regulations. The basic roles of collective societies are collection of royalties and distributing it to the authors; legal support; negotiate rates and terms of contract with users; representing authors before national or international bodies; social and cultural action.

Collective societies can manage copyrights on behalf of authors after the assignment of authors until the creator receives the benefits of his creation or with the expiration of the copyright duration. This thesis explores the roles of the collective societies and brings the importance of their roles into light. In order to make it understandable, the well known collective societies in the EU are mentioned, such as CISAC, GESAC, GEMA, and BIEM.

The number of members of collective societies which would be more than million creaters from different countries with the reciprocal agreements signed between different collective societies. Also the remuneration collected by collective societies are verey remarkable. For example, CISAC stated in its web page that it has 219 authors' societies from 115 countries. That means it directly or indirectly represents more than 2.5 million creators within all the artistic repertoires. CISAC announced that it collected over € 6.7 billion in 2005.

The studies show that the economic contribution of copyrights to national economy is up to 6 percent. As expressed above, announcements of the other collective societies support this result. This thesis tries to underline the importance of the

functions of collective societies in the light of the statistics documents. Both the Universal Declaration of Human Rights, singed in 1948, and the International Covenant on Economic, Social and Cultural Rights, signed in 1966, provide protection for the moral and material interests of authors and creators, but in balance with the public's right to enjoy the arts and to share in scientific advancement and its benefits. This thesis tries to explore the relationship of the collective societies with the individuals and corporations that are its members. This relationship includes the issues such as the criteria for membership and affiliation, the licensing, monitoring, and enforcement authority that the organization possesses, and the rules for allocating and distributing royalties. Also, the relationship of collective societies between users is weaved in the light of human rights framework. Given the dominant position of the collective societies, the activities of collective societies may put the human rights of both users and authors in danger. All these explanations prove the importance of the economic and social contribution of collective societies. Besides, this importance causes another problem about the need for harmonisation of the activities of collective societies.

In the light of the Digital Right Managements (DRM) and its effects to collective rights management, the future of collective societies should be discussed to forecast the changes in the field of copyright protection. DRM affects collective societies because it may provide authors new ways for exploitation of their works. Some believes that the use of DRM will increase by authors and collective societies. DRM means the digital access, copy and redistribution control mechanisms for copyrighted contents such as music, video, films, games or text. The Serial Copy Management System for digital audiotapes and the Content Scrambling System (CSS) for DVDs may be given as examples of DRM. The main functions of DRM can be summarized as controlling access to the work; preventing unauthorized copying; identifying the works and those who own copyright in them; and enabling contracting for the use of the works.

The Digital Millennium Act of 1998 (DMCA) provides protection for information management in the digital environment at international level. In addition, at the EU level, Copyright Directive implemented very important international obligations

under the framework of the Internet Treaties. The Commission Recommendation of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC) and the Commission Recommendation of 24 August 2006 on the digitization and online accessibility of cultural material and digital preservation (2006/585/EC) are the other regulations concerning digital copyrights at the EU level. Also some commentators suggest adaptation of the Framework Decision on Cybercrime to protect DRM from hackers.

This thesis explores the action fields of DRM. These action fields include audio works, audio-visual works, text industry, software and other industries. Furthermore, the types of DRMs are reviewed to prove the effect of DRM to collective rights management such as Private Technical Protection Measures (TPMs), Extensible Rights Mark-up Language (XrML) and Digital Object Identifier (DOI). TPMs provide protection only to technologies that control access to or the use of a copyright protected work. The DOI System aims at identifying content objects in the digital environment. XrML provides a universal method for securely specifying and managing rights and conditions associated with all kinds of resources including digital content as well as services.

This thesis also analyzes the disadvantages of DRMs and alternatives to DRMs. The main disadvantages of DRMs are the balance in copyright between private rights and the public interest, the consumer privacy and the consumer convenience. The suggested alternatives to DRMs are content flat rate, voluntary collective licensing. This investigation outlines all the effects of DRMs to collective rights societies. Some commentators even say that DRMs are the end of collective rights societies. On the other hands, some commentators believe that collective societies would work with DRM.

In summary, this thesis tries to find out an answer some questions about the best protection way for copyrighted works in the light of the impact of the technological developments. The historical background of and the revenue collected by collective societies have spotted the lack of legal regulation concerning collective societies.

The European Union legislator has discussed the necessity of legal harmonisation on collective societies established within the EU and the best way for the harmonisation according to attribution, subsidiarity and the proportionality principles. On the other hand, the technological development and the use of DRM systems create some different problems which are also be solved by the legislators.

2. THE CONCEPT OF COPYRIGHTS

AND RELATED RIGHTS

2.1 WHAT ARE COPYRIGHTS?

Concept of copyrights and related rights is defined in the legislation of different countries. Nevertheless basic concepts of these definitions are common and consistent with the provisions of the Berne Convention, Rome Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), WIPO Treaties and the other relevant international conventions on intellectual property rights (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, Chapter 2, parag.34).

Intellectual Property Rights are divided into two main branches: Industrial Property and Copyrights. Thus, it could be seen clearly that copyrights is the one of the main branches of the intellectual property rights.

The Convention which established the WIPO stated that intellectual property rights shall include (Background Reading Material on Intellectual Property, WIPO 1988, pp.3-4);

a) Literary, artistic and scientific works
b) Performances of performing artists, phonograms and broadcast
c) Inventions in all fields of human endeavour
d) Scientific discoveries
e) Industrial designs
f) Trademarks, service marks, and commercial names and designations
g) Protection against unfair competition

According to definition of the Convention Establishing the WIPO, literary, artistic and scientific works constitute the copyrights and performances of performing artists,

phonograms and broadcast constitute the so called neighbouring rights, which are also called related rights.

Copyright protection helps promoting, enriching and disseminating the national cultural heritage. Protection of the creativity of people and encouragement of national creativity are conditions for the progress of the national culture. The importance of copyright in this process is described in the preface to the Guide to Berne Convention, as follows: (Background Reading Material on Intellectual Property, WIPO 1988,p.209)

> *Copyright, for its part, constitutes an essential element in the development process. Experience has shown that enrichment of the national cultural heritage depends directly on the level protection afforded to literary and artistic works. The higher the level, the greater the encouragement for authors to create; the greater the number of a country's intellectual creations, the higher its renown; the greater the number of productions in literature and the arts, the more numerous their auxiliaries in the book, record and entertainment industries; and indeed, in the final analysis, encouragement of intellectual creation is one of the basic prerequisites of all social, economic and cultural development.*

Copyrights protect artistic creations such as poems, novels, music, paintings, etc. It can be simply defined that when a person creates a literary, musical, scientific or artistic work, as mentioned above, he or she is the owner of that work and is free to decide on its use. That person, who is called the "creator" or the "author" or "owner of rights", can control the use of the work. It is the reason that in most countries copyright is called author's rights.

As Copyright applies to every production related to the artistic, literary, and scientific works, related rights provide protection to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts.

It should be noted that copyright law protects the work from the moment it comes into being and whatever may be the mode or form of expression. There is no formality to be complied with, such as registration or deposit.

Unlike protection of inventions, copyrights protect only the form of expression of ideas (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, Chapter 2, parag.36). In Other words, mere ideas in themselves are not protected, only the way in which they are expressed. Also for the enjoyment of the copyright protection, originality is essential. It does not a matter whether the ideas in the work are new or not, the form of expression must be an original creation of the author. It should be pointed out that originality is needed both to the substance and to the form (Background Reading Material on Intellectual Property, WIPO 1988, pp.5-6);

In other words it is the form of expression which is protected. And original creativity of a work of an author is protected irrespective of the quality or the value of the work. Another important point is that as long as the conditions mentioned above are provided, the protection of the copyrights applies whether the work is published or not.

Practically all national copyright laws provide for the protection of the following types of works (Background Reading Material on Intellectual Property, WIPO 1988, p.212);

1. **Literary works;** novels, short stories, poems, dramatic works and any other writings, irrespective of their content (fiction or non-fiction), length, purpose (amusement, education, information, advertisement, propaganda, etc.), form (handwritten, typed, printed; book, pamphlet, single sheets, newspaper, magazine); whether published or unpublished; in most countries oral works, that is, works not reduced to writing, are also protected by copyrights,
2. **Musical works;** whether serious or light; songs, choruses, operas, musicals, operettas; if for instructions, whether for one instrument (solo), a few instruments (sonatas, chamber music, etc.), or many (bands, orchestras),
3. **Artistic works;** whether two-dimensional (drawings, paintings, etchings, lithographs, etc.) or three-dimensional (sculptures, architectural works), irrespective of content (representational or abstract) and destination (pure art, for advertisement, etc.),

4. **Maps and technical drawings,**
5. **Photographic works;** irrespective of the subject matter (portraits, landscapes, current events, etc.) and purpose for which made,
6. **Motion pictures (cinematographic works);** whether silent or with a sound track, and irrespective of their purpose (theatrical exhibition, television broadcasting, etc), their genre (films, dramas, documentaries, newsreels, etc.), length, method employed (filming live, cartoons, etc.) or technical process used (pictures on transparent film, on electronic video tapes, etc.)

Many copyright laws protect also "works of applied art" (artistic jewellery, lamps, wallpaper, furniture, etc.) and choreographic works. Some regard phonograph records, tapes and broadcasts also works.

2.1.1. Rights Compromised in Copyrights

The author of the copyright protected work has exclusive rights on his work. He has complete power on deciding how to use work as he wishes. The author may authorize or excludes others to use his work or assign his rights on his work to someone or an organisation. Rights of the author of the copyrighted work are divided into two groups. There are the economic rights and the moral rights (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, Chapter 2, parag.40-47).

The **economic rights** can mainly be listed as;

a) **Right of reproduction;** This is the most basic right under copyright. The author may prevent others from making copies of his work and this right applies all kind of copyrighted works and also irrespective of the form of the copy.
b) **Right of broadcasting;** This right covers the transmission by wireless means for public reception of sounds or of images and sounds, whether by radio, television or satellite.

c) **Right of public performance;** This right includes the performance of the work at a place where the public can be present and live performances to the public and the performances by means of recordings.

d) **Right of adaptation, arrangement and other alteration;** Adaptation commonly means modification of the copyrighted work to create another work. Thus adaptations are also works protected by copyrights. The result of the technological development there has been a discussion on the right of the adaptation. With the increased possibilities for adapting and transforming works, manipulation of the text, sound and images has become very easy and quick. The balance between the rights of the author to control the integrity of the work by modifications and the rights of the users to change the work as part of the normal use in digital format has become very important.

e) **Right of translation;** Translation means the expression of a work in a language other than the original version of the work and it is protected by copyright. And the authorisation of the author is required to translate the work into another language. An authorisation both from the author of the original work and the owner of the copyright in the translation or adaptation is a condition to reproduce and publish a translation.

f) **Right of communication to the public;** This right covers wide range of activities. Basically cable transmission, making copyrighted works available on-line on-demand and the transmission in the digital networks are involved in this right. According to national legislation the right of communication may cover public performance and broadcasting.

g) **Right of distribution;** This right includes the distribution of copies of protected works. It is usually subject to exhaustion on the first sale or the other transfer of ownership of a particular copy. In this point a question arises that how far the distribution right is exhausted in one country when the sale of the copy is authorised by the author in another country.

h) **Right of rental;** The authorisation must be obtained for the commercial rental of copies. It is restricted to certain categories of works such as musical works, phonograms, audiovisual works, and computer programs.

The **moral rights** are required member countries by Bern Convention to grant to;

a) The right to claim authorship of the work
b) The right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to his honour or reputation.

These rights are considered independent of the usual economic rights. The most important difference between the economic rights and the moral rights is that the moral rights remain with the author even after he has transferred his economic rights (Background Reading Material on Intellectual Property, WIPO 1988, p.215).

Both sets of rights belong to the creator who can exercise them. The exercise of rights means that he can use the work whatever he wishes. He may use the work himself, or assigns his right to an organisation or give permission to someone else to use the work or exclude someone else from using the work. The general principle is that copyright protected works cannot be used without the authorization of the owner of rights. In principle, the term of protection is the creator's lifetime and a minimum of 50 years after his death (www.wipo.int.2007). On expiry of the term of protection, the work can be used by anyone without any authorization.

At the international level, the economic and moral rights were conferred by the "Berne Convention" adopted in 1886. This Convention has been revised several times to provide effective protection of the copyrighted works against the technological developments**.**

2.2. WHAT ARE RELATED RIGHTS?

The "related rights", also known as "neighbouring rights" provide protection to other categories of owners of rights, namely, performers, the producers of phonograms and broadcasting organizations. These rights provide similar protection to the copyright, but its scope is narrower than the copyright.

The related rights are divided into three categories (Background Reading Material on Intellectual Property, WIPO 1988, pp.216-218);

1. The rights of the performing artist in their performances, these rights provide the performancers to prevent fixation and direct broadcasting or communication of phonograms to authorise or prohibit reproduction of their performance without their consent.
2. The rights of producers of phonograms in their phonograms, these rights includes authorisation or prohibition of reproduction of their phonograms and the import and distribution of unauthorised duplicates there of.
3. The rights of broadcasting organisations in their radio and television programs; these rights includes authorisation or prohibition of rebroadcasting, fixation and reproduction of their broadcasts.

The related rights belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts respectively.

The rights of performing artist, record producers and broadcasters are referred to as neighbouring rights or related rights because they have developed in parallel with copyright, and the exercise of these rights have very close link with the exercise of copyright. As the protection of the literary, artistic and scientific works by copyright was needed as a result of technological development, also effective protection for the related rights gained importance (Background Reading Material on Intellectual Property, WIPO 1988, p.218). Copyright legislation could cover rules on related rights that provide protection in the dissemination of such works, in respect of their own rights.

The difference between copyright and related rights that related rights do not belong to author. They belong to owners regarded as intermediaries in the production, recording or diffusion of works. The close link with copyright is formed that the three categories of related rights owners are intermediaries associated with the dissemination and broadcasting of works. For example a musician performs a musical work written by a composer; an actor performs a role in a play written by a

play writer; producers of phonograms or more commonly "the record industry" record and produce songs and music written by authors and composers, played by musicians or sung by performers; broadcasting organizations broadcast works and phonograms on their stations (www.wipo.int.2007).

At the **international level**, related rights are conferred by the "Rome Convention". This Convention was adopted in 1961 and has not been revised since. The TRIPS Agreement, signed in 1994, incorporates or refers to this international protection.

2.3. LIMITATIONS AND EXCEPTIONS ON COPYRIGHT PROTECTION

A balance between the interests of the author of the copyright protected work in receiving fair reward for his efforts and the interests of copyright users in receiving access to copyright materials are very important. There are several ways to form this balance. The most important way of these is the implementation of a series of limitations and exceptions to the exclusive rights of authors. Exceptions to the rights of authors have been around almost as long as the rights themselves. The English Statute of Anne, which came into effect in 1710, contained no exceptions but required that deposit copies should be lodged with seven important libraries as a condition of protection. The reason for this that copies of the work must be made available to the public (www.ifla.org.2007).

Article 9(2) of the Berne Convention permits member countries to make exceptions with respect to the right of reproduction of copyright owners provided that such exceptions are a ‘special case; do not conflict with a normal exploitation of the work; and do not unreasonably prejudice the legitimate interests of the author. Also Article 10 of The Berne Convention permits free uses for the purposes of ‘Quotations’ and ‘Illustrations for teaching and Article 10*bis* permits further possible free uses for the purpose of reporting current events. Compulsory licences are also permitted in certain other circumstances by Article 11*bis* and Article 13.

Similar provisions exist in the TRIPS Agreement; specifically Article 9(2) of Berne is repeated in Article 13 of TRIPS, with respect to all rights, not simply the right of reproduction.

Mainly these limits are:

a) **Duration of copyright;** Copyright protection provides limited time protection. The duration of copyright begins with the creation of the work and it is protected by copyright during the duration of copyright. After the expiration of the duration of copyright, copyright protected work enters into the public domain and can be used by anyone and any purpose without authorisation. This limitation provides an enormous resource material that is permanently available to education, research and the development of new creative works. The maximum duration of copyright, when the very first Copyright Act was passed in England following the passage of the Statute of Anne, was 28 years. In the member of Berne Convention and in many other countries, duration of copyright provided by national law is the life of the author and not less than 50 years after the death of the author.

b) **Limited suite of rights;** A copyright owner's capacity to control the use of his or her work is limited to the suite of rights. Uses that fall outside these rights are not subject to the copyright owner's control. For example, copyright permission is required to print copies of a book; however, once a legitimately-printed copy has been sold, the copyright owner may not control what is done with that copy. The purchaser is free to read the book multiple times, lend, borrow, sell or destroy it. This was enshrined in U.S. law as the 'Doctrine of First Sale' and also known as 'exhaustion of the copyright'.

c) **Subject matter;** Copyright historically applied only to books. It has been expanded ever since to include an ever-widening set of creative and non-creative material. As mentioned above that copyright only provides protection to the works if they fulfil the originality test.

d) **Non-material Works;** This limitation is the exclusion from copyright protection of certain categories of works. In some countries, the work must be

fixed in tangible form to be protected by copyright. Otherwise it is excluded from protection. Also in some countries the text of laws, court and administrative decisions are excluded from copyright protection.

e) **Free uses (or fair dealing);** The concept of fair use is also known as; free use, fair dealing, or fair practice. Fair use sets out certain actions that may be carried out, but would not normally be regarded as an infringement of the work. Fair use allows use of works without authorisation of the author and without an obligation to compensate the author's right for the use. Under fair use rules, it may be possible to use quotations or excerpts, where the work has been made available to the public. The balance between the copyright and fair use is form by taking into account such factors as the nature and purpose of the use, including whether it is for commercial purposes or not; the nature of the work used, the amount of the work used in relation to the work as a whole, which must be justified, and no more than it is necessary is included; the source of the quoted material is mentioned, along with the name of the author; and the likely effect to the use on the potential commercial value of the work. Typical free uses of work include use of the works for the purpose of news reporting, use of the works by way of illustration for teaching purposes; and incidental inclusions. The idea behind this is that if copyright laws are too restrictive, it may stifle free speech, news reporting, or result in disproportionate penalties for inconsequential or accidental inclusion.

f) **Non-voluntary licenses;** The laws of some countries permit the broadcasting of protected works without authorisation, provided that fair remuneration is paid to the author of the copyrighted work. Under this system, a right to remuneration can be substituted for the exclusive right to authorise a particular act. This system is called compulsory licenses because they result from the operation of law and not from the exercise of the exclusive right of the author.

g) **Geographic limitations;** The right of the author is protected by the national law of a country against acts restricted by copyrights which are done in that country. For protection against acts done in another country, he must apply to

the law of that other country. If both countries are members of one of the international conventions on copyright, the solution of the problem becomes easier.

The result of the reduced impact of some limitations in the field of copyright in the digital environment, other exceptions and limitations have become more important than ever. And it should be pointed out that copyright is a monopoly right. Without exceptions, copyright owners would have a complete monopoly over learning, and thus control access to knowledge.

2.4. ECONOMIC FUNCTIONS OF COPYRIGHT

The object of copyright is to form a balance between protection of the creativity and the different economic effects. As copyright law defines, recognises and protects the copyright of original work, it also states that which kind of works could be marketed and sets out the general rule for their trade. Copyright law provides market transactions on copyrighted works.

As a result of technological developments, copyright has become a very important economic subject. The WIPO survey (Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001) showed that with the growing industry has triggered the copyright protection which has expanded more quickly than the other parts of the economy[1]. These surveys clearly proved that copyright industry contributes very important part of economy. In some countries the surveys on copyrights are held systematically which show the importance of copyright and the economic growth of the copyright industries.

[1] The survey says at p.9 that "the first survey was completed in seventies in Canada and Sweden, followed by a series of studies in the 1980's in the United States of America, New Zealand , The United Kingdom, The Netherlands, Germany and Austria. After 1990's the researches made in Finland, Japan and Latin American countries were more comprehensive and broader in their geographical scope."

The copyright industries are divided into four groups by US economists as core, partial, distribution, and copyright-related industries (Copyright Industries in the US Economy The 2004 Report, p. 4). Also WIPO divided the copyright industries into four groups as core, partial, non-dedicated support, and interdependent copyright industries. The definition of the core copyright industries was made by WIPO as (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, p.29);

> *The core copyright industries are industries that are wholly engaged in creation, production and manufacturing, performance, broadcast, communication and exhibition, or distribution and sales of works and other protected subject matter.*

And it was stated that core copyright industries could be divided into nine groups as; (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, pp.30-31);

(a) press and literature;

(b) music, theatrical productions, operas;

(c) motion picture and video;

(d) radio and television;

(e) photography;

(f) software and databases;

(g) visual and graphic arts;

(h) advertising services; and

(i) copyright collective management societies.

It is clearly seen that the core copyrights industries are those industries whose primary purpose is to produce or distribute copyright materials. On the other hand, these industries have close relationship with the other parts of the economy such as retail and transportation industries for the distribution of copyright protected goods. It should be noted that core copyright industries have been affected significantly by the development of the internet. It has become very easy to distribute text information, music and also video products over internet to and from consumers by using dial-up and broadband data links. Hence it can be said that they would contribute as copyright distribution industries at least in part.

The definition of the interdependent copyright industries was made by WIPO as (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, p.33);

> *Interdependent copyright industries are industries that are engaged in production, manufacture and sale of equipment whose function is wholly or primarily to facilitate the creation, production or use of works and other protected subject matter.*

And interdependent industries includes manufacture, wholesale and retail, both sales and rental, of TV sets, radios, VCRs, CD players, DVD players, cassette players, electronic game equipment, and other similar equipment; computers and equipment; and musical instruments. It is clearly seen that it is essential to use the interdependent copyright industries to consume the copyright content (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, p.33). For example a cassette can not be listened to by anyone without cassette player.

The definition of partial interdependent copyright industries made by WIPO is (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, p.33),

> *The partial copyright industries are industries in which a portion of the activities is related to works and other protected subject matter and may involve creation, production and manufacturing, performance, broadcast, communication and exhibition or distribution and sales*.

These industries range from fabric to furniture to architecture. Hence it could be said that it covers manufacture, wholesale and retail, both sales and rental, of photographic and cinematographic instruments; photocopiers; blank recording material; and paper (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, pp.33-34). It is connection to copyright is less than the core interdependent group but it has still link to the copyright.

The non-dedicated support industries are defined by WIPO as (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, p.35);

> *…the industries in which a portion of the activities is related to facilitating broadcast, communication, distribution or sales of works and*

other protected subject matter, and whose activities have not been included in the core copyright industries.

This definition indicates that these industries include general wholesale and retailing; general transportation; and telephony and Internet.

According to above explanation it is understood that copyright industries constitute a very important portion of the GDP of a country. On survey three main indicators are used to provide comprehensive results about the impact of the copyright industries on the economy of the given country. These indicators are;

1- Size of the copyright-based industries as a percentage GDP,
2- Employment in those industries, and
3- Foreign trade (i.e. share of imports and exports).

The size of the copyright-based industries has surpassed expectations and taken a big part in the economy as a percentage of GDP. The 2002 Report on the copyright-based industries in the US economy proved the importance of the copyright-based economy. The report stated that (Copyright Industries in the US Economy The 2002 Report);

a) In 2001, the U.S. copyright industries accounted for 5.24percent of U.S. Gross Domestic Product (GDP), or $535.1 billion — an increase of over $75 billion from 1999 and exceeding 5.0 percent of the economy and one-half trillion dollars for the first time;
b) Over the last 24 years (1977-2001), the U.S. copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy (7.0 percent vs. 3.0 percent);
c) Between 1977 and 2001, employment in the U.S. copyright industries more than doubled to 4.7 million workers, which is now 3.5 percent of total U.S. employment;
d) Between 1977 and 2001, the U.S. copyright industries' average annual employment grew more than three times as fast as the remainder of the U.S. economy (5.0 percent vs. 1.5 percent);

e) In 2001, the U.S. copyright industries achieved estimated foreign sales and exports of $88.97 billion, again leading all major industry sectors including chemicals and allied products; motor vehicles; equipment and parts; aircraft and aircraft parts; and the agricultural sector.

The 2001 Australian study says that in 1999–2000 Australia's copyright industries contributed $19.2 billion in the industry gross product (IGP). The study stated over the period 1996–97 to 1999–2000 the copyright industries grew at an average annual growth rate of 5.7 percent, exceeding the average annual growth rate of the total economy over the same period, which was 4.85 percent per year. Also it shows that the employment in the copyright industries grew from around 312,000 in 1995–96 to nearly 345,000 in 1999–2000, representing an average annual growth rate of 2.7 percent (The Economic Contribution of Australia's Copyright Industries 2001).

According to the study in the period 1994-1998 the copyright sector in the Netherlands grew one and a half times faster than the Dutch economy as a whole – 5.6 percent compared to 3.2 percent. The study says that the employment in the copyright industries increased during the period of 1994-1998 from 363,589 to 419,775 persons, both full time and part time jobs. This translates to roughly 338 thousand full time equivalents. The employment in the copyright-based industry measured in persons increased between 1994 and 1998 with more than 56,000 persons. In full time equivalents it increased by 42,000 over the same period (Economic Contribution of Copyright-Based Sector in the Netherlands 2004).

The contribution of the copyright industries is over 8 percent of the UK's GDP, with a growth rate of twice the rest of the economy. UK defines that the music industry is one of the UK's creative successes as its domestic expenditure on music is nearly £5 billion a year (Counting the Notes, National Music Council 2002). Also music activities generate the equivalent of 126,000 full-time jobs in the UK. According the research the UK is the third largest market in the world for sales of music, behind only the USA and Japan. Sales in the UK amounted to 10.4 percent of all music sold globally in 2004. As a source of repertoire globally, the UK is the second only to the USA. Meanwhile, the emerging economies of China and India are showing

increasing interest in the creative industries and the value they bring (www.publications.parliament.uk 2007)

In Finland, during the period 1988-1997 the average annual growth was 4.05 percent while at the same time the growth of the value added in the core copyright-based industries was 8.3 percent (WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries 2001, p.31)

The economic studies have shown the important contribution of copyright industries to the European economy. The copyright industries contributed over € 1200 billion to the EU Economy in 2000. The total copyright industries employ 3, 14 percent of the total employment in Europe (The Contribution of Copyright and Related Rights to the European Economy, European Commission 2003). Result of the technological development, the internet industry has emerged as one of the most innovative sectors of the economy. The contribution of the software and databases industries to the European nations' GDP was 1,35 percent in 2000, making it the largest sector within the EU copyright industries. Performance gains in computer hardware, advances in software functionality, and the growth of the Internet into an established communication.

2.5. THE BIRTH OF MODERN COPYRIGHT

The English Act of 1709, known as Statute of Anne, is widely regarded as the first legislative arrangement in the field of copyright law. The full title of the statute is "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned." This statute gave exclusive rights to authors rather than publishers, and it also gave protections for consumers of printed work to prevent publishers from controlling their use after sale. It provided limited the duration of such exclusive rights to 28 years, after which all works would pass into the public domain.

The US Act of 1790 followed the Statute of Anne. The original name of the act is "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies". It was the first copyright law in the United States of America and this was clearly stated in the act. The act included books, maps and other original materials regardless whether printed or not. Also it gave protection for a period of 14 years (US Act of 1790).

The other step was the French legislation of 1791 and 1793. The legislation adopted in 1791 was the first in France to give the force of law to authors' performance rights in respect of their dramatic works. Beaumarchais who founded the Society of Dramatists in 1787 had been the first to call for such legislation. The French Revolution brought the new concept of freedom and property. They became natural rights in terms of their enjoyment. The decree of 1791 'concerning theatrical entertainment' required 'the formal, written consent of the authors' for any performance. It also provided protection the period of five years following the author's death. The decree of 1793 deals with 'the property rights of authors' and is designed to prevent 'printing from making the production of writers' public property', that is, by implication, during their lifetime or in so far as their heirs are affected. It could be said that the decrees of 1791 and 1793 are truly revolutionary.

During this period, the protection of copyright law was territorial. But during the 19th century protection at international level for copyright became essential for states as a result of the problems they had to deal with an unauthorised reproduction (Kallinikou 2002, p.2).

2.5.1. The Berne Convention

The Berne Convention signed at Berne in 1886 was the first step to built copyright protection at the international level. The full name of the Convention is "Berne Convention for the Protection of Literary and the Artistic Works" and it has been modified several times, at Berlin in 1908, Rome in 1928, Brussels in 1948, Stockholm in 1967, and Paris in 1971. Hence the current version of the convention is the Paris Act of 1971. The convention is administered by the WIPO. The Berne

Convention provides protection for all authors who are nationals of, or habitually resident in a country which singed the Convention, and other authors as regards works first published or simultaneously published in a Contracting State and in some other country (Article 2 of The Bern Convention). Also an author from any country that is a signatory of the convention is awarded the same rights in all other countries that are signatories to the Convention.

The terms of the Convention also requires other countries that are not the signatories of the Convention to protect work by nationals of signatory country. It states that where a country which is not the member of the Convention does not provide adequate protection to authors, members of the Convention are entitled to not extend protection to nationals of that country, beyond that which is granted by the country.

According to the Berne Convention, the author has the following exclusive rights. Hence none of the actions stated below can be carried out without permission;

1. The right to authorise translations of the work.
2. The exclusive right to reproduce the work, though some provisions are made under national laws which typically allow limited private and educational use without infringement.
3. The right to authorise public performance or broadcast, and the communication of broadcasts and public performances.
4. The right to authorise arrangements or other types of adaptation to the work.
5. Recitation of the work, (or of a translation of the work).
6. The exclusive right to adapt or alter the work.

However the concept of 'country of origin' became very important to understand how the Convention provides protection. The Convention defines the country of origin in Article 5(4) as;

1. in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;

2. in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
3. in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national.

The other important point is that authors do not need to apply any formalities such as registration, deposit of a copy of the protected work or payment of a fee. At this point copyright differs from patent and trade mark law.

The Convention provides protection not only economic rights, also sets minimum standards for moral rights. The basic moral rights are stated in Article 6 of the Convention as;

1. the right to be identified as the author of the work,
2. and object to any modification of the work which would be 'prejudicial to his honour or reputation'

Moral rights became the subject of the Berne Convention after the modification at Rome in 1928. Also the Convention provides for a minimum term of protection consisting of the lifetime of the author plus fifty years (Article 7 of The Bern Convention).

2.5.2. The Universal Copyright Convention (UCC)

The Universal Copyright Convention (UCC), was first created in 1952 in Geneva. It was promoted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO). It was revised in Paris in 1971 (Keeling 2004, pp. 285-286).

Some countries disagreed with certain articles in the Berne Convention. So those countries singed the UUC as an alternative to the Berne convention. They were unwilling to grant to high standard of the protection required by the Berne

Convention. Those countries included the United Sates of America which finally signed up to the Berne Convention on the 1st of March 1989.

The UCC ensured that international protection was available to authors even in countries that would not become parties to the Berne Convention. Berne convention countries also became signatories of the UCC to ensure that the work of citizens in Berne Convention countries would be protected in non-Berne Convention countries. Also it should be stated that the existence of the UCC did not lead to a conflict with the Berne Convention, because Article 17 of the UCC lays down the principle that the convention does not affect any provision of the Berne convention, and the appendix declaration to the article goes on to state that any country that withdraws from the Berne Convention after 1st January 1951 will not be protected by the UCC in countries of the Berne Convention Union. This effectively gave the Berne Convention precedence and penalises any country that withdraws from the Berne Convention to adopt the UCC (www.copyrightservice.co.uk 2007).

Some have accepted that the UCC is just the draft and has not details. The main principles of the Convention are:

1. Contracting states provide the same cover to foreign published works as they do to their own citizens.
2. States that require formal registration should treat works from foreign states that are signatories of the convention as though they had been registered in the state, provided that they carry a notice which includes the © symbol and states the name of the owner.
3. It sets a minimum duration for copyright protection as 25 years from the date of publication, and typically not less then 25 years from the authors' death. With a notable exception of photographic and applied arts work which has a minimum protection of 10 years.
4. It recognises the economic rights of the author,
5. It recognises the author's right to make translations of the work.
6. It also specifies particular exceptions which may be applied to developing countries.

As with the Berne Convention, the UCC provides flexibility to the member states on the implementation of the details of the convention. Hence it should be read in conjunction with national copyright laws to in order to understand specific aspects.

2.5.3. The International Convention For The Protection Of Performers, Producers Of Phonograms And Broadcasting Organisations (The 1961 Rome Convention)

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, known as the 1961 Rome Convention, is an international treaty under which countries moved by their desire to protect the rights of performers, producers of phonograms, and broadcasting organizations allow reciprocal treatment to rights holders of other countries signatory to the Convention. There are 83 countries that are contracting parties to the Rome Convention, including the United Kingdom, Germany, France, Italy, Spain, Australia and Japan, but not the United States.

The Convention protects three distinct categories as the title of the Convention implies. It secures protection for performers, producers of phonograms and broadcasting organizations.

a) Performers are actors, singers, musicians, dancers and other persons who perform literary or artistic works (Article 2 of The Rome Convention) and they are protected against certain acts they have not consented to. Such acts are: the broadcasting and the communication to the public of their live performance; the fixation of their live performance; the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for purposes different from those for which they gave their consent (www.wipo.int 2007). The Rome Convention provides for national treatment. Hence the performer is entitled to national treatment in respect of performers which took place on the territory of a signatory country regardless of the nationality of the performer.

b) Producers of phonograms have exclusive the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Phonograms are defined in the Rome Convention as any exclusively aural fixation of sounds of a performance or of other sounds (Article 3(b) of The Rome Convention). The word phonogram covers records, audio cassettes, CD's and mini-discs, but not video-cassettes or DVD's. The producer of a phonogram is the natural or legal person who first fixes the sounds of a performance or other sounds. When a phonogram published for commercial purposes gives rise to secondary uses, a single equitable remuneration must be paid by the user to the performers, or to the producers of phonograms, or to both; the contracting states are free, however, not to apply this rule or to limit its application. The Rome Convention provides for national treatment for producers of phonograms regardless of their nationality.
c) Broadcasting organizations enjoy the right to authorize or prohibit certain acts, namely: the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee (Article 13 of The Rome Convention). The Rome Convention provides for national treatment for broadcasting organisations too.

The Rome Convention allows exceptions in national laws to these rights as regards the exceptions discussed above, except for compulsory licenses that would be incompatible with the Berne Convention. Furthermore, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application (www.wipo.int 2007).

Protection is granted at least until the end of a period of 20 years calculated from the end of the year in which the performers was recorded for phonogram producers and the rights of performers and from the end of the year in which the broadcast took place for the rights of the broadcasting organisations (Article 14 of The Rome Convention).

The Rome Convention is administered by WIPO, jointly with the ILO and UNESCO. These three organizations compose the Secretariat of the Intergovernmental Committee set up under the Convention and consisting of the representatives of 12 Contracting States. This Convention is open to States party to the Berne Convention or to the UCC.

2.5.4. Convention For The Protection Of Producers Of Phonograms Against Unauthorized Duplication Of Their Phonograms (The 1971 Phonogram Convention)

The aim of this Convention is to protect phonogram producers against certain forms of piracy. The Convention does not provide national treatment; under the provisions of the Convention each contracting state is responsible to protect phonogram producers who are nationals of other contracting states against unauthorised production of copies, the importation and the distribution of such copies. The Convention applies only to sound recordings, so it excludes audio-visual material.

2.5.5. Convention Relating To The Distribution Of Programme-Carrying Signals Transmitted By Satellite (Brussels Satellites Convention 1974)

As the title of the Convention implies, this Convention is concerned only with broadcasting by satellite. The aim of the Convention is to protect organisations which broadcast by satellite, television or radio programmes against unauthorised access by public via satellite. All contracting states are required to implement necessary measures under the provisions of the Convention (Article 2 of The Satellite Convention).

2.5.6. The Agreement On Trade-Related Aspect Of Intellectual Property Rights, (TRIPS Agreement)

Some countries wanted to relate copyright and other intellectual property rights with trade. Then at the end of the 20th century, these countries singed the TRIPS Agreement as a result of the Uruguay Round of the General Agreement on Tariffs

and Trade (GATT) in Marrakech in 1994. Also the World Trade Organisation (WTO) was established in 1995 at the conclusion of the Uruguay Round of multilateral trade negotiations. The WTO is directed by its member economies and leads a wide-ranging system of rules for international trade. The aim of the WTO is to liberalise and expand trade under agreed and enforceable rules for reciprocal benefit. The TRIPS is one of the steps to build up the integrated WTO system of trade rules (www.dfat.gov.au 2007).

It should be noted that the philosophy of the TRIPS Agreement is different from both the Berne Convention and the Rome Convention. The main subject of the TRIPS Agreement is the protection of freedom of international trade, not the authors and their works. The Preamble states that the purpose of TRIPS is to reduce distortions and impediments to international trade, promote effective and adequate protection of intellectual property rights and ensure the adoption of measures and procedures to enforce such rights (Kallinikou 2002, p.3). In addition, the TRIPS Agreement provides lower standard of protection than the Rome Convention and it does not impose any obligation to recognise moral rights (Keeling 2004, p. 290-291).

TRIPS Agreement is intended to maximise the contribution of intellectual property systems to economic growth through trade and investment by (www.dfat.gov.au 2007);

1. establishing minimum standards for intellectual property rights protection in the national systems of WTO members
2. prescribing agreed elements of an effective mechanism for administration and enforcement of intellectual property rights
3. creating a transparency mechanism - each WTO member is required to provide details of their national intellectual property laws and systems, and to answer questions about their intellectual property systems
4. creating a predictable, rules-based system for the settlement of disputes about trade-related intellectual property issues between WTO members
5. allowing for mechanisms that ensure that national intellectual property systems support widely accepted public policy objectives, such as stamping

out unfair competition, facilitating transfer of technology, and promoting environmental protection

In other respect, TRIPS established a binding, transparent and rules based dispute settlement mechanism. The WTO Understanding on the Rules and Procedures Governing the Settlement of Disputes enforces the commitments made by WTO Members under TRIPS. DFAT's WTO Trade Law Branch has responsibility for managing and advising on all WTO Disputes.

2.5.7. World Intellectual Property Organisation (WIPO)

The World Intellectual Property Organization (WIPO) was established by the WIPO Convention in 1967. WIPO aims to promote the protection of intellectual property all over the world through cooperation among states and in cooperation with other international organisations. It is a specialized agency of the United Nations. Its headquarters are in Geneva, Switzerland (www.wipo.int 2007).

WIPO's vision is that IP is an important tool for the economic, social and cultural development of all countries. This shapes its mission to promote the effective use and protection of IP worldwide. Strategic goals are set out in a four yearly Medium Term Plan and refined in the biennial Program and Budget document (www.wipo.int 2007).

The five strategic goals defined in the 2006-2007 program and Budgets are:

a) To promote an IP culture;
b) To integrate IP into national development policies and programs;
c) To develop international IP laws and standards;
d) To deliver quality services in global IP protection systems; and
e) To increase the efficiency of WIPO's management and support processes.

The two important WIPO treaties, the WIPO Copyright Treaty and the WIPO Performers and Phonograms Treaty which is also known as Internet Treaty, offer solutions to some of the problems which occurs as result of the technological

developments, specially in digital field. They also shape the international institutional framework for the protection of the works and artistic contribution to the information society (Kallinikou 2002, p.5).

2.5.8. WIPO Copyright Treaty

The WIPO Copyright Treaty (WCT) is a special agreement signed under the provision of the Berne Convention. Hence any Contracting Party, irrespective of whether it is party to the Berne Convention or not, must comply with the substantive provisions of the Paris Act of the Berne Convention. Furthermore, the WCT mentions two subject matters to be protected by copyright (www.wipo.int 2007);

1. computer programs, whatever may be the mode or form of their expression, and
2. compilations of data or other material ("databases"), in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations.

As to the rights of authors, the Treaty deals with three main subjects (www.wipo.int 2007);

1. the right of distribution,
2. the right of rental,
3. the right of communication to the public.

Each of them is an exclusive right, subject to certain limitations and exceptions mentioned above.

The WCT obliges the Contracting Parties to provide legal remedies against the circumvention of technological measures used by authors in connection with the exercise of their rights and against the removal or altering of information (www.wipo.int 2007).

In addition, the WCT obliges each Contracting Party to adopt the measures necessary to ensure the application of the Treaty according to its legal system. Hence every Contracting Party must provide enforcement procedures under its law so as to permit effective action against any act of infringement of rights covered by the Treaty, including expeditious remedies to prevent infringement and remedies which prevent further infringements.

The WCT constitutes an Assembly of the Contracting Parties whose main task is to deal with matters concerning the maintenance and development of the Treaty. This desire was stated in the Preamble of the WCT. The administrative tasks concerning the WCT were entrusted to the Secretariat of WIPO. The Treaty is open to all States which are members of WIPO and to the European Community (www.wipo.int 2007).

2.5.9. The WIPO Performances And Phonograms Treaty, (WPPT)

The WIPO Performances and Phonograms Treaty (WPPT), was adopted by the WIPO in 1996. WPPT aims to protect the related rights, mainly rights of performers and producers of phonograms as stated in the name of the treaty. The WPPT recognises the effect of the development and convergence of information and communication technologies on the production and use of performances and phonograms. In addition to this, the WPPT tries to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information (www.sipo.gov.cn 2007).

The both WIPO Treaties deal with IP issues, in the WPPT especially concerning two beneficiaries, namely performers and producers of phonograms. Because of this, The WCT and the WPPT also were known as Internet Treaties. The reason that two beneficiaries are addressed simultaneously is most of the rights of performers are rights related to their fixed and vocal performances. The Treaty, inter alia, focuses on four main themes, right of reproduction, right of making available, technological measures and right management information (www.sipo.gov.cn 2007).

2.6 EUROPEAN UNION TREATIES

The first judgments of the European Court of Justice concerning copyrights were The first judgments of the European Court of Justice concerning copyright were made under the non-discrimination provision of Article 12 of the EC (formerly Article 7), and under the provisions of Article 30 of the EC (formerly Article 36) which allows for restrictions on trade between Member States on the condition that if it is justified by the protection of industrial and commercial property. It is accepted by the ECJ that Article 30 of the EC covers intellectual property. The directives were made under the internal market provisions of the treaties, notably Article 95 of the EC (formerly Article 100a). The well-known directives in the field of copyright and related rights which shape the acquis communautarie;

2.6.1. Council Directive 91/250/EEC Of 14 May 1991 On The Legal Protection Of Computer Programs

It is a European Union directive in the field of copyright law. Copyright protection has recently expanded to digital technology. The economic participation of software, multimedia, databases and other technology based products have increased significantly. The Directive was regulated under the internal market provisions of the Treaty of Rome and it is also known as Software Directive. According to the Article 1 of the Directive, computer programs and any associated design material must be protected under copyright as literary works within the sense of the Berne Convention for the Protection of Literary and Artistic Works.

The Article 4 of the Directive also defines the copyright protection to be applied to computer programs. According to the definition, the owner of the copyright has the exclusive right to authorize:

1. the temporary or permanent copying of the program, including any copying which may be necessary to load, view or run the program;
2. the translation, adaptation or other alteration to the program;

3. the distribution of the program to the public by any means, including rental, subject to the first-sale doctrine.

These rights are also subject to certain limitations (Article 5). The legal owner of a program has a license to create any copies necessary to use the program and to alter the program within its intended purpose. The legal owner also has a right to make a back-up copy for the personal use. The program may also be decompiled if this is necessary to ensure that it operates with another program or device (Article 6), but the results of the decompilation may not be used for any other purpose without infringing the copyright in the program. The duration of the copyright was originally fixed at the life of the author plus fifty years (Article 8), in accordance with the Berne Convention standard for literary works (Article 7.1 of The Berne Convention).

The Commission prepared a report on the implementation and effects of Directive 91/250/EEC on the legal protection of computer programs (Report from the Commission to the Council, The European Parliament and the Economic and Social Committee on the implementation and effects of Directive 91/250/EEC on the legal protection of computer programs, COM (2000) 199 Final, 2000). The Commission stated that;

> *The overall results show that the objectives of the Directive have been achieved and the effects on the software industry are satisfactory. On the basis of these results there appears to be no need to amend the Directive.*

In order to support its conclusion, the Commission states that without exception the interests interviewed in the context of the 1997 study proved that the Directive had had a significant harmonising effect by setting standards for the protection of computer programs by copyright as literary works. In addition, the Commission underlined that the adoption of the Directive promoted the computer programs industry in relation to four important points:

1. A reduction in piracy (decline throughout Western Europe from an average rate of 78 percent in 1990 to 36 percent in 1998)
2. An increase in employment (European software industry grew from 19 billion ECU in 1992 to 31 billion in 1997)

3. A move towards open systems, and
4. Harmonisation for employee-created computer programs.

The Commission Report stressed that only a few minor problems remain on the implementation of the Software Directive. On the other hand it would be very important to monitor whether the Software Directive has been correctly implemented and the new rules has become applicable in the new Member States.

Despite the improved legal framework, the real situation remains the same everywhere without effective enforcement. The 2004 survey on global piracy indicates that 36 percent of all software in use in the Western Europe is pirated (The First Annual BSA and IDC Global Software Piracy Study, July 2004). This rate is increased to 71 percent in the Eastern Europe. Piracy costs $ 9.600 million in the Eastern Europe and $ 2.111 million in the Western Europe. This theft deprives the EU economies of much needed jobs and tax revenues. In April 2003 economic impact study by IDC indicates that a 10 point reduction in the piracy rate could help the Western Europe double the number of people employed in IT jobs since 1995, reaching 3.5 million IT jobs by 2006. This would bring the EU a long way toward reaching its Lisbon goal of "more and better" employment (Huppertz 2004).

In order to fight against the levels of piracy and counterfeiting effectively, the enforcement of the EU directives on IP and copyright is very important. It is also required as a complementary action at the EU level to harmonize the criminal rules applicable to counterfeiting.

2.6.2 Council Directive 92/100/EEC of November 1992 On Rental Right And Lending Right And On Certain Rights Related To Copyright In The Field of Intellectual Property

This Directive is on the rental and lending right of all works and contribution of certain related rights such as performers, producers and broadcasting organizations.

The following right holders have the exclusive right, subject to limitations, to authorize or prohibit the rental or lending of their works (Article 2.1);

1. authors in respect of the original and copies of their works (except buildings and applied art);
2. performers in respect of fixations of their performance;
3. phonogram producers in respect of their phonograms; and
4. producers of the firs fixation of films in respect of the original and copies of their films.

The rental and lending right may be transferred, and unless there is provision to the contrary these right is assumed to be transferred in film production contracts. (Article 2.5) Even the rental and lending right is transferred, the author of the performer retains an inalienable right to claim equitable compensation for the rental and lending of their works and this compensation is administered by the collecting societies.

Also the Directive sets out the minimum rights which Member States must provide for performers, phonogram and film producers and broad casting organizations. The preamble of the Directive stated that Member States may go beyond this minimum protection if they so wish.

The fixation right (Article 6) for performers with respect to their performances and broadcasting organizations with respect to their broadcasts is the exclusive right to authorize or prohibit recording. The reproduction right (Article 7) is the exclusive right to authorize or prohibit reproduction. The distribution right (Article 9) is the exclusive right to make available to the public, for sale or otherwise, subject to the first sale doctrine. The fixation right is personal by its nature, and the reproduction and distribution rights may be transferred, assigned or licensed.

Performers, phonogram producers and broadcasting organizations have the exclusive right to authorize or prohibit use of their work protected by copyright (Article 8). All these rights are also subject to the limitations and exceptions (Article 10). The duration of the copyright was originally fixed at the life of the author plus fifty years (Article 11-12)

2.6.3. Council Directive 93/98/EEC Of 29 October 1993 Harmonizing The Term Of Protection Of Copyright And Certain Related Rights.

The directive set the duration of the protection of copyright and related rights to 70 years from the death of the author for authors' rights (Article 1). The main aim was to ensure that there was a single duration for copyright and related rights across the entire EU.

The duration of protection of related rights of performers, phonogram and film producers and broadcasting organizations was set as fifty years with the following rules for calculating the starting date (Article 3).

The directive also harmonizes the copyright treatment of cinematographic and other audiovisual works and photographs throughout the EU. They are protected for 70 years from the death of the last of the following people to die: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work (Article 2.2). The principal director of the film is always considered as an author of the film, although national legislations may provide for other co-authors (Article 2.1).

The copyright protection of photographs was harmonized within the EU as 70 years as long as the photograph is "the author's own intellectual creation reflecting his personality"(Article 6).The directive accords copyright to the publisher of a public domain work which was previously unpublished, for 25 years after the date of publication (Article 4).

2.6.4. Directive 93/83/EC Of The European Parliament And The Council Of 27 September 1993 On The Coordination Of Certain Rules Concerning Copyright And Rights Related To Copyright Applicable To Satellite Broadcasting And Cable Retransmission

The purpose of the Directive is to harmonize legal framework in the field of copyright and related rights for the development of satellite broadcasting and cable retransmission throughout the EU. The main subject of the Directive is the

communication to the public by satellite of copyright works (Article 2). The Directive stated that it complies with the Directive 92/100 EC (Article 4).

2.6.5. Directive 96/9/EEC Of The European Parliament And Of The Council Of 11 March 1996 On The Legal Protection Of Databases

This Directive is very important in respect of the information society. The concept of database is defined as "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means" (Article 1.2). Non-electronic databases are also covered by the Directive. Article 3 of the Directive says that databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected by copyright. No other criterion may be used by Member States. Any copyright concerning the database is separate from and without prejudice to the copyright in the entries.

The Directive regulates the expression of the database which is protectable by copyright (Article 5). So the author of a database has the exclusive right to carry out or to authorize:

1. temporary or permanent reproduction by any means and in any form, in whole or in part;
2. translation, adaptation, arrangement and any other alteration;
3. any form of distribution to the public of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
4. any communication, display or performance to the public;
5. any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

This shall not prevent the lawful use of the database by a lawful user (Article 6.1). Member States may provide for any or all of the following limitations, and any traditional limitations to copyright (Article 6.2):

1. reproduction for private purposes of a non-electronic database;
2. use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
3. use for the purposes of public security of for the purposes of an administrative or judicial procedure.

Copyright protection lasts for seventy years after the death of the author, or seventy years after the creation of the database if it is deemed to be a collective work (Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights) Article 7 of the Directive, Member States must provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database. Database rights are protected for fifteen years from the end of the year that the database was made available to the public, or from the end of the year of completion for private databases (Article 10).

2.6.6. Directive 98/84/EEC Of The European Parliament And Of The Council Of 20 November 1998 On The Legal Protection Of Services Based On, Or Consisting Of Conditional Access

The Directive regulates the conditional access services. The conditional access services are defined in Article 2 as television or radio broadcasts or internet services. And the conditional access is defined as any technical measure and/or arrangement whereby access to the protected service in an intelligible form is made conditional upon prior individual authorisation. The payment must be made for the access. For examples pay-per-view and encrypted television and internet sites charge for access.

Member States may not restrict the provision of the conditional access services which originate in another Member State (Article 3.2). Devices intended to circumvent the access restrictions are prohibited (Article 4). Also Member States have to take any appropriate measures for protected services (Article 5).

2.6.7. Directive 2001/29/EC Of The European Parliament And Of The Council Of 22 May 2001 On The Harmonization Of Certain Aspects Of Copyright And Related Rights In The Information Society

This Directive is often known as EU Copyright Directive or Infosoc Directive. The main purpose of the Directive is the legal protection of the creator and related rights in the framework of the domestic market, especially concerning information society (Kallinikou 2002, p.7).

Copyright and related rights were defined in Article from 2 to 4. The Directive distinguishes the "reproduction right" (Article 2) from the right of "communication to the public" or "making available to the public" (Article 3). The right of communication to the public is specifically intended to cover publication and transmission on the internet. The right of communication to the public is also distinguished from the "distribution right" (Article 4) by the fact that it is not subject to the firs-sale doctrine.

Article 5 of the Directive sets the limitations which Member States may apply to copyright and related rights. But Member States may provide other exceptions and limitations to rights provided by the Article 1 and 2 (Article 3)

Article 6 of the Directive provides protection for technological measures. The article says that the expression of technological measures means any technology device or component which is designed to restrict or prevent certain acts which are not authorized by the right holder. Member States must provide adequate legal protection. This protection may be civil, criminal or a mix of the two. Technological measures are only protected if they are effective. Right holders who use such anti-circumvention measures must allow reproduction which is permitted under the

limitations to copyright protection (Article 6.4). Digital rights management information is similarly protected (Article 7).

2.6.8. Directive 2001/84/EC Of The European Parliament And Of The Council Of 27 September 2001 On The Resale Right For The Benefit Of The Author Of An Original Work Of Art

The Directive provides protection for authors of graphic and plastic works of art so that they receive a royalty on their works when these are resold. This right is often known by its French name *droit de suite.* Works of art were sold countries without *droit de suite* provisions to avoid paying the royalty. This was clearly a distortion of the internal market that led to the regulation of the Directive.

The subject of the Directive is to provide protection for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author (Article 1). According to Directive, the expression of original work of art means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art. In addition, copies of works of art covered by this Directive, which have been made in limited numbers by the artist himself or under his authority, shall be considered to be original works of art for the purposes of this Directive. Such copies will normally have been numbered, signed or otherwise duly authorised by the artist (Article 2). The directive applies to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art (Article 1.2). Also the artist must be a national of a Member State or of another country which has *droit de suite* provisions (Article 7).

The Directive has some provisions to be set a minimum sale price (Article 3-4) The *droit de suite* is an inalienable right of the artist, and may not be transferred except to

heirs on death, nor waived even in advance (Article 1.1- 6.1). Member States may provide for the optional or compulsory collective management by collecting societies (Article 6.2). The term of protection of the resale right was provided according to the Article 1 of Directive 93/98/EEC (Article 8.1)

2.6.9. Directive 2004/48/EC Of The European Parliament And Of The Council Of 29 April 2004 On Measures And Procedures To Ensure The Enforcement Of Intellectual Property Rights.

The subject of the Directive is the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights, including industrial property rights (Article 1). Member States were obliged to provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights which must be fair and equitable and not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays (Article 3.1). In addition, those measures, procedures and remedies must be effective, proportionate and dissuasive and applicable in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse (Article 3.2).

The Directive leaves unaffected the substantive provisions on intellectual property, international obligations of the Member States and national provisions relating to criminal procedure and criminal enforcement. In short, the Directive adds extra measures on enforcement of digital copyright while leaving national law in other areas unaffected.

The persons who are entitled to apply for the remedies are primarily the holder of intellectual property right, but also any person authorized to use it, such as licensees and intellectual property rights and collective rights management and professional defence bodies may also have the right under certain circumstances (Article 4).

The Directive sets rules on the evidence. Article 6 orders that the concerned party have a right to apply for evidence as regard of an infringement which is in the possession of the other party. The condition to apply for evidence is to present

reasonably available evidence sufficient to support its claim to courts. In addition, the Member States have to take the necessary measures to force the opposing party to present its banking, financial or commercial documents, if the infringement is on a commercial scale. In these two cases confidential information is under the protection. Also Article 6 states that such measures can be taken without the other party having been heard, if the delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Article 7 of the Directive gives an opportunity to apply the measures referred by Article 6 under the same conditions before the proceedings commence. Also it provides measures such as physical seizure for the infringing goods and the materials used in the production and distribution.

The Directive regulates that the court may decide to issue an interlocutory injunction to prevent an "imminent infringement" of or to prevent a continuing infringement intellectual property rights at the request of the applicant. In the case of continuing infringement, the court may decide a recurring penalty payment or lodging of a guarantee to compensate the right holder.

In the case of an infringement on a commercial scale, Article 9(2) confers a right holder to apply to the court for a precautionary seizure of "movable and immovable property" which also freezes the bank accounts and other assets of the opposing party.

2.6.10. Directive 2006/115/EC Of The European Parliament And Of The Council Of 12 December 2006 On Rental Right And Lending Rights Related To Copyrights In The Field Of Intellectual Property

This Directive is a consolidated version of the former Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyrights in the field of intellectual property. This Directive codified the amendments on the former Directive.

2.6.11. Directive 2006/116/EC Of The European Parliament And Of The Council Of 12 December 2006 On The Term Of The Protection Of Copyright And Certain Related Rights

This Directive is a consolidated version of the former Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights. It includes all amendments made up to and including 2006. It replaces the text of the older directive.

3. COLLECTIVE MANAGEMENT IN THE EUROPEAN UNION

3.1. FOUNDATION OF THE COLLECTIVE ADMINISTRATION

The first authors' societies were established in France. The first collective society was founded by Beaumarchais and his friends in 1777. He was leader of the struggle against theatres which did not want to recognise and respect authors' economic and moral rights. The result of the struggle was the foundation of the *Bureau de Legislation Dramatique*. It was later transformed into *the Societe des Auteurs et Compositeurs Dramatiques* (SACD) (Kallinikou 2006).

Honore de Balzac, Alexandre Dumas, Viktor Hugo and other French writers constituted the *Societe des Gens Des Letters* (SGDL) in 1837.

There is a very well known story about the invention of the collective administration. According to copyright society folklore, it was a straightforward response to a problem of transaction costs. The story is about the visit of Ernest Bourget, French composer of popular musical *chansons* and *chansonettes comiquis*, to Paris cafe Ambassadeurs in 1847 where, among other pieces, his music was being played without permission. Then he refused to settle the bill for drink of sugared water, at the time a fashionable beverage. In the resulting brawl, M. Bourget argued,

> *"You consume my music, I consume your wares."*

He won the argument before the Tribunal de Commerce de la Seine and this case upheld a revolutionary law of 1793 that recognised for the first time a right to the public performance. Ernest Bourget understood that as individual composer he should not devote his life to chasing unauthorised performances of his music. The solution to the failures of individual contracting was collective administration, combining a comprehensive monitoring service of music usage with a facility to

issue licences. Ernest Bourget and his colleagues Victor Parizot and Paul Henrion as well as the publisher Jules Colombier founded an Agence Centrale, the direct predecessor of the first modern colleting society the *Socite des Auters et Compositeurs et Editeurs de Musique* (SACEM). SACEM was established in 1850 and became the European model (Kretschmer 2002).

At the end of the 19th century and during the first decades of the 20th century European countries had a tendency to constitute similar authors' organisations. So 18 members from an equal number of countries, mainly representing dramatic arts founded Confederation of Collective Societies of Authors and Composers (CISAC) in 1926 in France, where it still has its worldwide headquarters. Inspired by the ideas of universal peace and co-operation, which arose after World War I, the founders' wish was to unite authors and composers from around the world. They intended to co-ordinate the work of their societies; to improve national and international copyright law, to foster the diffusion of creative works and, in general, to attend to all common problems of creation in its widest sense (www.cisac.org 2007). Now CISAC has members which are collective societies dealing with the collective management of the copyrights of protected works.

In addition in 1929, BIEM was formed as an international organisation representing mechanical rights societies. Originally it exercised the licensing function on behalf of its European members but in 1968 those responsibilities reverted to the individual societies. BIEM is based in Neuilly-sur-Seine in France and represents 46 societies, from 43 countries.

BIEM negotiates a standard agreement with representatives of the International Federation of the Phonographic Industry (IFPI) fixing the conditions for the use of the repertoire of the societies (www.biem.org 2007). IFPI was formed in 1920's and represents the recording industry worldwide with some 1400 members in 75 countries and affiliated industry associations in 49 countries (www.ifbi.org 2007).

3.2. THE ORGANISATION OF COLLECTIVE MANAGEMENT

There are various kinds of collective management organization or groups of such organizations. They manage different kind of rights according to the category of works involved such as music, dramatic works, etc (www.wipo.int 2007).

Traditional collective management organizations deal with collective exercise of rights on behalf of their members. They negotiate rates and terms of use with users, issue licenses authorizing uses, collect and distribute royalties. The individual owner of rights is not directly involved in any of these steps. Right holders authorise collective management organisations to monitor the use of their works, negotiate with prospective users, give them licences against appropriate remuneration on the basis of tariff system and under appropriate conditions, collect such remuneration, and distribute it among the owners of rights (Ficsor 2002, p.16).

Rights clearance centres are the organisations that perform joint exercise of rights without any real collectivised elements in the system (Ficsor 2002, p.12). They grant licenses to users to obtain authorisation and pay for it. Usually each individual holder of rights who is a member of the centre sets the remuneration terms. Here the centre acts as an agent for the owner of the rights who remain directly involved in setting the terms of use of his works.

"One-stop-shops" do not fit easily into these two categories. They are a sort of coalition of separate collective management organizations that offer users a centralized source where authorizations can be easily and quickly obtained. There is a growing tendency to set up such organizations on account of growing popularity of "multimedia" productions which require a wide variety of authorizations (www.wipo.int 2007).

3.2.1. Categories Of The Collective Management Organisation

In the field of musical works, including all types of music, modern, jazz, classical, symphonic, blues and pop whether instrumental or vocal, there are three pillars on

which the collective management of the rights of public performance and broadcasting is based. These pillars are documentation, licensing and distribution

The collective management organization negotiates with users, such as radio stations, broadcasters, discotheques, cinemas, restaurants and the like, or groups of users and authorizes them to use copyrighted works from its repertoire against payment and on certain conditions. On the basis of its documentation, which means information on members and their works, and the programs submitted by users, such as logs of music played on the radio, the collective management organization distributes copyright royalties to its members according to established distribution rules. A fee to cover administrative costs, and in certain countries socio-cultural promotion activities, is generally deducted from the copyright royalties. The fees actually paid to the copyright owners correspond to the use of the works and are accompanied by a breakdown of that use. These activities and operations are performed with the aid of computerized systems especially designed for the purpose (www.wipo.int 2007).

In the field of dramatic works which includes scripts, screenplays, mime shows, ballets, theatre plays, operas and musicals, the collective management organization acts as an agent representing authors. It negotiates a general contract with the organizations representing theatres in which the minimum terms are specified for the exploitation of particular works. The performance of each play then requires further authorization from the author in the form of an individual contract setting out the author's specific conditions. The collective management organization then announces that permission has been given by the author concerned and collects the remuneration (www.wipo.int 2007).

In the field of printed works, which includes books, magazines, and other periodicals, newspapers, reports and the lyrics of songs, collective management mainly involves the grant of the right of reprographic reproduction. In other words, they allow protected material to be photocopied by institutions such as libraries, public organizations, universities, schools and consumer associations. Non-voluntary licensing arrangements, when allowed by international conventions, can be adopted into national legislation. In such cases, a right of use against remuneration is

accorded that does not require the consent of the owner of rights. Collective management organizations administer the remuneration. In the special case of reproduction for private and personal use, some national legislation contains specific provision for equitable remuneration payable to the owners of rights and funded by a levy imposed on equipment or photocopies or both (www.wipo.int 2007).

In the field of related rights, the national legislation of some countries provide for a right of remuneration payable to performers or producers of phonograms or both when commercial sound recordings are communicated to the public or used for broadcasting. The fees for such uses are collected and distributed either by joint organizations set up by performers and producers of phonograms or separate ones. This depends on the relation of those involved and the legal situation within the country (www.wipo.int 2007).

3.2.1.1. Social, Economic And Cultural Effects Of Collective Management Organisations

Collective management organizations have a very valuable service for copyright protected works. After the authorisation of the right holders, collective societies monitor the use of their works, negotiate with prospective users, give those licences against appropriate remuneration, collect such remuneration, and distribute it among the owners of rights. This system is rewarding creators for their work, and provides adequate copyright and related rights protection and an efficient system for the management of rights. In addition, such system encourages creators to contribute to the development of the cultural sector, attracts foreign investment and generally enables the public to reach the copyrights protected works. Hence, this system has a very important impact on national economies. In the light of the above explanation on the contribution rate of the copyright industries to the national economies, collective management is essential as the contribution rate of it is up to 6 percent of the gross national product of some major countries. Therefore, it could be seen clearly that income from the collective management of copyright and related rights accounts for a substantial part of that percentage (www.wipo.int 2007).

It is worthwhile to note that some collective management organizations offer various kinds of social welfare protection to their members. The benefits often include assistance with payment for medical treatment or insurance, annuities on retirement or some sort of guaranteed income based on the members' royalty payments history.

On the other hand, collective management organizations may sponsor cultural activities to promote the national repertoire of works and to support creators within their countries and at abroad. They organise the theatre festivals, music competitions, productions of national folklore and music anthologies and other such activities (www.wipo.int 2007).

3.2.1.2. Collective Management And The Effect Of The Digital Environment

Copyrighted works have available in digital form via global networks such as the Internet. In the online world of the new millennium, the management of rights has to take necessary steps to provide adequate protection for the copyrighted works. Protected works are now digitized, compressed, uploaded, downloaded, copied and distributed on the Internet to any place in the world. The expanding power of this network allows mass storage and online delivery of protected material. The possibility of downloading the contents of a book, or to listen to and record music from cyberspace is now a reality. While this presents immeasurable opportunities, there are also many challenges for owners, users and collective management organizations (www.wipo.int 2007).

WCT and WPPT deal with the challenges of protecting and managing copyright and related rights in the digital age. They set obligations concerning technological protection measures and rights management information in the digital environment; ensure that the owners of rights are protected when their works are disseminated on the Internet. Therefore, these treaties are known as "Internet Treaties".

The effect of the rapid development in technological devices such as the Internet and mobile telephones, especially music market has gained very concerned about copyright protection. For the protection of the legal rights of authors and in order to avoid liability for copyright infringement, online content providers should obtain a

licence from each and every relevant collective management society in each territory of the EU in which the work is accessible. With the effect of the internet collective management societies has made reciprocal arrangements between themselves for the exploitation of non-domestic repertoire. The multi-territorial licensing of on-line music is more affective but without harmonisation some difficulties in cross-border licensing of copyright protected works can not be solved in Europe (Commission Decision of 8 October 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No COMP/C2/38.014 – IFPI 'Simulcasting', (April 30th, 2003) O.J. L. 107/58 (EC) [IFPI Simulcasting).

On the other hand the system of the cross-border licensing of copyright protected works may cause a very important problem on the liberalisation for rights-owners and users. Some thinks that enabling right holders to authorise a collective management society of their choice to manage their works within the EU might be an effective model for achieving multi-territorial licensing of legitimate on-line music. Also users may obtain a licence from any society within the European Union, even though they live outside of the user's territory of economic residency (Commission of the European Communities, Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Cases COMP/C2/39152-BUMA and COMP/C2/39151 SABAM (Santiago Agreement-COMP/C2/38126), (August 17th, 2005) O.J. C. 200/11). So this solution could help to increase competition between collective management societies, and this is beneficial for both authors and users, because the societies would have to compete on the basis of their economic efficiency, transparency and accountability (Guibault and others, 2006, pp.117-152).

European legislators took into account of the importance of these matters and the creation of European level for collective management societies has been an item on the European Commission's agenda at least since the publication of the Green Paper of 1995 (Commission of the European Communities, Green Paper on Copyright and Related Rights in the Information Society of 19 July 2005, COM(95) 382 final). The European Parliament Resolution on collective management of copyright and neighbouring rights set framework for collective societies (European Parliament Resolution on a Community framework for collective management societies in the

field of copyright and neighbouring rights (2002/2274(INI)), (P5_TA(2004)0036)) and the European Commission's Communication on the Management of Copyright and Related Rights in the Internal Market regulates the issue in the aspect of internal market (Commission of the European Communities, Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – The Management of Copyright and Related Rights in the Internal Market, (April 16th, 2004), COM(2004) 261 final). The other step for the establishment of a regulatory framework for collective management societies is some part of the European Commission's Work Programme for 2005 (Commission of the European Communities, Commission Work Programme for 2005 –Communication from the President in agreement with Vice-President Wallström, (January 26th,2005), COM(2005) 15 final). The European Commission stuff working document on the cross-border collective management of copyrights set out some options for regulation to legitimate online music services (Commission of the European Communities, "Commission Staff Working Document - Study on a Community Initiative on the Cross-Border Collective Management of Copyright" (July 7th, 2005)).

3.3. CURRENT REGULATION OF THE COLLECTIVE MANAGEMENT SOCIETIES

The structure and operations of collective management societies have never been harmonized at the European Community level. Common way to form a collective society is copyrights holders get together and create their own society on the basis of the freedom of association and on democratic rules. External control has been exercised strictly by the European rules on competition. Over time, the European Court of Justice (ECJ) and the European Commission have developed an impressive body of jurisprudence putting the alleged anticompetitive behaviour of collective management societies to the test of Articles 81 and 82 of the EC Treaty (Guibault and others, 2006, p.3). Therefore the activities of collective management societies

must be in conformity both with the European rule on competition and with the requirements of specific national regulatory measures.

3.3.1. Regulation At Community Level

The European case law has drawn a framework on the subject of collective management societies, especially in the field of the European competition rules. The European Court of Justice (ECJ) and the European Commission has pointed out three issues on the monitoring of the European collective management societies (Guibault and others, 2006, pp.5-6).

1- the relationship between collective management societies and their members
2- the relationship between collective management societies and users;
3- the reciprocal relationship between different collective management societies.

3.3.1.1. The Relationship With Members

3.3.1.1.1. *The extent of the assignment of the rightholders and the freedom of the rightholder to enter and leave a collecting society*

The problem is the limitation of the assignment to which collecting societies ask their members for the management of their works, which is closely attached to the freedom of a member to join and leave the collective society. The decision of the ECJ in the GEMA I case (GEMA (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte) v Commission of the European Communities (Case 45-71 R.)) was the cornerstone of the legal framework regarding the relationship between collective management societies and their members on the extent of the assignment of copyrighted works. The problem raised in the GEMA I case. The Commission emphasises that a collecting society is in a dominant position and they are not allowed to set any limit which prevents a member from joining another collecting society. On the other hand, the Commission stated that if collecting societies set any obligation which requires its members to assign unduly broad categories of rights and to exclusively assign all their current and future rights with respect to all categories of works within the Member State or even worldwide

for a long period, this obligation could constitute an abuse of dominant position for the reason of preventing the author from joining other collecting societies. This ruling was later confirmed by the ECJ in the BRT v. SABAM case (Belgische Radio en Televisie (BRT) v. SABAM, (1974) E.C.R. 51; Belgische Radio en Televisie(BRT) v SV SABAM and NV Fonior (BRT-II -Case 127-73)(European Court reports 1974 Page 00313)). In the decision of the ECJ, the decisive factor is whether the statutes exceed the limits absolutely necessary for effective protection (the "indispensability" test) and whether they limit the individual copyright holder's freedom to dispose of his work no more than necessary (the "equity" test) (Guibault and others, 2006, p.6). Therefore, the Court ruled as follows:

> ***7. It is therefore necessary to investigate whether the copyright association, through its statutes or contracts concluded with its members, is imposing, directly or indirectly, unfair conditions on members or third parties in the exploitation of works, the protection of which has been entrusted to it.***
>
> ***8. For this appraisal account must be taken of all the relevant interests, for the purpose of ensuring a balance between the requirement of maximum freedom for authors, composers, and publishers to dispose of their works and that of the effective management of their rights by an undertaking which in practice they avoid joining .***
>
> ***10. For an association effectively to protect its rights and interests it must enjoy a position based on the assignment in its favour, by the associated authors, of their rights to the extent required for the association to carry out its activity on the necessary scale.***
>
> ***11. Consequently, it is desirable to examine whether the practices in dispute exceed the limit absolutely necessary for the attainment of this object, with due regard also to the interest which the individual author may have that his freedom to dispose of his work is not limited more than need be.***
>
> ***12. For this purpose, a compulsory assignment of all copyrights, both present and future, no distinction being drawn between the different generally accepted types of exploitation, may appear an unfair condition, especially if such assignment is required for an extended period after the member's withdrawal . For this purpose, a compulsory assignment of all copyrights, both present and future, no distinction being drawn between the different generally accepted types of exploitation, may appear an unfair condition, especially if such assignment is required for an extended period after the member's withdrawal .***

> ***15. It must thus be concluded that the fact that an undertaking entrusted with the exploitation of copyrights and occupying a dominant position within the meaning of Article 86 imposes on its members obligations which are not absolutely necessary for the attainment of its object and which thus encroach unfairly upon a member's freedom to exercise his copyright can constitute an abuse.***

The ECJ clearly stated that the compulsory representation for a long time after the member left the collective society is unacceptable.

3.3.1.1.2. *Prohibition Of Discrimination Between Among Members*

Collective management societies can not discriminate among members as regards the distribution of income. The Commission stated in the GEMA I case that discrimination among members on the distribution of royalties is prohibited. The Commission declared that GEMA's conduct of paying supplementary fees only to those members who had been ordinary members for at least three years constituted an abuse of dominant position. On the other hand as long as the collecting societies apply a justifiable criterion, there is no infringement of competition rule. For example, the criterion of the number of sold product is justifiable reason for the lower payments to the rightholder of the work.

3.3.1.1.3. *Prohibition Of Discrimination On Grounds Of Nationality*

Furthermore, one of the most important points in the relationship between collecting societies and their members is the prohibition of discrimination on the grounds of the nationality. The Commission ruled that collective management societies must accept nationals of other EU Member States as members. The Commission restrain collective management societies from impose discriminatory terms concerning their membership rights. As a result of the decision of the Commission, such kind of behaviours automatically constitutes an infringement of Article 82 of the EC Treaty, as they run counter to the principle of equal treatment resulting from the prohibition of "any discrimination on grounds of nationality" in Article 12 of the EC Treaty.

The ECJ confirmed, in the *Phil Collins* case (Phil Collins v Imtrat Handelsgesellschaft mbH and Patricia Im- und Export Verwaltungsgesellschaft mbH and Leif Emanuel Kraul v EMI Electrola GmbH. - Joined cases C-92/92 and C-

326/92 *(*European Court reports 1993 Page I-05145))., that domestic provisions containing reciprocity clauses cannot be relied upon in order to refuse the membership of nationals of other EU Member States rights conferred on national authors.

The ECJ stated as follows:

> ***22. Like the other industrial and commercial property rights, the exclusive rights conferred by literary and artistic property are by their nature such as to affect trade in goods and services and also competitive relationships within the Community. For that reason, and as the Court has consistently held, those rights, although governed by national legislation, are subject to the requirements of the Treaty and therefore fall within its scope of application.***
>
> ***23. Thus they are subject, for example, to the provisions of Articles 30 and 36 of the Treaty relating to the free movement of goods. According to the case-law of the Court, musical works are incorporated into phonograms which constitute goods the trade in which, within the Community, is governed by the above provisions.***
>
> ***24. Furthermore, the activities of copyright management societies are subject to the provisions of Articles 59 and 66 of the Treaty relating to the freedom to provide services. As the Court stated in its judgment in Case 7/82 GVL v Commission [1983] ECR 483, paragraph 39, those activities should not be conducted in such a way as to impede the free movement of services, and particularly the exploitation of performers' rights, to the extent of partitioning the common market.***
>
> ***25. Finally, the exclusive rights conferred by literary and artistic property are subject to the provisions of the Treaty relating to competition.***
>
> ***32. In prohibiting "any discrimination on the grounds of nationality", Article 7 of the Treaty requires, on the contrary, that persons in a situation governed by Community law be placed on a completely equal footing with nationals of the Member State concerned (judgment in Case 186/87 Cowan v Trésor Public [1989] ECR 195, paragraph 10). In so far as that principle is applicable, it therefore precludes a Member State from making the grant of an exclusive right subject to the requirement that the person concerned be a national of that State.***

As a result, it is accepted that collective societies are in a dominant position and they can not refuse any application for its membership without objective justification.

3.3.1.2. The Relationship With Users

3.3.1.2.1. *Prohibition of Hindering Trade between Members Sates*

The most important objective of the EU is the free trade between the Member Sates. Then most of the cases the ECJ and the Commission have to face the problems concerning trade within the EU. Concerning the collecting societies and users, one of the most important problems is to prevent collecting societies from any behaviour which hinder trade between Member Sates. As an example in the fourth GEMA case, the Commission stated that charging royalties by a collecting society on sound recording which are manufactured in Germany, regardless of whether the licensee obtained a licence from a collecting society in another Member State constitutes an abuse of a dominant position. The aim of these behaviours is to reduce manufacture in the country of licencing. According to the Commission, the licence which provides Community copyright protection the collective society can use all the rights of the licence throughout the European Union and authorize manufacture in other Member States (Competition issues relevant to copyright and the information society, Thomas Kaufmann, European Commission DG IV).

It should be noted that licences given by collecting societies which are outside the European Union are excluded from community-exhaustion. Hence, for the example relevant collecting society in the UK has a right to claim the royalties for the manufacture of records for which a licence has been given in non Member States, such as Japan.

3.3.1.2.2. *Problems Concerning Level Of Royalty*

The ECJ has designated the relationship between a collective management society and its users regarding the Community competition law. The main difficulty in this subject is whether the royalty level of a collecting society can be subject to the EU competition law. The ECJ stated in its case law that one of the most common differences amongst collective management societies in the Member States arises on the level of royalties. In the very well known decision of the ECJ's judgement, the Tournier case (Ministère public v. Tournier, E.C.R. 2521 (Case 395/87)), French

discothèque owners had complained that the royalty which the French collective management society SACEM charged was too high, nonnegotiable and unfair.

The ECJ held the case as below:

> ***46. Article 8[2] of the Treaty must be interpreted as meaning that a national copyright-management society holding a dominant position in a substantial part of the common market imposes unfair trading conditions where the royalties which it charges to discothèques are appreciably higher than those charged in other Member States, the rates being compared on a consistent basis. That would not be the case if the copyright-management society in question were able to justify such a difference by reference to objective and relevant dissimilarities between copyright management in the Member State concerned and copyright management in the other Member States.***
>
> ***42 It is apparent from the documents before the Court that one of the most marked differences between the copyright-management societies in the various Member States lies in the level of operating expenses. Where.... the staff of a management society is much larger than that of its counterparts in other Member States and, moreover, the proportion of receipts taken up by collection, administration and distribution expenses rather than by payments to copyright holders is considerably higher, the possibility cannot be ruled out that it is precisely the lack of competition on the market in question that accounts for the heavy burden of administration and hence the high level of royalties.***

The ECJ ruled that a national collective management society imposes unfair trading conditions in the meaning of Article 82 of the EC Treaty and abuses the dominant position if the royalties charged are appreciably higher than those charged in other Member States, unless the differences were justified by objective and relevant factors. The Court has imposed the burden of proof on the collecting society to show that the difference is justified.

In addition the ECJ pointed out another important point as well in the *Tournier* case. This point is that a national collective management society can not refuse to grant direct access to its own national repertoire to users who live in other EU Member States without valid reasons; such as difficulties in organising and monitoring its system in these countries.

Here is the decision of the ECJ.

> ***23. Concerted action by national copyright-management societies with the effect of systematically refusing to grant direct access to their repertoires to foreign users must be regarded as amounting to a concerted practice restrictive of competition and capable of affecting trade between the Member States.***

On the other hand, if the refusal is caused as a result of agreements between the national collective societies in the Member States in which the users are established, this would be restriction of competition in the common market that is contrary to Article 81 of the EC Treaty.

3.3.1.2.3. *Extension of the Collecting Societies to Refuse Negotiation On The Whole or Parts of the Repertoire*

The other problem is the question to what extent collecting societies are obliged to licence their repertoire. The point is whether they have a right of refusal to licence only parts of their repertoire or not. The ECJ considered in the Tournier case whether collective management societies are able to refuse to grant licenses for only parts of their repertoire. In the case the discothèque owners had asked SACEM to grant them licenses for only the part of its repertoire that they actually used instead of general licence, but SACEM refused. In principle, it is accepted that a collecting society can not refuse to grant a licence to a user in its territory without legitimate reason. The ECJ stated that collecting societies are not allowed to refuse direct access to their repertoires to users of recorded music and refer them to the collecting society of their own Member State. On the other hand, the ECJ ruled that the refusal by a collective society to grant national users authorization for solely the foreign repertoire which is administered in the territory in question would not be prohibited under Article 81 of the EC Treaty, if discrimination in respect of foreign users could be justified by the difficulties of setting up a system and monitoring its system in the other territory.

This view is very essential for multimedia applications since the problems arising from the package licensing would play an even more important role in the multimedia field in the future. The framework drawn by the case law of the ECJ is that a practicability test must be applied to package licensing. In this way it could be understood whether only the package license can guarantee that organization and management necessities are fulfilled in view of an equitable remuneration for the

right owners (GEMA (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte) v Commission of the European Communities. (Case 45-71 R.))

3.3.1.2.4. *Problems Arising From Cable Copyright Licensing Agreements*

Cable copyright licensing agreements constitute a special problem in the relationship between collecting societies and users. These agreements include a multitude of participants and the problems regarding them might be very important for multimedia companies; such as the example of BBC Enterprises Limited Case (Twenty-third report on competition policy 1993,Annex 3, point13). This agreement was between British broadcasters and organisations which represent the owners of copyright and related rights in television programme services broadcast in the UK and, also various cable television undertakings in Ireland. This case proves the complexity that multimedia cases would make agreements together for one single licensing procedure in the future (Guibault and others, 2006, p.18). The Commission Report states in the report that the collective licensing is the most effective way for a cable operator to be sure of not infringing copyright or neighbouring rights in retransmitting television broadcasts to its subscribers. The Commission remarked that the conditions of Article 81 of (3) were fulfilled in this case. Article 81 of (3) gives the Commission the right to exempt it on the condition that production and distribution of a product can be improved by the agreement.

3.3.1.3. The Reciprocal Relationship Between Collective Management Societies

The European Commission held that the collective management societies in the different Member States must compete against each other in order to achieve the objectives of the EU. This was clarified in the GEMA case that charging royalties on sound recording which are manufactured in Germany, regardless of whether the licensee obtained a licence from a collecting society in another Member State, constitute an abuse of a dominant position. The Commission made an announcement concerning GEMA case that a licence granted by a collective management society in a Community Member State is valid throughout the Community and authorizes manufacture of sound recordings in any Member State (Commission's Press Release

of 6 February 1985, 2 Common Market Law Review 1). As a result of this exhaustion, collective management societies in Europe now have to compete against each other for so-called "Central European Licensing" deals (Guibault and others, 2006, p.7). The ECJ said in Tournier case as follows:

> ***19 Consequently, it is apparent that reciprocal representation contracts between copyright-management societies have a twofold purpose : first, they are intended to make all protected musical works, whatever their origin, subject to the same conditions for all users in the same Member State, in accordance with the principle laid down in the international provisions; secondly, they enable copyright-management societies to rely, for the protection of their repertoires in another State, on the organization established by the copyright-management society operating there, without being obliged to add to that organization their own network of contracts with users and their own local monitoring arrangements.***
>
> ***20... the reciprocal representation contracts in question are contracts for services which are not in themselves restrictive of competition in such a way as to be caught by Article 8[1](1) of the Treaty. The position might be different if the contracts established exclusive rights whereby copyright-management societies undertook not to allow direct access to their repertoires by users of recorded music established abroad; however, it is apparent from the documents before the Court that exclusive-rights clauses of that kind which previously appeared in reciprocal representation contracts were removed at the request of the Commission.***

Then the ECJ stated that the reciprocal relationship between collective management societies did not fall under Article 81(1) of the EC Treaty, unless this relationship turns into a concerted action in the Tournier and Lucazeau cases. The reciprocal representation agreements became recently very justified in economic aspect for a context where physical monitoring of copyright usage was required. (Guibault and others, 2006, p.7).

Two sets of reciprocal representation agreements, known as the "Santiago Agreement"[2] and the "BIEM Barcelona Agreement"[3], are very important. These

[2] The Santiago Agreement was signed in October 2000 by five collecting societies, including the Performing Rights Society (PRS) from the UK and Broadcast Music Inc from the US. The Agreement was notified to the Commission in April 2001 by the collecting societies of the UK, France (SACEM), Germany (GEMA) and the Netherlands. These were subsequently joined by all societies in the European Economic Area (except for the Portuguese society (SPA) and the Swiss society (SUISA)). In April 2004, the Commission declared a "statement of objection" to the "Santiago Agreement" and its economic residency clause, which the Commission felt was in breach of European Union

agreements allowed each of the participating societies to issue multi-territorial licences for the on-line use of copyrighted works of the repertoires of these societies for only on-line users who live in their own territory. With this license, the web radio station could reach the musical repertoires of all those authors' societies who are contracting party to the "Santiago Agreement", regardless of country where its server was located. The idea behind this was that since the internet is borderless, the licence was global. But in April 2004, the Commission declared a "statement of objection" to the "Santiago Agreement" and its economic residency clause. The Commission stated that the clause was contrary to European Union competition rules.

In the IFPI Simulcasting decision, the Commission forced the parties to make the necessary changes in their reciprocal agreement to allow users established in the territory of the European Union and as well as territory of Norway, Iceland and Liechtenstein, which is called European Economic Area (EEA), to approach any collective management society, which is established within the EU and party to the Santiago Agreement, to apply and obtain a multi-territorial simulcasting licence (Guibault and others, 2006, p.7).

The Commission came to a conclusion that task of collective management societies of monitoring the copyrighted works in the on-line environment can be fulfilled directly on the Internet. Also distance is not a problem. In other words, the traditional economic justification for collective management societies not to compete in cross-border provision of services no longer applies in this context. Furthermore, the parties in this case have to increase transparency as regards the payment charged. This transparency in pricing should enable users to choose the most efficient societies and to obtain their licences from the society that charges them at the lower cost (Guibault and others, 2006, p.7).

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competition rules. Authors' societies have decided to no longer apply the "Santiago Agreement" as of December 31, 2004. The Santiago Agreement has been null and void since January 1, 2005, and the agreements signed in 2000 have expired since December 31, 2004.

[3] BIEM, CISAC's sister organisation in charge with mechanical rights societies, adopted a similar standard contract to Santiago Agreement, the "Barcelona Agreement" at its 2001 Congress in Barcelona for mechanical reproduction rights. Given the analogous nature of performing rights and mechanical rights, the Barcelona Agreement would have been difficult to apply without the Santiago Agreement. Consequently, the Barcelona Agreement became invalid as of January 1, 2005.

3.3.2. Regulation At Member State Level

There are twenty-five Member States in the European Union and they all have very different national regularity systems as regards of collective management societies. So there is a considerable disparity between the national regulatory systems of the EU countries concerning collective management societies. Some member states has special rules on the formation and operation of collective management societies such as Austria, Czech Republic, Germany, Greece, The Netherlands, Portugal. On the other hands, the two thirds the EU Member States have the rules concerning collective management societies incorporated with the relevant provisions inside the general copyright act. These countries are Belgium, Cyprus, Denmark, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. In addition, some countries also have supervisory authority to control the collective societies. There are only two EU Member States, Luxembourg and Estonia, do not have supervisory authority (Guibault and others, 2006, p.10).

There are basically three kinds of supervision (Guibault and others, 2006, pp.8-12). These are;

1. Strict supervision
2. Intermediate supervision
3. De minimis supervision

3.3.2.1. Strict Supervision

The strict supervision system in force is used in the German, Austrian and Portuguese. In Germany, the 1965 Law (The 1965 Law on the Administration of Copyright and Neighbouring Rights (LACNR)) administrates the exploitation of all collective management societies. According to this act the German Patent and Trade Mark Office (GPTO) is the supervision authority. It is said that GPTO is the most comprehensive legal system of control of collective management societies on the international level.

Article 1 of the LACNR requires that prior authorization is needed to make business in the collective management of copyrights. Even after the authorisation is obtained, a collective management society gets into the permanent supervision of the GPTO which supervise whether or not it complies with the LACNR to ensure that it does not abuse its powers. The LACNR has very comprehensive and strict obligations for collective management societies to achieve this objective.

3.3.2.2. Intermediate Supervision

The most national legal systems of the EU Member States take up intermediate supervision system. The national law of the Member States requires the supervision of an independent person or administrative body regarding the activities of the collective management societies. This system imposes a number of requirements of transparency and accountability. In most of the Member States, the minister is in charge of copyrights and exercising control on the actions of the collective management societies. In addition, some countries have a dispute settlement mechanism accompanied to this supervisory authority.

The legislation of the Netherlands is a very good example for the intermediate supervision. According to the Act on the Supervision of Collective Management Societies (ASCMS, Gazette 2003, 20 March 2003, 111.), only the collective societies which enjoy a *de jure* or state-supported monopoly fall under the jurisdiction of the supervisory body. The ASCMS defines the subjects which are under the control of the Supervisory Commission such as the task of the supervision on the collection and distribution of the payments by the collective management societies. The ASCMS explicitly states that the Supervisory Commission can not extent supervision over the societies that such supervision is already exercised by the Dutch competition authority. On the other hand the other collective management societies are under the control of the Dutch competition authority (Guibault and others, 2006, p.11).

3.3.2.3. De Minimis Supervision

The legislation of Ireland, Poland and the UK establishes a "*de minimis* supervision" system. The control of this system is essentially limited to the tariff. As an example

the UK's Copyright, Designs and Patents Act 1988 (CDPA 1988 (c. 48), Her Majesty's Stationary Office, June 1995) has only one regulation which is applicable only in cases of complaints. The CDPA does not have any regulation on the formation of collective management or the regulation of their activities. Furthermore, there is no specific authority to supervise the societies (Guibault and others, 2006, p.12).

In cases of complaints, the CDPA provides only temporary supervision and establishes the Copyright Tribunal for this purpose. The Tribunal's general competence is limited to disputes between collective management societies and their users. Hence the Tribunal has no jurisdiction on the matters arising between the societies and their members. Furthermore, the Tribunal can only give references on the problems brought before it by users, and not by members or on its own initiative.

3.3.3. Intended Community Framework On Collective Rights Management

As mentioned above, after the publication of the Green Paper 1995, the Commission put its agenda an item to create the European level for collective management societies. The main development of the intended Community framework is described below.

3.3.3.1. The Resolution Of The European Parliament

The European Parliament's Resolution of January 2004 (The European Parliament, European Parliament Resolution on a Community framework for collective management societies in the field of copyright and neighbouring rights (2002/2274(INI)), (January 15th, 2004), (P5_TA(2004)0036)) states that the protection and collective management of intellectual property rights are important factors in stimulating cultural creativity and influencing the growth of cultural and linguistic diversity (The European Parliament's Resolution of January 2004, parag.22). The Parliament emphasized the greater advantage of collective management societies in facilitating users" access to the content and circulation of works, for the benefit of the entire chain (The European Parliament's Resolution of

January 2004, parag.23). In addition the Parliament accepts the fact that in the area of copyright and related rights, a proper, fair, and professional system of collective rights management is crucial for financial as well as cultural success (Guibault and others, 2006, p.14).

On the other hand, the Parliament is very critical on actual state of the collective management societies such as internal democracy, transparency, absence of dispute settlement mechanisms. The Parliament underlines management of copyright and related rights by the effective collective rights management must be compatible with the internal market. For this reason the Parliament presents some solutions.

The Parliament makes a general call for the deficit in the internal democratic structures of collective management societies, the lack of transparency in the financial policy of the societies and the absence of rapid dispute settlement mechanisms (The European Parliament's Resolution of January 2004, parag.46,48,52 and 49). Furthermore the Parliament states that there are major structural differences in the regulation and efficiency regarding the external control of collective management societies in the different Member States because of historical, legal, economic and, above all, cultural diversity (The European Parliament's Resolution of January 2004, parag.26).

In addition, the Parliament calls for the creation of common tools and of comparable parameters and the coordination of collective management societies" areas of activity, to improve cooperation between societies and take the development of the information society into account (The European Parliament's Resolution of January 2004, parag.38). The Parliament stressed the necessity to establish minimum standards for organisational structures, transparency, accounting and legal remedies in order to increase internal democratic structure of the societies. Also the Parliament considers that the establishment of a framework for minimum standards for the calculation of tariffs is necessary for the transparency required in accordance with competition law (Guibault and others, 2006, p.13).

The Parliament recognises the reciprocal agreements between collective management societies as long as they are not contrary to the EU competition law. Also The

Parliament recognises the establishment of an efficient national one-stop shop (The European Parliament's Resolution of January 2004, parag.43). Moreover the Parliament makes a call for an efficient Exchange of information in order to increase the cooperation between collective management societies (The European Parliament's Resolution of January 2004, parag.56). Finally a call is made for and the discontinuation of so-called "B contracts" in reciprocal representation agreements.[4]

It should be noted that the Resolution states the importance of the restriction of competition law to safeguard copyrights management effectively now and in the future. The European Parliament believes that collective management societies is an important safeguard in the field of media and stresses that the monopoly of collective management societies should not be replaced by a monopoly of the media industry (Guibault and others, 2006, p.14).

3.3.3.2. The Communication From The Commission

The Communication on the Management of Copyright and Related Rights in the Internal Market (Communication From The Commission To The Council, The European Parliament And The European Economic And Social Committee on The Management Of Copyright And Related Rights In The Internal Market, 16.04.2004 COM (2004/261 Final)) is more technical document than the Parliament's Resolution, mentioned above. The communication asks all the questions relating to the individual and collective management of intellectual property rights. It notes that the internal market has become the appropriate environment for achieving economies of scale in the analogue or digital exploitation of intellectual property. The accounts for more than 5 percent of the Community's gross domestic product (GDP) prove the importance of the intellectual property. The Commission takes the view that individual rights management does not for the moment require legislative action. Close monitoring of developments would be sufficient for individual rights

[4] The European Parliament's Resolution of January 2004, parag.45 says that 'There are two kinds of reciprocal representation agreements which are called A and B agreements. The "A" Agreements provide a reciprocal transfer of royalties. On the other hand the "B" Agreements each society collects and distributes royalties used in its territory only to its own rightholders and there is no transfer of money or data.'

management. Also the Communication tackles two other essential aspects for the marketing of protected goods and services: the emergence of digital rights management (DRM) and the question of a Community-wide licence (www.europa.eu 2007)

The European Commission states a legislative approach at Community level is required in field of collective rights management throughout the Internal Market. The Commission believes that the Internal Market can be best achieved if the monitoring of collecting societies under competition rules is complemented by the establishment of a legislative framework on good governance.

The Commission states that the absence of the legislative framework on the collective societies hinders the cross border trade of goods and provision of services based on copyright and related rights in the Internal Market. It proves the importance of the efficiency, transparency and accountability of collective management societies.

The Commission stated in the communication that in order to achieve a level playing field on collective management in the Internal Market, common ground on the following features of collective rights management would be required;

a) Conditions On The Establishment And Status Of Collective Management Societies

The Commission finds it important to harmonise the conditions to establish collective management societies in all Member States. The communication declares that in order to promote good governance, common ground appears to be required at Community level in relation to the persons that may establish a society, the status of the latter, the necessary proof of efficiency, operability, accounting obligations, and a sufficient number of represented rightholders.

b) The Relation of Collecting Societies to Users

Taking into account the exclusive and strong position of collective societies, the Commission supports the functions of collective societies as one-stop-shop licencing.

The Communication requires collective societies to publish their tariffs and grant a licence on reasonable conditions. Furthermore, the Commission finds it essential for users to be in a position to contest the tariffs, be it through access to the courts, specially created mediation tribunals or with the assistance of public authorities which supervise the activities of collecting societies.

The Commission points out that Some Member States provide that potential users, who contest the tariffs of the collecting society can only proceed with the exploitation of the rights, if they have deposited a certain amount with the collecting society. In addition the Commission recommends that a Community-wide application of these principles should be established in order to promote or safeguard access to protected works and other subject matter on appropriate terms.

c) The Relationship With Right-Holders

The Commission wishes to achieve a level playing field in collective copyrights management concerning the relationship with rightholders. Hence the communications requires the principles of good governance, non-discrimination, transparency and accountability of the collecting society in its relation to rightholders. The Commission believes that these principles must apply to the acquisition of rights (the mandate), the conditions of membership (including the end of that membership), of representation, and to the position of rightholders within the society. The mandate should offer rightholders a reasonable degree of flexibility on its duration and scope. In addition the Commission accepts that in the light of the deployment of Digital Rights Management (DRM) systems, rightholders should have, in principle, and unless the law provides otherwise, the possibility if they so desire to manage certain of their rights individually.

d) The External Control Of Collective Management Societies

The Commission underlines the disparities between the Member States on the control of collecting societies, mention above pages 65-67. The Commission states that the external control encompasses the behaviour of the societies, their functioning, the control of tariffs and licensing conditions and also the dispute settlement. As

mentioned above, the Commission says that divergent rules on control from one Member State to another constitute obstacles to the interests of rightholders and users. For this reason, the Commission wishes to create a level playing field with respect to the external control of collective management societies. The Commission finds it useful to establish common ground on certain parameters of external control and make specific bodies (e.g. specialised tribunals, administrative authorities or arbitration boards) available in all Member States. In addition, the Commission would like to establish common ground on their competencies, their composition and the binding or non-binding nature of their decisions. The Commission says that it is not an appropriate option to rely on soft-law or on codes of conduct agreed upon in the market place. Therefore, the Commission expresses the intention to propose a legislative instrument.

3.3.3.3. The Commission Work Programme 2005

The Commission announced that the adoption of a legislative proposal on collective rights management in the Internal Market would be part of its Work Programme 2005(Commission of the European Communities, Commission Work Programme for 2005-Communication from the President in agreement with Vice-President Wallström, (January 26th,2005), COM(2005) 15 final) The aim of the proposal is to create a level playing field in order to enhance both right-holders' and users' trust into collective management societies. The objectives of the legislative framework would be mainly (Guibault and others, 2006, p.15);

1. To ensure the transparency and efficiency of collective societies;
2. To ensure that the control of collective management societies is exercised to provide the similar general interest protection level in all Member States;
3. To enhance competitiveness of creative industries,
4. To reinforce the existing *acquis communautaire* in the field of intellectual property.

The Commission discussed the possibility of adopting either a directive or a regulation and ended up with the idea that the most appropriate way to achieve the

objectives mentioned, therefore, appears to be the adoption of a directive (Guibault and others, 2006, p.16).

3.3.3.4. The Study On Cross-Border Collective Management Of Copyright

The Commission recently published the study on the subject of collective management societies focuses on the cross-border collective management of copyright (Commission Of The European Communities Commission Staff Working Document, Study On A Community Initiative On The Cross-Border Collective Management Of Copyright, Brussels, 7 July 2005). The scope of issues addressed in this study appears much narrower than that of the European Parliament's Resolution or of the Commission's Communication (Guibault and others, 2006, p.16). This Study presents structures for cross-border collective management of legitimate online music services. The study could be accepted as a reflection to the Commission's wish to first adopt the principles set out therein with respect to online music services, before expanding the cross-border collective licensing system to copyright management as a whole. The study explained the reason for the action at the EU level is the revenue achieved with online content services in the US in 2004 which was almost eight times higher than online content revenue produced in the Western Europe.

The study states that the absence of the-wide copyright licences for online content services makes it difficult for these music services to takeoff. It says that in order to improving cross-border licensing for music services, the creation of entirely new structures for cross-border collective management of copyright is essential. The study reveals that the main problem encountered in the cross-border collective management of copyright is that the core service elements "cross-border grant of licences to commercial users" and "cross-border distribution of royalties" do not function in an optimal manner and hamper the development of an innovative market for the provision of online music services (Guibault and others, 2006, p.16).

This Study considers three options to improve cross-border management of copyright.

1. Do nothing (Option 1);
2. Suggest ways in which cross-border cooperation between national collecting societies in the 25 Member States can be improved (Option 2); or
3. Give right-holders the choice to authorise a collecting society of their choice to manage their works across the entire EU (Option 3).

The Study concludes that Option 3 offers the most effective model for cross-border management. Option 3 allows right-holders to choose a collecting society outside their national territories for the EU-wide licensing for the use of his works. Option 3 also creates a competitive environment for cross-border management of copyright and considerably enhances right-holders' earning potential. In addition cross-border distribution of royalties of the rightholders with the freedom to choose any collecting society in the EU will be a powerful incentive for collective societies to provide optimal services to all its rightholders, irrespective of their location – thereby enhancing cross-border royalty payments. The study therefore proposes a series of principles that Member States would have to implement. The objective of the principles is to prevent the Member States from stifling the adaptation of Option 3 as a competitive model for the cross-border management of copyright works.

In addition, Option 3 would effectively cut out the intermediary, the affiliate society, in favour of direct membership in a collective right management society who, by choice of the right-holder, could receive an EU-wide mandate to manage this right holder's copyright protected works. The European Commission believes that the enhancement of competition between societies would bring about the enhancement of transparency, accountability, royalty distribution and the quality of enforcement.

3.3.3.5. The Harmonization Through Legislative Action

The European Commission announced its intention to adopt a legislative instrument, most probably in the form of a directive, as mentioned above at page 67 and 68. A Community framework directive would set minimum rules applicable in all Member Sates on how collective management societies should account for revenue collected, how they should distribute the revenues among right-holders and how the collective management of rights should be organized. On this point the there are two

questions should be answered. These questions are whether the Community legislator has the power to establish the intended legislative instrument and to what extent it may exercise these powers. These questions can be answered according to the principles of subsidiarity and proportionality.

3.3.3.5.1. *The Attribution Principle*

Article 5 of the EC Treaty says that "The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein". According to the article Community legislations must be in conformity with the principle of attributed powers. The articles states clearly that if no powers have been conferred upon the Community, the powers shall remain with the Member States. The Community legislator has no general power to act. It may act only if and insofar as powers have been conferred upon it by the provisions of the EC Treaty, and with a view to achieve the EC objectives. This principle draws the framework of the area which harmonization can be governed at the Community level. In principle, harmonization is only possible for the achievement of certain objectives. Article 3(1)(h) of the EC Treaty states that the laws of the Member States can only be approximated "to the extent required for the functioning of the common market" (Guibault and others, 2006, p.21).

According to the Communication the aim of the legislative action could be to achieve a genuine Internal Market for both the off-line and the on-line exploitation of copyright and related rights. Article 95 of the EC Treaty says that measures may be adopted for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the Internal Market. In addition, the European legislator may invoke Article 47(2) in conjunction with Article 55 of the EC Treaty as a basis to a legislative action, since functions of collective management societies falls under the Article 50 of the EC Treaty. Directives may therefore be issued for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as service providers. Consequently, any measure adopted with respect to collective management societies

must contribute to the well functioning of the Internal Market (Guibault and others, 2006, p.22).

The European Court of Justice has consistently held that a measure may satisfy this test in two ways;

a) by removing disparities between the laws of the Member States that are liable to create or maintain distorted conditions of competition, and
b) by removing disparities between the laws of the Member States that are liable to hinder the free movement of goods or the freedom to provide services within the Community.

The Court also held that the choice of the legal basis is not a matter of discretion; it must be based on objective factors, which are amenable to judicial review, including in particular the aim and content of the measure.

According to the explanation above, it could be said that harmonization in the field of collective rights management through legislative action by the Community legislator may validly rest on Article 95 of the EC Treaty and Article 47(2) in conjunction with Article 55 of the EC Treaty.

In the Communication, the Commission explained its reason for necessity of harmonisation as need for removal of disparities between the national regulations of the Member States that are liable to hinder the free movement of goods and the freedom to provide services. The ECJ also recognises that the activities of collective management societies could work in a way which constitutes an economic effect in the common market and a restriction to the freedom of services. In addition, it could be thought that harmonization may also be necessary to remove disparities between the national regulations of the Member States that are likely to create or maintain distorted conditions of competition (Guibault and others, 2006, p.23).

In one hand, the objective of harmonization of these is not at the basis of the establishment and functioning of the Internal Market. Because harmonisation does not directly remove distortions of competition or eliminate obstacles to the free

movement of goods or services. On the other hand, it would increase the efficiency of the control over collective management societies, if there was a higher degree of efficiency and convergence with respect to these rules.

In short, a level playing field in the external control may be very helpful to achieve the true Internal Market in collective rights management.

3.3.3.5.2. *The Subsidiarity Principle*

The subsidiarity principle is very important for the competence of the Community in the establishment of Community legislation. Article 5(2) of the EC Treaty, the Community is competence on the condition that "if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community". For the examination of whether or not this condition is fulfilled, three guidelines have been formulated in the Protocol on subsidiarity and proportionality annexed to the EC Treaty. In the light of these guidelines, Community action may be justified if;

1. the issue under consideration has translational aspects which cannot be satisfactorily regulated by action of the Member States;
2. action by Member States alone or lack of Community action would conflict with the requirements of the EC Treaty or would significantly damage Member States' interests; and
3. action at Community level would produce clear benefits by reason of its scale or effects compared with action at Member State level.

The Protocol clearly emphasizes that the Community is competent for legislation on basis of subsidiarity principle as long as legislation on Community level is necessary and its measures should leave as much scope for national decision as possible (Guibault and others, 2006, p.24). According to above explanation, the problem of appropriate level of harmonisation, in the Community level or Member States level, arises in the harmonisation of collective management. Taking into account the current state that all collective management societies in the Europe operate on the

basis of the national law and with respect to the territory of the Member State in which they are established. This situation shows that if the issue is left to the Member States to take appropriate actions, it would increase disparities between Member States. In order to achieve a true level playing field in the collective management in the Europe, action at the Community level would be the best way.

However, the Community level harmonization may not be necessary to deal with all the issues in this area. There are valid reasons to leave some issues to the Member States to take appropriate actions, as far as a harmonization of specific rules on the "external control" of collective management societies is concerned. The Commission evaluated this idea and indicated in its Work Programme 2005 that the purpose of an eventual legislative proposal would not be to harmonize all the rules governing collective management societies, but "to impose obligations necessary to the smooth functioning of the Internal Market without prejudging the legal mechanisms to be used by Member States in order to implement them".

3.3.3.5.3. *The Proportionality Principle*

According to the third paragraph of Article 5 of the EC Treaty, Community action must comply with the principle of proportionality. This principle concerns the intensity of Community action: "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty". The ECJ has consistently held that the principle of proportionality is one of the cornerstones of Community law. This principle binds Community bodies that Community action must be appropriate and necessary in order to achieve the objectives legitimately pursued by it. The principle also means that disadvantages of the action must not disproportionate to the objectives of the action. Consequently, the positive and negative effects of the action must be in balance. Also if there is other way which is equally effective, but less detrimental to achieve the aim in question, the Community legislator have to choose that way (Guibault and others, 2006, p.25).

Article 151 of the EC Treaty states that the Community must contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the

fore. Therefore the Article 151(4) of the EC Treaty requires the Community legislator to take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. That means the Community legislator is responsible for ensuring that the national and regional diversity of the cultures of the Member States will be respected. In addition, the Protocol on subsidiarity and proportionality states that Community legislator must respect the well-established national arrangements as well as the organization and working of Member States' legal system.

Taking into account that disparities on regulations of collective management societies between Member States arises from historical, legal, economic and, above all, cultural reasons, the obligation of respecting all these different national legal systems is not a very easy task. Also the question of which creation can be used to determine whether a national system is effected or not should be answered in order to draw the border of the obligation set by Article 151 (Guibault and others, 2006, p.26). The principle of proportionality obliges the Community carefully weigh the measures it intends to establish and try to find an appropriate balance between these measures and the various other issues and interests involved. And the Protocol on subsidiarity and proportionality states that;

1. the form of Community action must be as simple as possible,
2. directives must be preferred to regulations and framework directives to detailed measures, and
3. If there is a choice between several appropriate measures, the least detrimental measure must be followed.

If the Commission takes legislative action as it indicated in the communication, it has to take into account the Protocol. According to the Protocol, a directive is preferable to a regulation, and furthermore a framework directive is more appropriate than a detailed measure.

4. COLLECTIVE MANAGEMENT ORGANISATIONS

4.1. THE ROLE OF COLLECTIVE MANAGEMENT

As mentioned above, it is impossible for individual authors to monitor the uses of their work. With the recent technological developments, TV and radio channels use very large amount of music items everyday. In addition, millions of people may download music, books, films, etc. without authorisation of authors. It is clear that technological developments make individual rights management impossible. Moreover authors should spend their time to create, not to monitor the uses of their work. In another respect, collective management is more adequate for users of creative works to find the proper right holder of the work they use.

The role of collective management societies could be summarised as follows (Hearing on Collective Management of Rights, 13 and 14 November 2000, GESAC's Contribution, Brussels 2001).

1. Collective management societies are essential to protect copyrights holders, whose protection needs in the information society are more important than ever since the exploitations of their works is difficult to control and they must cope with increasingly powerful users
2. Collective management societies have a vital role for users by simplifying access to works of copyright holders, which is particularly important in the information society, as users need to have access to a number of Works easily and rapidly for varied forms of exploitation covering the entire world.
3. Collective management societies are essential in order to introduce efficient and rational management mechanism in the interest of copyrights holders and users.

Authors benefit from the activities undertaken by a collective administration organisation.

These benefits mainly are (www.cisac.org 2007);

a. collection of royalties and distributing it to the authors;
b. legal support, such as drawing up of model contracts, issuing licences and authorising uses; negotiate rates and terms of use with users;
c. political action in favour of the effective protection of author's rights; such action can be undertaken before national or international bodies representing the author's right community, be it governmental or non-governmental;
d. social and cultural action, promoting author's interests and safeguarding their well being.

4.2. UNDERSTANDING COLLECTIVE ADMINISTRATION

Collective management starts after the assignment of a work of rightholders to ensure the enforcement of his or her rights. It ends either when the creator receives the benefits of his creation or with the expiration of the copyright duration. Collective management includes the below steps;

4.2.1. Registration And Documentation

A creative work is protected by copyright law from the moment of its creation. It only needs to be in tangible form. Nevertheless, authors' societies believe that registration of all the works of authors' would allow effective exercise of their rights. Collective societies set conditions, which might vary from society to society, for the registration of works. The basic information about the creator and his or her work is essential to manage the intellectual rights of creators. This documentation allows collective administration to carry out its task.

4.2.2. License

Collective societies grant licences to users as the representative of authors. If a user meets the conditions set by the society, he will obtain a license to use a specific work. The major condition for license is the payment of royalty. Tariffs are generally set as a result of negotiation between author's societies and users. Collective societies manage different kinds of rights, depending on the forms of exploitation of the repertoire it represents.

4.2.3. Collection

When a license is granted for the use of author’s works, collective societies become responsible for collecting the royalties, which the user accepted to pay. In case of non-payment, the authors' society has a right to act on behalf of the affected author. Collective societies could defend the rights of its members even a court of justice.

4.2.4. Distribution

After collective societies collect the royalties from users, they are responsible for distributing the sums to the individual right owners in such a way that everybody receives the share that he or she is entitled to. A fee to cover administrative costs is generally deducted from the copyright royalties. The fee for administration cost varies from society to society. Some collective societies set limit to administrative cost.

In practice, the fair and simple principle of equitable distribution is really very difficult. As mentioned above, transparency in administration cost, tariffs and distribution of royalties is very important in economic aspect. The reasons which make distribution of royalties very difficult are number of the authors of one work, the problem of how to divide among them, and the enormous number of works to be handled by collective societies. These reasons show that the task of distributing remuneration is enormous. Therefore, collective societies established special departments to deal with distribution of royalties.

4.2.5. International Network Of Information Exchange

The development of the technology increases the global use of copyrighted works that requires international information exchange. When a Japanese film is broadcast in Chile, the Japanese representative of its maker needs to be informed by its Chilean partners. On a more general level, collective management societies face to similar challenges and benefit form the experience of their foreign counterparts. International confederation of collective societies creates international network of societies of authors and composers to enhance information exchange.

4.2.6. Cultural And Social Support

Author's societies may reserve a part of their collections for cultural and social ends. This allows them to organise the theatre festivals, music competitions, productions of national folklore and music anthologies and other such activities.

In addition this provide them to offer authors provisions for their development, training, promotion, by offering awards of fellowships, for example. On the other hand, they can create fund order to be able to help their member when they need in case of illness or old age and such as.

4.2.7. Copyrights Protection From Human Rights Aspect

Some people do not even count authors right as human rights. In fact these rights were recognised at the beginning of the international human rights movement. Universal Declaration of Human Rights (UDHR) adopted by United Nations in 1948, states in Article 27(2) that “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author.”

International Covenant on Economic, Social and Cultural Rights (ICESCR), an international agreement adopted in 1966 and entered into force in 1976, supported the protection referred by UDHR.

ICESCR states in Article 15(1) (c) that the signatory states recognize 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 is the author."

The human rights framework for intellectual property recognises authors' moral and material interests as human rights, because the ICESCR Committee believes that these rights would serve two essential functions.

Firstly ICESCR Committee claims that these rights protect the personal link between authors and their works and between people or other groups and their collective cultural heritage. Secondly ICESCR Committee claims that these rights protect authors' essential economic interests in their works that is necessary to have an adequate standard of living by engaging in scientific research and creative activity.

The ICESCR Committee states that collective societies can help to improve the human rights framework for authors' rights. However the analysis of the ICESCR Committee's on Article 15(1) (c) implies that certain collective management practices might be incompatible the Covenant's intellectual property provisions. The ICESCR Committee expressed its view as:

> *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.*

The ICESCR Committee requires governments to regulate the activities of non-state and private actors such as collective societies to fulfil the obligation "to protect". The ICESCR Committee implied that by saying;

> *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.*

States may provide such protection is through the establishment of systems of collective administration of authors' rights. According to ICESCR Committee, collective administration is particularly appropriate to protect works in the digital environment, where works are easily accessible or reproducible through modern communication and reproduction technologies.

Also the ICESCR Committee requires governments "to create the necessary conditions for the realization" of Article 15(1) (c). The ICESCR 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 (General Comment No:3, 1990). So States have to recognize the essential role of international cooperation for the achievement of the rights recognized in the Covenant. Hence these conditions include funding and other affirmative measures to facilitate "the formation of professional associations," and "to ensure the active and informed participation" of authors in those associations to protect their moral and material interests.

4.2.7.1. Activities Of Collective Societies Which Support The Human Rights Of Authors And Users

As mentioned above very broadly, main activities of the collective societies are collection of royalties, distribution the money collected to their members, negotiation with consumers on behalf of authors, granting licenses to users, in case of infringement taking legal actions before national or international bodies in case of infringement to provide effective protection, social and cultural support.

Especially in the digital age, it is impossible for authors to monitor their works and to enforce users to pay royalties. Collective societies can track and monitor the use of

copyrighted works better than individual rights management. The ICESCR Committee believes that collective societies perform two essential functions to provide the effective protection of authors' rights:

a) Collective societies prevent users from unauthorised use, and
b) Collective societies grant licenses for legal use of copyrighted works; in return they collect royalties and distribute it to right owners.

Through collective societies, authors can use their exclusive rights on the copyrighted works. International confederation of collective societies, such as CISAC's CIS system, creates international network of societies of authors and composers to enhance information exchange. By this networks system collective societies can track the use of their repertoire in the other part of the world. The contribution of collective societies to national economies proves the importance of their task. Collective societies carry out their tasks in a way to provide their members human rights benefits. Legal support is one of their tasks to human rights framework for rights of authors. Also some collective societies creates fund to provide their members social services such as health benefits in case of illness and pensions in old ages. These activities provide human rights benefits for authors. In addition collective societies reserve a part of their collections for cultural supports, such as organisation of the theatre festivals, music competitions, productions of national folklore and music anthologies and other such activities. Also collective societies offer their members awards for their development, training, promotion.

By these activities comply with contracting states obligations under Article 15(1) (c), and also with other economic, social, and cultural rights in the Covenant as well. Collective management also provides users legal access to copyrighted works. In addition collective management is more convenient for consumers to find out the legal right owner to pay royalty. Collective societies negotiate with users about contract and grant license them for access to their repertoire. In respect of users, the activities of collective societies are compatible with the Article 15(1) (c). On the other hand there are some problems about blanket licences that do not allow limited use of repertoire of collective societies.

4.2.7.2. Activities Of Collective Societies Which Infringe The Human Rights Of Authors And Users

Collective management of authors' rights is in dominant position. Collective societies may use this dominant position in a way that infringes both human rights of authors and users.

The problem of the extention of the assignment of authors is one of the main issues in the relationship between collective societies and their members. This problem is attached to the freedom of a member to join and leave the collective society. It is accepted within the EU by Commission and case law that any requirement made by collecting societies does not comply with the EC Treaty, if the requirement is set to force its members to assign unduly broad categories of rights and to exclusively assign all their current and future rights with respect to all categories of works within the Member State or even worldwide for a long period. The reason for this conclusion is based on competition rules. The case law stated that these kinds of obligations could constitute an abuse of dominant position, because they prevent authors from leaving and joining other collecting societies. Also discrimination between members and on grounds of nationality is another aspect which is open to infringement of human rights by collective societies. Collective societies are in a dominant position in the field of copyrights protection; they have the possibility to refuse any application for its membership without objective justification.

The problems concerning human rights of users are based on the level of royalty and refusal to grant license to access its repertoire without valid reasons. Within the EU, all these problems are dealt with according to competition rules. However this is not an efficient solution for human rights of authors and users. Collective societies may infringe human rights of authors and users without abusing competition rules set by the EC Treaty. The ICESCR Committee requires states to prevent private parties from imposing unreasonably high license fees or royalties. The ICESCR Committee believes that this constitutes an interference with other rights in the Covenant. This interference includes the right to education and to culture. For these reason national governments should regulate (Contested Collective Administration of Intellectual

Property Rights in Music, The Challenge to the Principles of Reciprocity and Solidarity, 1999);

1. the licenses that collective societies offer to users,
2. the relationships between collective societies and their members, and
3. the relationships among the members themselves .

As mention above, in some countries, collective societies are under control by supervisory bodies. These bodies may be administrative agencies, tribunals, or other specialized regulatory bodies and they monitor activities of collective societies and adjudicate complaints by licensees. This protection is not available in all countries. The framework of human rights for intellectual property requires a balance between the rights of authors and the rights of the public.

The ICESCR Committee made a reference concerning the level of royalty paid by users, and it requires states to provide some regulations concerning collective societies licensing practices. Through these regulations, collective societies may be obliged to comply with their obligations under the Covenant.

The draft general comment of ICESCR Committee has two provisions regarding the relationship between collective societies and their members, and among their members. These two provisions aim to regulate the areas of the restriction of authors' rights to natural persons, and the more capacious equality norms that the ICESCR clearly supports.

It should be noted that the exclusion of corporations and other business entities from the protection referred by Article 15(1) (c) draws the attention to individual creators who are compelled, either by law or as a practical matter, to enforce their rights through collective societies. In this case, states parties should provide protection for those authors. Also states supervise collective societies for equal treatment for individual creators. This issue includes the terms of collective society membership, transfers of rights from individuals to the collective societies, the distribution of royalties among authors, and participation by authors in collective societies' decisions that affect their interests.

Finally the influence over collective societies' decision making procedure is an open area for infringement of human rights. Both individual authors and business may be members of the same collective society. Even though some collective societies accepted the principles of "equity" and "solidarity" among rights holders in their statutes, in practice there is a big potential for infringement.

4.3. THE WELL-KNOWN COLLECTIVE SOCIETIES IN EUROPE

Europe Based Global Collective Societies

- **a.** International Confederation of Societies of Authors and Composers (CISAC)
- **b.** International Federation of the Phonogram Industry (IFPI)
- **c.** International Federation of Reproduction Rights Organisations (IFRRO)
- **d.** Bureau International des Sociétés Gérant les Droits D'Enregistrement et les Reproduction Mecanique (BIEM)

National Collective Societies in Europe

France

Société des auteurs compositeurs et éditeurs de musique (SACEM)

Germany

- **a.** Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA) (musical recordings and performances)
- **b.** Verwertungsgesellschaft Werbung + Musik mbH (VGWM) (musical recordings and performances)
- **c.** Gesellschaft zur Verwertung von Leistungsschutzrechten (GVL) (performing artists)
- **d.** Verwertungsgesellschaft Wort (VG Wort) (texts of all kind)
- **e.** Verwertungsgesellschaft Bild-Kunst (VG Bild-Kunst) (pictures, movies and fine arts)
- **f.** Verwertungsgesellschaft Musikedition (VG Musikedition) (musical collections, music textbooks for school use, songbooks for church use)

United Kingdom

a. Authors' Licensing & Collecting Society (ALCS)

b. Artists' Collecting Society (ACS)

c. Broadcasting Data Services (BDS)

d. British Equity Collecting Society (BECS)

e. Copyright Licensing Agency (CLA)

f. Design and Artists Copyright Society (DACS)

g. Directors UK (D-UK) formerly the Directors' and Producers' Rights Society (DPRS)

h. Educational Recording Agency (ERA)

i. Mechanical-Copyright Protection Society (MCPS)

j. Motion Picture Licensing Company (MPLC)

k. Newspaper Licensing Agency (NLA)

l. Open University Worldwide (OUW)

m. Performing Artists' Media Rights Association (PAMRA)

n. Performing Right Society (PRS)

o. Phonographic Performance Limited (PPL)

p. Publishers' Licensing Society (PLS)

q. Video Performance Limited (VPL)

Italy

a. Institute for the Protection of Performing Artists (IMAE)

b. Società Italiana degli Autori ed Editori (SIAE)

Finland

a. Kopiosto (Copyright organization for authors, publishers and performing artists, collecting fees for photocopying, radio and tv programmes, extended collective licensing agreements and copyright levies)

b. Teosto (authors and composers of musical works)

c. Gramex (performers and publishers of musical works)

d. Kuvasto (arts)

e. Tuotos (audiovisual works)

f. Sanasto (litteral works)

The Netherlands

a. Buma/Stemra

b. SENA

c. Musicopy

Norway

a. TONO (Copyright collective for authors and composers of musical works)

b. Kopinor (books, newspapers, magazines, sheet music, and similar publications)

Sweden

a. Swedish Performing Right Society, STIM

b. COPYSWEDE

Austria

Autoren, Komponisten und Musikverleger

Switzerland

SUISA

4.3.1. CISAC

The International Confederation of Societies of Authors and Composers (CISAC), was founded by 18 members from an equal number of countries in 1926 in France. It was inspired by the ideas of universal peace and co-operation and the aim was to unite authors and composers from around the world. The founders intended to co-ordinate the work of their societies, to improve national and international copyright law, to foster the diffusion of creative works and, in general, to attend to all common problems of creation in its widest sense. CISAC consisted of five federations for dramatic performance rights, public performance rights, mechanical rights, literary rights and film rights. After the structure of CISAC was written in 1966, CISAC united the five federations to form the International Confederation of Societies of Authors and Composers. CISAC unites societies of authors and composers. Authors do not join CISAC themselves. They are represented by the societies to which they belong (www.cisac.org 2007).

CISAC is a non-governmental, non-profit organisation. Its activities are strictly independent of any political or religious affiliation. CISAC summarizes its main tasks as follows.

1. To strengthen and develop the international network of copyright societies;
2. To secure a position for creators and their collective management organisations in the international scene;
3. To adopt and implement quality and technical efficiency criteria to increase copyright societies' interoperability;
4. To support societies' strategic development in each region and in each repertoire;
5. To retain a central database allowing societies to exchange information efficiently;
6. To participate in improving national and international copyright laws and practices.

CISAC stated in its web page that in June 2006, it has 219 authors' societies from 115 countries and indirectly represents more than 2.5 million creators within all the artistic repertoires: music, drama, literature, audio-visual works, graphic and visual arts. Despite of the piracy, decline of CD sales and other challenges, the total amount of royalties collected by CISAC's member societies, on their own national collection territories, amounted in 2004 to more than € 6, 5 billion (www.cisac.org 2007). CISAC collected € 6.746.161.215, globally in 2005, the increase rate is 3.8 percent from 2004 to 2005 (CISAC Annual Report 2006). According to CISAC's latest economic survey, authors' societies collected nearly 7 billion Euros in copyright royalties in 2006, that is 4 percent over than 2005. CISAC declared that the surveys show steady growth over the past 3 years, reaffirming the central role that creators' play in today's creative economy. Also the musical repertoire still represents 90% of the total collections of collective socities, although the visual arts and audiovisual repertoires experienced significant growth, reaching 81 and 307 million Euros respectively.

CISAC explained the the need for collective management by the difficulties or impossiblities for authors to track the uses of their works. CISAC gives an example

to make it more understandable, the BBC uses almost 60,000 music items every week. The other reason to support collective management is that authors are not supposed to spend their time going after their rights, they are sopposed to create. Also users of creative works would find it as impossible to address the proper right holder every time they use a copyrighted work. Especially if this work, a film as an example, consists of the work of different authors of different creative disciplines. Then users of thatcopyrighted work need an authtorization of all those right holders. Hence like authors, users of copyrighted works such as broadcasters also are not supposed to spend their time to get an authorization from each of them.

CISAC take actions to improve the position of authors and composers and to enhance the efficiency of the collective administration around the world. CISAC has speed up its activities to manage the challenges of the digital age and contributes to the establishment and development of a global network that authors' societies have built up between themselves in order to represent the their respective members all over the globe CISAC (Annual Report 2006).

CISAC provides protection for its repertoire in the digital environment. CISAC adopted Common Information System (CIS). Also CIS aims to standardise the information exchange between societies in order to improve their efficiency. CIS enables CISAC's members to optimise their day-to-day administration and information exchanges. Then CIS will provide automated transactions and more accurate and quicker royalty distribution between CISAC societies. The CIS consists of two series of tools that provide the building blocks to global digital copyright administration (www.cisac.org 2007). These are;

1. The first component features the integration of unique, ISO-certified, standardised international identifiers of works and parties relevant to the creative process.
2. The second pertains to a network of global databases, or sub-systems relying on various centralised and increasingly decentralised technologies, that will serve as the repository of authoritative information on the creative process for all participating CISAC societies.

4.3.2. IFRRO

IFRRO was founded in 1980 as a working group of the Copyright Committee of the International Publishers Association and the International Group of Scientific, Technical & Medical Publishers (STM). It is structure was changed several times and finally IFRRO became a formal federation eligible to speak on behalf of its constituents before various international bodies such as WIPO, UNESCO, the European Community, and the Council of Europe in April 1988 in Copenhagen. Its headquarters was established in Brussels in 1998 (www.ifrro.org 2007).

IFRRO is an independent organisation and its legal base is in the Berne and Universal Copyright Conventions. IFRRO represents and links national Reproduction Rights Organisations (RROs) all over the world. RROs administer reproduction and other relevant rights including certain forms of digital uses in copyright text and pictorial works on behalf of authors and publishers. These rights are named as reprographic rights. Members of IFRRO are national RROs, and national or international associations of creators and publishers such as the Federation of European Publishers, the European Writers Congress, European Visual Artists, the European Newspaper Publishers Association and the International European Federation of Journalists at the European level. IFFRRO explained in its Board Report 2007 that IFRRO has 50 RRO members and 61 national and international authors', visual artists' and publishers' associations, a total of 111 members (IFRRO Board Report, July 2006-June 2007).

The main objective of IFRRO is to increase lawful use of text and image based copyright works at the international basis and to prevent unauthorised copying. IFRRO works through its members to supports creators and publishers alike and provides internationally a common platform for them. In addition IFRRO aims to develop and increase public awareness of the need for effective RROs and to support joint efforts of publishers, authors and other rights holders to develop rights management systems world-wide. IFRRO builds up the development of studies and information-exchange systems; relationships between, among and on behalf of members; and effective methods for conveyance of rights and fees among rights

holders and users, consistent with the principle of national treatment to achieve its objectives. IFRRO stimulates creativity, diversity and investment in cultural goods as a useful tool for rightholders, consumers, the economy and society as a whole.

4.3.3. SACEM

Socite des Auters et Compositeurs et Editeurs de Musique (SACEM). SACEM was established in 1850 by Ernest Bourget and his colleagues Victor Parizot, Paul Henrion and the publisher Jules Colombier, mentioned above at pages 47and 48. SACEM is a private entity; it is a non-trading company *"société civile"* directed by authors, composers and publishers. In addition, SACEM is one of the most active members of CISAC and has been active in developing shared IT tools to track and process information (www.sacem.fr 2007)

The repertoire of SACEM includes songs, rock, jazz, rap, symphonies, chamber and electro-acoustic music, film scores, audiovisual music programs, video clips, sketches and poems, etc. SACEM protects in total more than four million French and foreign works. SACEM has over 110.000 members, authors, author-directors, composers and publishers, thus encompassing almost all French authors and composers. SACEM also represents in France the works of foreign writers by reciprocal agreements with 100 organizations of foreign authors. In addition, SACEM has dealings with 800,000 broadcasters, show organizers and music producers. SACEM employs 1.490 permanent staff and half of them work in its 83 regional offices (The Annual Report 2005 of SACEM).

SACEM stated that it had 110.000 members and in 2005 it registered 522.828 new works to protect. It is considerable that the royalty collected by SACEM is € 757.4 million in 2005 and it distributed € 608.4 million to its members, it should be noted that € 82.1 million of this money, which is 16 percent of the total amount, went to foreign collective rights management organizations. It means that 80,000 composers, songwriters and lyricists received SACEM royalties through their 111 national CMOs in 2005 (The Annual Report 2005 of SACEM).

SACEM explained the sources of royalty revenues as 26.6 percent of television, 20.2 percent of recorded music used in public venues, 19.6 percent of records, video, telephone and multimedia (Internet €700k) , 9.1 percent of international royalties, 8 percent live shows, 7.6 percent of radio, 6.9 percent of private copies, and 2 percent of films (The Annual Report 2005 of SACEM).

Finally, SACEM has continually changed its management methods in order to deal with the new technologies and the media, especially today with the Internet, mobile devices, video and music on demand, as well as all other forms of digital and interactive media. This provides uninterrupted new sources of revenues for SACEM and increased income for creators.

4.3.4. GESAC

European Grouping of Societies of Authors and Composers (GESAC) was founded in Brussels in December 1990 in the form of an EEIG (European Economic Interest Grouping). GESAC consists of 34 of the largest authors' societies in the European Union, Norway and Switzerland. Thus GESAC represents nearly 500.000 authors or their successors in title in the area of music, graphic and plastic arts, literary and dramatic works, and audiovisual as well as music publishers. Members of different authors'' societies constitute a flexible formula of working groups which are responsible for the preparation of joint positions. GESAC is financed by the participation from member societies (www.gesac.org 2007).

GESAC states the objects of its foundation as supporting the legal, economic and cultural developments for its members. Thus GESAC's aim is to ensure effective copyright protection at the highest level within the framework of the EU. GESAC points out two issues in order to achieve its objectives. GESAC explains these issues at its web page as follows.

1. close collaboration with the institutions responsible for the preparation and implementation of European legislation to ensure that the new legislation takes into account both the cultural dimension and the economic aspects of copyright

and must be adapted to the increasing internationalisation of exchanges of cultural products and to the emergence of new technologies.

2. participation in technical assistance programmes in the matter of intellectual property initiated by European Union institutions in third countries.

Since September 1994, GESAC is in charge of the implementation of a Phare Programme "Intellectual Property Rights" in favour of the PECO and Baltic Countries.

4.3.5. GEMA

Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte or Society for musical performing and mechanical reproduction rights (GEMA), is a collecting society established in Berlin. GEMA is under the supervision by the German Patents and Trademarks Office and the German Federal Cartel Office, mentioned above at pages 65 and 66. GEMA was founded in 1903 by Richard Strauss and Friedrich Rösch as the Co-operative of German Composers (GDT) which is the predecessor of GEMA.

GEMA administers the copyrights assigned to it by its members. GEMA represents the rights of 60,000 members - composers, lyricists, music publishers - in Germany and over 1 million international rights owners (www.gema.de 2007). Thus it protects the worldwide repertoire of currently some two million works and also grants licenses for the music user on behalf of the author of these works in return for equitable remuneration. According to the German Copyright Administration Act, GEMA must monitor every use of music protected by copyright and check whether any royalties should be paid by users. GEMA is in cooperation with 74 collecting societies or agencies for public performing rights and/or mechanical reproduction rights through a network of unilateral and bilateral agreements. By this way, GEMA protects the rights of its own members in other countries.

GEMA declared that it reached satisfactory economic results in 2006, despite of the negative effects of CD sales and the problems arising from the Internet use of music

in Europe. But GEMA's total revenue in year 2006 was nearly € 874.4 million, which are € 22.2 million more then the total revenue of the previous year. GEMA said that the 2.60 percent growth in revenue is not enough in music used in many sectors, especially in online business to provide efficient protection for copyrighted works. Also GEMA reduced below the 14 percent mark to 13.92 percent. AS a result of this positive trend for income and expenditure, the amount available for distribution raised by € 20.8 million or 2.84 percent to a total of € 752.7 million - the highest level yet (www.gema.de 2007).

It is noteworthy to mention about sources of GEMA's royalty revenue. The revenue figures show that music authors do not benefit adequately from the increasing music distribution business in the Internet. GEMA stated that in the field of music downloads and ring tone melodies, its revenue fell from € 5.5 million to € 3.5 million from 2005 to 2006. The amount of the money deposited in escrow accounts, € 6.3 million for ring tone melodies and € 2.5 million for music-on-demand, on account of arbitration proceedings proves the importance of the subject. Therefore, GEMA made a call to shareholders, Usenet access providers and Internet radio recording services not to infringe copyright and to obtain an appropriate license for the use of GEMA's repertoire.

On the other hand, GEMA announced that the revenue situation improved in all segments. The earnings from radio and television broadcasting grew by € 8.5 million from € 233.0 million in the financial year 2005 to € 241.5 million in 2006. This means the increase of 3.63. Although the reducement in the private television licensing sector in 2005, the advertising market increased to € 2.2 million. The increase came to € 3.1 million for public broadcasting licences. And this licensing sector once again reached the level of the boom years 2000/2001, in 2006 (www.gema.de 2007).

In short, it is significantly important to see that GEMA collected in total € 806.2 million in 2004, € 852.2 million in 2005 and € 874 million in 2006 while it distributed in total € 690.2 million in 2004, € 731.9 million in 2005 and € 752, 7 million in 2006.

4.3.6. BIEM

The Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique (BIEM) is the international organisation that represents mechanical rights societies. BIEM was founded in France in 1929. Originally it exercised the licensing function on behalf of its European members but in 1968 those responsibilities reverted to the individual societies. BIEM currently represents 50 societies, from 46 counties (www.biem.org 2007).

The term "mechanical right" came into being at the time when all reproductions were made by a mechanical process. Today still nowadays reproductions are carried out by electronic and digital ways. Mechanical rights societies license the reproduction of songs. Thus, their members are composers, authors and publishers and their users are record companies and other users of recorded music. They also license mechanical aspects of the downloading of music from Internet. That means producers of CD, audio cassette or LP need a license from the owner of the works if they contain protected musical works. They have pay royalties for each copy they manufacture and sell. The mechanical rights societies issue the licenses and collect the royalties on behalf of the owners of the protected works (www.biem.org 2007).

Members of BIEM become parties of agreements to allow each of them to represent the others' repertoire. Through these agreements, a BIEM society provides very effective representation of protected works to users in the world.

BIEM negotiates a standard agreement with representatives of the International Federation of the Phonographic Industry (IFPI) to set common conditions for the use of the repertoire of the societies. The standard agreement provides the member societies that there is no compulsory licence or statutory licence in their territory. BIEM also finds its responsibility to assist in technical collaboration between its member societies and to help solving problems arising between individual members. BIEM represents and defends the interests of its member societies, particularly in forums relating to authors' rights such as WIPO, UNESCO, TRIPS and the WCO. In addition, BIEM is in cooperation with the international non-governmental organisations such as CISAC, GESAC which pursue the same objectives as its own.

4.3.7. PRS-MCPS ALLIANCE

The Performing Right Society (PRS) is a collecting society that was established in 1914 in The United Kingdom. PRS protects the copyrights of UK songwriters, composers and music publishers. PRS is a not-for-profit company which acts under the auspices of the Copyright, Designs and Patents Act, which was enacted in 1988. The PRS is not a statutory body, and then it has no power to bring criminal proceedings before any court against anybody who infringes copyrights of authors. That power could be used by the Crown Prosecution Service (The CPS) (www.mcps-prs-alliance.co.uk 2007).

The PRS formed an alliance with The Mechanical Copyright Protection Society (MCPS). MSPS collects mechanical royalties as PRS collects performing royalties for their musical works performed in public, broadcast or transmitted. The MCPS-PRS Alliance is one of the collective societies which represent the world's best music writers, composers and publishers. After ten years alliance, MCPS-PRS Alliance has become one of the world's most efficient combined rights collecting operations. It collects more money, and distributes more money to its members.

MCPS-PRS protects over 10 million pieces of music and enables businesses and individuals to access to its repertoire for their use. MCPS-PRS Alliance has 50.000 writers, 8.000 publishers, and 2000 successor as members in June 2008. That means it has 60.000 members. MCPS-PRS Alliance reported record revenues for performing and mechanical royalties during 2006 exceeding £ 545 million (US$1.1bn; €0.8bn). It collected over £562m for their members. The money collected each year by MCPS-PRS was £397 million in 1997, £ 408 million in 1998, £ 435 million in 1999, £ 459million in 2000, £482 million in 2001, £ 490 million in 2002, £ 510 million in 2003, £ 517 million in 2004, £ 528 million in 2005 and £ 547 million in 2006. The numbers proves the remarkable success of the alliance. In 2007, the alliance collected over £ 121 million overseas performances (www.mcps-prs-alliance.co.uk 2007).

MCPS is an active member of the Internet Enforcement Group (IEG) that is a cross industry body of Internet investigators, established in 2001. IEG fights against online

piracy and works co-operatively with The Internet Service Providers (ISP's). Also MCPS Anti-Piracy Unit works closely with Enforcement Agencies such as the Police, Trading Standards Departments and Customs & Excise. In addition it established a cooperation with the Patent Office, as well as it has developed IPCass, a database of precedent cases which would b used for those investigation and prosecution of infringements.

4.3.8. PLS

Publishers Licensing Society (PLS) is a not-for-profit organisation and has mandates from over 2200 UK publishers ranging from multinationals to single title publishers, charitable societies to academic associations (www.pls.org.uk 2007). PLS's sole objective is to serve the UK publishing industry by working to protect publishers' rights, and to lead on industry-wide initiatives involving rights management and collective licensing. PLS is dedicated to protecting and strengthening the copyright framework by motivating good practice in rights management. One of the most important ways PLS does this is by facilitating licence solutions that protect rights and provide revenue for publishers through collective licensing. PLS strives to ensure a high level of service that works on behalf of publishers and readers to uphold copyright legislation. PLS revenue has grown from £17.2 in 2005 to £22.8 million in the last financial year. This means that PLS has distributed £169 million to publishers since its foundation (The Annual Report 2007 of Publishers Licensing Society).

PLS explains its 2012 vision as publishing will remain a hybrid of print and electronic content. PLS believes that the differences between the sectors will remain. As consumer magazines in print remain popular, academic and business publishing will be in digital form and will grow constantly in trade publishing.

4.3.9. ALCS

The Authors' Licensing and Collecting Society (ALCS) represents the interests of all UK writers, established in 1977. ALCS is the largest writers' organisation

in the UK and it represents over 66,000 members. ALCS currently holds reciprocal or bilateral agreements with over 50 sister organisations in 38 countries. The objective of ALCS is to ensure that its members fairly compensated for all use of their works. ALCS defends that writers' primary rights should be protected by contract. ALCS believes that copyright has an important role to protect writers and creators from unpaid use and moral abuse of their work. ALCS has distributed over £182 million to writers since its foundation and it declared that it distributed £18.6 million to over 46,000 writers in the last financial year (www.alcs.co.uk 2007).

ALCS aims to protect and promote rights of authors by:

1. encouraging the establishment of collective licensing schemes, where appropriate, and ensuring that fees resulting from such schemes are efficiently collected and distributed, and
2. building an understanding of the value of the contribution writers make to society.

ALCS represents writers of all genres, from text-book authors and freelance journalists to poets and radio dramatists. ALCS membership is open to all types of writers and their successors across the print and audiovisual sectors.

4.3.10. CLA

Copyright Licensing Agency Limited (CLA) was set up in 1983 by the Authors' Licensing and Collecting Society Ltd. (ALCS) and the Publishers' Licensing Society Ltd. (PLS). Also CLA is a leading member of the International Federation of Reproduction Rights Organisations (IFRRO). CLA aims to provide a fair and effective way of collecting fees due to authors and publishers for the reproduction of their work. CLA grants licences to users which permit the photocopying, scanning and emailing of copyright protected works without having to seek permission from the copyright owner each time (www.cla.co.uk 2007)

4.3.11. IFPI

IFPI was established in London and has regional offices in Brussels, Hong Kong, Miami and Moskow. IFPI represents the recording industry worldwide. It has 1400 record companies as members in 73 countries and affiliates industry associations in 48 countries.

The main objective of IFPI is to promote the value of recorded music, protect the rights of record producers and expand the commercial uses of recorded music in all markets where its members operate (www.ifpi.org 2007). It explained that global digital music sales was estimated US$3 billion in 2007, a roughly 40 percent increase on 2006 which was US$2.1 billion (Digital Music Report 2008 of IFPI)

4.3.12. DACS

Design and Artistic Copyright Society (DACS) is a collective society based in the United Kingdom. DACS represents 36,000 fine artists and their heirs, in addition to 16,000 photographers, illustrators, craftspeople, cartoonists, architects, animators and designers, including some of the biggest names in contemporary visual arts (www.dacs.org.uk 2007).

DACS provides a range of licensing services for copyright consumers seeking to license the individual rights of an artist. Also it grants licenses for secondary uses of artistic works under collective licensing schemes on behalf of all visual creators. DACS also manages Artist's Resale Rights of all artists in the UK. The Artist's Resale Right entitles an artist to a resale royalty each time their art work is sold by an auction house, gallery or dealer.

DACS is a not-for-profit organization and distributes 75 percent of licensing revenue back to visual creators. So the rest of 25 percent is commission for administration cost. DACS stated that it paid almost £3.6 million to over 8,000 artists, visual creators and their representatives between December 2005 and September 2006. DACS paid £123.723 as Artist’s Resale Right to 173 visual creators, £784.473 Individual Rights to 847visual creators and £2.674.708 Payback to 7,217 visual

creators, in total £ 3582.904. In addition DACS declared that it has collected over £ 2.5 million in resale royalties since February 2006 (DACS Royalties Report 2005-2006).

DACS provides an individual rights management service for over 36,000 UK and international fine artists and their heirs. It is in cooperation with 32 similar societies in 28 countries abroad. Through this way, it is able to license the artistic works of foreign artists to customers in the UK.

DACS also provide a collective rights management service on behalf of 52,000 artists and visual creators, including members of our individual rights management service, in addition to any entitled artists who are not members of DACS.

4.3.13. DPRS

The Directors'&Producers' Rights Society (DPRS) is the collecting society which represents British film and television directors in the UK. The DPRS protects the rights of the directors and producers. So it collects and distributes royalty rising from the exploitation of directors' works. DPRS fights for establishing and protecting directors' rights in the UK and abroad. The DPRS is a non-governmental and non-profit making organisation. It cooperates closely with the Directors' Guild of Great Britain (DGGB) and the Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) to improve the conditions and terms under which directors are employed (www.dprs.org 2007).

The DPRS has over 2,500 members who work in all fields of film and television from features to soap, from fly-on-the-wall to natural history. The DPRS is recognised by all the UK broadcasters and has close relationships with sister organisations across Europe and a full member of CISAC. The DPRS monitors transmissions on over 60 European channels to check whether members' work is shown and processes programme information provided by British Broadcasters. The DPRS concluded agreements with societies in over 20 countries and has collected

considerable sums of money on behalf of British film and television directors over the past fifteen years.

4.3.14. IMAIE

Institute for the Protection of Performing Artists (IMAE) is collective society operating in Italy. It is the Institute in charge for the administration of the rights of performing artists of music, cinematographic and audiovisual works in general. IMAE was established by the trade union organizations of the performers' categories sector, such as CGIL, CISL and UIL. It was founded in 1977 as a free association of performing artists in order to protect their professional performances and to exercise their right to an equal remuneration related to the re-utilization or reproduction of the works interpreted or performed by them. It is a non-profit body.

IMAE protects all right holders' interest without distinction in order to guarantee the exercise of their rights and the full respect of the personality of the categories involved (www.imaie.it 2007).

4.3.15. SGAE

Sociedad General de Autores y Editores is a Spanish Society of Authors and Publisers (SGAE) is a collective management organisation which is stated in Spain. SGAE represents more than 66,000 members in the field of cinema directors, screenwriters, composers of all genres, playwrights, librettist, choreographers, mimes, etc (www.sgae.es 2007).

SGAE's repertory covers more than three million dramatic and choreographic works, all kinds of musical compositions such as symphonic, jazz, pop, rock, flamenco, etc. and audiovisuals such as feature films, short films, documentary film, television series, etc. SGAE grant licenses to the users of the dramatic, audiovisual and musical works by paying royalties in return (www.sgae.es 2007).

SGAE has 13 offices and a 200 national representative network. It is a leading entity of Latin repertory and holds representation agreements with 160 societies worldwide.

SGAE has its own delegations in Argentina, Brazil, Cuba, China, Japan, Mexico and the USA. Also SGAE is the first worldwide authors society to have been granted, by the international competency organization the quality certificates for management procedures (ISO-9002) and to the continued improvement process of implementation (ISO 9001 - 2000, in 2001) (www.sgae.es 2007).

4.3.16. KOPIOSTO

Kopiosto is a Finnish collective society which represents roughly 50.000 Finnish copyrights owners who belong to 44 member organizations representing authors, photographers, performing artists and publishers in all fields of creative work. Kopiosto is an active member in the international copyright organizations such as IFRRO and CISAC and it has bilateral agreements with reproduction rights organizations in several countries worldwide (www.kopiosto.fi 2007).

5. DIGITAL RIGHTS MANAGEMENT (DRM) AND ITS EFFECTS TO COLLECTIVE MANAGEMENT

5.1 DIGITAL ENVIRONMENT AND COPYRIGHTS

Digital technology enables the transmission and use of copyright protected works in digital form over network systems around the world. That means that copyright protected works can be transmitted across the Internet and then communicated, copied or stored in digital form.

Also copyright protected works is very important subject of e-commerce. Thus, Internet could be defined as the world's biggest copy machine (Kallinikou 2006).

Some thought that copyright and the World Wide Web never went together and copyright would be ended by the Internet. The bandwidth and user base of the Internet has increased very rapidly. The Internet user may easily download and use new types of works. PDF published texts, MP3 files and high-quality commercial video files can be downloaded and used by everyone who has internet access. Especially in music market this problem creates big phenomenon due to MP3 technology and its use by file-exchange services such as Napster.

Despite the efforts spent by sites such as iCraveTV and JumpTV to draw attention to the phenomenon, it is not very easy problem to deal with. P2P technology and other forms of online transmission and exchange effect copyrights in a negative way. If the necessary changes are made, copyright will be protected.

5.2. DIGITAL RIGHTS MANAGEMENT (DRM)

DRMs may affect the functions of collective societies. DRMs provide authors new ways to exploit their works and support distribution models of collective societies. Then it would be assumed that the use of DRMs will increase by authors and collective societies.

DRMs refer to digital access, copy and redistribution control mechanisms for copyrighted contents such as music, video, films, games or text. They can be used either on physical supports such as DVDs or on purely digital files. DRMs control access to digital content files such as digital songs, texts and movies. The Serial Copy Management System for digital audiotapes and the Content Scrambling System (CSS) for DVDs were early examples of DRMs. These systems were just copy restriction tools. DRMs can also control the freedom attached to digital contents. They assign a pre-defined and self-enforcing set of uses to each item of digital content covering rights to view, modify, record, excerpt, translate into another language, keep for a certain period, distribute, etc. The legal protection of DRMs is part of a "privatization" of copyright protection. This makes proprietary software, governed by intellectual property rights and reinforced by public law, crucial to the vertical relations shaped by exclusive copyright. Basically the main functions of DRMs are as follows (www.peyrot.info 2007).

1. controlling access to the work
2. preventing unauthorized copying
3. identifying the works and those who own copyright in them
4. enabling contracting for the use of the works.

DRMs are believed that it would become an industry standard. In that case, the problems associated with their technological development will remain. Also the other difficulties related to interoperability should be solved. In any event, the evolution and future use of DRMs as a standard method of digital protection is unpredictable.

As mention above DRMs provide a much greater range of consumer choice. It may even cause a reduction in pricing. In the meantime DRMs would give greater control to copyright holders to exercise their rights in digital content, thereby facilitating legitimate access to digital works. However, the degree of control over works in a digital environment could also help to provide efficient protection for copyrighted works.

The WIPO presents some very attractive scenarios that could become real if the DRM is successful (WIPO, 1 August 2003, Current Development in the Field of Digital Rights Management, SCCR/10/2).

a) A consumer downloads music at home from a network service, and is given the necessary permissions to listen to this music on any device she owns for 12 months from the date of download (as often as she would like to do so); she may also pass a copy of the music to up to ten friends without charge–but they can only listen to it once without obtaining a license of their own. However, to reward her as the distributor of the protected files, she will be recompensed, either financially or in kind, by the rights holder who benefits from her distribution to friends.
b) A consumer downloads a recently released movie. The permissions she is granted mean that she is allowed to watch it only three times within a one-month period. After that, the file becomes inaccessible unless a new license fee is paid. However, the permissions also provide for her to register for a free ticket to her local movie theatre any time in the month after her permissions expire.
c) A student "visits" his University library from his room, which is off campus, and finds the five different journal articles and individual chapters of books which he needs to write his assignment. He downloads these to his own laptop. They are only available on "short loan," so after five days the files on his laptop become inaccessible to him. However, the library also has an arrangement with an e-Book vendor, who offers discounts on a range of e-Books relevant to the journal articles. This is achieved through the use of complex metadata matching through the DRM system.

5.3. COPYRIGHT MANAGEMENT INFORMATION AND DRMs

The Digital Millennium Act of 1998 (DMCA) separately provides for protection of "copyright management information (CMI). WIPO stated that CMI is central to an effective DRM system, as it is information that describes the work and how it may be used.

The DMCA describes CMI very broadly. The description includes any information concerning with a work. This information may be the work, including the title, author, information set out in a copyright notice, the name of performers, the names of writers, directors and performers, terms and conditions for use, identifying numbers or symbols and other information. DMCA forbids the distribution or importation of false CMI if the person intentionally induces, enables, facilitates, or conceals infringement. Also it prohibits an unauthorized person from intentionally removing or altering CMI; distributing or importing CMI knowing that it has been removed or altered without authorization; or distributing, importing or publicly performing a copy of a work or a work knowing that the CMI has been removed or altered without the authorization of the copyright. In short according to DMCA, if the person knows or has reasonable grounds to know that his or her activity will induce, enable, facilitate or conceal an infringement, his or her act relating to above mentioned acts is prohibited (WIPO, 1 August 2003, Current Development in the Field of Digital Rights Management, SCCR/10/2).

The EU Copyright Directive implemented an important number of the new international obligations under the framework of the Internet Treaties. Also the Recommendation (Commission Recommendation of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC)) on collective cross-border management of copyright and related rights for legitimate online music and the Recommendation (Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation (2006/585/EC)) on digitisation and online accessibility of cultural material and digital preservation are the new steps taken by the Commission concerning digital copyrights.

The Commission believes that DRM systems are an important tool for rights management in digital age. The view is supported that the Commission should take necessary measures to make DRMs technologies develop in the EU a long with the strong protections against the unauthorized circumvention of DRM technologies. And it is suggested that the EU should as well adopt the Framework Decision on Cybercrime to protect DRMs from hackers.

5.4. THE ACTION FIELD OF DRM

The study of WIPO on the current development of DRM draws the importance of DRM in action. The study underlines the effectiveness of DRM systems. It is really worthwhile to mention about the findings of the study.

The WIPO pointed out some issues about current implementations.

a) Most of the implementations of DRMs are currently limited to specific content sectors, such as the publishing or music industries. DRM is not applicable to multimedia content broadly. This vertical separation reflects analogy content delivery. It is expected that as DRM becomes more flexible, enabling on-the-fly combination of content types, the vertical separation between content delivery streams will start to become invisible.
b) The business models to support the delivery of content are still fairly basic. Subscription models, pay-per-view/listen and outright purchase are the dominant modalities. WIPO stated in future, there will be a proliferation of business models, many of them based on the purchase of hybrid products; such commercial peer-to-peer models. The majority of peer-to peer-models are dealing in unauthorized content.
c) Payment systems are still primitive, with most payments being made by credit card.

5.4.1. In The Field Of Audio Works

The WIPO determined the effects of DRM systems in the music field. The study states that the major record companies and online content distribution companies have applied to a number of online music services such as RealNetworks and its Rhapsody service. These systems provide an alternative to the illegitimate peer-to-peer services.

The study gave some examples to describe the effects of DRM for online music services. BMG, Warner Music and EMI founded Music Net. Sony and Universal singed an agreement with them on the online music service. The system allows users to download and stream DRM-enabled music content. Depending on the subscription type, users can save music on their hard disks and copy it to CDs. It costs users about US$10 a month to listen to an unlimited amount of tracks from MusicNet's online catalogue. Also, iTunes has become available in the U.S.A. since the spring of 2003. Apple announced in June 2003 that it had sold more than five million tracks through its iTunes Music Store that shows the popularity of the service. The service of iTunes uses the Apple iPod device as its player. It stores DRM-protected tracks which are downloaded from the iTunes service via a computer terminal. Also the other systems were founded such as Pressplay, Echo, and OD2 by different companies in all over the world to provide online music service.

5.4.2. In The Field Of Audio-Visual Works

The study points out that DRM gives movie studios an opportunity to provide on-demand movie services over the public Internet. Major movie studios want to use this opportunity, thus the implementation of DRM affects their strategies very deeply. The new MovieLink on-demand portal was launched by a joint venture between MGM Studios, Paramount Pictures, Sony Pictures Entertainment, Universal Studios and Warner Bros in 2002. The service provides a collection of 200 movies from the major movie studios to only U.S.A. residents.

Major entertainment companies use DRM to lock up digital media. DRM prevents users from making back ups DVDs and music downloaded from online stores, recording TV programs, using the portable media player of one's choice, remixing clips of movies into home movies, and much more. Hollywood and the music industry are very concerned about new technologies that help users get more from media. The lawsuits were brought against the VCR, DAT recorder, the MP3 player, and the PVR. However DRM systems may provide media companies to take away the legitimate fair use and home recording rights in order to sell those rights back to users later. It should be underlined that recent DRM has invaded users' privacy and created severe security vulnerabilities in computers (www.eff.org 2007).

5.4.3. In The Field Of Text Industry

DRM affects the text industry. The WIPO states in the study that Microsoft developed a DRM system for customized electronic publications called the Digital Asset Server. And its rival Adobe is marketing the Adobe Content Server. Palm's software Division of Palm Digital Media distributes its e-Books by a customized DRM system. Most major online e-Book stores use technologies from several DRM vendors to build custom systems for the online publishing industry.

5.4.4. In The Field Of Software

The study implied that DRM systems is specially used to protect games consoles and online games systems. The Microsoft Xbox games console was given as an example by saying that it includes a 128bits strong hardware encryption system to prevent users from playing pirated games and using the console for any other purpose. Also Sony use DRM systems in its PlayStation 2 and Nintendo in its GameCube. On the other hand, the study pointed out the problem arising from the proliferation of so-called "mod chips" which allows users to bypass the copy protection of a games console. Despite the piracy rate is not as higher as in the fields of music, movies and text, this problem has taken very seriously by both videogame and software companies.

5.4.5. Extention Of DRM To Other Industries

DRM recently has become applicable in sectors other than the copyright content industries. The information about an organizations has become the most important and valuable asset. Thus, members of a corporate board of directors and senior executives are coming under pressure both from regulatory authorities and their own shareholders to demonstrate that they fulfil the duty of care to maintain the security of information. The issue of the security of information has made changing on the use of DRM systems. Companies try to control usage of information, where before they were only able to control access, by employing DRM techniques in order to provide close protection their assets and be able to track where their information is being consumed. The study states that DRM systems will provide a much greater level of information security than is currently possible.

5.5. TYPES OF DRM SYSTEMS

DRMs provide the exchange of usage information among rights owners and distributors, and establish the manner in which a work may be used. DRMs are divided into two general categories: digital rights management systems which do not utilize technological protection measures and digital rights management systems which utilise technological protection (www.pch.gc.ca 2007).

5.5.1. DRMs That Do Not Utilize TPMs

These types of DRMs are readily associated with collective copyright management organizations or collective societies. As mentioned above collective societies represent authors and grant users licence to use works within its repertoire. Collective societies negotiate the fees and terms of use for works on behalf of artists, and are later responsible for collecting those fees and distributing the royalties. Many collective societies provide internet and other online technologies to mediate the clearing of rights, establishment of licence terms, and payment of fees for the use of a copyrighted work. DRM technologies facilitate the expediency and efficiency of licensing content.

The use of DRM technologies by collective societies must be contrasted with the use of Private Technical Protection Measures (TPMs). TPM refers only to technologies that control access to or the use of a copyright protected work. TPMs supplement copyright laws with self-enforcing access and copy control measures. Access control measures prevent consumers from unauthorised access to the repertoire of collective societies and put pressure on users to pay for access to its repertoire. The content may be bundled either with physical supports such as books, newspapers, tapes, CDs, DVDs; or with tickets such as concerts, movie projections, pay-TV broadcasts to form delivery goods and services. In meanwhile copy control measures define consumers' freedom of use. These technical protection measures are both private and cooperative (mpra.ub.uni-muenchen.de 2007).

DRMs are a generic term of a method that identifies content and sets out licensing conditions. However, the term DRM has recently become synonymous for those DRMs that use TPMs. DRMs rely on TPMs to manage the rights attached to digital content. DRMs may control, monitor and meter the most uses of a digital work. Thus, DRMs can be used to royalty tracking and accounting systems where the copyright holder is able to track usage and payment. In addition, DRMs provide a wide variety of business models beyond sales and subscriptions. For example, DRMs provide users license with variable terms and conditions. DRMs make it possible for a copyright holder to permit potential customers to sample digital content in a demonstration mode. DRMs also provide site licences based on numbers of simultaneous users or linked to specific hardware. Terms of use can be based on limited and unlimited use, or time related use (Kallinikou 2006).

5.5.1.1. Digital Object Identifier (DOI) System

The DOI System aims at identifying content objects in the digital environment. The system is administered by the International Digital Object Identifier (DOI) Foundation. The DOI Foundation is an international non-profit organization working to develop an international identification system for digital intellectual property. DOI is a consortium of publishing organizations such as Microsoft Corporation, Association of American Publishers, and the Alliance of European Music Rights

Societies. The DOI Foundation is also an open membership consortium including both commercial and non-commercial partners. The DOI is being developed as a voluntary standard within the publishing field and has recently been accepted for standardisation within ISO (www.doi.org 2007).

The DOI Foundation was established in 1998 and supports the needs of the intellectual property community in the digital environment. The development and promotion of the DOI System has become a common infrastructure for content management. The Foundation is controlled by an Executive Board elected by the members of the Foundation. However, the activities of the Foundation are controlled by its members. The DOI Foundation takes also into consideration comments and participation from non-members (www.doi.org 2007).

A DOI® is a name for an entity on digital networks. A DOI name means "a *digital identifier"* for any "*object of intellectual property"*. A DOI name is an implementation of the Internet concepts of Uniform Resource Name and Universal Resource Identifier. It provides a system for persistent and actionable identification and interoperable exchange of managed information on digital networks. DOI names are assigned to any entity for use on digital networks. A DOI name can apply to any form of intellectual property expressed in any digital environment.

DOI names have been called "the bar code for intellectual property", such as the physical bar code that attaches to add value and save cost. A DOI name differs from commonly used internet pointers to material such as the URL, by identifying an object as a first-class entity. It means that it does not identify simply the place where the object is located. A DOI name also differs from commonly used identifiers of intellectual property such as standard bibliographic and related identifiers such as ISBN, ISRC, etc., by association with defined services. It could be said that the DOI names are their electronic equivalent (www.doi.org 2007).

Intellectual property includes both physical and digital manifestations, performances and abstract works. DOI names can be used to identify, for example, text, audio, images, software, etc; and in future could be used to identify the agreements and

parties involved. Hence, a DOI name can be used to identify any resource involved in an intellectual property transaction. Intellectual property transactions do not necessarily involve Money, because DOI names can be used to identify free materials and transactions as well as entities of commercial value.

DOI names can provide current information. Information about a digital object may change over time, but its DOI name does not change. The DOI System provides a framework for persistent identification, managing intellectual content, managing metadata, linking customers with content suppliers, facilitating electronic commerce, and enabling automated management of media. The DOI System has been developed and implemented in a range of publishing applications since 2000. By 2007 over 30 million DOI names had been assigned. The development of the DOI System has proceeded through three parallel tracks (Paskin 2008).

1. an initial implementation of persistent naming: a single redirection from a DOI name to a digital location (URL) of the entity or information about it;
2. the development of more sophisticated means of management, such as contextual resolution, where the result of a redirection is also a function of some additional information such as local holdings information;
3. collaboration with other standards activities in the further development of tools for managing entities in a digital environment.

The first and the biggest application of the DOI System was made by CrossRef. It is an independent membership association which was founded by publishers. CrossRef's mandate is to connect users to primary research content. It aimed to enable publishers to work collectively in a DOI System registration agency for scholarly and professional publications. DOI set up CrossRef citation linking network in 2000. It allows a researcher to click on a reference citation on one publisher's platform and link directly to the cited content on another publisher's platform, subject to the target publisher's access control practices. This network covered some 30 million articles and other content items from several hundred scholarly and professional publishers by in mid 2007 (Paskin 2008).

5.5.1.2. Extensible Rights Mark-up Language (XrML)

Extensible Rights Mark-up Language (XrML) is the Digital Rights Language of choice. XrML is a general-purpose and XML-based specification grammar for expressing rights and conditions associated with digital content, services, or any digital resource. XrML provides a universal method for securely specifying and managing rights and conditions associated with all kinds of resources including digital content as well as services (www.xrml.org 2007).

XrML was developed at Xerox Palo Alto Research Center (PARC), but currently XrML is governed by ContentGuard, Inc. XrML is the only Rights Language which is used in commercially deployed solutions, including the DRM solutions from Microsoft. The goal of XrML is to expand the usefulness of digital content, resources, and web services to rights holders, technology developers, service providers and users by providing a flexible, extensible, and interoperable industry standard language that is platform, media, and format independent. XrML is an automated system that allows rights holders to embed rules into hypertext code. This software can be used in the selling and licensing of electronic books, digital video and music, computer games, software, and other objects in digital forms. XrML describes the rights, costs, and conditions of a work. Sophisticated tools for rule-setting are being developed. There are many benefits to using XrML to specify rights and conditions, such as;

a) XrML is precise and unambiguous.
b) Inherits the benefits of using XML (flexibility, extensibility, namespaces, aliases, schemas, etc.)
c) Leverages other standards to specify digital signatures, digital identifiers, content metadata, etc.
d) Supports digital products and Web services
e) Defines entities to allow interoperability across multiple systems and applications
f) It's independent of media type, format, and platform and delivery architecture
g) It's secure - all XrML labels and licenses are digitally signed.

h) Has tools available now to assist with development
i) Provides a comprehensive framework for specifying rights (tools, documentation, examples, tutorials, use cases, etc.)

As XrML provide rights holders with a tool to prevent unauthorized access and use of their work, it enables the creation of new revenue streams based on the ability to control the use and access of digital content and services across simple or complex value chains. XrML is supported by Microsoft that stated its plans to use XrML in its own products and services. XrML is widely supported by the many companies which participated in the MPEG-21[5] and OASIS Rights Language Technical Committee (RLTC)[6] to create standards based on XrML. These include IBM, HP, Cisco, Verisign, Universal Music Group, among many others. Also some companies are planning to use XrML such as Microsoft, Sony, Zinio, OverDrive, Integrated Management Concepts, DMDsecure and Contents Works.

5.6. DISADVANTAGES OF DRM

The implementation of the copyright regime and the introduction of legal protection of DRMs and the weakening of exceptions and limitations are the main points of the discussions of the opponents of DRM systems, such as Electronic Frontier Foundation in America and privatkopie.net[7] in Germany. They pointed out several problems in their objections.

[5] The MPEG-21 standard from the Moving Picture Experts Group which aims at defining an open framework for multimedia applications. ISO 21000.

[6] OASIS, Organization for the Advancement of Structured Information Standards, is a not-for-profit consortium that drives the development, convergence and adoption of open standards for the global information society. The consortium produces more Web services standards than any other organization along with standards for security, e-business, and standardization efforts in the public sector and for application-specific markets. OASIS was founded in 1993, and has more than 5,000 participants representing over 600 organizations and individual members in 100 countries. (www.oasis-open.org 2007)

[7] Privatkopie.net is a civil society initiative working to protect information user rights like the one to make private copies. Its petition urging the German government to preserve the private copying exception in the digital age has so far received nearly 50.000 signatures. (www.privatkopie.net 2007)

In Germany, privatkopie.net prepared a report with Bits of Freedom[8] from Netherlands in 2004 (Putting users at the centre achieving an 'information society for all'- Comments in response to the Informal Consultation of the Final Report of the High Level Group on DRM, Berlin, 20 September 2004).

In this report, privatkopie raised the question about the issue of data protection with respect to citizens and consumers, especially referring to hardware-driven Trusted Computing[9], the issue of hindering the right of access to information, limiting the usage of media products, high transaction costs which have to be paid by consumers and authors, technological "lock-in" combined with limitation of the choice of technical platform and limitation to sustainable storage of information, for example by libraries. In addition the report underlined the problems concerning competition and progress in the content sector. It specially expressed the effects of high transaction costs and market concentration. The report claimed that in this respect DRM would only be an advantage for big companies. Thus authors will suffer from increased market concentration. While today they do get compensation for private copying through collecting societies, they will not be compensated for the copying that DRM allows for. They lose the possibility to promote their work through file sharing networks. And in the end, authors and users will have to pay for the DRM infrastructure. On the other hand individual authors would not be able to afford the costs of DRM licences and their usage (Baratis 2005).

The report took attention to competition and progress in the technology branches. The results were market concentration and the blockade of alternative developments. So the report ended up the conclusion saying that the disadvantage of DRM was high

[8] Bits of Freedom is a privacy and digital rights organisation. Major topics of concern to Bits of Freedom are copyright, the balance between law enforcement and privacy, freedom of speech, and spam. Bits of Freedom is a not-for-profit organisation based in Amsterdam, the Netherlands. BOF organises both public and closed events to promote its ideas, often in collaboration with other organisations. (www.bof.nl 2007)

[9] The Trusted Computing Group (TCG), successor to the Trusted Computing Platform Alliance (TCPA), is an initiative started by AMD, Hewlett-Packard, IBM, Infineon, Intel, Microsoft, and Sun Microsystems to implement Trusted Computing. Many others followed. The term is taken from the field of trusted systems and has a specialized meaning. Trusted Computing means that the computer will consistently behave in specific ways and those behaviours will be enforced by hardware and software. More information is available at http://en.wikipedia.org/wiki/Trusted_Computing, last visited 10.10.2007)

transaction costs which have to be paid by consumers and authors. By income from individual remuneration for private copying they do not have to expect anything. In contrast to this, they would, after all, get a part of it through collection societies. In addition, the opponents of DRM depends all the previous achievements of the digital revolution on the free programmability and they claims that if this free programmability was threatened by DRM, future progress was in danger. (Baratis 2005).

On the other hand, as the threat arisen from Peer to Peer (p2p) use of copyrighted works has become a very important issue, despite legal protection of DRM, the existence of TPMs and several legal actions. Thus some come to the conclusion that the idea of DRM does not work yet, and there are doubts that it ever will. This conclusion is based on the absence of the truly secure system and the idea that in the end there would be an open "analogue whole" which would allow analogue copies which could be digitized anyway (Baratis 2005).

5.6.1. The Effect Of DRMs To The Balance In Copyright Between Private Rights And The Public Interest

Technologies such as XrML and other digital rights language software provide the possibility to set licensing terms and the technological capability of controlling the uses of a work. For this reason, DRM therefore has become deep and difficult challenges in maintaining a balanced copyright regime. Copyright owners determine the rules that are embedded into the technological controls for rights management systems. However, implementation of technological measures on access to and use of digital information infringes the rules of intellectual property law.

As a result of DRM use, technical constraints substitute for legal constraints. In addition, the control over the design of information rights is shifted into the hands of private parties. They may not respect public policies that follow public access doctrines such as fair use. Also, when a person buys a copy of a work embodied in physical media, such as a paperback, CD, or video cassette, the author of the work has no further control over how often the work is read, heard, or viewed by the

purchaser. In contrast, DRM can limit the number of times that a person can use the digital equivalent of such a work. In addition to that, once a person lawfully acquires a copy of the work such as a book, sound recording, or audiovisual recording, the purchaser can loan the item or re-sell it to another person, but DRM could prevent the subsequent transfer of the digital form of such a work by the purchaser. Even if rights holders wished to design DRMs to enable users to utilize any of copyright exceptions, at present, this is not technologically feasible (Kallinikou 2006).

5.6.2. DRM And Concerns On Consumer Privacy

DRM collects, process, and in some cases, store personal information to function properly. DRM may also closely monitor and track the use of digital content. The DRM would collect much information about consumers and consumer consumption patterns. The use of such personal information might be helpful if it is used in good faith. Otherwise use of personal information also threatens privacy of people concerned (Kallinikou 2006).

5.6.3. DRM And The Consumer Convenience

DRM provide customized services and new business models, such as new revenue streams to authors. Some of these new business models have been tested in the market. These test results may be negative. Such as the so-called 'dot-com revolution' may result that it is not viable. If the test results prove that customised services and new business models are viable and provide new benefits, it does not change the fact that they generate new burdens for consumers. Finally consumer could be in the situation to use incompatible information systems in order to get what they want, such as a technical burden and additional costs on users. These would become an obstacle to the easy access of online content (Kallinikou 2006).

5.7. ALTERNATIVES TO DRM AND POSSIBLE DEVELOPMENTS IN THE FUTURE

5.7.1. Content Flat Rate, Voluntary Collective Licensing

The disadvantages of DRM and also the possibility of failure of DRM brought about possible alternatives to DRM. Then in June 2004, the idea of content flat rate came into light as a solution to save file sharing as it compensate copyright holders for the loss of their income because of technological development.

The idea of content flat rate is to permit file-sharing which can not be prevented. Then content flat rate obliges users to pay remuneration. Practically, consumers would have to pay a levy according to their bandwidth to their ISPs. The remuneration collected would have to be forward to the collecting societies in order to be distributed to the members of collective societies. This idea was put forward in the Berlin Declaration (Berlin Declaration on Collectively Managed Online Rights: Compensation without Control Berlin, 21 June 2004). The Berlin Declaration is accepted as a respond to the European Commission's Communication on the Management of Copyright and Related Rights in the Internal Market. The Berlin Declaration states that the primary goal of copyright lawmaking must be a balance between the rights of creators and those of the public. The declaration calls for an indirect compensation that has been time-tested for private copying since decades. Users would pay a flatrate for the right to share, and the online collecting society would pay authors and publishers according to the measured use of their works - without setting up a surveillance-system such as mandatory for Digital Rights Management (DRM) (www.contentflatrate.org 2007). The Berlin Declaration underlines the importance of the balance "the rights of creators and those of the public", but also want to "compensate" the whole non-creative copyright holders, from music publishers to heirs of dead creators.

The Berlin Declaration states its essentials as below:

1- DRM and mass-prosecution of filesharers are not solutions acceptable to an open and equitable society.
2- Primary goal of copyright lawmaking must be a balance between the rights of creators and those of the public.
3- Collecting societies need to become more democratic, transparent and flexible, allowing their members to release their works under open-access, non-commercial licenses.
4- With the collecting societies suitably reformed, the successful European experience with exceptions and limitations compensated by levies should be reviewed for possible application to the on-line realm.
5- We urge the European Commission to consider a content flatrate to ensure compensation of rightsholders without control over users.

The Berlin Declaration expressed its opposition on ground that;

> ***These systems also have the potential to seriously interfere with other EU policy objectives, notably citizens' rights such as that to privacy, services essential to an inclusive and sustainable Information Society such as libraries, education, and journalism, the freedom of competition, and the freedom of research and innovation. The digital revolution holds the potential of a semiotic democracy, the reuse and remix culture being one of its most promising innovative aspects.***

The conclusion of the Berlin Declaration on the disadvantage of DRM was very considerable (www.contentflatrate.org 2007).,

> ***"Content locked under DRM will destroy the potential of this culture."***

The Berlin Declaration takes the view of the Commission that the current system of collecting societies lacks flexibility, internal and external transparency, and often democratic structures that allow its members to influence its decisions. The Berlin Declaration supports the Commission to disapprove the mandatory requirement in the statute of collecting societies that all rights of an author in respect of all utilisation forms of his or her works are assigned, including their on-line exploitation. In practice the case law has settled this policy as principle, but the Berlin Declaration states that today it needs to be reformed urgently and supports the idea of the Communication that rightholders should have, in principle, and unless the

law provides otherwise, the possibility if they so desire to manage certain of their rights individually.

The other important point of the Berlin Declaration is statement on collecting societies. The supporter of the Berlin Declaration believes that collecting societies should operate in the service of their members, but they should not overly restrict their members' freedom to set the conditions under which others may use their works. Taking attention to the Creative Commons licenses, three million link-backs to works licensed in little more than one year, the Berlin Declaration proves its idea that creators desire the option to share their works with others under non-commercial terms. On the other hand, the Berlin Declaration underlines the importance of the subject that collecting societies should be flexible enough to allow their members the advantages of collective representation and at the same time the freedom to be part of the emerging free information culture. Then the Berlin Declaration urges the European Commission to work towards reforms of the collecting societies to give choice back to the artists including the right to offer non-commercial licenses independent of artists' collectively managed rights (www.contentflatrate.org 2007).

This system is not a limitation. If it was a limitation, it would pass neither the three-step-test nor the Information Directive. Also the Content Flatrate is applicable as a non-voluntary licence. Taking into account, it was no limitation; it did not collide with the three-step-test or with the Information Directive. There is a common belief that exclusive rights can be less advantageous for authors than remuneration rights according to a non-voluntary license administered by a collecting society. Some researches on non-voluntary licences proved that mandatory licence did not come into conflict with international and European copyright law.

However an alternative to this compulsory model would be a voluntary licence model as introduced by the Electronic Frontier Foundation (EFF).

EEF underlines the problem arising from peer-to-peer file sharing and decreasing number of the sold record labels as millions can get access to those works by file sharing. That situation causes risk for privacy, innovation, economic growth and

right owners. As a result of these reasons EEC believes that a better way is needed to protect copyrighted works. The main feature of this way is that;

1. This way should provide fair compensation for right holders.
2. File sharing should be available.
3. The users of the copyrighted works make the works available more than the labels. Apple's iTunes Music Store brags about its inventory of over 500,000 songs. The number of the songs may sound high but in fact the users of the copyrighted works have made millions of songs available on KaZaA. These shows that the peer-to-peer networks would quickly improve in the legal environment.
4. Government intervention should be minimized in favour of market forces.

EFF evaluated the alternatives and ended up the idea of voluntary collective licensing as a solution. This idea is based on formation of a collecting society in the music industry. This collecting society proves file-sharing music users the opportunity of legal access to copyrighted works in exchange for a reasonable regular payment. The principle is so long as they pay, they are free to get access for file sharing. Collecting society would collect the money and distribute it among rights-holders based on the popularity of their music.

These ways provide file-sharing music consumers to download freely whatever they like and use whatever software works best for them. It ends up with the result that;

1. The more people share, the more money goes to rights-holders.
2. The more competition in applications, the more rapid the innovation and improvement.
3. The more freedom to fans to publish what they care about, the deeper the catalogue.

6. CONCLUSION

This thesis implies that the concept of copyrights has broadened since ancient time. As copyrights included only literary works, musical works, now it includes artistic works, technological drawings, photographic works, motion pictures and even data bases by the effects of technological developments. Not the concept of copyrights has been broadened; also the concept of related rights has become more important than the past. TV programs, film producers have a great impact on economy and employment rate.

The international treaties concerning copyrights have enhanced the concept of copyrights. From Bern Convention to the WIPO Copyright Treaties, all international treaties has expanded the copyrights protection including related rights. The need of the protection of copyrights not only at state level, also at international level underlined the importance of the copyrights in many aspects.

The definition of the copyrights and related rights has a close relation with economy. The broader definition of copyrights and related rights makes it possible to get the higher economic contribution rate. This thesis proved that contribution of copyright industries to the European economy has gained more importance. The reports show that the copyright industries contributed over € 1200 billion to the European Union Economy in 2000. These studies also proves that the total copyright industries employ 3, 14 percent of the total employment in Europe. With the impact of technological developments, the contribution of the software and databases industries to the European nations' GDP were 1, 35 percent in 2000. Even all these statistical numbers imply the importance of the contribution rate of the copyright industries. It should be born on mind that the object of copyright is to form a balance between protection of the creativity and the different economic effects. Copyright law protects both the copyright of original work and set the rules for their trade. As a result, this thesis underlines the fact that copyright protection has expanded more quickly than the other parts of the economy.

The investigation of the legal framework in the European Union shows that the EC treaty does not include any specific provision regarding copyrights. On the other hand, the European Council regulates copyrights according to Article 12 and 36 of the EC Treaty. The European Council issued several directives to provide copyright and related rights protection in the European Union. The European Council tries to update all these regulation against the technological developments and its effects on copyrights. If these directives are examined, one can find out that there is a directive even for data base protection or conditional access services. It clearly proves the effects of the technology and the needs of legal regulation arisen from the developments in the technology.

As stated above there is no article concerning copyrights in the EC Treaty. That means the EC Treaty does not regulate collective copyrights administration. The revision of the directives concerning copyrights does not regulate directly collective copyrights administration as well. However the ECJ decided that activities of collective societies fall under the Article 81 of the EC Treaty. In the Phil Collins case, the ECJ analyzed the case in the light of Article 12 and 36 of the EC Treaty. The Phil Collins decision of the ECJ prohibits discrimination on ground of nationality. This decision requires that national legislation should apply to the EU rights owners the same length of protection as that granted to nationals. The European Council and the ECJ accepted that collecting societies are in a dominant position. (In the famous BRT v. SABAM Case.) It was underlined that collective societies can not set any obligation or prohibition in order to prevent a member from leaving and joining another collecting society. In addition to that extension of assignment of copyrights was also evaluated if there is an abuse of dominant position. The ground for this evaluation is that collective societies can abuse its dominant position by an assignment of rights exclusively for a long period. Also the case law set very clear rules such as collective management societies can not discriminate among members as regards the distribution of income and imposing unfair trading conditions in the meaning of Article 82 of the EC Treaty constitutes an abuse the dominant position.

This thesis underlines the greater advantage of collective management societies in facilitating user's access to the content and circulation of works; this means collective management societies serve both authors and users. On the other hand collective management societies should be professional and fair for success financially and cultural. The surveys on collective societies are very critical on actual state of the collective management societies. Even within the EU three different systems are used over collective management societies, such as their structure or supervision, by different member states.

The European Parliament believes that harmonisation is essential for the deficit in the internal democratic structures of collective management societies, the complexity of the financial policy of the societies and the legal structure of collective societies. The harmonisation of actual state of the collective management societies such as internal democracy, transparency, absence of dispute settlement mechanisms would help right holders get efficient copyright protection. Also, taking into account the relationship of the collective societies with other collective societies established in both the other Member States and non-Member States countries also proves the needs for harmonisation. The technological developments make unauthorised use of intellectual property very easy. Copyrights holders should be protected under the same level of protection which is observed by the court. The reciprocal agreements collective management societies make would infringe the rights of the copyrights holders and also be contrary to the Article 81 and 82 of the EC Treaty. In this respect, the case law of the ECJ indicates the benefits of the harmonisation about legal system concerning collective management societies. In fact, it is very surprising that even if there is no specific regulation or directive regarding collective rights management, the ECJ has drawn a very detailed framework for the actions about collective societies. Even though all these decision were based on competition rules of EC Treaty, the results of the decisions set general framework about actions of collective societies.

In parallel with the European Parliament, the European Commission supports the harmonisation concerning collective societies to achieve the aim of the Internal Market. The European Commission states that harmonisation is essential on

conditions on the establishment and status of collective management societies, the relation of collecting societies to users, the relationship with right-holders, and the external control of collective management societies. Subsequently the European Commission expressed that it could adopt a legislative proposal on collective rights management in the Internal Market in 2005.

In the other aspect, collective management must be compatible with the internal market. The deficit in the internal democratic structures of collective management societies, the lack of transparency in the financial policy of the societies and the absence of rapid dispute settlement mechanisms hinder the free movements of goods and the freedom to provide services. Hence major structural differences in the regulation and efficiency regarding the external control of collective management societies in the different Member States should be minimised, but it should be remembered and respected that these differences arisen from historical, legal, economic and, above all, cultural diversity.

All these reasons point out the necessity to establish minimum standards for organisational structures, transparency, accounting and legal remedies in order to increase internal democratic structure of the societies. Besides the other problem about harmonisation is the form of the legal harmonisation. The European Commission benefits of adopting either a directive or a regulation. It appears that the European Commission found that the most appropriate way is the adoption of a directive in the light of the subsidiarity and proportionality principles.

In this respect, it is truth that the economic contribution of copyrights is provided by the collective management societies. The role of the collective societies could be summarised as finding balance between protecting copyrights and by simplifying access to works of copyright holders. It could be seen that they are essential for efficient and rational management mechanism in the interest of copyrights holders and users. Collective societies register the copyrighted works and grant licences to users, collect royalties and distribute sums to theirs members. Also they help each others in order to develop international information exchange for efficient protection the global use of copyrighted works against the technology. According to annual

reports of the collective management societies, the economic contribution of copyrights can not be disdained. The studies show that its share in the national economy is up to 6 percent. Taking into account the economic role of collective management societies, the lack of legal regulation appears unbelievable and the urgency of the harmonisation is to be understood.

On the other hand, the speed of the technological developments has changed the face of the world. Consequently it affects the collective societies. DRM provides authors new ways to exploit their works and support distribution models of collective societies. The use of DRMs will increase by authors and collective societies. DRM may be used for controlling access to the work, preventing unauthorized copying, identifying the works and those who own copyright in them, enabling contracting for the use of the works. While it is believed that it would become an industry standard, the evolution and future use of DRMs as a standard method of digital protection is unpredictable. The EU Copyright Directive regulated an important number of the new international obligations under the framework of the Internet Treaties. The Commission supports DRM systems as an important tool for rights management in digital age. DRM has the disadvantages such as high transaction costs paid by consumers and authors. Also the income from individual remuneration for private copying is just a part of it through collection societies. Also the opponents of DRM draw attention to the exceptions and limitations of copyrights. DRM can not protect the balance between copyrights and the exceptions/limitations of copyrights. Consumer privacy and consumer convenience remain unsolved problems arising from use of DRM. The conclusion of the Berlin Declaration on the disadvantage of DRM was “Content locked under DRM will destroy the potential of this culture.” That fear is very considerable.

The disadvantages of DRM and also the possibility of failure of DRM created alternatives to DRM. Content Flat Rate enables users to save file sharing as it compensate copyright holders for the loss of their income as a result of technological development. Collecting societies are criticised because of flexibility, internal and external transparency, and often democratic structures. For these reasons voluntary licence model is supported.

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