

DIGITAL COPYRIGHT ADMINISTRATION A CROSS-BORDER SOLUTION

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1. Towards an international administration of rights in digital networks

The digitalization of copyrighted works and its dissemination through digital networks has revolutionized the way these works are distributed and exploited. In consideration of the fact that technology evolves at a faster pace as legislation, this evolution challenges the legislator in two main ways: on the one hand, thanks to the digital circulation of copyright through digital networks, violation of copyright (piracy) has dramatically increased and on the other hand, the local protection of copyrighted works entails great difficulties on the granting of cross-border and cross-repository licenses on digital works.

The paper aims to present a hypothetical model of digital copyright administration at an international level, capable to solve the said difficulties by establishing a one-stop shop as an international platform of digital copyright works administration. Thus, the goal of the model is to try to increase the economic efficiency of cross-border rights administration, give users incentives to respect copyrighted works and to promote culture by granting equal opportunities to authors of copyrighted works at an international level.

The model will be based on two assumptions: on the one hand, copyrighted works are commercialized in a monopolistic competition market and on the second hand, collective administration is considered the most efficient way to administer rights and as a consequence to grant cross-border and cross-repository licenses over digital networks.

1.1. First assumption: copyright evolves in a monopolistic competition market

Traditionally, legal and economic doctrine has qualified the exclusive right conferred by copyright as a monopoly. Nonetheless, taking into account the characteristics of copyright, this qualification appears inappropriate. Several reasons confirm this affirmation; firstly, the author of a copyrighted work is more a price taker given that he does not really have the power to control the level at which the price of his work will be fixed. Secondly, the entry of the copyrighted work to the market is not restricted. Thirdly, there is a high substitution degree between similar copyrighted works. It can

be then inferred that the author does not benefit from a monopoly position or from a monopoly power¹.

We consider that copyright evolves within a monopolistic competition market². Bearing in mind that the legislator protects the expression of the idea and not the idea itself, a number of works containing the same idea but expressed in a different way can coexist within the market. Copyrighted works are therefore differentiated goods that can be substituted but that are not perfect substitutes. This last characteristic grants the author a limited market power degree.

1.2. Second assumption: copyright collectives are the most efficient way to administer digital copyright internationally

By comparing collective administration to private or individual administration we take into account the following elements that could lead to a more efficient administration of rights in several ways. Firstly, the most important economic impact of copyright collectives is the diminution of transaction costs in the administration of rights thanks to the economies of scale that are produced. On the one hand, the author has to face research and information cost while seeking for potential consumers of its works. Once the potential consumer has been identified, the author engages negotiation costs while negotiating the license and granting the authorization to exploit and to use the work. Then the author has to survey that the royalties will be paid and have to monitor the appropriate use of its works which entail the costs of license execution. On the other hand, the consumer (user of the work) has to face research and information costs while determining who the right right-holders are. Once the right-holder has been indentified the consumer has to initiate the negotiations which involve negotiation costs and then the payment of the royalties has to take place, which entails license execution costs. Secondly, considering that copyright collectives are better informed and benefit from economies of scale, the administration of rights is less risky than in the private administration of rights. Thirdly, the fact that quite frequently copyright collectives evolves as a natural monopoly reveals the existence of scale economies and as a consequence the economic interest for the society to use such an administration system.

The asymmetries of information are very important in this context. Thus, copyright collectives are better informed than authors individually administering their rights. Copyright collectives can also spread administration costs and establish collective methods to fulfill its administration mission; therefore they are in a better position to efficiently administer the rights. In sum, collective administration could be the most

¹ The “monopoly” granted to an author cannot be considered a monopoly in an economic way. Please see more in detail A. STROWEL, *L'analyse économique du droit d'auteur. Une revue critique des arguments invoqués*, in *Le rôle socio-économique des droits intellectuels*, M. VAN HOECKE, (éd.), Leuven, E. Story Scientia, 1991 and S. BECHTOLD, *Von Urheber- zum Informationsrecht. Implikationen des Digital Rights Management*, Munich, Ed. C.H. Beck, 2002.

² See more in detail C. YOO, *Copyright and product differentiation*, in *New York University law review*, Vol. 79, April, 2004.

efficient method for licensing, monitoring and enforcing rights in digital context. However, Katz criticizes this affirmation and presents a model of online licensing and distribution of music combining two technologies: Internet and digital rights management systems³. In its model Katz, that we very briefly summarizes here, wraps music on digital rights management systems what will prevent unauthorized uses of the work and what specifies the uses that are allowed. The single song or the album that is distributed online will contain a micro-payment system in it. The payment will vary in function of the type of use given to the work and the type of blanket license. "The model could be supplemented by computerized scanning technologies in order to discourage broadcasters from airing music obtained by cheating on the DRM system or from airing music obtained in a non DRM-protected form"⁴. Even if there is not more place for collective management on the market, existing copyright collectives can change their functions and become mere agents for individual right holders or distributors who obtain the right to license from the copyright holder and then resell it. In this sense administration of copyright will be developed by moral entities in a competitive market.

Other models had been proposed. For instance, Marco Ricolfi proposes a two ways model: private and collective administration at the same time. Right-holders determine which part of the rights will be individually administered and which will be administered by a collecting society. Copyright collecting societies will face competition in order to permit right holders to adhere to several collecting societies and to permit to each of them to administer different rights, but only the commercial ones⁵.

Further, Brian Day proposes a model based in the comparison of the travel clearinghouse to the administration of rights through a clearinghouse. The clearinghouse acts as a one stop shop. It fulfils two main activities: permit licensors to have a fair remuneration for the work and permit licensees to pay a price for a specific use of the work. This model only applies within the borders of the USA, therefore the clearinghouse will be composed by all USA collecting societies, the Harry Fox Agency, producers and lyricists non having adhere to a collecting society. Users will have access to the whole repertory of each one of the institutions. The clearinghouse will be administered by a neutral organism composed by members of collecting societies, lyricists, artists, editors and major labels. Licenses can be given individually by these organisms outside the clearinghouse.

Despite the existence of the above mentioned models and even others not mentioned in this article, in the following pages we will try to enlighten our own idea on the creation of a one stop shop ideally capable to grand cross-border and cross-

³ A. KATZ, *The potential demise of another natural monopoly: new technologies and the administration of performing rights*, 1 J. Competition L. & Econ. 2008.

⁴ Ibidem, page 66.

⁵ Please see more in detail M. RICOLFI, *Individual and collective management of copyright in the digital environment*, in Paul Torremans (éd.), *Copyright law: a handbook on contemporary research*, Cheltenham, Edward Elgar, 2008.

repertory licenses in the digital environment. We consider that our proposal could be an efficient way of administering rights in the digital environment if the following conditions are fulfilled:

2. Structure of the one stop shop

2.1. Actors of the one stop shop

The legislator dealing with copyright matters has to take into account the divergence of interests of copyright market actors and the differences within local regulations. This particularity is very sensible in the creation of the one stop shop in consideration of all the different interests that coexist. These copyright actors interests are summarized as follows: firstly, the interests of culture and communication industrials which are looking for revenues; secondly, the interests of authors of copyrighted works seeking to live out of their work; thirdly, the interests of consumers, who are looking to pay the less to access cultural goods, and, fourthly, the interests of the State who is willing to promote cultural development and economic progress within the society.

The lobbying about the distribution and protection of copyrighted works on digital networks at an international level is significant, mostly of world economic powers, to which, digital economy is one of the vectors of economic development. This is the reason why the protection of copyright on internet and the designing of distribution mechanisms for copyrighted works through digital networks is a sensible subject for the legislator.

The model attempts to take into account the divergence of interests at the stage of granting rights and the imposition of obligations, as will be described in the following pages:

2.1.1. Administrator (manager) of the one stop shop

In order to avoid interventionism of world economic powers, the administration of the one stop shop should be conferred to a neutral international organism. This organism will have the exclusivity to accomplish the task of delivering cross-border and cross-repertory licenses in the digital environment. In this sense, the organism should be neutral and have international visibility.

Two possibilities could be taken into account. On the one hand, confer the administration of the one stop shop to an existent international organization as the United Nations Organization and particularly to one of its institutions: the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) or the International Telecommunications Union (ITU). These organizations accomplish characteristics that are required to administer the one stop shop: being neutral at an international level by belonging to the United Nations system and developing activities in the promotion of culture or technology.

Other possibility is to confer the administration of the one stop shop to the World Trade Organization.

As for its domain of activity, we consider the World Intellectual Property Organization the most appropriate organism to administer the one stop shop.

On the other hand, award this mission to an organization that will be specifically created to achieve this task. This organization will be created through an international agreement or a constitutive instrument of an international organization⁶ by means of an international treaty or an international conference. In the best scenario, admission to the international treaty should not be conditioned and be almost automatic. If a limitation is required, a criterion could be to limit the admission to States that already are members of the Berne Convention.

The neutral international organism in charge of administering the one stop shop will have its headquarters in a single place. From there the organism will administer entirely the system. The creation of local offices it is not necessary bearing in mind that the accomplishment of administration tasks will take place on internet.

2.1.2. Members and beneficiaries of the one stop shop

The States are the ideal members of the one stop shop. Two principal reasons support this affirmation, on the one hand, the system would be better governed by an international treaty and as a consequence only States are able to adhere to such instruments. On the other hand, in order to favor the introduction of a new form of rights administration, the chances of success will increase if the actual system is not deeply upset. In this case, it would be less probable that local copyright collectives would like to adhere to such a system because they will lose the control on it and as a consequence, local copyright collectives will cooperate only if their contribution is mandatory. In this sense, local copyright collectives will only give up the administration of the digital rights of their repertory.

Beneficiaries of the system will then be determined by the States taking into account the directives of the international treaty at this regard.

Beneficiaries can be limited by the international treaty to three actors: firstly, local collecting societies. In the actual system of administration of rights, local copyright collectives administer their own repertory and exceptionally the repertory of foreign collecting societies by means of bilateral agreements⁷. Despite the effectiveness of these bilateral agreements to grant cross-repertory licenses its domain of activity is very limited. The model intends to enlarge the possibility to grant cross-repertory and

⁶ Article 5 of the Vienna Convention on the Law of Treaties, "Treaties constituting international organizations and treaties adopted within an international organization. The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization".

⁷ F. POLLAUD-DULIAN, *Le droit d'auteur*, Paris, Economica, 2005, n° 1204, p. 710.

cross-border licenses at a real international level. In order not to disturb the actual system, the model will focus only on the distribution of digital copyrighted works. As a consequence, the one stop shop will be exclusively empowered to administer digital rights.

The one stop shop as the only entity administering digital copyright at an international level will lead to the diminution of transaction costs in the administration of digital rights, making society better off. As far as the one stop shop will distribute all kind of works, the specialization of collective societies are not more needed regarding digital works⁸.

Secondly, authors who individually administer their rights and who not belong to a collecting society. Traditionally, authors of copyrighted works have the freedom to join or not to join a collecting society. In the cases in which the author decides not to adhere to a copyright collective, the author is in the obligation to fulfill all the tasks regarding the administration of the rights. The author establishes a direct relationship with the consumer (user) and determines the conditions to exploit the work and the way and the amount in which this exploitation shall be paid. The author also needs to monitor the use that the consumer give to the work and collect royalties. Thus, the costs and the legal risks⁹ of this kind of administration are higher compared to the costs of collective administration. Accordingly, the author not belonging to a local collecting society has the possibility to let the one stop shop to administer its rights and as a consequence include its works in the one stop shop data basis.

Thirdly, authors originating from countries where collective administration does not exist. Given that culture promotion at an international level is at the heart of the one stop shop tasks, the author originating from a country where there is not a system of rights administration can benefit of this promotion and its works will be at the disposal of international consumers in the one stop shop data basis.

2.1.3. Users – consumers

The one stop shop concern all digital uses that can be given to digital copyrighted works in all kind of digital networks¹⁰. Considering that one of the purposes of the one stop shop is to promote the legal use of works and thus contribute to the combat against internet piracy, users will be divided in two categories: in the one hand, users of high commercial value as the provider of digital content who develops its

⁸ In the administration of physical copyrighted works collecting societies are specialized in a specific domain and therefore the consumer of each type of work has to address to the specific collecting society.

⁹ See more in detail A-M. PÉREZ GÓMEZ TÉTREL, Considering the risk dimension in the administration of copyright, Review of economic research on copyright issues, Vol. 5, No. 1, pp 75-87, 2008.

¹⁰ We mean the exploitation of works particularly by means of digital networks or digital mobile networks.

commercial activity through digital networks¹¹ and on the other hand, users of low commercial value as the private user who are willing to personally use the work but not necessarily to exploit it¹². Therefore, the one stop shop act as an international platform to grant licenses over all kind of digital works leading to the promotion of a legal consumption of copyrighted works.

3. Functioning of the one stop shop

The entity in charge of administering the one stop shop will have to accomplish four main functions:

3.1. Information function

One of the main functions of the one stop shop is the centralization of information. The one stop shop shall administer an international data basis containing the repertory of all existent copyrighted works provided to the one stop shop by the authors and by the local collecting societies. Considering that the one stop shop fulfills a mission of granting cross-repertory and cross-border licenses the existence of a complete data basis is essential. The objective pursued by the data basis is to centralize not only the administration of digital copyrighted works but to centralize digital information goods at an international level.

One of the conditions to benefit the system is the obligation for the one stop shop members to oblige the beneficiaries to transmit to the one stop shop the protected works. So, local collecting societies should transmit to the one stop shop its entire repertory and authors should transmit all works for which they have the rights.

The one stop shop data basis will contain then all disclosed digital works, the name of the author(s), the name of the right holder(s), the type of work (literary, audiovisual, artistic, musical, etc), between others. This information will help identifying the work and the rights on it in the granting of licenses, diminishing notably research and negotiation costs. The data basis will evolve with the pass of the years as far as new protected works will be disclosed, will enter the market and will be transmitted to the one stop shop¹³. The fact of having an evolving data basis benefits the two types of users, because for the two of them the one stop shop data basis will be a global library of digital works in several fields: literature, arts, music, etc.

The one stop shop data basis will benefit the market in several ways. On the one hand, users will benefit of the simplicity of finding the world available digital

¹¹ This will be the case of the provider of web radio, web video, web television or digital television services as well as video on demand, simulcasting, webcasting, ringtones and digital download.

¹² Ariel Katz uses also this distinction: "high-valuation commercial users who engage in public performance and low-valuation "home" users who perform the music privately". A. KATZ, *The potential demise of another natural monopoly: rethinking the collective administration of performing rights*, 2005, p. 550.

¹³ E. LIASKOS, *La gestions collective des droits des auteurs dans la perspective du droit communautaire*, Ed. Bruylant, 2004, N° 447, p. 276.

copyrighted works in just one place which diminishes the consequential transaction costs¹⁴. On the other hand, authors themselves will benefit of the data basis as far as all protected works will be classified by categories. Taking into account the substitutability possibility of cultural works not known authors will benefit of well known authors reputation considering that their works will be classified under the same category.

3.2. Promotion function

The promotion of culture remains a principal element of the one stop shop taking into account that its philosophy is to allow any author to benefit from the system and to include any protected work in the one stop shop data basis. This is the reason why the international treaty establishing the one stop shop should not institute barriers to become a member. Thus, a dynamic interaction between authors of all countries is therefore privileged. As a consequence, authors originating from countries in which the collecting systems are not well developed can also benefit from the one stop shop dynamics.

Culture is currently polarized at a certain degree by the production of cultural goods originated from English-speaking countries. The one stop shop will act as a neutral actor facilitating the promotion of a multilingual and universal culture.

3.3. License granting

The one stop shop will grant two types of licenses: on the one hand, blanket licenses and on the other hand, particular exploitation licenses. In this sense, the granting of licenses will not be limited to users of high commercial value, digital networks entrepreneurs, but will also be opened to users of low commercial value.

Aiming to incite users of low commercial value to respect digital copyright and to promote the legal consumption of this kind of goods, the one stop shop will be able to grant different types of licenses what will lead to the establishment of a price discrimination system. The licenses can be granted for many uses: listen only, share with other users, copy for personal use and commercial use. The price will vary in function of the type of use, thus, the price for a listen only license will be less expensive than the license for public performance. Users will then pay the “fair” price for the given use of the work. Additionally, the one stop shop would be able to grant licenses concerning the entire repertory or a fraction of the one stop shop, the entire repertory or a fraction of a specific local collecting society, the entire repertory of a single author or just a fraction of its work. Furthermore, the one stop shop can grant

¹⁴ “[...] providers – and in particular the end – consumers – do not wish to pay a share to every right owner. They do not know these shares and even if they knew them, costs of works of performances documentation would by far be too high. Providers will want to continue to pay copyright fees to one single right owner or to as few as possible”. A MEYER, *DRMS do not replace collecting societies* in C. B. Graber, C. Govoni, M. Girsberger and M. Menova (eds.), *Digital rights management: the end of collecting societies?*, Staempfli publishers Ltd. Verne, 2005, p. 63.

licenses that will be technically exploited or used a determined number of times, an unlimited number of times and that be granted for an specific territory or for the world.

The transmission of protected works to the one stop shop will include the transfer of the rights to administer the works at a digital and international level. In this sense, the administration of rights will be more efficient if the one stop shop has the rights to license all digital copyrighted works at an international level¹⁵. Thus, research costs linked to the determination of the right holders diminish notably¹⁶.

The extent of the license will depend on the type of exploitation that the user will give to the copyrighted good and to the countries in which the user wants to exploit the work. At all events, the license will be granted for reproduction and representation right to all territories that will be indicated by the user¹⁷.

Concerning the price that will be asked for the license two options can be envisaged: on the one hand, if the license relates to a specific repertory administered by a local collecting administration, the price that will be charged is the price locally demanded for the repertory. On the other hand, in cases in which the license reposes on individual copyrighted works individually administered by authors or right-holders not belonging to a copyright collective, the one stop shop will set a price for the license.

3.4. Royalties recovery function

Finally, the entity administering the one stop shop should have the task of recovering the royalties produced by the granted licenses. The royalties will then be distributed between the beneficiaries of the one stop shop.

3.4.1. Royalties distribution to local copyright collectives

Taking into account that local collecting societies had transmitted their repertoires to the one stop shop and in order not to disturb the actual functioning of the local administration of rights the distribution of royalties will be executed in two steps: first, the one stop shop will distribute the royalties directly to the local collecting society. The distribution of royalties will concern the repertory of the local collecting society to which refers the license. Second, each local copyright collective will distribute according to its own rules the royalties within its members.

¹⁵ « It is unsatisfactory when a single provider of an online service delivering music throughout the EU has to negotiate licenses with CCS (Copyright collecting societies) in all 25 member states ». R. TOWSE, and C. HANKDE, *Regulating copyright collecting societies: current policy in Europe*, Serciac Article, July 12 2007, www.serci.org, last visit June 18 2013.

¹⁶ While analyzing the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services Josef Drexl asserts: « the Recommendation's approach causes search costs at least for online users who may have problems finding out which society holds the rights to the music they want to use on the internet ». J. DREXL, *Competition in the field of collective management: preferring "creative competition" to allocative efficiency in European copyright law*, in Paul Torremans (éd.), *Copyright law: a handbook on contemporary research*, Cheltenham, Edward Elgar, 2008.

¹⁷ See more in detail HEYDE, *Die grenzüberschreitende Lizenzierung von Online-Musikrechten in Europa, eine urheber und wahrnehmungsrechtliche Studie*, Ed. Nomos Verlagsges. MBH + Co., 2011.

In order to avoid any conflict in the determination of a price for the license, the price for the license will be the price applied by each local collecting society for the specific protected work (or repertory) and for the specific granted right(s). In this sense, different regimes application and different economic conditions in the fixation of the price will not interfere in the administration of the digital rights.

As far as local copyright collective intervention will be limited to the distribution of royalties a competition between local copyright collectives concerning the cost of their service can take place. By transparency, the cost of local copyright collective's services needs to be disclosed, given that this cost differs of the one stop shop administration fee of the one stop shop and of the license price.

3.4.2. Royalties' distribution to authors not belonging to a collecting society

Considering that the authors having transmitted its works to the one stop shop do not belong to a local collecting society the determination of the price for the work becomes a necessity. The one stop shop needs to determine a price for the work. This is not a simple task. Three solutions can be envisaged: firstly, to fix a price in relation with a price scale; secondly, to determine a minimum price, or, thirdly, to fix de price within a range. Nevertheless, a practical way to determine the price for the works is to fix a percentage out of the direct and indirect revenues produced by the protected work¹⁸.

In order to promote the economic balance of the system, the amount that will be retrieved by the author not belonging to a collecting society as royalties will be inferior to the amount recovered by the authors belonging to a copyright collective. The reason why is based on the need to motivate authors and right holders to adhere to local collective societies. First of all, authors not belonging to a collecting society are not obliged to support the administration costs of the collecting society while authors belonging to a copyright collective do. In order to avoid paying administration costs of collecting societies, authors and right-holders will have motivations to individually administer their rights. As a consequence, authors not belonging to a collecting society should pay to the one stop shop an administration fee for the administration of their rights in digital environments. This measure will decrease the incentives for authors and right-holders to migrate to private administration systems.

Furthermore, culture industrials will have great incitations to migrate to individual administration of their rights in order to avoid financing of cultural and social programs hold by collecting societies.

¹⁸ P. SCHEPENS, *Guide sur la gestion collective des droits d'auteur*, ed. Unesco, 1^{ère} éd., 2000, p. 23.

3.4.3. Interest of using digital rights management in the determination of royalties

The use of digital rights management systems is important at this stage. It will lead the one stop shop to efficiently monitor the use of the works, to determine the number of times that the work was used identifying the rights, to implement a price discrimination system and the recovery and the distribution of the royalties at a precise way¹⁹. This will lead to scale economies²⁰. Taking into account concerns about digital rights management systems employ, its use will be limited to monitor the protected work and not to technically impede the creation of copies of the work²¹. Digital rights management systems will contribute to the diminution of the cost of license execution by the monitoring of the uses given to the works²².

4. Cost of the administration of rights in digital environment by the one stop shop

The administration of rights in digital environment supposes a cost for the one stop shop. The question is: who should bear this cost? Members, beneficiaries or users of the one stop shop?

States, as members of the one stop shop can contribute proportionally to the participation of their beneficiaries to the system. This is the way the majority of international organizations functions. The problem of this option is that taking into account that cultural industry is in a constant evolution and that it is an industry polarized by industrial countries and particularly by industrial English-speaking

¹⁹ « Cheap and effective DRM techniques would certainly have a range of important implications. Within a CRM system, it would allow for a much more precise assessment of the use of individual works and for more extensive price discrimination so that individual works can be priced more precisely according to their value and even individual user's willingness to pay. This would also improve the process of market signaling so that supply would be more tightly linked to paying consumers tastes. It should also help CCS to reduce costs in most of their activities from back-office tasks to collecting and evaluating data as well as the enforcement rights ». C. HANDKE, and R. TOWSE, *Economics of copyright collecting societies*, International Review of Intellectual Property and Competition law, vol. 38, no. 8, 2007, p. 949.

²⁰ V-L. BENABOU, and A-G. GEFFROY, *Etude sur la recommandation de la Commission Européenne relative à la gestion collective transfrontière du droit d'auteur et des droits voisins dans le domaine des services licites de musique en ligne du 18 octobre 2005*, Rapport de recherche pour le Conseil Supérieur de la Propriété Littéraire et Artistique, Octobre 2006, p. 49.

²¹ « DRM technologies can facilitate an effective form of price discrimination because the user may be required to self-identify in advance and be monitored afterwards. Thus home users (and different types thereof) will pay different prices from public performances, and payment among different public performers will vary as well ». A. KATZ *Copyright collectives: good solution but for which problem?* Forthcoming in R. DREYFUSS, F. HARRY and D. ZIMMERMAN, (eds.), *Working within the boundaries of intellectual property*, Oxford University Press, 2009, p. 16.

²² « Monitoring use of members' works could be hived off. This service has both fixed and variable costs and it obviously depends upon having access to the database of works. The most difficult aspect of the problem is monitoring use in far off places; at present; this is achieved through reciprocal agreements between CCS and it is the case at present that CCS in different countries operate on a somewhat different basis. Note that if DRM/TPM worked, this structure would be unnecessary! ». R. TOWSE and C. HANDKE, *Regulating copyright collecting societies*, Keynote talk CIPPM Symposium, 3rd December 2007, p. 5.

countries, the risk of world economic powers interventionism is very high. The neutrality of the system and its function of promoting culture can be dangerously affected. This is the reason why we do not consider this option feasible.

Beneficiaries of the one stop shop could contribute to the administration of the system. Nevertheless, it is important to highlight the differences between beneficiaries. On the one hand, local collecting societies will not be willing to contribute to the administration of the one stop shop. In practice, these societies would probably be reluctant of surrendering the administration of a part of their activity to a third entity (the one stop shop). This is the reason why it shall be mandatory for local collecting societies to be part of the system as beneficiaries and what partially explains why the members of the one stop shop are the States and not collecting societies themselves.

On the contrary, authors not belonging to a collecting society will be happy of having a single entity capable administering world-wide their rights in digital environments. Subsequently, they will be willing to pay an administration fee to the one stop shop. This fee will be equivalent to the fee that an author pays to a collecting society to the physical administration of its rights.

Users would be better placed to contribute to the financing of the system. Thus, an administration fee will be added to the license price that the consumer has to pay as royalties. The administration fee should be calculated on a nonprofit basis.

5. Legal applicable regime

The distribution of digital copyrighted works through digital networks has not physical borders and therefore takes place at an international level. We can talk of global distribution of goods. On the contrary, copyright protection is given at a local level. This is the reason why it is very difficult to implement an effective mechanism to deter piracy of copyrighted works on digital networks and to grant global licenses on digital copyrighted works. As a consequence, the legal framework ruling copyright distribution through digital networks needs to be an international one.

The international regulation ruling copyright distribution through digital networks would better be based on the Vienna Convention on the law of treaties and as a consequence, adopt the legal form of an international treaty²³.

In our case, the international treaty should take into account two main aspects: on the one hand, it should constitute the one stop shop as a digital system to administer digital copyright defining its functioning to grant cross-border and cross-repository licenses. The international treaty will describe the functioning of the system but will

²³ The Vienna Convention define treaty in the following terms: ““treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”. Vienne Convention on the law of treaties of 1969, section 2, 1, a).

not regulate the functioning of the international organism in charge of the administration of the one stop shop. It will only rule the action of this international organism in what relates to the administration of digital rights.

On the other hand, the international treaty should create the framework to determine actions likely to constitute a violation of rights on digital networks. It will fix the criminal framework permitting States to establish the applicable punishment to the determined illegal behaviors. States will then take all legislative measures to punish illegal behaviors and particularly, the research and inquiry on illegal behaviors, pursuance procedures and sanctions application.

The international treaty is the framework to which States should adhere to become member of the one stop shop. As was mentioned, adhesion to this international instrument should be very flexible to encourage States to become members.

It is unusual the adhesion of States to international instrument when it relates to private rights. Copyright is a private right. Nonetheless, considering that culture market is in constant expansion States will be willing to adhere to a system capable to galvanize the market while contributing to digital copyright compliance. The constitution of the one stop shop can then justify the intervention of State in the private sphere of right-holders.

International treaty only imposes obligations and grants rights to States adhering to it²⁴. As a consequence, only States having adhered to the one stop shop can benefit of the member status.

To give birth to an international treaty several options can be foreseen. Firstly, the Berne Convention for the protection of literary and artistic works is the international framework ruling intellectual property rights (copyright). It is then possible to envisage including specific regulation on the protection of rights on digital networks. To his end a revision of the Berne convention needs to be carried out²⁵. The difficulty is that the revision process requires the unanimity of Union Member States²⁶.

Secondly, section 20 of the Berne Convention allows the conclusion of special agreements among countries of the Union but the conclusion of the agreements risks to be too long if one takes into account the necessity of including the majority of States.

Thirdly, in the framework of the negotiations of these special agreements it will possible to call in a diplomatic conference. States can also be called in by an

²⁴ According to the legal principle *pacta tertiis nec nocent nec prosunt*.

²⁵ The revision option is addressed at Section 27 of the Berne Convention

²⁶ "One of the main reasons why the World Intellectual Property Organisation (WIPO) abstained from calling for a further revision conference might have been the apprehension that it would no longer be possible to achieve the unanimity of votes required for any revision [...]". S. VON LEWINSKI, and J. REINBOTHE, *The WIPO treaties 1996*, Butterworths, LexisNexis, 2002, p. 1.

international organization developing activities in the development of culture or technology or the protection of intellectual property. These organizations can provide a draft convention that can serve as a basis for the deliberations between States.

Fourthly, another possibility is to promote the creation of the one stop shop within the framework of the World Trade Organization and the Doha Cycle and to include the proposal within the agenda of the Doha development program. Nevertheless, this is not an optimal solution taking into account that the obtained regulation can be limited to the economic aspects of the one stop shop activities.

Fifthly, a last option is the promotion of an international diplomatic convention called in by the interested States. Considering the high stakes that implies the distribution of copyrighted works through digital networks, States will be willing to adopt a solution to the problem of cross-border licensing and to the protection of digital copyright in digital networks at an international level. We consider that this last option could be the most appropriate to launch the one stop shop regulation.

Conclusion

Concluding, the one stop shop could be a good method to galvanize digital copyright market and to foster copyright respect in digital networks. The granting of cross-border and cross-repertoire licenses at an international level will be feasible. Considering the centralization and the administration of digital copyrighted works economies of scale are produced. Thus, the one stop shop can acquire important market power. The economies of scale will imply a diminution of transaction costs. This is due to the fact that the marginal total cost of the international collective administration will be lower to the addition of all marginal cost of local collecting societies.

Digital rights management systems can contribute to the right distribution of royalties particularly in the digital environment²⁷. As a consequence, a simplification of royalties' distribution between local collecting societies and right-holders not belonging to copyright collectives can take place. Again economies of scale will have effect as far as the cost of the one stop shop for the administration of an international repertoire will be lower than the addition of the reciprocal agreements administration cost of all local collecting societies.

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²⁷ See more in detail O. BOMSEL, and A. G. GEFFROY, *Analyse économique des systèmes numériques de gestion de droits*, Paris, Cerna, Centre d'économie industrielle. Ecole Nationale Supérieure des Mines de Paris, 2005.

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References

- BECHTOLD, S. (2002) *Von Urheber- zum Informationsrecht. Implikationen des Digital Rights Management*, Munich, Ed. C.H. Beck.
- BENABOU, V-L., and GEFROY, A-G., (2006), *Etude sur la recommandation de la Commission Européenne relative à la gestion collective transfrontière du droit d'auteur et des droits voisins dans le domaine des services licites de musique en ligne du 18 octobre 2005*, Rapport de recherche pour le Conseil Supérieur de la Propriété Littéraire et Artistique
- BOMSEL, O., and GEFROY, A. G., (2005) *Analyse économique des systèmes numériques de gestion de droits*, Paris, Cerna, Centre d'économie industrielle. Ecole Nationale Supérieure des Mines de Paris.
- DREXL, J., (2008), *Competition in the field of collective management: preferring "creative competition" to allocative efficiency in European copyright law*, in Paul Torremans (éd.), *Copyright law: a handbook on contemporary research*, Cheltenham, Edward Elgar
- HANDKE, C., and TOWSE, R., (2007), *Economics of copyright collecting societies*, *International Review of Intellectual Property and Competition law*, vol. 38, no. 8
- HEYDE, (2011), *Die grenzüberschreitende Lizenzierung von Online-Musikrechten in Europa, eine urheber und wahrnehmungsrechtliche Studie*, Ed. Nomos Verlagsges. MBH + Co.
- KATZ, A., (2005), *The potential demise of another natural monopoly: rethinking the collective administration of performing rights*.
- KATZ, A. (2008) *The potential demise of another natural monopoly: new technologies and the administration of performing rights*, 1 J. Competition L. & Econ.
- KATZ, A., (2009), *Copyright collectives: good solution but for which problem?* Forthcoming in R. DREYFUSS, F. HARRY et D. ZIMMERMAN, (eds.), *Working within the boundaries of intellectual property*, Oxford University Press
- LIASKOS, E., (2004), *La gestions collective des droits des auteurs dans la perspective du droit communautaire*, Ed. Bruylant
- MEYER, A., (2005), *DRMS do not replace collecting societies* in C. B. Graber, C. Govoni, M. Girsberger and M. Menova (eds.), *Digital rights management: the end of collecting societies?*, Staempfli publishers Ltd. Verne.
- PÉREZ GÓMEZ TÉTREL, A-M. (2008), *Considering the risk dimension in the administration of copyright*, *Review of economic research on copyright issues*, Vol. 5, No. 1
- POLLAUD-DULIAN, F., (2005) *Le droit d'auteur*, Paris, Economica
- RICOLFI, M. (2008) *Individual and collective management of copyright in the digital environment*, in Paul Torremans (éd.), *Copyright law: a handbook on contemporary research*, Cheltenham, Edward Elgar.
- SCHEPENS, P., (2000), *Guide sur la gestion collective des droits d'auteur*, ed. Unesco, 1^{ère} éd.
- STROWEL, A. (1991) *L'analyse économique du droit d'auteur. Une revue critique des arguments invoqués*, in *Le rôle socio-économique des droits intellectuels*, M. VAN HOECKE, (éd.), Leuven, E. Story Scientia.
- TOWSE, R., and HANDKE, C., (2007), *Regulating copyright collecting societies*, Keynote talk CIPPM Symposium, 3rd December 2007

VON LEWINSKI, S., and REINBOTHE, J., (2002) *The WIPO treaties 1996*, Butterworths, LexisNexis

TOWSE, R., and HANKDE, C., *Regulating copyright collecting societies: current policy in Europe*, Serciac Article, July 12 2007, www.serci.org, last visit June 18 2013.

YOO, C. (2004) *Copyright and product differentiation*, in *New York University law review*, Vol. 79, April.
