Panel Session V:
A balancing act – copyright versus other rights

Monday, September 24
11:00-12:30
• Prof. Dr. Jan Bernd Nordemann, Germany - Moderator
  Attorney-at-law, certified for intellectual property, copyright and media law, partner at BOEHMERT & BOEHMERT, Berlin; honorary (adjunct) professor at Humboldt-University Berlin; chair of AIPPI Standing Committee Copyright

• Irely Aquique, Mexico
  Director IP Enforcement, Instituto Mexicano de la Propiedad Industrial (IMPI), Mexico City

• Gregory Sebald, USA
  Attorney-at-law, partner at Merchant & Gould P.C., Minneapolis (intellectual property law with an emphasis patent and copyright matters)

• Remy Chavannes, The Netherlands
  Attorney-at-law, Partner at Brinkhof, Amsterdam (copyright, media, privacy & internet litigation); member of AIPPI Standing Committee Copyright & Programme Committee
A balancing act - copyright versus other rights
A balancing act - copyright versus other rights

• **Means** by which copyright laws in different jurisdictions seek to achieve **balance between copyright and other rights and interests.**

• Different **“gates”** into copyright law for this balancing act
  – See perspectives from Latin America, USA and EU
  – Presentations will e.g. comment on the following **“gates”**:  
    • Defining the scope of the exclusive right  
    • Defining the scope of exceptions & limitations  
    • Defining the scope of enforcement measures
“PANEL SESSION V: A balancing act – copyright versus other rights”

Irely Aquique, Director IP Enforcement, Mexican Institute of Industrial Property
Perspectives from Latin America

Illegal download from Web pages

reached 210 million Internet users

That represents half of those connected in the region.
Case in the study

The "Alliance Against Piracy of Cable TV" together with the British company NetNames conducted a survey and it was determined that the bandwidth consumption in those countries to access illegal content exceeded 789 petabytes, distributed in the three modalities of online piracy of audiovisual content.
ONLINE PIRACY MODALITIES

Cyberlocker: Hosting services that use one or more servers to distribute videos

Uptobox y Uploaded.net

Peer to peer: computer network in which each of them is a server for the others, shared file access

BitTorrent, Ares, Pirate Bay y Cuevana

Streaming ilegal de IPTV: services that offer live television content, such as sporting events Roja directa

“La piratería online de contenido audiovisual representa una amenaza significativa a la protección de los derechos de propiedad intelectual”
Limits between Copyright and the Right to Information

Copyright

- Rules the rights and obligations of the creators with respect of their works.
- It is aimed to:
  - Ensuring legal certainty on the moral, economic and related [powers/Rights]
  - To make sure that authors enjoy a prior status in relation with the users of their creations

Right to information

- Individual dimension which protects and guarantees that people collect, disseminate and publish information with full freedom;
- Collective dimension as the essential pillar on which every democratic State is erected, as well as the fundamental condition for social and individual progress.
Balance between the Copyright and Right to Information

- They cannot be excluded between them
- Both are HUMAN RIGHTS, there is not a hierarchy relation between them.
- The Right to Information is available for the public or society to access information, knowledge and research
- Copyright protects creations, and moral and patrimonial rights as well.
- Without a creator, there would be no information available to consult.

- There are not many cases of Laws foreseeing a Section related to online piracy.
- Normally, each country has their own protection agencies for industrial property and copyright.
- The speed of technological advances make available a lot of new ways to illegally access content that should be protected in the online environment.
Countries with best practices against online piracy:

- Mexico
- Peru
- Uruguay
- Paraguay
- Argentina
Authorities fighting against piracy and counterfeiting in Mexico

- General Attorney’s Office
- Federal Commission for the Protection against Sanitary Risks
- Federal Police
- General Administration of Customs
- Mexican Institute of Industrial Property
Not only registration functions

Enforcement powers

“20 years protecting your innovations”

Innovation + protection = economic growth
IMPI’s Enforcement Faculties

- Conduct investigations into alleged administrative infringements, arrange and conduct inspections.
- Request information and particulars, order and implement precautionary measures to prevent violations of industrial property rights or cause such violations to cease.
- Hear alleged infringers speak in their defense and impose the appropriate administrative sanctions in industrial property matters.
ACTIONS COMBATING COUNTERFEITING AND PIRACY

- Inspection visit
- Merchandise’s seizure
- Imposition of administrative fines
- Close down establishments
- Suspension of the free movement of goods of foreign origin
PRACTICAL CASES IN MEXICO

- B-KA CASE

- The SOCIEDAD DE AUTORES Y COMPOSITORES DE MÉXICO, S.G.C. DE I.P. (Society Authors and Composers of Mexico Association) requested a provisional measure and a trade-related infringement proceeding, under the Industrial Property Law and the Copyright Act, against the

- RIGHT HOLDER OR OWNER OF THE FOLLOWING WEB:
  - www.ba-k.com
“In compliance with the provisions foreseen by the Industrial Property Law, the Copyright Act and their regulations, it is not possible to visualise the web site www.ba-k.com, pursuant to the suspension order or cessation of conducts that allegedly are a trade–related infringement, issued by the Mexican Institute of Industrial Property under the file---IMC 2036/2013 (M-340) 20995.”
PRACTICAL CASES IN MEXICO

- MYMIUSIIC

La SOCIEDAD DE AUTORES Y COMPOSITORES DE MÉXICO, S.G.C. DE I.P., [THE SOCIETY OF AUTHORS AND COMPOSERS OF MEXICO] requested a provisional measure and a trade-related infringement proceeding in terms of the Industrial Property Law and Article 231, paragraphs I, III and X of the Copyright Act, against:

The RIGHTHOLDER OR OWNER OF THE FOLLOWING WEB SITE:

www.mymusiic.com

Resolution issued by the Supreme Court
The Supreme Court resolved, among other findings, the following:

• The provisional measure imposed by IMPI is grounded in the Industrial Property Law and the Mexican Institute of Industrial Property has enough powers for its application.

• The provisional measure is aimed into a legitimate goal, due to the fact that it is protecting the copyrights of third parties.

• The provisional measures shall be both necessary and strictly proportionate, therefore must fulfill the following conditions:
  
  ✓ The provisional measures shall be concrete but cannot mean a whole blocking.
  ✓ The provisional measures must be narrowed to blocking the allegedly infringing contents in connection with the rights invoked within the corresponding proceeding.
  ✓ Prior to any blocking of allegedly infringing contents, it is necessary to have the certainty that the owner of the web site is not able to take down the allegedly infringing contents.
  ✓ The flow of information through the Internet must be subject to the lowest possible restrictions.
Trade – Related Infringements and Infringements against copyright.

In terms of the Industrial Property Law, the IMPI is the authority in charge to resolve on trade-related infringement proceedings:

- Economic Rights
- Purpose of Direct or Indirect Financial Gains.
- Infringements at Commercial or Industrial Scale.

- The Copyright National Institute resolves on administrative infringements related to the copyright:
  - Moral rights
  - Any infringement of the Copyright Act, (General Provisions of the copyright)
Limits between Copyright and the Related Right.

• The Federal Law of Copyright foresees limitations to the Copyright and Related Rights as follows:

  ✓ Publication or translation of literary or artistic works, for reasons of public interest as necessary for the advancement of science, culture or national education.

  ✓ Artistic and literary works already disclosed, provided that their use do not conflict with the normal exploitation of a work, in the following cases:

    ❖ Quotation of texts.
    ❖ Published by any means of dissemination, provided it is not prohibited by the author.
    ❖ Criticism and investigation.
    ❖ Personal and private use.
    ❖ Security and preservation (libraries or archives institutions)
    ❖ Evidence in judicial proceedings
    ❖ Visible works in public places
    ❖ People with disabilities
Limits between Copyright and the Related Right

- Promotion for the sale of work copies (in open establishments to the public).
- Ephemeral [fixation/recording]
- Public domain (respecting moral rights).
- Free use by anonymous author.
- Royalties for public execution (transmission received in a common device, no charge, not retransmitted and receiver is not micro industry or small taxpayers).
- Do not constitute violations of the rights of performers, producers of phonograms and videograms or broadcasting organizations (in cases where there is no economic benefit direct, brief fragments and purposes of teaching or research).
- Portrait of a person (as part of a group or taken at a public place, for information purposes).
King of the Jungle?
Appearances can be deceiving...
Thanks for your attention
MOVER MÉXICO