

Collection
Media

The fight against sound and audiovisual piracy

Handbook

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The fight against sound and audiovisual piracy

Handbook

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La lutte contre la piraterie sonore et audiovisuelle -- Vade-mecum

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Introduction

1. "Piracy" is a fashionable term, but it conceals a serious problem. The term might conjure up romantic images recalling the exploits of buccaneers sailing the seven seas in the last century. In reality, the term conveys harm caused to individuals and to society as a whole. Just like parasites, pirates live off the creativity, talents, enterprise and investment of others.

1. What is sound and audiovisual piracy?

2. Taking the record, video and broadcasting industries as reference points, "piracy" refers essentially to unlawful (that is without the consent of the owner) commercial activities involving works and other contributions protected by intellectual

property law: for example, the unlawful reproduction for commercial purposes of sound recordings (tapes, records), videos, radio and television broadcasts, etc. In a similar vein, the clandestine manufacture of television decoding equipment with a view to its resale or the exploitation without permission of sound or audiovisual works can be considered as acts of piracy or at least as having close links to it: without asking for authorisation and without payment, "pirates" install sound systems in public places (discothèques, shops, hotels, etc.), or organise unlawful screenings of audiovisual works in cinema theatres, on buses, in blocks of flats or housing estates, bars, local community groups, etc. Pirates also arrange for the redistribution of television broadcasts via private cable networks.

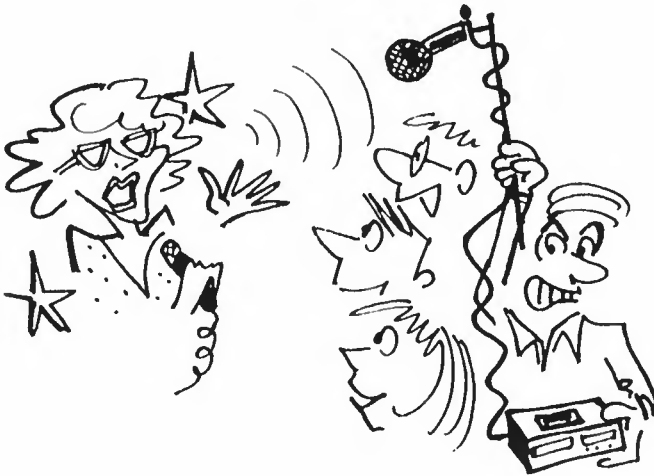
3. "Pirates" today get rich not on gold bullion snatched from galleons but by manufacturing and selling, without proper authorisation, thousands, even millions of copies of successful tapes or videos.

1.1 Piracy of musical works

4. Copies circulating unlawfully on the market are very often identical to the original recording. The quality of the

sound is similar, and the packaging is identical. The price of unlawful copies is frequently pitched at the same level as the lawful product. These copies are referred to as "counterfeits".

5. At the origin of the large scale manufacture of copies, there is occasionally to be found a clandestine recording made during a live concert. Alternatively, there may be a recording made from the broadcast of a music work on radio or on television. These types of recordings are known as "bootlegs".



6. The rediscovery of the musical successes enjoyed by many popular performers in the 50s, 60s and 70s has launched a hidden parallel market. There are tapes and records on sale described as "X's greatest hits". In reality, the hits compiled are imitations of the original! They are unlawfully promoted as the original recordings of "X".



1.2 Piracy of audiovisual works

7. Following screening on the cinema circuit, feature films normally come out on video. Individuals can buy or hire videos. However, the video distribution of a cinematographic work does not take place at the same time throughout Europe. A video of a film may be obtained in one country before it is available for release in other countries. This situation plays into the hands of pirates, since they can unlawfully distribute recorded videos in different countries.

8. As with musical works, video recordings are quite often (although not always) of the same quality as the original feature film. The packaging often looks like the real thing.

9. A bootlegger is often behind the unlawful reproduction on video. The film may be surreptitiously recorded in the projection room with the use of a video camera. Alternatively, the pirate may "borrow" the reel and make a copy, which will be subsequently reproduced on a large scale. The pirate may also record the film when it is shown on television and make multiple copies from the recording.

1.3 Television and radio piracy

10. Some categories of pirates retransmit or redistribute broadcasts by cable without obtaining the authorisation of the relevant broadcasters. As to the encrypted channels, which exist alongside TV programmes broadcast "in clear", the viewer needs to pay a subscription fee to view the programmes and appropriate decoding equipment must be acquired for this purpose. Some pirates, without seeking the consent of rightholders, manufacture and sell decoding equipment.



11. Several forms of piracy affect broadcasters. These may involve unauthorised use of the signal as such, for example for rebroadcasting or cable distribution (simultaneous off-air or

deferred, complete or incomplete, possibly replacing the original advertising wholly or partly), or selling of cassettes of copies of broadcasts.



On the other hand, another broadcaster or cable distributor may have pirated satellite signals of material for which a broadcaster in the same country had acquired the exclusive broadcasting rights – for example, coverage of a sports event taking place abroad (such as the football World Cup). There may also be broadcasters established with or without an operating licence, and who broadcast material (phonograms, videocassettes) or relay foreign satellite channels (possibly by adding simultaneous voice-over translation) without the necessary authorisation of the right owners concerned.

2. Why is piracy so widespread?

12. Various factors increase the attraction of piracy activities in which quite a lot of money can be made without investing much effort. Technically, it is relatively easy to become a pirate. There is also a buoyant market.

2.1 Technical possibilities

13. Technical developments, especially digitisation, make it easier and cheaper to reproduce records, audiovisual works,

broadcasts and software on a mass scale and under good quality conditions. Piracy is also less expensive than the lawful activity. The pirates' expenditure is confined to the costs of reproduction and distribution. The piracy of musical works is not affected by the need to remunerate rightholders, and the pirate can choose from a whole range of available works or broadcast material. The pirate can, relatively cheaply, select the most popular works of a performer or put together a compilation of the works of a number of different performers. Likewise, the pirate only needs to finance the costs of reproduction and packaging of feature films and videos to make a profit out of big-budget works which have been carefully, and at great cost, marketed and promoted.

2.2 The existence of a buoyant market

14. Alongside technical feasibility, there is also a buoyant market for pirated works in Europe. There is a marked increase in the demand for sound and audiovisual works, including both recent and revived works (compilations of the hits of various performers, film directors, etc.). The European public wants access to a wide range of domestic and foreign programme services, including those available on subscription.

15. The major political, economic and social changes which have occurred in central and eastern Europe, as well as the difficult economic situation in many European countries, have a bearing on the increase in the various forms of piracy. In this new context, many European consumers find themselves in a dilemma: they want attractive sound and audiovisual products which are on offer, but they cannot or will not pay the costs involved in purchasing, hiring or subscribing to these products. The marked demand for sound and audiovisual works often goes hand in hand with a lack of purchasing power or a refusal to pay the price requested by retailers. All of these factors promote the emergence of piracy which results in copies of the products sought being offered at a better price (pirated cassettes). They also give rise to

unauthorised use of sound and audiovisual products (installing sound systems in discos, screenings of films in blocks of flats, etc.).



3. The harm caused by piracy

16. Given the very nature of piracy, it is impossible to calculate its precise extent in these different sectors. However, the estimates available suggest that the economic loss resulting from sound and audiovisual piracy in Europe amounts to billions of US dollars¹.

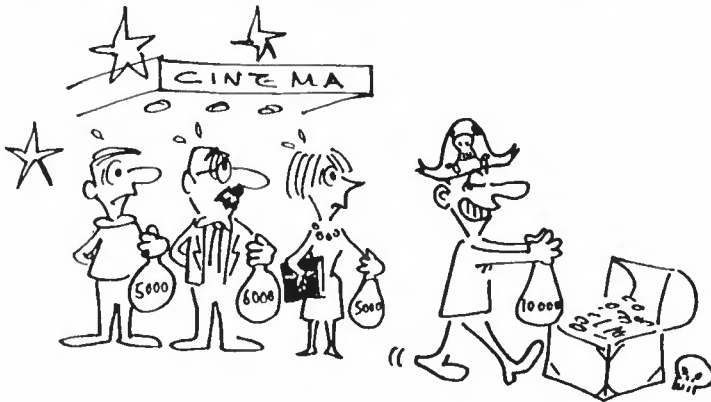
1. For example, a worldwide increase in the piracy of compact discs has been noted: 20 million pirate CDs were sold in 1991, 35 million in 1992 and 70 million in 1993 (cf. *Unauthorised sound recordings*, May 1994, source International Federation of the Phonographic Industry (IFPI)). In Europe, more than 19 million pirate CDs were sold in 1993, representing about 4% of the total volume of sales during this period (cf. *Screen Digest*, July 1995, p. 168; source IFPI).

In 1994, audio-visual piracy (videos, unauthorised broadcasting of films, unlawful retransmissions, piracy of decoding equipment) represented about 10 million dollars in countries such as Austria, Bulgaria, Portugal, Switzerland; 20 million dollars in Romania; 50 million dollars in France, Germany, Greece and Spain; roughly 100 million dollars in the United Kingdom; more than 200 million dollars in Italy, which in 1993 recorded a volume of audiovisual piracy at around 350 million dollars, cf. *Yearbook 1994-1995 of the European Audiovisual Observatory*, p. 117; source Motion Picture Export Association of America (MPEAA).

3.1 Earnings lost by creators, the audiovisual industry and by the state

17. Piracy destroys the source of earnings of individuals and professional sectors: authors, composers, film producers, performers, record producers, broadcasters, producers of software associated with audiovisual productions (especially multimedia and video games), distributors, retailers, cinema owners, etc.

18. The pirate who copies and sells a successful work obtains a net benefit since nothing is paid to the authors and composers whose music and words have been plundered. Nor is anything paid to the performers and musicians who performed the original work. However, it is the producer of the lawful product who really loses out, since he or she took the risk in bearing the overall costs, including the search for talented performers, the recording sessions, the marketing of the product and the promotion of the performer and the work. Pirates run off with the fruits of these efforts.



19. As far as the broadcasters are concerned, it should be recalled that the operation of a broadcasting organisation is a costly organisational and technical undertaking. The responsibility of the public service broadcaster in particular is to provide a creative role in national culture by making a wide variety of

original productions, as well as live broadcasts, and enabling members of the public to have a broader awareness and appreciation of culture whether of their own country or further afield.

20. Pirates also threaten the viability, not to say the survival, of certain pay-TV stations, since these derive most of their budget from regular payment of subscriptions. In addition, rightholders involved in the various broadcast programme services will at some stage stop selling their rights to channels which threaten their own economic survival².

21. Finally, states lose out. Companies involved in piracy usually do not pay taxes, customs duties, nor other forms of state contributions. The audiovisual and entertainment industries are particularly weakened by piracy. These industries, which are of major importance for the national economy, generate significant employment and contribute substantial revenue to the state (taxes paid by creators and employees, taxes imposed on companies involved in the entertainment and audiovisual industry). In the final analysis, piracy harms the industrial and commercial competitiveness of countries prey to the activities of pirates.

3.2 Threats to artistic creation and to national and European culture

22. The considerable loss of revenue caused by piracy to authors, performers, producers and distributors, tends to discourage creativity and investment in the cultural industries. These factors threaten the diversity and quality of the products on offer. In the long term, they run counter to the interests of the general public.

2. If the rights to a film have been sold to a subscription channel for a given number of transmissions, and if this channel is in effect accessible to the entire population, the distributors find themselves in a situation where they cannot also sell their films to a public or commercial non-coded television channel for broadcast eighteen months or two years later, as is the current practice. For a producer or distributor, a situation like this represents a major lost opportunity.

23. As with other unlawful activities, the consumer suffers, since a share of the profits made by lawful producers is invested in less popular works: avant-garde music or film, religious music, art house films or new talent. Creaming off these profits reduces the number of new sound and audiovisual works on the market and, at the end of the day, impoverishes national culture.

24. When made available to the public, sound and audiovisual works – for both entertainment and cultural purposes – may, like any other art form, have a profound effect on life and emotions and may enrich, even define, the cultural fabric of nations or particular sectors of society. Europe may take pride in the richness of its cultural products, which are exported and appreciated throughout the world³.

25. Furthermore, it should be kept in mind that a country which seriously disregards its obligation to enforce effectively



3. For instance, Europe has now become the largest music market in the world. In 1993 the recording companies employed some 40,000 Europeans. There are more than 50,000 European musicians who count on the recording industry for all or part of their living. Record retailing employed some 80,000 Europeans. The audiovisual industries (film, video and television) employed 1.8 million people. *(see next page)*

its intellectual property protection risks international commercial countermeasures which may seriously affect its foreign trade. Recent history has shown some examples of this.

4. What steps should be taken against pirates?

26. Even though it is obviously desirable not to restrict the possibilities which the public has to benefit from technological development and to have access to creative works – especially music and audiovisual works – the rights and legitimate interests of both national and foreign rightholders must also be protected. An improvement of the legal framework and the introduction of technical anti-piracy methods must go hand in hand with awareness creation, targeted especially at judicial (criminal and civil) and administrative (police and customs) authorities. Information and awareness strategies must also be aimed at the users of sound and audiovisual works, and major efforts must be deployed for this purpose. The general public must be made aware of the seriousness of piracy.



(continued)

The copyright sector, which includes sound recordings, publishing, cinema, television, radio and software, is one of the most rapidly expanding sectors of the European economy. 3-5% of the gross national product of countries in the European Economic Area is derived from creation and distribution of goods protected by intellectual property, especially songs, films and literary works.

4.1 Rights must be recognised

27. Many member states have already taken steps to ensure that their legislation provides for civil and criminal remedies, making it possible to act speedily and effectively against persons engaged in piracy, including the importation and distribution of pirated products.

28. The cultural industries have been able to develop because rightholders in most countries have been given a minimum level of legal protection: national legislation provides for a number of intellectual property rights, enabling rightholders to authorise or prevent the exploitation of their works, to obtain appropriate remuneration, etc.

29. National laws generally reflect the commitments which states have undertaken under international treaties and agreements. The most important instruments are the Berne Convention for the Protection of Literary and Artistic Works (1886, last revised in the Paris Act of 1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961), the Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms (Geneva, 1971), the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels, 1974), the European Agreement on the Protection of Television Broadcasts (Strasbourg, 1960), together with its protocols, and the Treaty on the International Registration of Audiovisual Works (Geneva, 1989). Another important instrument is the so-called TRIPS Agreement (the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods) concluded in the framework of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). This Agreement enters into force on 1 January 1996 and contains exclusive obligations both as regards substantive rights for authors, performers and producers and as regards the enforcement of those rights.

30. When adopting measures at national level with a view to ratification of these treaties, states guarantee that rightholders have appropriate rights at the national level so as to allow them to defend their economic and moral interests against the various forms of piracy made possible by technological development. States may also undertake, for example by means of bilateral agreements, to provide for reciprocal guarantees for the protection of their nationals whose rights have been infringed by piracy.

4.2 Introduction of remedies and sanctions

31. Success in the fight against piracy presupposes that the legal remedies available are adequate. Remedies should include procedures which allow for rapid action to be taken to obtain the necessary evidence and sanctions to be applied, capable of dissuading people from engaging in piracy in the future.

32. The remedies should cover all persons engaged in piracy, namely, the manufacturers of infringing copies, importers and persons involved in the distribution of such copies, down to and including the retail stage, as well as unauthorised cable distributors and pirate broadcasters.

33. Effective remedies against piracy should be available under both the criminal and civil law, though, of course, the emphasis placed on one or other type of procedure might well vary from country to country. An additional sanction against a broadcaster operating without a licence is to close it down.



- Criminal law

34. In the context of criminal law, adequate powers of search and seizure are an essential weapon in the fight against piracy; without them, obtaining the evidence required for conviction would be extremely difficult, if not impossible. Thus, warrants should be issued to the police to search the premises of persons reasonably suspected of engaging in piracy and to seize all material found which is relevant to the investigation, including infringing copies and their means of production. The introduction of powers for the securing of financial gains from piracy, assuming that these can be clearly identified, should also be considered.

35. Provision should be made for the destruction or forfeiture of infringing copies and seizing the means of production in the event of conviction. Similarly, profits derived from piracy should be subject to forfeiture: it should be possible to award all or part of the profits forfeited to the injured party as compensation for the loss suffered. In many countries the victim of a criminal offence may enter a claim for damages in the context of criminal proceedings. Another approach would be to empower criminal courts to make a compensation order in favour of the injured party following a conviction.

36. The sanctions should be stringent. Minor fines may be seen by pirates as a sort of tax payment, which may only ease their conscience before embarking on more profitable activities. Stringent penalties deter people from engaging in piracy activities and at the same time encourage the relevant public authorities to devote sufficient resources to combating piracy. Recent experience in several member states shows that a substantial increase in the level of sanctions and an effective application of sanctioning policy by courts has had a real dissuasive effect on the commission of acts of piracy. These methods of dissuasion are even more essential whenever piracy assumes a transfrontier dimension. This may require bilateral and multilateral co-operation between the states concerned. Also, the above-mentioned TRIPS Agreement contains a number of obligations relating to procedural and other matters concerning criminal sanctions of piracy.



- Civil law

37. As regards civil law, effective means should exist for obtaining evidence in piracy cases. The means in question will inevitably vary from country to country in the light of legal traditions. Each member state should examine whether the means presently available to plaintiffs are sufficient, bearing in mind the particular difficulties involved in securing evidence of piracy.

38. In certain countries a plaintiff in civil proceedings may obtain *ex parte* a court order requiring the defendant to allow the plaintiff to enter his premises and to search for and seize evidence of piracy. Needless to say, such orders are invariably accompanied by undertakings on the part of the plaintiff to protect the legitimate interests of the defendant. Procedures of this type have proved to be a very effective means of combating piracy.

39. In other countries when the plaintiff is able to show that a particular activity will give rise to irreparable harm, an injunction may be granted ordering the activity to cease pending a judicial decision on the merits of the case.

40. Generally speaking, the ultimate civil law remedy is an action for damages for loss suffered by the plaintiff. So as to evaluate the harm caused by piracy, a number of jurisdictions take into account matters such as the "loss of reputation" suffered by a performer who has been imitated or whose work has been modified. "Loss of market share" experienced by a record or video producer as a result of the disappointment of customers who have bought products not knowing that these were mediocre copies sold under their names is another relevant element. Similarly, the harm which piracy may cause to marketing structures, for example adverse effect on competition, is also taken into consideration. Pirates can sell their products quite cheaply since they do not pay any dues to the rightholders or to the state.

41. It is useful to allow the plaintiff to have the opportunity to choose between an action for damages to compensate the loss suffered and a claim for the profits made from the piracy when these can be identified. This possibility would be particularly useful in cases where the plaintiff has difficulty in demonstrating the precise extent of the loss suffered.

42. It is particularly essential that any damages awarded are not merely symbolic but constitute an effective compensation for the loss and injury sustained. This also finds corroboration in the TRIPS Agreement.

43. As regards the fate of unlawful copies and the means used to produce them seized in the context of civil proceedings, these should – bearing in mind of course constitutional guarantees – be destroyed or handed over to the plaintiff. Care must be taken to ensure that piracy is brought to an end and not simply "delocalised" or transferred from one place to another.

44. Legal costs vary from country to country. However, the bill to be paid by the defendant should refer to the costs, including those for technical expertise, incurred by virtue of the proceedings, especially in cases involving unlawful reproduction of sound recordings for commercial purposes.

45. Court judgments should be widely publicised, especially the sanctions handed down. This may be an effective way of deterring potential pirates. It may also be useful for the public as a means of discovering the presence of pirated products on the market.

4.3 Setting up effective structures for:

- conducting inquiries and collecting evidence

46. In some European countries, courts and tribunals have special chambers to deal with intellectual property cases, including piracy. This allows for a degree of harmonisation in the case law on sound and audiovisual piracy offences. This system has shown itself to be particularly effective.

47. The strengthening of the domestic legal framework has also provided additional support to the anti-piracy measures taken by interested professional bodies. In certain member states, for instance, anti-piracy cells operate. These cells are composed of teams made up of duly sworn officers (for example, former police officers, customs officials and police officers who check up on the sales outlets). When spotted, suspect products undergo technical and legal control. Evidence of piracy offences results in complaints being made before the relevant prosecutor's office. As far as broadcasting organisations are concerned, one practical way of telling whether a cable relay is pirated would be to ask the cable distributor to show its authorisation from the broadcaster in question.



48. This being said, the requirement of proof of intellectual property law offences is a particularly thorny task for the prosecutor and/or rightholders. Ownership and subsistence of copyright or neighbouring rights are often very difficult and costly to establish. A plaintiff may not be able to obtain compensation if the legal system requires production of an excessive amount of documentary proof, especially of commercial transactions. Legal proceedings taken against persons engaged in piracy may thus be seriously impeded by a statement that the plaintiff does not hold the rights to the work in question. To counter unreasonable challenges from defendants, a number of states have provided for legal presumptions which make certain types of evidence automatically admissible.

49. By way of illustration, several states have provided that, in interlocutory proceedings, subsistence and ownership of copyright or of a neighbouring right shall be presumed unless the contrary is proven. Of course, as regards ownership of copyright, it is already the case that in most countries the person whose name appears on a work, and who claims to be the author, will be presumed to be so in the absence of proof to the contrary.

50. Appendix I contains examples of legal presumptions which might facilitate the fight against sound and audiovisual piracy.

- effective application of legislation

51. Co-operation between police and customs authorities as well as with legal authorities is essential at both the national and European levels.

52. When customs authorities have powers enabling them to prevent the importation or transit of products which have been pirated (regardless of the form taken), they are in a position to contribute considerably to the eradication of piracy. In practice, action by customs authorities in this field might well

be heavily dependent on the right owners being able to give advance notice of the arrival of pirate material at the frontier.



However, customs authorities can also receive information regarding shipments of pirate material from other sources, for example their counterparts in other countries. They should, as far as possible, act on the basis of information supplied. It should be mentioned that the TRIPS Agreement contains provisions on the possibilities for customs authorities to delay for a period of 10 days the entry into commercial channels of imported goods which are suspected to be pirate material. Co-operation may take the form of a permanent transfrontier exchange of information including with professional bodies involved in the fight against piracy. Debt collecting companies which ensure that fees are duly paid to authors, performers and producers may be an effective means for uncovering piracy activities and collecting evidence.

53. Infringement of intellectual property rights may also attract the attention of other parties, especially the tax inspectorate and consumer protection associations.

54. International organisations representing the various professional interests are also very active in the fight against sound and audiovisual piracy.

55. Appendix II contains the addresses of various international organisations which are competent in the fight against sound and audiovisual piracy.

4.4 Incorporation of effective anti-copy systems in sound and audiovisual works and equipment

56. Technological evolution has also made it possible to develop effective techniques for the protection of works and other contributions. For example, identification codes, such as the SID⁴ code of the International Federation of the Phonographic Industry (IFPI), have been developed to strengthen the security surrounding the manufacture of compact discs at both mastering and reproduction stages. Today it is possible to incorporate into sound or audiovisual recordings systems which prevent unlawful copying or which, at least, make it more difficult to do so. These systems resolve many of the problems created by minor forms of piracy.

57. Furthermore, the use of authentication systems, especially holograms inserted in the packaging of records, videos and laser discs, has been shown to be an effective system of protection.

58. Appendix III contains information on a number of technical features which could be effective against certain forms of sound and audiovisual piracy.

4. The SID code (Source Identification Code) is a four figure code which is attributed, on request, to companies manufacturing CDs. The code makes it possible to determine where the CD is reproduced and where the original disc comes from. It is thus one of the primary control measures for the production of CDs. See Appendix III.

4.5 Developing public awareness of the seriousness of piracy: we all lose out!

59. The general public and lawyers in particular (judges, prosecutors, legal practitioners, law professors, law students, etc.) must, as a matter of urgency, be made aware of the need to respect copyright and neighbouring rights of authors and other contributors in respect of works and other protected contributions. Awareness of the serious economic and cultural consequences of non-respect of these rights also needs to be promoted.

60. Education and awareness programmes can be promoted through the media (press articles, TV ads, etc.) to encourage consumers to co-operate in the fight against piracy, for example by reporting on pirated products which they come across to the authorities.

61. Training programmes for police officers, customs officers, etc., as well as seminars for the legal profession can be extremely useful for creating awareness of the problems of and the steps to be taken against counterfeit products.

62. In creating awareness, the bodies representing the various categories of rightholders as well as collecting societies have an important role to play, often in co-operation with public authorities. They promote the preparation of media campaigns and disseminate texts, audiovisual materials, etc. These bodies invest in preventive activities as part of their contribution to an effective fight against piracy. Their investments quite often prove to be rewarding in the long run. Sometimes simple initiatives make it possible to deal a heavy blow to the pernicious work of pirates.

APPENDIX I

Examples of legal presumptions which might facilitate the fight against sound and audiovisual piracy

Modern copyright laws often contain certain presumptions which make various types of evidence automatically admissible. For example:

- the fact that at a specified time, copyright subsisted in the work which is the subject matter of the action;
- that a person named in the certificate or affidavit is the owner of copyright;
- that a copy of the work which is annexed to the certificate or affidavit is a true copy;
- that the author of the work is a citizen of or domiciled in a named country;
- that the author of the work is a body corporate established or incorporated under the law of a named country;
- that in an action involving a corporate body, a certificate attached to the affidavit is a true copy of the certificate of incorporation of that body;
- that the work was first published in a named country.



APPENDIX II

Addresses of a number of international organisations competent in the fight against sound and audiovisual piracy¹

Authors Rights and Neighbouring Rights Societies

AEPO (Association of European Performers' Organisations)
8, rue Brémontier
F-75017 PARIS
Tel: (33) 1 42 27 43 09 Fax: (33) 1 43 80 67 83

BIEM (International Bureau of the Societies administering the Rights of Mechanical Recording and Reproduction)
56, avenue Kléber
F-75116 PARIS
Tel: (33) 1 47 04 57 04 Fax: (33) 1 47 55 11 53

CISAC (International Confederation of Societies of Authors and Composers)
11, rue Keppler
F-75116 PARIS
Tel: (33) 1 47 20 81 01 Fax: (33) 1 47 23 02 66

FIA (International Federation of Actors)
Guild House, Upper St Martin's Lane
GB-LONDON WC2H 9EG
Tel: (44) 171 379 0900 Fax: (44) 171 379 8260

FIM (International Federation of Musicians)
Hofackerstrasse 7
CH-8032 ZÜRICH
Tel: (41) 1 422 66 11 Fax: (41) 1 422 65 02

INTERGU (International Society for Copyright)
Balanstr. 59
D-8000 MUNCHEN 90

1. These international organisations can provide the addresses of national anti-piracy organisations set up in different countries.

Recording Industry

IFPI (International Federation of the Phonographic Industry)
54 Regent Street
GB-LONDON W1R 5PJ
Tel: (44) 171 434 3521 Fax: (44) 171 439 9166

Film Industry

MPEAA (Motion Picture Export Association of America)
270-272 avenue de Tervueren
B-1150 BRUSSELS
Tel: (32) 2 778 2711 Fax: (32) 2 778 2750

FIAD (Federation of Associations of Film Distributors)
43, boulevard Malesherbes
F-75008 PARIS
Tel: (33) 1 42 66 05 32 Fax: (33) 1 42 66 96 92

FIAPF (International Federation of Film Producers Associations)
33, avenue des Champs Elysées
F-75008 PARIS
Tel: (33) 1 42 25 62 14 Fax: (33) 1 42 56 16 52

Video Industry

IVF (International Video Federation)
Jozef Mertensstraat 46
B-1702 GROOT-BIJGAARDEN
Tel: (32) 2 463 24 29 Fax: (32) 2 463 24 31

Broadcasting Organisations

ACT (Association of Commercial Television in Europe)
7, square Ambiorix
B-1040 BRUSSELS
Tel: (32) 2 736 0052 Fax: (32) 2 735 4172

EBU (European Broadcasting Union)
Ancienne Route 17a
CH-1218 GRAND-SACONNEX (GENEVE)
Tel: (41) 22 717 2111 Fax: (41) 22 717 2481

Cable Communications Organisations

ECCA (European Cable Communications Association)
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Intergovernmental Organisations

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WTO (World Trade Organization)
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APPENDIX III

A number of technical features which may be effective against certain forms of sound and audiovisual piracy

Encryption

Films have a special importance for thematic channels, especially recent films which have been shown on the cinema circuit but never on television. The owners of pay-TV channels must, to acquire the exclusive right to broadcast these films, pay substantial fees for the rights and undertake to encrypt the signal so as to ensure that only subscribers can view them.

It seems however that it is not always necessary to possess a decoder to be able to unscramble a picture. The computational algorithms which are at the heart of an encryption system are essentially computer software that can be run on a simple PC. Unscrambling programmes of this type have recently appeared on certain computer hosts or on bulletin boards run by private individuals.

Sometimes, the smart cards used by several popular encryption systems are bought in one country, then sold in another country with a significant commission added on top. Although these "genuine" cards have been officially marketed by a subscription television operator, the use outside the territory for which they were intended must nonetheless be said to constitute an act of piracy.

Furthermore, in certain cases the same decoder is used by several households at the same time, by virtue of various makeshift DIY systems, with a resulting picture quality which is far from breathtaking. In an extreme case, cable operators unscramble subscription channels at their head end and then retransmit the programmes across the whole of their network.

"Copyguard" systems can be built into sound or video recordings to prevent unauthorised copying or at least make it more difficult. Casual piracy can be largely dealt with by these systems.

Digitisation

The invention of digital technology which permits the storage, retrieval and transmission of information, sounds and images in their original form has revolutionised cultural industries and has brought about new means of accessing them.

As advances have outstripped technical controls, the digital age also makes it easier for pirates to produce perfect copies of original works. Such copies can now also be transmitted electronically without detection. For example, someone in North America can illicitly record a musical concert from a stereo television broadcast into a digital receiver, which can then be unloaded on to the open user international computer data base called "Internet" and down-loaded by a receiving party anywhere in the world. Such transmissions cannot be detected, and the digital tape which can be made from this transmission can produce a perfect compact disc master which can in turn result in limitless numbers of copies in compact disc format or indeed any other sound carrier. The very same method can be used for the transmission of motion pictures. Regardless of where the copies are made, the distribution networks are well established by the pirates who find safe-haven countries where enforcement is known to be lax. The first knowledge a right owner has of the existence of pirate copies is when the distribution and sale have already taken place.

Equally, broadcasters and other network users involved in the commercial exchange of information are finding it increasingly difficult to encode or encrypt their products to avoid illicit duplication and dissemination. The strategy may even consist in waiting until a certain level of piracy has been reached on the market before activating a kind of new combination in the scrambling system, thereby reducing to zero the whole parallel pirate market which has developed and, by the same stroke, dismembering once and for all a number of commercial organisations which have sprung up. When the scrambling system used by a subscription channel is based on

a smart card, the operator can use the radical method of replacing the cards in their entirety with new ones containing a totally different code, which are sent out only to the legitimate users of such a card. Although this method is costly for the operator, it is nonetheless a radical solution. Furthermore, it effectively counters the pirate rings that operate smart card swaps from one country to another.

Systems for authenticating copies

These systems enable the public to recognise the genuine from the counterfeit product.

SID Code

For identification of compact discs, a Source Identification Code stamped on the surface of compact discs has been introduced. The code represents a series of numbers assigned to individual CD manufacturing plants which will identify any product from that particular plant. The SID Code system of identifying the source of compact discs at the mastering and reproduction stages is the way forward for manufacturing plants to prove their legitimacy. Any record company or video distributor worried about the piracy of their product will want to deal only with plants using the codes since this will distinguish pirate and counterfeit products from original pressings.

The system is at present voluntary in the sense that it is based on contractual arrangements and can therefore not be enforced universally. Consideration is, however, being given at the intergovernmental level to the use of such codes and measures preventing their manipulation.

ISRC

Similar to the International Standard Book Number (ISBN), digital audio and video carriers such as CD and CD Video can contain digital subcode information. This code is a unique identifier developed by the International Organisation for Standardisation (ISO). The International Standard Recording

Code (ISRC) provides a means of international identification of phonograms and music videograms. In view of technological trends in the field of consumer electronics, information, broadcasting and telecommunication technologies, the industry needs to prepare itself for the time when phonograms and videograms will eventually be distributed directly to the consumer's home by electronic means. Technical methods need to be developed to enable the industry to collect remuneration or prevent unauthorised use. The ISRC was designed by ISO to benefit both the record industry and broadcasters alike.

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The unlawful copying of video-cassettes, compact discs, etc., is a thriving business in Europe. "Piracy" is a romantic term which hides the shameful reality of some individuals who, just like parasites, live off the creativity, talents, enterprise and investment of others. What are the most common forms of sound and audiovisual piracy in Europe today? Why is piracy so widespread? What is the extent of the real harm caused by piracy to rightholders, the audiovisual industry and national culture? What are the most effective legal, technical, political and educational measures to combat this phenomenon?

This handbook, prepared by the Council of Europe's Group of Specialists on Sound and Audiovisual Piracy, provides answers to these questions.

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