

**SPEECH OF MRS. FIEN TJE MOERMAN, MINISTER OF ECONOMY, ENERGY,
FOREIGN TRADE AND SCIENCE, ON THE OCCASION OF THE ANNUAL
GENERAL MEETING OF IFFRO.**

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Introduction

Ladies and Gentlemen,

Thank you for inviting me to open this session of the Annual General Meeting of IFFRO (International Federation of Reproduction Rights Organization), here in Brussels.

Today, more than ever, issues involving copyright and rights management are at the very heart of the internal market and the information society. Moreover, we have recently seen massive cuts in the workforce of the major record companies; mergers and acquisitions seem to be the only means of survival in an industry that is already highly competitive, and that has witnessed a substantial erosion of its profit margins due to illicit behavior, such as piracy, counterfeiting and copyright infringement through the internet.

These issues present a major challenge to policy makers, both on the national, and on the European and international level. National policy makers, the European Commission and international organizations, such as the World Intellectual Property Office (WIPO), need to carefully balance both the interests of the rights holders as well as of the public at large when dealing with copyright issues.

Reproduction rights organizations, such as Repobel (which hosts this years annual meeting of IFFRO), have been empowered by the relevant authors and publishers in their country (and if necessary by foreign right holders) to manage their rights in the field of reproduction of their works. The copyright laws of six EU Member States¹, and of seven of the Candidate Countries², provide for legal licences for reprography. Limited copying of copyright protected works is permitted for private and other internal uses without the authorisation of the rights holders, but against payment of remuneration by the manufacturers and importers of copying machines. The reproduction rights organizations in these countries manage these legal licences, collect the fees and pay the remuneration to the authors and publishers they represent.

This system of legal licencing poses, however, a number of questions in a digital environment: what to do with a copyrighted text that can be saved on a hard disk or printed, and subsequently copied?

The directive of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society deals exactly with these kind of questions. I will therefore elaborate first on this text, that needed to be transposed in Belgian law before December 2002.

Afterwards, I will discuss briefly the bills that my administration has prepared in the field of the enforcement of copyright law, and I will conclude my opening remarks for this meeting with a brief discussion of the monitoring of activities of reproduction rights organizations by government services.

¹ Austria, Belgium, Germany, Greece, Spain, Portugal

² Bulgaria, Czech Republic, Hungary, Poland , Romania, Slovakia, Slovenia

Directive copyrights in the information society

My most urgent priority in the field of copyright is the transposition of directive 2001/29 of 22 May 2001 which aims to bring about the harmonization of certain aspects of copyright and related rights in the information society.

This directive invites the Belgian legislator to adapt the Belgian Copyright Act of 30 June 1994 with regard to the reproduction rights, the rights of communication and the distribution right. Most discussions regarding this directive deal with article 5, that provides a survey of exceptions on the exclusive reproduction right, and article 6 that deals with the protection of technological measures and rights management information.

Let's take a closer look at article 5. A first exception is obligatory: temporary acts of reproduction, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable a transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right.

This is quite logical in a digital, networked environment; without such a provision, there would be no internet. It's also a measure of common sense: it is hardly feasible to check each and every machine that is connected to the Internet upon transmitting copyright protected work.

The list of exceptions in article 5(2) of the directive is a menu from which member states may choose at free will. The very first exception in this list deals with reprography: reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation.

These wordings coincide perfectly with the legal license that already exists in the Belgian Copyright Act and shall therefore also figure in the bill that will be presented shortly to the Belgian Parliament. However, because of the digital environment in which we will play after the implementation of the directive in Belgian law, the playing field will have to go through some changes.

The reproduction on paper or a likewise carrier will fall within the scope of the legislation on reprography. Printing of a copyright protected text will be considered as an act of reprography. In adapting the current legal framework, the policy makers will have to take into account best practices in organizing and monitoring this broadened scope of reprography rights. Not an obvious task!

Finally, I would like to discuss briefly the protection of technological measures and rights management information.

The protection of technical measures aims to provide the rights holders with some form of control on the usage that is being made of their works. This right of control, however, is not absolute: the public interest requires that those that can benefit from certain exceptions, also may use effectively these exceptions, and that in doing so they are not hindered by technical security measures developed by the rights holders. This provision will also concern reprography: when and if a legal license shall cover both paper and other carriers, technical measures need to be easily removable.

This may give rise to litigation between rights holders and those that benefit from the exceptions on the reproduction right. Different means to resolve these conflicts are available: judicial, government, measures or mediation. Member states having already transposed the directive have opted for different solutions. My personal preference extends to the resolution of conflicts by mediation.

Enforcement

Counterfeiting and piracy, and infringements of intellectual property in general, are a constantly growing phenomenon which nowadays has an international dimension, since it is a serious threat to national economies and governments. I will discuss briefly the Belgian and European measures that are currently under discussion to combat this plague.

Under the previous legislature, the Belgian government introduced a bill of law that aims to simplify the civil procedures in cases of counterfeiting and piracy.

Until now, Belgian law prohibits simultaneous claims regarding counterfeiting and claims regarding unfair competition. The trade in and distribution of counterfeited or pirated goods constitutes, nevertheless, clearly an act of unfair competition, and there is therefore no sound reason to prohibit a simultaneous action.

Furthermore, the bill of law contains a number of articles that will render the seizing (“beslag”) of pirated or counterfeited goods more efficient. The bill of law also proposes a centralization of the litigation with regard to intellectual property rights. The purpose of this is to create a body of specialized magistrates and render the judgments in these cases in Belgium more coherent: all too often, litigators are frustrated with decisions that are quite absurd or penalties that are ludicrous, taking into account the economic damage suffered.

Apart from an adaptation of the civil procedures, we are also working on a bill that will adapt our customs and excise legislation and our criminal codes. I hope to be able to brief you more in detail on this on a next occasion.

In the European Internal Market, the phenomenon of counterfeiting and piracy, and infringements of intellectual property in general, takes particular advantage of the national disparities in the means of enforcing intellectual property rights. These disparities seem to influence the choice of where counterfeiting and piracy activities within the Community are carried out, and this means that the counterfeited and pirated products are more likely to be manufactured and sold in those countries which are less effective than others in combating counterfeiting and piracy. They therefore have direct repercussions on trade between the Member States and a direct impact on the conditions governing competition in the Internal Market. This situation leads to diversion of trade, distorts competition and creates disturbances on the market.

The disparities between the national systems of penalties, apart from hampering the proper functioning of the Internal Market, make it difficult to combat counterfeiting and piracy effectively. This leads to a loss in confidence in economic circles in the Internal Market, and hence to a reduction in investment. In addition to the resultant economic and social consequences, counterfeiting and piracy also pose problems for consumer protection, particularly when public health and safety are at stake. Increasing use of the Internet enables pirated products to be distributed instantly around the globe. Finally, this phenomenon appears to be increasingly linked to organised crime. Combating the phenomenon is thus of vital importance for the Community especially when these illegal activities are carried out on for commercial purposes or cause significant harm to the right holder.

The aim of the proposal of Directive, the Commission presented recently, is to tackle this situation by harmonising national legislation on the enforcement of intellectual property rights. Of course, I will take the developments on the European level into account when finalizing the two bills of law I spoke about earlier on.

Monitoring of rights management organizations

Right management organizations, as all other intermediary organizations in the rights management business, bear an important responsibility towards those rights holders they represent, through reciprocal agreements with sister organizations or directly with the rights holders themselves.

This all the more important when the legislator, as is the case in Belgium, has created a legal license for reprography, with specific rights and obligations for all parties involved, including the possibility to search premises.

The Belgian legislator rightfully claimed in 1994 that not the whole playing field of rights management should be left to the contractual relations between parties and created a special control service.

Today, the role of this Belgian rights management organization control service is subject to discussion. First let's indicate what is not the role of the control service: direct intervention with the daily management of the rights organizations and the contractual relationships they have built. However, the control service should be able to be consulted in case of “class action suits”, this is when the rights management organizations enter into dispute with other players, other groups of interest, such as the manufacturers of audio equipment, the press, the libraries, youth organizations etc.

Very often, conflicts can be resolved prior to escalating in public. On the other hand, the control as it has been embedded in our legal framework, protects the individual author or composer against a management of his rights that is not always adequate. Organizations, such as IFFRO and its members, should strive to draw up a set of best practices for rights management, call it a “Corporate governance for copyright”. This is not a different set of corporate governance rules but an addition to the existing set, justified by the mere complexity and the inherent contractual and international character of relationships built by rights management.

It is my understanding that the European Commission currently investigates the opportunity of adopting a directive on the issue of controlling rights management organizations. I think both France and Belgium, that have some experiences with this, will be able to make a number of useful contributions. Meanwhile, the bill of law that was developed under the previous legislature will be scrutinized again and corrected where necessary.

Concluding remarks

Ladies and gentlemen,

Allow me to make the following concluding remarks.

As you have noticed, a number of important bills of law need to be adopted by the Belgian government in the months to come. These bills cover a wide range of topics but are nevertheless closely intertwined: they still deal basically with rights, rights holders and rights management.

The advent of the internet and the growing globalization may have posed a number of problems and some times challenges that seem insurmountable, but I am confident that the philosophy, which is at the very base of our copyright law, will survive: striking the right balance between the interests of the rights holders and those that use their copyright protected works. In the meantime, the several hundreds of thousands of authors should also strike the proper balance in their relationships with the rights holders organizations.

Of course, the above precludes that all legislative measures in the field of copyright should be discussed with those immediately concerned and that the measures are closely co-ordinated so as to safeguard a coherence in the legal framework governing our copyright.

Thank you for having given me the opportunity to adress you here today. I hope your general assembly meeting in our beautiful capital Brussels, will be fruitful.