

PACA CONFERENCE –Oct. 26, 2008

Sunday –second session notes

Enforcing your copyright in the US

Nancy Wolff- moderator

Sylvie Fodor –CEPIC Orphan works in Europe

Ellen Boughn –expert Witness and Appraiser

Dan Nelson- Intellectual property lawyer

Fier Wilson-Picscout

Sylvie Fodor gave an extremely detailed and comprehensive 30 minute overview of Orphan works legislation in Europe. Her powerpoint went quite quickly so it was difficult to get all of the details of each law that is currently in force. But, briefly summarizing, the EU is directive based in terms of legislation. That is each state has guidelines for following when dealing with Orphan works. It is never perfect but it does provide for loopholes and exceptions, unlike current US laws.

EU history: 1993 introduced Copyright Terms Directive as basic legislation. Each state can adjust and enact their own versions.

2001-Information Society Directive-allows optional exceptions like reporting news or personal copying.

i2010 Digital Libraries Initiative is similar to Google. In response to this project, the EU has had to address some orphan issues. They currently are favoring a more cautious position but still a soft law as opposed to hard laws to deal with orphan works. Favor recommendations as opposed to amendments. 19 July 2008 Green Paper-available on the internet on Knowledge Economy.

In Europe, an Orphan Work is defined as “cannot be identified or located” Diligent searches are recommended, but member states are expected to work out their own conditions. Denmark has passed legislation in July 2008 and Hungary is expected to soon.

UK is closest to US in terms of requirements. Gowers Review on IPR is basic legislation. 2001 Directive should be amended. Guidelines on reasonable search should be amended. They want EU to be involved. Also collecting societies should not be the only ones with a say.

Germany: Signal code 197BGB- puts monies into an escrow account in case artist shows up to claim the copyright fees.

France: Initiated the i2010 DL project. President of the French Public Library pushed a response to it and Google. For music, movies and videos, there is good registration already, so no problems there. But for still images, mandatory licenses are registered through the collecting societies and credited in publications as DR (Reserved Rights) if the artist is unknown.

Orphan Works are really an issue in the US and EU both. Not the same balance tho between the owners and users. France's penalty is double the license fee and in Germany violators just pay the basic license fee to the copyright holder if caught violating the copyrights. No real urgency to comply. Collecting societies are prevalent in Germany and France also. No single solution for all of the EU.

Nancy Wolff—Comments:

US—Senate version passed. Still in the House, but may or may not pass before this session is over. Does require diligent search. We can use appropriate technology to enforce infringement. Picscout is one tool.

Picscout comments by Fier Wilson:

Only 10% of usage is being licensed. Lots of unintentional use. To follow up infringers they use their software but there are others like Tin Eye and Google image. Stop infringers by turning them into clients. Resolve by billing the amount that would be due. Helpful to have in house counsel to send notice of take down letters. ISP's can sometimes be a way of turning people in and the ISP will remove the site...the ISP's used to be a safe harbor, but not anymore since they are afraid of litigation. Very difficult to resolve sometimes with repeat infringers. Helpful to send FAQ to uninformed infringers.

Need to look at the nature of the infringement. US law says holders can still sue for damages with or w/o registration.