



SG07-1296
EVA Jubilee Conference
Brussels, 20/09 2007
Source language: English

22/10/2007

Visual Art Societies in the World Community of Collective Management Societies

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**EVA Jubilee Conference
(Brussels, September 20, 2007)**

1. Introduction

It is with the greatest of pleasure that, on behalf of CISAC, I convey to EVA our heartfelt congratulations on this landmark anniversary. I was truly honoured by the invitation from EVA to deliver this key note speech on the “Visual arts societies in the world community of collective management societies”. At no time in EVA’s years of existence has this subject been more pertinent than today.

On the occasion of this ten year Jubilee, I thought it might be appropriate to raise ten issues with you relating to visual art societies in the collective management world. I am not sure if these ten issues are a celebration of the ten years that have been – or a tribute to the ten years that are to come. Nevertheless, each issue is, my view, worthy of further consideration on this important day.

2. The Ten Issues

I now turn to each of these ten issues in turn.

a) CISAC and the visual art societies today

The first issue which I would like to address today is that of CISAC and the visual art societies. I know that I speak on behalf of all CISAC members when I say that visual arts societies occupy an important position in the world community of collective management societies. Whilst the financial muscle of musical works societies cannot be denied, it must be remembered that CISAC has amongst its members some 50 societies administering rights in visual works – that is a quarter of societies represented by CISAC. Indeed, CISAC unanimously recognises the importance of ensuring that all categories of copyright receive the attention which they deserve. This recognition is enshrined in CISAC’s statutes in several ways:

- i. Firstly, visual works are rightfully given equal prominence in CISAC’s objectives;
- ii. Secondly, statutory provisions introduced over the last few years have ensured equitable representation of the visual arts on all of CISAC’s statutory organs;
- iii. Finally, CISAC has established a permanent statutory body of visual art societies called CIAGP which ensures that administrative issues pertinent to the interests of the visual artist are resolved. The CIAGP is one of the most effective and productive of CISAC’s so-called “ authors’ councils”

Recognition of the importance of the visual arts is also present within the Secretariat. Reflecting CISAC’s commitments to visual works, I am pleased to confirm that I have recently appointed Silvina Munich as Repertoires & Creators Relations Director.

Silvina Munich’s brief is to:

- i. ensure that all categories of works are equitably and efficiently serviced by CISAC;
and

- ii. liaise with other organisations, such as EVA, which share CISAC's desire to further the cause of the creative community.

Silvina will be known to many of you. Silvina is ably supported at CISAC by CISAC's Regional Directors who have been instructed to give the highest priority to visual art works in 2008.

Developments on the technical front have also occurred within CISAC. A members group of visual art societies have taken concrete steps to ensure that all visual art societies are able to adapt to the demands of tomorrow's world. Discussions within the working groups are at an advanced stage on several topics, including:

- i. The development of new licensing/collection techniques;
- ii. The creation of centralising structures which are able to respond to the on-line demands of multimedia international players. The initiative is called "Online Art" and it has the capacity to license the repertoire of the societies which have signed up to the initiative on the basis of a common tariff set by OLA. Users are able to approach OLA through any of the participating societies and obtain a worldwide on-line license.
- iii. The adaptation of the well known CISAC standardised database tool, the IPI, which contains details of relevant interested parties and which has successfully been used for many years in the musical works field ; and
- iv. The establishment of societies in countries where hitherto there have been no visual art societies (such as in Argentina or in the Philippines). CIAGP will meet in Singapore next year.

In short, CISAC will continue to strive on behalf of visual artists. We see visual art societies as an important member of the CISAC family. A chain is only as strong as its weakest link. If CISAC's servicing of the visual art societies is weak, then CISAC itself will be weak. CISAC must therefore continue to reinforce its service to the visual art societies.

b) CISAC and the visual art societies tomorrow

This brings me naturally to the second subject which I would like to discuss today, namely the issue of CISAC and the visual art societies in the future.

CISAC is currently finalising its strategy for 2008. High amongst our priorities are:

- i. The further strengthening of CISAC's activities in the visual arts field;
- ii. The continuing perfection of information tools which are common to AGP societies. In particular, CISAC is examining the introduction of a common distribution format and a standardised method for identifying interested parties. For this purpose, CISAC is able to draw on the considerable work which has been carried out in the musical works field, adapting that experience to answer the needs and specificities of other categories of works, including visual works.

- iii. The extension of CISAC's recently introduced Professional Rules to all categories of works. As we all know, times are changing. Quite rightly, societies are being asked to demonstrate high standards of corporate governance, transparency and accountability. CISAC is dedicated to ensuring that societies maintain and even improve their traditional values in this regard.
- iv. the reinforcement of CISAC's training programme in the visual arts during the course of 2008; and
- v. Further lobbying on behalf of the visual arts societies in close cooperation with EVA.

c) CISAC and EVA

Having now raised the important subject of EVA, I turn to the third of my ten topics, namely the symbiotic relationship which exists between CISAC and EVA.

For the past ten years, CISAC has had a long tradition of close – and, crucially, warm - cooperation with EVA in the furtherance of the interests of visual artists. That cooperation bears testament to the truism that, working together, we can achieve considerably more than we could ever achieve on an individual basis.

Examples of CISAC/EVA cooperation can be found in the joint conference which was held almost a year ago to the day on 21 and 22 September 2006 in Budapest. The conference was the direct result of CISAC's and EVA's proactive policy of boosting protection of visual arts in the different regions and had as its aim to:

- i. expand the theoretical and practical knowledge on the collective management of visual arts; and
- ii. update participants on the present situation in the EU.

The conference proved beyond any doubt that such events are a wonderful vehicle for promoting the collective administration of the visual arts.

Another example of the close cooperation between the two international organisations was the visit within the last year or so of CISAC's Director for European Affairs, Mitko Chatalbashev, to the Czech Republic in the company of EVA to help the development of the local society.

d) Droit de Suite

I turn now to my fourth subject, namely the droit de suite.

The continuing legislative expansion of the artists' resale right and the consequential economic benefits inevitably associated with that expansion must surely be one of the principle features of the forthcoming ten years. The introduction of such right in potentially significant markets such as the United Kingdom can only have a positive effect on the interests of the creative community. In my view, the challenge for visual art societies will be to ensure that newly introduced rights are controlled by the creative community for the benefit of the creative community, rather than by those third parties who exploit the community's creations.

e) Cultural diversity

One must not forget, in all the talk surrounding the digital revolution that, cultural goods are unique in nature. As Jan Figel, the European Commissioner for Education, Training and Culture and Youth stated in his opening speech during CISAC's recent Copyright Summit, "*Culture is a necessity, not a luxury*".

As Commissioner Figel also pointed out, if culture is necessary for the world's economic and political well-being then copyright is as well.

In my view, the important role which CISAC's and EVA's members play in maintaining Europe's rich cultural diversity will be a central feature of the landscape within the next ten years. It is this contribution to cultural diversity which will help to protect societies as they come under increasing pressure from regulatory authorities.

To summarise this principle, in an ever-changing media landscape, both CISAC and EVA must encourage cultural diversity and the promotion of minority cultures.

f) Private copying

I turn now to the sixth topic, namely private copying.

As you will be aware, the European Commission proposed measures during the course of 2006 which would have had the effect of threatening the creator's right to receive royalties from private copying. You will also be aware that the initiative was based on the false premise that Digital Rights Management systems were now the panacea which permitted the rightsholders to control the copying of each work – thereby making private copying redundant.

This first argument was particularly specious in the visual arts field since everybody is well aware that DRMs are not developed in this field. Both CISAC and EVA together with others helped vociferously to defend the creative community's interests in Brussels. However, we need to be vigilant. Opponents of private copying royalties are powerful, wealthy and well-connected. Without doubt, these opponents believe that they have lost the battle – but not the war. The campaign will certainly be reopened.

Both EVA and CISAC and indeed all rights holders' organizations need to be prepared for the day when this issue comes up again.

g) Copyright law

The seventh topic which I would like to raise today is that of copyright law.

The challenge in the field of copyright law will be to ensure that such law keeps pace with developments in the market and in a multi-territorial world. For example, it is essential for organisations such as CISAC to continue to ensure that the definition of an artistic work is given its widest possible meaning – and in particular that such definition is wide enough to cover all forms of artistic expression.

Furthermore, following the failure of discussions at WIPO on a new treaty for broadcasters, it seems likely that a review of the exceptions and limitations to copyright will soon fill the void in WIPO's activities. Civil society interests which are traditionally hostile to copyright are active and well-mobilised. These interests will vociferously argue that the scope of exceptions and limitations should be extended. The creative community will need to be particularly active to counteract that threat.

h) Competition law

The eighth topic today is that of competition law.

There is no doubt that authors' societies continue to face powerful users who are quite prepared to use the full force of competition law to negate or otherwise neutralise the exclusive rights given by copyright laws.

The main focus for this regulatory activity is at present in the musical works field. However, in my view, there is a real danger of "competition law creep" and of Commission-related issues spilling over in the visual art field. Forewarned is forearmed – it is therefore perhaps wise to spend a couple of minutes discussing what musical work societies have already experienced.

The Commission sent a Statement of Objections to CISAC and the EEA Societies in January 2006. The "SO" set out certain objections to the contractual network between European musical work societies in so far as the network related to transfrontier forms of exploitation

CISAC and the overwhelming majority of the affected societies made it clear that they did not agree with the SO's findings. Nevertheless, they continued discussions with the Commission on a possible "amicable" settlement. Eventually, CISAC and 19 "Signatory Societies" agreed to offer certain "Commitments" (without any admission of liability). These Commitments were:

- i. *exclusivity* – CISAC and the Signatory Societies agreed formally to reconfirm the absence of exclusivity from the society network of contractual arrangements;
- ii. *membership* – CISAC and the Signatory Societies agreed to re-emphasise the right of an EEA creator and publisher to move freely between EEA Societies.
- iii. *territoriality* – Each Signatory Society agreed to grant rights in its repertoire to another Signatory Society so that such other Signatory Society might grant multi-territorial EEA internet, satellite and cable retransmission service licences for such rights (subject to several important exceptions, provisos and qualifications).

The Commission has since been examining third party comments on the proposed Commitments before deciding the next move for musical societies. In the meantime, visual art societies need to remain vigilant.

i) *The digital environment*

No presentation would be complete without mentioning my ninth topic, namely the collective management of the visual arts in the digital environment. At a time when the digital environment is rapidly evolving, bringing with it major changes to our everyday lives, what are the implications of this rapid evolution on visual art societies? What do I believe are the imperatives for societies in today's digital world?

It is perhaps fair to say that technological changes are irrevocably changing the face of the visual arts industry, with such changes inevitably affecting the ways in which copyright works are created, produced, licensed, disseminated and enjoyed. Of course we all know that a significant feature of the visual arts world is that analogue reproductions will inevitably be an important market for many years to come. However, for the creator, the digital environment has meant a more significant degree of freedom and a potentially closer degree of contact between him and his public. The creator is accordingly liberated from some of the past practical constraints and is able more easily to disseminate his creations to the public. In short, the new digital environment has empowered the creator and given him access to a new world of possibilities.

For the consumer, the digital environment has significantly increased and varied the supply of visual art, thereby presenting him with a multiplicity of hitherto unknown opportunities to exploit cultural content.

As for the entrepreneur, the digital environment has seen the birth of new services, all of which are anxious to take full advantage of alternative revenue streams.

So where does all of this leave the collective administration of visual works?

Naturally there will be challenges. The storage of visual and other works in databases and their subsequent on-line communication to the public have created a new category of users with direct contact to the creator. The challenge for societies will be to ensure that they continue to respond to a changing market in a way which benefits the artist – but also which benefits the user.

j) *Solidarity*

Last but not least is my tenth topic, that of solidarity.

In CISAC's view, if visual art societies are to thrive in the world community of collective management societies, the artistic community must demonstrate solidarity – solidarity between the individual artist and his society – solidarity between one collective management society and another – solidarity between CISAC and EVA.

The European artist is without doubt facing a defining moment in his development. The digital environment; the expansion of the European Union; the increasingly regulatory tendencies in Europe; the changing face of those who wish to exploit the artists work – all these changes naturally create a potential instability. However, as the old proverb goes "with danger, comes opportunity". Provided that all parts of the artistic community remain united, those opportunities will inevitably be realised. Societies still represent the best chance for the creator – even the most successful creator - to counter the economic muscle of the multi-nationals who will without doubt continue to be a dominating force in the digital environment.

In short, creators cannot meet the challenges alone and need established collective management organisations to guide them through the technological minefield. In CISAC's view, the solidarity, the security and the collectively offered by authors' societies represent the best way to respond to the technological challenges and to protect the interests of the individual creator.

3. Conclusion

So in conclusion, CISAC sends its renewed congratulations to EVA and to EVA's members on EVA's tenth jubilee. EVA has successfully championed the interests of the visual arts community for a full decade and CISAC welcomes this success. Furthermore, CISAC looks forward to strengthening its bond with EVA.

I believe that it was Abraham Lincoln who once said:

"The strongest bonds of human sympathy outside the family relation should be one uniting working people of all nations and tongues and kindred"

Both CISAC and EVA are living proof of the veracity of this assertion. Moreover, the bond which unites CISAC and EVA guarantees that visual art societies will continue to occupy their rightful place in the world community of collective management societies for the next ten years – and indeed, for the next ten decades.