Symposium: Collective Management of Copyright: Solution or Sacrifice?

Welcome and Introductory Remarks

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Let me say a few words about why we decided to focus on collective management of copyright for our symposium this year. Collective licensing and collective management have long been part of the U.S. copyright landscape. In particular, the performing rights organizations, ASCAP, BMI and SESAC,[1] license performing rights in music, and almost all composers and music publishers belong to one of those organizations. There are, of course, later-developed collective management organizations in the United States. One notable one is Copyright Clearance Center ("CCC"), which was developed after the 1976 Copyright Act, largely to license photocopying of textual materials. But the world has changed since then, and the scope of CCC licenses has expanded to meet the demand for audiovisual and digital forms as well. Still, outside the field of music, collective management organizations are not as prominent or as widely adhered to in the United States as they are elsewhere in Europe and around the world.

Two developments have brought the concept of collective management more currency in the United States. The first is the ever increasing ability of the Internet to provide vast quantities of information and entertainment content to people. Because it is technically possible to digitize and make available digitized copyright content on a grand scale, many people think it should be more easily available as a legal matter, without the necessity of negotiating individually with each right holder, a process that is made even more difficult by the fact that many of the works are orphan works. Over the past decade or so, a number of commentators have suggested that collective licensing is the solution, arguing that both rights holders and users would be better off if it were implemented.

The second development that has generated discussion about collective licensing and collective management is the settlement in the Google Books case, which would create a Book Rights Registry to manage proceeds from Google's use of the

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1. American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; Society of European Stage Authors & Composers.

books, distribute them to right holders, and serve as intermediary between Google and the authors and publishers, among other things.[2] Whatever happens with the settlement, it is clear that the idea of digitizing the analog works in U.S. libraries has taken hold, and a collective licensing mechanism may be an important—and possibly indispensable—part of doing that, by agreement or by statute.

We decided on the topic for our symposium because it seemed to us that often the suggestions for collective management and collective licensing are presented as the answer to the problem without any serious attention to the details. How are such organizations created? What problems do they face in their management and in their efforts to enforce the rights of their members? These are the types of topics we will explore in this morning's session. Then, in the afternoon, we will talk more specifically about collective licensing in the context of digitizing analog materials. And in the second panel, we will talk about alternatives to collective licensing.

We are extremely fortunate today to have Professor Daniel Gervais to give our keynote presentation. Professor Gervais is on the faculty of Vanderbilt Law School, and you will see from his biography that he has a distinguished career in international intellectual property law and is extremely knowledgeable about collective management organizations. His talk will set the stage for today's events. He will speak about the landscape of collective management organizations.

2. *See* Amended Settlement Agreement, Authors Guild, Inc. v. Google, Inc., 92 U.S.P.Q.2d 1956 (S.D.N.Y. 2009) (No. 05 CV 8136(DC)).