

Introduction

JANE GINSBURG

Columbia University
New York, United States of America

Good afternoon. This is topic 2, which is a presentation of the report of the ALAI study group on private copying. The members of the ALAI study group, appointed to look into the problem of private copying, particularly but not exclusively, in the digital environment, are Thomas Dreier, Pierre Sirinelli, Jaap Spoor, Nelson Landry and myself. Together, we elaborated the questionnaire which was sent out to the national groups. The report that follows is based on the responses that we have so far received. I would like to take this opportunity to thank very much the national groups for their hard work in replying to this complicated questionnaire. Those groups are Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Spain, Switzerland, Sweden and the United States.

The presentation that follows will be divided into various sub-parts. Parts A and B on the overall nature and outline of national laws addressing private copying were prepared by Hannah Shay Chanoine and Margo Crespín of the Columbia Law School and will be presented by Margo Crespín. Part C on regimes governing analogue private copying was prepared by Stefan Martin of Canada, who is a lawyer in private practice and is also editor in chief of the “*Cahiers de la propriété intellectuelle*”. Unfortunately, he was not able to be here, having other commitments in Canada, so I will summarize some of the highlights of his report. I urge you to take a look at the excellent charts that he prepared in connection with that report. Part D on legislative activity concerning private copying in the digital domain was prepared by and will be presented by Antoine Latreille. Part E on implementation of the European Information Society Directive, Article 5(2)(b) was prepared and will be presented by Thomas Dreier.

Private copying is all around us. Indeed, right here at this Congress. Some of you might have noticed that, during the performance last night, a number of the musicians were playing from photocopies. Photocopies made to facilitate their performance, so that they did not have constantly to turn the pages of their printed scores – scores which they also purchased and owned, of course!

Assume, then, that a first hypothesis of private copying concerns the copyist’s making an additional copy for convenience from a copy she purchased. But there are, of course, other hypotheses. Suppose for example, that those musicians had

borrowed their scores from friends or from a library and then had photocopied them at machines available to the public in a library. Or perhaps the musicians had gone to a for-profit copy shop to make the copies. What is the effect of those facts on the possible conclusions as to private copying? What if the musicians had scanned the scores and had e-mailed the scanned scores to themselves? Are these still examples of “private” copying? What if after scanning the score, they also e-mailed it to lots of other people? What if they put it up on a web-site for other people to download? What if there were a web-site titled www.doobee-doobeedoo.com where great hits performed by Frank Sinatra and local ALAI specialists were available for public download? Does it make any difference if what was made available on www.doobee-doobeedoo.com were a phonogram, or a videogram?

These are all questions that our panelists will be addressing, so I will now turn it over to them.