Budapest Manifesto
What do artists want?
(Translation)

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There is an unquestionable need for an adequate balance between the protection of rights, their application, and the repercussion of all this for the creativity of artists, as an essential condition to guarantee the future of creativity, which is closely linked to the future of artists and authors.

Freedom, justice and culture; these are the pillars upon which we base our position and action.

Millions of artists demanding that international organizations like WIPO, and governments, political parties and institutions give attention and assistance to artists in order that they may obtain effective legal protection for their intellectual property rights.

There are millions of artists – and not just a few rich, famous ones – who are asking politicians for justice, intelligence, understanding, and responsibility for the future. All these artists promote, every day, creativity and cultural diversity in the world. A great majority of them do not have great names; they do not enjoy generous sponsorships; and their future is based on and sustained by their intellectual property rights.

It should also be recognized that intellectual property is an inherent right of human beings, just like the rights to freedom and integrity.

The protection of artists' intellectual rights has become a 'historical mission". A duty to be fulfilled for thousands of artists who have placed their confidence in their management organizations; in us. And we are going to fulfill this mission.

The threats against artists and their rights come not only from users, but also from equipment and recording media manufacturers and importers – formerly in respect of cassettes and now of CDR and DVD-Rs – as well as from media conglomerates and Internet service providers. They provoke division, lethargy and fear of the future in the artists in an irresponsible manner.

Those who try to abolish collective management, which is what truly protects all artists, making the effective application of their rights possible, commit a grave mistake.

The machinations and dubious tactics that would strangle the rights of the artists, try to undermine fundamental legal principles and to deny all the well-

established philosophical basis for intellectual property legislation duly recognized in the international treaties and national laws.

As a result of all this we are living in a difficult historical period without precedent.

On the one hand, in several countries at least, appropriate legislation has been adopted to protect our intellectual property rights; on the other hand, however, this legislation is ever more frequently challenged in the stage of their practical application.

We artists are worried when we have to be faced with the possible disintegration of our intellectual rights; in particular when we can see that the politicians and the governments themselves tend to accept the demands of producers and telecommunication companies (of whom, sometimes, they are owners or co-owners). As a result, the artists, in certain countries, have to try to find allies among the opposition parties, because they are not able to establish an appropriate communication with the parties in power.

Intellectual property finds itself in the epicenter of the new economic challenges created by technology and trade, regarding the situation of artists and authors, and it is sometimes forgotten that the development of culture and creativity depends directly on the quality and the level of intellectual property protection.

Technology alone does not serve for anything. Without content, the communication highways and digital systems would not be able to function. Musical and audiovisual works and other creations contribute the very soul for technology, without which it would not be able to offer what the public needs.

Consumer groups, telephone companies, multimedia firms, service providers, etc., have combined their forces with the makers and importers of equipment, with the intention of debilitating the protection of intellectual property rights, and confront the creative industry.

It is a great mistake because, without rights, creators will not have anything to negotiate with the makers and importers of equipment. This would lead to inactivity of artists, due to the lack of incentives and benefits, and would leave the communication highways without content. Without rights there would be neither creation nor products.

The industry, authors, and artists have survived in the analog era despite widespread copying. However, today the problems created for the artists and for the creative industry is greater because the high quality of digital copies turns them into perfect clones and possible master copies of production. This, along with the facility of distribution of these perfect copies, the economy of creativity has been put into danger.

Consumers and artists need to be on the same side, that is, on the side of the law, the protection of rights and creative development**.**

It is not acceptable that representatives of consumers are giving support for piracy through the digital network, sponsored by the phone companies that seem to prefer, for the moment, to have more unscrupulous clients, ready to pay a fee to use their services and to get cultural products without any respect for intellectual property rights, rather than to respect and protect those rights, and to guarantee by this the future of electronic commerce.

At the same time, the passivity and lack of action and appropriate means of the authorities has led to a spectacular rise of "conventional" piracy, turning illegal sales widespread in the streets, making the artists' situation even worse.

Piracy is a crime:

It undermines the law. Pirates mistreat legitimate interests related to creative works and interpretations. Pirates do not pay taxes. Pirates do not invest in the creation of new works and interpretations. They do not create legitimate jobs.

The international mafia controls piracy and use, in the street, immigrants without job, housing and future, in order to create pity towards them and thus reduce in the eyes of the public the social and economic importance of the harm they do. They are considered "poor people".

These "poor people" – who act as mere servants of the "rich people"; that is, the mafia that controls piracy worldwide – are turning artists and authors into real "poor people".

Users refuse to pay for rights:

These days and for a few years already, users are delaying, frequently with some legal "hairsplitting", the payment for intellectual property rights, with the declared or obvious intention of not paying. It is what is called "*the user's rebellion".*

Later, when the artists, after years of litigation, start obtaining favorable sentences, users question the fees, the legitimacy of those who are to collect them, etc.

There is no real conscience of how important it is strategically for users and consumers to remunerate creators, who are those who guarantee the continuity of content, on which the users' businesses and the availability of cultural products to consumers depend.

The CD industry finds itself drifting:

It reduces and concentrates their activities, local rosters and personnel. It rescinds a great number of contracts, and it does not renew many of the existing contracts. It does not employ new artists, with a few exceptions. Each time there are fewer recordings and production budgets are lower.

The "television personalities" produced for the masses steal space and time:

Public television channels dedicate more and more space to stupid programs, devoid of content, in which they show their fake "heroes and heroines" consuming a great part of their programming time, leaving less and less space for artists.

The rest of the programming is reserved for certain musical or artistic phenomena "of the masses" broadcast for hours and hours, in which artists are puppets of these programs' "ideologues".

Artists complain that these phenomena make up news bulletins and information programs, leaving very little space for concerts, album presentations, promotional activities, etc.. As a consequence, there is almost no space for a normal project of an artist or group that does not fit into these "accepted" schemes for radio or television programming. As a consequence of these politics, the great majority is left out, without space.

The absence of appropriate programming:

The institutions that, with public money, hire firstly these "television personalities", paying great sums, do not care that they leave hundreds, thousands of artists, musicians, technicians, and other collaborators and entertainment industry workers unemployed to depend each year on some temporary summer hiring. Surely they don't realize the irreparable damage they do to professional musicians.

We are dedicating all our forces, knowledge and astuteness to provide the artists with firm and applicable legal instruments, seeing that the immediate future that we can see is not promised to be sweeter, in legal and economic terms, than the present of which we are suffering.

To transform this future, is the goal that we have accepted and that with which we have affronted, with dignity and good spirit.

Seeing what comes to us from above, collective management organizations have become crucial and should play a more active role in pursuing their objectives, giving rise to the creation of groups and coalitions that defend artists' interests, and not just in the field of intellectual property.

The European Parliament approved, in February 2001, the directive of copyright and related rights in the Information Society, with the aim of granting protection for artists, authors and producers in the new digital scene.

This legislation has been the object of strong pressure on part of the artists and cultural industry, on one side, and the telecommunication companies and equipment manufacturers on the other.

On the occasion of the voting about the directive, I sent a letter to the deputies of the European Parliament, and to various political parties and institutions, in name of the more than 500,000 artists who, in Europe – also as here and now in Budapest, in the name of the world's artists – ask politicians for justice, intelligence, comprehension, responsibility and a sense of the future.

The great majority of these artists don't have big names, nor sponsorships, and their future is based on and sustained by their copyrights.

The support that the artists demand is not just to finance some great and well-known performers, but to provide everyone with the legal weapons they need to move, develop and compete in the modern world, in the digital environment.

There are thousands of artists who, for necessity and as a matter of adaptation to the new environment of creativity and commerce, have to produce their own recordings.

All these thousands of artists do not have much capital behind themselves, but are able to produce a lot and are the immediate future of the creative musical and audiovisual industry.

The Internet provides performers unique opportunities to create and communicate directly with the public, without the need of any intermediary; however, this is not possible without effective legislation behind them. We artists are not asking for preferential treatment. We want just, efficient, and modern laws that protect freedom of expression, cultural diversity, trade, the industry and free competition.

The result of the Information Society Directive is not the worst we were afraid of, but it doesn't satisfy the aspirations and necessities of the artists for the protection of their rights.

We artists had placed much hope in this European Directive, because we understand that this legislation would immediately extend to Latin America and other regions.

After the first reading of the draft directive, in February 1999, culture had won, the digital renaissance and the sensation of feeling that politicians had been sensible and were going to protect the future heritage, the biggest and most important for humanity: the artistic, intellectual heritage.

However, four years later, things have not improved much: some international consumer associations, with phone companies and equipment manufacturers, on one side, and the street mafias, on the other, try to silence the voice of the artists, sending them to fight against the consumers, self-named "men on the street", whom, defending piracy and chaos, want to freely obtain the product of the intellectual work of other "men on the street" who are the creators.

All this is coming to an elevated misappropriation of interests. We artists do not want to be accomplices, and we alert governments everywhere so that they should not be either.

This has nothing to do with the digital renaissance and democracy that the internet augmented; the horizontal network, where freedom of expression was going to be respected, censure abolished and unlimited communication made possible.

And the respect for others? And the law?

The new technologies are revolutionizing the concept of object and use in the field of intellectual property.

We have defended and we defend that concept of intellectual property that exists in Europe and has extended to Latin America and other world regions opposite to the copyright system that exists in the United States.

However, after the persecution and closing of the free illegal systems of diffusion and downloading of music – Napster, Autogalaxy, Kazaa and others – the agreements about private digital copying that have been taken in the United States, and the condemnation of the MP3, we could think that in the United States they are granting protection to their artists better than in Europe and Latin America.

Who was and/or is behind the creation and development of Napster?

The great invention of Napster has created a great lure to bait millions of unwary people that, excited by pillaging, the free cost and the morbid curiosity of piracy (getting something from others without paying) have constituted, without any cost to its inventors, a commercial nucleus of great potential and global reach.

Millions of totally free digital recordings of all types, eras and styles have swelled into an enormous sound archive, providing market research that would have taken many years to carry out, concentrating potential clientele to be absorbed, through agreements, by multinational record labels. A real display of commercial strategy and design.

The first shot against MP3.com confirmed the rights of the big record companies: but who really cares about the rights of the performers?

In reality it is the artists' performances that have been used without authorization by MP3.com. That way, it seems more than reasonable and just that the performers get part of this money that the record labels are going to perceive due to the copyright infringements through MP3. The producers should be compensated, but not with the performers' share.

It is fundamental to recognize that intellectual property is an essential part of the information society.

Before this array of situations, there is a question to pose:

What do artists want?
What level of protection do they really need?

Artists, in the new configuration of markets and commerce, need:

1. THAT POLITICIANS, LEGISLATORS AND AUTHORITIES MAKE APPLICABLE LAWS AND GUARANTEE THEIR COMPLIANCE.

It is absurd to grant artists a right of making available that supposes, in theory, the possibility of arriving, without intermediaries, to a great quantity of people, without territorial or border limits, if this right is not subject to collective management, since the artist himself cannot enforce this right, nor collect the remuneration, nor distribute it.

The right to make available to the public should be, necessarily, exercised through mandatory collective management, like the other rights of remuneration.

It is unacceptable that, in order to comply with laws in the case of which the appropriate exercise has been delayed, in some cases, more than one hundred, artists have to go constantly to the courts to fight with the powerful users' associations that, as representatives of numerous voters groups, pressure governments so that these laws be not applied and that the protection of these rights be cut back.

2. THE IMMEDIATE IMPLEMENTATION OF THE RIGHT TO REMUNERATION FOR PRIVATE COPYING IN EVERY COUNTRY IN WHICH IT STILL HAS NOT BEEN IMPLEMENTED.

It is useless to argue about rights and legality if legislation that should compensate for the prejudices of new technologies, used in the domestic sphere, to the rights of artists, authors, and products, is not applied in due course.

There have already been many years of the application of private copying levies in Europe and other regions.

Why is it not applied in Latin America and Asia?

Does it not equally damage European artists if this legislation does not extend to the regions where their rights are used?

Is it not embarrassing that many artists are recognized worldwide by the public, while their country's governments do not recognize for them something as extended and old as the right of compensatory remuneration for private copies?

Why has the European record industry been so combative in obtaining the levy, making a common cause with artists and authors, and refuses to collaborate in South America, in spite of the fact that the same multinationals that control, in both places, about 85% of the record business?

Now for several years in Europe, the IFPI has argued that piracy, in the analog sphere, is "cured", in part, with the application of compensatory levy for private copying. What are their plans now? IFPI has indicated that it is not going to

"fight nor collaborate" for the implementation and development of private copying legislation in Latin America. To which interests does this position respond?

The right of reproduction for private copying is beneficial for creators, producers, the legal industry and consumers, while it helps regulate the market at the same time.

Governments must be asked: are they able to adequately protect their artists?

3. THE EXTENSION OF THE TERM OF PROTECTION FOR ARTISTS TO THE SAME LEVEL AS FOR AUTHORS.

We have turned with this demand several times, to the President of the European Parliament, to the WIPO and the other international organizations, to parliaments and national authorities.

The Latin American and Caribbean Group (GRULAC) agreed upon and formally presented this petition at the session of the WIPO Committee of Experts, although it did not have the majority support to move it forward and was not included in the WIPO Performances and Phonograms Treaty.

It is fair to give thanks to this group, in the name of artists, and ask them to continue supporting this proposition. The corresponding legal norms, in some countries, like Peru, have already been embodied in national legislation.

It is completely unfair, ridiculous and antiquated that, in the digital era, where recordings do not die away and exist always in the quality first generation copies, the rights of performers are protected only for fifty years after the fixation or publication of their performances, and not during their entire life, and still between fifty and seventy years post mortem, as the rights of authors.

What is the difference between one and the other?

Neither the producers, nor the authors, nor the users, nor the consumers will end up being harmed if the term of protection of the rights of artists is extended.

On various occasions, I have held conversations with the President of the European Parliament, with intellectual property specialists, professors, the Director General of WIPO and distinct advisors, department heads, consultants and others. I have asked all of them from where the mysterious figure of 50 years from the fixation or publication as the term of protection for performers comes. Nobody was able to tell me from where this enigmatic figure has come from: 50 years. Why not 10, 100, or any other number of years?

We appeal to the legislators' common sense to correct this historic mistake, without cost or opposition.

4. TO DISTINGUISH BETWEEN INTELLECTUAL CONTRIBUTION AND ECONOMIC AND/OR MEDIA CONTRIBUTION.

That is: to distinguish between the creators – the performing artists and authors – and the producers and other rightholders, in the sense that there is no reason to recognize the latter as intellectual creators, since this quality is only due to the authors and performers.

Producers have tried to be recognized as creators and introduce themselves as such in the Berne Convention, but naturally the authors have impeded them.

The producer sometimes contributes economic and other means, but there is no such intellectual contribution on their part as would justify their recognition of the same kinds of rights as for creators.

Why should not we call "profit" that producers should get, and reserve the expression intellectual rights that correspond to the intellectual contribution of authors and performing authors?

5. ELIMINATE THE ABSURD DEFINITION AND DENOMINATION OF "RELATED RIGHTS", WHEN IT REFERS TO THE RIGHTS OF PERFORMERS.

Related to what?

A performance is creative, unique, and unrepeatable.

If there is a right that, necessarily, is related to another it is that of the author with respect to the artist, since, without the artist's contribution, there is no communication of the work. This has been recognized during the entire history of creativity.

Even if a work previously exists, in order to be known it should be communicated, and that is not possible without its performance.

It is that easy to explain the relation between performers and authors, and between authors with performers. However, it is difficult to find any intellectual relationship between producers and/or broadcasters with the creations.

Thanks to the "innocent" error of including producers under the umbrella of intellectual property, the United States tried during the negotiations about the proposed MAI (Multilateral Agreement on Investment) to define intellectual property as a mere economic benefit (investment) in order to transmit all its aspects to the WTO (World Trade Organization), taking it away from the WIPO, where the U.S. had problems with imposing its theses.

Fortunately they were not able to, although the producers, who do not necessarily defend collective management, did not do much to avoid it.

Taking into account the tolerant attitude that the producers showed during the MAI negotiations, at the WTO round, I propose that the issues of benefits of producers and other similar rightholders be moved to the WTO and that intellectual property remain at the WIPO.

Let us call "related" rights the rights of producers and similar rightholders. Intellectual property rights belong to artists and authors.

Performers have, like authors, a generic right to intellectual property, as fundamental as the right to liberty or integrity, which should be called the right of the performers.

The just and necessary demands of performers should not affect their contractual relations with producers.

This blind vision of the future may let artists without rights and the producers without products, since, without rights, creation will not be possible**.**

6. TO GUARANTEE THE COLLECTIVE MANAGEMENT OF INTELLECTUAL PROPERTY RIGHTS, AS A FORM OF PROTECTION AND APPLICATION OF LAW.

Governments should assume this responsibility, and apply adequate rules in order to guarantee clearly the collective management of intellectual property rights.

For some time now, the governments of certain countries have been speaking of the "self-regulation of the sector". This means that these governments do not want to be involved in the conflicts between users and collective management bodies and/or rightholders.

We artists agree, in principle, that, in general, the courts – not the administrative bodies – should deal with the legal problems, should complete, clarify and harmonize the application of the existing laws, and should thus consolidate, forever, the individual and fundamental intellectual rights, but this does not apply for collective management. It is a governmental job.

How can we self-regulate the relationship between users – who can have access to the performances that already exist in the market through video or audio downloads – and rightsholders who have remuneration rights, that are generated all over the world, at any moment?

How could an individual know where, how, when, and to what extent are his performances used, without collective entities that can establish tariffs, monitor uses and promote legislative development, take infringers to court, and demand the compliance of the law, collecting payments and distributing them among their real owners?

How could artists individually manage their rights facing, alone, the communication networks and highways?

Individualized exercise of rights, in a "self-regulated" market would be a trick on artists who, without proper protection, would end up at the mercy of huge companies, which are now presenting artists with exploiting contracts, in which they are supposed to transfer all their exclusive intellectual property rights.

Without collective management, there will be no intellectual property, nor freedom of expression for creators.

Those who threaten artists and their rights try to eliminate collective management, putting artists at the mercy of the dominant position of users, in a "free market", as they say, "subject to the self-regulation of the sector".

7. TO ELIMINATE THE ADJECTIVE "SINGLE" WHEN IT REFERS TO THE FAIR REMUNERATION OF ARTISTS.

The artist should have the right of remuneration for the use of his performance without it having to be single or shared, nor compared with others, who are not in any case the authors with whom artists shape creativity.

The performers, through their legally constituted management bodies, should have, in accordance with the law, the independent capacity to charge fees, and to collect and distribute them.

8. WE ARTISTS APPEAL FOR THE CREATION OF AN "AUTHORITY" THAT IS CAPABLE OF ARBITRATING AND APPLYING TECHNOLOGICAL MEASURES THAT GUARANTEE EQUAL LEGAL TREATMENT BETWEEN RIGHTHOLDERS.

The fact of sharing management with entities that are, in many cases, opponents and have very distinct objectives, has forced us to litigate not just against the users who refuse to pay and comply with the law, but also against other management bodies whose deeper objective – although veiled – consists of boycotting collective management, since they are interested in obtaining, by contract, all artists' rights.

It is necessary to create an authority that decides the differences between rightholders, while still looking after the current system of shared management.

9. WE ARTISTS URGENTLY NEED THE ENLARGEMENT OF THE LEGISLATIVE SCOPE FOR ELECTRONIC COMMERCE TO LATIN AMERICA.

Europe already has its Directive on Electronic Commerce, in which the liability of Internet service providers is regulated. The United States has strongly criticized this European regulation. But what is the point of theses norms if they only exist in Europe?

The operational sphere of the network is global. This protection should exist at least in the countries party to the Rome Convention, and a few others, above all in Asia.

10. ARTISTS DEMAND THAT WIPO AND GOVERNMENTS ACTIVATE THE INTERNATIONAL TREATY FOR THE PROTECTION OF AUDIOVISUAL PERFORMERS.

WIPO and the governments should convene the Diplomatic Conference to adopt, without provisions on transfer of rights and presumptions, the treaty that performing artists need for the recognition of their rights and for eliminating the great damage generated by the arbitrary use of their audiovisual performances.

Currently, the Treaty finds itself blocked at WIPO, by the U.S. and some sectors that, even if they have accepted the "famous" Article 12, they want the artists to their rights to producers.

This is unacceptable, an insult to intelligence, legal principles, ethics, common sense, and the future of the audiovisual sector.

This treaty will bring about appropriate harmonization for audiovisual performers' intellectual property rights, and will allow the extension of their application to the various countries where there is no adequate protection yet for such rights, where performing artists are the hostages of the new technologies, of conventional and digital piracy, without the possibility of accessing the world of the Internet, and where, if they still may access it, they have to see that everything circulates there uncontrolled, especially their performances.

We can in no way accept that "universality" only exists for those who have the key to global communication. Universality should be just that – universality – for everyone.

In the so-called *globalization* we must not confuse rights with taxes. The counter-value for performing artists and authors, that is, for creators – in respect of the communication to the public of their performances and their works, respectively – is and should be ever more than before, their intellectual property rights.

Without appropriate rights granted to them, there will not be works nor performances. The operation of the free market should be subject to appropriate conditions and adaptations, because if we do not handle this, there will soon be as a consequence an unprecedented cultural and linguistic homogenization. All of this, in a peaceful way, through satellites and cables and through the indiscriminate use of new technologies. This is called the trans-cultural effect of globalization, and it is already taking place.

Clearly, this denomination for cultural invasion is misleading since we can only speak about any trans-cultural development when culture travels in all geographic directions and not just one. In short, trans-cultural movements must be mutual.

It must be understood that cultural diversity is a good thing and not an obstacle. Governments should make sure that possibilities exist in the mediums of diffusion to openly compete, providing artists with adequate judicial weapons so that they can collect, administer and distribute their rights.

The great challenge of this Budapest ALAI Congress is to show to the world, through dialogue, reflection and work, the great future of this space for knowledge and creativity constructed between peoples and cultures of very differing origins. But this will not be possible if performing artists do not have the judicial weapons and adequate protection that guarantee the future of their rich and diverse artistic-intellectual heritage and creativity, so that modernity do not have to deny tradition, cultural diversity and integration.

Le Chapelier pointed out already in 1791: "The most sacred, the most legitimate, the most personal of all property is the work, fruit of an author's thought."

As a necessary and fair analogy, this definition is also applicable to performing artists, since "without the performance, the work never would be communicated nor known."

We artists demand digital democracy from this congress, based on the ten demands presented above, and adequate audiovisual regulation of the free market that avoids the ferocious cultural homogenization, discouragement extinction of creators, and foments freedom of expression and cultural diversity, with proper respect to justice, creativity and trade.

Arts and Rights in Freedom!