

A hotbed of piracy

OWEN DEAN

Seventeen African countries have joined together to launch the Southern and East African Copyright Network (SECONET) under the auspices of the United National Educational Scientific and Cultural Organisation (UNESCO) in order to address issues relating to the promotion and protection of the creative industries, copyrights and the IP field in general. SECONET faces an imposing agenda, including harmonising the region's copyright laws and combating piracy and copyright theft.

Can SECONET rise to the IP challenge?

The current members are Angola, Botswana, Kenya, Lesotho, Malawi, Mauritius, Madagascar, Mozambique, Namibia, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. Topics on the agenda for SECONET (which will be based in Malawi) include:

- upgrading the region's IP laws to comply with the World Trade Organization (WTO) Agreement on Trade-Related Aspects of

Intellectual Property Rights (TRIPs);

- harmonising and updating the region's copyright laws;
- protecting traditional knowledge; and
- eradicating piracy and copyright theft.

This is an imposing agenda for a region which is seen as lagging slightly behind the developed world in focusing on intellectual property.

The TRIPs Agreement lays down minimum standards with which the IP laws of WTO members must comply; however, the countries in the region have been slow to give full effect to TRIPs obligations. Thus, it will be a major achievement if SECONET can make the IP laws of the regions TRIPs compliant.

At the same time, SECONET should also urge its members to adhere to the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, which deal with protection in the digital age. If the SECONET member countries wish to be taken seriously in regard to IP rights, they must embrace these treaties. SECONET should aim to persuade its members to implement the treaties into their domestic laws.

The region has a rich heritage of traditional knowledge and folklore and there is a strong desire to grant some form of protection to this genre of works. International debate on the best approach to such protection has raged for

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African approach is that, in seeking to protect traditional knowledge through ill-fitting legislation, not only is the desired objective not being achieved, but also damage is being done to long-established copyright prin-

years and is no closer to reaching a definitive solution. South Africa has opted to protect traditional works as a separate species of work eligible for copyright protection – the government is considering a draft bill to amend the Copyright Act to this effect. What is highly debatable, however, is whether copyright is an appropriate tool to protect traditional knowledge – a more effective approach might be to treat traditional knowledge as a *sui generis* type of work which is best regulated by a separate law.

One major problem which has emerged from the South

principles. SECONET should strive to break away from this example, rather encouraging and facilitating the *sui generis* approach among its member countries. Considering this aim alongside the objective of harmonising IP laws throughout the region, it follows that SECONET should try to persuade the South African government to abandon its attempts to utilise copyright law to give proper protection to traditional works.

Like the rest of Africa, the southern and eastern region is a hotbed of piracy, particularly in the fields of computer software, music and audiovisual works. SECONET faces a major challenge to improve the region's performance in this regard. The first step is to implement effective and up-to-date legislation, while the second is to put in place appropriate enforcement mechanisms. In both these areas the region falls short of what is necessary to combat piracy. South Africa has made important strides in providing a proper legislative infrastructure to combat piracy, particularly through the Counterfeit Goods Act, which compares favourably with its counterparts throughout the world. Therefore, SECONET should, as a matter of priority, aim to promote the adoption of similar legislation by its member countries. If this can be achieved, SECONET will have got off to a good start, which will bode well for its future effectiveness. ♦

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