

ARTICLE

The Importance of Collective Management

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Collective management of rights is an essential mechanism carried out by Collective Management Organizations (CMOs). It enables creators and rights owners to exercise their rights efficiently in their country and abroad, in their own interests and in those of commercial users, consumers and the general public. CMOs play a vital role in the national and international exercise and administration of authors' rights/copyright.

Background

Authors' rights/Copyright legislation grants creators - including literary authors, composers, lyric writers, visual artists, photographers and others - exclusive rights to do certain acts. These rights give their owners the ability not only to decide how the work shall be used and to give permission for the use of the work in return for remuneration, but also as a general rule the right to forbid others to exploit the work without their express authorisation.

The rights granted to authors include the economic rights of reproduction, broadcasting, public performance, adaptation, translation, rental, distribution and making the work available over the Internet. Authors also have moral rights. These moral rights normally include the right to claim authorship of the work and to object to any distortion, mutilation or other modification of the right owner's work that might be prejudicial to his honour or reputation.

All these rights have to be exercised if the right owner is to benefit from them and if the public is to obtain access to the works in question.

Individual v Collective Licensing

The right owner may choose to exercise the rights he or she have under the law by individual or collective management. The decision whether to exercise rights individual or collectively depends on the category of rights owner and the nature of the use. Some rights lend themselves to being exercised on an individual basis, by agreement between the right owner and the individual user of the work. There are still many cases in which rights continue to be exercised individually by the creator. For example, individual exercise of rights is normal practice as regards contracts for the publication of literary and artistic works; and for the performance rights in a dramatic work.

There are, however, many rights which are difficult, if not impossible, to exercise individually. Such rights are typically entrusted to CMOs by right owners, to exercise on their behalf on a collective basis (i.e. together with similar rights of other rights owners).

Public performance of music was the first use to give rise to collective licensing in the late Nineteenth Century but meanwhile, as a result of the advent of new technologies developed over the past fifty years, the importance of the role of collective management has grown. Legislation has been introduced giving right owners new rights to control new uses of works, and the rights administered by CMOs on behalf of their right owner members have increased accordingly. New, high-volume markets for works have emerged in respect of which individual exercise and control of rights is at worst impossible, or at best impractical, as individuals do not have the capacity to negotiate with users, to monitor the various uses of their works and to collect remuneration due.

Today, CMOs exercise an array of rights for a variety of right owners: the right of public performance, the broadcasting right, reproduction rights for certain uses, remuneration rights for private copying, reprographic reproduction of literary and graphic works, making works available online, and the visual artist's resale right. Some rights by law may only be exercised collectively in the European Union: these include, for example, cable distribution, private copying and the visual artist's resale right.

Role of CMOs

CMOs were traditionally set up by right owners at national level to manage one or more of the rights of one or more categories of right owners and to grant licences to commercial users on their behalf. They have been defined by EU legislation as “*any organisation which manages or administers copyright or rights related to copyright as its sole purpose or as one of its main purposes*”. Today, acting on behalf of their members, CMOs negotiate royalty rates and other licence terms, and issue licences to users authorising the various uses of the works of their members. Once a licence is issued, the CMOs have the task of enforcing the rights, monitoring uses, collecting the revenue due to their members and distributing it to them in accordance with agreed distribution schemes based on use of the works.

Traditionally, CMOs have been set up on a national basis and, in general, one CMO represents the rights of one particular category of right owners in a given territory. Foreign right owners are represented by national CMOs by virtue of reciprocal representation agreements; thus, they are able to exercise the rights to which they are entitled by virtue of the national treatment rules of the international copyright and related rights conventions and EU law.

Benefits of collective management

Collective management of rights has many advantages. CMOs act as important facilitators in the creative industries. They play a valuable role in administering the licensing of rights and lowering transaction costs for both their members and users. They are practically, economically and legally both viable and essential:

- **Practically**, because authors' rights/copyright owners cannot be in an indefinite number of places at the same time exercising individual rights and foreign right owners would be unable to exercise their rights outside their country of origin without extreme expense and difficulty
- **Economically**, because it is cheaper to share the financial expenses of negotiation, supervision and collection among the greatest possible number of right owners
- **Legally**, because CMOs makes it possible for users to clear rights for a large number of works, where individual negotiations to obtain the necessary permissions from every right owner, both national and foreign, would be impractical and entail prohibitive costs.

For the commercial user, there is a clear advantage in being able to obtain a licence from a single source, a national collecting society, which for a low transaction cost gives him the right to use virtually any work from its worldwide repertoire, given that national CMOs control the rights administered by their sister CMOs in other countries. Individual negotiations with individual right owners to obtain such repertoire would be impractical and prohibitively expensive so that the role of CMOs for such users has become essential. The commercial user with a licence from the national collecting society in his home country is generally safe from actions for infringement regardless of the source of the works used.

There is an additional advantage to individual right owners and users whose personal standing or size would put them in a weak bargaining position in negotiating licences. Large entities such as broadcasting organisations and film companies would be able to negotiate successfully but individual right owners and small users would have difficulties. Collective licensing increases their marketing power, putting the individual and small user on the same footing as their more powerful and influential colleagues. In this way CMOs play a key cultural role in the protection and promotion of diversity of cultural expressions by enabling small, specialist and less popular repertoires to access the market.

Consumers also have an interest in effective collective rights management. Efficient licensing of copyright works is central to the economy and without it many such works would not be made available, seen or heard by any significant number of consumers. By licensing large repertoires of creative works, CMOs effectively facilitate the mass use of creative content for the benefit of consumers.

Thus, the benefits and convenience that collective management of authors' rights/copyright offer to right owners, users and consumers are generally regarded as being unlikely to be matched by any other means and to be in the interest of the public at large. Collective management makes authors' rights/copyright work in practice. It will remain a useful tool to ensure the future of culture and creativity, and the prosperity of right owners and commercial users alike.