

ARTICLE

Collective Administration of Rights and the Public Interest

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AU SERVICE DES AUTEURS DANS LE MONDE
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Collective administration of authors' rights/copyright is a worldwide phenomenon. Although the precise structure, scope of representation and practices of Collective Management Organisations (or CMOs) vary from country to country, collective administration of rights by some form of CMO is standard practice in virtually all countries that have authors' rights/copyright legislation. Moreover, collective administration of rights conducted through CMOs is not just the preserve of market economy countries; it is also the prevalent form of rights administration in countries with planned economies.

In general - and in some cases, subject to applicable anti-trust or competition laws - any category of rights owners may exercise at least some of their rights collectively. In practice, most do. In many countries there exists a range of CMOs representing and managing the rights of various rights owners including authors, composers, music and book publishers, artists, film producers, producers of sound recordings and performers. Collective management can operate for a wide range of rights: public performance, broadcasting, distribution, rental, making available on line, artists' resale right, reprographic and private copying rights and public lending rights.

In some countries, for certain rights and particular categories of rights holders, collective administration through a CMO is a requirement of the law.

Collective administration through CMOs also functions to the benefit of the international community by encompassing the interests of foreign as well as national owners within national representation.

The fact that the process of collective administration through CMOs is so widespread – regardless of the kind of economy in which it operates – confirms the process is now overwhelmingly accepted as being, on the one hand, the best means of managing the rights owners' interests, whilst on the other hand facilitating ease of access to copyright works by rights users (such as broadcasters) and consumers. Mass market exploitation of works has become so extensive and cross-border licensing so much the norm there is now a general consensus that CMOs provide the best available mechanism for licensing and administering authors' rights/copyright and that, at the very least, collective administration is essential wherever direct licensing is not a viable option for individual rights owners.

As collective administration enables right owners to be remunerated for uses which they would not otherwise be able to manage themselves (either at home or abroad) it also plays an important social and cultural role by enabling specialist and lesser known works to enter the market. Collective administration of rights brings benefits to rights owners and users alike in terms of efficiencies and cost savings. Equally importantly - and equally irrefutably - it operates in the public interest by facilitating ready access to a large body of works by the public at large. Without CMOs the product of a great deal of important and innovative cultural creativity would be lost to the public.

Without diminishing in any way the principle of individual exercise of exclusive rights where such exercise is both feasible *and* in the best interests of right owners and users, it needs to be recognised there are many circumstances in which rights owners must, by the nature of the use of their works, rely on collective administration. In these situations, CMOs enable copyright owners:

- To license and monitor the use of their works
- To receive their due return for the use of their works
- To benefit from central anti-piracy services where unauthorised use of their works infringes or threatens to infringe their rights
- To benefit generally from the efficiencies of scale and positive network effects of collective administration

The argument in favour of collective administration is equally compelling on the demand side of the market. In addition to the benefits to rights owners, collective administration of rights also reduces the number of persons with whom rights users must negotiate licensing agreements. Again, this facilitates broader and more immediate access to copyright works for the consumer. In particular, large scale users of works, such as broadcasters, benefit from dealing with a single CMO as a trusted third party with whom they can negotiate centralised licences and tariffs for a wide range of copyright works. They are thus spared the resource overhead of tracking down a multitude of individual right owners and negotiating suitable payments for each one, in order to meet their legal obligations. This is overhead which can be better applied in improving the quality and content of the service to the consumer. Large corporations and small individual users of music such as pubs and restaurants can readily de-risk their businesses with a single licence covering both present and future use of any work from the vast global inventory of works represented by their local CMO.

In short, with the convenience, efficiency and security of “one-stop” licensing it makes possible, collective administration of authors’ rights/copyright is the corner stone of the innumerable markets where members of the public go for their entertainment, education and enlightenment.

Technological advances in the 21st Century are such that the variety and number of channels for the exploitation of protected works, not least via the internet, has grown exponentially. These same advances, whilst facilitating access to works by the consumer, have also inevitably increased the challenges of managing the rights of creators, be they exclusive rights – such as communication to the public - or rights to remuneration – such as that in respect of private copying. In many situations, collective administration provides the only practical means for right owners to safeguard their interests.

Particularly in this new and still evolving environment, an efficient and effective collective administration system also supports a primary objective of authors’ rights/copyright: the promotion of creativity to the benefit of society as a whole. It facilitates broader and easier access to the product of that creativity. And it does so in ways that is both conducive to innovative use of works and reduces the costs inherent in rights administration and clearance.

This overriding public interest in collective administration explains why regional and national governments, national courts and competition authorities (including the Commission of the European Union and the CJEU) recognise the dependence of right owners on the collective administration of certain rights. They know that in practice an individual right owner does not have the reach or resources, in many situations, to exercise her rights directly and must rely in such cases on collective administration. Moreover, right owners often depend on CMOs to counterbalance the market strength of major rights users and to provide thereby a level playing field in the licensing market. This also explains why the law of the European Union and some national laws provide for the mandatory collective administration of rights by CMOs in respect of certain rights.