



Collective management of rights in a transforming market

A speech by Gadi Oron, Director General, CISAC, at the ALAI Copyright Congress

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I am delighted to be here today and I would like, first, to express my appreciation for all the people who made this conference possible. In particular, I would like to thank Mr Rudolf Leska, the president of the ALAI group here in the Czech Republic, and his team, who I know have been working tirelessly, for many months, to organise this ALAI event. I am very happy and proud that we, at CISAC, could partner with ALAI this year and be associated with this conference.

CISAC is the international confederation of authors' societies. We bring together 239 authors' societies from 122 countries. These societies collectively represent over 4 million authors who come from different disciplines of the arts. Many of them are music creators – songwriters and composers, but our societies also represent visual artists, film and TV directors and screenwriters, playwrights of dramatic works, and authors of literature.

Our societies' mission is, first and foremost, to generate increased remuneration for their affiliated creators. Royalties collections by our member societies last year - in 2018 - totalled more than \$US 10 billion.

Collection and distribution of royalties is indeed the main task of Collective Management Organisations and the main reason for their establishment, but they serve creators far beyond collecting royalties. Throughout their history, authors' societies have taken a leading role in advocacy and policy making with the goal of enabling creators to be adequately protected and equitably remunerated. This has become an increasingly challenging task, particularly with transformation to the digital world.

However, history teaches us that societies have always had to evolve and adjust their operations to match a transforming market. And transformation has always been fuelled – and triggered – by technology.

Today, the world of collective management is changing more rapidly and more decisively than ever, in order to stay successful and relevant in the 21st century but, alongside this theme of transformation, there is an equally strong theme of continuity. This because the core principles and the key functions of collective management remain as vital as they were at the founding of our sector some 200 years ago.

If you examine the ecosystem in which societies operate today, you see this mix of change and continuity. This ecosystem is characterised by an inherent imbalance of power between, on one

hand, the creators, and, on the other, those powerful commercial entities which are the main users of creative works.

This imbalance is, of course, nothing new. It is at least 200 years old. And when one views this in a historical perspective, it is easy to identify a remarkable convergence between past and present.

At the heart of the comparison between the present landscape and that of the past, is the place of the “intermediary”. Just as today, 200 years ago rightsholders had to keep challenging the power of the intermediaries that attempt to control rights, dictate the terms of access to the cultural marketplace, and retain a disproportionate share of the revenues from the use of creations.

So, if you think our sector has a major struggle with digital intermediaries today, let me share with you a quote from the Marquess *Robert De Flers*, a French playwright and one of CISAC’s founding fathers. De Flers’ exhorted authors around a mission he described as “the elimination of the intermediary”.

He says:

“...I am not talking about the honest, active and useful intermediary – there are indeed a few; not many perhaps, but some; but of the parasitical and noxious intermediary who deprives us of the money owed to us, who deforms our works – or allows it to be deformed, who debases them by programming them in theatres where they shouldn’t be and translates them in languages that are from no country at all.

This intermediary, Gentlemen, I believe we have just been burying. It seems to me one of the most joyful funerals which I might conceivably be invited to attend.”

De Flers was speaking on 13th June 1926, the historic day in which CISAC was established. So you might forgive him for being a little euphoric about the impending doom for intermediaries which he perceived as being just around the corner...

But this quote also sets today’s copyright battles in a fascinating historical context.

If you replace the theatre owners of the 1920s with today’s larger internet platforms, the 93-year-old quote truly comes to life.

The men and women who shaped collective management politics understood the importance of a proportional remuneration as a direct reflection of creators’ economic rights.

Today we understand the same thing – and we know that the fight for fair remuneration for creators is ultimately a fight for fair treatment by the “intermediaries”.

Indeed, the issues that occupied the authors who founded societies, are the same as those that are facing us today. Technologies come and go, politics fluctuate, business models mutate, but the challenges for rightsholders remains essentially the same.

Collective management came into being because of a practical need to manage legal rights which the authors cannot manage individually. Creators understood that in negotiations with users, the collective is much stronger than the individual.

Societies' role very quickly extended far beyond negotiations and collections of royalties, to the mission of protecting and safeguarding creators' moral and economic interests and to shaping the legislative environment for cultural activity.

Technological change has reinforced this mission.

First, at an operational level, the digital world has created a greater need than ever to manage rights collectively. With the sheer volume of data processing that's involved in rights management today, collective administration is essential, both economically and operationally.

Second, negotiating as a collective to offset the strong position of commercial users is more important today, possibly than ever before. The digital world may have liberated the consumer and revolutionised the way creators can access a global audience, but it has also created dominant giants with enormous negotiating power that are the world's largest users of creative works.

Third, lobbying and influencing decision-making is more important in today's multi-stakeholder world than it ever was. Copyright users have immense political power and influence. The recent debate around the EU Directive on Copyright in the Digital Single Market dramatically demonstrated this. Prominent copyright users took advantage of their influence over mass audience and, while spreading misinformation and using scare tactics, they made significant effort to block the Directive which they considered disadvantageous to their business.

The ecology of the cultural sector is changing at a breath-taking pace. Our market is rapidly becoming more global and increasingly more diverse. This is fuelled by two phenomena: the *first* is that platforms are constantly improving consumer experience and offering a growing selection of repertoire. The *second* is the rapidly changing consumer behaviour and preference.

There are 2 recent examples to demonstrate this:

Youtube recently reported that among the Top 10 most viewed music videos in 2019 so far, only one is in English. Five out of the Top 10 music videos are in Spanish, two in Korean and two originated in India.

Another example of globalisation comes from the audio-visual sector. While the TV market is switching to on-demand streaming and consumers are gradually turning their back on linear TV broadcasts, the dominant online platforms are increasingly involved in the production of original content.

The traditional broadcasters are not sitting on their hands, though. Rather, they react by boosting their own original productions, with some of them reporting up to 100 times more original TV shows. They are also offering catch-up streaming services for their broadcasts.

The consequences of these market developments are substantial structural changes to licensing models. Collective management structures have had to adapt, re-invent and modernise to a global, diverse and fast-paced reality. They have had to become more effective in capturing value. They have had to offer new types of licenses. They have had to develop the capacity to deal with enormous amounts of data in order to monitor and monetise the diversified types of commercial use. And they have had to improve the speed and efficiency of their distribution of royalties to their affiliated rightsholders.

The technologies driving change are new; but the phenomenon of societies adapting the system is nothing new. In fact, the very establishment of the collective management system back in the 18th century came in response to a need that previously did not exist.

A bit of history is very instructive here.

Collective management was founded by playwrights who realised they could obtain better conditions and better remuneration for their use of their works when they negotiated collectively with theatre owners.

In a hot summer evening on the 3rd July 1777, the famous French playwright Pierre Beaumarchais brought together a group of 22 authors to discuss the poor remuneration paid for their works by the *Théâtre-Français*.

In the case of Beaumarchais, the complaint centred on the low remuneration he received from the *Comédie Française* for the use of his play *the Barber of Seville*.

The action by this small group of authors eventually led to change.

In 1791 France passed the first law on authors' rights. Shortly afterwards, entities that managed the new authors' rights were created. Once established in the world of theatre, the principle of collective management proved essential to other repertoires as well.

The famous story goes that in 1847 the French composer, Ernest Bourget, visited *Les Ambassadeurs*, a café in Paris where live music was being performed. When Bourget heard some of his own compositions being played, he was angry that his permission for their use had not been sought and that he was not being paid, while he, of course, had to pay the establishment for his drink.

With a few other composers, he brought an action against the owner of the café. They asked the court to either forbid the performance of works in the café or to hold that they, the creators of the works, should be paid for these performances.

The court of course found in their favour. The principle was thus established that authors and composers had a performing right in their works. But having the rights was not enough. For these authors, there was the practical problem of monitoring and enforcing their rights. And so the first music authors society was formed – SACEM. Others followed, in Italy, Germany, the UK and the US. The developments in France, however, were especially significant because they took place before the Berne Convention of 1886 was signed.

Since those early days, the history of CMOs has been one of constant changes in the licensing market. Societies have always had to adjust to new forms of exploitation and technologies: from traditional public performance to broadcasting; mechanical reproductions and private copying; cable distribution; satellite transmissions and of course, the internet.

Digital technologies have had a radical impact on the way music, films, books and other creations are accessed. They have created new business models and destroyed or marginalised old ones. Yet, this has not changed the fundamental principles underlying collective administration of rights. Indeed, the market changes have made those principles more relevant than ever.

In the digital world negotiations over creators' remuneration are taking place not just with powerful entities, but with some of the world's largest corporations. Advocacy work has become more complex due to the commercial interests involved. And in the management of rights, CMOs have a dramatically enlarged role, with the capacity to process enormous amounts of data that are simply impossible to conduct individually.

I spoke about the past and the present, so I would like to conclude with some thoughts about the future.

The cultural and creative industries are continuing to grow phenomenally. With that comes exponential growth in activities related to the management of rights.

Collective Management Organisations are responding proactively to this evolution. They have re-shaped, evolved and transformed to operate in a global landscape where both rightsholders and users have more freedom of choice.

They have also pursued unprecedented cross-border collaborations among themselves: from joint ventures in the offering of licenses, through consolidation of back-office activities and cross-border initiatives on data, to one-stop-shop solutions bringing together authors and neighbouring rights owners.

These initiatives are taking shape and form in every region of the world, with the overarching goal of simplifying the licensing business, cutting down costs, and serving creators better.

There is also a marked increase in competition among traditional non-profit CMOs as well as the entry of new players, some of which are for-profit entities, into the market.

The sheer scale of data processing that's involved in collective management today requires substantial investment in technical capabilities. The scene is set for greater competition and greater pressure for societies to improve.

What is for certain is that the future of our sector is digital. The key features of the digital world I have mentioned will, I believe, continue to shape the agenda of CMOs in the future:

- Creators will continue to face an imbalance in bargaining power between them and the commercial users of their works.
- Societies will continue to see a proliferation of digital uses of content and will face an increasing burden in administering rights and monitoring use.
- Users will continue to demand innovating and cross-border licensing solutions
- And finally – both creators and societies will need to play a decisive and active role in advocacy, in lobbying and influencing policymaking in order to secure meaningful protection for copyright.

Thank you.