

ARTICLE

The History of Collective Management

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The story of collective administration of rights in creative works begins in France in the 18th Century.

On 3rd July 1777, famous author Beaumarchais called together a group of 22 other authors to formulate a response to the under-remunerated use of their works by the *Théâtre-Français*. A number of the authors present on that distant summer's evening, including Beaumarchais himself, had previously complained in writing about their treatment at the hands of the powerful theatrical institution. In the case of Beaumarchais, the complaint centred on the poor remuneration he received from the *Comédie Française* for the use of his play "*Le Barbier de Séville*". Although not immediately successful, action by the group of authors – supported in no small part by Beaumarchais' strong political connections – did eventually lead to change. In 1791 France passed the first law on authors' rights. After a struggle lasting fourteen years, authors obtained the vote on the law of 13th January 1791, ratified on 19th January 1791 by Louis XVI, which recognised the concept of authors' rights for the first time anywhere in the world. The year 1829 saw the creation of the Society of Dramatic Authors and Composers (SACD) combining two earlier societies created in 1791 and 1798 respectively.

The first collective licensing body (or Collective Management Organisation – "CMO") in the music area, dates from 1851 when the French society SACEM (Society of Authors, Composers and Music Publishers) was established to administer public performance rights in musical works. The date is significant because it predates the adoption of the Berne Convention for the Protection of Literary and Artistic Works in 1886.

SACEM, like SACD, was born of the frustration and indignation of authors. The story goes that in 1847 the French composer, Ernest Bourget, visited *Les Ambassadeurs*, a Paris café where live music was being performed. When he heard some of his own compositions being played, he was naturally angry that his permission for their use had not been sought and that he was not being paid either (while he, of course, had to pay the restaurant for his dinner). Subsequently, together with a lyric writer, Paul Henrion, and a publisher, Victor Parizot, he brought an action against the owner of the café, asking the court to either forbid the performance of their works in the café or to hold that they, the creators of the works, should be paid for every performance of their works. The court found in their favour and, following appeal decisions in 1848 and 1849 upholding the original verdict, the principle was established that authors and composers had a performing right in their works which entitled them to be paid whenever and wherever their works were performed in public.

Acknowledging that in practice it was difficult to monitor and enforce the performing right on an individual basis, the authors and composers of France set up SACEM two years later.

When the Berne Convention was signed in 1886, it recognised – for the first time under international law – the public performance rights of authors and composers (along with a number of other basic rights) as a principal feature of the protection to be afforded to all authors. Over the course of time, CMOs were established in many other countries in Europe as well as in other parts of the world to administer the rights of authors and composers of musical works. GEMA, the German CMO managing performance rights in musical works, was founded in 1903 and its United Kingdom counterpart - the Performing Rights Society (PRS) – was established in 1914.

It was very soon established that the new process of collective rights management through a CMO could achieve efficiencies in administration and licensing which direct management of rights by individual rights owners could not.

CMOs thus developed to meet the needs of rights owners in respect of particular forms of use of their works by collecting from rights users the fees due for such use and distributing them. Generally, the collective administration of rights came to be required in circumstances where there was a need to manage the interaction of a multitude of copyright owners, a variety of authors'

rights / copyright users, and numerous instances of use requiring a licence. These were usually also situations where the possibility of conducting individual licence negotiations was absent.

As a rule, CMOs represent a single category of rights owner in respect of a particular class of right or rights. Broader groupings can however occur: for example, there are working alliances between authors and publishers, on the one hand, and producers of sound recordings and performers, (on the other,) in respect of their public performance rights.

Early in the 20th Century many new uses of copyright works emerged, resulting from new technologies. First came radio and television broadcasting, followed in due course by satellite transmission and cable distribution. Advances in different kinds of copying and distribution technology also brought new licensing challenges such as reprography (photo copying of literary works), private copying of music and the commercial rental of music and audio-visual products on new formats such as compact discs and DVDs.

Over the past twenty years digital copying and distribution of works via the internet as well as the growing public dependence on new categories of works, such as computer programs, electronic games and databases, have fundamentally changed the landscape for rights administration. As a consequence, the role and importance of collective administration through various forms of CMOs have grown exponentially.

As a matter of historical perspective it is interesting to note that while there are obvious differences in local detail, collective administration of rights and the CMOs which provide it have developed along similar lines all over the world. This is in spite of the differences in national legislation regarding their constitution and regulation. This can no doubt be explained at least in part by the logic of the collective administrative process and the ongoing quest of CMOs to achieve the best economies of scale and management efficiencies in the common interests of their members. Equally important is the realisation that, without CMOs much essential licensing of copyright works would simply not occur because of the prohibitive costs of engaging in licensing transactions and their administration on an individual basis.

CISAC, the International Confederation of Societies of Authors and Composers, was established in 1926. In 2015, CISAC grouped 230 societies in 120 countries. These societies manage the rights of authors in the musical, audiovisual, dramatic, literary and visual arts sectors.