

ARTICLE

The Role of Collective Management Organisations

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Collective management of authors' rights/copyright serves two primary purposes. Firstly it enables copyright owners to administer certain of their rights effectively and cheaply in order to obtain a fair return for their work. Secondly it provides a service to rights users by facilitating ready access to and licensing of copyright works, easily and cost effectively.

The UK Monopolies and Mergers Commission, in a 1988 statement, explained that collective management organisations (or CMOs for short) have the following principal functions:

- to licence the use of the rights they manage;
- to monitor that use in order to enforce the conditions upon which the licence has been granted; and
- to collect and distribute the royalties payable as a result of the licensed use.

It went on to state that the licensing function includes the negotiation of appropriate rates of royalty with the prospective user which, once agreed, should guarantee the rights user's immediate access to the licensor's repertoire. CMOs should keep the administrative costs incurred by users and owners to a minimum and should also provide for the use of works that have yet to be made (and hence are of unknown value). CMOs should meet the needs of rights owners and users whatever the scale of their business.

In short, the role of the CMO is to simplify the process of rights clearance on behalf of its members through efficient and cost-effective "one-stop" licensing solutions.

In a system of collective rights administration, rights owners authorise one or more CMOs to administer rights on their behalf. The rights may be assigned to the CMO or the CMO may act as the agent or licensee of their members. CMOs then, as a general rule, offer blanket licences to prospective rights users which allow them to make the authorised use of the entire repertoire, national and foreign, represented by the CMO in question, for certain purposes and for a prescribed period.

What is a "blanket" licence? In the field of musical works, blanket licences are licences granted in respect of all the musical works under the management of a particular CMO: the CMO's repertoire. CMOs do not usually license their repertoire on a piecemeal basis. Blanket licences generally provide substantial value to the rights users by encompassing the CMO's entire repertoire within a standard fee and licence structure. Licences can be arranged for one-off events as well as long-term use and may apply to use in a specific venue or on a regional or global basis. CMOs also offer a range of licensing tariffs to reflect the different ways that music is used. Increasingly, CMOs are making substantial investments in setting up online licensing mechanisms further enhancing access to and ease of licensing.

Online music uses including download and streaming services (interactive or otherwise) are becoming increasingly important to both rights owners and music users. Since many of these new services operate across borders, CMOs have responded by building multi-territory licensing capability and capacity. In Europe, for example a number of alliances between different CMOs have emerged, in line with calls by the Commission of the European Union, and as now embodied in EU legislation, to facilitate user-friendly, pan-European licensing.

In some cases, however, the task of licensing and administering rights is split between the rights owner and the CMO. For example, authors of dramatic works commonly conclude individual contracts with theatres directly while the CMO takes on the job of monitoring performances and collecting and distributing the remuneration.

There are circumstances where a CMO will issue an individual licence on behalf of a right owner, although on standard terms.

A licence granted normally gives rise to fees for the use of works: royalties (and in some instances advance payments of royalties) or other forms of remuneration - the fees are payable in respect of private copying for example. CMOs collect all the remuneration and distribute it to their members according to distribution rules and policies. These rules and policies are established by agreement between the CMOs' governing bodies and the membership to ensure they are fair, efficient, accurate and transparent.

CMOs operate within an international framework that enables them to represent their members at home and abroad. To this end, CMOs around the world cooperate to ensure the accurate cross border collection and distribution of remuneration. They do so by sharing vast amounts of data on copyright works and their use in their respective territories. CMOs have together created international standards for the identification and description of repertoire and for the systems supporting the necessary information exchange. CMOs nowadays operate through an increasingly comprehensive and sophisticated global data network.

CMOs also undertake a number of other functions on behalf of their members in addition to their ongoing supervisory role in relation to the licences they grant and monitoring the uses made of the works entrusted to their care.

CMOs also have a residual responsibility to ensure that unauthorised use of the works under their management does not occur. These days, most CMOs have anti-piracy departments set up to investigate infringements and to defend their members' interests. Where necessary, CMOs institute legal action to stop the unauthorised use of their members' works. They also organise technical and legal cooperation among their members to assist in the constant fight against piracy. Again, providing this collective anti-piracy support is essential to the interests of rights owners for whom the cost of individual actions against infringers would be prohibitive.

The advent of digital technology and the increasing importance of online music services have drawn attention to the importance of collective management. Some fifteen years ago a new form of technology, Digital Rights Management (DRM), was promoted as the way forward for rights owners to manage their rights individually. In theory, DRM and technological protection measures (TPMs) allowed rights holders to apply encryption technology to copyright works so that they could only be used where they gave express permission and where strict rules for the use of the works was enforced by the technology itself. In reality, while the promise of DRM technologies has proven illusory, the role and importance of CMOs has grown exponentially. The challenge of effective licensing of online use of copyright works is essentially about finding solutions that will scale, that can accurately and cost effectively perform the licensing tasks in a global market and in relation to the vast and ever increasing volume of use. Only CMOs can provide the necessary infrastructure and systems to achieve this, fairly and efficiently, on behalf of a growing population of rights owners.

The role of CMOs has also evolved in other ways as well so that nowadays they undertake additional tasks which are not directly connected with the administration of rights but which have a more general (but no less important) cultural or social purpose. These activities include the provision of social and legal support services to rights owners; educational and public relations activities aimed at ensuring a better understanding of and respect for authors' rights/copyright by the general public; and representation of their members' interests with national governments and in relation to intergovernmental bodies responsible for authors' rights/copyright such as WIPO and the WTO at the international level. All of this additional activity is informed by the CMOs direct experience of the practicalities and challenges of authors' rights/copyright administration acquired through their day-to-day licensing activities.

CMOs offer their additional services to right owners either on a voluntary basis or as provided for in their rules. For example, some CMOs channel undistributed royalties towards activities such as the support of emerging talent and the establishment of social pension funds for the benefit of older and retired members. Such welfare activities are considered acceptable provided that they have been approved by the membership of the CMOs concerned and are in accordance with governing international norms.

Finally, it should be noted that many CMOs have adopted Codes of Conduct that set out the service standards that members and users can expect from them and provide for complaints procedures. These correspond to and meet the requirements established for authors' societies under CISAC's Professional Rules and Binding Resolutions, which establish best practices in the area of collective management for all CISAC members.