

WORKING DOCUMENT

WIPO Good Practice Toolkit for CMOs (The Toolkit)

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Glossary

Annual Report

A comprehensive report on a CMO's activities throughout the previous year.

Typically, this would include the annual accounts, with collections and distributions broken down by sector, including a comparison to the prior year; Operating Expenses; a section on governance, detailing the governing bodies and persons who manage the business of the CMO.

CMO, Collective Management Organization

Collective Management Organizations (CMOs) typically exist in a situation where it would be impossible or impractical for owners of copyright and related rights to manage their rights directly, and where it is to their advantage that the licensing of the rights that they own or represent be aggregated with a CMO.

The CMO's authority is typically conveyed by its Statute (if Membership-based), by voluntary mandates, by Representation Agreements with other CMOs and/or by national law. In most (but not all) cases, CMOs are organised on a not-for-profit basis and are owned or controlled by their Members.

CMOs ensure that their Members receive payment for copyright-protected uses of their works and other subject matter.

CMOs represent different categories of rights, for instance, a Mechanical Rights Organization (MRO), a Music Licensing Company (MLC), a Performers' Collective Management Organization (PMO), a Performing Rights Organization (PRO), a Reproduction Rights Organization (RRO) and a Visual works Collective Management Organization (VCMO).

Distributions

Payments to Members of a CMO, CMOs with whom Representation Agreements have been concluded, or other authorized rightholders, after the deduction of Operating Expenses and other authorized deductions.

The payment will be based either on actual usage data or, as far as economically feasible, on an agreed formula.

Extraordinary General Meeting

Any general meeting of the CMO that is not the annual General Meeting, and which can be held at any time of the year.

Typically, the Statute would provide for either the governing bodies or a minimum percentage of the Members to call this Extraordinary General Meeting, and there be a minimum notice period to Members of the CMO.

General Meeting

A regular meeting of a CMO's Members and/or their elected representatives, convened at least once per year.

Licensee

A User who is licensed by a CMO to make copyright-protected uses of copyright works or other subject matter is a Licensee of a CMO.

Typically, such a Licensee is responsible for payment of licensing fees or statutory remuneration, whether permitted by legal exception or limitation, statutory or contractual license, and fulfils related legal obligations, such as the provision of information.

Member

A member of a CMO recognized as such in its Statute, and who may be a natural person or legal entity.

Typically, members of a CMO include, depending on the rights managed by the CMO, authors (such as writers, composers, painters and photographers), performers (such as musicians, actors and dancers), publishers, phonogram producers, film producers and other rightholders which fulfil the membership requirements of a CMO as well as rightholders whose rights the CMO represents.

Operating Expenses

Include salaries, rents, utilities, and other expenses directly relating to the running of the operation.

Representation Agreements

Include unilateral bilateral and reciprocal representation agreements, signed between CMOs, whereby one CMO mandates another CMO to manage the rights it represents.

Most Representation Agreements will include provisions for the transmission of Distributions allocated to the receiving CMO.

Rights Revenue

Revenue collected from Licensees or from other parties responsible for the payment of remuneration for or related to copyright-protected uses of copyright works.

Statute

Means the memorandum and articles of association, charter, by-laws, the rules or documents of constitution of a CMO.

This includes, but is not limited to, a summary of the CMO's role and function, and an explanation of each category of rightholders and rights which it represents.

User

The User is a natural or legal person who uses a copyright work or other subject matter protected by copyright or neighbouring rights, whether permitted by legal exception or limitation, statutory or contractual license.

Introduction

The purpose of this WIPO Good Practice Toolkit for CMOs (The Toolkit) is to compile examples of legislation, regulation and codes of conduct in the area of collective management of copyright and related rights from around the world and to distil them into examples of good practice.

If they wish, Member States and other stakeholders may select tools from The Toolkit to choose the right approach in view of their country's particular circumstances, and decide on their own infrastructure for collective management.

This document should not be perceived as being normative in any way.

All the topics in The Toolkit are presented under the following three headings:

Heading	What is discussed
Explanation	A short explanation of why attention should be paid to a particular issue, and why that issue is important.
Examples of good practice in codes, regulation or legislation	A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation.
Good practice tools	A menu of optional tools for consideration by Member States and other stakeholders.

Key Issues of the Toolkit

1. Providing information about the CMO and its operations

1.1 The role of the CMO and its primary functions

Explanation

Role: CMOs provide appropriate mechanisms for the exercise of copyright and related rights, in cases where the individual exercise by the rightholder would be impossible or impractical. Collective management is an important part of a functioning copyright and related rights system, complementing individual licensing of rights, resting on robust substantive rights and corresponding enforcement measures. In this vein, CMOs are policy bridge between rightholders and Users.

Function: CMOs provide a mechanism for obtaining permission to use copyright materials, as well as for paying the corresponding fees or remuneration for certain uses of such materials, through an efficient system of collection and distribution of license fees and/or remunerations. Some CMOs provide social, cultural and promotional services.

Examples in codes or legislation

Role:

European Union:

“Collective management organizations play, and should continue to play, an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their rightholders and the public.”

Recital 3, Directive 2014/26/EU on collective rights management and multi-territorial licensing of rights in musical works for online uses (EU Directive 2014/26/EU)

The Societies' Council for the Collective Management of Performers' Rights Code of Conduct (SCAPR):

“Performers' rights affected by mass uses must, as reflected by most national legislations, be managed by non-profit organizations established for collective management of individual rights. Such practical considerations inter alia induced national and international legislators to provide performers with remuneration rights regarding certain mass uses and to entrust organization with the assertion of the performers' remuneration rights.”

SCAPR Code of Conduct, Introduction to Collective Management of Performers' Rights

China:

“Rights which are difficult for right owners to exercise effectively by themselves, such as those of performance, presentation, broadcasting, rental, communication through information network, and reproduction provided for in the Copyright Law, may be collectively administered by a copyright collective administration organization.”

Article 4, Regulations on Copyright Collective Administration

Côte d'Ivoire:

"Collective management organizations have as their object:

- to negotiate with the users the exploitation authorizations of the rights which they manage;
- to collect the corresponding fees and distribute them among the rightholders;
- to carry out and finance social and cultural actions for the benefit of their members;
- to sue for the defense of the interests for which they are responsible by law, including the collective interests of their members."

Article 116, Law on Copyright and Related Rights, 2016

Mexico:

"Collective management society is the non-profit making legal entity that is constituted under the protection of this Law in order to protect authors and holders of related rights, both national and foreign, as well as to collect and distribute the amounts for copyright or related rights generated in their favor."

Article 192, Federal Copyright Law, as amended up to 2016

International Federation of Reproduction Rights Organisations (IFRRO):

"RROs

- 1.1 act according to their governing rules and constitution as well as applicable national and international law;
- 1.2 provide information about their operations that is clear and easy to understand;
- 1.3 educate and train their staff to meet the standards of this Code;
- 1.4 work to maintain, protect and value copyright laws where required and appropriate;
- 1.5 organize and publicize appropriate procedures to manage complaints and resolve disputes;
- 1.6 deal with confidential information appropriately, respecting agreements and applicable laws while respecting privacy rights of rights holders and users;
- 1.7 administer rights efficiently, including where they involve other organizations, so as to minimize total administrative costs that are being deducted."

IFRRO Code of Conduct

Function:

Brazil:

"Authors and related rights holders may associate on a non-profit basis, for the exercise and defense of their rights."

Article 97 and 97(1) Law on Copyright and Neighboring Rights, 1998, as amended up to 2013 ("ECAD Law")

Colombia:

"Copyright or related rights collective management organizations shall primarily have the following objectives: (a) To administer their members' rights and the rights entrusted to its administration, in accordance to its bylaws; (b) To provide the best benefits and social security for its members; (c) To promote the intellectual production and the improvement of the national culture."

Article 2 Decree no. 0162 of 1996, regulating Andean Decision 351 of 1993 and Law no. 44 of 1993, in connection with Copyright or Related Rights Collective Management Organizations ("CMO

Regulations")

Malawi:

"The functions of the Society shall be:

- (a) to promote and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers and in particular to collect and distribute any royalties or other remuneration accruing to them in respect of their rights provided for in this Act;
- (b) to maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers;
- (c) to publicize the rights of owners and give evidence of the ownership of these where there is a dispute or an infringement;
- (d) to print, publish, issue or circulate any information, report, periodical, book, pamphlet, leaflet or any other material relating to copyright, expressions of folklore, rights of broadcasters, performers and producers of sound recordings; and
- (e) to advise the Minister on all matters under this Act."

Article 42, Copyright Act, 2016

The International Confederation of Authors and Composers Societies (CISAC):

Each [CMO] shall use its reasonable endeavors to:

- license all uses of its repertoire in accordance with and subject to the scope of its mandate;
- promptly collect all Licensing Income due under the licenses which it issues and take all steps it may consider appropriate to collect unpaid Licensing Income;
- monitor and protect the use, and prevent the unauthorized use, of its repertoire; and
- promptly collect relevant information about Works exploited by its licensees.

CISAC Professional Rules (music)

Good practice tools

1. *A CMO is an organization with a primary responsibility towards the rightholders it represents. A CMO should always act in the best interest of those rightholders, in accordance with applicable law and its Statute.*
2. *With respect to certain uses and/or rights, collective management may be the most cost effective mechanism for ensuring the effective exercise of copyright and related rights, in order to make these rights work in practice.*
3. *A CMO provides licensing and/or collection services to the Users of copyright content.*
4. *CMOs play an important role in copyright and as promoters of culture, by providing social, cultural and educational services for the benefit of rightholders.*
5. *Rightholders entrust a CMO with the management of their rights. A CMO should undertake its services diligently, efficiently, and in a non-discriminatory manner.*
6. *Within the limits of the mandate provided by a rightholder or granted by law a CMO should:*

- (a) *License and/or collect remuneration for the rights it represents or conclude agreements for the use and/or collection of such rights, as the case may be;*
- (b) *collect all Rights Revenue in respect of the use of such rights or of relevant copyright remuneration schemes;*
- (c) *monitor the use of such rights;*
- (d) *prevent the unauthorized use of such rights and enforce remuneration schemes; and*
- (e) *collect and process data on the use of such rights to enable the timely and accurate individual distribution of monies.*

7. *Within the limits of its mandates and in the interest of the rightholders it represents, a CMO may engage in activities aimed at increasing public awareness about copyright, collective rights management and CMOs, as well as their positive effect on the national economy and on cultural diversity, including its cultural and social activities.*

1.2 Information for the public

Explanation

In order to ensure a relationship of mutual trust, it is important for all stakeholders in the value chain to have easy access to accurate information about CMOs, as well as to the way in which they are organized. The provision of certain basic information about a CMO's operations is usually an essential step towards the creation of a more positive perception of CMOs amongst the general public.

Examples in codes or legislation

Andean Community:

"Collective Management Organizations "must undertake to publish at least annually, in a medium with wide national circulation, their balance sheets and accounts, and also the general tariffs for the use of the rights that they represent" and "must circulate to their members complete and detailed periodical information on all those of their activities of the society that may have a bearing on the exercise of the rights of the said members."

Article 45(h) and (i), Andean Community Decision no. 351 establishing the Common Regime on Copyright and Neighboring Rights ("Decision no. 351"), 1993

Colombia:

"Societies for the collective administration of copyright and related rights shall publish their general tariffs, and the amendments to such tariffs, on their Websites, and shall have them available in their headquarters."

Article 5, Decree no. 3942 of 2010, regulating the Laws no. 23 of 1982 (Copyright Act) and 44 of 1993

Brazil:

"Collective management organizations, in the development of their functions, shall:

- (I) make public and transparent, through their own electronic means, the calculation formulas and collection criteria, differentiating, among other information, per type of user, time and place, as well as the criteria for the distribution of the collected

- amounts, including playlists and other usage records (...);
- (II) make public and transparent, through their own electronic means, their bylaws, their collection and distribution rules, the minutes of their deliberative meetings and the lists of works and right holders they represent (...)"

Article 98(b)(i) and (ii), ECAD Law

Canada:

"A collective society referred to in section 70.1 must answer within a reasonable time all reasonable requests from the public for information about its repertoire of works, performer's performances, sound recordings or communication signals."

Article 70(11), Copyright Act, as amended up to June 22, 2016

European Union:

"[Member States shall ensure that] a CMO makes public at least the following information:

- its statute;
- its membership terms and the terms of termination of authorisation to manage rights, if not included in the statute;
- standard licensing contracts and standard applicable tariffs, including discounts;
- the list of the persons [who manage the business of the collective management organisation];
- its general policy on distribution of the amounts due to rightholders;
- its general policy on management fees;
- its general policy on deductions from rights revenue for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;
- a list of the representation agreements it has entered into, and the names of CMOs with which these representation agreements have been concluded;
- the general policy on the use of non-distributable amounts; and
- the complaint handling and dispute resolution procedures available in accordance with Articles 34, 35 and 36."

Article 21, EU Directive 2014/26/EU

European Union:

The annual transparency report shall contain information on the total amount of remuneration paid to the persons [who effectively manage the business of a CMO and its directors] in the previous year, and on other benefits granted to them.

based on Articles 9 and 10, EU Directive 2014/26/EU

Belgium:

CMOs shall establish rules for tariff setting, collection and distribution regarding all sorts of rights managed under their responsibility, with the exception of tariffs determined by the law.

Up to date versions of the rules for tariff setting, collection and distribution will be available, and published on the CMO's website

not later than one month after their last adjustment.
based on Belgian Code of Economic Law, Book XI, Title 5

Brazil:

" [CMOs], in the development of their functions, shall:

- (i) make public and transparent, through their own electronic means, the calculation formulas and collection criteria, differentiating, among other information, types of user, time and place, and the criteria for the distribution of the collected amounts, including playlists and other usage records of the works and phonograms provided by users, except for the values distributed to the individual owners;
- (ii) make public and transparent, through their own electronic means, their bylaws, their collection and distribution rules, the minutes of their deliberative meetings and the lists of works and right holders they represent and the amount collected and distributed and credits collected and undistributed, their origin and the reason for their retention;
- (iii) seek operational efficiency, among other means, by reducing its administrative costs and the deadlines for distribution of the amounts to the right holders;
- (iv) offer the right holders the technical means so that they can access the balance of their credits in the most efficient way within the state of the art;
- (v) improve their systems for increasingly accurate investigation of public executions carried out and annually publish their verification, sampling and verification methods;
- (vi) guarantee members access to information on the works on which they are entitled and the executions assessed for each of them, refraining from signing contracts, agreements or agreements with a clause of confidentiality;
- (vii) guarantee the user access to information regarding the uses made by him.

The information contained in items I and II shall be updated periodically, in an interval never exceeding six (6) months."

Art. 98(b), ECAD Law

Panama:

"Provide its members with periodic, complete and detailed information of all the activities that may be of interest to the exercise of their rights, which should also be sent to the foreign entities with reciprocal agreements."

"Without prejudice to their legitimacy, collecting societies should provide to users, in the formats regularly used by them, the tariffs and administrated repertoire."

Articles 138 and 140, Law on Copyright and Neighboring Rights and Enacting Other Provisions ("Copyright Law"), 1994

African Intellectual Property Organization (OAPI):

"Collective Administration:

(1) The protection, exploitation and administration of the rights of authors of works and the rights of holders of related rights as defined in this Annex together with the defence of their moral interests shall be entrusted to a national collective rights administration body of which the structure, tasks and operation are to be determined by the competent national authority of each member State of the Organization.

(2) The provisions of paragraph (1) above shall in no event

prejudice the faculty enjoyed by the authors of works and their successors in title and by the holders of related rights to assert the rights afforded them by this Annex.

(3) The national collective rights administration body shall administer on its national territory the interests of the other national and foreign bodies within the framework of conventions or agreements that it may conclude with them.”

Article 60, Bangui Agreement (1977, and further revisions)

SCAPR:

“CMOs shall be accountable and transparent to their members and make available to the performers all relevant information regarding the organization’s activities, particularly its management, collection conditions and distribution of remuneration, including relations with sister organizations in other countries.”

Article 4.2, SCAPR Code of Conduct

“CMOs shall act in a consistent and transparent manner with regard to users and the public in general.”

Article 11, SCAPR Code of Conduct

Good practice tools

8. *A CMO should regularly publish and keep up to date:*
 - (a) *its Statute, membership terms and rules on termination of membership;*
 - (b) *its tariff structure;*
 - (c) *its general distribution policy;*
 - (d) *its policy on deductions (such as any administration, social, cultural or educational deductions);*
 - (e) *its policy on the use of non-distributable Rights Revenue;*
 - (f) *its annual accounts;*
 - (g) *its complaint and dispute resolution procedures;*
 - (h) *a list of the persons who manage its business and who sit on its board; and*
 - (i) *the total amount of remuneration paid, and other benefits provided to the persons who manage the business of the CMO.*

2. Membership: information, adherence and withdrawal

2.1 Before joining a CMO as a Member

Explanation

In order to ensure transparency towards rightholders and users, a CMO should provide a rightholder with the necessary information about its membership requirements, the nature of its Representation Agreement, management fees, other possible deductions, membership withdrawal conditions, the governance structure, and any opportunities to participate in the decision-making processes.

Examples in codes
or legislation

United Kingdom:

“Regarding membership CMOs shall provide essential information to members-to-be], explaining the following points:

- who can join, and the procedures for doing so, the terms of membership and where these can be found;
- the nature of the grant or transfer of rights: exclusive license, assignment, etc. and the implications of this for the member;
- the scope of the authority granted under the agreement;
- if and how the member may restrict the authority to act and/or require consultation (if applicable);
- arrangements for terminating membership and describe implications of termination;
- Successors in title: explain what happens if the member dies or (if corporate) dissolves while still a member of the CMO.”

The British Copyright Council’s (BCC) Principles of Good Practice for Collective Management Organizations, List 1

“CMOs shall inform membership about aspects of representation in governing bodies, participation at meetings, voting rights and other governance issues, inter alia explaining:

- how members will be represented on the governing body/board of directors;
- how the governing body is composed, how it is appointed, terms of office, and the cycle of changes to the governing body;
- any technical/regional committee or council structures, and how these are appointed;
- how members can apply to be on the governing body or any committees/regional councils etc.;
- the frequency of general meetings and how members will be notified;
- what voting rights they have;
- what rights members have to call a special meeting and how to do it and
- how members can still exercise voting rights even if they cannot attend (proxies, etc.).”

BCC Principles of Good Practice for Collective Management Organizations, List 2

Senegal:

“Optional nature of collective management. – Unless otherwise provided by law, owners of copyright and neighbouring rights shall not be required to belong to a collective management society. Provided that they give sufficient notice, they may withdraw from the society after joining it.”

Art. 114, Law on Copyright and Related Rights, 2008

Mexico:

“Persons entitled to become members on a collective management society may freely choose whether to join it or not; likewise, they may choose to exercise their economic rights individually, through proxy or through society. Collective management societies may not intervene in the collection of

royalties when the members choose to exercise their rights individually with respect to any use of their works or have agreed direct mechanisms for such collection. On the other hand, where the members have given a mandate to collecting societies, they will not be able to collect royalties on their own, unless they revoke it. Collective management societies may not impose as mandatory the management of all modes of exploitation, nor the entire work or future production.”

Article 195, Federal Law on Copyright

Nigeria:

“Withdrawal of Membership

A member shall, upon reasonable notice of his/her intention to do so, have the right to withdraw his membership of a Collective Management Organization or the rights assigned to the Organization in respect of any of his works.”

Article 7, Copyright Regulations (CMOs), 2007

Ecuador:

“Members of collective management societies. - Collective management societies shall have the obligation to admit as a member any right holder. The statute of the society must prescribe the conditions for admission as members of the rights holders who request it and certify the quality of such.”

“The affiliation of the holders of copyright or related rights to a society of collective management will be voluntary. The representation conferred on collecting societies pursuant to this Chapter shall not impair the right of holders to exercise directly the rights recognized in this Title.”

Articles 240 and 241, Organic Code on Social Economy of Knowledge, Creativity and Innovation (“COESCCI”), 2016

European Union:

“The CMO is required to provide the rightholder with information on management fees and other deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his consent to it managing his rights.”

based on Article 18, EU Directive 2014/26/EU

SCAPR:

“The managerial services of a PMO shall be open to all performers enjoying rights in the territory of its operation. The membership is a personal right of the performer.”

SCAPR Policy and Guidelines Introduction

“Basic information on membership and the activities of the CMO shall be available in English to all foreign performers.”

Article 4.4, SCAPR Code of Conduct

Good practice tools

9. A CMO should provide (where possible, electronically) a clear summary of applicable rights, obligations and other essential information. In particular, a CMO should explain:

- (a) who can join, and the procedures for doing so, the terms of membership and

where all such information can be found;

- (b) the nature of the grant or transfer of rights (whether rights have been granted on an exclusive or non-exclusive basis) and the implications of such information for the Member;*
- (c) the scope of the authority granted under the agreement;*
- (d) how a Member may restrict the authority of the CMO to act on its behalf;*
- (e) how the CMO consults with its Members;*
- (f) the arrangements for terminating membership and a description of the implications of termination;*
- (g) what happens if a Member dies or (if corporate) is dissolved while still a Member of such CMO;*
- (h) how Members will be represented on the governing bodies;*
- (i) how the governing bodies are composed, how they are appointed, and their terms of office;*
- (j) any sub- committee or council structures, and how these are approved;*
- (k) how a Member can present their candidature for elections to the governing body or apply to become Member of any sub-committees or council structures;*
- (l) the frequency of General Meetings and how a Member will be notified of such meetings;*
- (m) what rights a Member has to call an Extraordinary General Meeting and how to do it;*
- (n) what voting rights a Member has;*
- (o) how a Member can still exercise voting rights through proxy if they cannot attend;*
- (p) information on whether collective administration by such CMO is mandatory, and the consequences of such information for the rightholder; and*
- (q) its deduction policies and the rightholder's ability to benefit from activities and services funded through those deductions.*

2.2 Acceptance of Members

Explanation

Given that a CMO offers rights management services to rightholders, in order to establish a relationship of mutual trust, it should ensure that:

- its membership criteria and/or terms of service are fair, transparent and non-discriminatory; and
- clearly defined in published documents such as its Statute, membership terms or User agreements.

Examples in codes
or legislation

Australasia:

“The membership of a Collecting Society will be open to all eligible creators of copyright material, and to anyone who owns or controls copyright material [.....], in accordance with the Constitution of the Collecting Society.”

Australasian and Australian Copyright Collecting Societies Code of Conduct

Belgium:

“CMOs shall accept rightholders as members if they fulfil the membership requirements which shall be based on objective, transparent and non-discriminatory criteria. They may only refuse a request for membership on the basis of objective criteria.”

Belgian Code of Economic Law, Book XI, Title 5

Colombia:

“[CMOs] shall admit as members those owners of rights who so request and duly attest their status as such in the area of activity concerned.”

Article 14.1, Law no. 44 of 1993

Ecuador:

“CMOs shall have the obligation to admit as member any rightholder. The CMO Bylaws shall prescribe the conditions for the admission as members of the rightholders who request so and prove their condition as such [as rightholders]”.

“The affiliation of copyright or related rights holders to a CMO shall be voluntary. The representation conferred to CMOs in accordance to this Chapter shall not affect the power of rightholders to directly exercise the rights granted to them under this Title.”

Arts. 240 and 241, COESCCI

International Federation of the Phonographic Industry (IFPI):

“Each MLC is to accept as members and/or provide services to all sound recording rightholders on non-discriminatory basis and according to principles of equal treatment, unless the MLC has objectively justified reasons to refuse its services or differentiation is absolutely necessary and based on justified and objective criteria (for example, where an applicant/member is proven to be engaging in piracy or other illegal practices or where an applicant/member manages rights in sound recordings that are of a type that does not fall within the MLC’s scope of activity (such as, for example, library music or jingles)).

IFPI Code of Conduct

SCAPR:

“Performers shall be encouraged to entrust the management of their rights to a CMO of their own choice.”

Article 1, SCAPR Code of Conduct

Good practice tools

10. Membership criteria should be included in a CMO’s Statute or its membership terms.

11. A CMO should accept a rightholder as a Member if they fulfil the membership

criteria.

12. *Rightholders should be free to grant their rights to one or more CMOs on condition that they do not grant the same rights within the same territory to more than one CMO. This is without prejudice to the rightholders' freedom to grant to CMOs non-exclusive mandates or licenses, and retain the right to license uses individually.*

13. *Membership criteria should be objective, transparent and non-discriminatory.*

14. *A CMO may only refuse a request for membership on the basis of objectively justifiable criteria, according to the provisions of its Statute or membership terms. Grounds for refusal should be provided to the applicant in writing within a reasonable period of time.*

2.3 Non-discrimination of rightholders

Explanation

The principle of fair and non-discriminatory treatment, which is enshrined in the Berne Convention and other international copyright treaties, should be integral to a CMO's operations. This principle therefore deserves the particular attention of those setting up and/or regulating a CMO. CMOs are important players in the cultural and creative industries, which emphasizes the need of all CMOs to abide by internationally and nationally adopted principles of non-discrimination.

Examples in codes or legislation

European Union:

"[...] a collective management organization should not, when providing its management services, discriminate directly or indirectly between rightholders on the basis of their nationality, place of residence or place of establishment."

Recital 18, EU Directive 2014/26/EU

Belgium:

"[...] the administration shall be carried out in a reasonable and non-discriminatory manner."

Belgian Code of Economic Law, Book XI, Title 5

Colombia:

"Foreign members whose rights are administered by a society for the collective administration of copyright and neighboring rights, either direct or on the basis of agreements with foreign counterpart societies for the collective administration of copyright and neighboring rights responsible for the direct representation of those members, shall be given the same treatment as members who are nationals of the country or have their usual residence there and are members of the collective administration society or are represented by it."

Article 14(6), Law no. 44 of 1993

Brazil:

"CMOs shall accord their members the same [equitative] treatment, and it is forbidden different treatment."

Article 98(5), ECAD Law

Dominican Republic: "Collecting Societies shall guarantee in its bylaws and operation, the following: [...]"

c) A system of collection, distribution and monitoring of royalties that is effective and transparent and treats all right holders equally, whether Dominican nationals or foreigners."

Article 162(iv) Law no. 65-00 on Copyright

SCAPR:

“The distribution and payment to foreign performers shall be based on the principle of equal treatment of all represented performers.”

Article 6.2, SCAPR Code of Conduct

“CMOs are obliged to identify all protected right owners involved, nationals and foreigners.”

Article 8.2, SCAPR Code of Conduct

IFRRO:

“[CMOs] maintain fair, equitable, impartial, honest, and non-discriminatory relationships with rightholders, users and other parties.”

IFRRO Code of Conduct

CISAC:

“[CMOs] shall be open to Creators and publishers of all nationalities. They shall refrain from discriminating between Creators and publishers or between Sister Societies in any manner which is legally unjustifiable or which cannot be objectively justified.”

CISAC Professional Rules

European Union:

Neither shall they discriminate between their own members and members they represent on the basis of a reciprocal representation agreement.

based on EU Directive 2014/26/EU

IFPI:

“Each MLC is to accept as members and/or provide services to all sound recording rightholders on non-discriminatory basis and according to principles of equal treatment, [*unless the MLC has objectively justified reasons to refuse its services or differentiation is absolutely necessary and based on justified and objective criteria (for example, where an applicant/member is proven to be engaging in piracy or other illegal practices or where an applicant/member manages rights in sound recordings that are of a type that does not fall within the MLC’s scope of activity (such as, for example, library music or jingles))*].”

IFPI Code of Conduct

Good practice tools

15. A CMO should not discriminate between rightholders it represents – either directly or indirectly – on the basis of:

- (a) *nationality or place of residence or establishment; or*
- (b) *gender, origin, religion, disability, age or sexual orientation.*

16. A CMO should treat the rightholders it represents by virtue of direct mandates, Representation Agreements or legislation, fairly and equally.

2.4 Scope of CMOs' rights management mandate/membership

Explanation

A CMO's authority to act may be based on mandates received from a rightholder or other legislative provisions. The contractual arrangement between a rightholder and CMO is of fundamental importance in the system of collective management. Such arrangements determine the nature and scope of a CMO's authority to license the rightholder's rights and otherwise to represent the interests of the rightholder (e.g. to take legal action in order to enforce the rights in their own name). These arrangements also set the limits of a CMO's authority to represent the rightholder and their rights.

A CMO's mandates should strike a fair balance between a rightholder's freedom to determine how his/her rights are managed and the legitimate need to have a meaningful repertoire of rights to license to Users.

Examples in codes or legislation

Colombia:

"Copyright or related rights holders may manage individually or collectively their economic rights."

Article 1, Copyright Regulations

Ecuador:

"The affiliation of copyright or related rights holders to a CMO shall be voluntary. The representation conferred to CMOs in accordance to this Chapter shall not affect the power of rightholders to directly exercise the rights granted to them under this Title."

Article 241, COESCCI

IFPI:

"Each MLC is to allow rightholders to determine the scope (rights, uses, repertoire and territory) and character (exclusive or non-exclusive) of the rights mandates they give to the MLC without restrictions, unless such restrictions are imposed by applicable legislation, competent courts or other authorities, or they are objectively justified for reasons of effective management and licensing of rights and they are always proportionate to the objectives they seek to achieve."

IFPI Code of Conduct

European Union:

"Rightholders shall have the right to authorize a CMO of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the CMO or the rightholder. Unless the CMO has objectively justified reasons to refuse management, it shall be obliged to manage such rights, categories of rights or types of works and other subject matter, provided that their management falls within its scope of activity."

Article 5, EU Directive 2014/26/EU

"Where a right holder authorizes a CMO to manage his rights, he shall give consent specifically for each right or category of rights or type of works and other subject matter which that rightholder authorises the CMO to manage. Any such consent shall be evidenced in documentary form."

Article 5(7), EU Directive 2014/26/EU

Good practice tools

17. A CMO should always act on the basis of a mandate from a rightholder or, in defined cases, by statutory or governmental mandate. A CMO may, in its Statute, restrict a rightholder's right to freely determine the scope of their rights management mandate provided that such a restriction is objectively justified. The restriction imposed by a CMO should be proportionate to the objective it seeks to achieve.

2.5 Termination of mandate/membership

Explanation

CMOs administer rights on a collective basis when individual rights management is impractical or impossible. Against this background, it is important to ensure that rightholders have the ability to terminate their membership of a CMO, to entrust their rights to another organization, or to manage their rights themselves.

Examples in codes or legislation

European Union:

"Right holders shall have the right to terminate the authorization to manage rights [...] upon serving reasonable notice not exceeding six months. The CMO may decide that such termination or withdrawal will take effect only at the end of the financial year."
Article 5(4), EU Directive 2014/26/EU

Colombia:

"The statutes [of the CMO] shall lay down the manner of and the conditions governing admission to and withdrawal from the society (...)."
Article 14.2, Law no. 44

Brazil:

"The right holder may move, at any moment, to another association [CMO], for which he shall just communicate it, in writing, to the original association [CMO]."
Article 97, ECAD Law

China:

"Any right owner may, according to the procedures prescribed in the articles of association, withdraw from a copyright collective administration organization, thus terminating the contract for copyright collective administration. However, any licensing contract that has been concluded, at that time, between that organization and another person shall remain valid until it expires, and the right owner shall, during the term of validity of the contract, have the right to obtain the relevant licensing fees and to consult the relevant business material."
Article 21, Regulations on Copyright Collective Administration

CISAC:

"A CMO shall permit a Creator and a publisher to terminate his affiliation agreement with the CMO, provided that the CMO may impose reasonable conditions in relation to the termination of such agreement."
CISAC Professional Rules

European Union:

"If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorization or the withdrawal of rights took effect, or under a license granted before

such termination or withdrawal took effect, the rightholder shall retain his rights [in the distribution process, and in the administrative and financial information provided by the CMO as if the rightholder still was associated with the CMO].”
Article 5(5), EU Directive 2014/26/EU

IFPI:

“In appropriate circumstances the MLC may require that rightholders’ rights continue to be included in licenses granted to users prior to termination for a reasonable period of time, however such a period shall not exceed 12 months.”
IFPI Code of Conduct

SCAPR:

“The membership is a personal right of the performer.”
Article 2, SCAPR Code of Conduct

Good practice tools

18. *A CMO should permit each Member to terminate or change the scope of his/her mandate, upon a reasonable notice period.*

19. *In circumstances described in its Statute, a CMO may require that a rightholder’s rights continue to be included, for a reasonable period of time, in licenses granted to Licensee prior to termination.*

20. *Notwithstanding the termination of a mandate, a rightholder should be entitled to his/her full share in the Rights Revenue collected.*

3. Members’ rights to fair treatment; their position in the CMO

3.1 Members’ rights to fair treatment

Explanation

Rightholders’ trust and confidence in their CMO helps it achieve a strong position in the marketplace and contributes to the effective management of rights. The best way of reinforcing the Members’ confidence in their CMO is through transparent governance as well as through proportionate rights and obligations.

Examples in codes or legislation

Peru:

“Without prejudice to the legal provisions applicable to the candidate society on account of its nature and form, its statutes shall contain the following: [..]

(d) the general rules that will govern the contract of association with the society, which shall be independent of the instrument of membership and is to be signed by all members, whether full or associate; the said rules shall be applicable to the representation contracts that the management societies may enter into with comparable foreign organizations;

(e) the conditions governing the acquisition and loss of membership, and also the suspension of membership rights; exclusion shall be allowed only in the case of a final sentence for an offending act to the detriment of the society to which the member belongs; only original or derived owners of the rights under management and exclusive licensees of any of those

owners may be members;
 (f) the duties of members and the disciplinary rules to which they are subject, and also their rights, including the right to information and voting rights; voting in the election of governing and representative bodies shall be secret.”

Article 151, Law no. 822 on Copyright

European Union:

CMOs shall not impose obligations on their members which are not objectively necessary for the effective management of the rights.

based on Article 4, EU Directive 2014/26/EU

Australasia:

“Each Collecting Society will treat its Members fairly, honestly, impartially, courteously, and in accordance with its Constitution and any Membership Agreement.”

Australasian and Australian Copyright Collecting Societies Code of Conduct

IFRRO:

“[CMOs] manage their relationships with rightsholders efficiently, equitably and impartially. Treat all rightsholders in accordance with applicable statutes and national laws.”

IFRRO Code of Conduct

Good practice tools

21. A CMO should treat each Member or rightholder fairly, and in accordance with its Statute and membership terms. It should not impose any obligation on rightholders that are not objectively necessary for the effective management of such rightholder's rights.

3.2 Members' rights in representative bodies

Explanation

In order to ensure a fair and balanced participation by rightholders in a CMO's decision-making process, the CMO should establish a genuine and balanced role for rightholders within its governance structures, with particular attention to fair voting rights.

Examples in codes or legislation

Andean Community:

“The members of the society [CMO] must be accorded appropriate rights of participation in the decisions thereof.”

Article 45(d), Decision no. 351

Colombia:

“The General Assembly shall be the supreme body of the association and shall elect the members of the Governing Board and Supervisory Committee and the Controller. Its responsibilities and operation and the manner of its convocation shall be laid down in the statutes of the association [CMO] concerned”; “The Governing Board shall be composed of no fewer than three nor more than seven active members of the association, whom the General Assembly shall elect by the electoral quotient system, together with their alternates, who must be specific to each person”; “The Governing Board shall be the body responsible for the administration and management of the society, responsible to the General Assembly, whose instructions it shall carry out. Its

responsibilities and functions shall be specified in the statutes.”
Articles 15, 16 and 17, Law no. 44

Ecuador:

“The rules, regulations and bylaws of CMOs shall prescribe: (...) (f) The rights and obligations of the members and their disciplinary regime and, particularly, the rights to information and to elect the governing and representation bodies. The vote shall be democratic and secret. All the members shall have the right to participate in the election of the CMO’s authorities, in accordance to the conditions provided in the Elections Rules [of the CMO]; and (g) Independent of the categories of members of a CMO, all the members shall have the right to participate in the decisions adopted by the General Assembly, for which they may use the electronic means necessary for enabling such participation.”
Article 245(1), COESCCI

Peru:

“To accord those whom it represents an appropriate right of participation in its decisions, with the possibility of introducing a voting system that incorporates reasonable weighting criteria proportionate to the actual use of the works, performances or productions embodying rights that are managed by the society; in matters relating to the suspension of membership rights, the voting system shall be equal.”
Article 153(d), Copyright Law

IFRRO:

“[CMOs] have open representation for all eligible rightsholders in accordance with applicable national and supranational laws, including competition law.”
IFRRO Code of Conduct

European Union:

“The statute of a CMO shall provide for appropriate and effective mechanisms for the participation of its members in the collective management organisation’s decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.”
Article 6(3), EU Directive 2014/26/EU

IFPI:

“Unless prohibited by applicable legislation each MLC is to provide rightholders the opportunity for a fair and balanced representation in the governing bodies.”
IFPI Code of Conduct

CISAC:

“(Where the Board is composed of Creators and publishers) [a CMO shall] maintain a fair balance on its Board between Creators on the one hand and publishers on the other hand; maintain a fair balance on its Board between the various categories of Creators.”
CISAC Professional Rules (music and visual)

European Union:

“All members of the CMO shall have the right to participate and vote at the general assembly of members. However, Member States may allow for restrictions on the right of the members of the collective management organisation to participate in and to

exercise voting rights at the general assembly of members, on the basis of one or both of the following criteria:

- (a) duration of membership;
- (b) amounts received or due to a member in relation to the specified financial period;

provided that such criteria are determined and applied in a manner that is fair and proportionate.”

Article 8(9), EU Directive 2014/26/EU

“Every member of a collective management organisation shall have the right to appoint any other person or entity as a proxy holder to participate in and vote at the general assembly of members in his name, provided that such appointment does not result in a conflict of interest which might occur, for example, where the appointing member and the proxy holder belong to different categories of rightholders within the collective management organisation. [.....]”

Article 8(10), EU Directive 2014/26/EU

SCAPR:

“PMOs shall act under the democratic control of the members. They shall be represented in a fair and balanced way in the decision making process of the PMO.”

Article 4.1, SCAPR Code of Conduct

Good practice tools

22. *The rules determining the basis for rightholder representation and powers within a CMO’s decision-making process should be open, fair and balanced. In particular, a CMO should maintain a fair balance between the rightholder categories that it represents*

23. *A Member of a CMO should be eligible for positions in any of its decision-making, supervisory or advisory bodies, provided that he/she meets the qualifications set out in the Statute.*

24. *All Members should have the right to participate at a CMO’s General Meeting (subject to any restrictions below).*

25. *Any restriction on the right of a Member to exercise its voting rights at the General Meeting of a CMO should be included in the Statute, and should be fair and proportionate.*

26. *Each Member of a CMO should have the right to appoint another Member as a proxy to attend and vote at a General Meeting. A CMO’s Statute may reasonably limit the number of proxies any individual Member may hold.*

4. Particular issues concerning the CMO–Member relationship

4.1 Financial and administrative information to Members

Explanation

Given the role of CMOs in ensuring timely and efficient distribution of remuneration, a CMO is expected to provide its Members with information about its financial results in an accurate and timely manner. This information should include, without being limited to, its:

- gross Rights Revenue broken down between the main collection sectors;
- Operating Expenses broken down between the main collection sectors;
- the social and cultural deductions it has made; and
- the amount of Distributions made.

For practical purposes, the statements which a CMO provides to each rightholder should allow such rightholder to verify the amounts due in respect of each of their works, performances or other subject matter.

Examples in codes
or legislation

Andean Community:

“Collective Management Organizations “must undertake to publish at least annually, in a medium with wide national circulation, their balance sheets and accounts, and also the general tariffs for the use of the rights that they represent” and “must circulate to their members complete and detailed periodical information on all those of their activities of the society that may have a bearing on the exercise of the rights of the said members.”

Article 45 (h) and (i), Decision no. 351

Ecuador:

“The CMO shall have permanently available to their members, physically or electronically: the annual budget, internal regulations, annual reports and distribution reports.”

Article 250.5(f) and (g), COESSCI

Brazil:

“CMOs shall keep updated and available to their members the information provided in paragraphs II and III of this article [databases of represented rightholders and works; bylaws and subsequent modifications; minutes of ordinary and extraordinary General Assemblies; reciprocal representation agreements with sister societies abroad; annual report of activities; annual accounts; report on the administrative fee; report of the external auditor; detailed governing model of the CMO; information on the managers and their salaries; etc.]”

Article 98(6), ECAD Law

Senegal:

“Statutory deductions. – The collective management society may make deductions in accordance with its statutes in order to finance social action and cultural activities, provided that the amount of such deductions remains within the limits allowed by generally recognized good governance practices.”

Article 120, Law on Copyright and Related Rights

Paraguay:

“Management bodies shall be obliged to ensure the provision of periodical information for the benefit of their members regarding the activities and transactions of the body that may have a bearing on the exercise of their rights, which information should include the general balance sheet of the body and the auditor’s report, and also the text of any resolutions adopted by their governing bodies. Similar information should be sent to foreign counterparts with whom they have representation contracts for the national territory.”

Article 142, Law on Copyright and Related Rights

European Union:

“A collective management organisation makes available no less than once a year to each rightholder to whom it attributed rights revenue or made payments in the period to which the information relates, at least the following information:

- any contact details which the rightholder has authorised the collective management organisation to use in order to identify and locate the rightholder;
- the rights revenue attributed to the rightholder;
- the amounts paid by the CMO to the rightholder per category of rights managed and per type of use;
- the period during which the use took place for which amounts were attributed and paid to the rightholder, unless objective reasons related to reporting by users prevent the collective management organisation from providing this information;
- the deductions made for management fees;
- the deductions made for any purpose other than management fees, including those that may be required by national law for the provision of any social, cultural or educational services;
- any rights revenue attributed to the rightholder which is outstanding for any period.”

Article 18, EU Directive 2014/26/EU

CISAC:

“In each Calendar Year, each [CMO] shall make available to each of its [members]:

- an annual report in respect of the fiscal year which immediately precedes such Calendar Year; and
- a summary of its domestic and international Income in respect of the fiscal year which immediately precedes such Calendar Year;
- a clear explanation of the purpose and the amount of all Expenditure which it makes from the Royalties due to such [member]; and
- a clear explanation of its distribution rules.

CISAC Professional Rules

Belgium:

“Without prejudice to any information that must be communicated in accordance with the laws and statutes, any [member] or his representative may obtain, within a period of one month as from the date of his request, a copy of the documents for the last three years concerning:

- the annual accounts approved by the general meeting and the financial structure of the society;
- an up-to-date list of the administrators;
- the reports made to the meeting by the administrative council and by the auditor-commissioner;
- the text and the statement of reasons of resolutions proposed to the general meeting and any information on candidates for the administrative council;
- the overall amount, certified by the auditor-commissioner, of remuneration, of lump-sum costs and of advantages of any nature whatsoever, paid to the directors;
- the up-to-date tariffs of the society;

- the allocation of monies that in first instance could not be distributed to rightsholders (non-distributable resale right remuneration and non-distributable monies in general)."

Belgian Code of Economic Law, Book XI, Title 5

SCAPR:

"PMOs shall be accountable and transparent to their members and make available to the performers all relevant information regarding the organization's activities, particularly its management, collection conditions and distribution of remuneration, including its relations with sister organizations in other countries."

SCAPR Code of Conduct

Good practice tools

27. A CMO should notify its Members (if possible electronically) that its Annual Report, including its income statement and accurate information about its collections, Operating Expenses and deductions, is available for download from its website or via other reasonable means.

28. A CMO should provide a rightholder with a list of the members of the board and the category each of them represents. A CMO should also make available information regarding the total amount of remuneration and other benefits paid to the members of the board and its management team.

29. A CMO should make available information (if possible electronically) to each Member to whom it has attributed Rights Revenue or made payments in the period to which the information relates and who is entitled to a distribution. Such information should include:

- (a) a statement of monies attributed to such Member, including information on Operating Expenses and deductions and the amounts subsequently paid to the rightholder;
- (b) a breakdown of Rights Revenue per main category of rights managed and per type of use;
- (c) a distinction between Rights Revenue earned nationally and Rights Revenue received on the basis of Representation Agreements; and
- (d) information regarding any amounts attributed to the rightholder which are outstanding for the period concerned.

30. The CMO should make available the distribution rules to its Members, if possible by electronic means.

4.2 Notification of changes in the CMO Statute and other pertinent rules

Explanation

A CMO should notify its membership about changes in its Statute and about other pertinent changes that may affect the Members' rights and/or obligations. Other rightholders that may not be the CMO's Members should be informed about any changes that may affect their rights and/or obligations.

Examples in codes or legislation

Brazil:

"CMOs shall keep updated and available to their members the information provided in paragraphs II and III of this article

[expressly included bylaws and subsequent modifications].”
Article 98(6), Law no. 9.610

Good practice tools

31. A CMO should notify each Member, where possible electronically, about important changes in its regulations on representation in governing bodies, participation at meetings, voting rights and other governance issues.

4.3 CMO's contact information

Explanation

It is essential for effective communication between a CMO and its Members that comprehensive contact information be both available and kept up to date.

Examples in codes or legislation

United Kingdom:

“A CMO shall provide clear signposts for how to contact the CMO, giving postal address(es), email addresses, telephone and fax numbers and any other communications methods.”

BCC Principles of Good Practice for Collective Management Organizations

Uganda:

“(1) Every registered society shall have a registered address to which notices and communications may be sent, and shall notify the Registrar on every change in its registered address within one month of the change. (2) Every registered society shall display its name and address on a signboard in a conspicuous position outside its place of business.”

Article 58, Copyright and Neighboring Rights Act, 2006

Good practice tools

32. A CMO should:

(a) make available to each Member it represents its up to date contact information, including; postal address(es), email address(es), telephone and if available fax number; and

(b) indicate the office hours and days of the week during which the CMO may be contacted.

5. Relationship between CMOs

Explanation

CMOs cooperate across borders on the basis of Representation Agreements. A fundamental requirement of such a Representation Agreement is that a CMO treats the Members of an overseas CMO on a non-discriminatory basis. CMOs should provide each other with all information which may be of assistance in executing it.

Examples in codes or legislation

Andean Community:

“Collective Management Organizations must undertake not to admit members of other collective administration societies of the same type, whether national or foreign, which have not first expressly renounced such membership.”

Article 45(k), Decision no. 351

Colombia:

“CMOs have the responsibility to enter into agreements with foreign collective administration societies operating in the same area of activity or management”; “Foreign members whose rights are administered by a society for the collective administration of copyright and neighboring rights, either direct or on the basis of agreements with foreign counterpart societies for the collective administration of copyright and neighboring rights responsible for the direct representation of those members, shall be given the same treatment as members who are nationals of the country or have their usual residence there and are members of the collective administration society or are represented by it.”

Articles 13(6) and 14(6), Law no. 44

Panama:

“Collective administration organizations shall provide their members and mandators with complete and detailed periodical information on all activities of the organization that could have a bearing on the exercise of their rights. Similar information shall be sent to the foreign organizations with which contracts have been entered into for representation on the national territory.”

Article 98, Copyright Law

China:

“A foreigner or stateless person may, through a like overseas organization that has concluded a reciprocal representation agreement with a Chinese copyright collective management organization, authorize the Chinese organization to administer copyright or rights related to copyright which he enjoys in the territory of China according to law.

The term “reciprocal representation agreement” in the preceding paragraph means an agreement in which a Chinese copyright collective administration organization and a like overseas organization mutually authorize the other party to carry out activities of copyright collective administration in the country or region to which the other party belongs.

A copy of reciprocal representation agreements concluded between a Chinese copyright collective administration organization and a like overseas organization shall be submitted to the copyright administration department of the State Council for the record and be published by such department.”

Article 22, Regulations on Copyright Collective Administration

IFRRO:

“[CMOs] provide information to other [CMOs] that is complete, consistent, clear and easy to understand.”

IFRRO Code of Conduct

CISAC:

“In each Calendar Year, each Member shall make available to each Sister Society an annual report in respect of the fiscal year which immediately precedes such Calendar Year.”

CISAC Professional Rules

IFRRO:

Each RRO will make available, on request, and subject to any confidentiality requirements, documents, information and records,

which may be of assistance to the other RRO in exercising its obligations under the bilateral agreement.”

IFRRO Code of Conduct

CISAC:

“Each [CMO] shall [...] keep accurate and up to date documentation relating to the scope of:

- its repertoire;
- the rights which it is mandated to administer in respect of such repertoire; and
- the territory in which it is mandated to administer in respect of such repertoire.”

“Each member (here: musical rights organization) shall distribute any Royalties due to its Sister Societies or to its Affiliates [...] as soon as practicable after collection and in any event no less than once a year.”

CISAC Professional Rules

“Any distribution by one [CMO] to another [CMO] should be made not less than once per year.”

IFRRO Code of Conduct

CISAC:

“[CMOs] distribute remuneration received:

- efficiently, diligently and expeditiously, while approximating actual use as far as possible;
- transparently explaining the manner and frequency of payments with sufficient detail.”

CISAC Professional Rules

IFRRO:

“Each [CMO] may deduct from collections, if authorized or required by national law or other governing authorities, by its statutes and/or distribution plans rules, and/or by its contracts or other agreements with rightholders or their representative organizations:

- allocations for the operations of the [CMO];
- allocations for social and/or cultural purposes, and/or
- tax deductions, e.g. withholding tax.”

IFRRO Code of Conduct

SCAPR:

“PMOs shall maintain continuous contact and cooperation with other organizations representing performers.”

SCAPR Code of Conduct

SCAPR:

Obligation to conclude reciprocal agreements with sister societies abroad and to exchange information and remuneration, in compliance with the Code of Conduct.

Articles 12-14, SCAPR Code of Conduct

“In a reciprocal agreement, the Contracting Parties shall cover their own costs incurred in the application of the agreement, and in the event that further cost deductions are taken by the receiving party, both parties shall agree on the specific and clear conditions upon which such deductions will be based.”

Good practice tools

33. *The relationship between one CMO and another CMO should be governed by their Representation Agreement.*

34. *A CMO should provide information to the other CMO that is complete, consistent, clear and easy to understand.*

35. *A CMO should provide the other CMO with the most recent Annual Report and other relevant information including data-management information.*

36. *A CMO should distribute remuneration received to the other CMO efficiently, diligently and expeditiously.*

37. *A CMO should inform the other CMO about its deduction policies, and any changes thereto.*

38. *A CMO should, upon request, make available to the other CMO accurate and up to date documentation relating to the scope of its repertoire, the rights which it is mandated to administer in respect of such repertoire and the territory in which it is mandated to administer in respect of its repertoire.*

6. Relationship between CMO and User

6.1 CMO's information to Users

Explanation

With a view to enabling all potential Users to take an informed decision about the benefits of an appropriate license, a CMO should make available to Users information which explains the key aspects of its licensing policies.

Examples in codes or legislation

Ecuador:

"CMOs shall have an updated and publicly accessible database with clear and precise information on the works, performances, broadcasts or phonograms whose copyright or related rights manage, as well as the names of their members and national and foreign represented persons, indicating:

- (1) each individual work, performance, broadcast or phonogram that they represent with respect to each rightholder;
- (2) the tariffs for each type of use and user category;
- (3) the reported uses for each work;
- (4) the methodology applied to the distribution."

Article 250, COESCCI

Brazil:

"CMOs shall keep a centralized database of all the contracts, declarations or documents of any nature that prove the authorship and ownership of works and phonograms, as well as the individual participation in each work and in each phonogram, preventing the falsification of data or any other fraud, and promoting the disambiguation of similar works titles"; "The information provided under paragraph 6º are of public interest and the access to it shall be granted by electronic means to any interested party, for free, allowing the Ministry of Culture

permanent and integral access to such information.”
Article 98 (6) and (7), Law no. 9.610

Uruguay:

Obligations of Collecting Societies: “(5) set fair and equitable tariffs that determine the required remuneration for use of their repertoire, whether for national or foreign rightholders, whether resident or not in the Republic, and keeping such tariffs available to the public.”

Article 21, Law on Copyright no. 17.616

China:

“A user shall, when paying licensing fees to a copyright collective administration organization, provide with that organization the information on specific use, such as the titles of the used works, sound or video recordings, etc., the names or titles of the right owners, as well as the manner, amount and time of the use; except otherwise stipulated in the licensing contract.

Where the information provided by the user involves his trade secrets, the copyright collective administration organization shall have the obligation to maintain secrecy.”

Article 27, Regulations on Copyright Collective Administration

United Kingdom:

“Each CMO shall provide its user [sic] with a comprehensive package of licensing (background) information, and inform the user how to get access to further details if of relevance. This communication shall include for instance:

- explanation of the rights administered by the CMO;
- the rightholders on whose behalf the CMO acts;
- explanation of the basis for the authority to act (e.g. membership agreements, etc.);
- summary of licensing schemes, terms and conditions and tariffs;
- explanation where more details can be found so as to provide a full picture of the whole agreement into which a licensee may be entering including information on any relevant related licensing scheme(s) or licenses operated by other CMOs or rightholders;
- where applicable, clarify how these have been negotiated (e.g. with a relevant trade association);
- explanation of how and when terms and conditions are reviewed;
- inform whether licenses grant any powers to the CMO to visit the licensee’s premises for compliance purposes, and if so, how these powers may be exercised; and how licensees will be consulted about changes or new developments materially affecting or likely to affect their licensing requirements (including changes to tariffs or fees).”

BCC Principles of Good Practice for Collective Management Organizations

Australasia:

“CMOs shall make available to [users] and potential licensees:

- information about the licenses or license schemes offered by the Collecting Society, including the terms and conditions applying to them, and about the manner in

- which the Collecting Society collects remuneration and/or license fees for the use of copyright material; and
- to the extent it reasonably can, having regard to the complexity of the questions of fact and law necessarily involved, take steps to ensure that all licenses offered by the Collecting Society are drafted so as to be plainly understandable to [users], and are accompanied by practical and suitable explanatory material.”

Australasian and Australian Copyright Collecting Societies Code of Conduct

SCAPR:

“CMOs shall act in a consistent and transparent manner with regard to users and the public in general.”

Article 11, SCAPR Code of Conduct

Good practice tools

39. A CMO should provide a User (where possible electronically) with relevant background information regarding licenses and licensing schemes. Such information should include:

- (a) an explanation of the rights administered by the CMO, and the categories of rightholders on whose behalf the CMO acts;
- (b) a summary of relevant tariffs;
- (c) a description of the licensing and invoicing procedures;
- (d) details of how a Licensee can cancel a license, any notice provisions which may apply, and any periods during which the right to cancel may subsist.

6.2 Principles governing licensing of Users

Explanation

Experience shows that an open and professional approach makes it easier for Users to accept a CMO’s licensing policies and allows a CMO to market itself in a more effective and productive manner. CMOs should therefore treat all potential Users in a fair, professional and non-discriminatory manner.

Competition laws often impose special obligations of fair and reasonable behavior on CMOs, given their common status as dominant market players. Such obligations might include non-discriminatory pricing and prohibition of unreasonable contractual terms.

Examples in codes or legislation

Australasia:

“Each [CMO] will treat [users] fairly, honestly, impartially, courteously, and in accordance with its Constitution and any license agreement.”

Australasian and Australian Copyright Collecting Societies Code of Conduct

CISAC:

“CMOs shall not unjustifiably discriminate between users.”

CISAC Professional Rules

European Union:

“Licensing terms shall be based on objective criteria [in particular

in relation to tariffs].”

Article 12, EU Directive 2014/26/EU

CISAC:

“Each CMO shall grant licenses on the basis of objective criteria, provided that a [CMO] shall not be obliged to grant licenses to users who have previously failed to comply with such Musical Society’s licensing terms and conditions.”

CISAC Professional Rules

Belgium:

“Any person who has a legitimate interest is entitled to consultation of all repertoires managed by a CMO, at the location of the CMO, or in writing. A person requesting in writing whether a certain work is part of the CMO’s repertoire will receive a written, and comprehensive reply not later than three weeks after the request has been received.”

Belgian Code of Economic Law, Book XI, Title 5

Good practice tools

40. *A CMO should treat Users fairly, in accordance with its Statute and in accordance with the terms of any relevant license agreement.*

41. *A CMO should license rights to Users on the basis of objective and non-discriminatory criteria.*

42. *If prior approval of a rightholder is required for the licensing, a CMO should use reasonable endeavors to expedite the approval process.*

43. *Best practices of acting impartially, fairly and on the basis of objective criteria, do not prevent a CMO from refusing to grant a license to a User for objective reasons, such as if that User has repeatedly failed to meet its contractual obligations with that CMO, or repeatedly breached any statutory obligations with respect to rights managed by that CMO, subject to any requirements of national legislation to the contrary.*

44. *If a CMO refuses to grant a license, it should provide a written statement explaining the reason and appeal procedure, within a reasonable period of time.*

45. *Users are expected to act in a responsible manner, provide accurate and timely information, and negotiate in good faith.*

6.3 Rules for setting of tariffs

Explanation

A key principle when a CMO sets tariffs (sometimes known as “licensing schemes”) is that their criteria should be clear, objective and reasonable. The price of the license issued should be fair and equitable. A CMO could, for instance, consider backing up its tariff proposals with independent economic research concerning the economic value of the rights in question in the relevant markets. When assessing the fair value of a CMO’s license, all aspects of the transaction should be taken into account, including the value of the rights and the benefit that collective licensing generates to Users by reducing the number of licensing transactions they have to make.

Examples in codes or legislation

Japan:

“(1) A management business operator shall specify royalty rules

containing the following items and make a previous report thereof to the Commissioner of the Agency for Cultural Affairs. The same shall apply in the case where the operator intends to change the rules;

(i)	royalty rates as per exploitation division ("exploitation division" means a division by classification of works and by distinction of exploitation means ; the same shall apply in Article 23) specified in accordance with the standard fixed by Ministry of Education and Science Ordinance;
(ii)	date of enforcement of the rules;
(iii)	other matters specified by Ministry of Education and Science Ordinance.

(2) A management business operator shall, when intending to specify or change royalty rules, endeavor to hear opinions previously from users or groups of them.

(3) A management business operator shall, when having made a report in accordance with the provisions of paragraph (1), make public the summary of the reported royalty rules.

(4) A management business operator shall not ask for, as royalty rates for works, etc. dealt with, rates exceeding those specified by royalty rules reported in accordance with the provisions of paragraph (1)."

Article 13, Law on Management Business of Copyright and Neighboring Rights

Brazil:

"CMOs adopt the principles of isonomy, efficiency and transparency in the collection for the use of any work or phonogram"; "CMOs may, in the interest of their members, establish the prices for the use of their repertoire, taking into consideration the reasonability, good faith and uses of the works", "The collection shall always be proportional to the level of use of the works and phonograms by the users, taking into consideration the importance of the public performance in their activities and the particularities of each sector, as provided under the regulation of this Law."

Article 98(2)-(4), Law no. 9.610

"The prices for the uses of works and phonograms shall be established by the General Assembly of the CMOs, called in accordance to the bylaws and widely announced among the members, taking into consideration the reasonability, good faith and uses of the works"; "The collection shall have as principles the efficiency and isonomy, and shall make no discrimination between users of the same characteristics"; "The collection shall be proportional with the level of use of works and phonograms by the users when the following criteria is observed:

I. Duration of use (...); II. Number of uses (...); III. The proportion of used works and phonograms that are in the public domain or that are licensed through individual management or under any licensing scheme other than collective management"

Articles 6, 7 and 8 of the Decree 8.469 of 2015

European Union:

“Rightholders shall receive appropriate remuneration for the use of the rights.”

Article 16(2), EU Directive 2014/26/EU

“[Licensing terms shall be based on objective criteria], in particular in relation to tariffs.”

Article 12(2), EU Directive 2014/26/EU

“Collective management organisations and users conduct negotiations for the licensing of rights in good faith. They shall provide each other with all necessary information.”

Article 16(1), EU Directive 2014/26/EU

Australasia:

“Each Collecting Society will where appropriate consult in good faith with relevant industry associations in relation to the terms and conditions applying to licenses or license schemes offered by the Collecting Society.”

Australasian and Australian Copyright Collecting Societies Code of Conduct

European Union:

“Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade taking into account the nature and scope of the use of the work and other subject matter, as well as to the economic value of the service provided by the collective management organisation. Collective management organisations shall inform the user concerned of the criteria used for the setting of these tariffs.”

Article 16(2), EU Directive 2014/26/EU

Australasia:

“In setting or negotiating license fees, a CMO may have regard to the following matters:

- the value of the copyright material;
- the purpose for which, and the context in which, the copyright material is used;
- the manner or kind of use of the Copyright Material;
- any relevant decisions of the Copyright Tribunal; and
- any other relevant matters.”

Australasian and Australian Copyright Collecting Societies Code of Conduct

Belgium:

“CMOs will establish rules for tariff setting [...] regarding all sorts of rights managed under their responsibility, with the exception of tariffs determined by the law.”

Belgian Code of Economic Law, Book XI, Title 5

“Up to date versions of the rules for tariff setting, [...] will be available, and published on the CMO’s website not later than one month after their last adjustment.”

based on Belgian Code of Economic Law, Book XI, Title 5

IFPI:

“Each MLC is to establish tariffs that are transparent and based on objective criteria and that fairly reflect both the value of rightholders’ rights in trade and the benefits to users of the MLC’s service.”

IFPI Code of Conduct

Good practice tools

46. *A CMO should establish tariffs which may be based on cross-sectoral tariff comparisons, economic research, the commercial value of the rights in use, the benefits to Licensees, or other relevant criteria.*

47. *Benefits for a Licensee should be assessed having regard to the CMO’s rights used considering, for example:*

- (a) *the purpose for which such rights are used;*
- (b) *the context in which such rights are used;*
- (c) *the manner or kind of use for which such rights are used; and*
- (d) *the benefit to the Licensee of having to deal with a CMO, rather than each rightholder individually.*

7. Governance

7.1 General meeting

Explanation

As with other companies and/or associations, the general meeting of a CMO should be held regularly and should be properly regulated. Most of the recommendations included in this section are standard clauses found in laws regulating the governance of companies or civil associations around the world.

The rules on the operation and running of the general meeting should naturally be in compliance with the applicable laws of the country of establishment of that CMO.

Examples in codes or legislation

Colombia:

“The General Assembly shall be the supreme body of the CMO and shall elect the members of the Governing Board and Supervisory Committee and the Controller. Its responsibilities and operations and the manner of its convocation shall be laid down in the bylaws of the concerned CMO.”

Article 15, Law no. 44 of 1993

Ecuador:

“The General Assembly, conformed by all the CMO’s members, is the supreme governing body and its competences shall be:

- i. Examine the annual budget and its funding;
- ii. Examine the economic and annual reports;
- iii. Examine the tariffs internal regulations;
- iv. Examine the distribution processes;
- v. Examine the reasons exposed by the Board of Directors and approved by the Supervisory Body for determining the

percentages of the collection allocated to the administration costs and to social benefits within the legal limits;
 vi. Elect the members of the Board of Directors and of the Supervisory Board;
 vii. To resolve the expulsion and suspension of a member; and
 viii. Any other business decided by its members.”
Article 245.2(c), COESCC/

Guatemala:

“The collecting society shall contain at least the following organs: the General Assembly, a Management Board and a Supervisory Committee. The management company collective shall be required to have external audit. Also, you have a Director General, who shall be appointed by the Board. Who presides over the Board and the Director General, they have the legal representation of the company, without prejudice to other charges that provision of the statutes also have the legal representation of the entity. Every collecting society shall register in the Registry of the Intellectual Property regulations issued. The General Assembly is the supreme body of the entity and appoints the members of the other organs. The General Assembly belongs, among others: a) To approve or reject the financial statements and annual report of the entity; b) To approve or reject the report of the Monitoring Committee; c) Appoint the external audit; d) To approve the amendment of the Constitution; e) Any other powers to establish its statutes, while not contravene provisions of this law.”

Article 120, Copyright Law

European Union:

“A general assembly of members shall be convened at least once a year.”

Article 8(2), EU Directive 2014/26/EU

“The general assembly shall approve any amendments to the statute and the membership terms of the CMO, where those terms are not regulated by the statute.”

Article 8(3), EU Directive 2014/26/EU

“The general assembly of members shall control the activities of the collective management organization by, at least, deciding on the appointment and removal of the auditor and approving the annual [transparency] report [...]”

Article 8(4), EU Directive 2014/26/EU

“The general assembly of members shall decide on the appointment or dismissal of the directors, review their general performance and approve their remuneration and other benefits such as monetary and non-monetary benefits, pension awards and entitlements, rights to other awards and rights to severance pay.”

“The general assembly shall decide on the general policy on the distribution of the amounts due to rightholders, the general policy on the use of the non-distributable amounts and on the rules on deductions from rights revenues.”

based on Article 8, EU Directive 2014/26/EU

Good practice tools

48. *A CMO should convene a General Meeting of its Members or of their elected representatives at least once a year.*
49. *The General Meeting should approve any amendments to the Statute and to the membership terms.*
50. *The General Meeting:*
- (a) *approves the general policies on the distribution of collected monies; deductions for social, cultural or educational purposes; and the use of non-distributable monies and investments;*
 - (b) *approves the Annual Report and is to be presented with an auditors' report that comes with that Annual Report;*
 - (c) *appoints and dismisses members of the board, and approves their remuneration and other benefits, pension awards, severance packages and other awards;*
 - (d) *decides on its general investment policies. The information about the type of investment, the investment policy, and the policy's results should be included in the Annual Report; and*
 - (e) *appoints one or two independent external auditors.*
51. *The Statute of a CMO may delegate some of the above mentioned powers of the General Meeting to the board.*

7.2 Internal supervision

Explanation

Proper internal supervision of the CMO management and operations by a board is an essential element of effective and transparent collective rights management. Members of the board are appointed by the CMO in the general meeting and normally represent the rightholders whose rights are being managed. It may, however, sometimes be advisable to appoint as board members individuals that do not directly represent rightholders, but have commercial or legal experience that is valuable for the proper functioning of the board.

Examples in codes or legislation

European Union:

"[A CMO shall establish] a supervisory function which is responsible for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organization."

Article 9(1), EU Directive 2014/26/EU

"There shall be fair and balanced representation of the different categories of members of the CMO in the body exercising the supervisory function."

Article 9(2), EU Directive 2014/26/EU

"The requirement of fair and balanced representation of members should not prevent the CMO from appointing third parties to exercise the supervisory function, including persons with relevant professional expertise [...]."

Recital 24, EU Directive 2014/26/EU

Colombia:

“Societies for the collective administration of copyright and neighboring rights shall have the following bodies: the General Assembly, a Governing Board, a Supervisory Committee and a Controller”; “The Supervisory Committee shall be composed of three main members and three numerical alternates, who must be members of the association. Their responsibilities and functions shall be specified in the statutes.”

Article 14(7) and (19), Law no. 44 of 1993

Ecuador:

“The Supervisory Board is competent for: i. Reviewing and presenting observations to the maximum amounts that the Board of Directors may allocate to redundancies and retributions for the General Manager and other managers of the CMO; ii. Reviewing and presenting observations to the annual budget and its funding; iii. Reviewing and presenting observations to the economic and annual reports; iv. Reviewing and presenting observations to the tariffs internal regulations; v. Reviewing and presenting observations to the distribution processes; vi. . Reviewing and presenting observations to the criteria for determining the percentages of the collection allocated to the administration costs and to social benefits within the legal limits; vi. Elect the members of the Board of Directors and of the Supervisory Board.”

Article 245.2(e), COESCCI

Good practice tools

52. *A CMO’s Statute should ensure a fair and balanced representation of its different categories of members on the board.*

53. *The General Meeting may elect board members for their commercial, legal and other relevant experience.*

7.3 Avoidance of conflicts of interest

Explanation

A well-functioning CMO should take steps to avoid conflicts of interest and ensure the integrity of the board and the management of the CMO. These measures and procedures should preferably be included in internal guidelines, which should be reviewed regularly.

Examples in codes or legislation

Colombia:

“The persons who form part of the Governing Board and Supervisory Committee, the Manager and the Controller of a CMO may not appear on similar organs of another CMO. The Manager may not server as a member of the Governing Board or Supervisory Committee or of any other organ of the CMO.”

Article 20, Law no. 44 of 1993

“Members of the Governing Board shall be subject to the following disqualifying factors in addition to those specified in the statutes:

- (a) being related to each other to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship;
- (b) being spouses or permanent companions of each other;
- (c) being artistic directors, owners, members or representatives of, or attorneys acting for, bodies indebted to the society or in dispute with it;

(d) being relations, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship, or the spouses or permanent companions, of members of the Supervisory Committee or of the Manager, Secretary, Treasurer or Controller of the society;

(e) being relations, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship, or the spouses or permanent companions, of officials of the National Copyright Directorate.”

Article 45, Law no. 44 of 1993

“Members of the Supervisory Committee shall be subject to the following disqualifying factors in addition to those specified in the statutes:

(a) being related to each other to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship;

(b) being spouses or permanent companions of each other;

(c) being artistic directors, impresarios, owners, members, representatives, attorneys or officials of bodies indebted to the society or in dispute with it;

(d) being relations, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship, or the spouses or permanent companions of members of the Governing Board or of the Manager, Secretary, Treasurer or Controller of the society;

(e) being relations, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship, or the spouses or permanent companions of officials of the National Copyright Directorate.”

Article 46, Law no. 44 of 1993

“The Manager, Secretary and Treasurer of a society shall be subject to the following disqualifying factors and incompatibilities in addition to those laid down in the statutes:

(a) being the manager, secretary or treasurer, or a member of the governing board, of a society other than those provided for in this Law;

(b) being a relation, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship, or the spouse or permanent companion, of members of the Governing Board or Supervisory Committee or the Manager, Secretary, Treasurer or Controller of the society;

(c) being the artistic director, manager, owner, a member, the representative or attorney or an officer of bodies indebted to the society or in dispute with it;

(d) being a relation, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship, or the spouse or permanent companion, of officers of the National Copyright Directorate;

(e) occupying a managerial post in any association or collegial grouping of the same nature.”

Article 47, Law no. 44 of 1993

“The Manager may not engage in contractual dealings with his or her spouse or permanent companion or with his or her relations to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship.”

Article 48, Law no. 44 of 1993

“The Controller shall be subject to the following disqualifying factors and incompatibilities in addition to those laid down in the statutes:

- (a) being a member;
- (b) being the spouse, permanent companion or a relation, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship, of members of the Governing Board or Supervisory Committee or of any of the employees of the society;
- (c) being the artistic director, manager, owner, a member, the representative or attorney or an officer of bodies indebted to the society or in dispute with it;
- (d) being a relation, to the fourth degree of blood relationship, the second of relationship by marriage or the first of civil relationship or the spouse or permanent companion of an officer of the National Copyright Directorate.”

Article 49, Law no. 44 of 1993

“No employee of the society may represent a member of the society at either ordinary or extraordinary sessions of the General Assembly.”

Article 50, Law no. 44 of 1993

Ecuador:

“The members of the Board of Directors cannot simultaneously be members of the Supervisory Committee. They shall exercise their position for a maximum period of four year and may be re-elected for an additional period.”

Article 245.2(b), COESCCI

“It is forbidden for the CMO to enter into agreements with the members of the governing bodies, as well as with the spouse, partner or relatives within the fourth blood grade and second affinity grade (...)”

Article 245.3(d), COESCCI

Brazil:

“The managers of the CMOs shall be elected for a three (3) year mandate, allowing just one re-election.”

Article 97, §13, Law no. 9.610

European Union:

“[...] The CMO puts in place and applies procedures so as to avoid conflicts of interest, and where these cannot be avoided, to identify, manage, monitor and disclose actual or potential conflicts of interest in order to prevent them from adversely affecting the collective interests of the rightholders the organisation represents.”

“These procedures shall include an annual individual statement by each person exercising the supervisory function and each of the persons who effectively manage the CMO to the general assembly of members, containing the following information:

- any interests in the collective management organisation;
- any remuneration received from the collective management organisation, including pension schemes, benefits-in-kind and other types of benefits in the preceding financial year;

- any amounts received as a rightholder from the collective management organisation in the preceding financial year; and
- a declaration on any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations towards the collective management organisation and any duty to any other natural or legal person.”

based on Article 10, EU Directive 2014/26/EU

Good practice tools

54. A CMO should have in place internal guidelines to avoid conflict of interest and, when such conflicts cannot be avoided, to identify, manage and monitor conflicts of interest which might prevent board members from discharging their responsibilities.

55. These guidelines should include at least an annual individual statement of actual or potential conflicts of interest by each person managing the CMO and by each member of the board.

8. Financial administration, distribution of revenue and deductions

8.1 Split accounts

Explanation

To ensure maximum transparency and accountability, a CMO should separate its Rights Revenue from income derived from its own assets or other activities.

Examples in codes or legislation

European Union:

“The CMO shall manage and keep separate the rights revenue and any income derived from its investment from its own assets, the income derived from its management services or the income derived from any other activities.”

Article 11(3), EU Directive 2014/26/EU

Belgium:

“The [...] CMO [...] will administer the deductions [for social, cultural and educational aims] in accounts separate from the CMO’s principal account, and the board of directors will report annually about the deducted sums and their expenditure.”

based on Belgian Code of Economic Law, Book XI, Title 5

SCAPR:

“CMOs shall exercise reasonable prudence and due care when investing reserved funds.”

Article 9.2, SCAPR Code of Conduct

Good practice tools

56. A CMO should manage and keep separate the Rights Revenue and any income derived from the investment of its own assets, the income derived from its management services or the income derived from any other activities.

57. A CMO should not be allowed, unless specifically authorized by the General Meeting or its Statute, or provided by law, to use Rights Revenue and any income from

the investment of Rights Revenue for any purposes other than Distributions to rightholders.

8.2 Annual report

Explanation

The Annual Report of a CMO is an important document providing information about its performance and operations to Members, other rightholders, other CMOs and the public at large. As CMOs, like all other companies and associations, normally have a legal obligation to produce and publish an Annual Report, it is recommended practice that a CMO provides in its Annual Reports a full and transparent picture of its financial performance and operations. It should also publish the reports in an easily accessible format, and make them available to the public for example through its websites.

Examples in codes or legislation

Ecuador:

“Without prejudice to other obligations set forth in their respective bylaws, collective management organizations shall: (1) publish, at least once a year, in a newspaper with wide national circulation, the balance sheet and accounts; and (2) send to their members, at least once each semester, complete and detailed information on all the activities related to the management of their rights.”

Article 249, COESCCI

Malawi:

“(1) The Society shall:

- (a) keep proper accounts and other records relating thereto in respect of its funds and in every respect comply with the provisions of the Finance and Audit Act;
- (b) furnish to the Minister annually, or as often as the Minister may direct, accounts in respect of finances and property, including an estimate of income and expenditure for the following financial year.

(2) The accounts of the Society shall be examined and audited annually by auditors appointed by the Society and approved by the Minister.

(3) The financial year of the Society shall be a period of twelve months beginning on 1st April every year and ending on 31st March the following year: Provided that the first financial year of the Society may be such longer period not exceeding eighteen months from the commencement of this Act as the Minister may approve.”

Article 45, Copyright Act

China:

“A copyright collective administration organization shall establish a finance and accounting system as well as a system of asset management according to law, and shall set up accounting books in accordance with the relevant provisions.”

Article 30, Regulations on Copyright Collective Administration

European Union:

“The CMO’s annual transparency report will include financial information on amounts due to rightholders with a comprehensive description of at least the following items:

- [...]
- total amount collected but not yet attributed to rightholders, with a breakdown per category of rights

- managed and type of use and indicating the financial year in which these amounts were collected
- total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and type of use and indicating the financial year in which these amounts were collected; and
- where a CMO has not carried out the distribution and payments within the deadline of 9 months, the reasons for the delay.”

cf. Annex, EU Directive 2014/26/EU

“The annual transparency report shall contain information on the total amount of remuneration paid to the persons [who effectively manage the business of a CMO and its directors] in the previous year, and on other benefits granted to them.”

Article 22, EU Directive 2014/26/EU

“The annual report should include a description of the principal risks and uncertainties the [CMO] faces.

based on Belgian Code of Economic Law, Book XI, Title 5

Good practice tools

58. *In respect of each financial year a CMO should distribute or make available an Annual Report to its membership well in advance of its General Meeting.*

59. *The Annual Report should contain:*

- (a) *a financial statement, which should include a balance-sheet or a statement of assets and liabilities as well as an income and expenditure account for the financial year;*
- (b) *a report of the CMO’s activities in that financial year;*
- (c) *a statement of Rights Revenue broken down per category of rights managed and per type of use including the total amount of Rights Revenue collected, but not yet attributed to rightholders, and the total amount of Rights Revenue attributed but not yet distributed to rightholders;*
- (d) *a breakdown of the Operating Expenses;*
- (e) *a breakdown of the deductions for the purposes of social, cultural and educational services in the financial year and an explanation of the use of those amounts, with a breakdown per social, cultural and educational expenditure;*
- (f) *information on the total amount of remuneration paid, and other benefits granted to, the persons who manage the business of the CMO and the board members in the financial year;*
- (g) *a general statement setting out, in respect of the transactions between a CMO and each partner CMO with which it has a Representation Agreement, the:*
 - (i) *name of such partner CMOs, and the dates of the relevant contracts;*
 - (ii) *total amount paid in the financial year to the partner CMOs;*
 - (iii) *total management fees and other specified deductions; and*
 - (iv) *total amount received from the partner CMOs.*

60. *The financial records of a CMO should be inspected annually by at least one external auditor appointed by the General Meeting.*

8.3 Distribution policies

Explanation

Noting that CMOs' distribution policies are based on the usage of licensed works, CMOs should bind their Licensees to provide accurate and timely information on their usage of works licensed by the CMO.

As a matter of principle, a CMO should collect and distribute – fairly, promptly, and as accurately as possible – to individual rightholders the Rights Revenue it has collected on the rightholders' behalf. It is therefore important that a CMO's distribution rules and policies are fair, objective, and transparent. The Distributions should reflect, to the greatest possible extent, the actual use of the content and the actual value attached to the use, or be based, as far as economically feasible, on an agreed formula.

Examples in codes or legislation

Colombia:

"The amount of remuneration collected by CMOs shall be distributed among the owners of rights in proportion to the actual use of their rights."

Article 14.5, Law no. 44 of 1993

Brazil:

"The portion destined to distribution to authors and other right owners won't be...less than 85% of the total collections."

Article 99 (4), ECAD Law

Chile:

"The distribution systems will contemplate a participation of the owners of works and productions in the collected rights, proportional to the use of these."

Article 98, Intellectual Property Law

Mexico:

"The obligations of collective management societies ... IX. Settle royalties collected through it, as well as the interest generated by them, within a period not exceeding three months, counted from the date on which such royalties have been received by the company."

Article 203, Federal Copyright Law

Guatemala:

"No remuneration collected by a collecting society may be allocated for any purpose other than distribution to its members, after deduction of the administrative expenses, unless expressly authorized by the General Assembly of the Associates. The directors of the company shall be jointly and severally liable for the infringement of this provision."

Article 124, Copyright Law

China:

"Licensing fees collected by a copyright collective management organization shall, after the deduction of administrative costs, be completely transferred to right owners, and shall not be diverted to any other purpose.

To transfer licensing fees, a copyright collective administration

organization shall keep a transferring record, which shall contain such items as the total licensing fees collected, the amount of the administrative costs, the names of the right owners, the titles and specific use of the works, sound or video recordings, etc., as well as the respective exact amount of licensing fees paid to each of the right owners, and which shall be preserved for more than 10 years.”

Article 29, Regulations on Copyright Collective Administration

European Union:

“[...] a collective management organisation [shall] regularly, diligently, accurately and in accordance with the general policy on distribution referred to in Article 7(5)(a) distribute and pay amounts due to rightholders.”

Article 13(1), EU Directive 2014/26/EU

[...] a collective management organisation or its members who are entities representing rightholders [shall] distribute and pay to rightholders these amounts as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons related in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matter with rightholders prevent the collective management organisation or, where applicable, its members from respecting this deadline.

Article 13(1), EU Directive 2014/26/EU

IFRRO:

“[CMOs] distribute remuneration received to rightsholders; efficiently and expeditiously; approximating actual use as far as possible; transparently, by publicizing distribution plans which explain the manner and frequency of payments with sufficient detail; in accordance with applicable national and international laws.”

IFRRO Code of Conduct

CISAC:

“A [CMO] shall apply the same level of diligence and fairness to all distributions, including, but not limited to, the frequency of distributions, irrespective of whether such distributions are being made to its [members] or to its Sister Societies.”

CISAC Professional Rules

“A [CMO] shall base its distributions on actual usage of Works or, if not practicable, on the basis of a statistically valid sample of actual usage of Works.”

CISAC Professional Rules

Australasia:

“Each Collecting Society will maintain, and make available to Members on request, a Distribution Policy that sets out from time to time:

- the basis for calculating entitlements to receive payments from remuneration and/or license fees collected by the Collecting Society (Revenue);
- the manner and frequency of payments to Members; and

- the general nature of amounts that will be deducted from Revenue before distribution.”

Australasian and Australian Copyright Collecting Societies Code of Conduct

Switzerland:

“Where it may reasonably be expected, the users of works must provide the collective rights management organizations with all the necessary information for the determination and application of the tariffs and for distributing the proceeds.”

Article 51(1), Copyright Act

Bosnia and Herzegovina:

“A collective organization shall deduct from its total revenue only the funds for covering the expenses of its own operation, and it shall distribute all other funds to its members. Exceptionally, the Statute of a collective organization may explicitly stipulate that a particular portion of such funds shall be allocated for cultural purposes and for the improvement of the pension, health and social status of its members. The amount of funds allocated for such purposes shall not exceed 10% of the net income of the collective organization.”

Art. 6 (2), Law on the Collective Management of Copyright and Related Rights, 2010

SCAPR:

“The performers should only pay the costs which are necessary for an effective management of their rights.”

Article 5, SCAPR Code of Conduct

“Remuneration collected and interests deriving from such income shall be distributed individually between the performers concerned in proportion to the uses of their performances, according to reports by users, or other available relevant information.”

Article 6.1, SCAPR Code of Conduct

“Individual remuneration due to performers but not paid out because of lack of the necessary information shall be reserved during the relevant national period of limitation”

Article 9.1, SCAPR Code of Conduct

Good practice tools

61. A CMO should maintain a distribution policy that sets out:

- (a) the basis for calculating entitlements to receive payments from Rights Revenue collected. In establishing such basis, a CMO should take into account, as far as possible, the actual use of works or other subject matter. If not practicable, a statistically valid sample approximating actual use of the works or categories of works can be used;
- (b) the manner and frequency of Distributions to Members; and
- (c) the amounts that will be deducted from the Rights Revenue before distribution on the basis of Operating Expenses and deduction policies as determined by the General Meeting, the Statute or the law.

62. A CMO should regularly, diligently and accurately distribute and pay amounts due

to the rightholders it represents, be it through membership, mandate – voluntary or statutory – or through Representation Agreements with other CMOs, in accordance with its general policy on Distributions and the agreements it has signed with other CMOs.

63. *A CMO should carry out such Distributions and payments no later than 12 months after the end of the financial year in which the Rights Revenue was collected, unless objective reasons, for instance insufficient reporting by Users, prevents it from meeting this deadline.*

8.4 Revenue deductions (such as social, cultural, educational)

Explanation

In view of its mission to manage rights efficiently on a collective basis, it should be a key objective for a CMO to provide high quality rights management services at the lowest possible cost, thus maximizing the Distributions to rightholders. It is therefore important that its Members have the power to decide on all deductions made from monies collected on their behalf, in particular in respect of any deductions for social, cultural and educational purposes.

Examples in codes or legislation

Andean Community:

CMOs “must undertake, except where expressly authorized by the General Assembly, to ensure that remuneration collected is not assigned to purposes other than the covering of the actual costs of administering the rights concerned and the distribution of the balance of remuneration after deduction of such costs.”
Article 45(j), Decision no. 351 of 1993

Colombia:

“No remuneration collected by a CMO may, without the express authorization of the General Assembly of members, be set aside for any purpose other than the covering of the real cost of the administration of the rights concerned, neither may the balance of the remuneration after the deduction of that cost be distributed”;
“CMOs may only set aside up to 10 percent of the amounts collected for the pursuit of social and cultural purposes previously defined by the General Assembly.”
Articles 14(4) and 21(2), Law no. 44 of 1993

Senegal:

“Management costs. – Management costs deducted by the collective management society shall be compatible with generally recognized good governance practices and shall, to the extent possible, be proportional to the actual cost of managing the rights in the work, performance, phonogram or videogram.”
Article 119, Senegal Copyright Act 2008

China:

“A copyright collective administration organization may deduct a certain proportion of the licensing fees which it has collected, as administrative costs to maintain its regular business activities. The proportion that a copyright collective administration organization may deduct as administrative costs shall gradually decrease with the increase of the amount of collected licensing fees.”
Article 28, Regulations on Copyright Collective Administration

China:

“Licensing fees collected by a copyright collective management

organization shall, after the deduction of administrative costs, be completely transferred to right owners, and shall not be diverted to any other purpose. [..]"

Art. 29, Regulations on Copyright Collective Administration

SCAPR:

"Deductions from the sums collected by the CMO can be made upon the authorization either by members of the organization or by statutory provisions, for purposes aiming at promotion of the general interests of performers."

Article 5, SCAPR Code of Conduct

Belgium:

"The general meeting of a Belgian CMO shall decide with a two/third majority about a deduction for social, cultural and educational aims. The deduction shall not be higher than 10%. CMOs in other countries may deduct a maximum of 10% from revenues accrued in Belgium. The Belgian CMO, and the non-Belgian CMO for Belgian revenues, will administer the deductions, in accounts separate from the CMO's principal account, and the boards of directors will report annually about the deducted sums and their expenditure."

based on Belgian Code of Economic Law, Book XI, Title 5

European Union:

"The following information shall be provided [annually] [in the annual transparency report]: the amounts collected for the purposes of social, cultural and educational services in the financial year, with a breakdown per category of rights managed and per type of use; the explanation of the use of those amounts, with a breakdown per type of purpose."

cf. Annex, EU Directive 2014/26/EU

IFRRO:

"[CMOs] deduct from collections, if authorized by national law and/or their statutes and/or distribution plan rules so to do, allocations for social and/or cultural purposes; and whenever they do so, the authorization for, as well as the amount and nature of the allocation, is clearly explained to the rightsholders concerned. RROs avoid discrimination on grounds of nationality or otherwise."

IFRRO Code of Conduct

Good practice tools

64. *The General Meeting should decide on the rules on deductions from Rights Revenue.*
65. *The amounts deducted from the Rights Revenue for the purposes of social, cultural and educational purposes in the financial year and an explanation of the use of those amounts should be included in the annual report.*
66. *A CMO should strive to ensure that funds for social, cultural and educational purposes are only deducted from the Rights Revenue with the agreement of the rightholders represented.*
67. *A CMO should ensure that its Operating Expenses are transparent and properly documented.*
68. *A CMO should ensure that each rightholder it represents – whether directly through a membership contract or through a Representation Agreement will be entitled to apply for its social, cultural or educational services provided deductions were made on Rights Revenue attributed and distributed to such rightholder.*

9. Processing of Members' and Users' data

Explanation

Members and Users provide CMOs with personal and sometimes confidential or commercially sensitive information. A CMO should treat such personal or sensitive data carefully, and always in compliance with the applicable rules on the protection of privacy, personal data, and trade secrets. The applicable rules on data protection vary from country to country, but it is good practice to ensure that personal data is only kept and used for the purpose for which it was originally collected and that consent is sought for any further processing of data. If it is necessary to transfer personal data about a Member abroad, a CMO should point out to the Member, when obtaining his/her consent, that some foreign countries might have weaker data protection laws, or no data protection laws at all.

Examples in codes or legislation

Belgium:

"Employees of the collecting society and all other persons who participate in the collection of remunerations due under chapters 5 or 9 shall be under an obligation of professional secrecy with respect to all information of which they obtain knowledge in or on the occasion of the exercise of their functions."

Belgian Code of Economic Law, Book XI, Title 5

European Union:

"A CMO shall make available at least once a year, by electronic means, the following information to each rightholder it represents: [...] any personal data which the rightholder has authorized the CMO to use including to identify and locate the right holder."

Article 6(4), EU Directive 2014/26/EU

IFRRO:

"[A CMO] deals with confidential information appropriately, respecting agreements and applicable laws while respecting privacy rights of right holders and users."

IFRRO Code of Conduct

Good practice tools

69. A CMO should use its reasonable endeavors to ensure that each of its directors and employees does not disclose to third parties any information they have obtained in the course of their employment or performance of their duties without an objectively justifiable reason or an order by a competent authority.

70. A CMO should keep and regularly update records of each rightholder it represents so that such rightholder can be accurately identified and located.

71. A CMO should respect the fundamental principles of privacy and the protection of personal data. It should also comply with its obligations under relevant laws relating to protection of privacy and personal data.

72. A CMO should inform (where possible electronically) a rightholder or a Licensee about the personal data it holds on such rightholder or User.

10. Development of staff skills and awareness

Explanation

In order to ensure the provision of high-quality services, a CMO should encourage the on-going development of its staff's skills and knowledge through, for example, training programs. A CMO should take reasonable steps to ensure that its employees and agents are aware of, and at all times comply with the applicable code of conduct, regulation or legislation.

Examples in codes or legislation

CISAC:

"Each [CMO] shall encourage the development of appropriate skills and knowledge amongst its staff by having in place training and development program for the benefit of all staff."

CISAC Professional Rules

Australasia:

"Each Collecting Society will take reasonable steps to ensure that its employees and agents are aware of, and at all times comply with, this Code. In particular, a Collecting Society will take reasonable steps to ensure that its employees and agents are aware of the procedures for handling complaints and resolving disputes set out in clause 3, and are able to explain those procedures to Members, Licensees and the general public."

Australasian and Australian Copyright Collecting Societies Code of Conduct

IFRRO:

"[A CMO] educates and trains its staff to meet the standards of this Code."

IFRRO Code of Conduct

SCAPR:

"CMOs shall continuously strive for the development of systems for the identification of right owners and uses."

Article 8.1, SCAPR Code of Conduct

Good practice tools

73. A CMO should encourage the development of appropriate skills and knowledge amongst its staff, and document that it has established procedures, which ensure that the staff is updated on rules relevant to its operation.

74. A CMO should take steps to ensure that its employees and agents are aware of the procedures for handling complaints and dispute resolution, and are able to explain those procedures to Members, Users and the general public.

11. Complaints and dispute resolution proceduresExplanation

It would be to the mutual benefit of CMOs, rightholders, members and Users that clear complaints and dispute resolution procedures are readily available, preferably by electronic means, for disputes between members/rightholders and between the CMO and Users. To ensure transparency and predictability, the statutory provisions should provide a standard for the dispute resolution bodies when deciding rate disputes between a CMO and a User.

Such a standard could, for instance, be expressed as a “willing buyer, willing seller” test (*cf.* USCA, s. 114), or that the tariff should reflect “the value of the use of rights in trade” (*cf.* EU Directive 2014/26/EU, Art. 16(2)).

Examples in codes or legislation

Japan:

“1) In the case where an order was made in accordance with the provisions of the preceding Article, paragraph (4) and an agreement was not reached, the parties concerned may apply for an arbitration by the Commissioner of the Agency for Cultural Affairs with respect to the royalty rules concerned.

(2) The Commissioner shall, in receipt of an application for arbitration mentioned in the preceding paragraph (hereinafter referred to as “arbitration”), notify thereof to other parties concerned and give them an opportunity to express their opinions during a considerable period of time designated.

(3) When having applied for arbitration before the day of enforcement of the royalty rules or received a notice mentioned in the preceding paragraph, a designated management business operator shall not enforce the rules concerned until the day when the arbitration is made, even after the lapse of a period during which the rules shall not be enforced in accordance with the provisions of Article 14.

(4) The Commissioner shall, when intending to make an arbitration, consult with the Culture Council.

(5) The Commissioner shall, upon making an arbitration, notify thereof to the parties concerned.

(6) In the case where an arbitration was made to the effect that it is necessary to change the royalty rules, the rules shall be changed in accordance with the decision made by that arbitration.”

Article 24, Law on Management Business of Copyright and Neighboring Rights

European Union:

“Complaints procedures

1. Member States shall ensure that collective management organisations make available to their members, and to collective

management organisations on whose behalf they manage rights under a representation agreement, effective and timely procedures for dealing with complaints, particularly in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.

2. Collective management organisations shall respond in writing to complaints by members or by collective management organisations on whose behalf they manage rights under a representation agreement. Where the collective management organisation rejects a complaint, it shall give reasons.”

Article 33, EU Directive 2014/26/EU

“Alternative dispute resolution procedures

1. Member States may provide that disputes between collective management organisations, members of collective management organisations, rightholders or users regarding the provisions of national law adopted pursuant to the requirements of this Directive can be submitted to a rapid, independent and impartial alternative dispute resolution procedure. (...)”

Article 34, EU Directive 2014/26/EU

“Dispute resolution

1. Member States shall ensure that disputes between collective management organisations and users concerning, in particular, existing and proposed licensing conditions or a breach of contract can be submitted to a court, or if appropriate, to another independent and impartial dispute resolution body where that body has expertise in intellectual property law.

2. Articles 33 and 34 and paragraph 1 of this Article shall be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.”

Article 35, EU Directive 2014/26/EU

United States of America:

The standard for dispute resolution bodies could be expressed as a “willing buyer, willing seller test”

based on U.S. Copyright Act, section 114

Good practice tools

75. CMO should make available to its Members, rightholders and other CMOs with whom they have a representation agreement, information on complaint and dispute resolution procedures, which should clearly describe to whom the complaint should be addressed, at which address (or e-mail address), and describe the timescales and stages of appeal.

76. In case of disputes between a CMO and a User, parties should be entitled to submit the dispute to a Court or an independent dispute resolution body with expertise in copyright, where it exists. Voluntary dispute resolutions procedure between CMOs and Users should also be encouraged.

12. Supervision and monitoring of CMOs

Explanation

Supervision and monitoring of CMOs can be undertaken either on the basis of statutory provisions or by self-regulation and a monitoring scheme, where CMOs, Users and Government put in place a structure by mutual agreement. In the latter scenario, it is customary that a code of conduct will be published, to ensure that all relevant parties clearly understand their obligations and rights.

Examples in codes or legislation

"Compliance

1. Member States shall ensure that compliance by collective management organisations established in their territory with the provisions of national law adopted pursuant to the requirements laid down in this Directive is monitored by competent authorities designated for that purpose.
 2. Member States shall ensure that procedures exist, enabling members of a collective management organisation, rightholders, users, collective management organisations and other interested parties to notify the competent authorities designated for that purpose of activities or circumstances which, in their opinion, constitute a breach of the provisions of national law adopted pursuant to the requirements laid down in this Directive.
 3. Member States shall ensure that the competent authorities designated for that purpose have the power to impose appropriate sanctions or to take appropriate measures where the provisions of national law adopted in implementation of this Directive have not been complied with. Those sanctions and measures shall be effective, proportionate and dissuasive."
- Article 36, EU Directive 2014/26/EU*

Good practice tools

77. In the case of self-oversight and monitoring, a working group should be established, comprising all stakeholders, including, but not limited to, rightholders, CMOs, Users and Government. The working group should consult and collaborate on the drafting of a code of conduct, which must be mutually agreed before being published.

78. In both the case of self-oversight and monitoring, and by provision in national laws, the code of conduct should include sections on at least:

- (a) *the role and functions of CMOs;*
- (b) *transparency;*
- (c) *accountability and consultation;*
- (d) *governance structures;*
- (e) *licensing policies;*
- (f) *distribution policies;*
- (g) *Operating Expenses and deduction policies;*
- (h) *data protection;*
- (i) *dispute resolution.*