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## **Transparency, Accountability, Good Governance of CMOs**

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### **THE CREATIVE SECTOR FUELS THE DIGITAL ECONOMY AND COPYRIGHT IS FUNDAMENTAL TO CULTURE AND THE ECONOMY**

The national creative industries are pivotal in sustaining national culture and cultural identity. The creation of artistic and literary expressions unique to a culture helps to define and project national identity.

The copyright sectors are also major contributors to the economy and employment. Studies in more than 40 countries using a methodology developed for WIPO show that the average contribution to the GDP is 5.5 %, with three-quarters of the countries offering a contribution between 4% and 6.5%. The average contribution to employment stands at 5.9%. The WIPO supported studies also show that there is a significant and positive correlation between the contribution of copyright industries to GDP and factors, such as the size of the country's economy, competitiveness, and innovation.

Development requires access to intellectual property. This may come from works produced in the country itself or from import of copyright works. A nation needs to find the right balance between the two. However, we normally want to have the possibility to use material, which is created in the context with which we are familiar, and not depend solely on the creation by others through import of copyright works, with the obvious cultural and other influence this implies. The World Summit on Information Society Forum in May 2015 also noted that lack of locally relevant online content deters mobile users in developing countries. The availability of locally created content is pivotal to the development of the digital content market.

The creation and publishing of new quality works nationally requires that the rightholders are protected from infringement on their creation and investment, and have the possibility to be rewarded for their efforts. Copyright is what enables the creator to make a living, and a nation to develop a viable publishing industry. There are studies, such as the two Stanford University professors' Report of 2014<sup>1</sup>, which document that copyright protection is what enhances the production and the quality in the creation of copyright works, rather than exceptions to the exclusive rights of rightholders.

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<sup>1</sup> The Stanford University economists Michela Giorcelli and Petra Moser have studied nearly 2,600 operas performed in 8 Italian states between 1770 and 1900. In 1770 none of the states had copyright laws. All 8 States introduced copyright legislation with the Napoleon Code, which included protection of intellectual property, creative expressions and the creator, but at different periods, starting with Lombardy and Venetia in 1801.

Giorcelli's and Moser's findings document that protection of the creator against infringement on his copyright work, or from uses that he has not authorized, or can claim payment for, stimulates significantly the creation of new quality works: "After all, if you think your song could easily be ripped off with no consequences, why write in the first place?" (Vox)

What the two economists found was that: "Copyright laws seemed to have created significantly more operas that also had staying power and were of higher quality. States with copyrights ended up producing 2.68 additional operas per year, a 121 percent increase over states without copyrights. Historically popular operas (as measured by the *Annals of Opera*) grew by 47 percent, and durable operas grew by 80 percent" (Vox)

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## **COLLECTIVE RIGHTS MANAGEMENT MAKES COPYRIGHT WORK**

The creative sectors' contributions to culture, education and knowledge, as well as to the economy and employment require solutions for easy legal seamless access to copyright works. An essential role of collective rights management is to contribute to that, and thus to make copyright work! Users such as educational institutions, companies, governments, students, teachers, researchers, managers and workers at all levels - society needs resources for access to copyright works that eliminates unnecessary hurdles and enables simple, fast and convenient, i.e., "seamless" access to copyright works. At the same time, the publishers and creators of those works need safe and effective means of dissemination of their works. Collective management organisations contribute to that through innovative solutions. Access to copyright works through agreements and licenses with rightholders directly supported by uses administered by CMOs on their behalf best meets dynamic user needs to legally access works in constantly changing environments. It offers the safest, simplest, fastest, most innovative, most convenient and most cost efficient way to seamlessly access content from multiple rightholders.

IFRRO - the International Federation of Reproduction Rights Organisations - is the main network of rightholder bodies in the print media sector with 143 members in 79 countries, of which 89 are RROs (Reproduction Rights Organisations), the collective management organisations in the sector. Its mission is to increase the lawful and eliminate unauthorised use of copyright works through the promotion of collective rights management through RROs.

RROs have been set up on all continents and operate in both developed countries and those under development. They are normally established and governed jointly by authors and publishers. Like any CMO, key facets of their tasks include awareness raising, enforcement, and the licensing of users, with the collection and distribution of revenues therefrom. RROs administer rights, chiefly of certain secondary uses of already published works, normally on behalf of authors and publishers jointly when the rightholders do not want to, or simply cannot administer the rights themselves.

A survey by PwC in the UK showed that some 25% of authors derive more than 60% of their income from secondary uses of their works and that UK publishers depend on secondary income for some 12% of their earnings, which equates to around 19% of their investment in new works. According to a survey by the UK Authors' Licensing and Collecting Society (ALCS), a 10% decline in income from the UK RRO, CLA, for creators would result in 20% less output, whilst a 20% decline would mean a drop of 29% in output or the equivalent of 2,870 works per year. For publishers, the PwC study revealed that the incentive to invest in new content development depends on the income from secondary uses.

Income from such secondary uses is thus vital to authors and publishers, and the sums they receive are not negligible. Last year, the RROs in membership of IFRRO collected nearly a billion USD for distribution to authors and publishers worldwide.

The increased focus on collective rights management and its ability to contribute to providing solutions to easy seamless legal access to copyright works is linked to the enhanced demands for 'one-stop shops'. The already important collection of revenues by Collective Management Organisations (CMO) is thus on the increase, and now turns around USD 12 billion annually. The development of the revenue collection by RROs in membership of IFRRO for distribution to authors and publishers can serve as an example of the increased importance of collective rights management in providing access to and authorising the use of copyright works.

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### **WELL GOVERNED CMOs MAKE COPYRIGHT WORK; AND TRUST MUST BE EARNED**

In order to fulfil properly their purposes, CMOs must be well governed, and transparent and accountable in their activities. The international federations, such as IFRRO, IFPI and CISAC, offer governance instruments in the form of codes of conduct, or professional rules, which they either oblige (CISAC) or recommend that their member organisations comply with. IFRRO offers two such instruments; a Code of Conduct; and the 'Relationship between RROs' document.

There are also examples of Codes of Conduct established on voluntary basis by CMOs nationally, for example

- ✓ The British Copyright Council's Principle of Good Practice for Collective Management Organisations
- ✓ Australasian Copyright Collecting Societies Code of Conduct, applicable, for instance, in New Zealand
- ✓ Australian Copyright Collecting Societies Code of Conduct

Enhanced importance of collective rights management also triggers more focus on the governance of those organisations from public authorities. The European Union adopted, last year, a Collective Rights Management Directive, which sets out main principles on good governance of CMOs, which they must abide by. These include rules on the publication of information; financial management; rules on directors, whether involved in policy functions, such as on the Management Board, or on the day to day operation; definition of members of a CMO; bilateral arrangements between CMOs; the CMO repertoire; relationship to users; enforcement and dispute resolution mechanisms.

A CMO can build its image. That does not automatically lead to a good reputation. Trust and reputation need to be earned! And this in turn is based on the CMO's real operation and how it is viewed by others. Building the reputation involves the corporate culture; the managing and management of the CMO; its products and services, and how they are delivered. The way they handle this will be reflected in the public image of the CMO.

In relation to reputation building with rightholders, the paramount requirement of CMOs is that they should protect rights and uphold business models. They should also:

- Licence only on the terms and conditions permitted by their mandates, with pricing strategies to be agreed by rightholders as represented on RRO Boards
- Monitor compliance with these terms and conditions, including internationally when bilaterals are signed with foreign RROs
- Ensure that data is collected sufficient for distribution purposes, and to provide usage and strategic information
- Undertake copyright awareness and education activities to be undertaken
- Demonstrate a high level of efficiency, transparency and accountability

Users will expect fair and equal treatment, transparency in relevant issues, such as tariffing and other licensing conditions, and accountability.

### **TAG – AN INITIATIVE TO ASSIST CMOs IN DOCUMENTING HIGH STANDING IN GOVERNANCE**

Being transparent, accountable and well governed is not always sufficient – especially not to those who have decided upfront that CMOs are not trustworthy organisations; additional confirmation by an impartial body, which the CMO can voluntarily apply for could be an answer to the dilemma.

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The WIPO-initiated TAG project, which started in 2013, proposes a program for ensuring the outside world and others, of the transparency, accountability and good governance of Collective Management Organisations (CMO). The initiative aims at addressing requirements of both the developed and developing countries. It considers both the possible introduction of a quality mark, which CMOs can voluntarily apply for to document that they have reached a defined standard of Transparency, Accountability and Governance (the three initials forming the TAG acronym), and a programme to assist CMOs in benchmarking and, when required, improve their governance. This should eventually help CMOs to document a high standard of governance and lead to enhanced respect for and understanding of collective rights management, and how it benefits rightholders and users. It also has the potential of helping the CMOs to contribute to a better functioning legal creative market for copyright works, which is particularly relevant in an environment where collective rights management has become increasingly important, and where CMOs are frequently criticized.

A group of international federations of CMOs<sup>2</sup> and WIPO have jointly governed the TAG project, with WIPO facilitating certain aspects of it, such as the project management. It is intended to address collective management of copyright and related (neighbouring) rights, including the full array of repertoires (such as film, music, visual arts, and printed works).

The project has worked out two documents for further examination: A Compendium, mainly for benchmarking and training purposes; and a quality mark for certification purposes. Both ‘tools’ require endorsement of those concerned before they can be put into practice. Currently, the focus is on the use of the Compendium.

The TAG ‘Compendium of good practices related to collective management of copyright and related rights’ represents the part of a package, which will also form the basis for education and training, which can be offered to support a CMO in its work to reach the required operational quality level. It proposes a series of recommendations for the improvement of transparency and governance of CMOs. The testing of it among CMOs<sup>3</sup> and IP Office representatives from African countries, and OAPI, in September this year, yielded positive reviews and encouragement to continue the work.

The project is also considering the establishment of a voluntary Quality Assurance Standard, with a corresponding audit and certification of CMOs (Quality Mark). If established, the intention is that any CMO can request to be examined for possible certification. The audit and certification would be carried out by an independent third party, different from WIPO, on the basis of the TAG Standard.

The TAG project does not intend to replace existing instruments, such codes of conduct, codes of good practice, or professional rules, developed by international or national CMOs, or national or regional legislation.

## **IN CONCLUSION**

Collective Management and CMOs offer benefits to rightholders, as well as to users, legislators and society at large: a win-win-win-win situation – provided the CMO is well governed, accountable and is transparent in its operation.

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<sup>2</sup> IFRRO, SCAPR and AGICOA have been active partners in the development of both documents, whilst IFPI has played a leading role in the drafting of the Compendium. EVA and SAA, as European organisations, have followed the initiative mainly as observers, but have offered valuable contributions to the development of both documents. Although CISAC has not wanted to be directly involved, and has expressed its opposition to the quality mark for its own members, it has, nevertheless, observed the process, received all documents, and attended some of the meetings.

<sup>3</sup> Ghana, Kenya, Nigeria, Tanzania and Uganda

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