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**THE IMPORTANCE OF COLLECTIVE MANAGEMENT OF COPYRIGHT
AND RELATED RIGHTS**

*prepared by Mr. Henry Olsson, Judge at the Court of Appeal,
and Special Government Adviser, Ministry of Justice, Stockholm*

1. Introductory remarks

This presentation is intended to be a general one and not dealing with the organisational and practical aspects of collective management. Furthermore, the issue is being dealt with on the basis of my experience in different positions in the government administration.. Other presenters will deal with organisational and practical aspects of such management in different fields.

2. Why collective management?

The traditional and normal way of managing economic rights in the field of copyright and neighbouring rights is through individual contracts, This is still the case in the publishing business and when it comes to public performance and broadcasting of choreographic works, theatre plays and other uses of the so-called “grand rights”.

In other cases individual administration is not feasible or possible, such as public performance or broadcasting of musical works, photocopying/reprography and cable retransmission of TV programs. This is where collective management through collective management organisations becomes necessary. Those organisations/societies receive authorizations from the right-owners to grant rights in different respects, conclude agreements on the exploitation of such rights and collect and distribute the remunerations for the uses made.

3. In whose interest is collective management?

Such collective management is in the interest both of the right-owners themselves and of the users.

For right-owners such management is indispensable because they would be unable to control themselves the mass uses that take place.

For users it is a great advantage to be able to conclude contracts with one party instead of having to contact thousands of right-owners that would be time-consuming and very difficult from a practical point of view.

4. Involvement of public authorities in collective management.

Legislation on copyright and related rights is an important part of the legal fabric of a country. It is in the interest of the public authorities that this legislation works in practice and serves the interests for which it was adopted, namely essentially to stimulate creativity and thereby promote the cultural, social and economic development. The public authorities have therefore an interest in ensuring that the law actually is implemented. This presupposes that there are appropriate mechanisms for enforcement of the law and for the management of rights in such situations where individual management is not possible or feasible.

The question is then to what extent public authorities/the government should be involved in collective management.

The very basic approach is of course that such collective management is in the interest of the right-owners themselves. The basic approach should therefore be that they should themselves form such organisations and that the government should not control these activities.

This may be a sound point of departure. In some countries there is, however, no tradition of collective administration in any field and in still other countries there may be all kinds of difficulties and/or resistance from the users, and some sort of government encouragement or support may be desirable.

The degree of such government involvement and the way in which it could be exercised is of course entirely depending on the legal traditions and the political and economic considerations in each and every country and there is certainly no common rule to be applied everywhere.

It could be mentioned that when the Swedish Performing Rights Society was set up in 1923 the right-owners themselves requested the government to support it and also to have representatives on the Board and approve the by-laws of the society,. The reason was obviously to obtain support from the public authorities and to in a way guarantee that the operations of the society were sound; there was at that point in time considerable suspicion in many quarters against the setting up and operations of such societies. It was only some years ago that the government decided to terminate the control that it exercised over the Performing Rights Society. There were several reasons for this. One was that the Society had not become mature and had acquired confidence in the marketplace. Another reason was to avoid conflict of interests; the Society had to negotiate with users and the government should not be seen to be involved in those and, furthermore, the society often had to submit opinions in hearings on government legislative proposals and it was considered inappropriate if the government argued its own case.

5. Government control of collective management

On the other hand, if direct involvement could be seen as less advisable, the government could – and sometimes should – control the operations in different ways. Also this is depending on the traditions in the various countries and there is no common rule.

In some countries there is a direct supervision of collective management organisations. This is the case in, for instance, Germany where the Patent Office has such a supervisory function.

In still other countries, the Government approves the tariffs, such as is the case in, for instance, Switzerland and Denmark

A third way of controlling the operations of such societies is through competition law. This aims at preventing the societies from abusing their de facto (or de jure) dominant position in the market place.

5. Legislative support of collective management

From what has been said now it is pretty clear that collective management is an important factor in the sound and effective operation of the law on copyright and related rights. At the same time, it is sometimes difficult for such management operations to cover all right-owners and thus provide the users with fully covering blanket licenses in the field concerned. There are different ways in which the legislation could facilitate such coverage, something that is very much in the interest of the users who could then be sure that a license from a management society actually covers the full repertoire.

There are various legal mechanisms that would assist in the granting of fully covering licenses.

One such mechanism is a legal presumption to the effect that the law prescribes a *presumption* that the a collective management organisation which administers the rights in a particular sector also represents the rights of the right-owners who are not members of the organisation-

Another mechanism is *compulsory collective management*, which exists in, for instance, France, as regards reprography.

A third solution is the so-called *extended collective license*, which exists especially in the Nordic countries (Sweden, Norway, Denmark, Finland and Iceland). This means essentially that a collective agreement concerning a certain use of works within a certain category, is concluded between, on the one hand, a representative organization of right-owners and, on the other hand, a user or a group of users, and that that agreement is by the operation of the law extended to apply also to right-owners who are not members of the contracting organisation. The effect of the agreement is consequently by operation of the law extended to cover all right-owners in the field concerned. Normally, the law also provides some guarantees for outside right-owners. Thus, they normally are given the right to always claim individual remuneration from the organisation concerned and sometime they also have the right to file individual prohibition of the use of their works under the agreement. This legal mechanism is used in particular in the fields of broadcasting of literary and musical works, reprography and cable re-transmission.

7. The importance of collective management

What has been said in this presentation so far shows that collective management is an indispensable element in the operations of any legislation on copyright and neighbouring rights. It is sometimes said that the collecting societies are no longer necessary or in any case not so important as they used to be, the reason being that individual management through Digital Rights Management would replace collective administration. This is far from the case, at least yet. Those systems are still under development and individual authors or their agents would find it difficult to manage their rights on an individual basis.

Collective management organisations would therefore still have a significant role to play and consequently its is important both for the right-owners themselves and the public authorities to encourage and support such organizations.

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