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***WIPO Good Practice Toolkit for Collective Management Organizations (The Toolkit)***

A Bridge between Rights Holders and Users

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## Introduction

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

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 optional tools of good practice.

If they wish, Member States and other stakeholders may review tools from The Toolkit to help inform their choices of appropriate legislative/ regulatory approach in view of their country's particular circumstances, and decide on their own infrastructure for collective management. The Member States may also seek experts' comments and advice, when amending national legislation.

This Toolkit is not intended to prejudice in any way the operation of exceptions and limitations to copyright as they may exist in national law.

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 (the explanation is not exhaustive).
Good practice tools	A menu of optional tools for consideration by Member States and other stakeholders.
Examples of how the topic in question is addressed in codes, regulation or legislation	A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

This Toolkit is a working document, based on the input received from WIPO Member States and other stakeholders throughout the consultation process 2017-18, with the aim to update and improve it on a regular basis; the current version reflects the submissions received in the course of periodic revisions in 2021 and 2024 and contains updated information as of the date of its publication. Member States and other stakeholders may use relevant parts of the document to help them design an approach suitable for their particular context.

Further information can be found on the WIPO website:

<http://www.wipo.int/copyright/en/management>

## 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 and channel, 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) license the use of creative works, sound recordings or performances on behalf of the Rights Holders they represent, typically on a collective basis, collect licensing fees and pay the Rights Holders. They can represent Rights Holders in various creative sectors, such as music, audiovisual, text and images, and the visual arts. CMOs can also have Representation Agreements between them to represent Rights Holders affiliated with CMOs in other countries.

CMOs typically exist in a situation where it would be impossible or impractical for owners of rights to exercise their rights individually, and where it is to their advantage that the licensing of the rights that they own or represent be aggregated with a CMO.

CMOs ensure that Rights Holders receive fair and appropriate payment for copyright protected uses of their works and sound recordings.

CMOs also provide services to Users, since they make it possible to clear rights for a large number of works or sound recordings, thus reducing the transaction costs associated with obtaining the necessary permissions.

Copyright and related rights are by their nature private rights.

International treaties on copyright and related rights, however, leave issues relating to exercise and management of rights for the Member States to consider. They may among others decide on issues relating to the nature of CMOs.

Some countries traditionally operate collective management under a public or semi-public entity, which may be a multi-purpose CMO representing Rights Holders from various creative sectors.

In most countries, however, CMOs are non-profit organizations governed by the rules agreed to by the Members, taking into account applicable copyright law and other laws and regulations. This model is considered preferable by the majority of countries and has often proven to offer the most effective and efficient collective management framework.

The CMO's authority to operate is typically conveyed by mandates from Rights Holders or other agreements with them and Representation Agreements with CMOs in other countries, or, in specified cases, by a statutory mandate or other national regulative provision.

CMOs represent different categories of Rights Holders and they are called by different names, such as 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).

Distribution(s)

Payment(s) to Members, CMOs with whom Representation Agreements have been concluded, or other represented Rights Holders, after the deduction of Operating Expenses and other authorized deductions.

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 natural or legal person who is authorized by a CMO or by law to use copyright protected works or sound recordings, either for its own purpose or for the benefit of their patrons, customers or employees.

Typically, a Licensee is responsible for payment of contractual license fees or statutory remuneration and, when relevant, to provide CMOs with accurate and timely usage information.

Management Fee

The amounts charged, deducted or offset by a CMO from Rights Revenue or from any income arising from the investment of Rights Revenue in order to cover the Operating Expenses for the management of copyright or related rights.

Member

Rights Holders, who are affiliated with a CMO, and typically gave a CMO a mandate to represent them.

Operating Expenses

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

Repertoire

The copyright protected works or sound recordings in respect of which a CMO manages rights.

Representation Agreement

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 holder

A natural or legal person that has copyright or related rights in a protected work or sound recording. Typically, Rights Holders are authors (such as writers, composers, painters



and photographers), performers (such as musicians, actors and dancers), publishers (music, book and journal publishers), producers (phonogram or audiovisual producers).

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 Rights Holders and rights which it manages.

User

A natural or legal person who uses a copyright protected work or sound recording, whether permitted under an applicable legal exception or limitation, or under a statutory or contractual license.

## Key Issues of the Toolkit

### 1. Providing information about the CMO and its operations

#### 1.1 The role of the CMO

##### 1.1.1 Explanation

*Role:* CMOs provide appropriate mechanisms for the exercise of copyright and related rights, in cases where the individual exercise by the Rights holder 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, exceptions and limitations, and corresponding enforcement measures. In this vein, CMOs can provide a bridge between Rights Holders and Users, facilitating both access and remuneration.

*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.

##### 1.1.2 Good practice tools

1. *A CMO is an organization with a primary responsibility towards its Members. A CMO should always act in the best interest of the Members, 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 to enable the effective exercise of copyright and related rights, in order to ensure these rights are duly represented and work in practice. A CMO provides appropriate mechanisms for the exercise of copyright and related rights, in cases where the individual exercise by the Rights Holders would be impossible or impractical.*

3. *A CMO provides licensing, collection and/or Distribution services to the Licensees of copyright content, on the basis of objective, fair and non-discriminatory criteria.*

4. *CMOs play an important role in copyright management, and may also provide cultural, social and educational services for the benefit and welfare of Rights Holders.*

5. *Rights Holders entrust a CMO with the management of their rights. A CMO should undertake its services diligently, efficiently, and in a transparent and non-discriminatory manner.*

6. *Within the limits of the mandate provided by a Member 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 and act against the unauthorized use of such rights and enforce remuneration schemes, taking into account applicable provisions on limitations and exceptions, as well as relevant licensing arrangements; 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 its Members, a CMO may engage in activities aimed at increasing public awareness about copyright and related rights, collective rights management and CMOs, as well as highlighting their effect on the national economy and on cultural diversity, including its cultural and social activities.*

### 1.1.3 Examples<sup>1</sup>

#### 1.1.3.1 Member States

##### Role:

##### Brazil:

“The associations [CMOs] regulated by this article carry on an activity of public interest, as determined by this Law, and must attend to its social function.”

*Article 97(1), Law on Copyright and Neighboring 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*

##### Ecuador:

“Collective management organizations shall be not-for-profit legal entities whose corporate purpose is the collective management of economic copyright, related rights or both.”

*Article 238, Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

##### Guatemala:

“The owners of copyright and related rights may set up non-profit associations under civil law for the defense and administration of the economic rights of their members.”

*Article 113 of the Law on Copyright and Related Rights*

“Once authorized, collective management societies shall be entitled to exercise the rights under their management and to assert them in all kinds of administrative and judicial proceedings without submitting any title or proof other than their own statutes. In the absence of proof to the contrary, it shall be presumed that the society is the authorized representative of the rights invoked.”

*Article 116 of the Law on Copyright and Related Rights*

“Collective management societies shall be authorized to collect and distribute remuneration for the use of the works and sound recordings entrusted to them for administration, being also authorized to lay down the appropriate tariffs for the use thereof.”  
*Article 123 of the Law on Copyright and Related Rights*

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*

Republic of Korea:

“The term “copyright trust service” means a business which continuously manages rights on behalf of the holder of economic rights of author, an exclusive publication right, publication right, or neighboring right or a person who has the right as a database producer, and which includes the case of a general agent regarding exploitation of works.”  
*Article 2(26), Copyright Act*

Function:

Brazil:

“For the exercise and defense of their rights, authors and holders of related rights may associate without profit.”  
*Article 97, Law on Copyright and Neighboring Rights*

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”)*

Ecuador:

“Authorized collective management organizations shall be obliged to administer the rights entrusted to them and shall be authorized to exercise them in accordance with this Document and under the terms provided in its statutes, under the mandates granted to them and under the contracts they have entered into with foreign entities, as the case may be.”  
*Article 239, Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

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<sup>1</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

Guatemala:

“Unless otherwise agreed, the following shall be the responsibilities of collective management societies:

- (a) to represent their members in dealings with the judicial and administrative authorities of the country in all matters of general and particular interest to them, except where the members decide to institute on their own behalf those actions that are available to them for the infringement of their rights;
- (b) to negotiate with users the conditions governing the authorization of acts covered by the rights that they administer and the appropriate remuneration, and to grant the relevant authority;
- (c) to collect and distribute among their members the remuneration deriving from the rights that belong to them; for the exercise of this power the societies shall be considered the agents of their members by virtue of the mere fact of membership;
- (d) to enter into agreements with foreign collective management societies concerned with the same kind of activity or management;
- (e) to represent within the country those foreign societies with which they have a representation contract in dealings with the judicial and administrative authorities in all matters of concern to them, being empowered to appear in court in their name;
- (f) to ensure the safeguarding of the national intellectual and artistic tradition;
- (g) such others as may be specified in their statutes.”

*Article 115, Law on Copyright and Related Rights*

Italy:

“1. Collective management organizations shall collect and manage rights revenue based on diligence criteria.”

*Article 14, Law-Decree No. 35/2017*

“1. Collective management organizations distribute regularly and with the necessary diligence and precision the amounts due to rightholders in accordance with the provisions of this section and in line with the general distribution policy [...]”

*Article 17, Law-Decree No. 35/2017*

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*

Mexico:

“Collective management organizations shall have the following purposes:

- I. Exercise the economic rights of their members;
- II. Make the repertoires it manages available to users in its offices;
- III. Negotiate under the terms of the respective mandate the licenses for the use of the repertoires that they administer with users, and enter into the respective contracts;
- IV. Supervise the use of the authorized repertoire;
- V. Collect royalties for copyright and related rights and distribute these after deduction of administrative costs of the CMO, provided that there is an express mandate;
- VI. Collect and distribute royalties generated in favor foreign rightsholders of copyright and related rights, by themselves or through the CMOs representing them, provided and when there is an express mandate granted to the Mexican CMO and prior to the deduction of administrative expenses;
- VII. Promote or perform services of welfare nature for the benefit of its members and support activities to promote their repertoires;
- VIII. Collect donations as well as accept payments based on inherited and transferred rights; and
- IX. Any other activities which correspond to their activities in accordance with their nature and which are compatible with the purposes above and with the function as intermediaries of its members vis-à-vis the users or the authorities.”

*Article 202 of the Federal Law on Copyright*

Spain:

“Social function and development of the legal digital offer.

1. Management organizations shall foster, directly or through other entities:
  - (a) The promotion of support activities and services for their members;
  - (b) The training and promotion of authors and performers; and
  - (c) The legal digital offer of the protected works and performances for which they manage the rights, which shall be understood to include:
    - (i) Training, education or awareness campaigns on the legal offer and consumption of protected content, and campaigns against the infringement of intellectual property rights;
    - (ii) The direct promotion of the protected works and performances for which they manage the rights, through their own technological platforms or those shared with third parties;
    - (iii) Activities to promote the inclusion of authors and performers with disabilities in their respective creative or artistic field, or both, and promote the legal offer of their works, creations and

performances, and access to them by persons with disabilities in the digital environment.

The activities or services mentioned in paragraphs (a) and (b) shall be provided on the basis of fair criteria, in particular with respect to access and scope.

2. Management organizations shall allocate equal percentages of the legally determined compensatory payments stipulated in Article 25 to the activities and services mentioned in paragraphs 1(a) and (b).

In no case shall it be understood that the amounts that the management organization must allocate to the activities and services mentioned in paragraphs 1(a) and (b), in accordance with the provisions of the preceding paragraph, constitute revenue of the management organization for any purpose; rather, these amounts shall be understood as automatically and mandatorily allocated, without the management organization having material legal ownership thereof.

3. At the request of the competent Administration, the management organization shall provide evidence that the activities and services mentioned in this Article pertain to support, training, promotion, and the legal digital offer of the protected works and services.
4. For the purposes of carrying out the activities set out in paragraph 1, a management organization may incorporate a non-profit legal entity, under applicable legislation, subject to communication of such incorporation to the competent Administration. In the event of the dissolution of the legal entity thus incorporated, the management organization shall communicate such dissolution and its terms to the body to which it communicated its incorporation.
5. As an exception, and on reasonable grounds, a management organization may, with the express and single authorization of the competent Administration, incorporate or become part of a profit-making legal entity for the purposes of carrying out the activities stipulated in paragraphs 1(a) and (b), as well as other activities of obvious interest. In the event of the dissolution of said legal entity, the management organization shall immediately communicate such dissolution and its terms to the body that authorized its incorporation or association."

*Article 178 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

"A collective management organisation must conduct its activities in the interest of the represented rightsholders. The organisation may not impose obligations on rightsholders other than those necessary to protect their interests or to manage their rights effectively."

Chapter 2 §1, Swedish act on collective management of copyright



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)*

### **1.1.3.2 Stakeholders’ organizations**

Role:

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

“The overarching objectives governing the conduct of the Members are as follows:

- a. to have as its aim and effectively ensure the advancement of Creators’ moral interests and the defense of the material interests of Creators and, where relevant, publishers;
- b. to have at its disposal effective machinery for the collection and distribution of Income to Creators and, where relevant, publishers and assume full responsibility for the administration of the rights entrusted to it;
- c. to have regard to its high and long-standing duty to its Creators and, where relevant, publishers in the conduct of all its operations;
- d. to encourage the lawful dissemination of Works by facilitating the licensing of rights in return for equitable payment (“Licensing Income”);
- e. to distribute Income (less reasonable Expenditure) to Creators and, where relevant, publishers, and Sister Societies on a fair and non-discriminatory basis;
- f. to conduct its operations with integrity, transparency and efficiency;
- g. to strive to adopt best practice in the collective administration field; and
- h. to adapt continually to market and technological developments.”

*Preamble, CISAC Professional Rules (music)*

IFRRO:

“RROs<sup>2</sup>

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;

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<sup>2</sup> Reproduction Rights Organizations (RROs) are collective management organizations which act as intermediaries/facilitators between rightholders and users in the fields of reprographic reproduction and certain digital uses.

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:

CISAC:

“A Collective Management Organisation means any organisation that fulfils all of the following criteria:

- 1) It shall be authorised by law in countries where operating as a collective management organisation requires such authorisation and/or by way of assignment, licence or other contractual arrangement to license, manage or otherwise represent as its primary purpose, Authors’ rights on behalf of a broad range of individual Creators (and, where relevant, other categories of rightholders);
- 2) It shall do so in a non-discriminatory manner for the sole benefit of the aforementioned Creators (and, where relevant, other categories of rightholders);
- 3) It shall be open to all individual Creators (and, where relevant, other categories of rightholders) according to objective, transparent and non-discriminatory criteria;
- 4) It shall represent Authors’ rights across a broad range of types of exploitation, unless it has been limited by applicable law, government regulation or judicial authority to serve a specific purpose;
- 5) It shall be owned or controlled by the aforementioned Creators (and, where relevant, other categories of rightholders) unless subject to specific oversight by applicable law, government regulation or judicial authority and/or is otherwise organised on a not for profit basis.”

*CMO definition, CISAC Statutes*

The International Federation of the Phonographic Industry (IFPI):

“It is acknowledged that MLCs<sup>3</sup> provide a range of valuable services both to right holders and for users. MLCs make it easier for potential users to use sound recordings legally and they streamline the process of collecting remuneration and/or licence fees for the use thereof.

MLCs shall act in the best interests of all the right holders they represent, whether directly or via agreements with other MLCs. MLCs shall offer their services and conduct their operations in a fair, effective and non-discriminatory manner and in compliance

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<sup>3</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

with the applicable legislation. MLCs shall strive to effectively collect remuneration or license fees on behalf of right holders and distribute the collective revenue to the correct right holders expeditiously and accurately. MLCs shall strive to continuously improve their performance e.g., by applying industry best practices and measuring their performance using industry standard performance indicators.”

*IFPI Code of Conduct for Music Industry MLCs*

## 1.2 Information for the general public

### 1.2.1 Explanation

CMOs should be transparent in their activities to fulfil properly their purposes. 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 how 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 Rights Holders, Users, and the general public. Day-to-day operations of a CMO must remain transparent to establish and bolster trust among all stakeholders.

### 1.2.2 Good practice tools

8. *A CMO should regularly publish (where possible, on the CMO's website) and keep up to date:*
- (a) *its Statute, membership terms and rules on termination of membership;*
  - (b) *tariff information;*
  - (c) *its general Distribution policy, and whenever possible, its Distribution schedule;*
  - (d) *its policy on deductions (such as any administration, social, cultural or educational deductions) and the deducted amounts;*
  - (e) *its policy on the use of non-distributable Rights Revenue;*
  - (f) *its annual accounts, including the total amount received and total amount distributed, Operating Expenses and other deductions, and, whenever possible, its Annual Report;*
  - (g) *its complaint and dispute resolution procedures;*
  - (h) *a list of the persons who manage its business and who sit on its supervisory body and/or board;*
  - (i) *the total amount of remuneration paid, and other benefits provided to the persons who manage the business of the CMO; and*
  - (j) *whenever possible, the Rights Revenue attributed, the amounts paid by the collective management organization per category of rights managed, and per type of use, for the rights it manages under the Representation Agreement, and any Rights Revenue attributed which is outstanding for any period.*

9. *Any information published by the CMO should, wherever possible, be done so following good practices in digital accessibility, in consideration of people with print disabilities.*<sup>4</sup>

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<sup>4</sup> For more information on web accessibility, click here (Hyperlink to: <https://www.w3.org/WAI/test-evaluate/preliminary/>).

For more information on making Word documents accessible, start here (Hyperlink to: <https://support.microsoft.com/en-us/office/make-your-word-documents-accessible-to-people-with-disabilities-d9bf3683-87ac-47ea-b91a-78dcacb3c66d>).

### 1.2.3 Examples<sup>5</sup>

#### 1.2.3.1 Member States

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.”

*Title 5, Book XI, Belgian Code of Economic Law*

Brazil:

“Associations [CMOs], in the performance of their duties, shall:

I - give publicity and transparency, through its own electronic websites, to the calculation methods and collection criteria, including, among other information, the type of user, time and place of use, as well as the criteria for distribution of rights values including spreadsheets and other records of use of the works and phonograms provided by users, except for the values distributed to the individual owners;

II - to publicize and transparency, through its own electronic websites, the statutes, the regulations for collection and distribution, the minutes of its deliberative meetings and the registers of the works and holders they represent, as well as 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 performances 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 must be updated periodically, in an interval never exceeding 6 (six) months.”

*Article 98-B, Law on Copyright and Neighboring Rights*

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*

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*

Ecuador:

“Obligations of collective management organizations – Without prejudice to other obligations provided for in their statutes, collective management organizations shall do the following once authorized:

1. publish, at least annually, the balance sheet and income statements in a national newspapers with wide circulation; and
2. provide to its members comprehensive and detailed information on all activities related to the exercise of their rights at least every six months.

*Article 249, Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

Guatemala:

“Tariffs shall be approved by the General Assembly on a proposal by the Management Board, and they shall be published in the Official Gazette to come into effect on the day following such publication. The annual financial statements approved by the General Assembly of the collective management society shall likewise be published in the Official Gazette and in another widely circulated journal.”

*Article 126, Law on Copyright and Related Rights*

Nigeria:

“Rights of Members

(...) (2) Each member shall be entitled to obtain from the Organization:

- a. annual statements of accounts;
- b. list of persons that constitute the Governing Board of the Organization;
- c. annual report of the Governing Board;
- d. report of the auditors;
- e. information on the overall amount of remuneration paid to any Director or employee of the organization certified by the auditors.

(3) The Governing Board of a Collective Management Organization shall as far as possible be representative of the different classes of right owners in the society.

(4) Nothing in these Regulations shall reduce, derogate or affect in any way the privileges that members of a Collective Management Organization are entitled to, or any relief or remedies available to them under their membership agreement or any applicable legislation. (...)”

*Article 6, CMO Regulations, 2007*

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<sup>5</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

“(1) Collective Management Organizations shall within 30 days of occurrence notify and furnish the Commission with information in respect of:

- a. alteration to the Memorandum or Articles of Association or any internal rules;
- b. adoption of Tariffs and any alteration thereof;
- c. Reciprocal Representation Agreements with foreign collecting societies;
- d. any alteration to the standard membership agreement;
- e. any decisions in judicial or official proceedings to which the society is a party, where the Commission so requires;
- f. any documentation, report or information which the Commission may require.

(2) Collective Management Organization shall, not later than the 1st day of July in each year prepare and submit to the Commission the following documents in respect of its operation for the preceding year:

- a. a general report of its activities; and
- b. annual audited financial report which shall show among others;
  - (i) the total revenue during the period of the report;
  - (ii) the total sum and general nature of expenses; and
  - (iii) payment of royalties to members in accordance with the organization’s distribution policy.

(3) Collective Management Organizations shall provide users of copyright works, or any member of the public, upon a written request, reasonable information on their services. Such information shall include:

- a. the description of the rights or class(es) of rights it administers;
- b. its Current Licensing arrangements including tariff, terms and conditions of license for all categories of users;
- c. and such other relevant information that may be necessary.

(4) Where a Collective Management Organization seeks any change in the tariff rates for any category of users, it shall inform such users through a medium that could be accessed publicly by them.”

*Article 8, CMO Regulations, 2007*

Peru:

“Collective management societies administrations shall be authorized, under conditions deriving from their own statutes, to exercise the rights entrusted to them from management and to assert them in all kinds of administrative and judicial proceedings without submitting any entitlement other than the said statutes, it being presumed, in the absence of proof to the contrary, that the rights exercised have been entrusted to them either directly or indirectly by the owners thereof. Without prejudice to that empowerment, the societies shall keep at the disposal of users, in the material form used by them for their management activities, their tariffs and a directory of the owners of national and foreign rights that they manage for purposes of consultation on their website and/or at their offices. Any other form of consultation shall be charged to the person requesting it.”

*Article 147, Law no. 822 on Copyright*

Republic of Korea:

“The copyright trust service provider shall prepare a list of works, etc. that he/she manages on a quarter year basis in written or electronic form as prescribed by Presidential Decree so that all the people may peruse the list during business hours at the least.

The following matters shall be stated in the list of works, etc. under management pursuant to Article 106 (1) of the Act:

1. Title of works, etc.;
2. Name, etc. of author, performer, phonogram producer or broadcasting organization, and database producer;
3. Year of creation or making public, year of performance, and year of production.”

*Article 106(1), Copyright Act and Article 50, Enforcement Decree of the Copyright Act*

Venezuela:

“For the purposes of fulfilling their obligations and meeting their audit requirements, CMOs must: (...)

(5) set the remuneration rates for the exploitation rights or user licenses issued for the works, performances or productions which they administer, in compliance with the principles set out in sections 55 and 56 of the Copyright Law;

(6) publish the rates referred to in the previous paragraph in at least two daily newspapers with wide national circulation, no less than 30 days from the date of entry into force of such rates; (...)

(11) maintain a periodic publication for members that provides information on the CMO activities that may be relevant to exercise of the rights of their members or clients; (...)

(14) publish their annual balance sheet in at least two daily newspapers with wide national circulation, within thirty days following the holding of the General Assembly.”

*Article 30, Implementing Regulations 1997*

Spain:

“Information provided upon request.

1. Without prejudice to the obligation under Article 185 (Provide information on certain documents and matters of the organization through its website), a management organization shall provide to any management organization on behalf of which it manages rights under a representation agreement, to any rightholder or to any user, in response to a duly reasoned written request, at least the following information:
  - (a) The works or other performances that it represents, the rights that it manages directly or under representation agreements, and the territories that it covers.
  - (b) If the works or other performances under paragraph (a) cannot be determined owing to the scope of the activity of the management organization, the categories of works or of other performances that it represents, the rights that it manages and the territories that it covers.

(...)

4. A management organization that grants non-exclusive multiterritorial authorizations of online music rights shall provide, by electronic means, to online music service providers, to the rightholders whose rights it represents and



to other management organizations, in response to a duly reasoned written request, the following up-to-date information for identifying the online music repertoire that it represents:

- (a) The musical works represented.
- (b) The rights represented, in whole or in part.
- (c) The territories covered.

Management organizations may take reasonable measures to protect, where necessary, the accuracy and integrity of the data, control its reuse and protect commercially sensitive information.”

*Article 183 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

“A collective management organization must keep the following information available on its website:

1. the organization's statutes,
2. the terms of membership,
3. the conditions for terminating a mandate,
4. the general conditions for licensing,
5. a list of the people who lead the business,
6. the general principles for distribution of rights revenues to the rightsholders,
7. the general principles for deductions,
8. the general principles for the use of funds that cannot be distributed,
9. a list of such agreements referred to in Chapter 8. § 1 that the organization is bound by and the names of the other organizations that the agreements refer to, and
10. information on complaints and dispute resolution procedures.”

*Chapter 10 § 1 of the Swedish act on collective management of copyright*

Türkiye:

“Society’s bylaws and directives, matters pertaining to membership, standard deed of assignment, entrance fees and membership fees, management fees, list of international organizations with which representation agreements have been signed, complaint submission procedures, tariffs, discounts and facilitated payment methods, standard license agreements, member and repertoire details, general assembly decisions, members of compulsory organs, contact information and the annual transparency report shall be published and updated on the corporate websites of collecting societies.”

*Article 58, Regulation on Collecting Societies in the Field of Copyright*

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*

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*

“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 and Annex, EU Directive 2014/26/EU*

### **1.2.3.2 Stakeholders’ organizations**

AGICOA:

“1. AGICOA shall draw up and publish on its website an annual transparency report as required by applicable law for each financial year no later than eight months following the end of that financial year. The transparency report shall remain available to the public on that website for at least five years.”

*Article 30 Annual Transparency Report, AGICOA by-laws*

CISAC:

“In each Calendar Year, each Member shall make available to each of its Affiliates:

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

*Article 11, CISAC Professional Rules (music)*

The Societies’ Council for the Collective Management of Performers’ Rights (SCAPR):

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

*Article 14, SCAPR Code of Conduct*

“A CMO shall be accountable and transparent to the performers it represents and make available to them all relevant information regarding the organisation’s activities, particularly its management, collection and distribution policies, along with its business relationships with sister organisations in other countries.

In this respect, CMOs shall provide a direct line of contact with all their members, as appropriate.”

*Article 4, SCAPR Code of Conduct*

The International Federation of Reproduction Rights Organisations (IFRRO):

“RROs<sup>6</sup>:

3.1.1 manage their relationships with rightsholders efficiently, equitably and impartially;

3.1.2 treat all rightsholders in accordance with applicable statutes and national laws;

3.1.3 collect and distribute remuneration in a diligent, efficient and transparent manner; and

3.1.4 explain clearly and regularly the basis of their operations.”

*Article 3, IFRRO Code of Conduct*

## **2. Rights Holders: Mandates and non-discriminatory management of rights**

### **2.1 Scope of CMOs’ rights management mandate**

#### **2.1.1 Explanation**

A CMO’s authority to act may be based on mandates received from a Rights holder or other legislative provisions. The specific role of contractual arrangements between a Rights holder and a CMO varies according to the different systems of collective management. Such arrangements determine the nature and scope of a CMO’s authority to license the Rights

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<sup>6</sup> Reproduction Rights Organizations (RROs) are collective management organizations which act as intermediaries/facilitators between rightsholders and users in the fields of reprographic reproduction and certain digital uses.

holder's rights and otherwise to represent the interests of the Rights holder (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 Rights holder and his/her rights.

CMO's mandates should strike a fair balance between a Rights holder'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.

### **2.1.2 Good practice tools**

*10. A CMO should always act on the basis of a mandate from a Rights holder or, in defined cases, by statutory or governmental mandate. A CMO may, in its Statute, restrict a Rights holder's right to freely determine the scope of his/her 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.*

*11. Rights Holders should be free to grant their rights to one or more CMOs on condition that they do not grant the same rights in the same category of Repertoire within the same territory and for the same period of time to more than one CMO. This is without prejudice to the Rights Holders' freedom to grant to CMOs non-exclusive mandates or licenses, and retain the right to license uses individually.*

## 2.1.3 Examples<sup>7</sup>

### 2.1.3.1 Member States

Brazil:

“With the act of affiliation, the associations [CMOs] referred to in art. 97 become [agents] of their associates for the practice of all the acts necessary for the judicial or extrajudicial defense of their copyrights, as well as for the exercise of the activity of collection of these rights.”

“The copyright holders may personally practice the acts referred to in the caput and § 3 of this article, by communication to the association [CMO] to which they are affiliated, within 48 (forty eight) hours prior to their practice.”

*Articles 98 and 98 (15), Law on Copyright and Neighboring Rights*

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, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Guatemala:

“For the purposes of the defense of the economic rights of their members, collective management societies shall be deemed to be the agents of those members by virtue of the mere fact of membership.”

*Article 114, Law on Copyright and Related Rights*

Mexico:

“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*

Senegal:

“Optional nature of collective management. – Unless otherwise provided by law, owners of copyright and related rights shall not be required to belong to a collective management society.”

*Article 114, Law on Copyright and Related Rights, 2008*

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*

### **2.1.3.2 Stakeholders’ organizations**

AGICOA:

1. AGICOA carries out its activities within the international, European and national legal frameworks for the collective management of copyright and related rights.

2. Under the General Mandates conferred by its Members and/or Declarants in a specific mandate form, AGICOA has the right to grant or refuse authorization for the following exploitations of audiovisual works that are part of AGICOA’s repertoire and are contained in television programs intended for the reception by the public:

2.1. Simultaneous, full, unchanged and continuous retransmission by cable, satellite or by any similar means.

2.2. The intervention by satellite package providers, cable distribution platforms or other comparable distribution platforms in the communication to the public.

2.3. Communication to the public by hotels, hospitals, homes for elderly, prisons and other similar establishments.

2.4. Recording for (non-commercial) educational purposes by educational institutions in specific countries as approved from time to time by the Administrative Board.

3. Under the Voluntary Mandates conferred by its Members and/or Declarants in a specific mandate form, AGICOA shall:

3.1. Have the right to grant or refuse authorization for the communication, including making available, to the public, and/or the reproduction of audiovisual works that fall under the AGICOA repertoire and that are contained in the television programs transmitted as part of linear or non-linear (on-demand) audiovisual media services, as listed and approved from time to time by the Administrative Board.

3.2. Carry out other acts according to the specific mandates that are granted to AGICOA by its Members and/or Declarants and

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<sup>7</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

approved by the General Assembly upon the recommendation of the Administrative Board.

*Article 3 Mandates and Activities, AGICOA by-laws*

IFPI:

“Each MLC<sup>8</sup> 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 for Music Industry MLCs*

SCAPR:

“PMOs<sup>9</sup> shall encourage performers to entrust the management of their rights to a CMO of their own choice.”

*Article 1, SCAPR Code of Conduct*

“The managerial services of a PMO shall be open to all performers enjoying rights in the territory of its operation. A performer shall have a right to join any PMO for any category of performers’ rights and for such territories as they may choose. A performer may thus join one or more PMOs, for the territory and/or category of rights of its choice.”

*Article 1.4, SCAPR Policy and Guidelines Introduction*

## **2.2 CMO disclosure to Rights Holders**

### **2.2.1 Explanation**

In order to ensure transparency towards Rights Holders, a CMO should provide a Rights holder with the necessary information about the rights they enjoy with regard to the scope of the rights management mandate, its membership requirements, the nature of its Representation Agreement, Management Fees, and other possible deductions.

### **2.2.2 Good practice tools**

*12. A CMO should make available to Rights Holders (where possible, electronically) a clear summary of applicable rights, obligations and other essential information. In particular, a CMO should explain:*

- (a) who can join as a Member, and the procedures for doing so, the terms of membership and where all such information can be found;*

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<sup>8</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies.

<sup>9</sup> A PMO (Performers’ Collective Management Organisation) is a CMO that represents the rights and interests of performers.

- (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 Rights holder;*
- (c) *the scope of the authority granted under the agreement;*
- (d) *the arrangements for terminating mandate and a description of the implications of termination (and reversion of rights, if relevant);*
- (e) *information on whether collective administration by such CMO is mandatory, and the consequences of such information for the Rights holder;*
- (f) *its deduction policies and the Rights holder's ability to benefit from activities and services funded through those deductions; and*
- (g) *a list of Representation Agreements or similar agreements with other CMOs.*



2.2.3 Examples<sup>10</sup>

## 2.2.3.1 Member States

Ecuador:

“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.”

*Articles 240, Organic Code on Social Economy of Knowledge, Creativity and Innovation, 2016*

Guatemala:

“The statutes shall determine the manner and conditions of admission to and withdrawal from the association.”

*Article 118, Law on Copyright and Related Rights*

Spain:

“Management contract.

The management organization shall inform the rightholder, before the signing of the management contract, of all the rights granted to the rightholder under this Title; of the conditions inherent in the right recognized in Article 169 (the right granted to the rightholder themselves to authorize the non-commercial exercise of rights); and of the management fees and other deductions that apply to the royalties that it collects and to income arising from the potential investment thereof.”

*Article 157.2 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

European Union:

“1. Member States shall ensure that rightholders have the rights laid down in paragraphs 2 to 8 and that those rights are set out in the statute or membership terms of the collective management organisation.

2. Rightholders shall have the right to authorise a collective management organisation 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 collective management organisation or the rightholder. Unless the collective management organisation 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 the scope of its activity.

3. Rightholders shall have the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject-matter that they may choose.

4. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other

subject-matter granted by them to a collective management organisation or to withdraw from a collective management organisation any of the rights, categories of rights or types of works and other subject-matter of their choice, as determined pursuant to paragraph 2, for the territories of their choice, upon serving reasonable notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal is to take effect only at the end of the financial year.

5. If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under Articles 12, 13, 18, 20, 28 and 33.

6. A collective management organisation shall not restrict the exercise of rights provided for under paragraphs 4 and 5 by requiring, as a condition for the exercise of those rights, that the management of rights or categories of rights or types of works and other subject-matter which are subject to the termination or the withdrawal be entrusted to another collective management organisation.

7. In cases where a rightholder authorises a collective management organisation 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 he authorises the collective management organisation to manage. Any such consent shall be evidenced in documentary form.

8. A collective management organisation shall inform rightholders of their rights under paragraphs 1 to 7, as well as of any conditions attached to the right set out in paragraph 3, before obtaining their consent to its managing any right or category of rights or type of works and other subject-matter.”

*Article 5, EU Directive 2014/26/EU*

### **2.2.3.2 Stakeholders' organizations**

IFRRO:

“RROs<sup>11</sup> ‘2.1.1 have open representation for all eligible rightholders in accordance with applicable national and supranational laws, including competition law;  
2.1.2 ensure that their dealings with their constituents are transparent by publicising and explaining their operations, practices and procedures.’”

*Article 2, IFRRO Code of Conduct*

SCAPR:

<sup>10</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

<sup>11</sup> Reproduction Rights Organizations (RROs) are collective management organizations which act as intermediaries/facilitators between rightholders and users in the fields of reprographic reproduction and certain digital uses.

“CMOs shall encourage performers to entrust the management of their rights to a CMO of their own choice.”

*Article 1, SCAPR Code of Conduct*

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

*Article 4, SCAPR Code of Conduct*

## 2.3 Non-discrimination of Rights Holders

### 2.3.1 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 for all CMOs to abide by internationally and nationally adopted principles of non-discrimination.

### 2.3.2 Good practice tools

13. *A CMO should not discriminate between Rights Holders – either directly or indirectly – on the basis of, including:*

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

14. *A CMO should represent Rights Holders fairly and equally, whether represented by virtue of direct mandates, Representation Agreements, or legislation. A CMO should not impose any obligations on Rights Holders that are not objectively necessary for the effective management of such Rights holder's rights.*

### 2.3.3 Examples<sup>12</sup>

#### 2.3.3.1 Member States

Belgium:

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

*Title 5, Book XI, Belgian Code of Economic Law*

Brazil:

“Associations [CMOs] shall treat their associates in an equitable manner, and unequal treatment shall be prohibited.”

*Article 98(5), Law on Copyright and Neighboring Rights*

Colombia:

“Foreign members whose rights are administered by a society for the collective administration of copyright and related rights, either direct or on the basis of agreements with foreign counterpart societies for the collective administration of copyright and related 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*

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*

Guatemala:

“Foreign members whose rights are administered by a collective management society either direct or under agreements with similar foreign societies shall enjoy the same treatment as the members who are nationals or who have their residence within the country. Collective management societies shall always be obliged to agree to the administration of their members’ rights”.

*Article 118, Law on Copyright and Related Rights*

“The distribution of royalties accruing to foreigners shall take place on the same conditions as have been laid down for the distribution of the royalties accruing to Guatemalans”.

*Article 123, Law on Copyright and Related Rights*

Republic of Korea:

“No business entity shall perform any of the following acts that are likely to hinder fair trade, or require its affiliates or other business entities to do such acts:

1. Unfairly refusing a transaction or discriminating against a certain transaction partner.”

*Article 23(1), Monopoly Regulation and Fair Trade Act*

Spain:

“General principles of rightholder representation.

5. Management organizations shall not discriminate against rightholders whose rights they manage under a representation agreement, in particular with regard to the applicable tariffs, management fees and the conditions for the collection of royalties and the distribution and payment of the amounts thereof.”

*Article 156(5) of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

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*

### **2.3.3.2 Stakeholders’ organizations**

CISAC:

“Each Member shall at all times refrain from discriminating between Creators and, where relevant, publishers or between Sister Societies in any manner which is legally unjustifiable, or which cannot be objectively justified.”

*CISAC Professional Rules (music)*

IFPI:

“Each MLC<sup>13</sup> 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 for Music Industry MLCs*

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*

<sup>12</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

<sup>13</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

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

*IFRRO Code of Conduct*

IMPALA:

viii. Societies should not discriminate between members in terms of the fees they seek from licensees, or the management fees that the society charges, or their distribution policies.

*IMPALA Collecting Society Code of Conduct*

SCAPR:

“The distribution of remuneration and the provision of funds and services for social, cultural and educational purposes shall be based on the principle of equal and non-discriminatory treatment of all performers.”

*Article 9, SCAPR Code of Conduct*

“Based on the principle of equal treatment, CMOs shall identify all protected rightholders involved, both national and foreign.”

*Article 12, SCAPR Code of Conduct*

## 2.4 Termination of mandate

### 2.4.1 Explanation

CMOs administer rights on a collective basis when individual rights management is impractical or impossible. For instance, it would not be possible for every author, performer, or producer to collect compensation or private copying from every person copying copyright protected works or sound recordings for personal use, or it would be impracticable for Rights Holders to negotiate licenses and remuneration for the use of their music in barber shops. On the other side, it is not practical for a barber shop to seek specific permission from every author, performer and producer for the use of each song.

Against this background, it is important to ensure that Rights Holders have the ability to terminate their mandate of a CMO, and/or to entrust their rights to another organization, or to manage their rights themselves, as permitted under the applicable legal and regulatory framework.

### 2.4.2 Good practice tools

15. *A CMO should permit each Rights holder to terminate or change the scope of his/her mandate, upon a reasonably determined notice period that should not exceed 12 months.*

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

17. *Notwithstanding the termination of a mandate, a Rights holder should be entitled to his/her full share in the Rights Revenue collected until termination of mandate is effective.*

2.4.3 Examples<sup>14</sup>

## 2.4.3.1 Member States

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*

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 of 1993*

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, CMO Regulations, 2007*

Senegal:

“Optional nature of collective management. – Unless otherwise provided by law, owners of copyright and related 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.”

*Article 114, Law on Copyright and Related Rights, 2008*

Spain:

“Full or partial termination of the management contract.

1. The term of the management contract may not exceed three years, renewable for periods of one year.
2. Upon giving reasonable notice of a period not exceeding six months, which is to be specified in the statute of the management organization, the rightholder shall be entitled to terminate the management contract, in full or in part, with a withdrawal of the rights, categories of rights, or types of works or performances of their choice in the territories of their choice.
3. The management organization may determine that the termination shall take effect from the end of the financial year in which the notice period expires, and may not make such termination conditional on the rights of the rightholder being entrusted to another management organization, except in relation to those rights provided for in this Act that must be managed by management organizations.

4. If the rightholder is owed amounts for royalties collected at the time that the full or partial termination takes effect, the rightholder shall retain the right to receive information concerning:
  - (a) Management fees and other deductions that the management organization will apply to those royalties pending payment;
  - (b) The rights related to the distribution and payment of royalties provided for in Articles 177 and 180;
  - (c) The information rights provided for in Articles 181 and 183, paragraphs (a) and (b);
  - (d) The right to file a claim or complaint in accordance with the procedure provided for in the statute of the management organization.
5. If the rightholder owes amounts to the management organization as a result of advance payments against future distributions of royalties, as provided for in Article 177(9), the management organization shall not continue to manage, in the relevant territories, the rights, categories of rights, and types of works or performances to which the full or partial termination relates, even if the debt has not been cancelled. The termination shall be carried out in accordance with the provisions of paragraph 2.  
The parties shall agree the terms of the full or partial repayment of the outstanding balances of any documented advances.  
If no agreement is reached, the proceeds from the exploitation of the rights to which the full or partial termination relates shall be deemed security for the payment of the outstanding balance of documented advances.
6. A management organization that does not grant or offer to grant non-exclusive multiterritorial authorizations of online music rights or does not allow another management organization to represent such rights for that purpose, shall allow its members to partially terminate the management contract in respect of such rights in order to be able to grant such authorizations. Such termination shall not affect the remaining online rights for the purposes of granting non-exclusive, non-multiterritorial authorizations.”

*Article 158 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

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.”

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<sup>14</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.



*Article 5(4), EU Directive 2014/26/EU*

“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*

#### **2.4.3.2 Stakeholders’ organizations**

CISAC:

“Each Member shall at all times permit a creator and [...] a publisher to terminate his affiliation agreement with such Member, provided that such Member may impose reasonable conditions in relation to the termination of such agreement.”

*CISAC Professional Rules*

IFPI:

“In appropriate circumstances the MLC<sup>15</sup> 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 for Music Industry MLCs*

SCAPR:

“Membership is a personal right of the performer.”

*Article 2, SCAPR Code of Conduct*

### **3. Membership: information, adherence and rights of Members**

#### **3.1 Before joining a CMO as a Member and Acceptance of Members**

##### **3.1.1 Explanation**

It is important that Rights Holders are fully aware of the conditions on the basis of which they can be accepted as Members, membership withdrawal conditions, the governance structure, or any opportunities to participate in the decision-making process. These need to be fair, transparent and non-discriminatory and included in published documents like the statute, and membership terms or distribution rules.

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<sup>15</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

### 3.1.2 Good practice tools

18. A CMO should make available to Rights Holders (where possible, electronically) a clear summary of applicable rights, obligations and other essential information. In particular, a CMO should explain:

- (a) who can join as a Member, 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 mandate;
- (d) the arrangements for terminating mandate and a description of the implications of termination (and reversion of rights, if relevant);
- (e) information on whether collective administration by such CMO is mandatory, and the consequences of such information for the Member;
- (f) its deduction policies and the Member's ability to benefit from activities and services funded through those deductions;
- (g) how the CMO consults with its Members;
- (h) what happens if a Member dies or (if corporate) is dissolved while still a Member of such CMO;
- (i) how Members will be represented on the governing bodies;
- (j) how the governing bodies are composed, how they are appointed, and their terms of office;
- (k) any sub- committee or council structures, and how these are approved;
- (l) how a Member can present his/her candidature for elections to the governing body or apply to become Member of any sub-committees or council structures;
- (m) the frequency of General Meetings and how a Member will be notified of such meetings;
- (n) what rights a Member has to call an Extraordinary General Meeting and how to do it;
- (o) what voting rights a Member has;
- (p) how a Member can still exercise voting rights through proxy or digital means if he or she cannot attend;
- (q) a list of Representation Agreements or similar agreements with other CMOs

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

20. *Membership criteria should be included in national legislation or regulations, a CMO's Statute or its membership terms.*

21. *A CMO should accept a Rights holder as a Member if it/he/she fulfils the membership criteria.*

22. *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.*

3.1.3 Examples<sup>16</sup>

## 3.1.3.1 Member States

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.”

*Title 5, Book XI, Belgian Code of Economic Law*

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:

“Collective management organizations shall be required to admit any rights holder as a member. 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.”

*Articles 240, Organic Code on Social Economy of Knowledge, Creativity and Innovation, 2016*

“Statute - Without prejudice to the provisions of the other applicable legal provisions and the regulations, the statutes of collective management organizations shall, in particular, stipulate the following:

1. Members:

- a. The requirements that only original or secondary holders of the rights administered may be members;
- b. The form and requirements for admission or withdrawal of the entity, cases of suspension of social rights and expulsion;
- c. The means for proving the status of holders of copyright or related rights;
- d. The manner of distributing the amounts collected;
- e. The criteria for allocating social and welfare benefits;
- f. The rights and duties of members and the disciplinary measures and, in particular, the information and voting rights for the election of governing and representative bodies. The vote shall be democratic and secret. All members shall have the right to participate in the election of the organization’s authorities, in accordance with the conditions established in the Rules of Procedure on Elections; and,
- g. Regardless of the existing categories of members in a collective management organization, all members shall have the right to participate in decisions to be adopted by the Assembly. The necessary technological means may be used to facilitate such participation.”

*Article 245.1, Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

Guatemala:

“Collective management societies shall admit as members the holders of rights protected by this Law who so request and who provide due proof of their status as such. The statutes shall determine the manner and conditions of admission to and withdrawal from the association. Foreign members whose rights are administered by a collective management society either directly or under agreements with similar foreign societies shall enjoy the same treatment as the members who are nationals or who have their residence within the country.

Collective management societies shall always be obliged to agree to the administration of their members’ rights.”

*Article 118, Law on Copyright and Related Rights*

“Members may in no event be expelled. The statutes shall determine the cases in which the suspension of membership rights is appropriate. Agreement on suspension shall require 75 per cent of the votes of those present at the session of the General Assembly at which the decision is taken. Suspension shall not imply deprivation or withholding of economic rights or amounts due.”

*Article 119, Law on Copyright and Related Rights*

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.”

*Article 195, Federal Law on Copyright*

Sweden:

“§ 1 Anyone who meets the conditions for becoming a member of a collective management organization must be granted membership. If an application for membership is not granted, the organization must state the reasons for this.”

“§ 2 The conditions for becoming a member of a collective management organization must be factual, clear and non-discriminatory. They must be set out in the organisation's constitution or terms of membership and kept publicly available.”

*Chapter 4 of the Swedish Act on collective management of copyright*

European Union:

“1. Member States shall ensure that rightholders have the rights laid down in paragraphs 2 to 8 and that those rights are set out in the statute or membership terms of the collective management organisation.

2. Rightholders shall have the right to authorise a collective management organisation 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 collective management organisation or the rightholder. Unless

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<sup>16</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

the collective management organisation 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 the scope of its activity.

3. Rightholders shall have the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject-matter that they may choose.

4. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject-matter granted by them to a collective management organisation or to withdraw from a collective management organisation any of the rights, categories of rights or types of works and other subject-matter of their choice, as determined pursuant to paragraph 2, for the territories of their choice, upon serving reasonable notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal is to take effect only at the end of the financial year.

5. If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under Articles 12, 13, 18, 20, 28 and 33.

6. A collective management organisation shall not restrict the exercise of rights provided for under paragraphs 4 and 5 by requiring, as a condition for the exercise of those rights, that the management of rights or categories of rights or types of works and other subject-matter which are subject to the termination or the withdrawal be entrusted to another collective management organisation.

7. In cases where a rightholder authorises a collective management organisation 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 he authorises the collective management organisation to manage. Any such consent shall be evidenced in documentary form.

*Article 5, EU Directive 2014/26/EU*

“2. A collective management organization shall accept rightholders and entities representing rightholders, including other collective management organizations and associations of rightholders, as members if they fulfil the membership requirements, which shall be based on objective, transparent and non-discriminatory criteria. Those membership requirements shall be included in the statute or membership terms of the collective management organization and shall be made publicly available. In cases where a collective management organization refuses to accept a request for membership, it shall provide the rightholder with a clear explanation of the reasons for its decision.

*Article 6, EU Directive 2014/26/EU*

### **3.1.3.2 Stakeholders' organizations**

AGICOA:

“AGICOA membership includes and is open to:

1. Founding Members: International Federation of Film Producers Associations and International Federation of Film Distributors’ Associations;
2. Institutional Members: any entity active within the scope of the purpose and activities of AGICOA, including collective management organizations and professional associations, that establishes its power to represent Rightsholders and/or Declarants and to achieve the purpose and realize the activities of AGICOA; and
3. Individual Members: any Declarant, other than a collective management organization, active within the scope of the purpose and activities of AGICOA that establishes its will to become an Individual Member in order to achieve the purpose and realize the activities of AGICOA (hereinafter collectively referred to as “Members”).”

*Article 6 Membership Requirements, AGICOA by-laws*

Australian CMOs:

“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.”

*Australian Collecting Societies Code of Conduct*

British Copyright Council (BCC):

“[A CMO should] summarize membership agreements and mandates:

- Explain who can join, and the procedures for doing so, the terms of membership and where these can be found
  - Explain the nature of the grant or transfer of rights: exclusive licence, assignment, etc., and the implications of this for the member
  - Explain the scope of the authority granted under the agreement
  - Explain if and how the member may restrict the authority to act and/or require consultation (if applicable)
  - Explain 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.”

“[Regarding the governance, a CMO should]:

- State how members will be represented on the governing body/board of directors
- State how the governing body is composed, how it is appointed, terms of office, and the cycle of changes to the governing body
- Explain any technical/regional committee or council structures, and how these are appointed
- Explain how members can apply to be on the governing body or any committees/regional councils etc.

[Regarding the Members’ meetings and voting rights, a CMO should]:

- Explain the frequency of general meetings and how members will be notified
- Explain what voting rights they have
- Explain what rights members have to call a special meeting and how to do it
- Explain how members can still exercise voting rights even if they cannot attend (proxies, etc.)

*BCC Principles of Good Practice for Collective Management Organizations*

CISAC:

“Each Member shall at all times be open to Creators and, where relevant, publishers of all nationalities.”

*CISAC Professional Rules (music)*

IFPI:

“Each MLC<sup>17</sup> 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 for Music Industry MLCs*

SCAPR:

“The managerial services of a PMO<sup>18</sup> shall be open to all performers enjoying rights in the territory of its operation. A performer shall have a right to join any PMO for any category of performers’ rights and for such territories as they may choose. A performer may thus join one or more PMOs, for the territory and/or category of rights of its choice.”

*Article 1.4 SCAPR Policy and Guidelines Introduction*

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

*Article 4, SCAPR Code of Conduct*

## 3.2 Members’ rights in CMO decision-making bodies

### 3.2.1 Explanation

<sup>17</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

<sup>18</sup> A PMO (Performers’ Collective Management Organisation) is a CMO that represents the rights and interests of performers.



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

### **3.2.2 Good practice tools**

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

*24. 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 or legislation.*

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

*26. 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 or provided by law, and should be fair and proportionate.*

*27. 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, unless otherwise provided by law.*

3.2.3 Examples<sup>19</sup>

## 3.2.3.1 Member States

Brazil:

"Only holders originating from copyright or related rights directly affiliated with national associations [CMOs] may vote or be voted in the associations regulated by this article."

"Associations [CMOs] shall treat their associates in an equitable manner, and unequal treatment shall be prohibited."

"The directors of the associations [CMOs] will act directly in their management, by means of personal vote, being forbidden that they act represented by third parties."

*Articles 97 (5), 98 (5), (14), Law on Copyright and Neighboring Rights*

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 of 1993*

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, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Mexico:

"Invariably, for the dismissal of members, the voting system shall be one vote per member and the dismissal shall be agreed to by 75% of the voters attending the Assembly."

*Article 205 of the Federal Law on Copyright*

Peru:

"To accord those whom it represents an appropriate right of participation in its decisions, given that the voting system shall be

equal. Exceptionally, the Assembly may establish a voting system that incorporates reasonable weighting criteria proportionate to the actual use of the works, performances or productions managed; this exception shall not apply to the election of members of its governing, executive and supervisory bodies, nor in matters relating to the suspension of membership rights.”

*Article 153(d), Law no. 822 on Copyright*

Sweden:

“A member has the right to participate and vote at the General Assembly. On request, it must be possible to participate and vote electronically.

The right to participate and vote may be limited on the basis of the duration of the membership. The right may also be limited in relation to the amounts received by or distributed to a member. A restriction must be reasonable and must not conflict with another law.

A limitation must be stated in the statutes or membership conditions.”

*Chapter 5 § 7 of the Swedish Act on collective management of copyright*

Türkiye:

“(1) Collecting societies shall be entitled to determine different types of membership, depending on the duration of membership or the royalty revenue generated via the society, provided that they are equitable and balanced.

(2) Types of membership may not be subject to discrimination in the distribution of revenues and compensations or with regard to social activities and affairs of similar nature.”

*Article 11, Regulation on Collecting Societies in the Field of Copyright*

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*

European Union:

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

*Article 4, EU Directive 2014/26/EU*

“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*

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<sup>19</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

“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*

### **3.2.3.2 Stakeholders’ organizations**

AGICOA:

“1. All Members shall be allowed to participate in and vote at the General Assembly, or vote prior the General Assembly as set out in Article 19 below, except those Members fully or partially suspended as provided in Article 9(2) above.

2. The votes are attributed to Members according to the royalties paid to them and/or, where applicable, to the royalties paid to Declarants that are not Members and that designated them, by AGICOA or its Partner Organizations, net of the AGICOA Management Fees applied during the three calendar years preceding the year of the calculation of votes. For the purposes of the present By-Laws, the AGICOA “Partner Organizations” means the collective management organizations that concluded cooperation agreements with AGICOA and that apply AGICOA’s Management Fees.”

*Article 14 The General Assembly – Voting Rights, AGICOA by-laws*

CISAC:

“(Where the Board is composed of Creators and publishers) [Each Member shall at all times] 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 arts)*

IFPI:

“Unless prohibited by applicable legislation, each MLC<sup>20</sup> is to provide right holders the opportunity for a fair and balanced representation in the governing bodies taking into account the direct economic interest a member has in the functioning of the MLC.

In the event that the right holders can become direct members of the MLC, all members should be given voting powers at the general meeting on the basis of criteria such as (i) number of tracks registered and/or (ii) amounts received or due to a member, provided that such criteria are determined and applied in a manner that is fair and proportionate to the value of their rights managed by the MLC.”

*IFPI Code of Conduct for Music Industry MLCs*

IFRRO:

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

*IFRRO Code of Conduct*

SCAPR:

“CMOs shall act under the democratic control or supervision of their members. Members be represented in a fair and balanced way in the decision making process of their CMO.”

*Article 4, SCAPR Code of Conduct*

### 3.3 Fair treatment

#### 3.3.1 Explanation

Members’ 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, regular distribution and reasonable deductions as well as through proportionate rights and obligations.

#### 3.3.2 Good practice tools

28. *A CMO should treat each Member fairly, and in accordance with its Statute and membership terms. It should not impose any obligations on Members that are not objectively necessary for the effective management of such Member’s rights.*

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<sup>20</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

### 3.3.3 Examples<sup>21</sup>

#### 3.3.3.1 Member States

Brazil:

“Associations [CMOs] shall treat their associates in an equitable manner, and unequal treatment shall be prohibited.”

*Article 98(5), Law on Copyright and Neighboring Rights*

Guatemala:

“The following shall be recorded in the statutes of a collective management society: [...]

(c) the classes of owners of rights under their management, and the involvement of each category of owners in the direction or management of the entity;

(d) the conditions governing the acquisition and loss of membership;

(e) the rights of members and persons represented;

(f) the obligations of members and persons represented, and the disciplinary regime to which they are subject; [...]

*Article 117, Law on Copyright and Related Rights*

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: [...]

(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, executive and supervisory bodies shall be equal among all associates and secret.”

*Article 151, Law no. 822 on Copyright*

Türkiye:

“When performing their duties, collecting societies shall not impose any obligation on their members, which are not objectively required for the protection or effective management of their rights and interests.”

*Article 9 (2), Regulation on Collecting Societies in the Field of Copyright*

#### 3.3.3.2 Stakeholders' organizations

Australian CMOs:

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

*Australian Collecting Societies Code of Conduct*

CISAC:

“Each Member shall at all times refrain from discriminating between Creators and, where relevant, publishers or between Sister Societies in any manner which is legally unjustifiable, or which cannot be objectively justified.”

*CISAC Professional Rules (music)*

## 4. Particular issues concerning the CMO–Member/Rights Holder relationship

### 4.1 Financial and administrative information

#### 4.1.1 Explanation

Given the role of CMOs in ensuring timely and efficient Distribution of remuneration to Members/Rights Holders, a CMO is expected to provide Members/Rights Holders with information about its financial results in an accurate, transparent 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.

The statements which a CMO provides to each Member/Rights holder should allow such Member/Rights holder to verify the sources of the amounts due in respect of each of his/her works.

#### 4.1.2 Good practice tools

29. *A CMO should notify its Members/Rights Holders (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.*

30. *A CMO should provide its Members/Rights Holders with a list of the members of the supervisory body and/or 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.*

31. *A CMO should make available information (if possible electronically) to each Member/Rights holder 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/Rights holder, including information on Operating Expenses and deductions and the amounts subsequently paid to the latter;*
- (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 Member/Rights holder which are outstanding for the period concerned.*

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<sup>21</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

*32. The CMO should make available the Distribution rules, and where possible Distribution schedule, to its Members/Rights Holders, if possible by electronic means, as well as a dispute resolution system when a Member/Rights holder does not agree to the amount of payment.*



4.1.3 Examples<sup>22</sup>

## 4.1.3.1 Member States

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)”

*Title 5, Book XI, Belgian Code of Economic Law*

Brazil:

“The [CMOs] should be accountable for the amounts owed, on a regular and direct basis, to their members.”

*Article 98-C, Law on Copyright and Neighboring Rights*

“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), Law on Copyright and Neighboring Rights*

Ecuador:

“Without prejudice to other obligations provided for in their statutes, collective management organizations shall do the following once authorized:

1. publish, at least annually, the balance sheet and income statements in a national newspapers with wide circulation; and
2. provide to its members comprehensive and detailed information on all activities related to the exercise of their rights at least every six months.”

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

*Articles 249 and 250.5, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Guatemala:

“Collective management societies are obliged to provide their members and the persons whom they represent with detailed periodical information on all the organization’s activities that might have a bearing on the exercise of their rights. Similar information shall be sent to the foreign societies with which they have a representation contract [...]”

*Article 122, Law on Copyright and Related Rights*

“[...] The annual financial statements approved by the General Assembly of the collective management society shall likewise be published in the Official Gazette and in another widely circulated journal.”

*Article 126, Law on Copyright and Related Rights*

Italy:

“1. Collective management organizations [...] provide at least once a year to each right holder to whom they have attributed income or made payments during the previous year, the following information relating to the annual reference period of the attribution of income or of payments made:

- a) data on the identification of the holder of the rights;
- b) the proceeds attributed to the holder of the rights;
- c) the amounts paid by the collective management organization to the holder of the rights for each category of rights managed and by type of use;
- d) the period in which the use took place for which the amounts were attributed and paid to the right holder unless, for objective reasons related to the communication by the users, it was not possible for the management body collective provide this information;
- e) deductions applied as management expenses;
- f) deductions applied other than management expenses, including any other deductions provided for by current legislation for the provision of social, cultural or educational services;
- g) rights revenue attributed and not yet paid to the right holder for any period.”

*Article 24, Law-Decree No. 35/2017*

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*

<sup>22</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

Republic of Korea:

“A trustee or beneficiary may request an inspection or reproduction of the books and other documents pertaining to, or seek an explanation on, the performance or the accounting of the trust affairs, from the trustee or administrator of trust property.”

*Article 40(1), Trust Act*

Sweden:

“A collective management organisation must, at least once a year, inform each right holder who has been awarded compensation of

1. the financial compensation awarded to the rightholder and, if, considering the circumstances, it can be requested by the organisation, also the time period during which the use that gave rise to financial compensation took place,

2. the compensation that has been paid to the rightholder, distributed among the rights and categories of rights that the administration intends,

3. compensation that has been awarded to the rightholder but has not been paid,

4. deductions that have been made for management fees, and

5. other deductions that have been made.”

*Chapter 10 § 1 of the Swedish act on collective management of copyright*

Venezuela:

“For the purposes of fulfilling their obligations and meeting their audit requirements, CMOs must: [...]”

10. Release a regular publication for its members, providing information on the CMO activities that might be relevant to the exercise of the rights of such members or its clients.”

*Article 30, Implementing Regulations 1997*

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*

#### **4.1.3.2 Stakeholders' organizations**

CISAC:

“In each Calendar Year, each Member shall make available to each of its Affiliates:

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

*CISAC Professional Rules*

IFRRO:

“RROs must ‘collect and distribute remuneration in a diligent, efficient, and transparent manner and explain clearly and regularly the basis of their operations.’”

*Article 3, IFRRO Code of Conduct*

SCAPR:

“A CMO shall be accountable and transparent to the performers it represents and make available to them all relevant information regarding the organisation's activities, particularly its management, collection and distribution policies, along with its business relationships with sister organisations in other countries.”

*Article 4, SCAPR Code of Conduct*

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

### **4.2.1 Explanation**

For the sake of transparency, a CMO should notify its Members/Rights Holders about changes in its Statute and about other pertinent changes that may affect their respective rights and/or obligations.

### **4.2.2 Good practice tools**

*33. A CMO should notify its Members/Rights Holders, where possible electronically, about important changes in its Statutes and/or regulations on representation in governing bodies, participation at meetings, voting rights and other governance issues.*

#### 4.2.3 Examples<sup>23</sup>

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-A, Law on Copyright and Neighboring Rights*

### 4.3 CMO’s contact information

#### 4.3.1 Explanation

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

#### 4.3.2 Good practice tools

34. A CMO should:

- (a) *make available to each Member/Rights holder 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.*

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<sup>23</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

### 4.3.3 Examples<sup>24</sup>

#### 4.3.3.1 Member States

Sweden:

“A collective management organization must ensure that members and rights holders can communicate with the organization electronically.”

*Chapter 4 § 3 of the Swedish Act on collective management of copyright*

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*

European Union

“4. A collective management organization shall allow its members to communicate with it by electronic means, including for the purposes of exercising members’ rights.”

*Article 6, EU Directive 2014/26/EU*

#### 4.3.3.2 Stakeholders’ organizations

BCC:

“[A CMO should] 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*

## 5. Governance

### 5.1 Principles and General Meeting

#### 5.1.1 Explanation

The CMO should establish an effective and equitable representation of Members within its governance structures, including in the decision-making process, with particular attention paid to fair voting rules. This may take into account, inter alia, criteria such as the duration of membership or amount of royalties generated.

It may sometimes be advisable, insofar as it serves the interests of Members better, to appoint as members of the CMO’s decision-making and/or advisory bodies individuals that do not directly represent Members, but have commercial or legal experience that is valuable for the

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<sup>24</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

proper functioning of such body, so long as representatives of Members make up more than a simple majority of decision-making bodies.

### **5.1.2 Good practice tools**

35. *A CMO should be governed independently and transparently, based on an appropriate legal structure, focusing on Members, and distributing remuneration to them.*

36. *A CMO should convene a General Meeting of its Members or of their elected representatives at least once a year.*

37. *The General Meeting should approve any amendments to the Statute and to the membership terms. CMOs should strive to share proposed amendments to its members within a reasonable period of time prior to the General Meeting.*

38. *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 supervisory body and/or 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;*
- e. *appoints one or two independent external auditors;*
- f. *approves clear and objective rules governing the functioning and proceedings of General Meetings; and*
- g. *approves the suspension of membership of Members, when appropriate.*

39. *The Statute of a CMO may delegate some of the above-mentioned powers of the General Meeting to the supervisory body and/or board, in compliance with applicable rules in national legislation, if any.*

### 5.1.3 Examples<sup>25</sup>

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:

“2. Governing and representative bodies:

a. The organization’s governing and representative bodies and their respective competences, as well as the rules governing the convening, installation, operation and adoption of resolutions of collegiate bodies. The governing bodies shall be the General Assembly, the Board of Directors and the Monitoring Committee. The implementation of gender-inclusive policies shall be guaranteed in the establishment of the Board of Directors and the Monitoring Committee.”

*Article 245.2(a), Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

“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), Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

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. [...]

The convening of a session of the General Assembly shall be communicated to the membership by means of notices published at least twice in the Official Gazette and in a journal widely circulated in the country no less than 15 days prior to the date of the session. Resolutions legally adopted by the Assembly shall be binding even on members who were not present or who voted against them, without prejudice to the right of members to contest them in court when they are contrary to public policy, to this Law and its regulations or to the statutes and regulations of the collective management society. [...]"

*Article 120, Law on Copyright and Related Rights*

Mexico:

"The rules for the convening of and quorum for the assemblies shall comply with the provisions of this Law, its regulations and the General Law on Mercantile Corporations."

*Article 206 of the Federal Law on Copyright*

Sweden:

"§ 1 A collective management organization must have a General Assembly

§ 2 To the extent that a matter is not regulated in this Chapter, what is prescribed in other laws concerning General Assemblies shall apply

§ 3 The General Assembly of collective management organisations must convened at least once a year.

§ 4 The General Assembly must decide on

1. amendments to the statute,
2. changes in the terms of membership,
3. appointment and dismissal of members of the board or an equivalent management body and, where applicable, the supervisory body, and
4. compensation and other benefits paid to the members of the board."

*Chapter 5 of the Swedish Act on collective management of copyright*

Türkiye:

The duties and authorities of the general assembly shall include the following:

- a) Designate the permanent and substitute members of the Board of Directors, the Board of Audit, the Technical-Scientific Board and the Discipline Committee, who would perform the relevant duties until the next ordinary general assembly, by following the procedure to be determined by the general assembly.
- b) Establish a federation, adopt a decision to join a federation, and elect the representatives who would attend the federation's general assembly.
- c) Deliberate and finalize the draft budget.
- ç) Review and decide on the reports presented by the boards.

<sup>25</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

- d) Perform the review and acquittal of the Board of Directors accounts.
- e) Review and resolve amendments to the society's bylaws.
- f) Determine the investment policy for the royalty revenues and compensations as well as the revenues generated from the investments made using these revenues.
- g) Determine a reasonable rate at which sums would be deducted as the management fee and for cultural and social purposes, from the royalty revenues and compensations as well as the revenues generated from the investments made using these revenues.
- ğ) Resolve the distribution directive and other proposed directives.
- h) Determine the entrance fee and membership fee.
- ı) Determine the fee to be paid to the chairpersons and members of the society's compulsory organs.
- i) Deliberate and resolve the issues which according to the Board of Directors should be discussed by the general assembly.
- j) Decide to open branches.
- k) Ratify the decision for the establishment of company and for becoming a partner of an existing company, that is aligned with the society's goal and field of activity
- l) Endorse the purchase and sale of real estates and the establishment of limited property rights over these.
- m) Decide on the risk management policy.
- n) Endorse the society's taking or giving a loan or giving security for the loans it has taken.
- o) Perform any other duties vested in it by the applicable legislation and the society's bylaws.

Article 21, Regulation on Collecting Societies in the Field of Copyright

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(8), 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*

## **5.2 Internal supervision**

### **5.2.1 Explanation**

Proper internal supervision of the CMO management and operations by an independent supervisory body is an essential element of effective and transparent collective rights management. Members of the supervisory body and/or board are appointed by the CMO in the General Meeting and normally represent Members of the CMO.

### **5.2.2 Good practice tools**

*40. CMO should establish an internal supervisory body and/or board which is responsible for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organization.*

*41. A CMO's Statute should ensure a fair and balanced representation of its different categories of members on the internal supervisory body and/or board, in compliance with applicable rules in national legislation.*

*42. The requirements, established in the Statute to apply to become a member of the internal supervisory body and/or board shall be clear, objective and not arbitrary.*

*43. The General Meeting may elect members on the internal supervisory body and/or board for their commercial, legal and other relevant experience, subject to any limitations provided by law.*

### 5.2.3 Examples<sup>26</sup>

#### 5.2.3.1 Member States

Colombia:

“Societies for the collective administration of copyright and related 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:

“b. The requirement that the only members that may be members of the Board of Directors or the Monitoring Committee are those that are resident in the country, in the case of natural persons or that have a proxy in the country, in the case of legal persons, in accordance with Article 98 of the present Code, and that have generated, in the twelve months prior to the election, amounts collected that are equivalent to the minimum established by the collective management organization, with the approval of the competent authority on intellectual rights, and that have not been subject to criminal, civil or administrative sanctions that show a lack of probity in relation to the administration, management and exercise of functions within a management organization or related entities. The members of the Board of Directors may not simultaneously be members of the Monitoring Committee. They shall exercise their functions for a maximum of four years and shall be re-elected for an additional period.”

*Article 245.2(b), Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

“d. The Board of Directors, whose responsibilities shall be to:

- i. Run and manage the collective management organization;
- ii. Submit a management report to each General Assembly;
- iii. Grant general and specific powers and revoke them when appropriate;
- iv. Establish the salary due to the President and the Director General in accordance with the budget to be presented to the Assembly;
- v. Establish rates after review by the Monitoring Committee; and,
- vi. Anything else established in the present Code, the relevant regulations and the statute of the collective management organization.”

*Article 245.2(d), Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

Spain:

“1. A body of the management organization shall, in accordance with the provisions of its statutes, discharge internal oversight functions over the management entrusted to the organization’s governing and representative bodies. This body may not of its own accord manage or represent the organization, without prejudice to the provisions of this article [...].

2. The composition of the internal oversight body and the procedure for the election of its members by the general assembly shall be determined by the statutes of the management organization and in any event shall meet the following criteria:

- a) the body shall be composed of three or more members of the management organization, ensuring fair and equal representation of the different member categories. None of its members may have a de facto or de jure relationship, whether direct or indirect, with natural or legal persons that form part of or are represented in the governing and representative bodies of the management organization;
- b) independent third parties that are not members of the management organization may be appointed as members of the oversight body if their technical expertise is relevant to the discharge of its functions. None of the third parties from outside the management organization may have a de facto or de jure relationship, whether direct or indirect, with either the management organization or any of its members. Management organizations that have annually collected €100 million or more in the previous financial period shall be under an obligation to appoint one or more independent third parties as members of the internal oversight body.

For the purposes of subparagraphs a) and b) above, a direct or indirect de facto or de jure relationship shall in all cases mean a personal relationship of kinship by consanguinity or affinity up to and including the second degree, or an employment or commercial relationship that subsists or had subsisted in the five years preceding the appointment.

3. The members of the internal oversight body shall be appointed by the general assembly for a term of four years, renewable once for the same term.

4. Before taking up duties, and thereafter annually, members of the internal oversight body shall make a statement on conflicts of interest to the general assembly for review and consideration [...]. The management organization shall forward a copy of such statements to the administrative authority to which it is accountable [...].

5. The internal control body shall perform the following minimal tasks:

- a) generally monitor the activities and performance of the organization's governing and representative bodies;
- b) monitor the implementation of decisions and general policies adopted by the general assembly [...];
- c) perform any tasks delegated to it by the general assembly, where appropriate [...];
- d) implement terms of reference assigned to it by the general assembly, where appropriate.

6. The internal oversight body may invite members of the management organization's governing and representative bodies and managerial and technical staff to attend its meetings as non-voting participants.

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<sup>26</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

7. The management organization's governing and representative bodies shall, at least quarterly, submit to the internal oversight body all information on the organization's management that is required for the discharge of its oversight functions. They shall also submit all other information on facts that can have a significant impact on the status of the management organization. Each member of the oversight body shall have access to all information conveyed to that body.

8. Without prejudice to the obligation laid down in the previous paragraph, the internal oversight body may request the management organization's governing and representative bodies and managerial and technical staff to convey to it whatever information that may be required for the discharge of its functions. Moreover, it may conduct, or request the conduct of, verifications crucial to the discharge of its functions.

9. The internal oversight body shall each year report orally to the general assembly, giving an account of its discharge of its functions.

The management organization shall forward a copy of that report to the administrative authority to which it is accountable [...].

10. The internal oversight body may convene extraordinary general assemblies in accordance with the provisions of its statutes whenever it deems such action to be in the interest of the management organization.

11. In management organizations that have annually collected €100 million or more in the previous financial period, the internal oversight body shall, in addition to the tasks listed in paragraph 5, oversee the following activities of the organization's governing and representative bodies:

- a) the application of rules and regulations on the distribution of royalties collected;
- b) the conduct and resolution of disciplinary proceedings against members of the organization;
- c) the handling and resolution of grievances and complaints;
- d) the implementation of the annual budget for the collection and distribution of managed royalties and of the organization's revenue and expenses.

12. In management organizations that have annually collected €100 million or more in the previous financial period, the internal oversight body shall:

- a) meet at least half-yearly;
- b) produce for each meeting minutes that shall include the following points:
  1. the attendees;
  2. the meeting agenda;
  3. the time and venue of the meeting;
  4. the main points made in the discussions, the content of agreements adopted and dissenting opinions.

The minutes of each meeting shall be adopted at the same or at the very next meeting, and a copy thereof shall be sent electronically to all members of the management organization within one month of being adopted.

- c) In discharging its functions, the internal oversight body shall, without prejudice to the provisions of paragraphs 7 and 8, be assisted by an auditor. This auditor, who shall not be

the auditor of the organization's annual accounts, shall be appointed by the general assembly [...].”

*Article 162 of the amended text of the Intellectual Property Law, approved by Royal Legislative Decree 1/1996 on 12 April 1996 (incorporating article 9 of Directive 2014/26/EU)*

Sweden:

“In a collective management organization, there must be a body that continuously monitors how the people who lead the business fulfil their obligations. The supervisory body must also decide on issues that have been delegated according to Chapter 5 § 6. The supervisory body must meet regularly and yearly report to the General Assembly the outcome of the supervision and how the supervisory body's decision-making authority has been exercised. The supervisory body may not participate in the day-to-day administration.

The person who is part of the management may not be a member of the supervisory body. The members of the supervisory body must report the information specified in section 2, second paragraph, to the general meeting.

In a collective management organization that must have a board, an administrative body or a supervisory body, what is said in this section must be fulfilled by that body and apply to its members. If the tasks are performed by a board or an administrative body, the organization must have an executive director.”

*Chapter 6 § 3, Swedish Act on collective management of copyright*

Türkiye:

“(1) Collecting societies shall principally perform internal audit. Internal audit may be performed by the general Assembly, the Board of Directors or the Board of Audit, or independent audit organizations may be commissioned for external audits. The fact that audits have been carried out by the general assembly, the Board of Directors or independent audit organizations shall not avail the Board of Audit of its liabilities.

(2) The Board of Audit shall look into:

a) Whether the operations carried out by the Board of Directors are in compliance with the applicable legislation and the society's bylaws,

b) Whether the books, accounts and records of the society have been kept as required by the applicable legislation and the society's bylaws,

c) Whether actions have been taken in an effort to increase the royalty revenues,

ç) Whether the society's expenditures are aligned with the applicable legislation and the goal of the society,

at intervals no longer than one year, and in accordance with the principles and procedures laid down in the society's bylaws. It shall draw up a report including the audit findings alongside the relevant information, documents and considerations, to the Board of Directors, and to the general assembly when it convenes.

(3) It is mandatory that, upon the request of the Board of Audit members, all kinds of information, documents and records are shown or provided by the society officials, and the request to access management quarters and the premises is accepted.”

## Article 31, Regulation on Collecting Societies In The Field Of Copyright

European Union:

“Supervisory function

1. [A CMO shall establish] a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation.
2. There shall be fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function.
3. Each person exercising the supervisory function shall make an annual individual statement on conflicts of interest, containing the information referred to in the second subparagraph of Article 10(2), to the general assembly of members.
4. The body exercising the supervisory function shall meet regularly and shall have at least the following powers:
  - (a) to exercise the powers delegated to it by the general assembly of members, (...);
  - (b) to monitor the activities and the performance of the duties of the persons [who manage the business of the collective management organization], including the implementation of the decisions of the general assembly of members and, in particular, of the general policies [of a CMO].
5. The body exercising the supervisory function shall report on the exercise of its powers to the general assembly of members at least once a year.”

*Article 9, 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*

### **5.2.3.2 Stakeholders’ organizations**

CISAC:

“Each Member shall at all times ensure that the by-laws -and/or internal rules- of each Member:

- (i) provide for a Supervisory Body whose role is to supervise the Member's business as carried out by the Management Body;
- (ii) ensure that such Supervisory Body effectively and independently supervises the Management Body, by means of setting up specific rules to this effect including, without limitation, the following rules:
  - (a) rules regarding the distinction and separation of the function of a member of the Management Body on the one hand and that of a member of the Supervisory Body on the other hand, or
  - (b) in the absence of such separation rules, rules prohibiting a member of the Management Body from having, (merely because of his status as a member of the Management Body) the right to vote during meetings of the Supervisory



Body, or at the very least, a blocking minority voting right or any right of veto whatsoever, and  
(iii) prohibit any improper interference of the Supervisory Body in decisions falling within the scope of the exclusive powers (if any) of the Management Body.”

*CISAC Professional Rules*

“Each Member shall at all times conduct its business in accordance with all relevant and applicable laws and regulations.”

*CISAC Professional Rules*

## **5.3 Avoidance of conflicts of interest**

### **5.3.1 Explanation**

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

### **5.3.2 Good practice tools**

44. *A CMO should have in place internal rules to avoid conflict of interest and, when such conflicts cannot be avoided, to identify, manage and monitor conflicts of interest which might prevent members of the internal supervisory body and/or board from discharging their responsibilities.*

45. *These rules should include at least an annual individual statement of actual or potential conflicts of interest by each person managing the CMO, by each member of the internal supervisory body and/or board or by the respective proxies they might appoint.*

### 5.3.3 Examples<sup>27</sup>

#### 5.3.3.1 Member States

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.”

<sup>27</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

*Article 245.2(b), Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

“Without prejudice to the provisions of the other applicable legal provisions and the regulations, the statutes of collective management organizations shall, in particular, stipulate the following:

3. Equity and balance sheets:

(d) The collective management organization may not enter into contracts with members of their governing and representative bodies or with the spouse, partner or relatives within the fourth degree of consanguinity and second degree of affinity of said members, with the exception of management contracts and all conventions that bind members of the collective management organization or persons under its administration for the representation of their rights”.

*Article 245, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

“Upon assuming their duties and every two years, the members of the Board of Directors, the Monitoring Committee and the Managing Director shall submit to the competent national authority in intellectual property matters a sworn declaration that they are not affected by any of the incompatibilities laid down in this Chapter, together with an affidavit of assets and income.

*Article 248, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Guatemala:

“Persons who form part of the governing bodies of a collective management society may not serve on similar bodies of another society or association concerned with the same subject matter.

The following persons may not be either titular or alternate members of the Management Board or Supervisory Committee, or the Director General, of a collective management society:

persons related to each other down to the fourth degree of blood relationship and to the second of legal kinship;

legal or common-law spouses;

artistic directors, impresarios, owners, members, representatives or attorneys working for entities indebted to the collective management society or in dispute with it;

relations down to the fourth degree of blood relationship or the second of legal kinship or legal or common law spouses of officials or staff of the Intellectual Property Registry as determined by the regulations under this Law. The members of the Management Board and Supervisory Committee and the Director General, on assuming their posts and annually thereafter, shall, within the first 15 days of January, file with the Intellectual Property Registry a sworn declaration made before a notary which attests that they are not affected by any of the incompatibilities referred to in this Law.”

*Article 121, Law on Copyright and Related Rights*

Sweden:

“A collective management organization must have appropriate routines to ensure that the joint interests of the rightsholders are

not harmed by conflicts of interest between the rightsholders and those who lead the business.

Each year those who lead the business must report to the General Assembly

1. the interests they have in the organization,
2. any compensation they have received from the organization during the previous financial year,
3. individual interests that may conflict with the organization's interests, and
4. obligations to others than the organization that may be in conflict with the obligations to the organization.”

*Chapter 6 § 2 of the Swedish Act on collective management of copyright*

Türkiye:

“(1) Members of the society’s compulsory organs shall be held liable for prudent performance of their duties, and protection of the society’s interests in compliance with the rules of integrity.

(2) Members of the society’s Board of Directors and Board of Audit shall compile the following information and submit it to the general assembly on an annual basis:

- a) The sums they have received from the collecting society in their capacity as rightsholders.
- b) Other payments received from the collecting society and the reason for being paid.
- c) Any other interests they have drawn from the collecting society.
- ç) Actual or potential conflicts between personal interests and interests of the collecting society, or between the liabilities to the collecting society and the liabilities to other persons.”

*Article 59, Regulation on Collecting Societies in the Field of Copyright*

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.”

*Article 10, EU Directive 2014/26/EU*

### **5.3.3.2 Stakeholders' organizations**

AGICOA:

"The Managing Director, the Administrative Board members and their delegates, the President and the Treasurer, the observer and its delegates shall make an annual individual statement on conflicts of interest to the General Assembly.

The form of such statement shall be approved by the Administrative Board and shall contain inter alia a declaration concerning any actual or potential conflict between any personal interests and those of AGICOA or between any obligations owed to AGICOA and any duty owed to any other natural or legal person."

*Article 27, Annual Individual Statement on Conflict of Interest, AGICOA by-laws*

## **6. Financial administration, distribution of revenue and deductions**

### **6.1 Split accounts**

#### **6.1.1 Explanation**

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

#### **6.1.2 Good practice tools**

*46. 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.*

*47. 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 Rights Holders or, if so decided by the General Meeting, social, cultural, educational, or cost reduction.*

6.1.3 Examples<sup>28</sup>

## 6.1.3.1 Member States

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.”

*Title 5, Book XI, Belgian Code of Economic Law*

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*

Spain:

“Collection and use of collected royalties.

3. The management organization shall, provided that the user has complied with the information obligation set forth in Article 167(1), keep separate in its accounts:
  - (a) The royalties collected and any income arising from the investment thereof. For this purpose, a management organization that administers royalties on works of different categories shall keep the collected royalties duly separated by origin or source of collection.
  - (b) All its own assets and the income arising from those assets, from its management fees, from other deductions or from other activities.
4. The management organization shall not be authorized to use the royalties collected or any income arising from the investment thereof for purposes other than distribution to the rightholders, except to deduct or offset its management fees and the amounts allocated to fund the activities and services provided for in Article 178 in accordance with decisions taken at its general meeting.”

*Article 175 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

“A collective management organization must in its accounts keep funds held on behalf of rightholders separate from its own assets and income.

Funds that cannot be distributed within the time specified in § 5 because the right holder is unknown or cannot be found, must be reported separately.”

*Chapter 7 § 2, Swedish Act on collective management of copyright*

Türkiye:

“Revenues of societies shall consist of the following:

The revenues generated from the collection of royalty revenues and compensations as well as the revenues generated from the investments of these revenues.

[...]

The revenues referred to in sub-paragraph (a) under the first paragraph hereof shall be kept in a separate account from other revenues.”

*Article 39, Regulation on Collecting Societies in the Field of Copyright*

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*

### **6.1.3.2 Stakeholders’ organizations**

CISAC:

“At least once in every calendar year, each Member shall make available to each of its Affiliates and Sister Societies, a description of the Member’s internal Rules concerning financial and other non-copyright related income. This description shall also address the use made by the Member of this income.”

*CISAC Professional Rules*

IFPI:

“MLCs shall segregate the funds for each revenue stream. The method for preparing each fund for distribution shall be set out within the distribution rules.

The method shall clearly establish processes for:

- 1) deducting operating costs/fees (see Operating Costs and Fees);
- 2) deductions for general reserves (see General Reserves);
- 3) deductions of applicable taxes;
- 4) any other authorised deductions;
- 5) any additional sources of revenue, such as interest, income arising from investments of rights revenue etc; and
- 6) any reserves for redistribution (unclaimed or General Reserves, see below).”

*IFPI Standard Practice for Funds Distribution*

SCAPR:

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

*Article 13, SCAPR Code of Conduct*

<sup>28</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.



## 6.2 Annual report

### 6.2.1 Explanation

For the transparency purpose, the Annual Report of a CMO is an important document providing information about its performance and operations to Members, Rights Holders, other CMOs and the public at large. 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.

### 6.2.2 Good practice tools

48. *In respect of each financial year, a CMO should make available an Annual Report (where possible, on the CMO's website). The Annual Report should be distributed or made available to its membership well in advance of its General Meeting.*

49. *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 and distributed, the total collected but not yet attributed to Rights Holders, and the total amount of Rights Revenue attributed but not yet distributed to Rights Holders;*
- 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 members of supervisory body and/or board 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.*

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

6.2.3 Examples<sup>29</sup>

## 6.2.3.1 Member States

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, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Italy:

“1. [...] collective management organizations shall draw up an annual transparency report, including the special report referred to in subparagraph 3, for each financial year, no later than eight months following the end of that financial year. The report shall be published on the website of each collective management organization where it shall remain publicly available for at least five years.

2. The annual transparency report shall contain at least the information set out in the Annex to this decree.

3. The special report shall address the possible use of the amounts deducted for the purposes of social, cultural and educational services and shall contain at least the information indicated on the subject referred to in point 3 of the Annex.

4. The accounting information included in the annual transparency report shall be audited by one or more entities empowered by law to audit the accounts. The audit report including any qualifications thereto, shall be reproduced in full in the annual transparency report. For the purposes of this subparagraph, the accounting information shall comprise the financial statements and any financial information as specified in the Annex.

*Article 28, Law-Decree No. 35/2017*

Peru:

“Management of societies are obliged:

(l) to issue a periodical publication for the benefit of their members, with information on the society’s activities that may have a bearing on the exercise of their rights, which shall at least contain the society’s financial statements, the auditor’s report and the text of any resolutions adopted by its governing bodies; similar information shall be sent to the foreign organizations with which they have representation contracts for the national territory, and to the Copyright Office of INDECOPi;

(o) to publish the financial statements of the society every fiscal year in a wide-circulation national newspaper within the 20 days following the meeting of the General Assembly;”

*Article 153 (l) and (o), Law no. 822 on Copyright*

Spain:

“Annual transparency report.

1. The governing and representative bodies of the management organization shall prepare an annual transparency report within three months from the end of the previous financial year.  
The annual transparency report shall contain at least the content specified in the annex. It shall also include a special report on the use of the amounts deducted for support services for the members of the organization, training and promotion activities for authors and performers, and the promotion of the legal digital offer of the protected works and performances for which the organization manages the rights.
2. The annual transparency report prepared by the governing and representative bodies shall be reviewed by the auditors appointed pursuant to Article 187(2) to audit the annual accounts, in order to verify that the accounting information contained therein is consistent with the accounts of the management organization. The auditors shall issue a report stating the outcome of their review and, if applicable, any inaccuracies found. The review report shall be reproduced in full in the annual transparency report.
3. The general meeting shall approve the annual transparency report within six months from the end of the previous financial year.”

*Article 189 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Türkiye:

“(1) The duties and authorities of the Board of Directors shall include the following: [...]

k) Commission a certified public accountant to approve the financial information included in the annual transparency report and the society's accounts.”

*Article 28, Regulation on Collecting Societies in the Field of Copyright*

“Based on the calendar year, the collecting societies shall draw up, by the end of August each year, a transparency report including the matters listed [...], and the said report shall remain available on the society's website for at least five years.”

*Article 56, Regulation on Collecting Societies in the Field of Copyright – 2022*

European Union:

“1. Information to be provided in the annual transparency report referred to in Article 22(2):

- (a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash-flow statement;
- (b) a report on the activities in the financial year;

<sup>29</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

- (c) information on refusals to grant a licence pursuant to Article 16(3);
- (d) a description of the legal and governance structure of the collective management organisation;
- (e) information on any entities directly or indirectly owned or controlled, wholly or in part, by the collective management organisation;
- (f) information on the total amount of remuneration paid to the persons referred in Article 9(3) and Article 10 in the previous year, and on other benefits granted to them;
- (g) the financial information referred to in point 2 of this Annex;
- (h) a special report on the use of any amounts deducted for the purposes of social, cultural and educational services, containing the information referred to in point 3 of this Annex.

2. Financial information to be provided in the annual transparency report:

- (a) financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance), including information on the income arising from the investment of rights revenue and the use of such income (whether it is distributed to rightholders or other collective management organisations, or otherwise used);
- (b) financial information on the cost of rights management and other services provided by the collective management organisation to rightholders, with a comprehensive description of at least the following items:
  - (i) all operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;
  - (ii) operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs, only with regard to the management of rights, including management fees deducted from or offset against rights revenue or any income arising from the investment of rights revenue in accordance with Article 11(4) and Article 12(1), (2) and (3);
  - (iii) operating and financial costs with regard to services other than the management of rights, but including social, cultural and educational services;
  - (iv) resources used to cover costs;
  - (v) deductions made from rights revenues, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs relating to the management of rights or to social, cultural or educational services;
  - (vi) the percentages that the cost of the rights management and other services provided by the collective management organisation to rightholders represents compared to the rights revenue in the relevant financial year, per category of rights managed, and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;
- (c) financial information on amounts due to rightholders, with a comprehensive description of at least the following items:

- (i) the total amount attributed to rightholders, with a breakdown per category of rights managed and type of use;
- (ii) the total amount paid to rightholders, with a breakdown per category of rights managed and type of use;
- (iii) the frequency of payments, with a breakdown per category of rights managed and per type of use;
- (iv) the 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 those amounts were collected;
- (v) the 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 those amounts were collected;
- (vi) where a collective management organisation has not carried out the distribution and payments within the deadline set in Article 13(1), the reasons for the delay;
- (vii) the total non-distributable amounts, along with an explanation of the use to which those amounts have been put;
- (d) information on relationships with other collective management organisations, with a description of at least the following items:
  - (i) amounts received from other collective management organisations and amounts paid to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;
  - (ii) management fees and other deductions from the rights revenue due to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;
  - (iii) management fees and other deductions from the amounts paid by other collective management organisations, with a breakdown per category of rights and per organisation;
  - (iv) amounts distributed directly to rightholders originating from other collective management organisations, with a breakdown per category of rights and per organisation.

3. Information to be provided in the special report referred to in Article 22(3):

- (a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown per type of purpose and, for each type of purpose, with a breakdown per category of rights managed and per type of use;
- (b) an explanation of the use of those amounts, with a breakdown per type of purpose including the costs of managing amounts deducted to fund social, cultural and educational services and of the separate amounts used for social, cultural and educational services.”

*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.*

### 6.2.3.2 Stakeholders' organizations

CISAC:

“With the objective of making the provided information available to all CISAC Members [...], each Member shall supply CISAC in each Calendar Year [...] with an annual report in respect of the fiscal year which immediately precedes such Calendar Year [...].

[...]

In each Calendar Year, each Member shall make available to each of its Affiliates:

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

[...]

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*

## 6.3 Distribution policies

### 6.3.1 Explanation

Noting that CMOs' Distribution policies are based on the usage of licensed works, CMOs should include in their licenses a requirement 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 Rights Holders the Rights Revenue it has collected on the Rights Holders' 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, when such data is not available on an agreed formula of proportionality, which must reflect actual use as far as economically feasible.

### 6.3.2 Good practice tools

51. *A CMO should maintain and publish (where possible, on the CMO's website) a Distribution policy, as approved by the General Meeting, 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 and manner of use of copyright protected works or sound recordings. If not practicable, a statistically valid sample approximating actual use of the works or categories of works can be used;*

- b. the manner, frequency and, where possible, schedule of Distributions to Members and Rights Holders, and, when required in national regulatory framework, also schedule; 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.*

*52. A CMO should regularly, diligently and accurately distribute and pay amounts due to Members and Rights Holders, 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.*

*53. 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 Licensees, prevents it from meeting this deadline.*

*54. A CMO should clearly state its policy relating to undistributed monies.*

### 6.3.3 Examples<sup>30</sup>

#### 6.3.3.1 Member States

Brazil:

"The associations [CMOs] shall provide information system for periodic communication by the user of all the works and phonograms used, as well as for the monitoring by the rights holders of the amounts collected and distributed."

"The portion destined to the distribution to the authors and other rights holders [...] shall not be less than 85% (eighty five percent) of the amounts collected."

*Articles 98(9) and 99(4), Law on Copyright and Neighboring Rights*

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*

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*

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*

Ecuador:

"Distribution of amounts collected – At the time of the distribution of the amounts collected, the collecting organizations shall provide sufficient information to enable members to understand how the calculation was done. Each member shall be individually provided with information in the form authorized for this purpose by the national authority competent for intellectual property rights matters in respect of each collecting society."

*Article 254, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

"The collections shall be effectively paid and distributed by the collecting organizations to the corresponding rightholders no later than six months following their collection by the respective society. Exceptions are made for cases where the competent national



intellectual property authority authorizes a different time limit after approval by the General Assembly.

The exact dates of payments to partners shall be reported annually to the competent national intellectual property authority and to members no later than the first quarter of each year.”

Article 255, *Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

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, *Law on Copyright and Related Rights*

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*

*“The statutes of collective management organizations shall, at the least, contain the following information:*

*XI. The percentage of the amount of resources obtained by the CMO, which will be earmarked for: (a) the management of the CMO; (b) the CMO’s social security programs; and (c) promotion of member’s works.”*

XII. The rules governing the revenue-sharing systems. Such rules shall be based on the principle that the holders of economic or related rights they represent shall be granted a share of the royalties collected in strict proportion to the actual, effective and proven use of their works, performances, phonograms or broadcasts.”

Article 205 of the *Federal Law on Copyright*

Spain:

“Distribution, payment and limitation of royalties.

6. The management organization shall allocate to the following purposes any collected amounts not claimed by the rightholder within the period set out in paragraphs 4 and 5 of this Article:
  - (a) Carrying out support activities for the members of the organization and/or training and promotion activities for authors and performers;
  - (b) Promoting the legal digital offer of protected works and performances for which it manages the rights, in accordance with Article 178(1)(c)(i) and (iii);

<sup>30</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

- (c) Increasing distribution proportionally for the remaining protected works and performances that were duly identified in the distribution process from which said amounts originate;
- (d) Funding the one-stop invoicing and payment portal provided for in Article 168;
- (e) Funding the legal entity provided for in Article 25(10).  
The general meeting of each management organization must agree annually the minimum percentages of the unclaimed collected amounts that are to be allocated to each of the aforementioned purposes, which, in no case, may be less than fifteen percent for each of these purposes, except in the cases of paragraphs (d) and (e).”

*Article 177 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

“A collective management organization must distribute remuneration to the rights holders in accordance with the general distribution principles that have been decided in accordance with Chapter 5 § 5.

The compensation must be paid as soon as possible and, unless there are acceptable reasons for otherwise, no later than nine months from the end of the financial year in which the rights revenue was collected.

If the compensation is not distributed by the collective management organization but through a member thereof, what is said in the second paragraph applies to the member.”

*Chapter 7 § 5 of the Swedish Act on collective management of copyright*

Türkiye:

“The duties and authorities of the general assembly shall include the following:

[...]

ğ) Resolve the distribution directive and other proposed directives.”

*Article 21, Regulation on Collecting Societies in the Field of Copyright*

“(1) The royalty revenues collected by the society shall be paid to the rightholder after the management fee has been deducted and the compensations collected by the society shall be paid to the rightholder after the collection costs and the management fee have been deducted within a maximum period of thirty days as of the end of the fiscal year in which they have been collected. These periods may be extended by the collecting societies in the event of a failure to fix the lists of uses or identify the rightholders.

(2) The distribution directive shall include the distribution criteria and the rules on non-distributable revenues.

(3) The payment list for the distributions shall be annually reported to the Ministry.”

*Article 40, Regulation on Collecting Societies in the Field of Copyright*

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.”

“[...] 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*

### **6.3.3.2 Stakeholders' organizations**

Australian CMOs:

“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.”

*Australian Collecting Societies Code of Conduct*

CISAC:

“Each Member shall use its reasonable endeavors to:

- a. license all uses of its repertoire in accordance with and subject to the scope of its mandate;
- b. 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;
- c. monitor and protect the use, and prevent the unauthorized use, of its repertoire; and
- d. promptly collect relevant information about Works exploited by its licensees.

[...]

Each Member shall:

- a. 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;
- b. 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 Affiliates or to its Sister Societies; and
- c. distribute any Royalties due to its Sister Societies or to its Affiliates in accordance with the Binding Resolutions.

[...]

Each Member shall distribute any Royalties due to each Sister Society as soon as practicable after collection and in any event no less than once a year.

[...]

Each Member whose previous year total annual global collections are over €10M shall:

- a. target quarterly distribution as soon as practicable subject to quality and in any event distribute Royalties for a revenue stream due to its Sister Societies not less frequently than the Royalties for the same revenue stream due to its own Affiliates;
- b. distribute Royalties to its Sister Societies within thirty days of payments to its own Affiliates.”

*CISAC Professional Rules*

IFPI:

“Each MLC<sup>31</sup> is to strive to accurately identify the use of individual sound recordings in performance activities and to distribute monies to all right holders at track level based on actual use and usage reports insofar as it is economically reasonable.”

*IFPI Code of Conduct for Music Industry MLCs*

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*

SCAPR:

“The performers shall pay only the costs which are objectively necessary for the protection of their rights and interests and for the effective management of their rights.”

*Article 5, SCAPR Code of Conduct*

“Remuneration collected from users and any interest earned thereon shall, to the highest degree possible, be distributed individually amongst the performers concerned in proportion to the uses of their performances, according to reports by users or other available relevant information enabling calculation, and according to the distribution rules adopted by the CMO in the country of collection.”

*Article 6, SCAPR Code of Conduct*

“Individual remuneration due to performers but not paid out because the right owner cannot be identified or located, shall be reserved during the relevant national period of limitation and, after

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<sup>31</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

such a period, dealt with according to the rules of the PMO in the country of collection.”

*Article 13, SCAPR Code of Conduct*

## **6.4 Revenue deductions (such as social, cultural, educational)**

### **6.4.1 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 Rights Holders. It is therefore important that its Members have the power to decide on all deductions made from monies collected on behalf of Rights Holders, in particular in respect of any deductions for social, cultural and educational purposes.

### **6.4.2 Good practice tools**

*55. The General Meeting should decide on the rules on deductions from Rights Revenue.*

*56. The amounts deducted from the Rights Revenue for the purposes of social, cultural, educational, and similar purposes in the financial year and an explanation of the use of those amounts should be included in the annual report.*

*57. A CMO should strive to ensure that funds for social, cultural, educational, and similar purposes are only deducted from the Rights Revenue with the agreement of its Members.*

*58. A CMO should ensure the amounts deducted from Rights Revenue for the purposes of the Operating Expenses are transparent, properly documented and related to its management.*

*59. A CMO should ensure that each Member – whether directly through a mandate 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 Member.*

### 6.4.3 Examples<sup>32</sup>

#### 6.4.3.1 Member States

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.”

*Title 5, Book XI, Belgian Code of Economic Law*

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.”

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

Brazil:

“Associations, by decision of their maximum decision-making body and as provided for in their bylaws, may allocate up to twenty percent (20%) of all or part of the resources resulting from their activities to cultural and social actions that benefit their members collectively.”

“Associations, according to a decision of its highest body of resolution and as provided for in its statutes, may allocate up to twenty percent of all or part of the funds from activities for events of cultural and social nature that benefit its members collectively and based on non-discriminatory criteria, such as:

- I- Social assistance
- II- Promotion of creation and diffusion of works; and
- III- Capacitation or qualification of members.”

*Article 98(16), Law on Copyright and Neighboring Rights and article 20, Decree no. 9.574, of November 22, 2018*

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*

“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. [...]”

*Article 29, Regulations on Copyright Collective Administration*

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*

Ecuador:

“Article 246. Allocation of administrative expenses of collective management organizations. - The General Assembly shall be required to establish annually the percentage of administrative and management expenses that, when added together, shall not exceed thirty per cent of the total collection.

A percentage not exceeding ten per cent of the proceeds shall be invested in training and/or projects to promote the creative activity of members. Such projects shall be subject to the approval of the General Assembly of the collective management organization.

The percentage allocated to welfare and social security benefits shall fall between five per cent and ten per cent of the amount collected, as established by the General Assembly. In the case of members who are legal persons, such benefits shall be added to the percentage for the promotion of creative activity.

Exceptionally, after obtaining the judgment of the Monitoring Committee and the authorization of the national authority competent in intellectual rights, the percentage corresponding to administrative costs and management costs may be up to thirty-five per cent, as a reduction of the amount intended for the promotion of creative activities of the members. When the percentage of administrative costs and management costs is less than thirty per cent of the total collected, the remainder shall be added to the distribution percentage.”

*Article 246, Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

Ethiopia:

“1) The budget of a collective management society shall be drawn from the following sources:

- a) deductions made from the royalties collected in accordance with this Proclamation;
- b) membership contributions;
- c) fees collected from other related services.

<sup>32</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

2) The annual deduction to be made pursuant to sub-article (1) (a) of this Article may not exceed thirty per cent of the total collected amount of royalty.

3) The amount of deduction to be made in accordance with sub-article (2) of this Article shall be submitted annually to the Office for approval before its implementation.”

*Article 35, Copyright and Neighboring Rights Protection (Amendment) Proclamation No. 972/2014*

Peru:

“The General Assembly defines the social and cultural aims that shall benefit members of the society for which it is allowed to set aside up to ten percent of the net amount collected – the amount after deduction of administrative costs derived from collective management activities; the General Assembly and/or the Management Board may authorize costs not originally provided for in the relevant budget, without exceeding the maximum percentages previously stated.

The society may as an exceptional measure, and with due justification, procure assets under the heading “Property, plant, and equipment or intangible assets”, provided that the total acquisition of such assets does not exceed three percent of the amount collected, in which case it shall previously have obtained the unanimous consent of the Management Board and the approval of the Supervisory Committee and the General Assembly.”

*Article 153(j), Law no. 822 on Copyright*

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*

Sweden:

“The deductions a collective management organization makes from rights revenues, or from income from investments of such revenues, must be determined on objective grounds. The deductions must be reasonable in relation to the services the organization provides to the rightsholders.

Deductions for management fees may not exceed the organization's justified and documented costs for management.

If deductions are made to pay for services provided for social, cultural or educational purposes, the services must be provided to the rightsholders on equal terms.”

*Chapter 7 § 4 of the Swedish Act on collective management of copyright*

Türkiye:

“The duties and authorities of the general assembly shall include the following: [...]

g) Determine a reasonable rate at which sums would be deducted as the management fee and for cultural and social purposes, from



the royalty revenues and compensations as well as the revenues generated from the investments made using these revenues.”

*Article 21, Regulation on Collecting Societies in the Field of Copyright*

Venezuela:

“For the purposes of fulfilling their obligations and meeting their audit requirements, CMOs must: [...]

9. Distribute the collected remuneration in accordance with their distribution rules, deducting only the percentage needed to cover administrative costs, up to the statutory or regulatory maximum, and an additional amount, up to the permitted threshold, to be used exclusively for welfare activities or services that benefit their members.

Apply distribution systems that exclude arbitrariness, in accordance with the principle of equitable distribution among right holders and based on the effective use of works, performances or phonograms, as the case may be.”

*Article 30, Implementing Regulations 1997*

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*

European Union:

“Deduction:

1. Member States shall ensure that where a rightholder authorises a collective management organisation to manage his rights, the collective management organisation 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 its managing his rights.

2. Deductions shall be reasonable in relation to the services provided by the collective management organisation to rightholders, including, where appropriate, the services referred to in paragraph 4, and shall be established on the basis of objective criteria.

3. Management fees shall not exceed the justified and documented costs incurred by the collective management organisation in managing copyright and related rights.

Member States shall ensure that the requirements applicable to the use and the transparency of the use of amounts deducted or offset in respect of management fees apply to any other deductions made in order to cover the costs of managing copyright and related rights.

4. Where a collective management organisation provides social, cultural or educational services funded through deductions from rights revenue or from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair

criteria, in particular as regards access to, and the extent of, those services.”

“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.”

*Article 12 and Annex, EU Directive 2014/26/EU*

#### **6.4.3.2 Stakeholders’ organizations**

CISAC:

“In each Calendar Year, each Member shall make available to each of its Affiliates [...] a clear explanation of the purpose and the amount of all Expenditure which it makes from the Royalties due to such Affiliate; and a clear explanation of its distribution rules.”

*CISAC Professional Rules*

IFPI:

“Each MLC<sup>33</sup> is to deduct from the collected sums only the appropriate costs of operating the MLC. No additional deductions for whatever reason should be made unless the right holders have agreed to such deductions or they are stipulated by law. MLCs are to provide details of such deductions to members and indicate whether these are statutory or voluntary.”

*IFPI Code of Conduct for Music Industry MLCs*

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<sup>34</sup> avoid discrimination on grounds of nationality or otherwise.”

*IFRRO Code of Conduct*

SCAPR:

“Deductions from remuneration collected by a CMO in its own territory (or from income from any investment of that remuneration by or on behalf of that CMO) may be made for social, cultural and educational purposes if required<sup>1</sup> by the local legislation of the collecting CMO or if the receiving CMO expressly consents to such deductions. If required by the local legislation, the collecting CMO shall inform the receiving CMO of the legal basis and the actual deductions made.

<sup>33</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

<sup>34</sup> Reproduction Rights Organizations (RROs) are collective management organizations which act as intermediaries/facilitators between rightsholders and users in the fields of reprographic reproduction and certain digital uses.

Deductions for social, cultural and educational purposes from incoming remuneration from another CMO may be made if required by the local legislation of the receiving CMO or if both CMOs agree on the specific and clear conditions upon which such deductions will be based. However, it is not recommended to make deductions from incoming remuneration if deductions have already been made as described above in section 8 para. 1 (i.e. no double deductions).

Any such deductions shall be transparent and, unless required under local legislation, shall be subject to the authorisation of the members of the CMOs in accordance with the internal regulations (bylaws, governance documents and alike) of each CMO.”

*Article 8, SCAPR Code of Conduct*

## 7. Managing rights across borders

### 7.1 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.

Rights Holders may also mandate foreign CMOs directly to manage their international rights. In those cases, the same requirements should apply *mutatis mutandis*.

### 7.2 Good practice tools

60. *The CMOs' relationship with other CMOs should be governed by a Representation Agreement. There should be no discrimination in the distribution formula and/or payment for copyright protected works or sound recordings of Members of other CMOs represented via a Representation Agreement.*

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

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

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

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

65. *A CMO should, upon request, make available to the other CMO accurate and up to date documentation relating to 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.*

66. *The Good practice tools under 7.2. should apply mutatis mutandis to direct mandates granted by foreign Rights Holders to local CMOs for the management of their rights.*



## 7.3 Examples<sup>35</sup>

### 7.3.1 Member States

China:

“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*

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 related 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 of 1993*

Ecuador:

“Article 239. Authorized collective management organizations shall be obliged to administer the rights entrusted to them and shall be authorized to exercise them in accordance with this Document and (...) under the contracts they have entered into with foreign entities, as the case may be.”

*Article 239 of the Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

Germany:

“Representation agreement; prohibition of discrimination  
Where a collecting society mandates another collecting society with managing the rights it manages (representation agreement), the mandated collecting society may not discriminate against the rightholders whose rights it manages under the representation agreement.”

*Section 44, German Collecting Societies Act, 2017*

“Deductions

The mandated collecting society may make deductions from the revenue from rights it manages under a representation agreement

<sup>35</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

other than in respect of management fees only where the mandating collecting society has explicitly consented thereto.”  
*Section 45, German Collecting Societies Act, 2017*

Guatemala:

“Among the responsibilities of collective management societies [...] (d) to enter into agreements with foreign collective management societies concerned with the same kind of activity or management; (e) to represent within the country those foreign societies with which they have a representation contract in dealings with the judicial and administrative authorities in all matters of concern to them, being empowered to appear in court in their name.”

*Article 115, Law on Copyright and Related Rights*

Italy:

“1. On the basis of an appropriately justified request, collective management organizations and independent management entities [...] shall make available to collective management organizations on behalf of which they manage rights under a representation agreement or any right holder or any user, by electronic means and promptly, at least the following information:

a) the works or other materials they manage, the rights they represent, directly or on the basis of representation agreements, and the territories covered by such agreements;

b) where it is not possible to determine such works or other protected materials because of the context of the activity of the collective management body, the types of works or other subject-matter they represent, the rights they manage and the territories referred by those agreements.”

*Article 27, Law-Decree no. 35/2017*

Nigeria:

“(1) The following conduct or practices by Collective Management Organization shall be deemed to be unethical: (...)

(e) inducing a user who is in the process of negotiating for a license with another society or right owner to refrain from completing the licensing process;

(f) failing to make available to any other Collective Management Organization information which is reasonably required by such other Collective Management Organization to enable it effectively administer the rights held by it. Such information may include but not limited to:

i. information regarding the repertoire of an author who has assigned works to both Collective Management Organization;

ii. information held by a Collective Management Organization that may assist the requesting Collective Management in the computation and equitable distribution of royalties; and

iii. information on the existing reciprocal representation agreement if any of a Collective Management Organization.”

*Article 18(1), CMO Regulations, 2007*

Peru:

“Management of societies are obliged to issue a periodical publication for the benefit of their members, with information on the society’s activities that may have a bearing on the exercise of their

rights, which shall at least contain the society's financial statements, the auditor's report and the text of any resolutions adopted by its governing bodies; similar information shall be sent to the foreign organizations with which they have representation contracts for the national territory,(...);”

*Article 153 (l), Law no. 822 on Copyright*

Sweden:

§ 1 If a collective management organisation has entered into an agreement with another such organisation to manage rights for the rightsholders that the other organisation represents, such rightsholders shall be treated equally in the administration to the rightsholders that the organisation represents.

§ 2 When collective management is done with the support of an agreement referred to in § 1, the organisation may make deductions from rights revenues, or from income from investments of such revenues, only if the deduction refers to deductions for administrative costs or if it has been expressly approved by the other organisation.

§ 3 In the case of administration with the support of an agreement referred to in § 1, the organisation must transfer the funds due to the other organisation as soon as possible and, if there are no acceptable reasons for otherwise, no later than nine months from the end of the financial year in which the rights revenues were collected.”

*Chapter 8 § 1-3, Swedish Act on collective management of copyright*

Türkiye:

“Collecting societies may not discriminate between their own members and the rightholders they represent within the scope of the representation agreements they have concluded with regard to matters such as the management of rights, tariffs, distributions and management fee.

Collecting societies may not deduct any amount, except for the management fee, from the revenues it has generated in connection with the rights they manage within the scope of a representation agreement, without explicit consent from the represented collecting society.

(2) Organizations with which the collecting societies have signed a representation agreement shall be briefed on the following matters, at least once a year:

a) The revenue accrued and amount collected as well as the revenue accrued but not yet collected, for each category of entitlement and type of use, regarding the rights managed by the collecting society within the framework of a representation agreement.

b) The deducted sum as management fee.

c) Sums deducted other than management fee.

ç) Information on the contracts signed or turned down within the scope of the representation agreement.

d) General Assembly decisions regarding the management of rights.”

*Article 18, Regulation on Collecting Societies in the Field of Copyright*

European Union:

“Rights managed under representation agreements:

Member States shall ensure that a collective management organisation does not discriminate against any rightholder whose rights it manages under a representation agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of amounts due to rightholders.”

*Article 14, EU Directive 2014/26/EU*

### **7.3.2 Stakeholders’ organizations**

CISAC:

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

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

“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.”

“Each Member shall:

- a. 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;
- b. 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 Affiliates or to its Sister Society.”

*CISAC Professional Rules*

IFRRO:

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

[...]

Each RRO<sup>36</sup> 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.

[...]

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

[...]

Each [CMO] may deduct from collections, if authorized or required by national law or other governing authorities, by its statutes and/or

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<sup>36</sup> Reproduction Rights Organizations (RROs) are collective management organizations which act as intermediaries/facilitators between rightsholders and users in the fields of reprographic reproduction and certain digital uses.



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:

“Each CMO shall deduct its own management costs incurred in the collection and distribution of remuneration derived from its own territory (or from income from any investment of that remuneration by or on behalf of that CMO). In the event that a receiving CMO wishes to make management cost deductions from incoming remuneration from another CMO, both CMOs shall agree on the specific and clear conditions upon which such deductions will be based. In no event shall the management costs exceed the justified and documented costs incurred by the CMO in managing the given rights.”

*Article 7, SCAPR Code of Conduct*

“Representation Agreements by which the CMOs exchange remuneration collected are an efficient and cost-effective means of managing performers' international rights.

Accordingly, CMOs shall maintain continuous contact and cooperation with other organisations representing performers.”

*Articles 15, SCAPR Code of Conduct*

## **8. Relationship between CMO and User**

### **8.1 CMO's information to Users**

#### **8.1.1 Explanation**

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

#### **8.1.2 Good practice tools**

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

- a. the legal authority under which the CMO is established, an explanation of the rights administered by the CMO, and the categories of Rights Holders on whose behalf the CMO acts;*
- b. if possible, a list of the works and corollary rights in its Repertoire available to Licensees;*
- c. a summary of relevant tariffs;*
- d. a description of the license term and conditions and invoicing procedures;*

- e. *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.*

### 8.1.3 Examples<sup>37</sup>

#### 8.1.3.1 Member States

Brazil:

“Associations [CMOs] shall maintain a centralized register of all contracts, declarations or documents of any nature that prove authorship and ownership of works and phonograms, as well as individual participations in each work and in each phonogram, preventing the falsification of data and fraud and promoting the disambiguation of similar titles of works.”

“The information mentioned in § 6 is of public interest and access to it shall be made available by electronic means to any interested party, free of charge, and the Ministry of Culture shall also be granted continued and integral access to such information.”

*Article 98(6) and (7), Law on Copyright and Neighboring Rights*

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, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Nigeria:

“Where a Collective Management Organization seeks any change in the tariff rates for any category of users, it shall inform such users through a medium that could be accessed publicly by them.”

*Article 8(4), CMO Regulations, 2007*

Republic of Korea:

“Where a user requests in writing, the copyright trust service provider shall supply the information under his/her management necessary for concluding exploitation contract of works, etc., which is prescribed by Presidential Decree, within a considerable period of time in writing, unless there are justifiable causes to the contrary.

1. List of works, etc.;
2. Period of trust agreement with the holder of author’s economic right of the relevant work, etc.;
3. Conditions for exploitation, such as royalties and standard contract.”

*Article 106(2), Copyright Act and Article 51, Enforcement Decree of the Copyright Act*

European Union:

“1. Member States shall ensure that a collective management organisation makes public at least the following information:

- (c) standard licensing contracts and standard applicable tariffs, including discounts;

2. The collective management organisation shall publish, and keep up to date, on its public website the information referred to in paragraph 1.”

*Article 21, EU Directive 2014/26/EU*

### **8.1.3.2 Stakeholders’ organizations**

Australian CMOs:

“Each Collecting Society will:

- make available to Licensees and potential Licensees information about the licences or licence 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 licence 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 licences offered by the Collecting Society are drafted so as to be plainly understandable to Licensees, and are accompanied by practical and suitable explanatory material.”

*Australian Collecting Societies Code of Conduct*

BCC:

“[A CMO should]

- Explain the rights administered by the CMO
- Identify the rightsholders on whose behalf the CMO acts
- Explain the basis for the authority to act (e.g. membership agreements, etc.)
- Summarize licensing schemes, terms and conditions and tariffs, etc:
  - explain 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 licences operated by other CMOs or right holders.
  - where applicable, clarify how these have been negotiated (e.g. with a relevant trade association)
  - explain how and when terms and conditions are reviewed
  - explain if licences grant any powers to the CMO to visit the licensee’s premises for compliance purposes, and if so, how these powers may be exercised.”

*BCC Principles of Good Practice for Collective Management Organizations*

SCAPR:

<sup>37</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

“CMOs shall act in a consistent and transparent manner with regard to users and the public in general.”  
*Article 14, SCAPR Code of Conduct*

## 8.2 Principles governing licensing of Licensees

### 8.2.1 Explanation

Experience shows that an open and professional approach makes it easier for Licensees to understand 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 Licensees in a fair, professional and non-discriminatory manner.

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

If permitted by competition law, CMOs may voluntarily decide to cooperate with other CMOs, with a view to increasing efficiency, reducing costs and to simplify the acquisition of licenses.

### 8.2.2 Good practice tools

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

69. *A CMO should license rights on the basis of objective, fair and non-discriminatory criteria, taking into account national copyright law, including applicable limitations and exceptions.*

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

71. *Good practices of acting impartially, fairly and on the basis of objective criteria, nonetheless permit a CMO to refuse to grant a license for objective reasons, such as if that User/Licensee 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.*

72. *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.*

73. *Licensees are expected to act in a responsible manner, provide accurate and timely information, and negotiate in good faith. Where the signatory to a license is someone other than the department responsible for the day-to-day management of the license, that department should be closely involved in the license negotiations.*

## 8.2.3 Examples<sup>38</sup>

### 8.2.3.1 Member States

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.”

*Title 5, Book XI, Belgian Code of Economic Law*

Spain:

“Granting of non-exclusive authorizations.

1. The management organization shall negotiate the granting of non-exclusive authorizations of the rights managed and enter into remunerated contracts therefor with users who so request, except on justified grounds, both parties acting under the principles of good faith and transparency, for which purpose they shall exchange all the necessary information.

For the purposes of this Title, a user shall be deemed any individual or entity that carries out acts that require the authorization of the rightholders or remuneration or payment of compensation to the rightholders.

2. Non-exclusive authorizations shall be granted on a fair and non-discriminatory basis. To this end, the management organization shall inform users of the commercial conditions granted to other users carrying out similar economic activities. However, for the granting of authorizations for online services, the management organization shall not be obliged to use as a basis the conditions previously offered to another user providing an online service that has been available to the public in the European Union for less than three years.

3. The management organization shall respond to user requests without undue delay, indicating, inter alia, the information necessary to provide the non-exclusive authorization.

Upon receipt of all relevant information, the management organization shall, without undue delay, provide the non-exclusive authorization or issue a reasoned refusal for each specific service that is not authorized.

4. Until the parties reach an agreement, the corresponding authorization shall be deemed granted if the applicant pays under reserve or legally transfers the amount requested by the management organization in accordance with its general tariffs.

5. Management organizations shall allow users to communicate with them electronically in order to report on the use of the non-exclusive authorization.”

*Article 163 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

“§ 1 Collective management organisations and users must conduct license negotiations in accordance with good business practice. The parties must provide each other with necessary information for the negotiations.

§ 3 A collective management organisation must, at the request of a user, indicate what information the organisation needs to be able to offer the user a license. Once the organisation has received the data, it must offer the user a license or state the reasons for not doing so. A request for a license must be handled without undue delay.”

*Chapter 9, Swedish Act on collective management of copyright*

Türkiye:

“(1) Collecting societies shall act in line with the principles of integrity and goodwill in their relations with the users.

(2) Collecting societies shall respond, without delay, to the users' requests for information on the license agreement. After gathering the necessary information, users shall be offered objective and non-discriminatory license agreements, or the request shall be turned down by specifying the reason.

(3) Collecting societies shall be available for communication via electronic means, including notifications about the license agreement.”

*Article 54, Regulation on Collecting Societies in the Field of Copyright*

European Union:

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

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

### **8.2.3.2 Stakeholders' organizations**

Australian CMOs:

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

*Australian Collecting Societies Code of Conduct*

CISAC:

“Each Member shall:

- a. grant licenses on the basis of objective criteria and, when applicable, meet the requirements to operate as set by the national legislation, provided that a Member shall not be obliged to grant licenses to users who have previously failed to comply with such Musical Society's licensing terms and conditions; and
- b. not unjustifiably discriminate between users.”

*CISAC Professional Rules*

<sup>38</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

IFPI:

“With a view to increasing efficiency and reducing costs MLCs<sup>39</sup> should examine opportunities for cooperation with other CMOs representing complementary rights, e.g., with respect to the licensing of rights in sound recordings and musical works for the public performance of recorded music.

*IFPI Code of Conduct for Music Industry MLCs*

## 8.3 Rules for setting of tariffs

### 8.3.1 Explanation

It is important that the tariffs of a CMO are clear, transparent and based on objective criteria. The key principle is that the price of a license should be fair and equitable corresponding as much as possible to the fair market value of the rights in question and the services provided by the CMO, taking all aspects of the transaction into account.

The “fair market value” standard could, for instance, be expressed as “willing buyer, willing seller” test, or the tariff may be subject to “value of the use of rights in trade”.

A CMO may therefore back up its tariff proposals with relevant data or independent economic research concerning the economic value of the rights in question in the relevant markets.

When deciding disputes on tariffs between a CMO and a User/Licensee, the “fair market value” standard should in principle also apply.

### 8.3.2 Good practice tools

74. *Wherever appropriate, a CMO should establish tariffs which reflect the fair market value of rights in a given market and the overall value of the service provided by the CMO.*

75. *In order for tariffs to correspond to the value of the rights in use, a CMO should establish clear, objective and reasonable criteria, considering, for example:*

- a. *Any available relevant data and economic research;*
- b. *The rates and terms for comparative types of services set by Rights Holders in comparative circumstances;*
- c. *Purpose for which such rights are used;*
- d. *The nature and context in which such rights are used; and*
- e. *The manner or kind of use for which such rights are used.*

<sup>39</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.



### 8.3.3 Examples<sup>40</sup>

#### 8.3.3.1 Member States

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.”

*Title 5, Book XI, Belgian Code of Economic Law*

“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.”

*Title 5, Book XI, Belgian Code of Economic Law*

Bosnia and Herzegovina:

“(1) The amount and method of calculation of remunerations payable by each user to a collective organization for the use of a work from its repertoire shall be fixed by the tariff. The amount of remuneration shall be appropriate as to the category of the work and the manner of the use thereof.

(2) The tariff shall be fixed by a collective agreement concluded between a collective organization and a representative association of users or, if it is impossible, by an agreement with an individual user or by a decision of the Copyright Council. The tariffs fixed in the mentioned agreements shall be considered as appropriate until such time as the Copyright Council issues a different final decision.

(3) When determining an appropriate tariff, the following shall be taken into account, in particular:

- a) total gross income derived from the use of a work or, if it is impossible, total gross costs related to such use;
- b) importance of the use of works for the activity of a user;
- c) ratio between protected and non-protected works used;
- d) ratio between the rights managed collectively and individually;
- e) particular complexity of the collective management of rights due to certain use of the works;
- f) comparability of the proposed tariff with the tariffs of similar collective organizations in other neighboring states and the states which may be compared with Bosnia and Herzegovina according to the relevant criteria, and in particular with respect to GDP *per capita* and purchasing power.”

*Article 23 (1), (2) and (3), Law on Collective Management, Bosnia and Herzegovina, 2010*

Brazil:

“The associations [CMOs] shall adopt the principles of isonomy, efficiency and transparency in the collection for the use of any work or phonogram.

[...]

It will be up to the associations, in the interest of their associates, to establish the prices for the use of their repertoires, considering the reasonableness, the good faith and the uses of the place of use of the works.

[...]

The collection will always be proportional to the degree of use of the works and phonograms by the users, considering the importance of the public execution in the exercise of its activities, and the particularities of each segment, as provided in the regulation of this Law.”

*Article 98(2)-(4), Law on Copyright and Neighboring Rights*

Canada:

“The Board shall fix royalty and levy rates and any related terms and conditions under this Act that are fair and equitable, in consideration of

(a) what would have been agreed upon between a willing buyer and a willing seller acting in a competitive market with all relevant information, at arm’s length and free of external constraints; [...]”

*Section 66.501 of the Canadian Copyright Act*

Ecuador:

[...]

Tariffs – Collective management organizations shall establish reasonable, equitable and proportional rates for the use of works, performances, broadcasts or phonograms included in their respective repertoires. [...]

It is important to note that CMOs are authorized to negotiate with user associations or unions to establish tariffs for specific uses.”

*Article 251, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

“A formally constituted association, union or representative group of users, whose representation is duly accredited, may request mediation by the competent national authority for intellectual property rights matters if it considers that the rates fixed and authorized in respect of a collecting society for the collective management of copyright or related rights do not meet the conditions laid down in this Code, in the specific case that is at issue.”

*Article 262, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Georgia:

“The collective management organisation shall be obliged to provide the user with full information on the criteria for setting the tariffs. The tariff should be commensurate with the economic value of the rights in civil circulation.”

*Article 666(3), Law on Copyright and Related Rights*

Germany:

“Inclusive contracts

The collecting society shall be obliged to conclude an inclusive contract with associations of users at reasonable conditions in respect of the rights it manages, except where the collecting society cannot be reasonably expected to conclude such an inclusive

<sup>40</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

contract, in particular because the membership of the association of users is too small.”

*Section 35, German Collecting Societies Act, 2017*

“Obligation to set tariffs

The collecting society shall set tariffs in respect of that remuneration which it claims for the rights it manages. If inclusive contracts have been concluded, the rates of remuneration agreed in them shall constitute the applicable tariffs.”

*Section 38, German Collecting Societies Act, 2017*

“Setting of tariffs

(1) As a general rule, the tariffs shall be calculated on the basis of the pecuniary benefits derived on account of the exploitation. The tariffs may also be calculated on another basis if there are sufficient indications which can be secured at economically justifiable expense for the benefits from the exploitation.

(2) When setting the tariffs, reasonable consideration shall be given to the share which the use of the work represents of the total utilisation and to the economic value of the services provided by the collecting society.

(3) The collecting society is to pay reasonable consideration when setting the tariffs and collecting the remuneration to the religious, cultural and social concerns of the users, including the concerns of the youth services.

(4) The collecting society shall inform the users concerned of the criteria used for the setting of the tariffs.”

*Section 39, German Collecting Societies Act, 2017*

“Disclosure of information to the public

(1) The collecting society shall publish at least the following information on its website: [...]

4. the tariffs and standard rates of remuneration, in each case including discounts,

5. the inclusive contracts it has concluded [...].”

*Section 56, German Collecting Societies Act, 2017*

Guatemala:

“Collective management societies shall be authorized to collect and distribute remuneration for the use of the works and sound recordings entrusted to them for administration, being also authorized to lay down the appropriate tariffs for the use thereof. [...].”

*Article 123, Law on Copyright and Related Rights*

“Tariffs shall be approved by the General Assembly on a proposal by the Management Board, and they shall be published in the Official Gazette to come into effect on the day following such publication. [...].”

*Article 126, Law on Copyright and Related Rights*

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*

"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*

Pakistan:

"Determination of objections. ---

(1) Every objection lodged, at the Copyright Office (...) shall, as soon as may be, be referred to the Board and the Board shall decide such objection in the manner, hereinafter provided.

(2) The Board shall notwithstanding that no objection has been lodged, take notice of any matter which, in its opinion, is one for objection.

(3) The Board shall give notice in respect of every objections to the performing rights society concerned and shall give to such society and the person who lodged the objection a reasonable opportunity of being heard.

(4) The Board shall, after making the prescribed enquiry, make such alterations in the statements as it may think fit, and shall transmit the statements thus altered or unchanged, as the case may be, to the Registrar, who shall thereupon as soon as practicable after the receipt of such statements, publish them in the official Gazette and furnish the performing rights society concerned and the person who lodged the objection with a copy thereof.

(5) The statement of fees, charges or royalties as approved by the Board shall be the fees, charges or royalties which the performing rights society concerned may respectively lawfully sue for or collect in respect of the issue or grant by it of licenses for the performance in public of works to which such fees, charges or royalties relate.

(6) No performing rights society shall have any right of action or any right to enforce any civil or other remedy for infringement of the performing rights in any work claimed by such society against any person who has tendered or paid to such society the fees, charges or royalties which have been approved by the Board as aforesaid."

*Sections 32 and 33, Copyright Ordinance, 1962*

Republic of Korea:

"The rate and amount of usage fee that a copyright trust service provider receives from users shall be determined by the copyright trust service provider after he/she obtains approval from the Minister of Culture, Sports and Tourism. In such cases, the Minister of Culture, Sports and Tourism shall collect opinions of interested persons, as prescribed by Presidential Decree."

*Article 105(5), Copyright Act*

Spain:

"General tariffs.

1. The management organization must establish clear and simple general tariffs that determine the remuneration required for the use of its repertoire. These general tariffs shall be accompanied by an economic report, the content of which shall be determined by regulation and which shall provide a detailed explanation by tariff modality for each category of user.
2. The general tariffs shall provide for reductions for non-profit cultural entities.

[...]

4. The methodology for determining the general tariffs shall be approved by an order of the Ministry of Culture and Sport, subject to a report by the National Commission on Markets and Competition and the agreement of the Delegated Government Commission of the for Economic Affairs.
5. If a user of intellectual property rights, who for said use must pay the general rate determined for exclusive rights and/or remuneration by the corresponding management entity, questions it in any way, including mere refusal to pay it,

must, at least and in any case, pay on account 100% of the last agreed rate, or, in the absence of a previous agreement, 50% of the current general rate. Until the conflict is resolved, it will be understood, provisionally, that the payment obligation has been fulfilled and, as regards the exclusive right that may coincide with the right to remuneration, authorization has been granted for the use of that exclusive right.

6. If the rate in question referred to in the previous section is null and void, or any circumstance arises that makes it inapplicable for the purposes of payment on account, the user of intellectual property rights will proceed to payment on account of 100 percent of the last agreed rate, or, in the absence of a prior agreement, 50 percent of the last general rate in force.
7. If the general rate is questioned by a user association, the payment on account must be made by each of the members that comprise it.
8. The payment on account indicated in the two previous sections will constitute a necessary prerequisite for the user or the user association to be able to initiate the rate determination procedure provided for in article 194.3 of this law.

User associations with less than one thousand members may initiate the procedure when, at least, they are up to date with the payment on account with the entity in relation to which they propose to initiate the procedure for determining member rates that represent, at least, the 85 percent of the income of all the members of the association.”

*Article 164 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

“A collective management organisation may not apply

1. license conditions lacking a factual basis, or
2. license terms that are discriminatory.

The compensation requested by a collective management organisation must be reasonable. The organization shall inform the user of the basis for calculating the compensation.

When applying § 2 part 2, conditions that apply to an online service of a type that has been available within the European Economic Area (EEA) for a shorter period than three years when the license agreement was concluded, shall not be considered.”

*Chapter 9 § 2 of the Swedish Act on collective management of copyright*

Tanzania:

“(3) A collective management organisation and user shall -

- (a) negotiate the licensing of rights in good faith; and
- (b) negotiate in good faith the tariffs for exclusive rights and rights to remuneration in relation to-

(i) 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 any other relevant matter;  
(ii) the economic value of the service provided by the collective management organisation; and  
(iii) the value added by any service providers and individuals; and  
(c) notify the user in writing of the criteria used for the setting of the tariffs specified in paragraph (b) of subregulation (1).”  
*Regulation 30(3), The Copyright and Neighbouring Rights (Royalty Collection and Distribution) (Collective Management Organisations) Regulations, 2023*

Türkiye:

In the determination of the tariffs; tariffs should be determined at a reasonable level by considering the adaptability of international practices to the economic and social conditions of the country; an impact which damages the structures of the sectors where works, performances, phonograms, productions and broadcasts are created and used, which hampers production and use and which prejudices generally accepted practices should be avoided; anti-competitive conditions should not be created; and the determination should be based on the classification made, product prices in the relevant sectors and the shares of these sectors in the gross domestic product, the frequency with which works, performances, phonograms, productions and broadcasts are used and/or communicated, unit price or lump sum payment, payment plan and similar issues.

*Article 42/A, Law on Intellectual and Artistic Works*

United Kingdom:

“A collective management organisation must ensure that—  
(a) right holders receive appropriate remuneration for the use of their rights;  
(b) tariffs it determines for exclusive rights and rights to remuneration are reasonable in relation to matters such as—  
(i) 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; and  
(ii) the economic value of the service provided by the collective management organisation;  
and  
(c) it informs the user concerned of the criteria used for the setting of those tariffs.”

*Section 15(4)(b) of the UK Collective Management of Copyright Regulations 2016*

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*

European Union:

“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*

“Rightholders shall receive appropriate remuneration for the use of the rights. 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 in relation 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 those tariffs.”

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

### **8.3.3.2 Stakeholders’ organizations**

Australian CMOs:

“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.

[...]

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.”

*Australian Collecting Societies Code of Conduct*

IFPI:

“Each MLC<sup>41</sup> 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 for Music Industry MLCs*

## **8.4. Obligations of Users/Licensees**

### **8.4.1 Explanation**

Both CMOs and Users/Licensees must act in a responsible manner and conduct negotiations in good faith and a transparent manner. Users/Licensees should provide CMOs with the

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<sup>41</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.



information required for the purposes of licensing rights, as well as collection and timely and accurate Distribution of the revenues for the use of rights managed by the CMO.

Licensees must cooperate with CMOs, in particular, by reporting the copyright protected works or sound recordings they use in a timely and accurate manner, as well as any data or information allowing the CMOs to calculate the license fee, which is essential to enable the CMOs to operate efficiently and distribute collected revenues timely to the correct Rights Holders. While providing such data, users should be expected to act reasonably and responsibly.

#### **8.4.2 Good practice tools**

*76. Licensees should provide a CMO with information on the use and for the identification of works and sound recordings in an agreed format and in a timely and accurate manner as well as any data or information to enable a CMO to calculate and distribute the license fees. Such a report should be provided according to international standards, where available.*

### 8.4.3 Examples<sup>42</sup>

#### 8.4.3.1 Member States

Albania:

“The granting of authorization for use

1. A natural or legal person, before starting to use a copyright protected object, must submit to the relevant CMO a request for authorization of such use. The application must contain information about the type and circumstances of use, such as the manner, place and time of the use and other necessary information for the determination of the amount of compensation.

2. The CMO gives the user the authorization, within its competence, to use the object under protection. The authorization shall include the right indicator for which it applies, the conditions as for the manner of use, the place and time and the amount of remuneration for the use, where its use is subject to remuneration.

3. The user shall submit without delay to the CMO the information regarding any change of circumstances for its use and completion, in order to change the conditions under which it was authorized or withdrawn it.”

*Article 140, Law No. 35/2016 on Copyright and Related Rights Act*

“The Obligation to Provide Information

In case of insufficient information for the unauthorized use of the material, the object under protection, the CMO will address, via a request, to the competent institutions of state administration or other legal persons, who are required to deliver the relevant information from their data. Failure to comply with this obligation results in legal responsibility.”

*Article 141, Law No. 35/2016 on Copyright and Related Rights Act*

Brazil:

“The user shall deliver to the entity responsible for collecting the rights related to the performance or public performance, immediately after the act of communication to the public, a complete list of the works and phonograms used, and shall make it public and freely accessible, together with the amounts paid, on its electronic website or, if this is not the case, at the place of communication and at its headquarters.”

*Article 68 (6), Law on Copyright and Neighboring Rights*

Chile:

“Fees shall be set by the collecting societies, through the administrative body provided for in their statutes, and shall enter into force from the date of their publication in the Official Gazette. Notwithstanding the foregoing, the collecting societies may negotiate special fee schedules with user associations that shall apply to the members of such organizations. Users who so desire may avail themselves of those special fee schedules. Users who obtain authorization in accordance with this article shall provide the collecting society with a list of the works used, together with payment of the corresponding fees.”

*Article 100, Intellectual Property Law*

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*

Côte d’Ivoire:

“Contracts entered into by collective management organizations with users of all or part of their repertoire, in accordance with the present Act and in pursuit of the purpose of the contracts, shall be civil acts.

The users of works shall provide the collective management organizations with all the information they require in order to establish and apply the tariffs and to distribute the proceeds.

Audiovisual communication companies shall promptly send the authorized collective management organization a detailed schedule regarding the use of the repertoire and all documentary evidence necessary for the distribution of rights.”

*Article 120, Act No. 2016-555 of July 26, 2016, on Copyright and Neighboring Rights*

Ecuador:

“Obligation of radio, television or cable broadcasting organizations to keep records.

All radio, television or cable broadcasters and any organizations that otherwise publicly disseminate protected works, performances, broadcasts or phonograms for commercial purposes and that make a detailed selection of the materials they disseminate directly to the public shall keep monthly catalogs, registers or schedules in which the title of the works broadcast and the names of the authors or owners of the corresponding copyright and related rights and of which they are aware shall be recorded in the order in which they are broadcast. The catalogs, registers or schedules shall be sent to each of the collecting societies and to the single entity responsible for collecting broadcasting royalties for the purposes provided for in this Chapter. Collecting societies shall issue receipts or other confirmation of receipt of the catalogs, registers or schedules referred to in this article.”

*Article 257, Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016*

France:

“When a license is granted, the user shall send the collective management organization, in a format and time frame agreed upon by the parties or established in advance, relevant information on

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<sup>42</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

the use made of the rights, thereby enabling the organization to collect and distribute the revenue derived therefrom.

In order to determine the required format in which to send such information, organizations and users shall take into account, as far as possible, voluntary industry standards, in particular standard identifiers for works and other protected subject matter. Where the parties fail to arrive at an agreement within a reasonable period of time, such information shall be that established by order of the Minister of Culture for the relevant industry.”

*Article L324-8, Intellectual Property Code*

Guatemala:

“The person responsible for the management of the entities or establishments in which public performances of musical works take place is obliged to:

(a) keep a daily record of the title of each musical work performed, the names of its author and composer, and those of the performers involved, the leader of the group or orchestra conductor, as the case may be, and of the phonogram or videogram producer where the public performance consists in the playing of a phonogram or videogram;

(b) convey the above information to each of the associations or management bodies that represent the rights of authors, performers and phonogram and videogram producers.”

*Article 99, Law on Copyright and Related Rights*

Italy:

“Obligations of users

1. Unless otherwise agreed between the parties, within ninety days of use, users shall provide the collective management organizations, as well as independent management entities, in an agreed or pre-established format, the relevant information at their disposal, necessary for the collection of the rights revenue and for the distribution and payment of the amounts due to right holders, and concerning the use of protected works. The information shall concern, in particular:

a) with reference to the identification of the protected work: the original title; the year of production or distribution in the territory of State, the producer and the overall duration of the work;

b) with reference to the use of the protected work: all the profiles related to the dissemination, such as the date or period of communication, dissemination, representation, distribution or marketing or otherwise public disclosure. The right of collective management organizations and independent management entities to request further information, where available, shall remain unaffected.

3. Collective management organizations shall agree in good faith on the information to be provided, the methods and timing of contracts with users, including taking into account voluntary industry standards.

4. The non-fulfilment of information obligations or the provision of false or erroneous data constitutes cause for termination of the license agreement, with the consequent inhibition of the use of

phonograms, cinematographic and audiovisual works even when remunerated with fair compensation.”

*Article 23, Law-Decree no. 35/2017*

Spain:

“Obligations of users.

1. Unless otherwise agreed between the parties, users must provide the management organization, within ninety days following the use of the right and in a previously agreed or established format, the detailed and relevant information at their disposal regarding the use of the rights represented by the management organization, which is necessary for the collection of the rights and the distribution and payment of the amounts owed to the rights holders.
5. If users do not have the necessary information to comply with the obligation provided for in paragraph 1, they may request it from the management organization in accordance with the provisions of Article 183(1). In this case, the deadline for the user to send the information to the management organization shall be suspended until the management organization provides the user with an adequate response.
6. The contract regulating the granting of the non-exclusive authorization shall include a penalty clause that is to be applied if the user does not comply with the obligation to submit information in due time and form.”

*Article 167 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

“A user who is obliged to pay compensation to a collective management organisation for the use of works or other protected subject matter must provide the organisation with the information that is available to the user and that the organisation needs to collect, distribute and pay the compensation to the rightsholders. If the parties have not agreed on when and in what format the information should be provided, it shall be provided at the request of the organisation and in an appropriate format.”

*Chapter 9 § 5 of the Swedish act on collective management of copyright*

Switzerland:

“Where it may reasonably be expected, the users of works must provide the collective rights management organisations with all the necessary information for the determination and application of the tariffs and for distributing the proceeds in a form that corresponds to the state of the art and allows for automatic data processing.”

*Article 51(1), Swiss Federal Act on Copyright*

Türkiye:

“For works, performances, phonograms and productions other than staged works, these [broadcasting] organizations are obliged to obtain permission from the collecting societies of the relevant field, by concluding a contract in accordance with article 52, to

make the payments for such broadcasts and/or transmissions to such societies and to inform such societies of the lists of works, performances, phonograms and productions that they have used.”  
*Article 43, Law on Intellectual and Artistic Works*

United States of America:

(The below provisions only apply to specific online blanket mechanical licenses available under Section 115 of the US Copyright Act.)

“e) Sound recording and musical work information.

(1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the blanket licensee, including unique identifier(s) (such as, if applicable, Uniform Resource Locators (URLs)) that can be used to locate and listen to the sound recording, accompanied by clear instructions describing how to do so (such audio access may be limited to a preview or sample of the sound recording lasting at least 30 seconds), subject to paragraph (e)(3) of this section;

(D) Actual playing time measured from the sound recording audio file; and

(E) To the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(1) Sound recording copyright owner(s);

(2) Producer(s);

(3) ISRC(s);

(4) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(i) Catalog number(s);

(ii) UPC(s); and

(iii) Unique identifier(s) assigned by any distributor;

(5) Version(s);

(6) Release date(s);

(7) Album title(s);

(8) Label name(s);

(9) Distributor(s); and

(10) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the blanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

- (1) Songwriter(s);
- (2) Publisher(s) with applicable U.S. rights;
- (3) Musical work copyright owner(s);
- (4) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and
- (5) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the blanket licensee, or any corporate parent, subsidiary, or affiliate of the blanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the blanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a blanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information should be reported.”

*§210.27 (e), Title 37, Code of Federal Regulations*

European Union:

“Member States shall adopt provisions to ensure that users provide a collective management organisation, within an agreed or pre-established time and in an agreed or pre-established format, with such relevant information at their disposal on the use of the rights represented by the collective management organisation as is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightholders. When deciding on the format for the provision of such information, collective management organisations and users shall take into account, as far as possible, voluntary industry standards.”

*Article 17, Directive 2014/26/EU*

#### **8.4.3.2 Stakeholders’ organizations**

IFPI:

“Each Music Licensing Company<sup>43</sup> is to require users to report the use of all sound recordings promptly and accurately using a standardised electronic format and where possible using industry standard recording identifiers, unless reporting would be

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<sup>43</sup> Music Licensing Company (MLC) is the term commonly used by the recording industry to refer to the organizations that are authorized by phonogram producers to manage certain rights collectively, notably broadcasting and public performance rights, and private copying levies. It should be distinguished from the Mechanical Licensing Collective of the United States of America.

commercially unreasonable and economically unviable considering in particular the value of the license in question.”

*IFPI Code of Conduct for Music Industry MLCs*

*SCAPR:*

“CMOs shall concurrently register the uses of both national and foreign performers' performances subject to the rights in their respective territories of operation, mainly based on the following sources: Reports from users providing comprehensive play lists or from reliable surveys;”

*Article 12, SCAPR Code of Conduct*

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

*Article 14, SCAPR Code of Conduct*

## 9. Processing of Members' and Licensees' data

### 9.1 Explanation

Members and Licensees 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.

### 9.2 Good practice tools

77. *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.*

78. *A CMO should keep and regularly update records of each Member so that such Member can be accurately identified and located.*

79. *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.*

80. *A CMO should inform (where possible electronically) a Member or a Licensee about the personal data it holds on such Member or Licensee.*

81. *A CMO is required to establish and maintain reasonable technical and organizational safeguards to ensure the protection of data provided by the other party.*





### 9.3 Examples<sup>44</sup>

#### 9.3.1 Member States

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.”

*Title 5, Book XI, Belgian Code of Economic Law*

Republic of Korea:

“When it is inevitably necessary to execute and perform a contract with a data subject, a personal information controller may collect personal information and use it with the scope of the purpose of collection.”

*Article 15(1), Personal Information Protection Act*

“A personal information controller shall destroy personal information without delay when the personal information becomes unnecessary owing to the expiry of the retention period, attainment of the purpose of processing the personal information, etc.”

*Article 21(1), Personal Information Protection Act*

Sweden:

“The organisation may refuse to release the information if it is not clear from the request that the person requesting the information needs it.

The organisation may take reasonable steps to ensure that the data is not manipulated and to control how the data is reused. The organisation may also take reasonable measures to protect commercially sensitive information.”

*Chapter 11 § 5, Swedish Act on collective management of copyright*

Türkiye:

“The duties and authorities of collecting societies shall include the following:

[...]

g) Comply with the liabilities regarding personal data protection.”

*Article 54, Regulation on Collecting Societies in the Field of Copyright*

“The ministry shall have the authority to grant permission or impose obligations regarding the submission of information and documents which need to be presented to the ministry in accordance with the law and the applicable legislation, through all kinds of electronic information communication means and media including the internet, by securing them with passwords, electronic signatures or other security tools, to lay down the format and standards to be followed as well as the principles and procedures for the

<sup>44</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

implementation, and to have this obligation enforced separately in view of the fields of activity of the societies.”

*Article 57 (Electronic Handling of Procedures and the Ministry's Authority), Regulation on Collecting Societies in the Field of Copyright – 2022*

European Union:

“It is important for collective management organisations to respect the rights to private life and personal data protection of any rightholder, member, user and other individual whose personal data they process. Directive 95/46/EC governs the processing of personal data carried out in the Member States in the context of that Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States. Rightholders should be given appropriate information about the processing of their data, the recipients of those data, time limits for the retention of such data in any database, and the way in which rightholders can exercise their rights to access, correct or delete their personal data concerning them in accordance with Directive 95/46/EC. In particular, unique identifiers which allow for the indirect identification of a person should be treated as personal data within the meaning of that Directive.”

*Recital 52, EU Directive 2014/26/EU*

“5. A collective management organization shall keep records of its members and shall regularly update those records.”

*Article 6, EU Directive 2014/26/EU*

### **9.3.2 Stakeholders' organizations**

CISAC:

“Each Member shall refrain from disclosing any Confidential Information.”

*CISAC Professional Rules*

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*

## **10. Importance of IT infrastructure**

### **10.1 Explanation**

A CMO should utilize a proper functional data model, which caters for the needs to document, identify, collect, allocate and distribute the Rights Revenue represented by the CMO in the respective territory and in relation to other territories the CMO cooperates with, taking into account applicable transparency rules.

The IT infrastructure should implement carefully the business processes of documentation, collection, allocation and Distribution. A CMO should minimise unnecessary spend and use existing solutions whenever possible, prior to developing a customized system.

Distribution is facilitated through existing international identifiers (EIDR, IPI, IPN, ISAN, ISBN, ISNI, ISRC, ISSN, ISWC, VRDB-ID, etc.), exchange formats and protocols (CRD, CWR, DDEX, SDEG, etc.) and dedicated industry IT standards (AV Index, Cis-Net, IDA, IPD, IPI System, VRDB, etc.). (See also Appendix 1.)

## **10.2 Good practice tools**

*82. A CMO should utilize a proper functional data model, which caters for the needs to document, identify, collect, allocate and distribute the Rights Revenue for the rights represented by the CMO in the respective territory and in relation to other territories the CMO cooperates with.*

## 10.3 Examples<sup>45</sup>

### 10.3.1 Member States

United States of America:

“Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

(...) (b) (3) Royalty distributions shall be accompanied by corresponding royalty statements containing the information set forth in paragraph (c) of this section for the royalties contained in the distribution.

(c) Content—

(1) General content of royalty statements. Accompanying the distribution of royalties to a copyright owner, the mechanical licensing collective shall provide to the copyright owner a statement that includes, at a minimum, the following information:

(i) The period (month and year) covered by the statement, and the period (month and year) during which the reported activity occurred. For adjustments, the mechanical licensing collective shall report both the period (month and year) during which the original reported activity occurred and the date on which the digital music provider reported the adjustment.

(ii) The name and address of the mechanical licensing collective.

(iii) The name and mechanical licensing collective identification number of the copyright owner.

(iv) ISNI and IPI name and identification number for each songwriter, administrator, and musical work copyright owner, to the extent it has been provided to the mechanical licensing collective by a copyright owner.

(v) The name and mechanical licensing collective identification number of the copyright owner's administrator (if applicable), to the extent one has been provided to the mechanical licensing collective by a copyright owner.

(vi) Payment information, such as check number, automated clearing house (ACH) identification, or wire transfer number.

(vii) The total royalty payable to the relevant copyright owner for the month covered by the royalty statement.

(2) Musical work information. For each matched musical work owned by the copyright owner for which accompanying royalties are being distributed to that copyright owner, the mechanical licensing collective shall report the following information:

(i) The musical work name, including primary and any alternative and parenthetical titles for the musical work known to the mechanical licensing collective.

<sup>45</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

(ii) ISWC for the musical work, to the extent it is known to the mechanical licensing collective.

(iii) The mechanical licensing collective's standard identification number of the musical work.

(iv) The administrator's unique identifier for the musical work, to the extent one has been provided to the mechanical licensing collective by a copyright owner or its administrator.

(v) The name(s) of the songwriter(s), to the extent they are known to the mechanical licensing collective.

(vi) The percentage share of musical work owned or controlled by the copyright owner.

(vii) For each sound recording embodying the musical work, the identifying information enumerated in paragraph (c)(3) of this section and the royalty information enumerated in paragraph (c)(4) of this section.

(3) Sound recording information.

(...)

(ii) The mechanical licensing collective shall report the following information to the extent it is known to the mechanical licensing collective:

(A) The record label name(s).

(B) ISRC(s).

(C) The sound recording copyright owner(s).

(D) Playing time.

(E) Album title(s) or product name(s).

(F) Album or product featured artist(s), if different from sound recording featured artist(s).

(G) Distributor(s).

(H) UPC(s). (...)

(4) Royalty information. The mechanical licensing collective shall separately report, for each service, offering, or activity reported by a blanket licensee, the following royalty information for each sound recording embodying a musical work included in a royalty statement:

(i) The name of the blanket licensee and, if different, the trade or consumer facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities.

(ii) The service tier or service description.

(iii) The use type (download, limited download, or stream).

(iv) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays.

(v) A detailed and step-by-step accounting of the calculation of royalties under applicable provisions of part 385 of this title, sufficient to

allow the copyright owner to assess the manner in which the royalty owed was determined and the accuracy of the royalty calculations, which shall include details on each of the components used in the calculation of the payable royalty pool.

(vi) The royalty rate and amount.

(vii) The interest amount.

(viii) The distribution amount.”

*§210.29, Title 37, Code of Federal Regulations*

“Musical works database information.

(...) (b) Matched musical works. With respect to musical works (or shares thereof) where the copyright owners have been identified and located, the musical works database shall contain, at a minimum, the following:

(1) Information regarding the musical work:

(i) Musical work title(s);

(ii) The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license;

(iii) Contact information for the copyright owner of the musical work (or share thereof), which can be a post office box or similar designation, or a “care of” address (e.g., publisher);

(iv) The mechanical licensing collective's standard identifier for the musical work; and

(v) To the extent reasonably available to the mechanical licensing collective:

(A) Any alternative or parenthetical titles for the musical work;

(B) ISWC;

(C) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for matched musical works;

(D) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for

use of such musical work (or share thereof) in the United States;

(E) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter, and administrator;

(F) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(G) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied, to the extent reasonably available to the mechanical licensing collective:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be included, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works.

(c) Unmatched musical works. With respect to musical works (or shares thereof) where the copyright owners have not been identified or located, the musical works database shall include, to the extent reasonably available to the mechanical licensing collective:

(1) Information regarding the musical work:

(i) Musical work title(s), including any alternative or parenthetical titles for the musical work;

(ii) The ownership percentage of the musical work for which an owner has not been identified;

(iii) If a musical work copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license;



- (iv) The mechanical licensing collective's standard identifier for the musical work;
- (v) ISWC;
- (vi) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for unmatched musical works;
- (vii) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;
- (viii) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter and administrator;
- (ix) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and
- (x) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied:

- (i) ISRC;
- (ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;
- (iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be included, but not the numerical identifier;
- (iv) Featured artist(s);
- (v) Playing time;
- (vi) Version;
- (vii) Release date(s);
- (viii) Producer;
- (ix) UPC; and
- (x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works."

*§210.31, Title 37, Code of Federal Regulations'*

European Union:

"Capacity to process multi-territorial licences

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works has sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the

administration of such licences, including for the purposes of identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.

2. For the purposes of paragraph 1, a collective management organisation shall comply, at least, with the following conditions:

(a) to have the ability to identify accurately the musical works, wholly or in part, which the collective management organisation is authorised to represent;

(b) to have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding rightholders for each musical work or share therein which the collective management organisation is authorised to represent;

(c) to make use of unique identifiers in order to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or Union level;

(d) to make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.”

*Article 24, EU Directive 2014/26/EU*

### 10.3.2 Stakeholders' organizations

CISAC:

“A CISAC Member shall [...] have at its disposal effective machinery for the collection and distribution of Income to Creators and, where relevant, publishers [...].”

Binding Resolutions on the use of common information system (e.g. CIS-Net) and identifiers (e.g. IPI and ISWC)

- IPI

“Each Member shall:

a. ensure that it enters Affiliate Information in respect of each of its Affiliates into the IPI System and that such Affiliate Information is comprehensive, accurate and up-to-date;

b. ensure that it enters the IPI Number in respect of the Affiliates of its Sister Societies into its Database;

c. use the IPI Number contained within the IPI System as the basis of any Documentation and Affiliate Information exchange between it and each Sister Society;

d. refrain from allocating a new IPI Number to any Interested Party who already has an existing IPI Number contained within the IPI System; and

e. use the IPI System in accordance with the IPI General Description and Business Rules.”

- ISWC

“Where:

a. a CISAC Member administering the performing right makes Documentation of a Musical Work which falls within its Repertoire available to a Sister Society; and

b. a Creator of such Musical Work is one of such Member's Affiliates, or

- c. a CISAC Member administering the mechanical right makes Documentation of a Musical Work which falls within its Repertoire available to a Sister Society, providing that
  - (i) there is no Member administering the performing right, or
  - (ii) the Member administering the performing right either does not have the means to assign an ISWC or has simply not assigned an ISWC at the point when all creators in the work can be identified; and
- d. The CISAC Member is able to identify all Creators associated with such Musical Work, then such CISAC Member shall:
  - e. ensure that an ISWC has been assigned to such Musical Work; and
  - f. abide by the ISWC Business Rules.”

- o Contribution to CIS-Net
  - “Where a Member is in possession of Minimum Mandatory Information on a Musical Work which either falls within its Repertoire, or has been used within its territory, it shall ensure that:
    - a. it enters such Minimum Mandatory Information into CIS-Net; and
    - b. such Minimum Mandatory Information is comprehensive, accurate and up-to-date.”

*CISAC Professional Rules and Binding Resolutions*

IMPALA:

- “iv. ISRC codes (...) must be established as sufficient for correct payment.
- v. Societies to refuse multiple ISRC registrations for the same track. Societies to pay registered ISRC owners only (...).
- x. A global track based database should be top priority with neutral management and equal treatment for the majors and the SMEs in terms of approval of database build/functionality, membership, management fees, access to data and participation in earnings. Local repertoire should be included on an equal basis.”

*IMPALA Collecting Society Code of Conduct*

SCAPR:

- “CMOs<sup>46</sup> shall continually strive for the development of systems for the identification of rightsholders and uses and for the trans-border exchange of information and data enabling individual distribution according to the principles mentioned above.”

*Article 12, SCAPR Code of Conduct*

## 11. Development of staff skills and awareness

### 11.1 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.

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<sup>46</sup> A PMO (Performers' Collective Management Organisation) is a CMO that represents the rights and interests of performers.

A CMO should take reasonable steps to ensure that its employees and agents are aware of, and at all times comply with the applicable conflict of interest prohibitions, code of conduct, regulation or legislation.

### **11.2 Good practice tools**

*83. 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.*

*84. 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 Rights Holders, Users and the general public.*

## 11.3 Examples<sup>47</sup>

### 11.3.1 Member States

Türkiye:

“Public Awareness activities will be organized for the improvement of the licensing system and collecting societies.”

*Article 566.1, Decision No. 1396 of the Grand National Assembly on the approval of the Twelfth Development Plan (2024-2028)*

“The training activities are conducted by Copyright Training Center which is established within the Ministry of Culture and Tourism.”

*Article 566.2, Decision No. 1396 of the Grand National Assembly on the approval of the Twelfth Development Plan (2024-2028)*

### 11.3.2 Stakeholders’ organizations

Australian Collecting Societies:

“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.”

*Australian Collecting Societies Code of Conduct*

CISAC:

“Each Member 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*

IFRRO:

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

*IFRRO Code of Conduct*

## 12. Complaints and dispute resolution procedures

### 12.1 Principles of Complaints and dispute resolution

#### 12.1.1 Explanation

CMOs should provide a clear and effective internal dispute resolution procedures, for disputes between a Member/Rights holder and a CMO or between Members and Rights Holders, in order to facilitate to settle the dispute on a voluntary agreement.

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<sup>47</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

CMOs, Members/Rights Holders and Users/Licensees should be also entitled to submit the dispute to court proceedings or other dispute resolution such as mediation, arbitration and expert determination.

*The WIPO Arbitration and Mediation Center offers ADR options to resolve disputes relating to copyright collective management outside the courts, including recommended contract clauses<sup>48</sup>.*

### **12.1.2 Good practice tools**

*85. CMOs should provide for clear, effective and affordable internal dispute resolution procedures.*

*86. CMOs 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.*

*87. Parties should be entitled to submit the dispute to a court or an other dispute resolution body, which ideally should have expertise in copyright and copyright valuation, where it exists.*

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<sup>48</sup> <http://www.wipo.int/amc/en/clauses/index.html>

### 12.1.3 Examples<sup>49</sup>

#### 12.1.3.1. Member States

Brazil:

“CMOs must establish rules to find expeditious and efficient solutions for cases on conflicts regarding directory information that result in retention of distribution of values to owners of works, interpretations or phonograms.”

*Article 15(3), Decree no. 9.574, of November 22, 2018*

Sweden:

“A collective management organisation must have effective procedures for handling complaints from rights holders and from other collective management organisations with which the organization has entered into an agreement referred to in Chapter 8 § 1.

The organisation must respond in writing to complaints received. If the organisation does not comply with a complaint, the organisation must state the reasons for this.”

*Chapter 10 § 8 of the Swedish Act on collective management of copyright*

Türkiye:

“Societies shall have a liability to take the administrative and technical measures required for effectively, quickly and accurately resolving the complaints regarding the society’s procedures and operations, submitted by their members, the organizations with which they have signed representation agreements, and the users.”

*Article 55, Regulation on Collecting Societies in the Field of Copyright*

United States of America:

“In the U.S., the regular rate setting procedures for certain compulsory licenses use a willing buyer, willing seller standard when setting the rate.”

*Sections 114 and 115, U.S. Copyright Act*

“[...] The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other 2 Copyright Royalty Judges, 1 shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics.”

*Section 802(a)(1) U.S. Copyright Act*

Venezuela:

“To ensure the exercise of administrative and other functions pertaining to registration, surveillance and inspection as provided for in this Law, the National Directorate for Copyright has been created under the Ministry that has given jurisdiction over these matters, by virtue of the law organizing the Central Administration. That Directorate shall: (...)

(6) Act as arbitrator, when requested by the interested parties, in conflicts arising between right holders; between CMOs; and between CMOs or right -holders and users of works, products or productions protected by this Law.”

*Article 130, Copyright Act 1993*

European Union:

“Member States shall ensure that a collective management organisation makes public at least the following information: [...] the complaint handling and dispute resolution procedures available in accordance with Articles 33, 34 and 35.”

"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 21(1) j), and 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*

### **12.1.3.2 Stakeholders organizations**

CISAC:

“Each Member shall resolve any dispute which arises between it and:

<sup>49</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.



- a. one of its Affiliates in accordance with the provisions of its affiliation agreement with such Affiliate and in accordance with the law governing such agreement; and
- b. each Sister Society in accordance with the provisions of the contract for the time being in force between such Societies and with the law governing such Contract.”

*CISAC Professional Rules*

IFRRO:

"RROs shall '1.1.5 organise and publicise appropriate procedures to manage complaints and resolve disputes;'"

*Article 1, IFRRO Code of Conduct*

WIPO Arbitration and Mediation Center:

The WIPO Arbitration and Mediation Center (WIPO Center) (<http://www.wipo.int/amc/en/>) provides alternative dispute resolution (ADR) advice and case administration services to help parties resolve disputes arising in the area of collective management outside the courts.

In this regard, the WIPO Center collaborates with copyright authorities in the promotion of the use of ADR for copyright disputes (<http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/>).

The WIPO Center also collaborates with relevant stakeholders and organizations, including the Association of International Collective Management of Audiovisual Works (AGICOA) and the *Entidad de Gestión de Derechos de los Productores Audiovisuales* (EGEDA) to provide adapted mediation and arbitration procedures for disputes involving CMOs and their members (<http://www.wipo.int/amc/en/center/specific-sectors/collecting-societies/>).

## 12.2 Foundation for a CMO to initiate dispute resolution proceedings on behalf of Rights Holders

### 12.2.1 Explanation

It could be important for a CMO to have the possibility to initiate proceedings for a dispute resolution, as Users/Licensees may not always comply with the agreed terms and conditions of a license agreement or refuse to take up a license. The legal standing is determined by national regulatory framework, including national copyright law or general civil or criminal law, and/or by the agreements between a CMO and the Rights Holders.

### 12.2.2 Good practice tools

88. A CMO may be able to initiate judicial, administrative and other proceedings for a dispute resolution on behalf of the Rights Holders and for rights it is mandated to manage, in accordance with the national regulatory framework and/or the agreements with the Rights Holders.

12.2.3 Examples<sup>50</sup>

## 12.2.3.1 Member States

## National Statutory Framework

Brazil:

“With the act of affiliation, [CMOs] become agents of their associates for the practice of all necessary acts for the judicial or extrajudicial defense of their copyrights, as well as for the activity of collecting these rights.

§ 15 Copyright holders may personally practice the acts referred to in the main section [...], upon communication to the association to which they are affiliated, with at least 48 (forty-eight) hours in advance of their practice.”

*Article 98, Law No. 9.610 of February 19, 1998 (Law on Copyright and Neighboring Rights, as amended up to Provisional Measure No. 907 of November 26, 2019)*

China:

“Copyright owners or owners of the rights related to the copyright may authorize collective administration organizations to exercise their rights or rights related to the copyright. A collective administration organization of copyrights established in accordance with the law is a not-for-profit legal person, which may, upon authorization, claim rights in its own name for the copyright owners or the copyright-related right owners, participate as a party in litigation, arbitration or mediation activities concerning the copyright or copyright-related rights.”

*Article 8, Paragraph 1, of the Copyright Law of China (enacted in 2020)*

“The term “copyright collective administration” in these Regulations means centralized exercising of relevant rights of right owners by a copyright collective administration organization with the right owners’ authorization and, in its own name, conducting of the following activities:

(4) – to participate in litigation or arbitration proceedings concerning copyright or rights related to copyright.”

*Article 2 (4), Regulations on Copyright Collective Administration (2005)*

France:

Article 1. Duly constituted collective management organizations may take legal action in the defense of rights for which they have a statutory responsibility and to safeguard the material and moral interests of their members, in particular with regard to professional agreements that concern them.

*Article L321-2, Intellectual Property Code, as amended by Ordinance No. 2016-1823 of December 22, 2016*

Hungary:

Section 8 With the exception of the case specified in section 11 (“non-commercial licences”), any royalty payment to, or an agreement with, any persons or organisations other than the collective management organisation representing the relevant

copyright work or subject-matter protected by related rights shall not be effective against the collective management organisation and the rightholder it represents, and shall not be exempt from the legal consequences of infringing copyright and related rights.

Section 9 (1) A collective management organisation shall be deemed to be the rightholder of the copyright or related right for the purposes of their exercise and enforcement before a court of law. No other rightholder needs to participate in the lawsuit for the collective management organisation to assert its claim before a court. *Act XCIII of 2016 on collective management of copyright and related rights, Chapter II Fundamental Rules of Collective Management*

The Netherlands:

“The equitable remuneration referred to in article 7 shall be paid to a representative legal person designated by Our Minister of Justice, who shall be exclusively entrusted with the collection and distribution of such remunerations. The legal person referred to in the preceding sentence shall represent the rightholders at law and otherwise in matters relating to the level and collection of the remuneration and the exercise of the exclusive right.”

*Article 15 (1), Neighbouring Rights Act, 1993*

Slovenia:

In the scope of its activity, a collective management organisation shall:

[...]

9. seek protection of copyrights before courts and other state authorities and submit the invoices for rights so enforced to authors  
*Article 16 (1), Act Regulating Collective Management of Copyright and Related Rights*

Spain:

Management organizations authorized under this Title may, in accordance with their own statutes, exercise the rights entrusted to them and assert them in any administrative or judicial proceedings.

In order to establish its legal standing, the management organization shall be required at the beginning of proceedings to provide only a copy of its statute and a certificate attesting that it has been duly authorized. The defendant may challenge the complaint only on the basis of the absence of representation, authorization received from the holder of the exclusive right or payment made of the corresponding remuneration.

*Article 150 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Russian Federation:

“Organisation managing rights on a collective basis are entitled to present claims in court either on behalf of right holders or on their

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<sup>50</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

own behalf, and also to commit other legal actions required for protecting the rights that have been transferred thereto for management on a collective basis.

An accredited organisation is also entitled to present claims in court on behalf of an indefinite group of right holders as may be required for protecting the rights managed by this organisation..“

*Article 1242 (5), Civil Code of the Russian Federation*

“A CMO which has received an authorization is entitled to present claims in the court on behalf of an indefinite group of RHs as may be required for protecting the rights managed by the CMO.“

*Article 1242 (5), Civil Code of the Russian Federation*

Zimbabwe:

“Presumption regarding registered collecting society

In any civil or criminal proceedings relating to copyright in any work, an entry in the Register showing that a collecting society is registered in terms of Part X in respect of the class of works to which the work concerned belongs shall be prima facie proof that the society represents the owner of the copyright in the work concerned.”

*Section 125, Copyright and Related Rights Act*

### **Agreements**

*Entidad de Gestión de Derechos de Propiedad Intelectual (AGEDI):*

“By virtue of this contract, AGEDI is authorized to exercise on behalf of the owner the rights mentioned in the first clause, in accordance with the provisions of its Statutes.

[...] Specifically, this contract authorizes AGEDI to:

[...]

Exercise the appropriate actions, both in court and outside of it, in defense of the rights of the owner, as well as settle with regard to and desist from said actions as per the procedural approach.”

*Article 3 of the membership agreement*

Australasian Performing Right Association (APRA) and Australasian Mechanical Copyright Owners Society (AMCOS):

Pending any assignment in accordance with Article 17(a) and insofar as it may not extend, every member, by virtue of his election, grants to the Association for and during the period of his membership, subject however to earlier or later termination as may be provided by these Articles, in his name or in that of the Association, but at the Association’s sole charge and expense, the sole power and authority in respect of the rights to be administered by the Association:

To institute and prosecute proceedings against all persons infringing such rights and, if the Association at its discretion thinks fit, to defend or oppose any proceedings taken against any member in respect of such works, and to compound, compromise, refer to arbitration or submit to judgement in any such proceedings, and generally to represent the member in all matters concerning such rights.

*Article 17 (e) (iv) (assignment), Articles of Association*

Indian Performing Right Society Limited (IPRS):

To the extent of and subject to the terms of the Member's Deed of Assignment, every Member by virtue of his/her being admitted as a Member, gives/grants to the Society (IPRS), for and during the period of Membership in his/her name or in that of the Society but at the Society's sole charge and expense, the sole power and authority:

To institute and prosecute proceedings against all persons infringing the said rights (Performing Right, Mechanical Right) and, if the Society in its discretion thinks fit, to defend or oppose any proceedings taken against any Member in respect of such rights and works, and to compound, compromise, refer to arbitration or submit to judgement in any proceedings, and generally to represent the Member in all matters concerning the said rights (Performing Right, Mechanical Right);

*Article 7 (e) (iv), Articles of Association*

Hungarian Recording Industry Association (MAHASZ):

2. Scope of the assignment

2.1. With the express consent of the Beneficiary in this Agreement, the Association exercises the following property rights and fee claims (Articles 2 and 3 of the Notice):

I. broadcasted in the programs of radio and television organizations, included his own program in the program of those broadcasting to the public via cable, and on video or audio media existing fee claim with regard to the private copying of audio recordings placed on the market (Szt. § 20);

II. existing sound recording producer's fee claim with regard to the broadcasting of sound recordings or a copy made of them for commercial purposes and their communication to the public in any other way (Szt. § 77);

III. exclusive non-commercial reproduction of the sound recording right of authorization (Szt. § 76, paragraph (1) point a)).

2.2. The Association in 2.1. with regard to the rights defined in point 2.1 performs the following collective rights management activities for the benefit of sound recording producer rightsholders with respect to their adjacent legal achievements (i.e. sound recordings):

[...]

- action against infringement of copyright or related rights (I., II., III.);

[...].

*Article 2 of the mandate agreement.*

Mechanical-Copyright Protection Society (MCPS):

Based on the MCPS Membership Agreement, Section 11.1.1, MCPS shall have the right at its own expense but subject to Clause 7. 7 to bring, defend, take over or intervene in any proceedings of whatsoever nature which relate in any way to the Rights and to conduct, maintain, and continue any such proceedings before any Court of Justice or Tribunal or other body having appropriate jurisdiction and to submit any such matter to arbitration.

MCPS shall have the right to use the name of the Member as plaintiff, defendant or intervener in any proceedings to which this

Clause applies but only after the Member has consented thereto. Consent is not required where the proceedings are representative proceedings and the name of the Member is not specifically referred to as plaintiff, defendant, or intervener whether or not in representative proceedings MCPS undertakes to keep the Member informed of progress in such proceedings on a reasonable basis and to consult with the Member prior to compromising or abandoning such proceedings.

Where MCPS has declined to take proceedings for infringement of the Rights in any Work or the recovery of any royalties or fees due in respect thereof, the Member shall then have the right on written notice to MCPS to take such proceedings at the Member's own expense. In this event any damages for such infringement and for any such royalties and fees recovered by the Member shall belong to the Member absolutely and MCPS shall not be entitled to commission thereon.

*Section 11, Membership Agreement*

Southern African Music Rights Organisation (SAMRO):

It is understood that the organisation (SAMRO) shall hold the assigned rights for the purpose of empowering itself to exclusively license and enforce the said rights in its own name on the behalf of and for the benefit of the assignor during the residue of the terms for which the said rights shall respectively subsist, or during such time as the said rights remain vested in or controlled by the organization (SAMPRO) in accordance with the provisions of its Memorandum of Incorporation for the time being in force.

*Article 2C, Deed of Assignment of Copyright*

Society of Composers, Authors and Music Publishers of Canada (SOCAN):

Society (SOCAN) and any Society with which society (SOCAN) has a reciprocal agreement shall have the right to institute or defend in its own name or in the name of the member, or otherwise, legal proceedings in respect of the rights assigned and member shall not be required to pay for any of the costs, charges and expenses of those proceedings.

*Article 8. 3, Writer Membership Agreement and Assignment of Performing Rights*

**12.2.3.2 Stakeholders' organizations**

AGICOA:

AGICOA's purpose consists in the worldwide collective management of copyright and of rights related to copyright on behalf of producers of audiovisual works, their successors in title and entities representing them who are Members and/or Declarants of AGICOA, in the meaning of Article 5 of the present By-Laws, for their collective benefit.

*Article 2 Purpose, By-laws of AGICOA*

5. In order to achieve its purpose, AGICOA may:

5.5. Conclude out-of-court settlements, negotiations or mediation procedures, initiate litigations in court of law and participate in arbitration procedures as required to execute its purpose and mandates.

*Article 3 Mandates and Activities*

IFPI:

“2.1 The [right holder] authorises [CMO]

2.1.1 to develop and publish licence schemes in relation to the rights [CMO] is authorised to administer according to Clause 2.1;  
2.1.2 to negotiate and agree with licensees (either individually or in groups) on the terms and conditions for any licences, including the licence fees payable by those licensees;

2.1.3 to make applications to the competent authority or court in respect of the exercise of the rights administered by [CMO] by virtue of this Authorisation (including in respect of any licence schemes), and to defend or otherwise participate in any other relevant proceedings related to the rights administered by [CMO] by virtue of this Authorisation in the competent authority or court; and

2.1.4 to commence, defend or otherwise participate in any legal proceedings, or take any other action, that [CMO] considers necessary or desirable for the purpose of: (a) collecting or recovering any licence fees or other amounts payable by any person in connection with the exercise of the rights administered by [CMO] by virtue of this Authorisation; or (b) preventing any unauthorised exercise or exploitation by any person of the rights administered by [CMO] by virtue of this Authorisation.

2.2 For the purpose of Clauses 2.2.3 and 2.2.4, the Member appoints [CMO] as its attorney and it authorises [CMO] to conduct any proceedings in its name if [CMO] considers it appropriate to do so.

2.3 The [right holder] reserves to itself all rights not expressly granted to [CMO] under this Authorisation (including, for the avoidance of doubt, the right to take any action that the [right holder] considers necessary or desirable for the purpose of preventing any unauthorised use of the rights and repertoire [CMO] is authorised to administer).”

*Sample clauses in agreements between record companies and IFPI affiliate MLCs*

## 13. Supervision and monitoring of CMOs

### 13.1 Explanation

CMOs should be governed, and the CMO management supervised and controlled, by the Rights Holders who own the rights and who have made a decision to entrust the management of their rights to the CMO.

To make sure that the CMOs operate in the best interest of their Members, governments may play an essential role in introducing the regulatory framework for the establishment, operation, governance and supervision of CMOs, including standards for good governance, financial management, transparency and accountability.

It is equally essential that the regulators or supervisory bodies' role reflects the need to create and maintain the right framework for efficient, transparent and accountable collective management. Governments should not unnecessarily become involved in the operation of CMOs, but should, as far as possible, ensure proper management by the CMOs, through impartial and transparent means. Supervision of CMOs should be fair, transparent and proportionate, and governments should avoid setting requirements which place disproportionate administrative and financial burdens on CMOs.

As part of a national regulatory framework, governments may choose to require a CMO to obtain approval from a competent national authority as a prerequisite to operate in the country. In that case, the national legislation should provide for a transparent and non-discriminatory approval procedure, based on clear and objective criteria.

If an approved CMO fails to meet the required criteria, its governing bodies should first be requested to take action to redress the situation. Conditions for withdrawal of the approval and other sanctions should be clear and proportionate and used only in last resort.

CMOs, Users and governments can also put in place a supervisory and monitoring mechanism by mutual agreement. In this scenario, it is customary to adopt a code of conduct, to ensure that all relevant parties clearly understand their obligations and rights.

### 13.2 Good practice tools

89. *In the case of self-regulation and monitoring, a working group may be established, comprising all stakeholders, including, but not limited to, Rights Holders, CMOs, Users and government. The working group should collaborate on the drafting of a code of conduct, which should be mutually agreed before adoption.*

90. *Legal provisions on supervision and monitoring or self-regulatory mechanisms should include sections on:*

- a. the role and functions of CMOs;*
- b. transparency;*
- c. accountability and consultation;*
- d. governance structures;*
- e. general principles of licensing;*
- f. general principles of distribution;*
- g. general principles on operating expenses and deductions;*
- h. data protection;*
- i. dispute resolution.*

91. *If a CMO approval process is introduced, the national legislation should provide for a transparent and non-discriminatory process based on clear and objective criteria.*

92. *Any sanctions should be applied in last resort and should be proportionate.*



13.3 Examples<sup>51</sup>

## 13.3.1 Member States

Brazil:

"The exercise of the collection activity referred to in art. 98 will depend on previous qualification in a Federal Public Administration body, as set forth in regulations, whose administrative process will observe: [...]"

"II - the demonstration that the requesting entity meets the necessary conditions to ensure an efficient and transparent administration of the rights entrusted to it and a significant representativity of works and registered owners, upon proof of the following documents and information: [...]"

"f) annual report of its activities, when applicable; [...]"

"i) annual external audit report of its accounts, as long as the entity has operated for more than one (1) year and the audit is demanded by the majority of its members or by a trade union or professional association, pursuant to art. 100 [...]"

*Article 98-A, Law on Copyright and Neighboring Rights*

"The trade union or professional association that brings together members of a collective copyright management association may, once a year, at its expense, after 8 (eight) days' notice, to supervise, through an independent auditor, the accuracy of the accounts rendered by this authorial association to its represented."

*Article 100, Law on Copyright and Neighboring Rights*

Ecuador:

"The competent national authority for intellectual property matters may, *proprio motu* or at the request of an interested party, conduct inspection and monitoring visits to verify the proper functioning of collective management organizations and to conduct summary proceedings or investigations in cases of infringement of the regulations governing them.

In any event, the competent national authority for intellectual property matters may, either *proprio motu* or at the request of an interested party, conduct inquiries and investigations and intervene with regard to a collective management organization if it fails to comply with the applicable regulations. Such intervention shall cover all areas of the collective management organization. Once the intervention has taken place, acts and contracts must be authorized by the competent national authority for intellectual property matters to be valid.

The intervention may be ordered by the competent national authority for intellectual property rights matters, after an investigation and by a properly reasoned administrative act, as a precautionary measure prior to or during the conduct of an investigation or inquiry concerning a collective management organization. For this purpose, the competent national intellectual property authority shall appoint one of its officials or another person who is technically qualified to perform the task as controller. The intervention shall last until the conclusion of the summary

<sup>51</sup> A list of examples of how a particular topic is addressed in codes of conduct, regulation or legislation following different approaches. It should be noted that the list is therefore provided for illustrating purposes only.

proceedings or investigation. In cases identified by the competent national intellectual property authority, intervention may be ordered as a measure to ensure compliance with the penalties imposed on the collective management organization for infringements of the regulations governing intellectual property rights, and until such time as they are remedied.”

*Article 258, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

“If the collective management organization fails to comply with the provisions of this Code, the respective regulation or its Statutes, in accordance with the procedure in the previous article; and does not remedy the non-compliance within the term established by the competent national authority, the authority may impose any of the sanctions laid down in this article, having regard to the seriousness of the infringement or the recidivism.

Sanctions shall be imposed taking into account the following criteria: the seriousness of the non-compliance and failure to follow the rules set out in this Code, together with other applicable rules, and whether the violation was single or repeated.

In case of concurrence of misconduct, the penalty for the most serious misconduct will be imposed. If they are all of equal severity, the maximum penalty will be imposed.

The sanctions are as follows:

1. written reprimand;
2. fine;
3. suspension of the operating permit for a period of up to six months; and
4. cancellation of the operating permit.

When a collective management organization is sanctioned, it shall inform its members of the scope of the sanction and the competent national authority for intellectual property matters shall publicize the sanction as stipulated by the relevant regulation. In the event of non-compliance with this provision, the competent national authority for intellectual property rights may sanction it with the fine stipulated in the regulations for this purpose.

Where the infringements are the result of willful misconduct or gross negligence on the part of the Director General, managers, members of the Board of Directors or Monitoring Committee, the collective management organization shall take further action against the officials for damages by way of a fine under this Article.”

*Article 259, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

“The competent national authority for intellectual property matters may, *proprio motu* or at the request of an interested party, carry out inspections or proceedings to establish non-compliance with the rules of this Code and other rules applicable to the operation of collective management organizations by the managers, the Board of Directors and the Monitoring Committee. In the event that responsibilities are established by the competent national authority for intellectual property rights matters, it shall provide that the collective management organization shall proceed to impose the following sanctions:

1. written reprimand;

2. fine; and
3. dismissal.”

*Article 260, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

“Where the suspension of the operating permit is decreed, the collective management organization shall retain its legal personality solely for the purpose of remedying the breach. If the company does not remedy the breach within six months after the suspension has been decreed, the competent national authority for intellectual property rights shall definitively cancel the company’s authorization to operate.”

*Article 261, Organic Code on the Social Economy of Knowledge, Creativity and Innovation*

Germany:

“Supervisory authority

(1) The supervisory authority shall be the German Patent and Trade Mark Office.

(2) The supervisory authority shall perform its duties and exercise its powers only in the public interest.”

*Section 75, German Collecting Societies Act, 2017*

“Powers of the supervisory authority

(1) The supervisory authority may take all necessary measures to ensure that the collecting society properly fulfils the obligations incumbent upon it under this Act.

(2) The supervisory authority may forbid a collecting society from continuing its business operations if the collecting society

1. acts without authorization or

2. repeatedly contravenes one of the obligations incumbent upon it under this Act, despite a warning from the supervisory authority.

(3) The supervisory authority may require the collecting society to provide information at any time regarding all matters concerning the management and to produce the books and other business documents.

(4) The supervisory authority shall be entitled to participate, through entitled persons, in the general assembly of members as well as in the meetings of the supervisory board, of the management board, of the supervisory body, of the representation of delegates (section 20) and of all the committees of these bodies. The collecting society shall inform the supervisory body in good time of the dates of the meetings referred to in the first sentence.

(5) Where there is reason to believe that a person authorized by law or under the statute to represent the collecting society does not possess the reliability needed in the exercise of his activity, the supervisory authority shall set the collecting society a deadline for his dismissal. The supervisory authority may prohibit him from continuing his activity until the expiry of this deadline if this is necessary to prevent serious adverse effects.

(6) Where there are indications that an organization requires authorization in accordance with section 77, the supervisory authority may require the information and documents needed to examine the obligation to obtain authorization.”

*Section 85, German Collecting Societies Act, 2017*

Guatemala:

“[...] Collective management societies shall be subject to inspection and supervision by the State, acting through the Intellectual Property Registry.”

*Article 113, Law on Copyright and Related Rights*

“The Intellectual Property Registry is authorized to inspect and supervise collective management societies, examine their books, seals, documents and request the information it deems relevant, in order to verify compliance with legal and statutory regulations. [...]”

*Article 61, Law on Copyright and Related Rights*

“[...] Without prejudice to the financial control rules laid down in the statutes, the society’s financial statements and its accounting entries and documentation shall be subject to inspection and a ruling by the external auditor. The external audit report, the financial statements and the accounting entries and documentation shall be made available to the membership 15 days prior to the holding of the General Assembly concerned.”

*Article 120, Law on Copyright and Related Rights*

Italy:

“1. [...] the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority), supervizes compliance with the provisions of this decree, exercising inspection and access powers and acquiring the necessary documentation.

2. Members of a collective management organization, the rights holders, users, collective management organizations and other interested parties shall report by electronic means to the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority), activities or circumstances that constitute violations of the provisions of this decree.”

*Article 40, Law-Decree No. 35/2017*

“1. Unless the fact does not constitute a crime, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority) shall apply administrative pecuniary sanctions [...] to any person who violates the obligations [...]. The same sanctions are also applied in the event of non-compliance with the measures relating to supervision or in the event of non-compliance with requests for information or those related to carrying out checks, or in the event that the information and documents acquired are untruthful and incomplete. In the event of particularly serious violations, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority) may suspend the activity of collective management organizations and independent management entities for up to six months or may order the cessation of the activity.

2. [...] In case of violations of particular gravity, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority) may suspend the activities of the collective management organizations and independent management entities for up to six months or may order the cessation of the activity.

3. In the event of multiple violations of the provisions sanctioned in subparagraphs 1 and 2, the more serious sanction provided increased up to one third shall be applied.

6. The Autorità per le garanzie nelle comunicazioni (Italian Communications Authority) regulates by its regulation to be issued within three months from the date of entry into force of this decree, the procedures aimed at ascertaining violations and the imposition of sanctions under its jurisdiction, ensuring the subjects involved the full knowledge of the investigative documents, the right to be heard in written and oral form, the minutes, and separation of inquiry functions and decision-making functions.”

*Article 41, Law-Decree No. 35/2017*

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*

Mexico:

“The Institute shall grant the authorizations referred to in Article 193 subject to the following conditions:

I. The statutes of the applicant collective management organization comply, in the opinion of the Institute, with the requirements laid down in this Law.

II. From the information provided and from the information that the Institute may gather, it may be concluded that the applicant collective management organization meets the necessary requirements to ensure the transparent and efficient administration of the rights the management of which will be entrusted to it; and

III. The operations of the collective management organization should be in the general interest of copyright protection, holders of economic rights and holders of related rights in the country.”

*Article 199, the Federal Law on Copyright*

Republic of Korea:

“The Minister of Culture, Sports and Tourism may demand a copyright trust service provider to submit a necessary report on the duties of the copyright trust service. In order to promote the protection of rights and interests of authors and the convenient use of works, the Minister of Culture, Sports and Tourism may issue necessary orders concerning copyright trust service.”

*Article 108(1)(2), Copyright Act*

“A copyright trust service provider shall, each year, report the business result of the preceding year and the business plan of the relevant year as stipulated by Ordinance of the Ministry of Culture, Sports and Tourism.”

*Article 52(1), Enforcement Decree of the Copyright Act*

“A copyright trust service provider shall prepare following matters as of the end of each month and make a report to the Minister of Culture, Sports and Tourism by the 10th of the following month: List of works, etc. under management of a copyright trust service provider; Information on the right to works; Contact information of a copyright trust service provider.”

*Article 52(3), Enforcement Decree of the Copyright Act*

Spain:

“Competences of Public Administrations.

1. In all cases, the Ministry of Culture and Sport shall be responsible for the following functions:

(a) Verifying compliance by management organizations and independent management entities with legal requirements at the commencement of activity and legally disqualifying them from operation, in accordance with the provisions of this Act.

(b) Approving statutory amendments submitted by management organizations that have the authorization provided for in Article 147, once such amendments have been approved by the respective general meeting and without prejudice to the provisions of other applicable rules. The management organization shall request approval from the Ministry of Culture and Sport within one month from the approval of the statutory amendment by its general meeting. Administrative approval shall be deemed granted unless a decision to the contrary is communicated within three months from the submission of the request.

(c) Receiving communications regarding the commencement of activity from management organizations based outside Spain and by independent management entities that provide services in Spanish territory, and communications regarding variation in the data contained therein. The Ministry of Culture and Sport shall maintain on its website an updated list of management organizations based outside Spain and independent management entities that have communicated the commencement of their activities in Spain.

2. The functions of inspection, oversight and control over intellectual property rights management organizations or independent management entities, including the exercise of sanctioning powers, shall be the responsibility of the Autonomous Community in the territory of which the organization or entity mainly carries out its ordinary business.

An intellectual property rights management organization or independent management entity shall be deemed to act mainly in a given Autonomous Community if its registered business address and the tax domicile of at least 50 percent of its members or, in the case of an independent management entity, of its principals are located in the territory of that Autonomous Community and the main area of collection of the remuneration for the rights managed by it is confined to that territory. The main area of collection shall

be understood as that from which more than 60 percent of the collection originates. Compliance with this condition may be reviewed every two years.

The Government, at the proposal of the Minister of Culture and Sport, shall establish by regulation the information obligations and mechanisms necessary for the coordinated and effective exercise of these functions.

3. The Ministry of Culture and Sport shall be responsible for the functions of inspection, oversight and control, including the exercise of sanctioning powers, over intellectual property rights management organizations, the entities under their authority and independent management entities, when the exercise of these functions does not fall to an Autonomous Community in accordance with the provisions of the preceding paragraph.”

*Article 155 of Royal Legislative Decree 1/1996, of April 12, 1996, approving the revised text of the Intellectual Property Act, regularizing, clarifying and harmonizing the applicable legal provisions on the subject*

Sweden:

“§ 2 The Patent and Registration Office may instruct a collective management organisation to provide the documents and information in general that are needed for supervision.

The Government or the authority designated by the Government may issue regulations that collective management organisations must submit certain information needed for supervision to the Patent and Registration Office.

§ 3 The Patent and Registration Office may intervene if a collective management organisation has disregarded its obligations under this Act.

An intervention takes place by issuing an order to take corrective action within a certain time.

An intervention due to a contractual condition that is contrary to this law may only take place through an injunction not to set the same or essentially the same conditions in similar cases in the future.

§ 4 If the Patent and Registration Office issues an injunction in accordance with this Act, the authority may combine the injunction with a fine.”

*Chapter 12 of the Swedish Act on collective management of copyright*

Türkiye:

“Collecting societies are under the supervision of the Ministry with regard to administrative and financial issues. The Ministry may itself always audit whether collecting societies are fulfilling their duties and obligations set out by this law, as well as asking the collecting societies to have this audit done by an 24 independent audit firm. A copy of reports issued by such audit firms on the audit they have carried out shall be sent to the Ministry.”

*Article 42/B, The Law on Intellectual and Artistic Works*

“Societies and federations shall be subject to inspection by the Ministry, on administrative and financial terms. The Ministry shall exercise this authority within the scope of public interest. Individual conflicts between the rightholders and the collecting societies,

which are not related to the functioning of collective rights management shall not be subject to inspection by the Ministry.”  
*Article 69, Regulation on Collecting Societies in the Field of Copyright*

European Union:  
"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*

### **13.3.2 Stakeholders' organizations**

CISAC:

“If a Member is legally required to obtain authorization from a statutory body in order to operate, then it shall ensure that it so obtains such authorization prior to so operating.”

“If a Member is appealing against the refusal of such statutory body to allow it to operate, it shall continue as a Member at least until the final appeal decision has been delivered.”

*CISAC Professional Rules*

## **Appendix 1**

### **International identifiers**

EIDR: The Entertainment Identifier Registry (EIDR) was created by the EIDR Association, a not-for-profit industry association that was founded to meet a crucial need across the entertainment supply chain for universal identifiers for a broad array of audiovisual objects. EIDR uniquely identifies an audiovisual object, which can be used for both physical and digital video objects that are part of the movie and television supply chain.

IPI: The purpose of the Interested Party Information (IPI) system is the globally unique identification of a natural person or legal entity with an interest in an artistic work across all



categories of works, different roles in relation to a work (composer, arranger, publisher, etc.) and the corresponding rights in a work.

**IPI System:** The IPI system and database are administered by the Swiss CMO SUISA in accordance with the CIS guidelines and standards established by CISAC. IPI System contains the names of all the Rights Holders in both of copyright protected works and public domain works. The collation and presentation of the information is standardized according to CIS regulations and supports the documentation, distribution and accounting processes of the member CMOs linked to the IPI system.

**IPN:** The International Performer Number (IPN) is a unique identifier assigned to a performer registered in the IPD.

**ISAN:** The International Standard Audiovisual Number (ISAN) is an ISO standard. It is a voluntary numbering system and metadata schema for the unique and persistent identification of any audiovisual works and versions thereof including films, shorts, documentaries, television programs, sports events, advertising, etc.

**ISBN:** The International Standard Book Number (ISBN) is essentially a product identifier used by publishers, booksellers, libraries, internet retailers and other supply chain participants for ordering, listing, sales records and stock control purposes. The ISBN identifies the registrant as well as the specific title, edition and format.

**ISNI:** The International Standard Name Identifier (ISNI) is an ISO standard, in use by numerous libraries, publishers, databases, and CMOs. It is used to uniquely identify persons and organizations involved in creative activities, as well as public personas of both, such as pseudonyms, stage names, record labels or publications.

**ISRC:** The International Standard Recording Code (ISRC), built by IFPI, enables recordings to be uniquely and permanently identified. ISRC helps to avoid ambiguity and simplifies the management of rights when recordings are used across different formats, distribution channels or products. The ISRC for a recording remains a fixed point of reference when the recording is used across different services, across borders, or under different licensing deals.

**ISSN:** The International Standard Serial Number (ISSN) role is to identify a publication, including newspapers, annual publications (reports, directories, lists, etc.), journals, magazines, collections, websites, databases, blogs on all media—print and electronic.

**ISWC:** The International Standard Musical Work Code (ISWC) is an ISO standard, and a unique, permanent and internationally recognized reference number for the identification of musical works.

**VRDB-ID:** A unique identifier assigned to a sound recording or an audio-visual work in VRDB.

### **Exchange formats and protocols**

**CRD:** The Common Royalty Distribution (CRD) is a CISAC standard reporting format. It is an Electronic Data Interchange format designed to facilitate the reporting of distributed royalties for CMO-to-CMO and CMO-to-members.

**CWR:** The Common Works Registration (CWR) is a CISAC standard format for the registration and revision of musical works. It is built for the communication data relating to musical works and specifically collection shares between publishers and composers in those works.

**DDEX:** The Digital Data Exchange, LLC (DDEX) is a not-for-profit, membership organization, and is focused on the creation of digital music value chain standards. DDEX was established by a consortium of leading media companies, music licensing organizations, Rights Holders, digital service providers and technical intermediaries.

**ONIX:** ONIX standards exist for books, serials, and licensing terms and rights information for literary published works. ONIX standards are designed to support computer-to-computer communication between parties involved in creating, distributing, licensing or otherwise making available intellectual property in published form, whether physical or digital.

**SDEG:** The SCAPR Data Exchange Guidelines (SDEG) is a protocol to allow two CMOs to exchange between them metadata for the transfer of performer's remuneration abroad.

### **Industry IT standards**

**AV Index:** The Audio-Visual Index (AV Index) contains information on audiovisual works. It allows CMOs to document and search information related to musical works used in audiovisual works in listings known as "cue-sheets". The AV Index database identifies the CMOs managing the cue-sheets for particular audiovisual works.

**Cis-Net:** Cis-Net is a network of databases built upon the CISAC's Common Information System (CIS) Standards. Each database constitutes a node within the overall network. There are three types of nodes: (i) Local nodes, maintained by individual CISAC member CMOs; (ii) Regional nodes, developed by regional groups of member CMOs; and (iii) WID Center, the CISAC database of musical works used by a large number of CMOs. The network can be accessed from a web-based search engine.

**IDA:** The International Documentation on Audiovisual works (IDA) index is an international centralized database facilitating the identification of audiovisual works and Rights Holders. The purpose of IDA is to simplify the identification of audiovisual works on an internationally-integrated basis and improve cross-border information exchanges by a local member CMO.

**IPD:** The International Performers Database (IPD) is a SCAPR tool to register individual performers and to assign a unique ID (the IPN) for the purpose of identifying individual performers in sound recordings and audio-visual works. Furthermore, the IPD contains information about the mandates a performer has given to CMOs on a territory, period and use type basis.

**VRDB:** Centralized system to enable SCAPR-members to more efficiently and accurately identify recordings, audio-visual works, usage of both and Performers' information necessary to properly run distributions locally. VRDB maximizes the flow of royalties exchanged between the member societies of SCAPR.

## Appendix 2

### List of legislation, regulations and codes of conduct compiled in this document

#### 1) Legislation

- **Albania:** [Law No. 35/2016 of March 31, 2016, on Copyright and Related Rights](#)
- **Andean Community:** [Decision No. 351 established the Common Regime on Copyright and Neighboring Rights, 1993](#)
- **Belgium:** [Code of Economic Law \(consolidated version of 2016\)](#) (French)
- **Bosnia and Herzegovina:** [Law on the Collective Management of Copyright and Related Rights, 2010](#)
- **Brazil:** [Law No. 9.610 on Copyright and Neighboring Rights, 1998 \(as amended by Law No. 12.853 of August 14, 2013\)](#)
- **Canada:** [Copyright Act \(R.S.C., 1985, c. C-42\) \(as amended up to June 22, 2016\)](#)
- **Chile:** [Law No. 17.336 on Intellectual Property \(as amended up to Law No. 20.750 on the Introduction of Digital Terrestrial Television\)](#) (Spanish)
- **Colombia:** [Law No. 44 of 1993 \(February 5\), amending and supplementing Law No. 23 of 1982 \(and amending Law No. 29 of 1944\)](#)
- **Côte d'Ivoire:** [Law No. 2016-555 of July 26, 2016, on Copyright and Related Rights](#) (French)
- **Dominican Republic:** [Law No. 65-00 on August 21, 2000, on Copyright](#)
- **Ecuador:** [Organic Code on the Social Economy of Knowledge, Creativity and Innovation, 2016](#) (Spanish)
- **European Union:** [Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market](#)
- **France:** [Intellectual Property Code \(consolidated version as of January 1, 2021\)](#)
- **Germany:** [Act on the Management of Copyright and Related Rights by Collecting Societies \(Collecting Societies Act, as amended up to Act of July 17, 2017\)](#)
- **Guatemala:** [Law on Copyright and Related Rights](#), Government agreement 233-2003
- **Italy:** [Law-Decree No. 35/2017](#) (Italian)

- **Japan:** [Law on Management Business of Copyright and Neighboring Rights \(Law No. 131 of November 29, 2000, as last amended by Law No. 68 of June 17, 2022\) \(Japanese\)](#)
- **Malawi:** [Copyright Act, 2016 \(Act No. 26 of 2016\)](#)
- **Mexico:** [Federal Law on Copyright \(consolidated text published in the Official Journal of the Federation on January 13, 2016\), last amended on July 1, 2020 \(Spanish\)](#)
- **Nigeria:** [Copyright \(Collective Management Organizations\) Regulations, 2007](#)
- **OAPI:** [Banqui Agreement Relating to the Creation of an African Intellectual Property Organization, Constituting a Revision of the Agreement Relating to the Creation of an African and Malagasy Office of Industrial Property \(Banqui \(Central African Republic\), March 2, 1977\)](#)
- **Pakistan:** [The Copyright Ordinance, 1962](#)
- **Paraguay:** [Law No. 1328/1998 on Copyright and Related Rights](#)
- **Peru:** [Copyright Law \(Legislative Decree No. 822 of April 23, 1996\)](#)
- **Republic of Korea:**
  - [Copyright Act \(Act No. 432 of January 28, 1957, as amended up to Act No. 14634 of March 21, 2017\)](#)
  - Enforcement Decree of the Copyright Act (Presidential Decree No. 1482 of April 22, 1959, as amended up to No. 28251 of Aug. 22, 2017)
  - Personal Information Protection Act (Act No. 10465, March 29, 2011, as amended up to Act No. 14839, Jul. 26, 2017)
  - Monopoly Regulation and Fair Trade Act (Act No. 3320 of December 31, 1980, as amended up to Act No. 15694 of June 12, 2018)
- **Senegal:** [Law No. 2008-09 of January 25, 2008, on Copyright and Related Rights](#)
- **Spain:** [Intellectual Property Law, approved by Royal Legislative Decree 1/1996 on 12 April 1996](#)
- **Sweden:** [Act \(2016:977\) on Collective Management of Copyright \(as amended up to Act \(2018:736\)\)](#)
- **Switzerland:** [Federal Act of October 9, 1992, on Copyright and Related Rights \(status as of July 1, 2023\)](#)
- **Uganda:** [Copyright and Neighbouring Rights Act, 2006](#)
- **United States of America:** [Copyright Law of the United States \(Title 17 of the U.S. Code\)](#)

- **Uruguay:** [Law No. 17616 of January 10, 2003, amending Law No. 9.739, relating to the Protection of Copyright and Related Rights](#)
- **Venezuela:** [Law on Copyright of August 14, 1993](#)

## 2) Regulation

- **Brazil:** [Decree No. 9,574, of November 22, 2018 \(Portuguese\)](#)
- **China:** [Regulations of December 22, 2004, of Copyright Collective Management \(promulgated by Decree No. 429 of December 28, 2004 of the State Council of the People's Republic of China\)](#)
- **Colombia:**  
[Decree No. 0162 of 1996 \(January 22\), by which the Andean Decision No. 351 of 1993 and Law No. 44 of 1993, in connection with the Collecting Societies Management of Copyright and Related Rights is regulated](#) (Spanish)  
[Decree No. 3942 of 2010, by which regulates Law 23 of 1982, 44 of 1993 and Article 2 c of the Law 232 of 1995, relating to copyright or related rights collecting management organization, the collecting entity and other provisions](#) (Spanish)
- **Italy:**  
[Resolution No. 396/17/CONS \(Reg. implementing Legislative Decree No. 35/2017\)](#)  
[Resolution No. 95/24/CONS \(Reg. implementing Articles 110-ter et seq. of the Copyright Law, as amended by Legislative Decree No. 177/2021\)](#)
- **Nigeria:** [Copyright \(Collective Management Organizations\) Regulations, 2007](#)
- **Spain:** [Consolidated Text of the Law on Intellectual Property, Regularizing, Clarifying and Harmonizing the Applicable Statutory Provisions \(approved by Royal Legislative Decree No. 1/1996 of April 12, 1996\)](#)
- **Türkiye:** [Regulation on Collecting Societies in the Field of Copyright published in the Official Gazette No. 31802 dated 7/4/2022](#)
- **United States of America:** [Title 37 Code of Federal Regulations §210, Compulsory License for Making and Distributing Physical and Digital Phonorecords of Nondramatic Musical Works](#)
- **Venezuela:** [Regulation to the Statutory Deposit Law, 1997](#) (Spanish)

## 3) Codes of conduct

- **AGICOA:** [AGICOA by-laws](#)

- **Australian CMOs:** [Australian Code of Conduct for Collecting Societies](#)

The Australian Code of Conduct for Collecting Societies was developed and adopted by Australian CMOs in 2002. The Code, which is reviewed every three years, seeks to ensure that CMOs protect the interests of creators and users of creative works.

Further information: <https://www.copyrightcodeofconduct.org.au/code>

- **BCC:** [The British Copyright Council's Principles of Good Practice for Collective Management Organizations](#)

The British Copyright Council is a not-for-profit organization that provides a forum for discussion of copyright law and related issues at UK, European and International levels.

Further information: <https://www.britishcopyright.org>

- **CISAC:** [Statute](#), [Professional Rules](#)

CISAC, the International Confederation of Societies of Authors and Composers, is the world's leading network of authors' societies (also referred to as Collective Management Organizations, or CMOs). CISAC protects the rights and represents the interests of creators worldwide. With 230 member societies in 121 countries, CISAC represents over four million creators of music, audio-visual, drama, literature, and visual arts.

Further information: [www.cisac.org](http://www.cisac.org) | Twitter: [@CISACNews](#) | Facebook: [CISACWorldwide](#)

- **IFPI:** [Code of Conduct](#) for Music Industry MLCs

IFPI, the International Federation of Phonographic Industry, is the voice of the recording industry worldwide, representing over 8,000 record company members across the globe. They work to promote the value of recorded music, campaign for the rights of record producers and expand the commercial uses of recorded music around the world. IFPI works with music licensing companies (collective management organizations) across the world to help ensure that those who produce and perform music used for public performance and broadcast are fairly rewarded for their work.

Further information: [www.ifpi.org](http://www.ifpi.org) | Twitter: @IFPI\_org | Facebook/LinkedIn: IFPI

- **IFRRO:** [Code of Conduct](#)

IFRRO, the International Federation of Reproduction Rights Organisations, is the international network of collective management organisations operating in the field of text and image (known as Reproduction Rights Organisations, or RROs<sup>52</sup>). IFRRO has 156 member organisations from over 80 countries. 106 are RRO members and 50 are Creator or Publisher Association members.

Further information: [www.ifrro.org](http://www.ifrro.org)

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<sup>52</sup> Reproduction Rights Organizations (RROs) are collective management organizations which act as intermediaries/facilitators between rightsholders\* and users in the fields of reprographic reproduction and certain digital uses.

- **IMPALA:** [Collecting Society Code of Conduct](#)

Formed in 2000 by prominent independent music companies and national trade associations, IMPALA is a non-profit making pan-European organization with a scientific and artistic purpose, dedicated to small, micro and medium sized music companies and self releasing artists. It has nearly 6,000 members.

Further information: [www.impalamusic.org/](http://www.impalamusic.org/)

- **SCAPR:** [Code of Conduct](#)

SCAPR, the Societies' Council for the Collective Management of Performers' Rights, founded in 1986, and based in Brussels, Belgium is an umbrella association representing 60 Performers' Collective Management Organizations (CMOs). Their members represent over a million performers (singers, musicians, actors, conductors, dancers) from most of the world nations. SCAPR's mission is to foster effective co-operation between performer CMOs and to support, promote, and maintain a worldwide, cross-border system of collecting and distributing performer royalties that is fair, efficient, accurate, transparent and continually improving.

Further information: [www.scapr.org](http://www.scapr.org)