



TAG Compendium of Good Practices Concerning the Collective Management of Copyright and Related Rights

Observations and Recommendations Aimed at Ensuring and Improving the Transparency,
Accountability and Governance of CMOs in Development

Working Document of the Consortium of International Federations and the World Intellectual
Property Organization (WIPO) within the Framework of the TAG of Excellence Project

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Abbreviations

Aus:	Australasian and Australian Copyright Collecting Societies Code of Conduct
Bel:	Belgian Copyright Act as amended in 2009
BCC:	The British Copyright Council's (BCC) Principles of Good Practice for Collective Management Organisations
CISAC:	The International Confederation of Authors and Composers Societies' (CISAC) Professional Rules
EU:	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
IFPI:	International Federation of the Phonographic Industry (IFPI) Code of Conduct
IFRRO:	International Federation of Reproduction Rights Organizations (IFRRO) Code of Conduct
SCAPR:	The Societies' Council for the Collective Management of Performers' Rights Code of Conduct (SCAPR)
VOI©E QM:	Quality Mark for CMOs in the Netherlands, members of trade organization VOI©E

Glossary

CMO, Collective Management Organization

Includes a Mechanical Rights Organization (MRO), a Music Licensing Company (MLC), a Performers' Collective Management Organisation (PMO), a Performing Right Organization (PRO) and a Reprography Right Organization (RRO).

Member

Natural person or legal entity (including other collective management organizations and associations of rightholders) that – whether provisional, associate or full – has joined a CMO; natural person or legal entity associated with a CMO which is a for-profit organization; natural person or legal entity associated with a not-for-profit organization without Members (for instance a foundation).

Statute

Includes the statutes, constitution, charter, by-laws of a CMO.

User

Licensee, or party responsible for payment of a legal remuneration or compensation, such as remuneration for public performance of phonograms, private copying or reprography levies.

Rights Revenue

Revenue collected from licensees or from other parties responsible for the payment of legal remuneration or compensation.

Distributions

The payment of monies to Members of a CMO and to affiliated CMOs after the deduction of administration expenses and other authorized deductions and after those monies have been allocated to particular rightholders.

Introduction

This Compendium seeks to provide advice and ideas on how to ensure and improve the transparency, efficiency and good governance of collective management organizations (CMOs) which are entrusted with the collective management of copyright and related rights. The Consortium of International Federations and WIPO have jointly created this Compendium for CMOs in development¹.

We hope the Compendium inspires its readers to benchmark their local CMOs' operations against the recommendations made.

We believe that this Compendium will:

1. serve as a checklist of, or a guide to, how the transparency, accountability and governance of CMOs' operations might be improved;
2. act as a useful benchmarking tool for CMOs striving to develop fair and accountable rights management services and standards; and
3. assist government agencies tasked with supervising CMOs by providing such agencies with a reference tool of international practices.

It is understood that not all CMOs will immediately attain all the levels indicated in this Compendium. The Consortium members are therefore prepared to provide technical assistance and advice to CMOs in development so that such CMOs might improve their operations – and thereby eventually comply with the good practice standards set out in the Compendium.

The Consortium of International Federations and WIPO will continue to discuss how the Compendium might be further developed, on the basis of input from the CMOs in development and other stakeholders.

All the topics in this Compendium are presented under the following three headings:

Heading	What is discussed
Explanation	A short explanation of why attention should be paid to a particular issue, and how that issue is important for the transparency, accountability or governance of a CMO.
Examples in codes or legislation	An illustrative summary of how a particular topic is addressed in industry codes of conduct, professional rules or international/national legislation.
Recommendations	<p>Recommendations of how the topic might be best addressed in practice. This section is the crux of the Compendium. The section:</p> <ol style="list-style-type: none"> 1. seeks to point the CMO, the regulator or the legislator, as the case may be, towards a fair and effective solution; and 2. allows the CMO to set its own target levels of transparency and good governance.

¹ The Consortium has defined a CMO in development as follows:
A fledgling CMO which is working towards achieving a solid and stable position in the marketplace and which might benefit from evidence that it complies with the essential principles of transparency, accountability and governance.

Key Issues of the Compendium

1. Providing information about the CMO and its operations

1.1 Primary functions and role of the CMO

Explanation

CMOs perform important functions. They provide services to rightholders, enabling them to exercise their rights, as well as to Users, facilitating the lawful use of protected works. This importance is acknowledged, for example, in the recitals to the European Collective Rights Management Directive which state:

(Recital 2) Management of copyright and related rights includes the granting of licenses to users, the auditing of licensees, the monitoring of the use of rights, the enforcement of copyright and related rights, the collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collective management organisations enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets.

(Recital 3) Collective management organisations 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.

Notwithstanding such importance, the general public may not always fully understand the useful role played by CMOs, which in turn can sometimes lead to an ambivalent attitude towards CMOs in particular and copyright in general.

To increase public awareness of the role and functions of CMOs, it is often helpful to include in industry codes of conduct or regulations some general observations on the role and functions of CMOs. It may also be advisable to point out the broader economic and cultural impact of copyright and of a well-functioning collective management system.

Examples in codes or legislation

CMOs act in the best interest of the rightholders whose rights they represent. [EU]

The management of rights must be done in the sole interest of the right owners. [Bel]

[CMOs shall provide] a summary introduction of their role and function *inter alia* underlining the following aspects:

CMOs are organisations with a primary responsibility to members and copyright owners who create and/or publish copyright material;

- they provide a simple mechanism for obtaining permission to use copyright material;
 - they provide an efficient system of collection and distribution of licence fees for use of copyright material;
- and

- they provide efficiencies in overall transaction costs/administration associated with the exploitation of copyright material to the benefit both of copyright holders and users. [BCC]

Each [CMO] shall use its reasonable endeavors to:

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

Recommendations

1. *A CMO is an organization with a primary responsibility towards the rightholders it represents. A CMO shall always act in the best interest of those rightholders.*
2. *A CMO provides valuable services both to the rightholders it represents and the Users of copyright content.*
3. *CMOs play an important role as promoters of the diversity of cultural expression.*
4. *Rightholders entrust a CMO with the management of their rights. A CMO shall undertake the performance of such management services diligently, efficiently, and in a non-discriminatory manner.*
5. *Within the limits of the mandate provided by a rightholder or granted by law a CMO shall:*
 - (a) *license the rights it represents or conclude agreements for the use of such rights, as the case may be;*
 - (b) *collect all Rights Revenue in respect of the use of such rights or of relevant copyright remuneration schemes;*
 - (c) *monitor the use of such rights;*
 - (d) *prevent the unauthorized use of such rights, enforce remuneration and compensation schemes; and*
 - (e) *collect and process data on the use of such rights to enable the timely and accurate individual distribution of monies.*
6. *Within the limits of its mandates and in the interest of the rightholders it represents, a CMO may engage in activities aimed at increasing public awareness about copyright, collective rights management and CMOs, as well as their positive effect on the national economy and on cultural diversity, including its cultural and social activities. A CMO's awareness-raising activities should also seek to highlight the benefits of collective management for users, rightholders and the general public in terms of its contribution to the broader dissemination of cultural goods and services.*

1.2 Information for the public

Explanation

Different stakeholders, including rightholders, government officials, politicians, the media, and User associations should have easy access to accurate information about CMOs, as well as to the way in which they are organized. Moreover, the provision of certain basic information about a CMO's operations is an essential step towards the creation of a more positive perception of CMOs amongst the general public. It is therefore of paramount importance that every CMO demonstrate it is operating in an open and accountable manner – especially if a CMO functions, not only on the basis of direct voluntary mandates, but also on the basis of compulsory collective management provisions.

Examples in codes or legislation

[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. [EU]

[A CMO shall] publish the remuneration it pays to [each] director, to [each] member of the supervisory council, to [each] member of an advisory board and to each person(s) who manage(s) the CMO. [NL Law]

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. [EU-Directive]

CMOs will establish rules for tariff setting, collection and distribution regarding all sorts of rights managed under their responsibility. 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. [Bel]

PMOs shall act in a consistent and transparent manner with regards to users and the public in general. [SCAPR]

Recommendations

7. *A CMO shall regularly publish:*
- (a) *a summary of its role and function;*
 - (b) *an explanation of each category of rightholders and rights which it represents;*
 - (c) *its Statute, membership terms and rules on termination of membership;*
 - (d) *its general distribution policy;*
 - (e) *its policy on deductions (such as any administration, social, cultural or educational deductions);*
 - (f) *its policy on the use of non-distributable Rights Revenue;*
 - (g) *its audited annual accounts;*
 - (h) *its complaint and dispute resolution procedures;*
 - (i) *a list of the persons who manage its business and who sit on its board; and*
 - (j) *the total amount of remuneration paid, and other benefits provided to the directors and senior management personnel.*

2. Membership: information, adherence and withdrawal

2.1 Before joining a CMO as a Member

Explanation

A CMO should help a rightholder make an informed decision about whether or not to join such CMO. It should, for example, provide a rightholder with the necessary information about its membership requirements, the nature of its representation contract, management fees, other possible deductions and membership withdrawal conditions.

It is also good practice to provide new Members and customers with information about the governance structure of such CMO, their rights, and any opportunities which exist for them to participate in the internal democratic processes.

Examples in codes or legislation

(*BCC list 1*) [Regarding membership CMOs shall provide essential information to members-to-be], explaining the following points:

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

- arrangements for terminating membership and describe implications of termination;
- Successors in title: explain what happens if the member dies or (if corporate) dissolves while still a member of the CMO. [derived from BCC]

(BCC list 2) CMOs shall inform membership about aspects of representation in governing bodies, participation at meetings, voting rights and other governance issues, inter alia explaining:

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

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

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

Recommendations

8. *A CMO shall help a rightholder to make an informed decision on whether or not to become a Member of the organization and shall provide (where possible, electronically) a clear summary of applicable rights, obligations and other essential information. In particular a CMO shall explain:*

- (a) *who can join, and the procedures for doing so, the terms of membership and where all such information can be found;*
- (b) *the nature of the grant or transfer of rights (whether rights have been granted on an exclusive or non-exclusive basis) and the implications of such information for the Member;*
- (c) *the scope of the authority granted under the agreement;*
- (d) *if and how a Member may restrict the authority of such CMO to act on such Members' behalf;*
- (e) *if and how a Member may require such CMO to consult with such Member;*

- (f) *the arrangements for terminating membership and a description of the implications of termination;*
- (g) *what happens if a Member dies or (if corporate) is dissolved while still a Member of such CMO;*
- (h) *how Members will be represented on the governing body/board of directors;*
- (i) *how the governing body of such CMO is composed, how it is appointed, terms of office, and the cycle of changes to the governing body;*
- (j) *any technical/regional committee or council structures, and how these are approved;*
- (k) *how a Member can present their candidature for elections to governing bodies, or apply to become member of any committees/regional councils etc.;*
- (l) *the frequency of general meetings and how a Member will be notified of such meetings;*
- (m) *what rights a Member has to call a special meeting and how to do it;*
- (n) *what voting rights a Member has;*
- (o) *how a Member can still exercise voting rights through proxy if they cannot attend;*
- (p) *information on whether collective administration by such CMO is mandatory, and the consequences of such information for the rightholder; and*
- (q) *its deduction policies and the rightholder's ability to benefit from activities and services funded through those deductions.*

2.2 Acceptance of Members

Explanation

A CMO offers rights management services to rightholders and, as service providers, can have significant market power over an individual rightholder. It is therefore in the best interest of both a CMO and its rightholders that:

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

Examples in codes or legislation

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. [AUS]

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. [Bel and EU]

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

Recommendations

9. *Membership criteria shall be included in a CMO's Statute or its membership terms.*
10. *A CMO shall accept a rightholder as a Member if they fulfil the membership criteria.*
11. *Membership criteria shall be objective, transparent and non-discriminatory.*
12. *A CMO may only refuse a request for membership on the basis of objectively justifiable criteria. Grounds for refusal shall be provided to the applicant in writing within a reasonable period of time.*

2.3 Non-discrimination of rightholders

Explanation

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

Examples in codes or legislation

[...] a collective management organisation 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. [EU]

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

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

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

Neither shall they discriminate between their own members and members they represent on the basis of a reciprocal representation agreement. [Derived from EU]

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

Recommendations

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

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

14. A CMO shall not discriminate between the rightholders it represents by virtue of direct mandates and the rightholders it represents by virtue of a reciprocal representation agreement or by virtue of legislation.

2.4 Scope of CMOs' rights management mandate/membership

Explanation

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

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

Examples in codes or legislation

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

Rightholders shall have the right to authorise 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. [EU]

Where a rightholder authorises 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. [EU]

Recommendations

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

2.5 Termination of rights management mandate/membership

Explanation

A CMO should strike a balance between its own financial interest in representing rightholders on a continuous, long-standing basis, and those of the individual. Rightholders should always have the ability to terminate their membership of a CMO, to entrust their rights to another organization, or to manage such rights themselves. Nothing a CMO does should prevent or hinder this.

Examples in codes or legislation

Right holders shall have the right to terminate the authorisation 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. [EU]

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

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 [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]. [EU]

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

Recommendations

16. A CMO shall permit each Member to terminate its rights management mandate or to change the scope of such mandate, upon a reasonable notice period not exceeding 180 days with the termination or change taking effect at the end of the calendar year in which notice was given.

17. In circumstances described in its Statute, a CMO shall require that a rightholder's rights continue to be included, for a reasonable period of time, in licenses granted to Users prior to termination. Such a period shall not exceed 12 months. After such termination a CMO may not include the terminating rightholder's rights in any new licenses granted.

18. Each rightholder shall be entitled to their full share in the Rights Revenue collected while such rightholder's rights are managed by the CMO, even though such rightholder may have terminated its rights management mandate before the monies are ready to be distributed.

3. Members' rights and obligations; their position in the CMO

3.1 Members' rights and obligations

Explanation

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

Examples in codes or legislation

CMOs shall not impose obligations on their members which are not objectively necessary for the effective management of the rights. [Derived from EU]

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

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

Recommendations

19. A CMO shall treat each rightholder fairly, and in accordance with such CMO's Statute and membership terms. It shall not impose on any rightholder obligations that are not objectively necessary for the effective management of such rightholder's rights.

3.2 Members' rights in representative bodies

Explanation

The fair and balanced participation by rightholders in a CMO's decision-making process is of paramount interest for a proper governance structure. A CMO in development should:

- attempt to establish a genuine and balanced role for rightholders within its governance structures; and
- ensure that voting rights fairly take into account all relevant factors, for instance the volume of rights under management; the rightholder's annual collections; and the fair representation of different rightholder groups.

Examples in codes or legislation

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

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. [EU]

Unless prohibited by applicable legislation each MLC is to provide rightholders the opportunity for a fair and balanced representation in the governing bodies. [IFPI]

(where the Board is composed of Creators and publishers) [a CMO shall] maintain a fair balance on its Board between Creators on the one hand and publishers on the other hand [CISAC-music]; maintain a fair balance on its Board between the various categories of Creators. [CISAC-Visual]

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. [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. [.....] [EU]

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

Recommendations

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

21. *A Member of a CMO shall be eligible for positions in any of its decision-making, supervisory or advisory bodies, including the board, provided that such Member meets the qualifications set out in the CMO's Statute for such a position. Such qualifications shall be fair and objectively justifiable.*

22. *All Members shall have the right to participate and take the floor at a CMO's general meeting.*

23. *Any restriction on the right of a Member to exercise its voting rights at the general meeting of a CMO shall be included in such CMO's Statute, and shall be fair and proportionate. Such restrictions might for instance include the duration of membership or the level of earnings of a Member.*

24. *Each Member of a CMO shall have the right to appoint any other Member as a proxy to attend and vote at a general meeting in such Member's name. A CMO's Statute may reasonably limit the number of proxies any individual Member may hold.*

4. Particular issues concerning the CMO–Member relationship

4.1 Financial and administrative information to Members

Explanation

A CMO is expected to provide its Members with information about its financial results in an accurate and timely manner. This information should include 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 rightholder should allow such rightholder to verify the amounts due in respect of each of their works, performances or other subject matter. Without sufficient financial transparency, a CMO risks losing the trust of rightholders and limiting its own capacity to develop and improve its operations.

Examples in codes or legislation

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. [EU]

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

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

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 rightholders. [Bel]

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

Recommendations

25. A CMO shall notify its Members (if possible electronically) that its annual report, including its income statement and accurate information about its collections and operating expenses, is available for download from its website or via other reasonable means.

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

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

(a) a statement of monies attributed to such Member, including information of management fees deducted, any other deductions and the amounts subsequently paid to such rightholder;

(b) a breakdown of Rights Revenue per main category of rights managed and per type of use;

(c) a distinction between Rights Revenue earned nationally and Rights Revenue received on the basis of reciprocal representation agreements; and

(d) information regarding any amounts attributed to the rightholder which are outstanding for the period concerned.

28. A summary of the CMO's distribution rules shall be part of the statement mentioned above.

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

Explanation

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

Examples in codes or legislation | Not applicable.

Recommendations

29. A CMO shall notify each Member, where possible electronically, about important changes in its regulations on representation in governing bodies, participation at meetings, voting rights and other governance issues. This notification shall take place no later than six months after the changes have taken effect.

4.3 CMO's contact information

Explanation

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

Examples in codes or legislation

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

Recommendations

30. A CMO shall:

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

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

5. Relationship between CMOs

Explanation

The advent of digital technologies brings with it a significant increase in cross-border transactions in the area of copyright and related rights. It is therefore of paramount importance for rightholders and Users alike that CMOs cooperate efficiently on the basis of bilateral representation agreements. A fundamental requirement of such a bilateral representation agreement is that a CMO treats the Members of the other CMO fairly, on a non-discriminatory basis and according to principles of equal treatment. CMOs should provide each other with all information which may be of assistance in executing the bilateral agreement.

Some international federations have included in their respective codes extensive principles governing the cooperation between member CMOs. The most important of these principles are reflected in this Compendium.

Examples in codes or legislation

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

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]

Each RRO will make available, on request, and subject to any confidentiality requirements, documents, information and records, which may be of assistance to the other RRO in exercising its obligations under the bilateral agreement. [...] [IFRRO]

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

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

- the territory in which it is mandated to administer in respect of such repertoire. [CISAC]

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

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

[CMOs] distribute remuneration received:

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

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

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

PMOs shall maintain continuous contact and cooperation with other organisations representing performers. [SCAPR]

Recommendations

31. *The relationship between a CMO and another CMO shall be governed by the mutual representation agreement concluded between these CMOs, by rules developed by the representative International Federation of CMOs, and by national and international laws.*

32. *In addition, and insofar as the subject matter is not included in mutual representation agreements, rules of International Federations or national or international laws, the CMO shall respect the principles explained hereafter.*

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

34. *A CMO shall provide the other CMO with the most recent annual report and other relevant information including data-management information.*

35. *A CMO shall distribute remuneration received to the other CMO efficiently, diligently and expeditiously.*

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

37. *A CMO shall, upon request, provide the other CMO with a comprehensive list of bilateral agreements concluded with third CMOs, and inform the other CMO about changes in the list.*

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

6. Relationship between CMO and User

6.1 CMO's service to Users: information

Explanation

A CMO will succeed if it is not only transparent towards its Members, but also towards its Users. It is an essential precondition for a business relationship between a CMO and its Users that such CMO makes available information which explains in full detail the key aspects of its licensing policies. In addition, a CMO should clarify its role and function as an intermediary between the two markets of rightholders and rights Users.

Examples in codes or legislation

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

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

CMOs shall make available to [users] 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 [users], and are accompanied by practical and suitable explanatory material. [AUS]

Recommendations

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

- (a) an explanation of the rights administered by the CMO, the categories of rightholders on whose behalf the CMO acts and with which other CMOs it has signed representation agreements;
- (b) a summary of relevant tariffs, terms and conditions and of remuneration or compensation rates and an explanation of how these have been negotiated (e.g. with a relevant trade association) or include a reference to a decision by or on behalf of a relevant authority on remuneration or compensation rates;
- (c) a description of the licensing and invoicing procedures;
- (d) details of how a licensee can cancel a license, any notice provisions which may apply, and any periods during which the right to cancel may subsist; and
- (e) a refund policy and timescales in which any agreed refund will be paid.

6.2 Principles governing licensing of Users

Explanation

Just as it is important for a CMO to gain the trust of rightholders so it is equally important that a CMO gain and retain the trust of its Users. Experience shows that an open and professional approach makes it easier for Users to accept a CMO's licensing policies and allows a CMO to market itself in a more effective and productive manner. CMOs should therefore treat all potential Users in a fair, professional and non-discriminatory manner.

It is worth bearing in mind that competition laws often impose special obligations of fair and reasonable behavior on CMOs given their common status as dominant market players. Such obligations might include non-discriminatory pricing and prohibition of unreasonable contractual terms.

Examples in codes or legislation

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

CMOs shall not unjustifiably discriminate between users. [CISAC]

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

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

Any person who has a legitimate interest is entitled to consultation of all repertoires managed by a CMO. Consultation may be 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. [Bel]

Recommendations

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

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

42. *If prior approval of a Member is required for the licensing of such Member's rights, a CMO shall use reasonable endeavors to expedite the approval process.*

43. *If a CMO refuses to grant a license to a User, it shall provide such User with a reasoned written statement explaining such reason.*

44. *A CMO may refuse to grant a license to a User if such User has repeatedly failed to meet contractual obligations previously agreed with the CMO.*

6.3 Rules for setting of tariffs

Explanation

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

Examples in codes or legislation

Rightholders shall receive appropriate remuneration for the use of the rights. [EU]

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

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

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. [AUS]

Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade taking into account the nature and scope of the use of the work and other subject matter, as well as to the economic value of the service provided by the collective

management organisation. Collective management organisations shall inform the user concerned of the criteria used for the setting of these tariffs. [EU]

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. [AUS]

CMOs will establish rules for tariff setting [...] regarding all sorts of rights managed under their responsibility. 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. [Bel]

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

Recommendations

45. *A CMO shall establish tariffs that are transparent, based on objective criteria that fairly reflect both the commercial value of the CMO's rights and the benefits to Users of those rights.*

46. *The applicable tariffs shall ensure each rightholder appropriate remuneration for the use of such rightholders' rights.*

47. *A CMO shall, where appropriate, consult in good faith with relevant industry associations in relation to the terms and conditions applying to licenses or tariffs offered by the CMO, or in relation to rates and conditions of remuneration and compensation schemes.*

48. *Benefits for a User shall be assessed having regard to the CMO's rights used considering;*

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

7. Governance

7.1 General meeting

Explanation

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

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

Examples in codes or legislation

A general assembly of members shall be convened at least once a year. [EU]

CMOs with members and directly affiliated rightholders must organize a formal meeting for members or affiliates at least once a year, at which, in an adequate and accessible manner, account must be rendered of the management and supervision at the CMO. It is in the interests of the CMO that as many rightholders as possible take part in the decision-making process within the CMO. For this reason, the board must aim to ensure the largest possible participation in this meeting or it must be guaranteed in some other manner that as many rightholders as possible take part in the decision-making process. [VOI@E QM]

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. [EU]

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

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. [Derived from EU]

The general meeting shall decide on investment policy. [VOI@E QM]

Investment policy shall be explained in an investment statute, and the information about the type of investment, and the policy's results shall together with the statute be included in the annual report. [VOI@E QM]

Recommendations

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

7.2 Internal supervision

Explanation

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

Examples in codes or legislation

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

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

Recommendations

53. *A CMO's Statute shall ensure a fair and balanced representation of its different categories of members on the board.*

7.3 Avoidance of conflicts of interest

Explanation

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

Examples in codes or legislation

[...] 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. [Derived from EU]

[Members of the supervisory board and persons effectively managing the CMO] must report investments and related transactions in sector-related companies or companies with which the CMO has a business relationship to a specifically designated official of the CMO in question or, if such an official has not been designated, to the chairman of the board. [VOI©E QM]

Employees or their partners may not have any financial interests in companies, organizations, etc. that are connected directly or indirectly with the CMO, unless the CMO in question has granted an exemption. Any financial interests for which permission has thus been granted must be reported by the employee to the CMO in question. [VOI©E QM]

An employee who has family or friendly relationships or other personal relationships with a provider of services to the CMO must refrain from taking part in the decision-making process regarding the assignment concerned. [VOI©E QM]

An employee may not accept any facilities or services from a provider of services to the CMO which may affect his independent position in respect of the provider. [VOI©E QM]

Recommendations

54. *A CMO shall have in place procedures to identify, manage, monitor and disclose conflicts of interest which might prevent such CMO's board from discharging its responsibilities and therefore adversely affecting the interests of the Members of the CMO.*

55. *Those procedures shall include an annual individual statement of actual or potential conflicts of interest by each person managing the CMO and by each member of the board.*

8. Financial administration, distribution of revenue and deductions

8.1 *Split accounts*

Explanation

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

Examples in codes or legislation

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. [Bel and EU]

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. [Derived from Bel]

The CMO shall not be allowed to use rights revenue and any income derived from its investment for its own account, save that it may deduct its management fees. [EU old text]

Recommendations

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

57. *A CMO shall not be allowed, unless specifically authorized by the general meeting or its Statute, or provided by law, to use Rights Revenue and any income derived from the investment of Rights Revenue for any purposes other than Distributions to rightholders.*

8.2 Annual report

Explanation

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

Examples in codes or legislation

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

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

The annual report should include a description of the principal risks and uncertainties the [CMO] faces. [Derived from Bel, and Belgian company law].

Recommendations

58. *In respect of each Financial Year a CMO shall:*

- (a) *make available an annual report to its membership no less than 14 days before each general meeting; and*
- (b) *publish the annual report on its website within three months after such general assembly.*

59. *The annual report shall contain:*

- (a) *a financial statement, which shall include a balance-sheet or a statement of assets and liabilities as well as an income and expenditure account for the Financial Year;*
- (b) *a report of the CMO's activities in that Financial Year;*

(c) *a statement of Rights Revenue broken down per category of rights managed and per type of use including the total amount of Rights Revenue collected, but not yet attributed to rightholders, and the total amount of Rights Revenue attributed but not yet distributed to rightholders;*

(d) *a breakdown of the cost of services provided by the CMO to its Members and rightholders it represents;*

(e) *a breakdown of the amounts allocated for the purposes of social, cultural and educational services in the Financial Year and an explanation of the use of those amounts, with a breakdown per social, cultural and educational expenditure;*

(f) *information on the total amount of remuneration paid, and other benefits granted to, the persons who manage the business of the CMO and the board members in the Financial Year;*

(g) *a general statement setting out, in respect of the transactions between a CMO and each partner CMO with which it has a reciprocal representation agreement, the:*

- (i) name of such partner CMO, and the dates of the relevant contracts;*
- (ii) total amount paid in the Financial Year to the partner CMO;*
- (iii) total management fees and other specified deductions; and*
- (iv) total amount received from the partner CMO.*

60. *The annual report and financial records of a CMO shall be inspected annually by at least one external auditor appointed by the general meeting.*

8.3 Distribution policies

Explanation

A CMO's main task is to collect and distribute – fairly, promptly, and as accurately as possible – to individual rightholders the Rights Revenue it has collected on the rightholders' behalf. It is therefore not just a “collecting society”. Unless CMOs distribute monies fairly, promptly and accurately, a CMO cannot count on gaining the trust of rightholders, Users or the public at large. It is therefore of paramount importance that a CMO's distribution rules and policies are fair, open, and transparent. The Distributions should reflect, to the greatest possible extent, the actual use of the protected content and the actual value attached to the use.

Examples in codes or legislation

[...] 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. [EU]

[...] a collective management organisation or its members who are entities representing rightholders [shall] distribute and pay to rightholders these amounts as soon as possible but no later than 9 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. [EU]

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

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

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

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 licence 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. [AUS]

Recommendations

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

(a) *the basis for calculating entitlements to receive payments from Rights Revenue collected by a CMO. In establishing such basis, a CMO shall take into account, as far as possible, the actual usage of works or other protected subject matter. If not practicable, a statistically valid sample approximating actual use of the works or categories of works can be used;*

(b) *the manner and frequency of Distributions to Members; and*

(c) *the amounts that will be deducted from the Rights Revenue before distribution on the basis of the general policy on deductions as determined by the general meeting, the Statute or the law.*

62. *A CMO shall regularly, diligently and accurately distribute and pay amounts due to the rightholders it represents, be it through membership, mandate – voluntary or statutory – or through reciprocal representation agreements with other CMOs, in accordance with its general policy on Distributions and the reciprocal agreements it has signed with other CMOs.*

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

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

Explanation

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

Examples in codes or legislation

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. [Derived from Bel]

A CMO is allowed to deduct up to a maximum of 15% of its revenues for social and cultural purposes. [VOI©E QM].

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. [EU]

[CMOs] deduct from collections, if authorised 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 authorisation for, as well as the amount and nature of the allocation, is clearly explained to the rightsholders concerned. RROs avoid discrimination on grounds of nationality or otherwise. [IFRRO]

Recommendations

64. *The general meeting shall decide on the rules on deductions from Rights Revenue.*

65. *The amounts deducted from the Rights Revenue for the purposes of social, cultural and educational purposes in the Financial Year and an explanation of the use of those amounts shall be included in the Annual Report.*

66. *A CMO shall ensure that the management fees it charges or operating costs it deducts shall be transparent and properly documented.*

67. *A CMO shall not deduct more than 10% of its Rights Revenue for social, cultural and educational purposes.*

68. *A CMO shall ensure that funds for social, cultural and educational purposes shall not be deducted from Rights Revenue allocated to a Member of another CMO unless such other CMO consents in writing.*

69. *A CMO shall ensure that each rightholder it represents – whether directly through a membership contract or through a reciprocal agreement – will be entitled to apply for its social, cultural or educational services provided deductions were made on Rights Revenue attributed and distributed to such rightholder.*

9. Processing of Members' and Users' data

Explanation

Members and Users provide CMOs with personal and sometimes confidential or commercially sensitive information. A CMO should treat such personal or sensitive data carefully, and always in compliance with the applicable rules on the protection of privacy, personal data, and trade secrets. The applicable rules on data protection vary from country to country but it is always 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 their consent, that some foreign countries have weak data protection laws and that some countries have no data protection laws at all.

Examples in codes or legislation

Employees of the collecting society and all other persons who participate in the collection of remuneration due under Chapters IV to VI 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. [Bel]

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

Each [CMO] shall refrain from disclosing any Confidential Information. [CISAC]

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

Recommendations

70. *A CMO shall 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.*

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

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

73. *A CMO shall, upon receiving a reasonable request, inform (where possible electronically) a rightholder or a User about the personal data it holds on such rightholder or User.*

10. Development of staff skills and awareness

Explanation

A CMO should encourage the ongoing development of its staff's skills and knowledge through training programmes for the development of its staff. A CMO should take reasonable steps to ensure that its employees and agents are aware of, and at all times comply with a code of conduct, set of professional rules or legislation that is applicable to its business.

Examples in codes or legislation

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

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. [AUS]

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

Recommendations

74. A CMO shall 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.

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

General observation

All recommendations in this Compendium are made subject to the laws and regulations in force in the adhering CMO's territory or country of operation.