

COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS



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The purpose of this brochure is to give a brief overview of the broad and complex notion of collective management of copyright and related rights. Other brochures will be issued in the future on more specific aspects of the subject (such as performers' rights, rights management information systems, reprographic reproduction rights).

Before defining the concept itself and introducing its main features, let us look briefly at what copyright and related rights themselves amount to.

Copyright is the legal protection extended to the owner of the rights in an original work that he has created. It comprises two main sets of rights: the economic rights and the moral rights.

What is copyright?

When a person creates a literary, musical, scientific or artistic work, he or she is the owner of that work and is free to decide on its use. That person (called the "creator" or the "author" or "owner of rights") controls the destiny of the work. Since, by law, the work is protected by copyright from the moment it comes into being, there is no formality to be complied with, such as registration or deposit, as a condition of that protection. However, certain national laws provide for formalities which are not considered to be a requirement to be satisfied in order to benefit from copyright protection, but which serve as initial proof in the case of a dispute.

In addition to this so-called automatic protection, it should be borne in mind that mere ideas in themselves are not protected, only the way in which they are expressed.

The **economic rights** are the rights of reproduction, broadcasting, public performance, adaptation, translation, public recitation, public display, distribution, and so on. The **moral rights** include the author's right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his honor or reputation.

Both sets of rights belong to the creator who can exercise them. The exercise of rights means that he can use the work himself, can give permission to someone else to use the work or can prohibit someone else from using the work.





Related rights are the rights that belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts respectively.

The general principle is that copyright protected works cannot be used without the authorization of the owner of rights. Limited exceptions to this general rule, however, are contained in national copyright laws. In principle, the term of protection is the creator's lifetime and a minimum of 50 years after his death.

These legal aspects are specified in international conventions to which most countries are now party. On their accession, Member States should have national legislation that is in line with the international standards.

At the international level, the economic and moral rights are conferred by the Berne Convention for the Protection of Literary and Artistic Works, commonly known as the "Berne Convention". This Convention, which was adopted in 1886, has been revised several times to take into account the impact of new technology on the level of protection that it provides. It is administered by the World Intellectual Property Organization (WIPO), one of the specialized international agencies of the United Nations system (consult the Organization's website at: www.wipo.int).

What is protection of related rights ?

Whereas the rights provided by copyright apply to authors, "related rights", also known as "neighboring rights" concern other categories of owners of rights, namely, performers, the producers of phonograms and broadcasting organizations.

Related rights differ from copyright in that they belong to owners regarded as intermediaries in the production, recording or diffusion of works.

The link with copyright is due to the fact that the three categories of related rights' owners are auxiliaries in the intellectual creation process since they lend their assistance to authors in the





communication of the latter's works to the public. A musician performs a musical work written by a composer; an actor performs a role in a play written by a playwright; producers of phonograms -- or more commonly "the record industry" -- record and produce songs and music written by authors and composers, played by musicians and sung by performers; broadcasting organizations broadcast works, phonograms and videograms on their stations.

At the **international level**, related rights are conferred by the **International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations**, better known as the "Rome Convention". This Convention was adopted in 1961 and has not been revised since. It is jointly administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO) and WIPO.

The 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which is administered by the World Trade Organization (WTO), incorporates or refers to this international protection.

There are other international treaties that concern copyright and related rights protection; further information may be obtained on them by applying to WIPO (see address on the last page). Two other treaties were adopted in 1996 to provide international coverage for the protection of works, performances and phonograms on the Internet (see the end of this brochure).

What is collective management of copyright and related rights?

It has been mentioned that the creator of a work has the right to allow or to prohibit the use of his works; a playwright can consent to his work being performed on stage under certain agreed conditions; a writer can negotiate a contract with a publisher for the publication and distribution of a book; and a composer or a musician can agree to have his music or performance recorded on compact disc. These examples illustrate how the owners of the rights can exercise their rights in person.

Other cases show that individual management of rights is virtually impossible with regard to certain types of use for practical reasons. An author is not materially capable of monitoring all uses of his works; he cannot for instance contact every single radio or television station to negotiate licenses and remuneration for the use of his works. Conversely, it is not possible for a broadcasting organization to seek specific permission from every author for the use of every copyrighted work. An average of 60'000 musical works are broadcast on television every year, so thousands of owners of rights would have to be approached for authorization. The very impracticability of managing these activities individually, both for the owners of rights and for the



users, creates a need for **collective management organizations**, whose role is to bridge the gap between them in these key areas, among others.

Collective management is the exercise of copyright and related rights by organizations acting in the interest and on behalf of the owners of rights.

Why is collective management of copyright and related rights necessary?

Composers, writers, musicians, singers, performers and other talented individuals are among society's most valuable assets. The fabric of our cultural lives is enriched by their creative genius. In order to develop their talent and encourage them to create, we have to give those individuals incentives, in particular remuneration in return for permission to make use of their works.

Collective management organizations are an important link between creators and users of copyrighted works (such as radio stations) because they ensure that, as owners of rights, creators receive payment for the use of their works.

Who are members?

Membership of collective management organizations is open to all owners of copyright and related rights, whether authors, composers, publishers, writers, photographers, musicians, or performers. Broadcasting organizations are not included in the list, as they are considered users, even though they have certain rights in their broadcasts. On joining a collective management organization, members provide some personal particulars and declare the works that they have created. The information provided forms part of





the documentation of the collective management organization that allows the link between the use of works and payment for the use of works to be made to the correct owner of the rights. The works declared by the organization's members constitute what is commonly known as the "national" or "local" repertoire (as opposed to the international repertoire which is made up of the foreign works managed by collective management organizations in the world).

What are the commonest types of right under collective management?

Collective management organizations most commonly take care of the following rights:

- The right of public performance (music played or performed in discotheques, restaurants, and other public places);
- The right of broadcasting (live and recorded performances on radio and television);
- The mechanical reproduction rights in musical works (the reproduction of works on CDs, tapes, vinyl records, cassettes, mini-discs, or other forms of recordings);
- The performing rights in dramatic works (theater plays);
- The right of reprographic reproduction of literary and musical works (photocopying);
- Related rights (the rights of performers and producers of phonograms to obtain remuneration for broadcasting or the communication to the public of phonograms).

How does collective management work?

There are various kinds of collective management organization or groups of such organizations, depending on the categories of works involved (music, dramatic works, "multimedia" productions, etc.) that collectively manage different kinds of rights.

"Traditional" **collective management organizations**, acting on behalf of their members, negotiate rates and terms of use with users, issue licenses authorizing uses, collect and distribute royalties. The individual owner of rights does not become directly involved in any of these steps.



Rights clearance centers grant licenses to users that reflect the conditions for the use of works and the remuneration terms set by each individual holder of rights who is a member of the center (in the field of reprography, for instance, authors of written works such as books, magazines and other periodicals). Here the center acts as an agent for the owner of the rights who remains directly involved in setting the terms of use of his works.




“One-stop-shops” are a sort of coalition of separate collective management organizations which offer users a centralized source where authorizations can be easily and quickly obtained. There is a growing tendency to set up such organizations on account of growing popularity of “multimedia” productions (productions composed of, or created from, several types of work, including computer software) which require a wide variety of authorizations.

In the field of musical works (encompassing all types of music, modern, jazz, classical, symphonic, blues and pop whether instrumental or vocal), documentation, licensing and distribution are the three pillars on which the collective management of the rights of public performance and broadcasting is based.

The collective management organization negotiates with users (such as radio or television stations, discotheques, cinemas, restaurants and the like), or groups of users (hotel associations for example) and authorizes them to use copyrighted works from its repertoire in return for payment and on certain conditions. On the basis of its documentation (information on members and their works) and the programs submitted by users (for instance, logs of music played on the radio), the collective management organization distributes copyright royalties to its members according to established distribution rules. A fee to cover administrative costs, and in certain countries also socio-cultural promotion activities, is generally deducted from the copyright royalties. The fees actually paid to the copyright owners correspond to the use of the works and are accompanied by a breakdown of that use. These activities and operations are performed with the aid of computerized systems specially designed for the purpose.

In the field of dramatic works (which includes scripts, screenplays, mime shows, ballets, theater plays, operas and musicals), the practice of collective management is rather different in that the collective management organization acts as an agent representing authors. It negotiates a general contract with the organizations representing theaters in which the minimum terms are specified for the use of particular works.

The performance of each play then requires further authorization from the author, which takes the form of an individual contract setting out the author’s specific conditions. The collective management organization then announces that permission has been given by the author concerned and collects the corresponding remuneration.



In the field of printed works (meaning books, magazines and other periodicals, newspapers, reports and the lyrics of songs), collective management mainly involves the grant of the right of reprographic reproduction, in other words allowing protected material to be photocopied by institutions such as libraries, public organizations, universities, schools and consumer associations. Non-voluntary licensing arrangements, when allowed by international conventions, can be written into national legislation; in such cases, a right of use against remuneration is accorded that does not require the consent of the owner of rights. Collective management organizations administer the remuneration. In the special case of reproduction for private and personal use, some national legislation contains specific provision for equitable remuneration payable to the owners of rights and funded by a levy imposed on equipment or photocopies or both.



In the field of visual arts, collective management allows the rights linked to the use of three-dimensional works (paintings, statues, drawings, lithographs, sculptures), graphic creations (illustrations, caricatures, cartoons) and photographic works to be managed. Apart from the right of reproduction, the authors of these categories of works can avail themselves of other rights if they are recognized in their national laws, such as the *droit de suite*, lending right and right of exhibition. As regards private digital copies, the works of visual art downloaded at home from databases (museum sites, image banks) through the Internet give rise to the payment of remuneration in certain countries.

In the field of related rights, the legislation of some countries provides for a right of remuneration payable to performers or producers of phonograms or both when commercial sound recordings are communicated to the public or used for broadcasting. The fees for such uses are collected and distributed either by joint organizations set up by performers and producers of phonograms or separate ones, depending on the relations between those involved and the legal system of the country.



The participation of collective management societies for performers' rights also occurs in relation to the copying of sound or audiovisual recordings in the countries which have installed this system. The remuneration for private copying compensates the loss suffered by the beneficiaries as a result of the copies made by private individuals at home. This system, which also covers phonogram producers, cannot be managed individually and uses the services of joint management bodies acting on behalf of the bodies representing the different rights' owners (authors, performers, producers). The method of distributing the rights is based on sampling which has the advantage, in this case, of reflecting as well as possible the effective use of protected works.

Where do collective management organizations operate?

National laws that establish rights in literary and artistic works and in related rights apply only within the boundaries of that country. According to the national treatment principle enshrined in both the Berne Convention and the Rome Convention, foreign owners of rights are treated in the same way as nationals of a country in most respects. This principle is upheld by collective management organizations which, under reciprocal representation agreements, administer foreign repertoires on their national territory, exchange information and pay royalties to foreign owners of rights.

Links to non-governmental organizations

There is now a well-established global network of collective management organizations, and they are strongly represented by non-governmental organizations such as the International Confederation of Societies of Authors and Composers (CISAC), the International Federation of Reprographic Reproduction Organisations (IFRRO), and at the European level, the Association of European Performers Organizations (AEPO), to name but a few.



As part of its international development cooperation activities, WIPO is working closely with the above organizations, and also with others such as the International Federation of Actors (FIA), the International Federation of Musicians (FIM) and the International Federation of the Phonographic Industry (IFPI). The aim is to assist developing countries, upon their request, in establishing collective management organizations, and to strengthen existing organizations to ensure that they can be fully efficient and effective, among other things in

their response to the challenges of the digital environment. Such activities are carried out under the WIPO Cooperation for Development Program.

Socio-economic and cultural dimension

Collective management does a valuable service to the world of music and other creative arts. By managing their rights, the system is rewarding creators for their work, and the creators in turn are more inclined to develop and apply their talents in an environment that provides adequate copyright and related rights protection, and an efficient system for the management of rights. Such a situation encourages creators to contribute to the development of the cultural sector, attracts foreign investment and generally enables the public to make the most of a broad array of works. Together, these factors have an undeniably favorable impact on national economies; cultural industries contribute up to six per cent of the gross national product of some major countries; income from the collective management of copyright and related rights accounts for a substantial part of that percentage.

Some collective management organizations offer various kinds of **social welfare protection** to their members. The benefits often include assistance with payment for medical treatment or insurance, annuities on retirement or some sort of guaranteed income based on the members royalty payments history.



Collective management organizations also sponsor **cultural activities** to promote the national repertoire of works at home and abroad. They promote the holding of theater festivals, music competitions, productions of national folklore and music anthologies and other such activities.

Welfare protection and the promotion of cultural activities are in no way compulsory. When they are provided for, however, they may take the form of a deduction that the collective management organization makes from the royalties collected. There is no unanimous view among collective management organizations on the idea of a deduction which, according to the rules of CISAC, should not represent more than ten per cent of net income.

Collective management and the digital environment

Copyrighted works will be increasingly delivered in digital form via global networks such as the Internet. As a result the collective management of copyright and related rights by public, semi-public and market sector entities will be re-engineered to take advantage of the efficiency gains offered by information technology. The ever-increasing opportunities offered to the holders of rights by the Internet and the advent of "multimedia" productions are affecting the conditions of protection, the exercise and management of copyright and related rights, and also the enforcement of rights.

In the online world of the new millennium, the management of rights is taking on a new dimension. Protected works are now digitized, compressed, downloaded, copied and distributed on the Internet to any place in the world. The expanding power of this network allows mass storage and online delivery of protected material. The possibility of downloading the contents of a book, or to listen to and record music from cyberspace is now a reality. While this presents immeasurable opportunities, there are also many challenges for rights' owners, users and collective management organizations.

Many collective management organizations have developed systems for online delivery of information relating to the licensing of works and content, the monitoring of uses, and the collection and distribution of remuneration for various categories of works within the digital environment. These digital information systems, which depend on the development and use of unique numbering systems and codes that are embedded in digital carriers such as CDs, films,

allow works, the rights' owners and the digital carriers themselves to be properly identified and provide other relevant information. Adequate legal protection is needed to prevent acts intended to circumvent technical protection measures, and also to insure against the removal or alteration of any elements of the digital information systems or other such practices.

Two treaties were concluded in 1996, under the auspices of WIPO, to respond to the challenges of protecting and managing copyright and related rights in the digital age. Known as "the Internet treaties," the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (WCT and WPPT respectively -- see the WIPO information brochures on them) deal among other things with obligations concerning technological protection measures and rights management information in the digital environment. They ensure that the owners of rights are protected when their works are disseminated on the Internet; they also contain provisions requiring national legislators to provide effective protection for technological measures, by prohibiting the import, manufacture and distribution of illicit tools or material designed to neutralize technological protection measures and also outlawing acts detrimental to rights management information systems.



There are other specific brochures on copyright, related rights, and the WCT and WPPT treaties; they are obtainable from WIPO on request. For more information on collective management, the reader should approach the Copyright Collective Management Division at WIPO on +41-22 338 99 51 (Secretariat), or visit the WIPO website at www.wipo.int.



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