



Best Practices for Collective Management Organisations

IFLA response to the World Intellectual Property Organisation Draft, 31 March 2018

Introduction

The International Federation of Library Associations and Institutions is the global voice of libraries, with over 1400 members in 145 countries. We strongly welcome the opportunity to comment on the [WIPO draft Best Practices guide for Collective Management Organisations](#).

We fully recognise that fair and effective licensing – and collective licensing – has a role to play in the wider copyright system, alongside a complete and flexible set of exceptions and limitations. As such, it is in the interest of all those invested in supporting creativity and innovation to ensure that the bodies charged with collecting and distributing legitimate royalties for uses of copyrighted works are operating to the highest possible standards. Given that collective licensing usually exists to deal with market failure, many in important areas of public interest such as education, we also believe that it is important to regulate appropriately the monopolies that often arise from the activities of CMOs.

Without this, the legitimacy of collective management – and of copyright as a whole – is brought into question. The current reforms in South Africa, for example, were triggered – as set out in a Parliamentary report of 14 March 2018 – by the need to ‘assess the concerns about the model of collecting societies used for the distribution of royalties to musicians and composers of music’.

We note the emphasis in the proposals that this document should not be seen as normative, and understand the reasons behind this. Nonetheless, we believe that setting out normative recommendations, and drawing on existing laws around the world, inevitably – and hopefully – will encourage positive changes. To this end, the guide should endeavour to be comprehensive, and not leave out key issues that would require legislative change.

The following sections identify specific comments by section of the draft document.

Section 1 – Providing Information about the CMO and its Operations

This is a very important section, given the need for rightholders and CMO customers to understand properly the actions of the collecting societies with which they must work.

We welcome point 2 (p8), which correctly emphasises that collective licensing is appropriate in certain circumstances. As the Berne Convention underlines, not all uses are suited for collective licensing – or licensing in general. The fact that there are many uses – notably those covered by exceptions and limitations to copyright – that are not suited to licensing of any sort should be made explicit.

We strongly welcome point 8 (p12), which underlines the value of transparency, notably about money paid to creators and to CMO staff. Given that CMOs are carrying out, in many cases, a public interest task, they should operate to the highest standards. Unfortunately, there is usually more focus on money collected than on money paid out.

CMOs play an important role not only in supporting creators, but also in contributing to wider society in the form of supporting businesses, broadcasters, education etc. As set out in point 7 (p9), there are situations where a CMO may choose to raise awareness. However, in line with the point made under point 57 (p43), the use of money for the purposes of lobbying in particular should be strictly controlled or outlawed. For public interest institutions such as libraries, it is regrettable when CMOs use funds collected from them to call for laws and regulations which will negatively impact their missions.

Finally, we believe that it is important to underline that CMOs should be independent of government. This would help ensure that there is no risk of the perception that the policy agenda is being driven by the interests of rightholders rather than by a concern to balance the interests of rightholders and users. This independence should, similarly, be made clear in the day-to-day operations of both CMOs and government.

Section 6 – CMO Relationships with Users

As a general point, we need to make a clear distinction between customers – or licensees – and users. In the case of educational settings, the library itself is the licensee, but it is their users who make use of licensed works. For the sake of clarity, we suggest renaming this section ‘CMO Relationships with Licensees’.

The relations between CMOs and their customers can have a determining impact on the legitimacy of the copyright system as a whole. As such, this is a central element of this guide from the perspective of libraries.

We regret that in talking about users, the draft guide gives no attention to the specificity of particular types of user. While there is reference to the need to take account of different purposes, contexts and manners of use, the document should highlight the implications of when licensing is taking place in the context of a public service activity, such as supporting education, research, or the promotion of cultural heritage as opposed to supporting the functions of a business.

To do this, in addition to points 46 and 47 (p37), there should be a specific focus on libraries, archives and museums as public interest institutions, and whose collections may often contain items whose licensing may not always be simple or appropriate. IFLA stands ready to contribute to the drafting of such a section. Governments too, as major users of the licences offered by CMOs, could also benefit from a specific section.

Point 38 (p31) concerning the duty of CMOs to provide clear and accurate information about the scope of their repertoire, including the precise nature of their bilateral agreements, and the rights which they are mandated to administer is important. This provision should be replicated in Section 6 (CMOs' relationships with users) in order to give those paying CMOs for rights a clear idea of what they can expect. This would imply an expansion of point 39a (p33).

Section 12 – Supervision and Monitoring

As highlighted previously, CMOs have both an important public interest mission, and in many cases a monopoly on providing licences for works. As such, regulation needs to be effective. In the introduction to this section, both government regulation and self-regulation are cited as means of ensuring supervision. However, points 77 and 78 (p55) refer only to self-regulation.

Recognising the desire of the document to remain non-normative, the fact of leaving out reference to government regulation gives the impression that self-regulation is prioritised. Given recent scandals – and the evidence that government regulation and intervention can improve matters e.g. The European Union's Collective Rights Management Directive– it is important to underline that external oversight of CMOs must be the priority, in order to ensure that all interests are duly promoted.

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