WIPO-ASEAN Copyright and Related Rights Collective Management Resource Document 2023

October 2023

Table of Contents

Introduction

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

A. Background

This WIPO-ASEAN Copyright and Related Rights Collective Management Resource Document 2023 (Resource Document) and its accompanying study (Study) have been developed jointly by the World Intellectual Property Organisation (WIPO) and the Association of South East Asian Nations (ASEAN) as part of the ASEAN Collective Management Best Practices Research Project Work Plan for 2022-2023.

The Study was based on the results of a survey carried out with the following Intellectual Property Offices/Copyright Offices (COs) and 38 participating Collective Management Organizations (CMOs) from all 10 ASEAN Member States (AMS) commencing June 2022.

COs:

1. Brunei Intellectual Property Office (BruIPO), Brunei Darussalam
2. Department of Copyrights and Related Rights, Ministry of Culture and Fine Arts (DCRR), Cambodia
3. Directorate of Copyright and Industrial Design, Directorate General Of Intellectual Property (DGIP), Indonesia
4. Copyright Division, Department of Intellectual Property (DIP Lao), Lao People's Democratic Republic (Lao PDR)
5. Copyright Division, Intellectual Property Corporation of Malaysia (MyIPO), Malaysia
6. Copyright Division, Intellectual Property Department (CDIP Myanmar), Myanmar
7. Intellectual Property Office of the Philippines – Bureau of Copyright and Other Related Rights (IPOPHIL – BCCR), Philippines
8. Intellectual Property Office of Singapore (IPOS), Singapore
9. Department of Intellectual Property (DIP TH), Thailand
10. Copyright Office of Vietnam (COV), Viet Nam.

Participating CMOs

Brunei Darussalam

1. Bruneian Authors & Composers (BeAT) Berhad (BeAT) representing musical works
2. Brumusic Copyright Sdn Bhd (BruMusic) representing sound recordings

Cambodia

3. Cambodian Music Collective Society (CAMCOS) representing musical works

Indonesia

4. Lembaga Manajemen Kolektif Nasional (LMKN) representing musical works, sound recordings and performers rights
5. Perlindungan Hak Penyanyi dan Pemusik Rekaman Indonesia (PAPRI) representing performers rights
6. Perkumpulan Reproduksi Cipta Indonesia (PRCI) representing literary and artistic works
7. Performers' Rights Society of Indonesia (PRISINDO) representing performers rights
8. Wahana Musik Indonesia (WAMI) representing musical works
9. Sentra Lisensi Musik Indonesia (SELMI) representing sound recordings

Lao PDR
Nil.

Malaysia

10. Music Authors Copyright Protection Berhad (MACP) representing musical works
11. Malaysia Reprographic Rights Center (MARC) representing literary and artistic works
12. Public Performance Malaysia Berhad (PPM) representing sound recordings
13. Recording Performers Malaysia Berhad (RPM) representing performers rights

Myanmar

14. MMA - Myanmar Music Association (MMA) representing performers rights
15. Myanmar Record Labels Association (MRLA) representing sound recordings
16. Myanmar Performance Rights Organization (MPRO) representing musical works
17. Myanmar Vocal Artists Association (MVAA) representing performers rights
18. Union of Myanmar Music Rights Protection (UMRP) representing performers rights

Philippines

19. Filipinas Copyright Licensing Society, Inc. (FILCOLS) representing literary and artistic works
20. Filipino Society of Composers, Authors and Publishers, Inc. (FILSCAP) representing musical works
21. Philippines Recorded Music Rights Inc. (PRM) representing sound recordings and performers rights
22. Performers' Rights Society of the Philippines (PRSP) representing performers rights
23. Sound Recording Rights Society Inc.(SR) representing sound recordings

Singapore

24. Copyright Licensing & Administration Society (CLASS) representing literary and artistic works
25. Composers and Authors Society of Singapore Limited (COMPASS) representing musical works
26. Music Rights (Singapore) Public Limited (MRSS) representing sound recordings

Thailand

27. Khon Muang Record 1999 Co., Ltd. (KMR) representing musical works
28. Music Copyright Thailand (MCT) representing musical works
29. MPC Music Co., Ltd. (MPC) representing musical works and sound recordings
30. Piriya music sound studio limited partnership (Piriya) representing musical works and sound recordings
31. Phonorights (Thailand) Ltd. (PNR) representing sound recordings
32. RMS Publishing Co. Ltd. (RMS) representing musical works

Viet Nam

33. Association for Protection of Performing Artists in Vietnam (APPA) representing performers rights
34. Recording Industry Association of Vietnam (RIAV) representing sound recordings
35. The Vietnam Association for Copyright Protection of Film and TV Movies (VAFC) representing audiovisual works
36. Vietnam Center for Protection of Music Copyright (VCPMC) representing musical works
37. Vietnam Reproduction Right Organization (VIETRRO) representing literary and artistic works
38. Vietnam Literary Copyright Center (VLCC) representing literary and artistic works.

Apart from the above-responding CMOs, the following are other CMOs which have been identified to also be existing and operating in AMS:

Lao PDR[1]

1. LASCAP representing musical works (LASCAP)

Malaysia[2]

2. Motion Picture Licensing Company Sdn Bhd representing audio-visual works (MPLC MY)
3. Music Rights Sabah Berhad representing musical works, sound recordings and performers rights in respect of ethnic songs in the state of Sabah (MRS)
4. Music Rights (Sarawak) Berhad representing musical works, sound recordings and performers rights in respect of ethnic songs in the state of Sarawak (MRSB)

Myanmar[3]

5. Music Copyright Myanmar (MCM) representing musical works

Thailand (29 other CMOs)[4]

6. Thai Music Copyright Co., Ltd. representing musical works
7. GMM Music Publishing International Co., Ltd. representing musical works and sound recordings
8. Thai Copyright Collection Co., Ltd. representing musical works and sound recordings
9. K.T. Publishing Co., Ltd. representing musical works and sound recordings
10. Rose Media & Entertainment Co., Ltd. representing musical works and sound recordings
11. Digital One Solution Co., Ltd. representing musical works and sound recordings
12. All Dance Copyright Co., Ltd. representing musical works and sound recordings
13. Four S (Thailand) Co., Ltd. representing musical works and sound recordings
14. Suraporn Copyright Collection Limited Partnership representing musical works and sound recordings
15. Sahaphan Copyright Thai Music Co., Ltd. representing sound recordings
16. Smile Music Licensing Co., Ltd. representing musical works and sound recordings
17. Copyright Good Song Co., Ltd. representing musical works
18. K.V. Promotion Limited Partnership representing musical works and sound recordings
19. Juadjard Production House Co., Ltd. representing musical works and sound recordings
20. Naphol Inter Music Production Co., Ltd. representing musical works and sound recordings
21. Naiphol Record Co., Ltd. representing musical works and sound recordings
22. Me Copyright Co., Ltd. representing musical works and sound recordings
23. Topline Music Co., Ltd. representing musical works and sound recordings
24. SSK Publishing Co., Ltd. representing musical works and sound recordings
25. UOK Inter Co., Ltd. representing musical works
26. CMC Entertainment Co. Ltd. representing sound recordings
27. Dream Dotato & Kraut Co., Ltd. representing musical works and sound recordings
28. Music Enjoy Co., Ltd. representing musical works and sound recordings
29. DMC 2021 Co., Ltd. representing musical works and sound recordings
30. Copyright Center Co., Ltd. representing musical works and sound recordings
31. Music Train (1995) Co., Ltd. representing musical works and sound recordings
32. V.P. 88 Music Center Co., Ltd. - representation information unavailable at time of writing
33. Inter Music Copyright Co., Ltd. representing musical works and sound recordings
34. PK Record Limited Partnership - representation information unavailable at time of writing

Singapore[5]

35. Motion Picture Licensing Company (Singapore) Private Limited (MPLC SG) representing audiovisual works.

[1] Source: DIP Lao

[2] Source: MyIPO (https://www.myipo.gov.my/en/list-of-declared-licensing-bodies/)

[3] Notification received on new CMO pending accreditation as at the time of writing.

[4] Source: DIP TH (www.ipthailand.go.th/images/26669/2566/Copyright/copyright-fee%20_20230713.pdf).

[5] Source: IPOS (https://www.ipos.gov.sg/about-ip/copyright/copyright-owners/collective-management-organisations)

As part of a stakeholder consultation process throughout 2022-2023, the following international CMO umbrella federations (IFs) were engaged and involved in the preparation of the relevant survey questionnaires, Study and this Resource Document:

a) AGICOA - The Association of International Collective Management of Audiovisual Works (www.agicoa.org);
b) CISAC – The International Confederation of Societies of Authors and Composers (www.cisac.org);
c) IFPI – The International Federation of the Phonographic Industry (www.ifpi.org);
d) IFRRO – The International Federation of Reproduction Rights Organisations (www.ifrro.org); and
e) SCAPR – The Societies' Council for the Collective Management of Performers' Rights (www.scapr.org).

B. Basic Information

Authors, performers, publishers, phonogram producers, film producers and other Rightholders, as drivers of the Copyright-Based Industries (CBIs), are important contributors to the economy and, in the present context, to the economic recovery of the ASEAN Region following the adverse effects of the COVID-19 pandemic. Hence, AMS recognise the need to ensure that such Rightholders receive remuneration due to them in the form of royalties by ensuring the adoption and promotion of effective and efficient collective management systems for copyright and related rights, whilst also addressing challenges posed by ever-developing online digital technologies.

In ASEAN legal systems, where copyright is considered a private right, collective management is an important option for Rightholders to administer their rights.

Pulling together information and various options on legislative frameworks and licensing structures for collective management in the ASEAN region is intended to help AMS COs and Collective Management Organizations (CMOs) to learn from each other and to develop good practices in support of the legitimate use of copyrighted works.

C. Purpose and Scope

The purpose of this Resource Document is to compile examples of legislation, regulation and practices in the area of collective management of copyright and related rights from the ASEAN region, summarise applicable general principles and provide available options, examples and tools from the other parts of the world for the AMS and other stakeholders to choose an appropriate approach in view of their country's particular circumstances, and decide on their own infrastructure for collective management.

As agreed by ASEAN, this Resource Document is structured based on the topics below:

1. Legislative Framework
2. CMO Structures
3. Supervising and Monitoring CMOs
4. Tariff Setting
5. Distribution Practices
6. CMO-Related Jurisprudence

This Resource Document is additionally intended to supplement the WIPO Good Practice Toolkit for Collective Management Organizations: A Bridge between Rightholders and Users (The Toolkit)[6] from an ASEAN perspective.

[6] https://www.wipo.int/publications/en/details.jsp?id=4561&plang=EN

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

The topics in this Resource Document are presented under the following three headings, wherever possible and relevant:

Heading	**What is discussed**
Explanation	A short explanation of why attention should be paid to a particular issue (the explanation is not exhaustive).
ASEAN Practices	A list of examples of how a particular topic has been approached by individual AMS in terms of legislation, regulations and CMO practice.
Reference tools	A menu of optional tools for consideration by AMS and other stakeholders, including examples of national or regional laws outside ASEAN jurisdictions for reference purposes.

Glossary

Wherever relevant and/or possible, the descriptions hereunder have been adopted from those contained in the Toolkit, as well as WIPO-administered copyright related treaties. Except for cases with clear references to WIPO treaties, no description should be interpreted normative or legal. It should be noted that those descriptions have been drafted for the primary purpose of facilitating an understanding and smooth reading of this document.

(Right of) Adaptation

The exclusive right of authors of literary or artistic work to authorize adaptations, arrangements and other alterations of their works.[7]

Non-exhaustive usage example(s): adapting a novel to make a motion picture; adapting an instructional textbook originally prepared for higher education into an instructional textbook intended for students at a lower level; and translating the lyrics of a song to be recorded using the same music as that of the original song.

ASEAN

The Association of Southeast Asian Nations, or ASEAN, was established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by the Founding Fathers of ASEAN: Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined ASEAN on 7 January 1984, followed by Viet Nam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, making up what is today the 10 Member States of ASEAN.[8]

ASEAN Member States (AMS)

1. Brunei Darussalam
2. Cambodia
3. Indonesia
4. Lao PDR

[7] Article 12, the Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979) (the Berne Convention)

[8] https://asean.org/about-us/

5. Malaysia
6. Myanmar
7. Philippines
8. Singapore
9. Thailand
10. Viet Nam

Audiovisual Fixation

The embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device.

Audiovisual Works

Any work that consists of a series of fixed related images, with or without accompanying sound, susceptible of being made visible and, where accompanied by sound, susceptible of being made audible.

Broadcasting; right of ~

The communication of a work or an object of related rights to the public by wireless transmission. It covers both terrestrial broadcasting and satellite broadcasting. "Broadcasting" is not to be understood as including interactive making available of works and objects of related rights over computer networks (where the time and place of reception may be individually chosen by members of the public).[9]

Non-exhaustive usage example(s): The electronic transmission of radio, television and satellite signals that are intended for general public reception.

Cablecasting

The communication to the public of a cable-originated program. Transmission by cable of encrypted signals carrying a cable-originated program is "cablecasting" where the means for decrypting are provided to the public by the cablecasting organization or with its consent. "Cablecasting" shall not be understood as including making available to the public through transmissions in an interactive manner through a computer network.[10]

Non-exhaustive usage example(s): Television channels that are transmitted only to paying subscribers, via a cable.

Collective Management Organization (CMO)[11]

Collective Management Organizations (CMOs) typically exist in a situation where it would be impossible or impractical for owners of copyright and related rights to manage their rights directly, and where it is to their advantage that the licensing of the rights that they own or represent be aggregated with a CMO.

The CMO's authority is typically conveyed by its Statute (if Membership-based), by voluntary mandates, by Representation Agreements with other CMOs and/or by national law. In most (but not all) cases, CMOs are organised on a not-for-profit basis and are owned or controlled by their Members.

[9] Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms 2004 (https://www.wipo.int/publications/en/details.jsp?id=361)
[10] ibid
[11] WIPO CMO Toolkit

CMOs ensure that their Members and represented Rightholders receive fair and appropriate payment for copyright-protected uses of their works and other subject matter.

CMOs represent different categories of rights, for instance, a Mechanical Rights Organization (MRO), a Music Licensing Company (MLC), a Performers' Collective Management Organization (PMO), a Performing Rights Organization (PRO), a Reproduction Rights Organization (RRO) and a Visual works Collective Management Organization (VCMO).

Communication to the Public; right of ~

For copyright authors: The exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.[12]

For phonogram producers[13] and performers: Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.[14] For this right to a single equitable remuneration, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.[15]

"Communication to the public" of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram.[16]

For audiovisual performers: The exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.[17]

However, Contracting Parties may notify that instead of the right of authorization, they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or communication to the public. Any Contracting Party may restrict or – provided that it makes a reservation to the Treaty – deny this right. In the case and to the extent of a reservation by a Contracting Party, the other Contracting Parties are permitted to deny, vis-à-vis the reserving Contracting Party, national treatment ("reciprocity").[18]

Non-exhaustive usage example(s): The transmission of recorded music, movies and television programmes by various means (compact disc players, wireless radio, television and satellite broadcasts, and by wired encrypted cablecasts) in public places (bars, discotheques, shops, etc.).

Commercial Rental; right of ~

For copyright authors[19]: The exclusive right of authorizing commercial rental to the public of the originals or copies of their works, as determined in national legislation.[20]

---

[12] Article 8, WIPO Copyright Treaty (WCT)

[13] In Brunei Darussalam, Cambodia, Malaysia, Singapore and Thailand, legislation provides phonogram producers with the exclusive rights to control the communication to the public of phonograms/sound recordings.

[14] Article 15 (1), WPPT

[15] Article 2, WPPT

[16] Article 2, WIPO Performances and Phonograms Treaty (WPPT)

[17] Article 11 (1), the Beijing Treaty on Audiovisual Performances (BTAP)

[18] Based on Article 11 (2) and (3), BTAP

[19] Specifically, copyright authors of works embodied in phonograms and in cinematographic works (Article 7 (1), WCT)

[20] Based on Article 7 (1), WCT

For phonogram producers: The exclusive right of phonogram producers to authorize the commercial rental to the public of the original and copies of their phonograms, even after distribution of them, by or pursuant to, authorization by the producer.[21]

However, some countries have kept the right of equitable remuneration, instead of the exclusive right.[22]

For performers: The exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms and audiovisual fixation as determined in the national law, even after distribution of them by, or pursuant to, authorization by the performer.[23]

Non-exhaustive usage example(s): the rental of movies and TV shows by video rental stores or online streaming platforms for temporary access and viewing for a fee; and the rental of music albums or recordings in both physical and digital formats for a specified period in exchange for a fee by stores or mobile music suppliers/disc jockeys.

Distribution(s)

Payment(s) to Members of a CMO, CMOs with whom Representation Agreements have been concluded, or other represented Rightholders, after the deduction of Operating Expenses and other authorized deductions.[24]

Distribution Rights

The exclusive right of authorizing the making available to the public of the original and copies of works, performances fixed in phonograms or in audio-visual fixations through sale or other transfer of ownership.[25]

In many countries, the right of distribution is limited by the "first sale" or "exhaustion" doctrine, which provides that once the first sale or distribution of a particular copy, phonogram or audiovisual fixation has been authorised, further distribution of this copy in the same territory cannot be limited. However, the purchaser cannot make copies or make derivative works based on it and authors continue to enjoy the exclusive right of authorising adaptations, arrangements and other alterations of their works.[26]

Non-exhaustive usage example(s): the sale of copies of music recordings and films.

Financial Income / Bank Interest

Income received as interest for monies/royalty revenue kept in banks pending distribution to Rightholders.

General Meeting[27]

A regular meeting of a CMO's Members and/or their elected representatives, convened at least once per year.

[21] Article 13 (1), WPPT
[22] Based on Article 13 (2), WPPT
[23] Based on Article 9 (1), WPPT and Article 9 (1), BTAP
[24] WIPO CMO Toolkit
[25] Article 6(1) of WCT, Article 8(1) of WPPT, and Article 8(1) of BTAP
[26] Based on Article 6(2) of WCT, Article 8(2) of WPPT, and Article 8(2) of BTAP
[27] WIPO CMO Toolkit

Licensee

A User who is licensed by a CMO to make copyright-protected uses of copyright works or other subject matter is a Licensee of a CMO.

Typically, such a Licensee is responsible for payment of licensing fees or statutory remuneration and, when relevant, to provide CMOs with accurate and timely usage information.[28]

Literary and artistic works

Literary and artistic works include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in pantomime; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.[29]

Making Available to the Public; right of ~

For copyright authors: The exclusive right of authorizing the making available to the public of their works by wire or wireless means, in such a way that members of the public may access these works from a place and at a time individually chosen by them.[30]

For phonogram producers: The exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.[31]

For performers: The exclusive right of authorizing the making available to the public of their performances fixed in phonograms and audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.[32]

Non-exhaustive usage example(s): the exploitation of works on any digital services, including but not limited to commercial and non-commercial platforms, social media platforms and via live streaming.

Mechanical Right

The mechanical right is involved when reproductions of protected works are carried out and royalties are payable for each copy.

Non-exhaustive usage example(s): the reproduction of musical works through the making of sound recordings.

[28] WIPO CMO Toolkit
[29] Article 2 (1), the Berne Convention
[30] Adapted from Article 8, WCT
[31] Article 14 WPPT
[32] Article 10 of WPPT, Article 10 of BTAP

Member(s)

A member of a CMO recognized as such in its Statute, and who may be a natural person or legal entity.

Typically, members of a CMO include, depending on the rights managed by the CMO, authors (such as writers, composers, painters and photographers), performers (as defined herein), publishers, phonogram producers, film producers and other Rightholders which fulfil the membership requirements of a CMO.[33]

Musical works

A song's underlying composition created by a songwriter or composer along with or without (depending on the legal definition in the relevant jurisdiction) any accompanying lyrics written by a lyricist.

Operating Expenses

Includes salaries, rents, utilities, and other expenses directly relating to the running of the operation of a CMO.[34]

Overseas Revenue

Monies/royalties received from foreign affiliate CMOs.[35]

Phonograms or Sound Recordings

The fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other sounds fixed in in a cinematographic or other audio-visual work.[36]

Any embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device is a fixation. Fixation fully applies in the digital environment, in particular to the use of phonograms in digital form, where it is an internationally understood that the storage of a protected phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of the WPPT.

Performers

Performers are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore.[37]

Public Performance; right of ~

The right of authorising the public performance of works by any means or process.[38]

[33] Based primarily on the definition in the WIPO CMO Toolkit
[34] WIPO CMO Toolkit
[35] WIPO CMO Toolkit
[36] Article 2, WPPT
[37] Article 2, WPPT
[38] Adapted from Article 11(1)(i) of the Berne Convention

A public performance includes any live performance of a work at a place where the public is or can be present, or at a place not open to the public but where a substantial number of persons outside the normal circle of a family and its close acquaintances are present.[39]

Non-exhaustive usage example(s): Performing plays and music live in public.

Representation Agreement

Includes unilateral bilateral and reciprocal representation agreements, signed between CMOs, whereby one CMO mandates another CMO to manage the rights it represents. Most Representation Agreements will include the transfer to the receiving CMO of Distributions allocated to the Rightholders.[40]

Reproduction; right of ~

The exclusive right of authorizing the direct or indirect reproduction of works, performances fixed in phonograms, or in audiovisual fixations, or phonograms, in any manner or form, and includes all reproduction in the digital environment.[41]

Non-exhaustive usage example(s): the making of copies of a text-based work by a publisher for distribution to the public, whether in the form of printed copies or digital media; and the making of copies of sound recordings containing recorded performances of musical works for downloads via digital platforms.

Reprographic Right

Reprographic right is the right regarding reproduction by the facsimile of a literary or artistic work or part of a work through any mechanical or electronic means, including hard copy and digital reproduction. Reprographic licensing also includes licensing the storage of digital reproductions on closed networks and intranets managed by the Licensee.

Non-exhaustive usage example(s): the photocopying and digital copying of printed works (i.e. text, music, photographs, illustrations, visual art etc. which are reproduced as sheet music, in books, journals, newspapers and other printed material) by businesses and educational establishments.

Rightholder

Any person or entity, other than a CMO, that holds a copyright or related right, or, under an agreement for the exploitation of rights or by law, regulation or Statute, is entitled to a share of the Rights Revenue.[42]

Statute

Means the memorandum and articles of association, charter, by-laws, the rules or documents of constitution of a CMO.

[39] Adapted from WIPO publication "Understanding Copyright and Related Rights (https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf)
[40] WIPO CMO Toolkit
[41] Article 9(1) of the Berne Convention and Agreed statements concerning Article 1(4) of WCT; Articles 7 & 11, WPPT and Agreed statement; Article 7 of BTAP and Agreed statement
[42] WIPO CMO Toolkit

This includes, but is not limited to, a summary of the CMO's role and function, and an explanation of each category of Rightholders and rights which it represents.[43]

Synchronization

The act of synchronizing sound recordings and/or musical works with any visual media output.

Non-exhaustive usage example(s): the inclusion of musical works in the sound tracks of films, television shows, advertisements, video games, movie trailers, etc.

User

The User is a natural or legal person who uses a copyright work or other subject matter protected by copyright or related rights, whether permitted by legal exception or limitation, statutory or contractual license.[44]

1. LEGISLATIVE FRAMEWORK

(reference: WIPO Good Practice Toolkit for CMOs – all chapters excluding Chapters 5, 6, 8.3 and 13)

1.1. Explanation

WIPO and ASEAN recognize the importance of CMOs for the effective administration of copyright and related rights.

A proper legislative framework is necessary for the effective establishment and functioning of CMOs because it assists, amongst others things, to:

(a) provide legal certainty and a level playing field for all stakeholders;
(b) ensure that CMOs operate in a transparent and accountable manner, with clear rules and procedures governing their activities;
(c) build trust and confidence among all parties, including creators, users, and the public;
(d) provide a mechanism for resolving disputes that may arise between CMOs and their stakeholders; and
(e) provide for the independent oversight of CMOs, ensuring that they are properly audited.

Without a proper legislative framework, there may be confusion, uncertainty, and inconsistencies in the way that CMOs operate, which can lead to inefficiencies and reduce the effectiveness of the collective management system. This can also result in disputes and legal challenges that can be costly and time-consuming to resolve.

1.2. ASEAN Practices

(General legislative provisions on CMOs excluding more specific provisions related to approval, governance, supervision and monitoring, tariff setting and distribution practices which are addressed in Chapters 3, 4 and 5 respectively):

[43] WIPO CMO Toolkit
[44] WIPO CMO Toolkit

1.2.1 **Brunei Darussalam** - Emergency Copyright Order 1999[45]

"Chapter VII – Copyright Licensing
Licensing schemes and licensing bodies
120.(1) In this Order, "licensing scheme" means a scheme setting out —

(a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences; and
(b) the terms on which licences would be granted in those classes of case,

and includes anything in the nature of a scheme, whether described as a scheme, a tariff or any other name.

(2) In this Order, "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

(3) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only —

(a) a single collective work or collective works of which the authors are the same; or
(b) works made by, or by employees of or commissioned by, a single individual, firm, company, or a holding company or a subsidiary company within the meaning of sections 125 and 126 of the Companies Act.

(4) In this section, "copyright licence" means a licence to do, or authorise the doing of, any of the acts restricted by copyright.

References and applications with respect to licensing schemes
121. Sections 122 to 127 apply to —

(a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they relate to licences for —
    (i) the copying of the work;
    (ii) the performing, playing or showing of the work in public; or
    (iii) the broadcasting of the work or its inclusion in a cable programme service;
(b) all licensing schemes in relation to the copyright in sound recordings (other than film sound-tracks when accompanying a film), broadcasts or cable programmes, or the typographical arrangement of published editions; and
(c) all licensing schemes in relation to the copyright in sound recordings, films or computer programs, so far as they relate to licences for the rental of copies to the public,

and in those sections "licensing scheme" means a licensing scheme of any of those descriptions.

122.(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case. (…)

References and applications with respect to licensing by licensing bodies
128. Sections 129 to 132 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme —

(a) licences relating to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they authorise-

[45] https://www.wipo.int/wipolex/en/text/187417

(i) the copying of the work;
(ii) the performing, playing or showing of the work in public;
(iii) the broadcasting of the work or its inclusion in a cable programme service; or
(iv) the communication to the public by wire or without wire;

(b) any licence in relation to the copyright in a sound recording (other than a film sound-track when accompanying a film), broadcast or cable programme, or the typographical arrangement of a published edition; and

(c) all licences in relation to the copyright in sound recordings, films, or computer programs, so far as they relate to the rental of copies to the public,

and in those sections a licence means a licence of any of those descriptions.

129. (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee." (…)

1.2.2 **Cambodia** - Law on Copyrights and Related Rights 2013[46]

"Collective Management of Rights
Article 56
The author of work and related-right holder can establish the collective management organization to protect and manage their economic rights.

The establishment of collective management organization of author's right, performer's right, and phonogram producer's right or video producer's right must require the recognition of the Ministry of Culture and Fine Arts.

The collective management organization of broadcasting right via radio, television, and cable television of the broadcasting organizations shall require the recognition of the Ministry of Information."

1.2.3 **Indonesia** - Law of the Republic of Indonesia Number 28 of 2014 on Copyrights[47]

"Chapter XII - Collective Management Organizations
Article 87
(1) In order to obtain the economic rights, every Author, Copyright Holder, and Related Rights owner become members of a Collective Management Organization in order to collect reasonable remuneration from users who use the Copyright and Related Rights in non-commercial public service.
(2) Copyright and Related Rights Users, who use the Rights as referred to in section (1), pay Royalties to the Author, Copyright Holder, or Related Rights owners through a Collective Management Organization.
(3) The Users as referred to in section (1) enter into an agreement with the Collective Management Organization stipulating the obligation to pay the Royalties for the Copyright and Related Rights being used.
(4) The commercial use of Works and/or Related Rights products by users is not considered an infringement of this Law insofar as the user has done and has fulfilled the obligations under the agreement with the Collective Management Organization.

Article 89
(1) To manage Copyright Royalties in the field of songs and/or music 2 (two) national Collective Management Organizations are established that each represents:
(a) interests of Authors; and

[46] https://www.wipo.int/wipolex/en/text/567454
[47] https://www.wipo.int/wipolex/en/text/578071

(b) interests of Related Rights owners.
(2) Both of Collective Management Organizations as referred to in section (1) have the authority to collect and distribute Royalties from commercial Users.
(3) To collect as referred to in section (2) the two Collective Management Organizations coordinate and determine the amount of Royalties that is the right of each Collective Management Organization in accordance with the prevailing best practice.
(4) The provisions concerning guidelines for determining the amount of royalties are established by the Collective Management Organizations as referred to in section (1) and endorsed by the Minister.

1.2.4 **Lao People's Democratic Republic** - Law on Intellectual Property (Amended) 2017[48]

"Chapter 8 - Collective Management Organizations
Article 118 (revised). Collective Management Organizations
Collective management organizations are organizations managing copyright and related rights, established on the basis of agreement among authors, copyrights owners, related rights owners, to operate in accordance with the law in order to protect copyrights and related rights and under the management of the Ministry of Science and Technology.

Article 119 (revised). Role of Collective Management Organizations
The Collective Management Organizations shall perform the following roles:
1. To manage copyright and related rights on behalf of authors, copyrights owners, related rights owners; to negotiate on licensing, the collection of remuneration on behalf of such persons, and to divide and distribute royalties, remuneration and other material benefits there from the allowance of exploiting the authorized rights;
2. To protect member's rights and legal benefits, including to represent the persons mentioned in item 1 above in legal proceedings, and to reconcile any dispute on their behalf.

Article 120 (revised). Rights and Obligations of Collective Management Organizations
The Collective Management Organizations shall have the rights and obligations as follows:
1. to establish encouraging creation activities and other social activities;
2. to cooperate with correlative national and international organizations on the protection of copyright and related rights;
3. to make report on collective management to the Ministry of Science and Technology;
4. to perform other rights and obligations according to the provisions of this law."

1.2.5 **Malaysia** - Copyright Act 1987[49] (as amended by the Copyright (Amendment) Acts of 2020[50] & 2022[51])

"Section 3 – Definition
"collective management organization" means a body corporate which is declared as a collective management organization under section 27A;"

[48] https://www.wipo.int/wipolex/en/text/583994
[49] https://www.wipo.int/wipolex/en/text/583950
[50] https://www.myipo.gov.my/ms/copyright-act-1987/?lang=en
[51] https://www.myipo.gov.my/wp-content/uploads/2022/02/Copyright-Amendment-Act-2022-Act-A1645.pdf

1.2.6 **Myanmar** - Copyright Law 2019[52]

Chapter I
Title, Enforcement and Definitions

2(ll). Collective Management Organization on Copyright or Related Rights means an association managing copyright and related rights on a non-profit basis, established on the basis of agreement among authors, copyright owners and related rights owners to protect their copyright and related rights in accordance with this Law;

1.2.7 **Philippines** - Intellectual Property Code of the Philippines (Republic Act No. 8293) (2015 Edition)[53] (As amended by Republic Act No.10372, or an Act Amending certain provisions of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines, and for other Purposes)

Part IV. The Law On Copyright
Chapter VII Transfer, Assignment and Licensing of Copyright
(…)
"SEC 183. Designation of Society. - The owners of copyright and related rights or their heirs may designate a society of artists, writers, composers and other right-holders to collectively manage their economic or moral rights on their behalf. For the said societies to enforce the rights of their members, they shall first secure the necessary accreditation from the Intellectual Property Office. (Sec. 32, P.D. No. 49a)"

1.2.8 **Singapore** - Copyright Act 2021 (No. 22 of 2021)[54]

Part 9 Regulation Of Collective Management Organisations
Division 1 — Preliminary
(…)
"Interpretation: what is a collective management organisation (CMO) and who are its members; what is a tariff scheme
459.—(1) In this Part, a person (X) is a "collective management organisation" or "CMO" if —

(i) X is in the business of collectively managing the use of copyright works or protected performances (or both), including —
  (i) the negotiating the terms of use;
  (ii) granting permission for the use;
  (iii) administering any terms of use; and
  (iv) collecting and distributing royalties or any other payment for the use;
(ii) those works or performances —
  (i) are made or given by different authors, makers, publishers or performers; and
  (ii) are not made or given by those authors, makers, publishers or performers —
    (A) as employees of X or a prescribed related person; or
    (B) under a commission from X or a prescribed related person;
(iii) X manages those works or performances —
  (i) as the rights owner or with the authority of the rights owners; and
  (ii) for the collective benefit of —
    (A) those authors, makers, publishers or performers; or
    (B) the rights owners of those works or performances (but not including X);

[52] https://www.wipo.int/wipolex/en/text/587121
[53] https://www.wipo.int/wipolex/en/text/488674
[54] https://www.wipo.int/wipolex/en/text/584840

(iv) X formulates or operates one or more schemes (however named) setting out —
(i) the classes of cases in which X is willing to grant, or procure the grant of, permission to use the works or performances that X manages; and
(ii) the terms (whether relating to the payment of a fee or charge or otherwise) on which X is willing to grant, or procure the grant of, that permission;
(v) one or more of the schemes mentioned in paragraph (d)are available to the public (or a segment of the public) in Singapore; and
(vi) X does not fall under any prescribed class of excluded persons.

(2) For the purposes of subsection (1) —
(a) to avoid doubt, X and the related person mentioned in subsection (1)(b)(ii) may be —
(i) an individual;
(ii) an organisation, an association or a body;
(iii) a corporate or an unincorporate entity; or
(iv) constituted under the law of a country other than Singapore;
(b) it does not matter whether the business mentioned in subsection (1)(a) —
(i) is carried on for profit or otherwise; or
(ii) is the sole or main business of X; and
(c) it does not matter whether the schemes mentioned in subsection (1)(d) are formulated or brought into operation before, on or after the appointed day.

(3) In this Part —
"members", in relation to a CMO, means the authors, makers, publishers, performers and rights owners mentioned in subsection (1)(c)(ii), but not the CMO itself;
"tariff scheme" means a scheme described in subsection (1)(d) that is available to the public (or a segment of the public) in Singapore."

1.2.9 **Thailand** - Copyright Act B.E. 2537 (1994)[55] [as amended by Copyright Act (No. 2) B.E. 2558 (2015), Copyright Act (No.3) B.E. 2558 (2015), Copyright Act (No.4) B.E. 2561 (2018) and Copyright Act (No. 5) B.E. 2565 (2022)]

Section 56. There shall be a Committee called "the Copyright Committee", consisting of the Permanent Secretary of the Ministry of Commerce as Chairperson as well as qualified members not exceeding twelve persons appointed by the Council of Ministers in which not less than six persons are appointed from representatives of the associations of owners of copyright or performers' rights and representatives of the associations of users of copyright or performers' rights.
The Committee may appoint any person to be Secretary and Assistant Secretary.

Section 60. The Committee shall have the powers and duties as follows:
(1) to give advice or consultation to the Minister with regard to the issuance of Ministerial Regulations under this Act;
(2) to decide an appeal against an order of the Director General according to section 45 and section 55;
(3) to promote or to support the associations or organizations of authors or performers with respect to the collection of royalties from users of the copyright work or the performer's rights and the protection or the safeguard of the rights or any other benefits under this Act;
(4) to consider other matters as entrusted by the Minister.

The Committee shall have the power to appoint a Sub-committee to consider or perform any matters as entrusted by the Committee, and section 59 shall apply to the meeting of the Sub-committee mutatis mutandis.

[55] https://www.wipo.int/wipolex/en/text/585444

In performing their duties, the Committee or the Sub-committee has the power to issue a written order summoning any person to give statements or furnish documents or any materials for consideration as necessary

1.2.10 **Viet Nam** - Law On Intellectual Property (No. 50/2005/QH11) 2005[56] [as amended by the Laws Amending and Supplementing a Number of Articles of the Law on Intellectual Property No. 36/2009/QH12)[57], No. 42/2019/QH14[58] and No.07/2022/QH15[59]]

"Chapter VI
Copyright And Related Rights Representation, Consultancy And Service Organizations
Article 56.- Collective Management Organization of Copyright and Related Rights

1. Collective Management Organization of Copyright and Related Rights is a voluntary organization, self-financed with operating funds, not for profit purposes, owned by authors, copyright holders, and owners. Agreement on establishment and operation in accordance with law to perform the authorization of copyright and related rights, subject to the state management of the Ministry of Culture, Sports and Tourism on collective management of copyright and related rights activities.

2. Collective Management Organization of Copyright and Related Rights shall carry out the following activities as authorized in writing by the author, copyright holders and related rights holders:

a) Perform the management of copyright and related rights; negotiate licensing, collect and distribute royalties and other material benefits from the exploitation of authorized rights;
b) Protecting members' legitimate rights and interests; arrange conciliation in the event of a dispute.

3. Collective Management Organization of Copyright and Related Rights has the following rights and obligations:

a) Ensure publicity and transparency in the management and administration activities of Collective Management Organization of Copyright and Related Rights with competent state agencies; authorized author, copyright holders, related rights holders; organizations and individuals exploit and use;
b) Develop authorized lists of authors, copyright holders and related rights holders; works, performances, phonograms, video recordings and broadcasts that are being managed by a collective management organization of copyright and related rights; scope of authorization; the validity of the authorization contract; the plan and results of the collection and distribution of royalties;
c) Develop a table of rates and methods of royalty payment, and submit them to the Minister of Culture, Sports and Tourism for approval. The Minister of Culture, Sports and Tourism shall approve the royalty payment schedule and method based on the principles specified in Clause 3, Article 44a of this Law;
d) Collect and distribute royalties according to the provisions of the organization's charter and the author's written authorization of the author, copyright holders and related rights holders having an agreement on the level or percentage , the method and timing of the distribution of royalties ; in accordance with the principles of publicity and transparency as prescribed by law. The collection and distribution of royalties from respective foreign or international organizations shall comply with the provisions of the law on foreign exchange management;

[56] https://www.wipo.int/wipolex/en/text/274445
[57] https://www.wipo.int/wipolex/en/text/472667
[58] https://www.wipo.int/wipolex/en/text/582363
[59] https://www.wipo.int/wipolex/en/legislation/details/21740

dd) To retain an amount of the total royalties collected to pay for the performance of the organization's tasks on the basis of an agreement between the author, the copyright owner, the related right holder, and the author. authority. The amount of withholding is adjusted on the basis of the agreement of the author, copyright holders, related rights holders. authorized and may be determined as a percentage of the total proceeds;

e) Distributing the royalties collected from the licensing of exploitation and use to authors, copyright holders and related rights holders after deducting the expenses specified at Point dd of this Clause;

f) To report annually and irregularly on collective representation activities to competent state agencies; subject to inspection and examination by competent state agencies;

g) To carry out activities to support cultural development, encourage creativity and other social activities;

h) Cooperate and sign reciprocal representation agreements with respective organizations of international organizations and countries in the protection of copyright and related rights;

i) Establish the organizational structure of the collective management organization of copyright, related rights , and guarantee the author , Copyright holders and related rights holders have authorized the right to stand for election and election to the positions of leadership, management, and control. of the organization.

4. In case a work, phonogram, video recording or broadcast program is related to the rights and interests of many organizations that collectively represent copyright and related rights authorized for management, organizations may agree for an organization to negotiate a license to use, collect and distribute royalties on behalf of the organization in accordance with the organization's charter and written authorization.

5. Where Collective Management Organization of Copyright and Related Rights, after five years of searching to distribute the collected royalties, still cannot find or contact the author, co-author, or owner. Authorized copyright holders, related rights holders, co-owners of copyrights or co-owners of related rights shall hand over this amount to a competent state agency for management after deduction of expenses . management and search fees in accordance with this Law and other relevant laws.
After receiving the handover, the competent state agency shall continue to notify the search for a period of five years. At the end of this period, if the competent state agency still cannot find or contact the author, co-author, copyright holders, related rights holders, co-owners Copyrights, related rights co-owners, persons with related rights and obligations as prescribed by law, this money shall be used for activities to encourage creation, propaganda and enforcement of copyright protection. copyright and related rights. Within the aforesaid time limits, upon finding or contacting the author, co-author, copyright holders, related rights holders, co-owners of copyrights, co-owners of related rights, authorities, persons with related rights and obligations as prescribed by law, this amount, after deducting management and search expenses, shall be paid to the above-mentioned persons in accordance with law.

6. The Government shall detail this Article.

Article 57.- Copyright and related right consultancy and service organizations

1. Copyright and related right consultancy and service organizations are established and operate according to the provisions of law.
2. Copyright and related right consultancy and service organizations shall conduct the following activities at the request of authors, copyright holders, related right holders:

a) Providing consultancy on issues related to the provisions of law on copyright and/or related rights;
b) Carrying out, on the behalf of copyright holders or related right holders, the procedures for filing applications for registration of copyright or related rights under authorization;
c) Joining other legal relations on copyright, related rights, protection of legitimate rights and interests of authors, copyright holders and related right holders under authorization."

1.3. Reference Tools

1.3.1. The Toolkit

Section 1.1.1 of the Toolkit provides the following explanation on the role of the CMO and its primary functions:

"Role: CMOs provide appropriate mechanisms for the exercise of copyright and related rights, in cases where the individual exercise by the Rightholder would be impossible or impractical. Collective management is an important part of a functioning copyright and related rights system, complementing individual licensing of rights, resting on robust substantive rights, exceptions and limitations, and corresponding enforcement measures. In this vein, CMOs can provide a bridge between Rightholders and Users, facilitating both access and remuneration.

Function: CMOs provide a mechanism for obtaining permission to use copyright materials, as well as for paying the corresponding fees or remuneration for certain uses of such materials, through an efficient system of collection and Distribution of license fees and/or remunerations. Some CMOs provide social, cultural and promotional services."

On this same topic, Section 1.1.2 of the Toolkit further lists examples of various non-AMS legislative provisions and IF descriptions whilst Sections 1.1.3 and 1.2.3 of the Toolkit provides good practice tools.

1.3.2. Directive 2014/26/EU[60]

Recital 3 of this directive provides the following explanation:

"Collective management organizations play, and should continue to play, an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their rightholders and the public."

1.3.3. WIPO publication Collective Management of Copyright and Related Rights (Dr Mihaly Ficsor - Third Edition – 2022) (WIPO Publication No. 855E/2)[61]

Excerpt from the Table of Contents for Chapter 3 (at page 3) for contextual reference

Collective management and the international treaties on copyright and related rights, and the role of governments

(a) Introductory remarks
(b) General obligations to undertake measures for the application, and to give effect to the provisions, of the treaties on copyright and related rights

[60] https://www.wipo.int/wipolex/en/text/332724
[61] https://tind.wipo.int/record/47101

(c) Suggested "dos" and "don't's"
(d) Mandatory, presumption-based and extended collective management
(e) Collective management and the obligation to grant national treatment

Excerpt from Chapter 3 (at pages 42 to 44)

"Provisions on the enforcement of rights and conflict resolution in the event that treaty obligations are violated are relevant to collective management. But the question of whether or not it may be said that a country duly "ensures the application" of a treaty by "giving effect to its terms" – that is, whether or not it applies the treaty in accordance with the terms of its provisions – is a more complex issue.

There are certain rights that may be exercised efficiently only through collective management. Thus, there seem to be good reasons to submit that, to fulfill its obligation to "ensure the application" of (i.e., to "give effect" to) the provisions on those rights, a country should adopt adequate legal regulation to facilitate the establishment and due operation of the necessary collective management system. This requires from governments, on the one hand, to be proactive where its contribution is needed and, on the other, to refrain from any unnecessary intervention that might create undesirable obstacles.

These considerations apply differently depending on whether or not there is already an existing collective management system in place in a country and hence it is necessary only to support its adaptation – including its extension, where needed – to technological, business-method and social developments. A proactive approach is particularly important in supporting certain developing countries and countries in transition (see Chapters 7 and 12), and it is in such countries that the assistance offered by WIPO and the international federations of CMOs is especially important (see Chapter 2). It goes without saying that any assistance, whether through WIPO or directly by the international federations, is to be supplied only on demand: it is for the governments concerned to recognize the value of and request such assistance.

Suggested "dos" and "don'ts"

The levels of governmental regulation and administrative intervention are not necessarily supposed to be the same across all rights. It follows from the nature of an exclusive right that, in the absence of an applicable exception or limitation, its owners – and *only* the owners – should be able to decide whether or not they authorize or prohibit any use of their works; and if they authorize the use, it should be they who decide to what extent, under what conditions and against what payment (if any). In such a case (again, in the absence of applicable exceptions or limitations), no governmental intervention is justified. The exclusive nature of the rights is such that their owners, in general, should be free to join a CMO or not.

When such a right is managed collectively, its exclusivity must be taken into account. When a CMO is in a de facto or de jure monopoly position, it may be necessary to take steps to mitigate the risk that it might abuse that position, but it is not justified to limit the exclusive rights by intervening automatically in the CMO's tariff system or licensing conditions without evidence of such abuse or that the risk is high. Indeed, in many cases, market forces and the supply/demand dichotomy may take care of appropriate arrangements.

In the case of compulsory licenses, the Berne Convention[62] foresees the intervention of an administrative authority. It is to be noted, however, that a compulsory license is not a statutory license (i.e., where a national law itself allows the performance of acts covered by a right against remuneration) or a right originally provided as a mere right to remuneration. Articles

[62] Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979) - https://www.wipo.int/wipolex/en/text/283693

11*bis*(2) and 13(1) on such licenses[63] make it clear that the competent authority is supposed to fix the "equitable remuneration" only in "the absence of agreement", which presupposes prior negotiations between the CMOs and the users seeking to establish a tariff system and licensing conditions.

As regards mere rights to remuneration[64] and non-voluntary licenses[65], more intensive regulation and intervention by administrative bodies may be justified. However, in the application of such rights too, negotiations between the CMOs and the users should play their proper part, because these negotiations are the most suitable way of establishing a level of remuneration that reflects the real value of the use of works and other protected productions.

In the case of those rights that are properly managed collectively, if it is accepted that governments should provide a favorable legislative framework for – and be proactive in encouraging – the establishment of the necessary CMOs, it may be recognized that such organizations should be truly capable of fulfilling the objective they are supposed to serve – namely, "giving effects to" the provisions on the rights concerned. Thus, the governments should guarantee that no CMO faces unreasonable legal obstacles; rather, it should receive all of the support necessary to its effective activity. This means that, among other things, although the freedom of association of rightholders should be ensured, where CMOs need to act as natural monopolies for the purposes of effectively managing rights, they should not be subjected to artificial constraints on competition. Indeed, in certain cases where the efficient exercise of the rights requires it (and the international norms allow it), mandatory collective management may be prescribed, or the effect of the licenses granted by voluntarily established CMOs be extended (with appropriate conditions and guarantees), to encompass those rightholders who have not joined the CMOs. (For the details of these models of collective management and the means of protection against possible abuses of a CMO's monopoly position, see Chapter 5.)

Of course, it is not sufficient if governments ensure only the necessary legal framework for efficient application of – that is, for the "giving effect" to – those rights for the exercise of which collective management is necessary; adequate legislative provisions and administrative measures are also essential, guaranteeing that the CMOs and the staff of CMOs act in the interests of the rightholders they represent, in accordance with the requirements of effective, efficient and transparent rights management.

At the same time, any unnecessary and poorly informed overregulation and intervention would endanger the effective operation of a CMO and hence jeopardize a country's capacity to meet its treaty obligations to "giv[e] effect to" the rights to be granted. For example, a statutory provision fixing the costs of management at a uniform level – too high for certain rights, but too low for others – may unreasonably undermine the organization's financial position and may prejudice the rightholders' legitimate interests (see Chapter 8).

These considerations point toward governmental registration, accreditation, or authorization as a way of ensuring that only organizations that fulfill their obligations can engage in collective management. As a corollary, a supervisory system should guarantee that CMOs, once

[63] It is true that the Appendix to the Berne Convention also provides for translation and reprint compulsory licenses applicable in developing countries, but those are rarely connected to collective management.

[64] See, e.g., the extremely detailed regulation of the remuneration to be paid set out in the E.U. Resale Right Directive: Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, OJ L 272/32, October 13, 2001.

[65] See, e.g., the provisions of Articles 11bis(2) and 13(1) of the Berne Convention under which, in the absence of agreement, a competent authority is to fix the equitable remuneration in the case of the compulsory licenses foreseen in those provisions for the rights of broadcasting and certain acts of secondary uses of broadcast works, and for the right of reproduction applied for recording musical works, respectively.

appropriately established, continue to function appropriately. However (and as it is stressed in Chapter 8), in the event of some irregularity, it is not a reasonable and proportionate solution to leap immediately to the toughest sanctions (such as suspension of the operation, or withdrawal of the accreditation of a CMO), because such measures inevitably punish also the rightholders. It is unfair that rightholders should suffer the impact of irregularities for which they are not responsible. Proportionality – and, wherever possible, patience and cooperation – seems to be the right approach, especially in the case of newly established CMOs, which usually face teething problems."

2. CMO STRUCTURES

2.1. Explanation

National collective management frameworks differ significantly with some being the results of long-lasting evolution and some being established rapidly when particular territories started to participate more actively in the global creative content market, in which collective management is a key element.

The following situations below are non-exhaustive and non-exclusive examples of structures of how CMOs have either arranged themselves according to the market, followed regulatory measures or were in circumstances where they were the sole CMO collecting for various sets of rights. Depending on whether they were in fact or perceived as a dominant aggregator of rights and licensing, the term "one-stop shop" CMOs may have been used to describe any or all of the situations (which is to say that the term "one stop shop" is not a term of art and currently suffers from a lack of definition):

- CMOs managing a specific category of right and/or a specific category of Rightholders, respectively ("mono-right" or "mono-work" CMO);
- CMOs managing several category of rights and/or several categories of Rightholders, respectively ("multi-rights" or "multi-works" CMO);
- Only one CMO established in a given country (the CMO with a *de facto* monopoly position);
- A CMO with a monopolistic position which may be statutorily allowed in a given country (the CMO with a *de jure* monopoly position);
- Multiple CMOs co-existing in a given country, each one of which manages a distinct category of rights for a distinct category of Rightholders;
- A few CMOs co-existing in a given country competing each other, managing the same specific category of rights for the same specific category of Rightholders;
- Competing CMOs co-existing under the administration of a central umbrella CMO; and
- CMOs in a given country, each one of which manages a distinct category of rights and providing a joint licensing service for users.

2.2. ASEAN Practices

2.2.1. Mono-right/work CMOs in ASEAN Member States[66]

(a) <u>CMOs representing musical works (11)</u>

Brunei Darussalam (BEAT), Cambodia (CAMCOS), Indonesia (WAMI), Malaysia (MACP), Myanmar (MPRO), Philippines (FILSCAP), Singapore (COMPASS), Thailand (KMR, MCT, RMS) and Viet Nam (VCPMC).

[66] Based on responses to the WIPO ASEAN CMO survey questionnaires issued in June 2022.

(b) CMOs representing sound recordings (8)

Brunei (BRUMUSIC), Indonesia (SELMI), Malaysia (PPM), Myanmar (MRLA), Philippines (SR), Singapore (MRSS), Thailand (PNR) and Viet Nam (RIAV).

(c) CMOs representing performers (8)

Indonesia (PAPPRI, PRISINDO), Malaysia (RPM), Myanmar (MMA, MVAA, UMRP), Philippines (PRSP) and Viet Nam (APPA).

(d) CMOs representing literary and artistic works (6)

Indonesia (PRCI), Malaysia (MARC), Philippines (FILCOLS), Singapore (CLASS) and Viet Nam (VIETRRO, VLCC).

(e) CMOs representing audio-visual works (1)

Viet Nam (VAFC)

2.2.2. Multi-right/work CMOs in ASEAN Member States[67]

(a) Voluntarily Created (3)

MPC (Joint Licensing CMO representing MCT and PNR for certain rights) and PIRIYA, both in Thailand representing musical works and sound recordings, and PRM in the Philippines representing sound recordings and performers.

(b) Statutorily Established (1)

Indonesia Joint Licensing CMO (LMKN) representing musical work, sound recordings and performers.

2.2.3. Case Studies on Joint Licensing Initiatives in AMS

(a) Indonesia - LMKN

1. The Law of the Republic of Indonesia Number 28 of 2014 on Copyrights[68] (this Law) stipulates that any party which can acquire power of attorneys of up to a certain number of assignors is allowed to establish a CMO (200 composers, or 50 performers, or phonogram producers). Detailed terms and conditions apply although they are administrative in nature.

2. Such stipulation which is provided in this Law ignited the emergence of newly established CMOs (called Lembaga Manajemen Kolektif (LMKs) in the Indonesian language) and as of the date of this resource document, permissions to operate have been issued by the Indonesian Directorate General of Intellectual Property (DGIP) to 12 CMOs in total, comprising of 5 copyright CMOs (4 in the field of music and 1 in the field of reprography); and 7 related rights CMOs, while several applications are pending.

3. The market ('users') expressed dissatisfaction at having to negotiate with so many CMOs, whilst some CMO members were also not satisfied on matters related to tariffs, transparency and accountability. The government responded by enacting the Law, which

[67] Based on responses to the WIPO ASEAN CMO survey questionnaires issued in June 2022.
[68] https://www.wipo.int/wipolex/en/text/578071

stipulated for, amongst others, a national CMO (*Lembaga Manajemen Kolektif Nasional* - LMKN) to be established in order to avoid users' being required to obtain 11 separate licenses to play music, in addition to a separate license for photocopying (reprography).

4. This national CMO is given the task to set tariffs and to coordinate the collection and distribution of performing rights based on principles of transparency and accountability. It holds the status of a 'state auxiliary body', but without using tax payers' money or state budgets. Under the Law, LMKN may issue licences for the communication to the public rights without powers of attorney or assignment of rights from the Rightholder and for the collection of remunerations, LMKN may authorize one of the LMKs to collect based on set targets and costs of collection.

5. LMKN is run by 10 Commissioners officially appointed by the Minister of Law and Human Rights of the Republic of Indonesia. These Commissioners are a mix of official representatives from 3 copyright CMOs and 3 related rights CMOs with another 3 selected by the relevant Minister, and 2 more, each a composer and a performer respectively not holding any official position in any CMO.

5. LMKN is not an integration of the 11 music-related LMKs. Registration to become a Member of a LMK, and assign the right to collect performing rights to LMKN, is still the task of each individual LMK. 2 LMKN Commissioners have the job desk of supervising the licensing activities of , each LMK which is given the authority to license certain types of users. The remaining 8 LMKN Commissioners are tasked in pairs to oversee the fields of information technology, public relations, distribution, litigation, finance and administration.

6. Any amount of royalty paid by users are transferred to a single account held by LMKN, (a single copyright and related rights licence). At of the date of this Resource Document, LMKN then distributes royalties collected honouring a distribution formula of 50% for the group of copyright LMKs,25% for the group of performer LMKs and 25% for the group of sound recording producers LMKs. Within each group, the respective LMKs have reached a consensus on how to divide the allocated amount based on an agreed market share rate.

7. Based on the applicable regulations [69] , LMKN has a structure whereby 10 Commissioners are in-charge of national coordination of the 11 LMKs. LMKN has its own secretariat and appoints an executive branch which, at the date of this resource document, is mandated to do licensing activities. The overall supervision of LMKN and LMKs is done by a Controlling Body comprising of 9 individuals entirely appointed by and reporting to the relevant Minister. The tasks of members of this Body are to (i) evaluate the performance and finances of LMKN and LMKs, (ii) evaluate the performance of the LMKN Commissioners, and (iii) receive complaints from the public as well as Rightholders.This Body is financed by the DGIP. The Regulation also emphasizes that the entire LMKN system (including LMKs) must not exceed 20% in costs of administration.

(b) Thailand – MPC

1. The first ever joint licensing initiative in the AMS was established in 2003, namely MPC Music Company Limited (MPC)(formerly known as JV: MCT-Phonorights).

[69] Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, Number 9 of 2022 in respect of the implementation of Regulation Number 56 of 2021 on Management of Copyright Royalty For Songs and/or Music. https://jdih.dgip.go.id/produk_hukum/view/id/108/t/permenkumham+no+9+tahun+2022+tentang+pelaksanaan+pp+nomor+56+tahun+2021+tentang+pengelolaan+royalti+hak+cipta+lagu+danatau+musik. Official translation in English unavailable as at the time of writing.

2. MPC was formed to license and control of the communication to the public right for members of 2 CMOs namely Music Copyright Thailand Limited (MCT) and Phonorights (Thailand) Limited (PNR). As at the time of writing, MPC represents 5,615,943 musical works and sound recordings.

3. MCT (the CMO representing international and over 200 local music authors and publishers) is an affiliate of CISAC which was established in 1994 whilst PNR (the CMO representing international and several local phonogram producers) is an affiliate of IFPI which was established in 1997.

4. MPC grants licenses for the public performance and broadcast of the musical works and sound recordings of its members and currently licenses airlines, radio stations, television stations, hotels, restaurants, bars, pubs, karaoke outs and other commercial premises. After deductions for operation costs, MPC distributes all royalties back to MCT and PNR for onward distribution to the relevant Rightholders based on available usage reports and agreed distribution practices.

5. Revenue collection-wise, MPC has seen gradual recovery in tandem with the post-pandemic economy but continues to encounter considerably difficult operating conditions in competition with possibly the largest number of CMOs (presently at 35) in the world with comparatively lower regulatory oversight. Some of the issues faced include:

i). Confusion and difficulty for Users to choose and obtain mass-market public performance licences from the correct CMOs;
ii). Widespread market complaints of fraudulent CMOs operating uncontrolled and without appropriate rights representation; and
iii). Mistaken payments by Users due to scams and general misunderstandings on which CMO(s) to pay.

6. In terms of regulatory oversight of CMOs, the following are current measures in place and considerations under deliberation:

i). Via indirect regulations, the Thai Department of Internal Trade oversee the CMOs administratively by requiring CMOs to register and declare the royalty rates, capital costs, expenses, rules, procedures, and conditions relating to the granting of rights to disseminate music copyrighted work for commercial purposes, to the Central Committee on the Price of Goods and Services (CCP) under provisions of the Prices of Goods and Services Act, B.E. 2542 (1999). This however remains a notification-only procedure without any examination process or penalties for submission of incorrect information in place, leading to concerns that fraudulent actors may continue to operate unchecked;
ii). DIP TH has introduced a voluntary CMO Code of Conduct effective 27 December 2021 with 8 CMOs participating as of the date of this publication. Concerns however remain that the voluntary nature of this CMO code with the absence of minimum qualifications (e.g., number of Works represented) and any examination process for compliance, will not allow the Code to be an effective measure to address some of the Thai CMO market issues raised above; and
iii). Previous draft legislation proposed to limit or regulate the number of CMOs have however failed to gain approval due to concerns that such provisions would infringe on Rightholders' basic freedom of association, resulting in continuing pressure for regulatory solutions.

2.2.4. Case Study on RROs in AMS[70]

1. The following table lists the 5 ASEAN RROs and the licensing basis on which they operate:

Country	*RRO*	*Licensing Basis*
Indonesia	PRCI	Voluntary
Malaysia	MARC	Voluntary
Philippines	FILCOLS	Voluntary
Singapore	CLASS	Voluntary
Viet Nam	VIETRRO	Voluntary

2. In early 2023, IFRRO commenced a joint project with the RROs in Indonesia, Malaysia, Philippines, and Viet Nam. The IFRRO ASEAN Project involves practical mentorship for the RROs with the aim of establishing viable collective licensing in the text and image sector. The mentorship is being delivered by two former RRO Chief Executives from Australia and New Zealand.

3. The COs throughout the ASEAN region have been active in assisting and regulating CMOs in the music sector, such that in all countries there are established music licensing schemes. These schemes underpin the viability of the local music industry and enable each country to comply with their international treaty obligations.

4. Except for CLASS in Singapore, there is no current, viable RRO licensing in the ASEAN region in the text and image sector. The bulk of revenue collected by the remaining ASEAN RROs has been minor amounts paid by other countries' RROs for the use of works in their jurisdictions. Apart from CLASS, all ASEAN RROs have reported zero local revenue in recent years. CLASS has been successfully licensing in the education sector at all levels for more than 20 years.

5. Referencing supportive licensing environments in other regions around the world[71] which demonstrate support for the legal use of text and image-based works, for collective management, and for authors and publishers, ASEAN RROs would benefit from similar local conditions including strong inter-government cooperation between agencies which are responsible for copyright and education respectively.

6. Examples of some challenges that the ASEAN RROs encounter include:

(i) In Indonesia, regulations for the operation of RROs have been in draft form since 2019, awaiting government sign-off and also requiring clarification to ensure the understanding that licence agreement terms which allow 10% for copying are valid only if royalties are paid. By contrast, regulations for the music CMOs in Indonesia were signed soon after the Law of the Republic of Indonesia Number 28 of 2014 was enacted and have since been updated, most recently in 2022. Without regulatory approval, the RRO is not able to commence licensing of the user groups that are set out in the draft regulations, including educational institutions;

(ii) In Malaysia, the Copyright Act 1987 requires CMOs to obtain declarations from MyIPO in order to operate. Despite the RRO having obtained MyIPO's relevant approval since August 2021, neither the Ministry of Education nor the Ministry of Higher Education has responded to the RRO's invitation to participate in negotiations for fair and equitable licensing terms; and

[70] Historic context and international examples on RRO licensing has been included as Annexure 1 to this Resource Document

[71] Ibid.

(iii) In the Philippines, licensing for K-12 schools (education for children from kindergarten through twelfth grade) had been established for some time with the Ministry of Education. Since the COVID-19 pandemic struck in 2020, the Ministry of Education determined that it would stop paying licence fees and, instead, rely on provisions in the Intellectual Property Code. It advised schools that making print and digital copies of copyright works was now free.

2.3. Reference Tools

2.3.1. International case studies of voluntarily created Joint Licensing Initiatives

(a) United Kingdom (UK)[72]

1. In 2018 and to simplify music licensing for UK businesses and organisations for public performance, PRS for Music (the CMO representing music authors and publishers) and PPL (the CMO representing music performers and phonogram producers) launched a joint venture company namely PPL PRS Limited, with one enquiry form[73] with parameters linked to the relevant tariffs[74], a unified customer service operation, and a combined customer database to avoid any duplication. For the non-customer-facing side, efficiencies arise from combined staffing, combined debt collection as well as legal enforcement actions.

2. The joint venture was initially announced in 2016 and later successfully obtained clearance from the UK Competition and Markets Authority (CMA). Great care was put into the final corporate structure of PPL PRS Ltd. External consultants were engaged to undertake a comprehensive data analysis and scoping exercise. A detailed shareholders agreement was promulgated setting out how the company would be operated (including allocation of costs) and owned. PPL PRS Ltd is equally owned by PPL and PRS for Music. The PPL PRS Ltd Board comprises an independent chairperson, and representatives from both PPL and PRS for Music for depth of experience as well as for fair representation.

3. PPL and PRS for Music continue to operate separately in the other areas of their respective businesses, including representing their members; collecting royalties outside the UK through agreements with their counterpart CMOs in other territories; developing, setting, and consulting on their respective tariffs and licensing schemes; licensing broadcast, online and recorded media customers, and their respective distribution policies and procedures.

4. Described in the simplest terms, PPL PRS Ltd issues TheMusicLicence on behalf of its parent companies (PPL and PRS for Music), acting as their agent. Licence fees invoiced to customers are recorded as revenue in its parent companies' accounts. PPL PRS Ltd's revenue stated in the financial statements is the recharge to its parent companies of the expenditure, plus a margin, incurred in respect of operating the joint venture. All operating expenditure is recharged back to its parents.

5. PPL then distributes music licence fees for the use of recorded music less its operating costs, to its record company and performer members (and those CMOs representing record companies and performers in other territories with which it has agreements) while PRS for Music distributes music licence fees for the use of musical compositions and lyrics,

[72] A more detailed case study has been included as Annexure 2 to this Resource Document.

[73] https://pplprs.co.uk/get-themusiclicence/

[74] An important point is that the joint venture is not permitted to set or negotiate any tariff for UK public performance licences. In this respect, PPL and PRS for Music continue to consult on, negotiate and set their respective public performance tariffs independently for PPL PRS Ltd to license.

less its operating costs, to its songwriter, composer and publisher members (and to those CMOs representing songwriters, composers and publishers in other territories with which it has agreements).

6. Aside from the continuous cost savings from the efficiencies mentioned above, the PPL PRS joint venture has generated strong results in 5 years of royalty collection, with 1 billion pounds of distribution facilitated. In 2021, the joint venture dealt with approximately 300,000 licensed customers, who operate over 400,000 venues.

(b) Canada

1. In 2019, SOCAN (CMO representing music authors and publishers) and RE:SOUND (the CMO representing music performers and phonogram producers) launched Entandem, a licensing business jointly operated by the two CMOs[75]. Both CMOs expect that this initiative may make "music licensing easier and more efficient", as the "single licensing organization means a simplified experience, by interacting with one organization instead of two, with one payment for both RE:SOUND and SOCAN music licenses, and one point of contact to answer questions and resolve issues."[76]

2. As to the scope, while Entandem issues licenses for live performances and the general use of recorded music in public venues, RE:SOUND and SOCAN continue to administer royalties separately for recorded music, for example on YouTube, social media, radio, television, movies and online streaming services. Background music suppliers also continue to obtain licenses directly from RE:SOUND and SOCAN.

3. In practice, Entandem is jointly owned and overseen by RE:SOUND and SOCAN, while in their day-to-day activities the CMOs operate independently from the joint organization, under their separate respective management structures.

(c) New Zealand

1. In 2013, APRA AMCOS (the CMO representing music authors and publishers) and RMNZ (the CMO representing music performers and phonogram producers) set up a joint venture for performing rights called "OneMusic New Zealand".

2. OneMusic New Zealand was established mainly for the benefit of customers of APRA AMCOS and RMNZ, to "offer simple music licences"[77] that grant users the permission they need to play music in their businesses.

3. Whilst the two CMOs remain separate bodies, RMNZ's licensing team physically relocated to APRA's offices to facilitate the daily operations of joint licensing. After operating expenses have been deducted, the collected royalties are split at a 50:50 ratio between the two CMOs before being distributed to their respective member Rightholders.

4. OneMusic works with Screenrights (the CMO representing audiovisual works) and Copyright Licensing New Zealand (CLNZ, the RRO representing text and image works) to operate "Get Licensed" a one-stop-shop for New Zealand schools have easy access to all of the copyright licenses they need for teaching.

[75] https://www.entandemlicensing.com/
[76] http://www.socan.com/resound-and-socan-collaborate-to-create-entandem/
[77] https://www.onemusicnz.com/music-licences/

(d) Australia

1. Following the successful implementation of OneMusic New Zealand, APRA AMCOS started the same initiative in the country that they are based in, Australia.

2. A joint licensing system of music performing rights, "OneMusic Australia", was launched in 2019, as a joint initiative between APRA AMCOS and PPCA (the CMO representing music performers and phonogram producers).

3. Like OneMusic New Zealand, the objective of this initiative is to provide their users "easy legal access to all works", as "there is no longer any need for separate licence agreements and invoices from PPCA and APRA AMCOS. The new organisation allows music users to more seamlessly meet their copyright obligations for the commercial use of musical works, sound recordings and music videos"[78].

4. Similar to the case of New Zealand, in order to maximize the smooth operation of joint licensing, PPCA licensing staff were re-deployed to APRA offices. The two CMOs have also merged their customer databases, and successfully agreed on new tariffs.

5. In 2017, the Australian RRO (Copyright Agency) merged with the local visual arts CMO (Viscopy). The two organisations had entered into a five year "services agreement" in 2012, where Copyright Agency and Viscopy merged their backend operations but maintained two Boards and two separate memberships. During this time, it was noted that sharing backend operations delivered efficiencies and cost-savings to the benefit of both Rightholders and users, with 'licensing revenue to Viscopy's visual artist members increasing by 10%' under the services agreement.

6. The merger took place by way of a scheme of arrangement which required approval by the Australian Supreme Court, the corporate regulator ASIC and the memberships of both organisations. Once the merger was approved, Viscopy members automatically became members of Copyright Agency and Viscopy ceased to exist as a separate legal entity. Today, Copyright Agency represents over 40,000 members including authors, journalists, publishers, and visual artists.

2.3.2. International examples of *de jure* joint licensing CMOs

(a) Brazil

1. Brazil's *de jure* umbrella CMO system was set up by statute and dates back to 1973, when the first law for the Central Office for Collection and Distribution (ECAD) was established, in order to address difficulties arising due to the fragmentation of CMOs; indeed, before the setting up of centralized collective management, there were five CMOs operating in the field of music[79].

2. ECAD is underpinned by the Brazilian Copyright Law[80]. According to Article 99:

> *"Art. 99. The collection and distribution of the rights related to the public execution of musical and literomusical works and of phonograms will be done through collective management associations created for this purpose by their owners, which should unify*

[78] https://onemusic.com.au/about/

[79] https://www.migalhas.com/HotTopics/63,MI38024,31047-Collective+Management+how+it+operates+in+Brazil

[80] Law No. 9.610 of February 19, 1998 (Law on Copyright and Neighboring Rights, as amended by Law No. 12.853 of August 14, 2013). Available in English at: https://wipolex.wipo.int/en/text/505104

the collection in a single central office for collection and distribution, which will act as a collecting entity with its own legal personality and will observe § § 1 to 12 of art. 98 [...]" (emphasis added)

3. In practice, ECAD is composed of the following seven association[81]: ABRAMUS, AMAR, ASSIM, SBACEM, SICAM, SOCINPRO and UBC. They form the General Assembly of ECAD, which is responsible for setting up tariffs, documentation and distribution rules for ECAD. All of them represent music authors, publishers, and phonogram producers, as well as featured and non-featured performers. ECAD just manages performing rights for these Rightholders.

4. In order to identify the proper Rightholders, ECAD maintains a centralized database enriched by the seven CMOs, and the documentation is conducted utilizing various identifiers, such as International Standard Musical Work Code[82] (ISWC for musical works), International Standard Recording Code[83] (ISRC for phonograms), International Standard Audiovisual Number[84] (ISAN for audiovisual works) or Interested Party Information System (IPI for various Rightholders).

5. On ECAD's centralized database the seven CMOs document Rightholders, musical works, sound recordings and audiovisual works (soundtracks). Once collected by ECAD, the royalties are distributed to the seven member CMOs, which then pass them onto their member Rightholders.

6. The collected royalties are generally split with 2/3 going to copyright holders and 1/3 going to related Rightholders[85]. Tariffs and license fees are negotiated by ECAD directly with the users. On the other hand, regarding the relationship with CMOs from other countries, it is each of the seven member CMOs that conclude representation agreements with foreign CMOs, as ECAD does not have direct links with overseas CMOs.

7. Considering the issue of whether the ECAD model can be applied in other countries, a scholar analyzed the pros and cons. According to that analysis, "on the plus side, the scale effects could potentially reduce costs whilst allowing member societies to concentrate on servicing their members. The disadvantages for member societies would be in giving up control of their data, ceding their independence in licensing and distribution and - as with any coalition or consortia - continually having to compromise in decision making."[86] A centralized and joint structure might also allow the CMOs more power over users during licensing. On the other hand, however, managing such a centralized structure could be more complex, from an administrative perspective.

8. Finally, it is noted that, prompted by an investigation conducted by the Brazilian Government in 2011, a supervision scheme for ECAD's operations was set up by the Minister of Culture, under the Copyright Law with a further Decree on CMOs[87] in 2016

[81] https://www3.ecad.org.br/associacoes/Paginas/default.aspx
[82] https://www.iswc.org
[83] https://isrc.ifpi.org/en/
[84] https://www.isan.org
[85] Except for live performance revenues, where ECAD's collections are purely for copyright holders; as no phonogram producers are involved, the authors and publishers of performed works are the sole beneficiaries.
[86] https://www.prsformusic.com/-/media/files/prs-for-music/research/economic-insight-21-ecadonomics-understanding-
[87] Decree No. 8.469 of June 22, 2016, regulating Law No. 9.610 of February 19, 1998 and Law No. 12.853 of August 14, 2013, relating to Collective Management of Copyrights. Available in English at: https://wipolex.wipo.int/en/text/492822

regulated the CMO tariff-setting procedure (tariffs must be approved by the CMO's general meeting), as well as transparency requirements.

(b) The Republic of Korea

1. Along with the amendment of the copyright law[88] in 2016, a legally underpinned joint licensing initiative was established in the field of music performance rights. In the copyright law, it is called an "integrated collection" system:

> *Article 106*
> *(3) Where necessary for users' convenience, the Minister of Culture, Sports and Tourism may request a copyright trust service provider that receives royalties (...) or an organization that receives remunerations from persons who do public performance using commercial phonogram (...) to make an integrated collection, as prescribed by Presidential Decree. In such cases, upon receipt of such request, the copyright trust service provider or remuneration receiving organization shall comply therewith unless there is good cause.*
> *(4) A copyright trust service provider or remuneration receiving organization may entrust the affairs related to the integrated collection of royalties and remunerations under paragraph (3) to a person prescribed by Presidential Decree.*
> *(5) A copyright trust service provider or remuneration receiving organization that entrusts affairs related to collection under paragraph (4), shall pay entrustment commission, as prescribed by Presidential Decree.*
> *(6) Necessary matters concerning the time frame for, and methods, etc. of, settlement of royalties and remunerations collected under paragraph (3) shall be prescribed by Presidential Decree.*

2. In practice, there are KOMCA (CMO representing for music authors and publishers) and background music service providers that have been designated by the Minister of Culture, Sports and Tourism to be the agents of the integrated collection system, on behalf of KOSCAP (CMO representing music authors and publishers), FKMP (CMO representing music performers) and KEMA (Association representing entertainment producers in music industry)

3. The one-stop-shop system by KOMCA and background music service providers function mainly for the collection and distribution of royalties in the area of background usage of music in many business spheres, such as karaoke-bars, coffee shops, draft beer pubs, sports arena and fitness training centres, dance and concert halls, golf and ski resorts, hotels and casinos, amusement parks, trains, planes, cruise ships or large-scale shopping malls.

2.3.3. WIPO publication Collective Management of Copyright and Related Rights

(see Chapter 1.3.3 above)

Excerpt from the Table of Contents for Chapter 4 (at page 3 and 4) for contextual reference:

"*Structural issues of collective management: monopoly and competition, mono- and multi-repertoires, cooperation and coalitions*
(a) Introductory remarks
(b) CMOs as natural monopolies
(c) Collective management and competition: an overview

[88] Copyright Act (Act No. 432 of January 28, 1957, as amended up to Act No. 14634 of March 21, 2017), available in English at: https://wipolex.wipo.int/en/text/525999

(d) How may CMOs compete with each other?
(e) Applicability of competition rules to the collective management of exclusive rights
(f) International copyright norms related to competition aspects of collective management
(g) Competition and national laws recognizing CMOs as natural monopolies
(h) Conditions to be fulfilled in a natural monopoly situation, the impact of uncontrolled competition
(i) and the management of rights in the absence of a natural monopoly
(j) Prohibition of concerted practices and collective management
(k) One organization or separate organizations to manage different rights?
(l) Cooperation and "coalitions" between CMOs
(m) Managing the right of performers and producers of phonograms to a single equitable remuneration"

Excerpt from Chapter 4 (at pages 50 to 51)

"It is easy to see what circumstances justify the establishment and operation of *de facto* or *de jure* monopoly for those CMOs managing certain rights such as the right of public performance in musical works. If there were more than one CMO managing the same right, two or more parallel managements, buildings, equipment, monitoring networks, staffs and so on would be needed, with inevitable impact on the costs involved in administering the system. Maintaining only one CMO in a country guarantees higher efficiency, less costs and more revenues to distribute.

If there were more organizations to manage the same right, the administrative costs of lawful users would also increase, since they have to obtain the necessary repertoire from different sources, negotiate with different CMOs, fulfill their obligation to provide information on actual use of works, and so on. At the same time, those users which seek to pay as little as possible or to avoid paying entirely would find it easier were parallel CMOs to manage the same rights: the users could falsely tell each that they are using only, or largely, the other's repertoires. The CMOs may protect themselves against such misinformation by increasing monitoring activity – but this again would lead to higher operational costs and hence to a decrease in distributable remuneration.

As discussed in the next chapter, the *de facto* or *de jure* monopoly status of a CMO managing a certain right in a given country tends also to facilitate the application of mandatory and extended collective management. Furthermore, as it is pointed out in Chapter 11, monopolistic collective management is more effective to the protection of cultural diversity than competition between CMOs with their own repertoires. Where only one national CMO manages a given right, that CMO may also function as a community of creators, within which attention and resources are devoted to the promotion of domestic creativity, and the community acts in solidarity with creators who are in need.

"Natural monopoly" is, however, not a legal category but a concept developed in economic science and it does or does not exist objectively depending on the circumstances of a given situation. The core question in any instance is therefore whether national legislation recognizes and adequately reflects the monopolies, or it tries to promote (directly or indirectly) competition even where the support of natural monopoly would be justified. At the same time, it should be apparent that extending the scope of CMOs as *de facto* or *de jure* monopolies beyond those cases in which there are objective reasons for their existence may create unjustified limitations of the rights concerned.

As technology and business methods evolve, so too do the conditions under which rights are exercised, and this necessarily influences the scope of rights for which "one-stop shop" licensing is appropriate and those for which it is not."

3. APPROVAL, GOVERNANCE, SUPERVISION AND MONITORING OF CMOs

(reference: WIPO Good Practice Toolkit for CMOs Chapters 5 & 13)

3.1. Explanation

The explanation on the supervision and monitoring of CMOS from Section 13.1 of the Toolkit Section 13.1 is reproduced hereunder for ease of reference.

"CMOs should be governed, and the CMO management supervised and controlled, by the Rightholders who own the rights and who have made a decision to entrust the management of their rights to the CMO.

Governments play an essential role in introducing the regulatory framework for the establishment, operation, governance and supervision of CMOs, including standards for good governance, financial management, transparency and accountability. This is essential to make sure that the CMOs operate in the best interest of their members and Rightholders they represent.

It is equally essential that the regulators or supervisory bodies' role reflects the need to create and maintain the right framework for efficient, transparent, and accountable collective management. Governments should not unnecessarily become involved in the operation of CMOs, which manage Rightholders' property rights on their behalf, but should, as far as possible, ensure proper management by the CMOs, through impartial and transparent means. Supervision of CMOs should be fair, transparent and proportionate, and governments should avoid setting requirements which place disproportionate administrative and financial burdens on CMOs.

CMOs, Users and Governments can also put in place a supervisory and monitoring mechanism by mutual agreement. In this scenario, it is customary that a code of conduct will be published, to ensure that all relevant parties clearly understand their obligations and rights."

3.2. ASEAN Practices

3.2.1. Brunei Darussalam

There are presently no legislative or regulatory clauses directly pertaining to the supervision and monitoring of CMOs.

3.2.2. Cambodia

Proclamation on Collective Management Organisation 2016[89]

"Article 13
CMO must send quarterly and annual report to the Ministry of Culture and Fine Arts to be evaluated about integrity and transparency of the organization.

The Ministry of Culture and Fine Arts has the duty to inspect all activities of the CMO to ensure accuracy of association's operation, duty and obligation under the copyright and related rights law, organization's statute and legal standards in case the irregularity occurs.

Article 14
The Ministry of Culture and Fine Arts may annul the recognition or temporarily suspend the functioning of the CMO in case irregularity occurs in the organization or in case the organization implements its work contradicted to the regulation.

[89] https://www.wipo.int/wipolex/en/text/544321

The re-functioning of the CMO can be made unless the investigation of the irregularity by the Ministry of Culture and Fine Arts completed and the organization is granted new permission from the Ministry of Culture and Fine Arts.

The CMO may interrupt its activity by sending a request to the Ministry of Culture and Fine Arts for review and approval.

The decision of the Minister of Culture and Fine Arts is an objective for the lawsuit at the court."

3.2.3. Indonesia

Law of the Republic of Indonesia Number 28 of 2014 on Copyrights[90]

Article 88
(1) The Collective Management Organization as referred to in Article 87 section (1) is obligated to submit Application for operational permit to the Minister.
(2) Operational permit as referred to in section (1) fulfills the requirements of:
(a) being a non-profit Indonesian legal entity;
(b) being authorized by the Author, Copyright Holder, or Related Rights owners to collect, and distribute royalties;
(c) having mandate givers as members for at least 200 (two hundred) Authors for Collective Management Organizations in the field of songs and/or music that represent the interests of authors and at least 50 (fifty) for Collective Management Organizations representing Related Rights owners and/or other Copyright objects;
(d) having the objective to collect and distribute Royalties; and
(e) being able to collect and distribute royalties to Authors, Copyright Holders or Related Rights owners.
(3) Collective Management Organizations that do not have an operational permit from the Minister as referred to in section (1) are prohibited from collecting and distributing Royalties.

Article 90
In managing rights of Authors and Related Rights owners, the Collective Management Organizations are obligated to perform financial audits and performance audits conducted by public accountant at least once in 1 (one) year and announce the results to the public through 1 (one) national print media and 1 (one) electronic media.

Article 93
Further provisions regarding procedures for requesting and issuing operational permit, as well as evaluating the Collective Management Organizations are regulated in a Ministerial Regulation."

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, Number 9 of 2022 in respect of the implementation of Regulation Number 56 of 2021 on Management of Copyright Royalty For Songs and/or Music[91].

Chapter III - Procedures For Management Of Royalty
Part Five - Distribution of Songs and/or Music Royalty
(…)

[90] https://www.wipo.int/wipolex/en/text/578071
[91] https://jdih.dgip.go.id/produk_hukum/view/id/108/t/permenkumham+no+9+tahun+2022+tentang+pelaksanaan+pp+nomor+56+tahun+2021+tentang+pengelolaan+royalti+hak+cipta+lagu+danatau+musik. Official translation in English unavailable as at the time of writing.

"Article 17
In conducting Royalty Management, LMKN is obliged to perform financial audit and performance audit conducted by public accountant no less than once a year and publish the results on one national printed media and one electronic media.

Chapter IV - National Collective Management Organization
Article 18
(1) For the purpose of Royalty Management, the Minister establishes LMKN representing the interests of Authors and Related Rights owners.
(2) LMKN consists of:
   a. LMKN for Authors; and;
   b. LMKN for Related Rights Owners.
(3) Both LMKN as referred to in paragraph (2) is authorized to collect, accrue, and distribute Royalties from Person engaging in Commercial Use.
(4) LMKN for Authors and LMKN for Related Rights owners are headed by an independent commissioner respectively.
(5) Provisions on functions and structure of LMKN are administered by a Ministerial Regulation.

Article 19
(1) LMKN may use operating fund in accordance with laws and regulations.
(2) The use of operating fund as referred to in paragraph (1) includes the financial aid for payment of social security premium for Authors, Copyright Holders, and Related Rights owners.
(3) Provisions regarding the amount and components to use operating funds is administered by a Ministerial Regulation.

Law of the Republic of Indonesia Number 28 of 2014 on Copyrights[92]

Chapter XII - Collective Management Organizations
Article 92
(1) The Minister evaluates the Collective Management Organizations at least once in 1 (one) year.
(2) In the event that the result of the evaluation as referred to in section (1) shows that the Collective Management Organization does not comply with the provisions as referred to in Article 88, Article 89 section (3), Article 90, or Article 91, the Minister will revoke the operational permit of the Collective Management Organization.

3.2.4. Lao People's Democratic Republic

Regulations on the Establishment of Collective Management Organization 2019[93].

"*Chapter III - Post-registration*
Article 17. Changes in Documents After Registration
After registration, Collective management organization must notify the Department of Intellectual Property if there is a change or modification of the documents and provide the information to the Department of Intellectual Property for consideration if there is a change within 30 days.

Article 18. Renewal of registration certificate

[92] https://www.wipo.int/wipolex/en/text/578071
[93] https://www.wipo.int/wipolex/en/legislation/details/22190 .

The certificate of registration as Collective management organization shall be valid for 3 years from the date of registration onwards. When the registration certificate is renewed, it can be renewed every 3 years.

1. Application for renewal in the printed form of the Department;
2. Membership Agreement/Deed of Assignment
3. The Agreement on Cooperation between CMO and International CMO
4. License agreement;
5. Audited Financial Statements

Article 19. Suspension of certificate
After the issuance of the registration certificate of the Collective management organization, the Department of Intellectual Property must suspend the certificate of the following:

1. The CMO tolerated or abetted any of its Board members or officers in violating any related law, rules and regulations issued by DIP;
2. Any of the documents or material information/data therein submitted by the CMO has been found to be false or untrue.
3. Failure to maintain its compliance with the provisions of Article 10 of this Regulation;
4. Failure to engage in any of the activities of article 22 within 18 months after registration;
5. Malicious breach of contract or fiduciary duty against any of its members;
6. inconsistent regarding the primary activities and the duties of Article 23 of this Regulation
7. Failure to give proper accounting to DIP or to its members The DIP must notify the CMO of the suspension registration.

Article 20. Motion to Lift Suspension Order
The CMO may file a motion to lift suspension or explanation to the DIP within 90 days from receipt of the order of suspension.

Article 21. Cancellation of registration.
The DIP can cancel the registration certificate of collective management organization upon consideration by the Department in accordance with Article 19 of this Regulation.
The DIP must inform the CMO, in the absence of any explanation, CMO shall be deemed to have agreed to cancellation registration."

3.2.5. Malaysia

Copyright Act 1987[94] (as amended by the Copyright (Amendment) Acts of 2020[95] & 2022[96])

Part IVA - Copyright Licensing

Collective management organization
27A. (1) A body corporate which intends to operate as a collective management organization for copyright owners, authors or performers shall apply to the Controller to be declared as a collective management organization.
(2) An application for a declaration shall be made in such form and on such medium as the Controller may determine which shall contain the following information:

(a) the applicant's constituent document, which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects also include the granting of licences covering works of more than one author;

[94] https://www.wipo.int/wipolex/en/text/583950
[95] https://www.myipo.gov.my/ms/copyright-act-1987/?lang=en
[96] https://www.myipo.gov.my/wp-content/uploads/2022/02/Copyright-Amendment-Act-2022-Act-A1645.pdf

(b) the list of copyright owners, authors or performers or their agents who are members of the applicant; and
(c) the applicant's constituent document relating to the collection and distribution of licensing scheme.

(2A) The application made under subsection (2) shall be accompanied with a fee as may be prescribed by the Minister.

(3) Upon receipt of an application, the Controller may declare an applicant to be a collective management organization for a period of two years and issue a declaration in writing to that effect to the said applicant.

(3A) An application for a renewal of the declaration issued under subsection (3) shall be made by the collective management organization to the Controller not later than sixty days before the date of expiry of the declaration, and the application shall be -

(a) made in the form and manner as may be determined by the Controller;
(b) accompanied with a fee as may be prescribed by the Minister; and
(c) submitted together with any information, particulars or documents as may be determined by the Controller.

(3B) Any application for the renewal made after the expiry of the declaration issued under this Act shall be subject to a payment of surcharge as may be prescribed by the Minister.

(3C) The date of expiry of the declaration renewed under subsection (3a) shall be stated in the declaration.

(4) Notwithstanding subsection (3), the Controller shall refuse an application if the information provided by the applicant pursuant to subsection (2) is insufficient or unsatisfactory to show that the applicant is fit and proper to be a collective management organization, or if the applicant's constituent document is identical with or similar to any other collective management organizations.

(5) (*Deleted*)

(6) The Controller may revoke a declaration given to a collective management organization if he is satisfied that the collective management organization —

(a) is not functioning adequately as a collective management organization;
(b) no longer has the authority to act on behalf of all its
(c) members;
(cc) has refused or failed, without reasonable excuse, to comply with any guidelines issued under section 27M
(d) is not acting in accordance with its rules or in the best interests of its members, or their agents;
(e) has altered its rules so that it no longer complies with any provision of this Act;
(f) has refused, or failed, without reasonable excuse, to comply with the provisions of this Act; or
(g) has been dissolved.

(7) A collective management organization which is aggrieved by the decision of the Controller under subsection (6) may appeal to the Tribunal within one month from the date of the decision.

(8) Any person which operates as a collective management organization without obtaining a declaration under subsection (1) commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand ringgit."[97]

(9) For the purpose of this section, "body corporate" means a company limited by guarantee incorporated under the Companies Act 2016.

"Licensing schemes to which sections 27B to 27G apply

27AA.(1) Sections 27B to 27G shall apply to licensing schemes operated collective management organizations in relation to the copyright in any work, so far as they relate to licences for—

[97] Effective 1 September 2023, this offence of operating without a CMO declaration may be compounded. Please refer to the relevant excerpt of the Copyright (Compounding of Offences) Regulations 2023 below.

(a) reproducing the work;
(b) performing, showing or playing the work in public;
(c) communicating the work to the public;
(d) rebroadcasting the work;
(e) the commercial rental of the work to the public; or
(f) making adaptation of the work.

(2) For the purposes of sections 27B to 27G, —licensing scheme means any of the licensing schemes described in subsection (1)."

(…)

Section 27A

Guidelines

27M. (1) The Controller may issue guidelines on any matter relating to the declaration and operation of a collective management organization provided under this Part.

(2) The person to whom the guidelines referred to in subsection (1) applies shall comply and give effect to such guidelines.

(3) The Controller may revoke, vary, revise or amend the whole or any part of any guidelines issued under this section.

Copyright (Collective Management Organization) Regulations 2022[98]

"*Issuance of declaration*

3. (1) After considering the application made under regulation 2, if the Controller is satisfied that the applicant is fit and proper to be a collective management organization under subsection 27A(4) of the Act, the Controller may issue a declaration to the applicant.

(2) Subject to subregulation (1), the declaration issued by the Controller shall be valid for a period of two years from the date of declaration.

Renewal of declaration

4. (1) An application for a renewal of the declaration shall be made to the Controller in Form CMO-2 of the Second Schedule not later than sixty days before the date of expiry of the declaration and accompanied with the fee specified in the First Schedule.

(2) Where an application for renewal is made after the expiry of the declaration, the applicant shall be subject to a payment of surcharge as specified in the First Schedule.

Revocation of declaration

5. (1) The Controller may revoke the declaration issued under regulation 3 on the grounds specified in subsection 27A(6) of the Act.

(2) Any collective management organization which is aggrieved by the decision of the Controller in relation to the revocation of declaration may request for grounds of the revocation from the Controller for the purpose of appeal to the Tribunal.

(3) The collective management organization shall, within fourteen days from the date of the decision of the Tribunal, serve a copy of such decision to the Controller."

Copyright (Compounding of Offences) Regulations 2023[99]

"*Offences which may be compounded*

2. (1) The offences specified in First Schedule are prescribed as offences which may be compounded.

(2) The compoundable offences may be compounded with the consent in writing of the Public Prosecutor in Form 1 of the Second Schedule.

[98] https://www.wipo.int/wipolex/en/legislation/details/22183

[99] https://www.wipo.int/wipolex/en/legislation/details/22184

Procedure for compounding
3. (1) Upon receipt of any information or complaint that an offence which may be compounded has been committed, the Controller, Deputy Controllers or any person authorized in writing by the Controller may, with the written consent of the Public Prosecutor referred to in subregulation 2(2), issue an offer to compound the offence in Form 2 of the Second Schedule.

(2) An offer to compound an offence is valid for a period of fourteen days or such extended period as the Controller, Deputy Controllers or any person authorized in writing by the Controller may grant and if full payment of the sum offered is made on or before the expiry of fourteen days or such extended period granted, no further proceedings shall be taken against the person who committed such offence."

First Schedule [Subregulation 2(1) and regulation 3]
Compoundable Offences

"The following offences under the Copyright Act 1987 [Act 332] are prescribed to be offences which may be compounded:
(a) subsection 27A(8); .."

3.2.6. Myanmar

Copyright Law 2019[100]

Chapter XIX
Formation of a Collective Management Organization on Copyright or Related Rights and its Functions and Duties

60. A person who wishes to form a Collective Management Organization:
   a) shall apply to the Agency for formation of a collective management organization together with its organizational structure, articles of association and code of conduct according to the prescribed categories of copyright;
   b) may include experts in the relevant categories of copyright or related rights as members in the organization, in applying for formation of a collective management organization on copyright or related rights under subsection (a).

61. The Agency shall:
   a) grant or refuse the formation of Collective Management Organization by prescribing the terms and conditions after examining the application under section 60;
   b) guide the granted collective management organizations on copyright or related rights according to the prescribed categories of copyright in respect of their functions and duties and coordinate them if necessary.

62. In respect of the categories of copyright, collective management organizations on copyright or related rights:
   a) shall encourage literary or artistic creation;
   b) may negotiate and settle disputes for enjoyment of the rights of authors and owners of copyright or related rights and for protection from infringement of such rights;
   c) may accept literary or artistic works, performances and phonograms entrusted by the author and owner of copyright or related rights and may collect the equitable remuneration from the users and distribute to the author or owner of copyright or related rights;

[100] https://www.wipo.int/wipolex/en/text/587121

d) may collect and maintain literary or artistic works, performances and phonograms with the consent of the author or owner of copyright or related rights or by purchasing, so as not to be obscured;
e) may communicate with foreign collective management organizations, international organizations and regional organizations and accept from and give assistance to them;
f) shall comply with rules and regulations and bye-laws prescribed by the Ministry and relevant Ministries and the terms and conditions and directives prescribed by the Agency.

3.2.7. Philippines

Revised Rules and Regulations on Accreditation of Collective Management Organizations and Similar Entities 2020[101]

Rule IV Post-Accreditation
Section 1. Re-application for Accreditation.
After the expiration of the period for accreditation, a CMO may re-apply for accreditation by updating the documents it originally submitted pursuant to Section 2, Rule II, above, and by paying the application fee as required in Section 3, Rule II. The Director shall consider the performance of the CMO in its previous accreditation and shall issue a resolution within fifteen (15) days from filing of the application.

Section 2. Suspension of Accreditation.
The Director may suspend, either totally or partially, the accreditation of a CMO, after giving the latter an opportunity to be heard, if anyone of the following circumstances are found after accreditation:
a. The CMO tolerated or abetted any of its Board members or officers in violating any related law, rules and regulations issued by IPOPHL.
b. Any of the documents or material information/data therein submitted by the CMO has been found to be false or untrue.
c. Failure to maintain its compliance with the provisions of Section 1 of Rule II above.
d. Failure to engage in any of the activities under Section 1 of Rule III within one year after accreditation.
e. Failure to observe the parameters for collection and distribution of royalties and other forms of remuneration.
f. Malicious breach of contract or fiduciary duty against any of its members, regarding the primary activities and the duties of an accredited CMO as set out in these Rules
g. and/or the principles of transparency, efficiency and good governance, including the fair and proportionate representation of members in the CMO's governing bodies.
h. Failure to give proper accounting to IPOPHL or to its members.
i. Failure to comply with the mandatory submissions under Sec. 2(b) of Rule III hereof.

Section 3. Motion to Lift Suspension Order.
The CMO may file a Motion To Lift Suspension with the Director within thirty (30) days from receipt of the order of suspension, provided, that the ground/s for denial or suspension has/have ceased to exist and it has complied with the pre- qualification and documentary requirements under Sections 1 and 2 of Rule II above.

Section 4. Cancellation of Accreditation.
If the CMO whose accreditation is suspended fails to comply with the condition/s for the lifting thereof within six (6) months from the date of suspension as provided in the immediately preceding Section, an order cancelling its accreditation shall be issued. Upon complaint by

[101] https://drive.google.com/file/d/1PWyJDV3yOGDveJXVcuczT9LVyhARj9_H/view

any interested party, the Director may also cancel the accreditation of the CMO, based on the grounds enumerated in section 2 of this Rule.

Section 5. Effect of Non-accreditation, Denial, Total or Partial Suspension and Cancellation of Accreditation.
A CMO who has not applied for accreditation after the effectivity of these Rules, or whose application has been denied, or its accreditation totally suspended or cancelled, cannot, under any circumstance, engage in any of the activities enumerated in Section 1 of Rule III. In case of partial suspension, the CMO may still engage in the activities enumerated in the same section with respect to the rights they are allowed to manage. Furthermore, CMO shall be banned from re-applying for accreditation for the remaining balance of the term of its original accreditation in case its certification of accreditation is cancelled.

Section 6. Notice to the Public.
Any change in the status of accreditation of a CMO resulting from the above actions shall be notified to the public through the IPOPHL Website.

3.2.8. Singapore

Copyright Act 2021 (No. 22 of 2021)[102]

"Part 9 Regulation Of Collective Management Organisations
(…)
460. The purpose of this Part is to —
(a) regulate CMOs under a class licensing scheme administered by IPOS; and
(b) confer on Copyright Tribunals powers over the circumstances in which, and the terms on which, CMOs grant permission to use copyrighted works and protected performances.

Division 2 — Class licensing of CMOs
CMOs must be licensed
461.—(1) It is an offence for a person to carry on business as a CMO —
(a) without a class licence; or
(b) while under a cessation order.
(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both.

Class licences
462.—(1) The Minister may, by regulations —
(a) establish one or more class licences (whether for all CMOs or for different classes of CMOs);
(b) prescribe, change, add to or revoke class licence conditions; and
(c) end a class licence.

(2) Without limiting subsection (1)(b), class licence conditions may relate to —
(a) the rights that a CMO must grant to its members;
(b) the collection and distribution of royalties or any other payment by the CMO
(c) the information that a CMO must provide to its members or the public;
(d) the manner by which a CMO must resolve any disputes with its members; and
(e) the governance of a CMO.

Financial penalty for non-compliance with class licence conditions

[102] https://www.wipo.int/wipolex/en/text/584840

463.—(1) If IPOS finds that a licensed CMO has contravened any of its class licence conditions, IPOS may, by written notice, impose —

(a) a financial penalty not exceeding $20,000 on the CMO; and

(b) a financial penalty not exceeding $20,000 on each officer of the CMO that IPOS considers to be responsible for the contravention.

(2) Before imposing a financial penalty on a person under subsection (1), IPOS must give the person an opportunity to make representations in accordance with the prescribed procedure.

(3) A financial penalty imposed under subsection(1) is recoverable as a fine.

(4) Financial penalties collected under subsection (1) must be paid into the Consolidated Fund.

Regulatory directions to CMOs and their officers

464.—(1) Subject to subsection (3), IPOS may, by written notice, give directions to a CMO or any officer of a CMO for any of the following purposes:

(a) to obtain information about the CMO and its business as a CMO, for the purpose of regulating CMOs in general;

(b) to secure the CMO's compliance with its class licence conditions;

(c) to ensure the good governance of the CMO;

(d) to investigate or remedy any contravention by the CMO of its class licence conditions;

(e) where the CMO is under a cessation order, to secure the orderly cessation of the CMO's business as a CMO.

(2) The power of IPOS under subsection (1) includes directing a CMO or any officer of a CMO to —

(a) provide security for the CMO's compliance with its class licence conditions;

(b) conduct an audit of the CMO's business at the expense of the CMO or officer;

(c) if there is reason to believe, based on credible information, that the CMO has contravened one or more of its class licence conditions —

(i) submit to an audit of the CMO's business conducted by or at the direction of IPOS;

(ii) pay the cost incurred by IPOS for the audit; and

(iii) pay any other cost incurred by IPOS in relation to the audit, but only if the findings of the audit lead to —

(A) a financial penalty being imposed on the CMO or an officer of the CMO;

(B) a regulatory direction to the CMO or an officer of the CMO to turn over the conduct of the CMO's business to a person appointed by IPOS; or

(C) a cessation order being made against the CMO;

(d) secure the removal or appointment of a person as an officer of the CMO;

(e) turn over the conduct of the CMO's business to a person appointed by IPOS;

(f) stop taking on the management of new works or performances; and

(g) in the case of an officer of the CMO — resign from or otherwise cease to act in that capacity.

(3) Regulations may require IPOS to give a person an opportunity to make representations in accordance with the prescribed procedure before giving a regulatory direction to the person.

(4) IPOS may, by written notice, revoke a regulatory direction at any time.

(5) It is an offence for a person to —

(a) fail to comply with a regulatory direction; or

(b) knowingly do anything that prevents or impedes compliance with a regulatory direction.

(6) A person who commits an offence under subsection (5) shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both.

(7) For the purposes of subsection (2)(c) —

(a) IPOS may certify in writing the cost incurred by IPOS for or in relation to an audit; and

(b) unless the contrary is proved, the certified cost is presumed to be the cost for or in relation to that audit and is recoverable as a debt due from the CMO or officer to IPOS.

(8) A regulatory direction has effect despite —

(a) any written law; and

(b) in the case of a CMO that is not an individual — anything in the memorandum or articles of association, or other constitution, of the CMO.

Cessation order

465.—(1) IPOS may, by written notice, order a CMO to cease its business as a CMO indefinitely or for a specified period if

(a) the CMO fails to comply with —

(i) a class licence condition; or

(ii) a regulatory direction given to it;

(b) an officer of the CMO fails to comply with a regulatory direction given to the officer;

(c) there is significant impropriety in the financial affairs of the CMO; or

(d) IPOS considers that the public interest so requires.

(2) Before making a cessation order against a CMO, IPOS must give the CMO an opportunity to make representations in accordance with the prescribed procedure.

(3) To avoid doubt, a cessation order may be made in addition to any financial penalty or sentence imposed on the CMO.

(4) When a CMO is under a cessation order —

(a) every class licence ceases to apply to it, unless the order otherwise specifies; but

(b) to avoid doubt, it is still subject to regulatory directions.

(5) IPOS may, by written notice, revoke a cessation order at any time.

Reconsideration of decisions

466.—(1) This section applies where IPOS —

(a) imposes a financial penalty on a person;

(b) makes a cessation order against a person; or (c) gives a regulatory direction to a person.

(2) The person may apply to IPOS, within the prescribed time and in the prescribed manner, for IPOS to reconsider its decision.

(3) In an application for reconsideration —

(a) IPOS must, within the prescribed time, confirm, vary or set aside its decision; and

(b) unless IPOS otherwise orders, a financial penalty must be paid, and a cessation order or regulatory direction complied with, pending reconsideration by IPOS.

(4) This section does not require IPOS to reconsider a decision made after reconsideration.

Appeal

467.—(1) This section applies where IPOS, after reconsideration under section 466 —

(a) confirms or varies a financial penalty imposed on a person;

(b) confirms or varies a cessation order made against a person; or

(c) confirms or varies a regulatory direction given to a person to turn over the conduct of the CMO's business to a person appointed by IPOS.

(2) The person may appeal to the Minister within the prescribed time and in the prescribed manner.

(3) In an appeal —

(a) the Minister may confirm, vary or set aside the decision appealed against;

(b) for the purposes of deciding the appeal, the Minister may require the appellant or any other person (whether or not the person is a party to the appeal) to provide the

Minister with any information that is relevant to the appeal, and to do so within the time and the manner specified by the Minister; and

(c) unless the Minister otherwise orders, the person must pay the financial penalty or comply with the cessation order or regulatory direction (as the case may be) pending the appeal."

Draft Copyright (Collective Management Organisations) Regulations 2023[103]

In October 2022, the Singapore government released for public consultation a draft of the CMO regulations, which will create Singapore's first regulatory framework for CMOs. This takes the form of an automatic class licensing scheme.

The table of contents of Part 3 of the draft CMO regulations is reproduced hereunder as a reference on the general structure and features of the upcoming regulatory framework.

Part 3 of the Copyright (Collective Management Organisations) Regulations (draft)	
Division 1	*Class licence*
4.	Establishment of class licence
Division 2	*Membership agreement*
5.	CMO must offer non-exclusive membership
6.	Membership to be based on written agreement
7.	Membership agreement to specify certain matters
8.	Membership agreement to incorporate membership, distribution and dispute resolution policies
Division 3	*Membership policy*
9.	CMO must establish membership policy
10.	Members must approve amendments to membership policy
11.	Membership criteria
12.	Specifying members' rights to use, and waive tariff collection for, own portfolio
13.	Members may vary or terminate grants of rights to CMO
14.	Members to be informed
15.	Procedure for general meetings of members
16.	Other matters
Division 4	Distribution policy
17.	CMO must distribute tariffs, etc. according to distribution policy
18.	Members must approve amendments to distribution policy
19.	Calculation of total amount to be distributed
20.	Calculation of amount to be distributed to each member
21.	Ordinary frequency and manner of distribution
22.	Dealing with monies that CMO is unable to distribute
23.	CMO must collect usage information
24.	Information to members about usage of portfolios and distributions of tariffs
25.	Opportunity to question basis of distribution
26.	Other matters
Division 5	*Dispute resolution policy and mediation*

103 https://www.mlaw.gov.sg/files/Annex%20A_Copyright_(Collective_Management_Organisations)_Regulations_2023.pdf - Expected gazette date in late 2023

27.	CMO must deal with members' and users' complaints in accordance with dispute resolution policy
28.	Members must approve amendments to dispute resolution policy
29.	Matters to be provided for in dispute resolution policy
30.	Other matters
31.	Direction to mediate
Division 6	*Governance*
32.	Governance requirements
Division 7	*Records and reports*
33.	CMO must keep financial records
34.	CMO must allow inspection of financial records
35.	CMO must make annual report
Division 8	*Publication of key information and documents*
36.	CMO must set up website
37.	CMO must publish information about portfolio
38.	CMO must publish other key information and key documents
Division 9	*Compliance with regulatory action*
39.	Email for service

Singapore's CMO regulatory framework adopts a light-touch model of regulation that focuses on key areas that promote greater market efficiency and uphold the principles of transparency, accountability, and good governance without unnecessarily increasing compliance efforts and costs.

Under this framework, IPOS administers a class licensing scheme for all CMOs. A dual set of levers ensure compliance and shape good behaviour:

(i) mandatory licence conditions. Failure by CMOs to comply constitutes a breach of the terms of the class licence, which may warrant regulatory action by IPOS; and
(ii) non-mandatory notes on best practices, which are intended to encourage and assist CMOs to meet industry and international standards.

Given the light-touch regulatory model, IPOS does not set or approve a CMO's tariffs. CMOs also need not register with IPOS or pay any fee to be licensed - they are automatically licensed under the class licensing scheme. The scheme only regulates in critical areas, and allows CMOs to retain flexibility in compliance wherever possible.

3.2.9. Thailand

There is presently no legislation directly pertaining to the supervision and monitoring of CMOs.

In 2022, DIP TH issued a voluntary "Code of Conduct for Collective Management Organizations (CMOs)"[104] with the following stated objective and chapter titles reproduced for structural reference:

"In Thailand, the copyright collective management varies in both the organization formats and operation practices. However, Thailand lacks specific legislation concerning copyright collective management. In response, the Department of Intellectual Property (DIP) has considered introducing "the Code of Conduct for CMOs." This code aims to provide recommendations for the CMOs, assisting them in implementing effective practices in line with international standards, in order to foster confidence in Thai CMOs to the entire rights owners, users, and the public in further."

[104] Official translation in English unavailable as at the time of writing.

Chapter titles

1. CMOs operating rules
2. CMO's duties to members
3. CMO's duties to users
4. CMO's duties to the public
5. Collecting and allocating royalties
   5.1 Royalty collections
   5.2 Administrative fees
   5.3 Royalty distribution to members
   5.4 Accounting related royalty collection and distribution
6. Annual report
7. Complaint and dispute resolution procedures
8. Personal data protection.

In the meantime, provisions of the Prices of Goods and Services Act, B.E. 2542 (1999) have been applied via the following selected articles of a notification gazetted on 18 September 2020 to regulate music CMOs indirectly via annual notifications to the Ministry of Commerce:

Notification of the Central Committee on the Price of Goods and Services Issue No. 65 B.E. 2563 (2020)[105]

Subject: Display and Declaration of Remunerations, Capital Costs, Expenses, Rules, Procedures, and Conditions relating to the Granting of Rights to Disseminate Music Copyrighted Work for Commercial Purposes

(…)

Article 2: The copyright owner, or an individual who was granted by the rightsholder (grantee) that intends to collect the remuneration in the dissemination of music copyrighted works, shall notify the information as follows:

(1) Remunerations received in each type of business from the individuals who utilize the right to disseminate music copyrighted works for commercial purposes.

(2) Capital Costs and Expenses conducted regarding granting the rights of disseminating music copyrighted works for commercial purposes.

(3) Rules, procedures, and conditions were defined in terms of the remunerating collection for disseminating music copyrighted works for commercial purposes.

(4) Name list and address of the individuals who had been granted the authority, Song title, and the number of songs that were licensed for collecting remuneration to disseminate music copyrighted works for commercial purposes.

Article 3: An individual who has been granted the authority by the copyright owner, or a person who was granted by the rightsholder to collect remuneration for disseminating music copyrighted works for commercial purposes, shall notify the information as follows:

(1) Name lists and addresses of the copyright owners, persons who have been granted by the rightsholder, including song titles and number of songs that were granted to collect remuneration for disseminating music copyrighted works for commercial purposes.

(2) The location to receive the payment for the right to disseminate music copyrighted works for commercial purposes.

Article 4: Persons under Article 2 and Article 3, who collect the royalties in disseminating music copyrighted works for commercial purposes that exist on the date of this notification comes into force, shall notify the information under Article 2 or Article 3 within forty-five days (45 days) from the date of this notification comes into force.

In the event that persons under Article 2 or Article 3 have collected the royalties in disseminating music copyrighted works for commercial purposes after the date of this

[105] Official translation in English unavailable as at the time of writing.

notification comes into force, they shall notify the information under Article 2 or Article 3 in advance, not less than forty-five days (45 days) before starting to collect the royalties.

In the event that persons under Article 2 or Article 3 have notified the information according to notification no. 97, B.E. 2562 (2019) of the Central Committee on the Prices of Goods and Services, with regard to the display and declaration of remunerations, capital costs, expenses, rules, procedures, and conditions relating to the granting of rights to disseminate music copyrighted work for commercial purposes dated 4th July B.E. 2562 (2019), it shall be deemed as notified the information requirements under Article 2 and Article 3 of this notification.

Article 5: In case, there is an intention to collect the royalties in disseminating music copyrighted works for commercial purposes in a different manner from the lists that were notified or the remunerations were collected higher than the amount declared under Article 2 or Article 3, these changes or such remunerations shall be notified in advance, not less than thirty days (30 days) before start to collect the royalties in disseminating music copyrighted works for commercial purposes.

In the event that persons under Article 2 or Article 3 have submitted the royalties collection for disseminating music copyrighted works for commercial purposes in a different manner from the lists that were notified or the collecting remunerations have been notified under notification no. 97 B.E. 2562 (2019) of the Central Committee on the Prices of Goods and Services, with regard to the display and declaration of remunerations, capital costs, expenses, rules, procedures, and conditions relating to the granting of rights to disseminate music copyrighted work for commercial purposes dated 4th July B.E. 2562 (2019), it shall be deemed that the notified change in the lists or remunerations in paragraph one, but these changes or increasing remunerations will be adjusted after fifteen days (15 days) from the date of this notification comes into force.

Article 6: The copyright owners or persons who have been granted by the rightsholders shall declare the selling price of copyrighted works in sound recordings, audio-visual works, or computer programs by displaying them on the copyrighted works of sound recordings, audio- visual works, or computer programs.

For the royalty collection in disseminating music copyrighted works for commercial purposes, which had repertoires over ten thousand (10,000) upwards, shall notify the royalties collection rate in disseminating music copyrighted works for commercial purposes to persons that have been granted the rights in advance every time.

The royalty collection in disseminating music copyrighted works for commercial purposes, which had the repertoires less than a minimum of ten thousand (10,000) songs, shall declare the rate of collection in disseminating music copyrighted works for commercial purposes, along with exhibiting the selling price details of the copyrighted works in sound recordings, audio-visual works, or computer programs.

The display of the selling price details of the copyrighted works in sound recordings, audio-visual works, or computer programs, including the royalty collection rate in disseminating music copyrighted works for commercial purposes, shall declare the prices and the rate of collection per unit by writing, publishing, or marking available to be seen in other ways such as on paper or other materials. However, it could be any language, but the Arabic numerals shall be included in a manner to be seen clearly, obviously, and can be read easily. The text messages or listings that were presented accompanying the selling price and the rate of collection shall be in Thai language, but also allowed to have other languages as well.

In case of the royalty collection in disseminating music copyrighted works for commercial purposes in the type of musical works, sound recordings, audio-visual works, or computer programs, the notified details of the royalty collection rate in disseminating music copyrighted works for commercial purposes shall be provided completely clear.

Article 7: The copyright owner or persons who have been granted by the rightsholders that granted the rights in disseminating music copyrighted works for commercial purposes, shall

provide the received payment documents of the license in disseminating music copyrighted works for commercial purposes to the persons who got those rights.

Article 8: The notification under Article 2, Article 3, Article 4, or Article 5 shall be submitted to the Secretary-General per the forms prescribed by the Secretary-General at the Central Committee on the Prices of Goods and Services, Department of Internal Trade, Ministry of Commerce.

(…)

3.2.10. Viet Nam

Decree 17/2023/ND-CP dated April 26 2023 of Government on detailed provisions of some articles and measures for implementation of intellectual property law on copyright and related rights[106]

Article 5. Responsibilities and contents of state management of copyright and related rights

1. The Government shall perform the unified state management of copyright and related rights.

2. The Ministry of Culture, Sports and Tourism is responsible to the Government for performing the state management of copyright and related rights, and has the following tasks and powers:

a) Formulate and promulgate according to its competence or submit to competent authorities for promulgation, direct and organize the implementation of mechanisms, policies, legal documents, strategies, master plans, plans and programs; , the project on copyright and related rights protection, development of cultural industries protected by copyright and related rights;
b) To assume the prime responsibility for, and coordinate in taking, measures to protect the legitimate rights and interests of organizations, individuals, the State and society in the field of copyright and related rights protection;
c) Manage and exploit copyright to works and related rights to performances, phonograms, video recordings and broadcasts of which the State is the owner's representative or management representative; receive the transfer of copyright and related rights of organizations and individuals to the State according to the provisions of law;
d) Approving the use of anonymous works; published works, performances, phonograms, video recordings and broadcasts of Vietnamese organizations or individuals in case the copyright owner cannot be found or cannot be identified. related rights;
e) dd) Provide guidance on the provision, cooperation, ordering, use and guarantee of copyright in works and related rights to performances, phonograms, video recordings and broadcasts;
f) Approve the translation of works from foreign languages into Vietnamese and the copying of works for teaching and research purposes not for commercial purposes in accordance with the provisions of the Annex to the Berne Convention for the Protection of Literary Works and art;
g) Managing the activities of organizations representing collective copyrights and related rights and consulting organizations, providing copyright and related rights services;
h) Approving the royalty schedule and payment method developed by the collective representative organization of copyright and related rights;
i) Issuance, re-issuance, renewal, invalidation of copyright registration certificates, related rights registration certificates;
j) Making and managing the national register of copyright and related rights; attestation of copyright;
k) Publishing and publishing yearbook of copyright and related rights registration;

[106] Official translation in English unavailable as at the time of writing.

l) To assume the prime responsibility for, and coordinate with concerned ministries and branches in, managing and directing the work of scientific research, training, retraining and human resource development in terms of expertise and expertise in copyright and related rights. mandarin; commendation for copyright and related rights;
m) Direct, guide, urge and organize the implementation of activities of education, propagation and dissemination of knowledge, laws, mechanisms and policies on copyright and related rights; provide professional guidance, professional training on copyright and related rights;
n) Organize statistical activities on copyright, related rights and cultural industries protected by copyright and related rights;
o) Organize information and communication activities on copyright and related rights and cultural industries protected by copyright and related rights;
p) Manage and organize the assessment of copyright and related rights; granting, re-granting and withdrawing the assessor's card of copyright and related rights; Certificate of assessment organization of copyright and related rights;
q) To assume the prime responsibility for, and coordinate with relevant competent state agencies in, inspecting, examining, settling complaints and denunciations and handling violations of the law on copyright and related rights;
r) To carry out international cooperation on copyright and related rights; negotiate, sign, join and organize the implementation of international treaties on copyright and related rights; propose settlement of disputes between Vietnam and other countries over copyright and related rights;
s) Perform other tasks assigned by the Government.

3. Ministries, ministerial-level agencies and agencies attached to the Government shall, within the ambit of their tasks and powers, have to coordinate with the Ministry of Culture, Sports and Tourism in the state management of copyright. , related rights.

4. People's Committees of provinces and centrally run cities (hereinafter referred to as provincial-level People's Committees for short) perform the state management of copyright and related rights in their localities, have duties and rights the following deadlines:
a) Formulate, promulgate according to its competence and organize the implementation of mechanisms, policies, legal documents, strategies, master plans, plans, programs and schemes on copyright and rights protection locally relevant;
b) Direct, guide, urge and organize activities of education, propagation and dissemination of knowledge, laws, mechanisms and policies on copyright and related rights in the locality. Directing scientific research, providing professional guidance, organizing professional training and retraining on copyright and related rights in the locality;
c) Organize activities to protect copyright and related rights in the locality; take measures to protect the legitimate rights and interests of the State, organizations and individuals regarding copyright and related rights; organize the development of cultural industries in the locality according to the provisions of Article 4 of this Decree ;
d) Guide and support organizations and individuals to carry out procedures for copyright and related rights in their localities;
e) dd) Inspect, examine and handle according to its competence complaints and denunciations, violations of the law on copyright and related rights in the locality;
f) Other duties and powers as prescribed by law.

5. The Copyright Office is a specialized agency under the Ministry of Culture, Sports and Tourism, responsible for assisting the Minister of Culture, Sports and Tourism in performing the function of state management of copyright, related rights.

Article 45. Collective management organizations of copyright and related rights

The collective management organization of copyright and related rights as prescribed in Clause 1, Article 56 of the Intellectual Property Law shall properly perform the scope and function of operation and the authorization contract between the copyright owner, related rights holders and the collective management organization of copyright or related rights on the management of a particular right or group of property rights.

Article 50. Exploitation and use of phonograms and video recordings licensed by a collective management organization of copyright and related rights

1. In case a work, phonogram or video recording is used according to the provisions of Clause 1, Article 26 and Clause 1, Article 33 of the Intellectual Property Law, which has been approved by the copyright owner, performer or owner. Owners of related rights authorize organizations to collectively represent copyright and related rights, and these organizations may negotiate, agree, authorize negotiation, and collect royalties in accordance with law. The proportion of royalties collected shall be mutually agreed upon by these organizations; in case no agreement is reached, the provisions of Clause 3, Article 34 of this Decree shall apply.

2. The authorized collective management organization of copyright and related rights is responsible for building a list of members, works, phonograms, video recordings and broadcasts of members and is responsible for signing them. authorization contract for a collective management organization of copyright and related rights to receive authorization to negotiate agreements and collect royalties.

3. The authorized collective management organization of copyright and related rights shall negotiate an agreement to collect royalties according to the list of members, works, performances, phonograms, video recordings, and chapters. broadcaster specified in the authorization contract.

Article 51. Organizational structure of copyright and related rights collective management organization

1. Organizations that collectively represent copyright and related rights must organize the Annual General Meeting and Conference.

2. The General Meeting decides on the following matters:
   a) Modify the name of the organization; amend and supplement the charter (if any);
   b) Change in personnel of leadership, management and control positions of the organization;
   c) Other contents as prescribed by relevant laws and the organization's charter.

3. The annual meeting includes the following contents:
   a. Amendment of the organization's operating regulations, if the contents of the regulations have not been adjusted by the charter;
   b. Report on the performance of the member's obligations, approve the salary and other benefits for the member performing the tasks of leadership, management and control of the organization;
   c. Operational reports and financial statements of the organization;
   d. Decide the percentage of the withholding amount as prescribed in Clause 4, Article 48 of this Decree;
   dd) Approve the Regulation on collection and distribution of royalties;
   e. Other contents as prescribed by relevant laws and the organization's charter.

4. Members performing leadership, management and control tasks of the organization must include authorized members.

Article 52. Members of copyright and related rights collective management organizations

1. Members of a collective management organization of copyright and related rights include:
   a) An authorized member is an organization or individual that owns one, several or all of the property rights specified in Clause 1, Article 20, Clause 3, Article 29, Clause 1, Article 30 or Clause 1, Article 31 of the Intellectual Property Law rights with a written authorization for the collective management organization of copyright and related rights for the management of property rights under their ownership to perform the activities specified in Clause 2, Article 56 of the Law. Intellectual Property;
   b) Other members as prescribed by law.

2. Authorized members have the right to participate and vote in the General Meeting, Annual Meeting or authorize other organizations and individuals to participate and vote in accordance with law.

3. Voting votes at the General Meeting and Annual Meeting of authorized members shall be calculated according to the proportion of fixed works, performances, phonograms, video recordings, fixed broadcasts and royalties collected that such member has authorized the collective management organization of copyright and related rights.

Article 53. Publicity and transparency in management and administration activities of copyright and related rights collective management organizations

1. Organizations that collectively represent copyright and related rights must publicize them at the Annual Meeting and publish on their website their annual reports, audited annual financial statements, including revenue from licensing, payable, paid, and collected but the author, co-author, copyright holders, co-owners of the rights cannot be found or contacted. Authors, related rights holders, co-owners of related rights authorized as prescribed in Clause 5, Article 56 of the Intellectual Property Law, withholdings, taxes, fees, charges, and arising interests from undivided royalties (if any).

2. Organizations that collectively represent copyright and related rights shall publish information on their websites about the following contents:
   a) Name of the author, copyright holders, related rights holders;
   b) For individuals: Date of birth; year of death (if any). For organizations: Date, month and year of establishment; year of dissolution (if any);
   c) Name of the work, name of the subject matter of related rights (performance; phonogram, video recording; broadcast program);
   d) Contents of works; performance content; the content of sound and video recordings; broadcast program content;
   e) Scope of authorization; the validity of the authorization contract;
   f) Licensing, collection and distribution of royalties;
   g) Activities of organizations representing collective copyright and related rights;
   h) Other relevant information.

Article 54. Implementation of the reporting regime

1. The collective management organization of copyright and related rights shall report to the Ministry of Culture, Sports and Tourism, the Ministry of Home Affairs, the Ministry of Finance and the governing body on amendments and supplements. supplement the charter and operating regulations; financial management mechanism; change leadership personnel; join international organizations; other external activities; rate schedule, royalty payment method; long-term and annual planning program; operation situation, signing of authorization contracts, use licensing contracts; status of authorized members , number of works, performances, phonograms, video recordings, authorized broadcasts; collection activities, collection rates,

methods of distribution, methods of distributing royalties, regulations on collection and distribution of royalties; annual reports, audited annual financial statements; other related activities.
In case of amendment or supplementation of the charter, it must be reported to the competent authority for approval before implementation.

2. The collective management organization of copyright and related rights shall build a website and connect with the specialized agency in charge of state management of copyright and related rights of the Ministry of Culture, Sports and Tourism and collective management organizations of copyright and related rights.

3. The collective management organization of copyright and related rights has a systematic database of copyright and related rights of its organization, connected to the national database on copyright, related rights.

3.3. Reference Tools

Methods of Approval, Governance, Supervision and Monitoring

3.3.1. Internal

The Toolkit

Section 5.1.1 provides the following explanation on general meetings:

> "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 be clearly mentioned in a CMO's Statute, and naturally be in compliance with the applicable laws of the country of establishment of that CMO."

Section 5.2.1 provides the following explanation on internal supervision:

> "Proper internal supervision of the CMO management and operations by an independent supervisory body is an essential element of effective and transparent collective rights management. Members of the supervisory body 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, insofar as it serves the interests of the Rightholders better, to appoint as members of the CMO's decision-making and/or advisory bodies individuals that do not directly represent Rightholders, but have commercial or legal experience that is valuable for the proper functioning of such body, so long as representatives of Rightholders make up more than a simple majority of decision-making bodies, unless subject to specific applicable rules or government regulations."

Section 5.2.2 lists examples of various non-AMS legislative provisions and IF descriptions whilst Section 5.2.3 provides the following good practice tools on internal supervision:

> "38. A CMO's Statute should ensure a fair and balanced representation of its different categories of members on the board, in compliance with applicable rules in national legislation.

39.The requirements established in the Statute to apply to become a member of the board shall be clear, objective and not arbitrary."

Section 5.3.1 makes available the following explanation on avoidance of conflict of interest:

"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 internal rules, which should be reviewed regularly. (…)".

Section 5.3.2 lists examples of various non-AMS legislative provisions and Section 5.3.3 provides the following good practice tools:

"41. A CMO should have in place internal rules to avoid conflict of interest and, when such conflicts cannot be avoided, to identify, manage and monitor conflicts of interest which might prevent board members from discharging their responsibilities.

42. These rules should include at least an annual individual statement of actual or potential conflicts of interest by each person managing the CMO, by each member of the board or by the respective proxies they might appoint."

European Union[107]:

"[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 organization." Article 9(1), EU Directive 2014/26/EU

"There shall be fair and balanced representation of the different categories of members of the CMO in the body exercising the supervisory function." Article 9(2), EU Directive 2014/26/EU

"The requirement of fair and balanced representation of members should not prevent the CMO from appointing third parties to exercise the supervisory function, including persons with relevant professional expertise [...]." Recital 24, EU Directive 2014/26/EU

"[...] 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 CMO;
- any remuneration received from the CMO, including pension schemes, benefits-in-kind and other types of benefits in the preceding financial year;
- any amounts received as a rightholder from the CMO in the preceding financial year; and
- a declaration on any actual or potential conflict between any personal interests and those of the CMO or between any obligations towards the CMO and any duty to any other natural or legal person."

Based on Article 10, EU Directive 2014/26/EU

3.3.2. Self-regulation

The Toolkit states at page 123:

[107] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.084.01.0072.01.ENG#d1e749-72-1

"70. In the case of self-regulation and monitoring, a working group should be established, comprising all stakeholders, including, but not limited to, Rightholders, CMOs, Users and Government. The working group should consult and collaborate on the drafting of a code of conduct, which should be mutually agreed before being published."

Examples include;

(a) Australia – Code of Conduct for Copyright Collecting Societies[108]

This code was developed and adopted by Australian CMOs in 2002 to ensure that CMOs protect the interests of creators and users of creative works. It was developed input from the Government and as an industry code, it is not government regulated. The CMOs appoint an independent code compliance reviewer (the Reviewer)(usually a former judge) to review and report on compliance with the code.

The CMOs report annually to the Reviewer on their compliance with the code and CMO members, licensees and other stakeholders can also make submissions to the Reviewer.

The Code itself is reviewed every three years, and the Code has been amended from time to time to take account of relevant developments with the latest amendment taking effect on 20 May 2022[109].

3.3.3. External approval, governance, supervision and monitoring of CMOs

Approval of CMOs

Guidance on the need for government action in issuing regulations and approving or authorising CMO to commence operations (where such authorisation is a legislative requirement for CMO operations) may be found from the following repeated excerpt from Chapter 3 at page 42 of the WIPO publication Collective Management of Copyright and Related Rights (see Chapter 1.3.3 above):

There are certain rights that may be exercised efficiently only through collective management. Thus, there seem to be good reasons to submit that, to fulfill its obligation to "ensure the application" of (i.e., to "give effect" to) the provisions on those rights, a country should adopt adequate legal regulation to facilitate the establishment and due operation of the necessary collective management system. This requires from governments, on the one hand, to be proactive where its contribution is needed and, on the other, to refrain from any unnecessary intervention that might create undesirable obstacles.

Supervision of CMOs

Several examples are contained in Chapter 13 "Supervision and monitoring of CMOs" of the Toolkit.

Other supervisory measures, before conducting an audit or investigation, and/or before considering the removal or appointment of an officer of the CMO, are provided, for instance, under the German Act on the Management of Copyright and Related Rights by Collecting Societies (Collecting Societies Act, as amended up to Act of June 1, 2017)[110]. Section 85 includes the following option, at the discretion of the supervisory authority:

[108] https://www.copyrightcodeofconduct.org.au/code
[109] https://www.copyrightcodeofconduct.org.au/s/Code_of_Conduct_amendments_2022.pdf
[110] https://www.wipo.int/wipolex/en/text/462219

"(4) The supervisory authority shall be entitled to participate, through entitled persons, in the general assembly of members as well as in the meetings of the supervisory board, of the management board, of the supervisory body, of the representation of delegates (…) and of all the committees of these bodies. The collecting society shall inform the supervisory body in good time of the dates of the meetings referred to in the first sentence."

3.3.4. Toolkit Good Practice

The Toolkit summarizes, on page 123:

"71. In both the case of self-regulation and monitoring, and by provision in national laws, the provisions should include sections on at least:

(a) the role and functions of CMOs;
(b) transparency;
(c) accountability and consultation;
(d) governance structures;
(e) licensing policies;
(f) distribution policies;
(g) operating expenses and deduction policies;
(h) data protection;
(i) dispute resolution."

4. TARIFF SETTING

(reference: WIPO Good Practice Toolkit for CMOs Chapter 8.3)

4.1. Explanation

4.1.1. The Toolkit

(paragraph 8.3.1 at page 94).

"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."

4.2. ASEAN Practices

4.2.1. Indonesia

Decision of the Minister of Law and Human Rights of the Republic of Indonesia Number: HKI2.Ot.03.01-02 Year 2016 on Ratification of Royalty Rate for Users who Commercially Utilize Creations and/or Related Rights in Music and Songs[111]

(…) "It is Decided:

FIRST

[111] https://www.wipo.int/wipolex/en/legislation/details/22191

The amount of royalty rates in this decision is determined proportionally and based on best practice that has been in effect in Indonesia;

SECOND
The amount of the royalty rate as attached to this decision, is the only official fee/price to be charged to the User by the Author's Collective Management Organisation and the Related Rights Collective Management Organisation in the field of music and songs;

THIRD
The amount of the royalty rate referred to in this decision is the Royalty Rate as determined by the National Collective Management Organisation (LIMKN) as follows:

a. verdict. LMKN No: 20160512 SKK/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Seminars and Commercial Conferences;
b. LMKN Decree Number: 20160512RKBD/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Restaurants, Cafes, Pubs, Bars, Bistros, Night Clubs and Discotheques;
c. LMKN Decree No 20160512KM/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Music Concerts;
d. LMKN Decree Number: 20160512PBKK/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Airplanes, Buses, Trains and Ships;
e. LIMKN Decree Number: 20160512PB/LMKN-Pleno/TarifRoyalti/2016 concerning Royalty Rates for Exhibitions and Bazaars;
f. LMKN Decree Number: 20160512B/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Cinemas;
g. LMKN Decree No. 20160512TBK/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Telephone Waiting Tones, Banks and Office;
h. LMKN Decree Number: 20160511T/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Shops;
i. LMKN Decree Number: 20160511PR/LMKN-Pleno/TarifRoyalti/2016 concerning Royalty Rates for Recreation Centers;
j. LMKN Decree Number: 20160504TV/LMKN-Pleno/Royalty Rates/2016 concerning Royalty Rates for Television Broadcasting Institutions;
k. LMKN Decree Number: 20160504R/LMKN-Pleno/Royalty Tariff/2016 concerning Royalty Tariffs for Radio Broadcasting Institutions;

FOURTH
The amount of the royalty rate as attached in this decision will be evaluated at least once every 1 (one) year;

FIFTH
This decision is valid from the date of stipulation with the provision that if in the future it turns out that there is confusion, a correction will be made as necessary."

4.2.2. Singapore

CMOs are free to set their own tariffs without government intervention. However, in the interest of transparency, CMOs must publish key information on their tariffs, including a list of all tariff schemes formulated or operated by the CMO and the terms of each tariff scheme.

Regulation 31 of the draft Copyright (Collective Management Organisations) Regulations 2023[112] provide:

112
https://www.mlaw.gov.sg/files/Annex%20A_Copyright_(Collective_Management_Organisations)_Regulations_2023.pdf

CMO must publish other key information and key documents
31.—(1) A CMO must publish the following information and documents on its website:
[…]
(c) a list of all tariff schemes formulated or operated by the CMO;
(d) for each tariff scheme formulated or operated by the CMO —
(i) the classes of cases in which the CMO is willing to grant, or procure the grant of, permission to use the works or performances managed by the CMO; and
(ii) the terms (whether relating to the payment of a tariff or otherwise) on which the CMO is willing to grant, or procure the grant of, that permission; […]

The tariffs and tariff schemes are subject to review by the Copyright Tribunals in Singapore. Section 485 of the Copyright Act 2023 provide:

Functions of Tribunals
485. It is the function of the Copyright Tribunals to, in accordance with this Act —
(a) decide the amount of equitable remuneration payable under the provisions of this Act; […]
(e) exercise the powers relating to tariff schemes in Division 3 of Part 9; and […]

4.2.3. Thailand

Copyright Act B.E. 2537 (1994)[113]
[Amended By Copyright Act (No. 2) B.E. 2558 (2015), Copyright Act (No.3) B.E. 2558 (2015), Copyright Act (No.4) B.E. 2561 (2018) and Copyright Act (No. 5) B.E. 2565 (2022)]

"Section 45. Any person who directly used a sound recording of a performance, which has been published for commercial purposes or the copies thereof in a broadcast or a communication to the public, is bound to pay an equitable remuneration to the performer. In case the parties cannot agree upon the remuneration, the Director General shall stipulate the remuneration by taking into account the normal rate of remuneration in such specific business.

A party may appeal against the order of the Director General according to paragraph one to the Committee within ninety days as from the date of receipt of the letter informing the order of the Director General. The decision of the Committee shall be final."

4.2.4. Vietnam

Law On Intellectual Property (No. 50/2005/QH11) 2005[114] [as amended by the Laws Amending and Supplementing a Number of Articles of the Law on Intellectual Property No. 36/2009/QH12)[115], No. 42/2019/QH14[116] and No.07/2022/QH15[117]]

"Chapter VI
Copyright And Related Rights Representation, Consultancy And Service Organizations
Article 56.- Collective Management Organization of Copyright and Related Rights
(…)

3. Collective Management Organization of Copyright and Related Rights has the following rights and obligations:
(…)

[113] https://www.wipo.int/wipolex/en/text/585444
[114] https://www.wipo.int/wipolex/en/text/274445
[115] https://www.wipo.int/wipolex/en/text/472667
[116] https://www.wipo.int/wipolex/en/text/582363
[117] https://www.wipo.int/wipolex/en/legislation/details/21740

c) Develop a table of rates and methods of royalty payment, and submit them to the Minister of Culture, Sports and Tourism for approval. The Minister of Culture, Sports and Tourism shall approve the royalty payment schedule and method based on the principles specified in Clause 3, Article 44a of this Law; (…)

Decree 17/2023/ND-CP dated April 26 2023 of Government on detailed provisions of some articles and measures for implementation of intellectual property law on copyright and related rights[118]

Article 46. Table of royalties

1. The collective management organization of copyright and related rights shall develop a royalty schedule and payment method suitable to the forms of use and the principles specified in Clause 3, Article 44a of the Intellectual Property Law, as a basis for negotiation and payment of royalties in the cases specified in Clause 2, Article 20, Clause 1, Article 26, Clause 4, Article 29, Clause 2, Article 30, Clause 2, Article 31 and Clause 2 1 Article 33 of the Law on Intellectual Property.
The collective management organization of copyright and related rights shall submit a dossier to the Minister of Culture, Sports and Tourism, requesting approval of the royalty rate and payment method before implementation.

2. Dossier of request for approval of royalty rate and method of payment includes:
a) A declaration requesting approval of the royalty rate and method of payment (under Form No. 07 of Appendix III issued together with this Decree);
b) The plan for formulating the royalty rate table includes the following contents:
Analysis of the proposed royalty rate table:
Bases for calculation (type, form, quality, quantity, structure, scale, frequency of exploitation, use and other bases); the factors that shape the level of royalties; socio-economic conditions by region, time and place of exploitation and use (with classification and assessment); analyze the impact of the royalty rate/level table on creative activities, exploitation, use and enjoyment of the results of such creative activities; the performance of obligations with the state budget;
Issues that have not been agreed with the operators and users (if any);
Proposed royalty rate and payment method and recommendations (if any).

3. Organizations and individuals exploiting and using works, performances, phonograms, video recordings, broadcasts, and collective management organizations of copyright and related rights are responsible for reaching agreement on royalties and payment methods.

4. Fees for consideration and approval of royalty rates and payment methods shall be paid by the party requesting approval in accordance with law.

Article 47. Approval of royalty rates and payment methods

1. The Minister of Culture, Sports and Tourism shall consider and issue a written approval within 90 days from the date of receipt of a valid dossier of request for approval of the rate schedule and payment method. The payment of royalties shall be submitted by the collective management organization of copyright and related rights according to the provisions of Clause 1, Article 46 of this Decree.

2. In case of necessity, the Minister of Culture, Sports and Tourism establishes an Advisory Council on copyright and related rights to consider the royalty rate and payment method prescribed. in Clause 1 of this Article and promulgate the working regulation of the Advisory Council on copyright and related rights.

[118] Official translation in English unavailable as at the time of writing.

3. The royalty schedule and payment method after being approved must be applied for a period of at least 3 years.

The Minister of Culture, Sports and Tourism considers adjusting the royalty rate table in the event of changes in the consumer price index and the country's economic growth rate related to the basis to determine level chart. Organizations proposing to consider adjusting the royalty rate table include: Organizations representing collective copyrights and related rights; Vietnam Federation of Trade and Industry; specialized agency in charge of state management of copyright and related rights of the Ministry of Culture, Sports and Tourism."

4.3. Reference Tools

4.3.1. E.U. CRM Directive[119]

For ease of reference, it is worthwhile reproducing Article 16(2) of this EU Directive which also appears in the Toolkit:

"Rightholders shall receive appropriate remuneration for the use of the rights. Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade, taking into account the nature and scope of the use of the work and other subject-matter, as well as in relation to the economic value of the service provided by the collective management organisation. Collective management organisations shall inform the user concerned of the criteria used for the setting of those tariffs."

4.3.2. The Toolkit

(sub-chapter 8.3.3 at page 99):

"72. A CMO should establish tariffs which may be based on cross-sectoral tariff comparisons, economic research, the commercial value of the rights in use, the benefits to Licensees, or other relevant criteria.

73. Benefits for a Licensee should be assessed having regard to the CMO's rights used considering, for example:

(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;
(d) the benefit to the Licensee of having to deal with a CMO, rather than each Rightholder individually; and
(e) the negotiated rates and terms that would be reasonable in relation to the economic value of rights and/or that have been negotiated in the marketplace between a willing buyer and a willing seller."

4.3.3. WIPO publication Collective Management of Copyright and Related Rights

(see Chapter 1.3.3 above) (at pages 180-181)

"As forms of authorizing uses, licensing and tariff setting do not necessarily demand the same of CMOs. Sometimes, CMOs may conclude individual licensing contracts with certain users; but in the case of blanket licenses, they will more usually establish tariffs that are applicable to all users who perform acts covered by the rights concerned.

While national rules for the procedures whereby CMOs may adopt and apply tariffs differ, they have some common elements.

[119] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.084.01.0072.01.ENG#d1e749-72-1

- Fair and good faith negotiations must generally take place between the CMOs and representatives of the users.
- The number of specific issues involved is such that, in some countries, special boards, councils, arbitration tribunals or mediation bodies may be the first forums in the event of a dispute, and the parties may turn to the courts only if such alternative dispute resolution (ADR) procedures fail.
- In other countries, the parties may turn to the court not only after the exhaustion of ADR options but also, at least in certain circumstances, directly.
- When tariffs are agreed or approved, and any disputes have been settled, they are applicable to any users in the given category.

Tariffs must be made publicly available, which means at least publishing them online, on the CMOs' websites, and may also mean publishing them in official gazettes."

5. DISTRIBUTION PRACTICES

(reference: WIPO Good Practice Toolkit for CMOs Chapter 6)

5.1. Explanation

5.1.1. The Toolkit

(excerpts from Chapter 6 on Financial Administration, Distribution of Revenue and Deductions from pages 65 to 78):

"6.1.1 Explanation on Split Accounts

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

6.2.1 Explanation on Annual Reports

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

6.3.1 Explanation on Distribution Polices

Noting that CMOs' Distribution policies are based on the usage of licensed works, CMOs should include in their licenses a requirement to provide accurate and timely information on their usage of works licensed by the CMO.

As a matter of principle, a CMO should collect and distribute – fairly, promptly, and as accurately as possible – to individual Rightholders the Rights Revenue it has collected on the Rightholders' behalf. It is therefore important that a CMO's Distribution rules and policies are fair, objective, and transparent. The Distributions should reflect, to the greatest possible extent, the actual use of the content and the actual value attached to the use, or, when such data is not available on an agreed formula of proportionality, which must reflect actual use as far as economically feasible.

6.4.1 Explanation on Revenue deductions (such as social, cultural, educational)

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

5.2. ASEAN Practices

5.2.1. Indonesia

Law of the Republic of Indonesia Number 28 of 2014 on Copyrights[120]

"Article 91
(1) A Collective Management Organization may only use operational funds as much as 20% (twenty percent) from the total amount of Royalties collected annually.
(2) During the first 5 (five) years since the establishment of the Collective Management Organization under this Law, the Collective Management Organization may use operational funds a maximum of 30% (thirty percent) of the total amount of royalties collected annually."
(…)

Regulation Number 56 of 2021 on Management of Copyright Royalty For Songs and/or Music[121]

CHAPTER II - SONGS AND/OR MUSIC DATA CENTER
Article 4
(1) Minister makes recordation of songs and/or music upon request.
(2) The request for recordation of songs and/or music as referred to in paragraph (1) is filed electronically to the Minister by:
    a. Authors;
    b. Copyright Holder;
    c. Related Rights Owner; or
    d. Proxy.
(3) The filing of request for recordation of songs and/or music by Proxy as referred to in paragraph (2) point d may be carried out by LMKN based on power of attorney from Author, Copyright Holder, or Related Rights Owner.
(4) The songs and/or music as referred to in paragraph (1) is placed on record in the Copyright database.
(5) The terms and procedures for recordation of songs and/or music as referred to in paragraph (1) is conducted in accordance with provisions of laws and regulations.

Article 5
All songs and/or music recorded under the Copyright database as referred to in Article 4 paragraph (4) shall go into the songs and/or music data center.

Article 6
(1) The songs and/or music data center as referred to in Article 5 is managed by the Directorate General.
(2) The songs and/or music data center as referred to in paragraph (1) is accessible to:

[120] https://www.wipo.int/wipolex/en/text/578071
[121] https://jdih.dgip.go.id/produk_hukum/view/id/99/t/peraturan+pemerintah+nomor+56+tahun+2021+tentang+pengelolaan+royalti+hak+cipta+lagu+danatau+musik#:~:text=Peraturan%20Pemerintah%20Nomor%2056%20Tahun,Cipta%20Lagu%20dan%2Fatau%20Musik. Official translation in English unavailable as at the time of writing.

a. LMKN as the ground for Royalty Management; and
b. Author, Copyright Owner, Related Rights owner, and/or his Proxy, as well as, a Person engaging in Commercial Use to obtain information on songs and/or music in recordation.

Article 7
(…)
(3) The songs and/or music data center updates its data quarterly or at anytime necessary.

CHAPTER III - PROCEDURES FOR MANAGEMENT OF ROYALTY
Part One - General
Article 8
Royalty Management is conducted by LMKN based on data integrated in the Song and/or Music Information System (SILM).

Article 9
(1) Any Person may engage in Commercial Use of songs and/or music by filing a request for Licensing to Copyright Holder or Related Rights owners through LMKN.
(2) The Licensing Agreement as referred to in paragraph (1) is placed in the recordation by the Minister in accordance with provisions of law and regulations.
(3) The Licensing as referred to in paragraph (1) entails obligation to provide songs and/or music usage report to LMKN by means of SILM.
(…)

Part Five - Distribution of Songs and/or Music Royalty
Article 14
(1) The Royalty accrued by LMKN as referred to in Article 13 is:
a. distributed to Authors, Copyright Holder, and Related Rights owner who have become the member of CMO;
b. used for operating funds; and
c. used for reserved funds.
(2) The Royalty accrued by LMKN as referred to in paragraph (1) is distributed by LMKN based on the songs and/or music usage report in SILM.
(3) The Royalty as referred to in paragraph (2) is distributed to Author, Copyright Holder, Related Rights owner through CMOs.

Article 15
(1) Royalty of unidentified Author, Copyright Holder, and Related Rights owner and/or non-member of CMO is saved and announced by LMKN for 2 (two) years to be claimed by Author, Copyright Holder, and Related Rights owner.
(2) If within the period as referred to in paragraph (1), the Author, Copyright Holder, and Related Rights owner is identified and/or has become a member of CMO, the Royalty is distributed.
(3) If within the period as referred to in paragraph (1), the Author, Copyright Holder, and Related Rights owner is unidentified and/or has not become a member of a CMO, the Royalty may be used as reserved funds.
(4) Further provisions regarding the use of reserved funds as referred to in paragraph (3) is administered by a Ministerial Regulation.

Article 16
In case of dispute regarding disagreement on the amount of distributed Royalty, the Author, Copyright Holder, and Related Rights owner may notify the Directorate General to be resolved by means of mediation.
(…)

CHAPTER VI - CLOSING PROVISIONS
Article 22
When this Government Regulation enters into force: Minister shall establish the songs and/or music data center; and LMKN shall build SILM no later than 2 (two) years as of the promulgation of this Government Regulation.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, Number 9 of 2022 in respect of the implementation of Regulation Number 56 of 2021 on Management of Copyright Royalty For Songs and/or Music[122]

CHAPTER V - ROYALTY DISTRIBUTION, OPERATIONAL FUNDS AND RESERVE FUNDS
Part One - Distribution of Royalties
Article 18
Royalties that have been accumulated by LMKN are used for:
a. distribution to creators, copyright holders, and related rights owners who have become members of LMK;
b. operational funds; and
c. reserved fund.

Article 19
Royalties collected as referred to in Article 18 is accumulated in the LMKN account and can be known by all LMKs.

Article 20
1. Distribution of royalty as referred to in Article 18(a) is carried out through LMK.
2. The distribution of royalties as referred to in paragraph (1) is given to creators, copyright holders and related rights owners who have become members of the LMK.
3. Royalties for creators, copyright holders and related rights owners who are not yet members of an LMK can only be collected and accumulated by the LMKN.

Article 21
1. Distribution of Royalties to Creators, Rightholders Copyright, and Related Rights owners are awarded according to the calculations of each LMK based on data on the use of songs and/or music by users.
2. Royalty distribution by LMK as referred to in paragraph (1) must be notified to LMKN at least 2 (two) times in 1 (one) year.
3. Notification of royalty distribution as referred to in paragraph (2) covers:
   a. the amount distributed;
   b. the party receiving the royalties; and
   c. user data per type of commercial-based usage.
4. In the event of a dispute regarding the discrepancy in the distribution of Royalties, the Creator, Copyright Holder and Related Rights owner may submit it to the LMKN for settlement through mediation.

Part Two - Operational Funds
Article 22
1. LMK uses operational funds at most 20% (twenty percent) of the total amount of royalties collected annually including LMKN operational costs.
2. The use of operational funds as referred to in paragraph (1) is carried out based on a joint agreement between LMKN and LMK.

122
https://jdih.dgip.go.id/produk_hukum/view/id/108/t/permenkumham+no+9+tahun+2022+tentang+pelaksanaan+pp+nomor+56+tahun+2021+tentang+pengelolaan+royalti+hak+cipta+lagu+danatau+musik. Official translation in English unavailable as at the time of writing.

3. Operational funds as referred to in paragraph (1) are used to support the activities of carrying out the duties of commissioners and Daily Executors.
4. The use of LMKN operational funds as referred to in paragraph (1) is carried out based on the annual budget plan approved by the LMKN plenary meeting.

Article 23
Guidelines for determining, withdrawing and distributing Royalties are regulated in the implementation instructions and technical instructions determined by the LMKN.

Part Three - Reserve Fund
Article 24
1. Royalties for Authors, Copyright Holders and Owners Related Rights that are unknown and/or have not become members of an LMK are stored and announced by the LMKN for 2 (two) years to be known by the Author, Copyright Holder and Related Rights owner.
2. If within the period referred to in paragraph (1) the Author, Copyright Holder and Related Rights owner are known and/or have become members of an LMK, the Royalties are distributed to the Authors, Copyright Holders and Related Rights owners concerned.
3. If within the period referred to in paragraph (1) the Creator, Copyright Holder and Related Rights owner are not known and/or are not members of an LMK, the Royalties can be used as a reserve fund.
4. Reserve funds as referred to in paragraph (3) are Royalties that:
   a. songs and/or music are not recorded its use;
   b. there are still disputes between owners; or
   c. Author, Copyright Holder, and/or owner Related Rights have not been registered as members of LMK.

Article 25
The amount of reserve fund as referred to in Article 24 paragraph (3) is determined based on the agreement in the meeting LMKN plenary.

Article 26
The reserve fund as referred to in Article 24 can used by LMKN for:
a. music education;
b. social or charitable activities;
c. social security for individuals who become LMK members; and
d. dissemination of Copyright and Related Rights related with Royalty Management.

Article 27
Regarding the use of reserve funds, LMKN conducts financial audits and performance audits carried out by public accountants at least once a year and the results are announced to the public through the electronic and print media."

5.2.2. Malaysia

Copyright Act 1987[123] (as amended by the Copyright (Amendment) Acts of 2020[124] & 2022[125])

"Dispute relating to royalties
59C.(1) The Tribunal may hear any dispute relating to royalties arising between a licensing body and any of its members subject to the agreement of such licensing body and such member.

[123] https://www.wipo.int/wipolex/en/text/583950
[124] https://www.myipo.gov.my/ms/copyright-act-1987/?lang=en
[125] https://www.myipo.gov.my/wp-content/uploads/2022/02/Copyright-Amendment-Act-2022-Act-A1645.pdf

(2) The Tribunal shall determine the dispute under subsection (1) and make an order accordingly.
(3) An order under subsection (2) may be made so as to be in force indefinitely or for such period as the Tribunal may determine."

5.2.3. Singapore

Draft Copyright (Collective Management Organisations) Regulations 2023[126]

"Division 4 — Distribution policy
CMO must distribute tariffs, etc. according to distribution policy
17.—(1) A CMO must establish a distribution policy in accordance with this Division.
(2) A CMO must comply with its distribution policy so far as the policy gives effect to this Division.
(3) To avoid doubt, paragraph (2) does not affect any remedy that a person may have against the CMO if the CMO does not comply with its distribution policy.

Members must approve amendments to distribution policy
18. The distribution policy must provide that —
(a) it may only be amended by a general meeting of members; and
(b) any amendment is void to the extent that it is inconsistent with these Regulations.

Calculation of total amount to be distributed
19.—(1) The distribution policy must provide for the method that the CMO will use to calculate how much of its tariffs will be distributed to members.
(2) The distribution policy must describe any deductions that the CMO will make from its tariffs before distributing the tariffs to members.

Calculation of amount to be distributed to each member
20.—(1) The distribution policy must provide for the method that the CMO will use to calculate the amount to be distributed to each member, and the method must comply with this regulation.
(2) The method to calculate the amount to be distributed to a member —
(a) must as far as practicable be based on the actual use of the member's portfolio; but
(b) maybe based on the estimated use of the member's portfolio to the extent that it is not practicable to find out the actual use.
(3) If the method is based on estimated use, the distribution policy must specify how the use is estimated.
(4) The method must continue to take into account any use of a member's portfolio after the member has given notice to vary or terminate the rights granted to the CMO.

Ordinary frequency and manner of distribution
21.—(1) The distribution policy must provide for —
(a) the frequency at which distributions are ordinarily made, which must comply with this regulation; and
(b) the manner in which distributions are ordinarily made.
(2) If a CMO receives a tariff during a financial year —
(a) the CMO must do its best to distribute the tariff within 6 months after the end of the financial year; and
(b) must in any event distribute the tariff within 12 months (or such other period to be specified in the distribution policy) after the end of the relevant financial year.

126 https://www.mlaw.gov.sg/files/Annex%20A_Copyright_(Collective_Management_Organisations)_Regulations_2023.pdf. Expected gazette date in late 2023.

(3) Paragraph (2) does not apply to the extent that —

(a) the CMO is unable to make a distribution; and

(b) the CMO's inability to make the distribution is a result of the conduct of a user (for example, the user fails to provide information about its use of the CMO's portfolio despite the CMO's best efforts to collect that information).

Dealing with monies that CMO is unable to distribute

22.—(1) The distribution policy must require the CMO to do the following in relation to tariffs that the CMO is unable to distribute according to its distribution policy:

(a) keep a record of those tariffs, including the reasons for being unable to distribute those tariffs;

(b) take specified steps towards distributing those tariffs (for example, by identifying the members who are entitled to a distribution);

(c) safeguard those tariffs until they are distributed or otherwise used or otherwise dealt with in accordance with the distribution policy;

(d) inform members about the steps taken under paragraph (b), and the amount safeguarded under paragraph (c) for each financial year.

(2) The distribution policy may allow the CMO to use those tariffs for purposes specified in the distribution policy, but only if the CMO remains unable to distribute those tariffs despite taking the steps mentioned in paragraph (1)(b).

CMO must collect usage information

23. The distribution policy must require the CMO to —

(a) do its best to collect (whether from its users or otherwise) accurate and timely information about the use of its portfolio, including the following information for each tariff scheme operated by the CMO —

(i) general information about the users of the scheme;

(ii) how often is permission granted under each class of case to which the scheme applies;

(iii) the categories of rights for which permission is granted under the scheme; and

(iv) how often is permission granted for each category of rights;

(b) if required by a member, explain to the member the efforts it has taken to collect that information.

Information to members about usage of portfolios and distributions of tariffs

24.—(1) The distribution policy must require the CMO to give the following information to a member when making a distribution to the member:

(a) general information about the users of the member's portfolio;

(b) how the distributed amount was calculated for each work or performance in the member's portfolio;

(c) for each tariff scheme operated by the CMO that applies to a work or performance in the member's portfolio —

(i) how often is permission granted under each class of case to which the scheme applies;

(ii) the categories of rights for which permission is granted under the scheme; and

(iii) how often is permission granted for each category of rights;

(2) However, the distribution policy may provide that the CMO is not required to give any information if the CMO does not have the information because of the conduct of a user (for example, the user fails to provide information about its use of the CMO's portfolio despite the CMO's best efforts to collect that information).

Opportunity to question basis of distribution

25.—(1) The distribution policy must require the CMO to —

(a) give a member an opportunity to, within a specified period (which must not be shorter than 60 days or longer than 3 months) —

(i) ask for information about how a distribution to the member was calculated (for example, information about how the use of a member's portfolio was estimated); and
(ii) dispute the amount that should have been distributed;
(b) provide any information asked for under paragraph (a)(i); and
(c) deal with any dispute in accordance with its dispute resolution policy.

(2) However, the distribution policy may provide that the CMO is not required to give any information if the CMO does not have the information because of the conduct of a user (for example, the user fails to provide information about its use of the CMO's portfolio despite the CMO's best efforts to collect that information).

Other matters

26. The distribution policy may —
(a) provide for any other matter not inconsistent with this Part; and
(b) provide that its application to a member is subject to the membership agreement between the CMO and the member, but only in respect of matters —
(i) for which provision is not required by this Division; and
(ii) that are expressly set out in the distribution policy."

5.2.4. Vietnam

Law On Intellectual Property (No. 50/2005/QH11) 2005[127] [as amended by the Laws Amending and Supplementing a Number of Articles of the Law on Intellectual Property No. 36/2009/QH12)[128], No. 42/2019/QH14[129] and No.07/2022/QH15[130]]

"Chapter III
Copyright Holders, Related Right Holders
Article 44a. Principles of determining and distributing royalties

1. Co-owners of copyright and co-owners of related rights shall agree on the proportion of royalties to be divided according to the part of creative participation for the entire work, performance, phonogram or recording. images, broadcast programs, capital contributions and suitable to the form of exploitation and use.
2. The rate of distribution of royalties when phonograms and video recordings are used according to the provisions of Clause 1, Article 26 and Clause 1, Article 33 of this Law shall comply with the agreement of copyright holders and performers. performer, the owner of related rights to such phonogram or video recording; in case no agreement is reached, the Government's regulations shall apply.
3. Royalties are determined according to a frame and rate table based on the type, form, quality, quantity or frequency of exploitation and use; harmonize the interests of creators, organizations and individuals exploiting, using and enjoying the public, in accordance with socio-economic conditions according to the time and place where the act of exploitation and use takes place."
"Chapter VI
Copyright And Related Rights Representation, Consultancy And Service Organizations
Article 56.- Collective Management Organization of Copyright and Related Rights
(…)

3. Collective Management Organization of Copyright and Related Rights has the following rights and obligations:

[127] https://www.wipo.int/wipolex/en/text/274445
[128] https://www.wipo.int/wipolex/en/text/472667
[129] https://www.wipo.int/wipolex/en/text/582363
[130] https://www.wipo.int/wipolex/en/legislation/details/21740

(…)

d) Collect and distribute royalties according to the provisions of the organization's charter and the author's written authorization of the author, copyright holders and related rights holders having an agreement on the level or percentage , the method and timing of the distribution of royalties ; in accordance with the principles of publicity and transparency as prescribed by law. The collection and distribution of royalties from respective foreign or international organizations shall comply with the provisions of the law on foreign exchange management;

dd) To retain an amount of the total royalties collected to pay for the performance of the organization's tasks on the basis of an agreement between the author, the copyright owner, the related right holder, and the author. authority. The amount of withholding is adjusted on the basis of the agreement of the author, copyright holders, related rights holders. authorized and may be determined as a percentage of the total proceeds;

e) Distributing the royalties collected from the licensing of exploitation and use to authors, copyright holders and related rights holders after deducting the expenses specified at Point dd of this Clause;

(…)

5. Where Collective Management Organization of Copyright and Related Rights, after five years of searching to distribute the collected royalties, still cannot find or contact the author, co-author, or owner. Authorized copyright holders, related rights holders, co-owners of copyrights or co-owners of related rights shall hand over this amount to a competent state agency for management after deduction of expenses . management and search fees in accordance with this Law and other relevant laws.

After receiving the handover, the competent state agency shall continue to notify the search for a period of five years. At the end of this period, if the competent state agency still cannot find or contact the author, co-author, copyright holders, related rights holders, co-owners Copyrights, related rights co-owners, persons with related rights and obligations as prescribed by law, this money shall be used for activities to encourage creation, propaganda and enforcement of copyright protection. copyright and related rights. Within the aforesaid time limits, upon finding or contacting the author, co-author, copyright holders, related rights holders, co-owners of copyrights, co-owners of related rights, authorities, persons with related rights and obligations as prescribed by law, this amount, after deducting management and search expenses, shall be paid to the above-mentioned persons in accordance with law.

Decree 17/2023/ND-CP dated April 26 2023 of Government on detailed provisions of some articles and measures for implementation of intellectual property law on copyright and related rights[131]

Article 48. Collection and distribution of royalties

1. Copyright and related rights collective management organizations must have a monitoring mechanism to ensure that royalties collected from licensing are stored in accounts separate from other assets, accounts, other revenues and expenses of the organization, including the case where the royalties cannot be distributed due to the failure to find or contact the author, co-author, copyright owner, co-owner. authorizing copyright holders, related rights holders and related rights co-owners as prescribed in Clause 5, Article 56 of the Intellectual Property Law.

2. The collective management organization of copyright and related rights shall distribute the collected royalties according to the provisions of Points d and e, Clause 3, Article 56 of the Intellectual Property Law on the basis of an agreement with the author and owner. Copyright

[131] Official translation in English unavailable as at the time of writing.

holders, related rights holders have authorized by term and not later than 6 months from the date of receipt of royalties, unless otherwise agreed.

3. The collective management organization of copyright and related rights may retain an amount of the total royalties collected to be used for the performance of the organization's tasks as prescribed in Point dd Clause 3 Article 56 of this Article. Intellectual property law. Expenses for performing the organization's tasks are the total expenditures for activities performed by the collective management organization of copyright and related rights as authorized by the author, copyright owner, related rights holders, other management costs but must not exceed reasonable costs for managing copyright and related rights according to each stage of development of the organization. Expenses must be recognized in the financial settlement statements of the collective management organization of copyright and related rights after being certified by an independent audit agency.

4. The withholding amount must be based on the agreement of the author, the copyright owner, the authorized related right holder, can be adjusted appropriately from time to time and must meet the following conditions :
a) Not more than 40% of the total royalties earned within the first 5 years after the organization's establishment;
b) Not more than 30% of the total royalties collected within the next 5 years;
c) Not more than 25% of total royalties collected for organizations established for 10 years or more.

5. In case the organization collects and distributes royalties as authorized by authors, copyright holders and related rights holders, but is not a collective management organization of copyright or related rights. If concerned, they must comply with the provisions of Point c, Clause 2, Article 57 of the Intellectual Property Law and Article 55 of this Decree, and at the same time must fulfil the corresponding obligations of the collective management organization of copyright, related provisions in Clause 2 of this Article and Articles 53 and 54 of this Decree.

Article 49. In case the author cannot be found or can not be contacted, the copyright owner or related right holder has authorized

1. The collective management organization of copyright and related rights cannot find or contact the author, co-author, copyright holders, related rights holders, and co-owners of rights. Authors and co-owners of related rights authorized under Clause 5, Article 56 of the Intellectual Property Law must publicly post relevant search information on their organization's website.

After 6 months from the date of publication of information, the collective management organization of copyright and related rights must transfer the collected royalties to a joint open bank account for the authors, co-authors and owners. copyright owner, related rights holder, co-owner of copyright, co-owner of related rights authorized but not found or cannot be contacted.

In case of finding or contacting the author, co-author, copyright holders, related rights holders, co-owners of copyrights, authorized co-owners of related rights, the collective management organization of copyright and related rights shall distribute the collected royalties according to the agreement.

2. After 5 years of searching for the distribution of royalties collected, the author, co-author, copyright owner, related rights holder, co-owner cannot be found or contacted. Authorized copyright and related rights co-owners shall hand over this amount, arising bank interests and documents related to the authorization and collection of royalties to competent state agencies

or management authority, after deducting management costs, search according to the provisions of law.

3. After receiving the handover, the competent state agency shall continue to post search notices on the website of copyright and related rights for a period of 5 years and manage royalties according to regulations. specified in Clause 8, Article 23 of this Decree.

4. Within the time limit specified in Clauses 2 and 3 of this Article, in case there is a legally effective judgment or decision of a court competent to identify the author, co-author, or copyright owner, , related rights holders, co-owners of copyrights, co-owners of related rights are missing, dead (for individuals) or dissolved, bankrupt (for organizations), clause royalties collected, bank interests (if any) after deducting management and search costs are paid to beneficiaries in accordance with relevant laws.

Article 52. Members of copyright and related rights collective management organizations
(…)

3. When distributing the collected royalties to authors, copyright holders and related rights holders authorized under Clause 2, Article 48 of this Decree, the collective management organization Copyright and related rights must be accompanied by the following information:

a) Amounts payable for each licensed work, performance, phonogram, video recording or broadcast, clearly stating the rights to be licensed and the purpose of use;
b) The time period in which the use is based on the collection and distribution of royalties."

5.3. Reference Tools

5.3.1. The Toolkit

(chapter 6 at page 65 to 83):

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

44. A CMO should not be allowed, unless specifically authorized by the General Meeting or its Statute, or provided by law, to use Rights Revenue and any income from the investment of Rights Revenue for any purposes other than Distributions to Rightholders or, if so decided by the General Meeting, social, cultural, educational, or cost reduction.

45. In respect of each financial year, a CMO should distribute or make available an Annual Report to its membership well in advance of its General Meeting.

46. The Annual Report should contain:

(a) a financial statement, which should include a balance-sheet or a statement of assets and liabilities as well as an income and expenditure account for the financial year;
(b) a report of the CMO's activities in that financial year;
(c) a statement of Rights Revenue broken down per category of rights managed and per type of use including the total amount of Rights Revenue collected, 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 Operating Expenses;
(e) a breakdown of the deductions for the purposes of social, cultural and educational services in the financial year and an explanation of the use of those amounts, with a breakdown per social, cultural and educational expenditure;

(f) information on the total amount of remuneration paid, and other benefits granted to, the persons who manage the business of the CMO and the 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 Representation Agreement, the:
    (i) name of such partner CMOs, and the dates of the relevant contracts;
    (ii) total amount paid in the financial year to the partner CMOs;
    (iii) total Management Fees and other specified deductions; and
    (iv) total amount received from the partner CMOs.

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

48. A CMO should maintain and publish a Distribution policy, as approved by the General Meeting, that sets out:
(a) the basis for calculating entitlements to receive payments from Rights Revenue collected. In establishing such basis, a CMO should take into account, as far as possible, the actual use and manner of use of works or other 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 Rightholders; and
(c) the amounts that will be deducted from the Rights Revenue before Distribution
(d) on the basis of Operating Expenses and deduction policies as determined by the General Meeting, the Statute or the law.

49. A CMO should regularly, diligently and accurately distribute and pay amounts due to the Rightholders it represents, be it through membership, mandate – voluntary or statutory – or through Representation Agreements with other CMOs, in accordance with its general policy on Distributions and the agreements it has signed with other CMOs.

50. A CMO should carry out such Distributions and payments no later than 12 months after the end of the financial year in which the Rights Revenue was collected, unless objective reasons, for instance insufficient reporting by Users/Licensees, prevents it from meeting this deadline.

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

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

53. 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 should be included in the annual report.

54. A CMO should strive to ensure that funds for social, cultural and educational purposes are only deducted from the Rights Revenue with the agreement of the Rightholders represented.

55. A CMO should ensure that its Operating Expenses are transparent and properly documented.

56. A CMO should ensure that each Rightholder it represents – whether directly through a membership contract or through a Representation Agreement will be entitled to apply for its social, cultural or educational services provided deductions were made on Rights Revenue attributed and distributed to such Rightholder."

5.3.2. Collective Management of Copyright and Related Rights, Third Edition, 2022)[132]

(at pages 158-159)

Additional guidance further to the Toolkit:

"In addition, three provisions concerning the costs of the management *(*from the Toolkit)* are worth reproducing here (with emphasis added):

North Macedonia:
"Article 16(6)- The organization may use funds from the collected fees in the amount specified in the statute or in the contract for the establishment, but not more than 15%." *Article 16, Law on Copyright and Related Rights*

Senegal:
"Management costs. – Management costs deducted by the collective management society shall be compatible with generally recognized good governance practices and shall, to the extent possible, be proportional to the actual cost of managing the rights in the work, performance, phonogram or videogram."
Article 119, Senegal Copyright Act 2008

European Union:
"3. Management fees shall not exceed the justified and documented costs incurred by the collective management organisation in managing copyright and related rights."
Article 12(3)], EU Directive 2014/26/EU421

It should be highlighted, however, that there are big differences between the costs of managing the various rights. For some, for example, a 15 percent level might exceed of actual costs of efficient management; for others (such as musical performing rights), a 15 percent level may be extremely difficult to achieve – perhaps even impossible – such that the CMO's financial situation may become untenable and its operation be endangered. The approach applied by the Senegalese Copyright Act and the E.U. Directive seems apt: they allow the deduction of the "justified and documented costs" "proportional to the actual cost of managing" the given rights."

6. ASEAN CMO-RELATED JURISPRUDENCE

The following summaries are on 3 cases selected from the 16 cases listed in the Study to provide non-exhaustive ASEAN jurisprudence examples respectively on (i) infringement litigation related to a CMO's enforcement of rights, (ii) tribunal assessment on the reasonableness of a CMO's licence rates and (iii) suggested considerations for legislative amendments indicated by the judiciary on rights administered by a CMO.

6.1. The Performing Right Society Ltd & Anor. v United Artists Singapore Theatres Pte Ltd [2001] SGHC 54[133] (Singapore)

Excerpt from WIPO Copyright and Related Rights Cases in the Field of Music in the Asia-Pacific Region 2010[134] at pages 158-159.

"*Facts/Issue(s)*

[132] https://tind.wipo.int/record/47101
[133] https://www.elitigation.sg/gd/s/2001_SGHC_54
[134] https://www.wipo.int/edocs/pubdocs/en/copyright/1025/wipo_pub_1025.pdf

The first plaintiffs, the Performing Right Society Ltd (PRS), was the owner of the rights of public performance, broadcasting and diffusion by cable of all musical works composed, arranged or published by their members. The second plaintiffs, Composers and Authors Society of Singapore Ltd (COMPASS), was the exclusive licensee of the PRS to authorize and administer, within the territory of Singapore, the performing rights of works comprised in the repertoire of the PRS. The works in question concerned nine musical works composed or arranged by Michael Phillip Jagger, Keith Richards, Paul James McCartney and John Neville Rufus Altman (the composers).

The defendants, United Artists Singapore Theatres Pte Ltd (UA), were exhibitors of motion pictures in Singapore, and the dispute arose from their screening of two motion pictures – "Jerry Maguire" and "Titanic" – at its theatre complexes some time in 1997 and 1998. It was alleged that three of the musical works had been synchronized or incorporated into the film "Jerry Maguire" (the "Jerry Maguire Works") whilst the remaining six works (the "Titanic Works") had been synchronised into the film "Titanic".

The plaintiffs did not deny that UA had obtained its licence to screen the motion pictures from the film producers and distributors ("Jerry Maguire" from Buena Vista Columbia Tristar Films (Singapore) Pte Ltd and "Titanic" from Twentieth Century Fox (East) Pte Ltd). However, the plaintiffs alleged that UA's screening of the two films infringed their rights in the Jerry Maguire Works and Titanic Works as the screening constituted a performance of those musical works (whose sound recordings had been synchronized into the soundtracks of the two films).

The issue for the court was: Whether UA required licences from the plaintiffs for a "performance" of the musical works through a screening of films whose soundtracks had embodied the musical works, even though UA had secured public screening rights from the film producers?

Ruling & Reasoning

The High Court held that the plaintiffs succeeded in their claim against UA in relation to the infringement of the Jerry Maguire Works, but not in relation to the Titanic Works. In other words, the court held that UA required a licence from the plaintiffs for screening of "Jerry Maguire", but not for the screening of "Titanic".

The court reasoned that though section 18(1) of the Singapore Copyright Act provided that "sounds embodied in a sound-track associated with visual images forming part of a cinematographic film shall be deemed not to be a sound recording", under section 117(1) of the Singapore Copyright Act, the operation of Part IV of the Copyright Act in which rights in sound recordings and cinematographic films arose did not affect the operation of Part III, in which rights in musical works arose. Thus, if the films "Jerry Maguire" and "Titanic" were "derived" (through the synchronized sound recordings of the musical works into the soundtracks of the films), whether wholly or partly, from the Jerry Maguire Works and Titanic Works respectively, by reason of section 117(1), the plaintiffs' rights to the Jerry Maguire Works and Titanic Works as musical works were not affected.

Therefore the screening of the two films amounted to a performance of the musical works and prima facie constituted an infringement of the plaintiffs' section 26(a)(iii) rights to public performance in the musical works.

However, the court held that the defendant had succeeded in challenging the rights of the plaintiffs to the copyright in the Titanic Works. As the composer of the Titanic Works was in the employ of Head Arrangements (he was contracted to arrange the musical works whose copyright had expired to produce the Titanic Works), copyright in his compositions would vest in Head Arrangements. Head Arrangements had assigned the rights to Twentieth Century

Fox, and not to the plaintiffs, who have purportedly taken an assignment from the composer. As the plaintiffs failed to produce the contract of employment between the composer and Head Arrangements and failed to prove that the composer's contract of employment was a mere contract for services, the court held that they failed to prove that the composer had the requisite copyright and that copyright in the Titanic Works vested in them.

Laws Cited

Singapore Copyright Act (Cap. 63 1987 Ed), Sections 7, 18(1), 22(1), 26, 30, 117, 195(1)
Australian Copyright Act 1968 (Cth), Section 85(1)."

6.2. Singnet Pte Ltd v Composers and Authors Society of Singapore Ltd [2021] SGCRT 1 (CT 1 of 2019)[135] (Singapore)

An application under Section 163(2) of the previous Copyright Act (Cap. 63) ("the Act") – reproduced hereunder:

> *Section 163.(2) A person who claims, in a case to which a licence scheme applies, that he requires a licence but that the grant of a licence in accordance with the scheme would, in that case, be subject to the payment of charges, or to conditions, that are not reasonable in the circumstances of the case, may apply to the Tribunal under this section.*

Facts/Issue(s)

The applicant, SingNet Pte Ltd ("SingNet"), was a subsidiary of Singapore Telecommunications Limited ("SingTel"). SingNet operated as an Internet service provider and offers Internet access solutions for both consumer users and commercial users. SingNet also provided the SingTel TV pay television service, which was formerly known as "MioTV".

The respondent, the Composers and Authors Society of Singapore Ltd ("COMPASS"), was a collective management organisation ("CMO") in Singapore that deals specifically with music copyright, and usage of musical works and musical associated literary works. It administers public performance, broadcast, diffusion and reproduction rights in such works on behalf of its members and affiliated societies.

SingNet and COMPASS were in dispute over the reasonableness of the charges sought to be imposed by COMPASS for a licence in respect of the right to communicate copyright musical works (the "Licence Scheme"). The licence rate in question is 1.5% of Net Television Revenue, which is defined as "all the subscription fees received by SingNet from its subscribers of the pay television services and advertising income received by SingNet from its pay television services (less the set-top box rental, technical access fees and actual advertising agency fees, provided that the aforesaid deduction for the actual advertising agency fees does not exceed 15% of the advertising income referenced to above)" (the "Licence Rate").

SingNet took the position that the Licence Rate was unreasonable and arbitrary, and filed an application to the Copyright Tribunal under section 163(2) of the Act (the "Application").

In the course of the proceedings, COMPASS successfully applied under section 169(1) of the Act for the Copyright Tribunal to refer a question of law on whether the Copyright Tribunal has the power to grant a retrospective order. Subsequently, in Composers and Authors Society of Singapore Ltd v SingNet Pte Ltd [2021] 3 SLR 1117, the High Court held that the Copyright

[135] https://www.ipos.gov.sg/docs/default-source/resources-library/copyright/singnet-pte-ltd-v-composers-and-authors-society-of-singapore-ltd-2021-sgcrt-1-(002).pdf

Tribunal has no jurisdiction under section 163(2) read with 163(6)(b) of the Act to grant a retrospective order. In other words, any order so granted by the Copyright Tribunal takes effect only from the date of the order.

The two main issues for the Copyright Tribunal were:

(a) whether the Licence Rate was reasonable or not in the circumstances of the case; and
(b) if the Tribunal finds the License rate not to be reasonable, then what are the charges that it considers reasonable in the circumstances in relation to SingNet, as provided under section 163(6)(b) of the Act.

Ruling & Reasoning

The Copyright Tribunal adopted the judicial estimation approach to assess the reasonableness of the Licence Rate and dismissed the Application with costs and the following findings:

(a) COMPASS's methodology in deriving the Licence Rate is one that is principled, objective and logical;
(b) COMPASS had been even handed in its treatment of StarHub and SingNet during negotiations on the license rate. SingNet's contention that COMPASS had sought to fix the Licence Rate in an arbitrary and capricious manner is without merit; and
(c) SingNet had failed to show that its pay television revenue is largely attributable to its sports content or that sports content is a differentiator between it and StarHub (SingNet's closest competitor in the pay television service provider business) to warrant paying a different licence rate.

Laws Cited

Singapore Copyright Act (Cap. 63 1987 Ed).
Australian Copyright Act 1968 (Cth).

6.3. Filipino Society of Composers, Authors, and Publishers, Inc., v Anrey Inc. (G.R. No. 233918 – 2022)[136] (Philippines)

Facts/Issue(s)

The appellant, FILSCAP was a non-profit society of composers, authors, and publishers that owns public performance rights over the copyrighted musical works of its members. It also owns the right to license public performances in the Philippines of copyrighted foreign musical works of its members and affiliate performing rights societies abroad.

Such rights proceeded from the contracts it has entered into with various composers, authors and publishers, and record labels, as well as the reciprocal agreements it had with affiliate foreign societies authorizing FILSCAP to license the public performance in the Philippines of musical works under their repertoire. These agreements deputized FILSCAP to enforce and protect the copyrighted works of its members or affiliates by issuing licenses and collecting royalties and/or license fees from anyone who publicly exhibits or performs music belonging to FILSCAP's worldwide repertoire. In exchange, FILSCAP shall pay a portion of the fees it collects to its members and affiliates.

[136] https://sc.judiciary.gov.ph/233918-filipino-society-of-composers-authors-and-publishers-inc-vs-andrey-inc/.

These rights were challenged by the respondent Anrey, Inc. (Anrey) when they were assessed by FILSCAP to pay annual license fees for the public performance of the copyrighted works of its members at the chain of restaurants owned by Anrey in Baguio City.

FILSCAP filed a Complaint for Copyright Infringement against Anrey (the Complaint) before the Regional Trial Court of Baguio City (RTC) asking the court to award the compensatory, nominal and exemplary damages in addition to costs.

Anrey denied playing any copyrighted music within its establishments. It claimed that the establishments it operates play whatever is being broadcasted on the radio they are tuned in. Even if the broadcast played copyrighted music, the radio stations have already paid the corresponding royalties, thus, FILSCAP would be recovering twice: from the station that broadcasted the copyrighted music, and from it, simply because it tuned in on a broadcast intended to be heard by the public. Finally, assuming that the reception is a performance, it was not done publicly since the broadcast was played for the benefit of its staff, and not for its customers.

The RTC dismissed the Complaint for lack of merit and cited Sec. 184 (i) of R.A. 8293[137] in absolving Anrey from copyright infringement. The provision exempts public performances by a club or institution for charitable or educational purposes provided, they are not profit making and they do not charge admission fees. FILSCAP filed a Motion for Reconsideration but this was subsequently denied by the RTC.

FILSCAP then filed an appeal to the Court of Appeal (CA) insisting on its right to collect license fees and/or royalties. It argued that regardless of whether the establishments concerned charge admission fees or if the public performance is done by simply tuning in on a radio broadcast, it can collect the fees and/or royalties due for the copyrighted music played. The CA, however, disagreed with FILSCAP and affirmed the Decision of the RTC. In denying the appeal, the CA applied what was known as the homestyle and business exemptions prevailing in the United States of America (US). These exemptions allow small business establishments to use television or radio sets within its premises, subject to the following conditions:

> "As such the rules of BMI and ASCAP provide that any food service and drinking establishment that is 3,750 square feet or larger must secure a license for the public performance of musical works via radio and television.
>
> [For establishments using television]:
> (a) it has more than four (4) television sets;
> (b) it has more than one (1) television set in any room;
> (c) if any _of the television sets used has a diagonal screen with size that is greater than fifty-five (55) inches;
> (d) if any audio portion of the audiovisual performance is communicated by means of more than six (6) loudspeakers or four (4) loudspeakers in any one room or adjoining outdoor space; or (e) if there is any cover charge.
>
> As to the use of radio sets, it must secure a license if the following conditions apply:
> (a) if it has more than six (6) loudspeakers;
> (b) it has more than four (4) loudspeakers in any one room or adjoining outdoor space;
> (c) if there is any cover charge; or
> (d) if there is music on hold."

The CA further denied a motion for reconsideration file by FILSCAP. FILSCAP then filed an appeal petition to the Supreme Court (SC).

[137] https://www.wipo.int/wipolex/en/text/488674

Ruling & Reasoning

The SC held that the right of FILSCAP to license public performance of the subject copyrighted musical works, the public performance of such works in Anrey's restaurants without license from FILSCAP, and the refusal of Anrey to pay the annual license fees for the said works were duly established.

It noted that the rates were annual fees that normally authorize access to what FILSCAP boasts to over twenty million songs in its repertoire, and that the evidence on record proved public performance on 12 occasions: 6 songs in 2 different days in in 2008 in 2 locations only. It found that the annual license fees demanded by FILSCAP appeared inequitable, after considering Anrey's seemingly valid position on a difficult question of law and the last portion of Section 216.l(b) states that "in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty."

The SC then granted an award of temperate damages equivalent to Philippine Pesos 10.000.00 as just and reasonable in lieu of FILSCAP’s claim for Philippine Pesos 18,900.00 for compensatory damages considering that: (1) the license fees were charged annually and Anrey was only shown to have publicly performed FILSCAP's songs on two different days; and (2) the license fees represents the use of over 20 million songs on FILSCAP's repertoire: and Anrey was only shown to have publicly performed FILSCAP's 12 songs in total.

The SC next denied FILSCAP’s claims for nominal damages of Philippine Pesos 300,000.00 (for blatant violation of its public performance rights) and exemplary damages of Philippine Pesos l00,000.00 (for gross negligence) but however awarded costs and interest to FILSCAP.

Considerations for possible amendments under the Intellectual Property Code (IPC)

After comparative analysis of how the other member states and signatories to the Berne Convention and TRIPS Agreements perceive transmissions embodying a performance or display of a work communicated to the public without the copyright owner's consent (*including on US' introduction of the business exemption triggering the dispute mechanism by the World Trade Organization (WTO) after being considered inconsistent with the TRIPS Agreement and the Berne Convention, and a violation of the rights of copyright owners*), the SC also suggested steps for local legislative consideration as follows:

> “Our function is to interpret the law and to adjudicate the rights of the parties in the case at bar, The present framework on copyright enables copyright owners to license the public performance or further communication to the public of sound recordings played over the radio as part of their economic rights, unless it is fair use.
>
> We understand that the-very broad definition of a public performance in the IPC is a cause for concern. By the mere definition of what a public performance is, listeners of a radio station, to some extent, risks copyright infringement. Our foreign counterparts have recognized this dilemma and some have already taken steps to address this situation.
>
> Neither the Berne Convention nor the TRIPS Agreement prohibit States from the introduction of limitations or exceptions on copyright. However, such limitations or exceptions cannot exceed a de minimis threshold or limitations that are of minimal significance to copyright owners. At present, the WTO employs three-step test in determining whether the limitation or exception on the rights of an owner exceed the threshold: they (1) must be confined to certain special cases, (2) cannot conflict with a normal exploitation of the work, and (3) cannot unreasonably prejudice the legitimate

interests of the right holder. These conditions are to be applied on a cumulative basis; if any one step is not met, the exemption in question will fail the test and be found to violate the TRIPS Agreement.

We no longer wish to discuss each of these steps in length, but Congress should take them into consideration, in the event it chooses to introduce changes in the IPC that affects may affect any of the given rights of copyright owners."

Laws and Treaties Cited

Republic Act No. 8293 [An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes] otherwise known as the Intellectual Property Code of the Philippines[138]
United States of America Copyright Act[139]
Berne Convention for the Protection of Literary and Artistic Works[140]
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[141]

[138] https://www.wipo.int/wipolex/en/text/488674
[139] https://www.wipo.int/wipolex/en/text/585336
[140] https://www.wipo.int/treaties/en/ip/berne/
[141] https://www.wto.org/english/docs_e/legal_e/31bis_trips_e.pdf

ANNEXURE - Detailed case studies

Case Study on RROs in AMS (from Chapter 2.2.4)

(A) Historic Context for RRO Licensing

RROs began their operation in the 1970's and 1980's in response to requests from educational institutions to copy legally from published works when the whole book, journal, etc. was not needed. The first licensing agreement on reprography was signed in Sweden, in 1974, between the RRO *BONUS* and the Ministry of Education. The licence set out terms for reprographic copying in schools. This was followed by agreements on reprographic copying of extracts of published works in universities and colleges and other education institutions.

Countries that were also early to establish RROs were the other Nordic countries, Australia, New Zealand and the UK. Here too educational institutions were the first to be authorised to make reprographic copies through licensing agreements with RROs. There are more than 80 countries in which the Education Sector – at all levels of education - is the main beneficiary of RRO licensing.

(B) RRO Licensing Agreements

The RRO licensing agreement typically authorises the copying of a portion of a legal copy of a published work. The portion that may be copied varies from one country to another; it is normally between 5% and 20% of the publication, which may be extended if the work is no longer available to purchase. The uses provided for are generally internal, personal use – in higher education institutions for the professor and the students enrolled in the course or programme, and in schools for the teacher and their enrolled students.

Most RRO licensing agreements would allow the user to copy a full chapter of a book, for sharing with a cohort of students. Permitted uses would include photocopying, printing, faxing and scanning, and, often, also copying from digital sources and the making available of copies in password protected networks such as an intranet, as well as inclusion in PowerPoint presentations and posting to devices such as smartboards. Posting of the copy to the open internet is not permitted, whilst remote access through secure networks would be allowed.

Licensing agreements for public educational institutions are often negotiated by ministries of (Higher) Education or a peak body representing the institutions. For example, in France the Ministry of Education negotiates the school licenses and also pays the fee under the license for primary education and below. For public education institutions at the higher level, the relevant ministries negotiate model licensing agreements with CFC, the French RRO. The Irish RRO, ICLA, has negotiated the schools license covering reprographic and similar uses in public primary and secondary schools with the Ministry of Education, which also pays the licensing fee. In Norway, the first public school and university licenses were negotiated with the ministries of Education and Higher Education, who also paid the remuneration. As the owners of public schools are the local (primary schools) and regional (secondary level) authorities, the school license is now negotiated with the peak body representing the local and regional authorities, who also settles the payment under the agreement. This approach to licensing in education creates efficiencies for both the ministries and the RRO. There is one party to both agree terms with and receive payment from.

(C) A Supportive Licensing Environment for RROs

The education sector is the highest user of copyright works owned by the authors and publishers that RROs represent – by enabling educational institutions to legally copy and disseminate copyright content easily and cost-effectively, a healthy licensing ecosystem delivers benefit to the education sector. Significant efficiencies are gained for the education institutions, the RRO and its members, when the licensing agreements are negotiated with the lead agency/ies for education.

All functioning RROs operating in Europe, North and Latin America, Oceania, the Caribbean and Africa have signed licensing agreements with educational institutions. In jurisdictions where RROs are fully and effectively functioning, it may be observed that there is a degree of cooperation between the government agencies responsible for copyright and collective management on the one hand, and for education on the other.

Joint Licensing Initiative Case Study: United Kingdom – PPL PRS Ltd. (from Chapter 3.2.1(a))

The following is a case study on a voluntary joint venture to achieve greater efficiencies and better customer service in respect of the collective management of music public performance rights in the United Kingdom.

(A) History of the two individual CMOs

1. In the UK, PPL and PRS (which operates as PRS for Music) are two separate CMOs. PPL (Phonographic Performance Limited) collects on behalf of its record company members for certain uses of their recorded music and then distributes the licence fees collected to its performer and record company members for certain uses of their recorded music, and PRS (Performing Right Society Limited) collects and distributes money on behalf of its songwriter, composer, and music publisher members, for certain uses of their musical compositions and lyrics. PRS was formed in 1914 and PPL in 1934. Each CMO has an established and successful collective management operation. Prior to 2018, both organisations licensed and collected public performance fees separately from businesses, and organisations, resulting in a duplication of effort and costs for both CMOs and users. Customers also had to deal separately with both CMOs, at different times of the year.

(B) The relevant rights

2. When a recorded piece of music is played in public under UK law, royalties are generally payable by the music user in relation to two types of copyright and to two different copyright holders:

(i) Copyright in the composition and lyrics (i.e., the musical work), owned (on creation) by writers/composers and publishers and, for those writers/composers and publishers who are members of PRS, the relevant rights in which are assigned to PRS under the terms of its mandates/membership agreements; and

(ii) Copyright in the sound recording, owned (on creation) by the producer(s) of the sound recording, but often assigned or exclusively licensed to a record company. For commercially released sound recordings that are owned or controlled by recording Rightholders who are members of PPL, the relevant rights are assigned to (or, where a member is an exclusive licensee of the relevant rights, the subject of an exclusive agency appointment of) PPL under the terms of its public performance and broadcast mandate.

3. The collection of royalties for the public performance/playing in public of musical works and sound recordings are complementary activities since, for example, anyone playing recorded music in public in the UK (for example, a retailer or hairdresser who plays a music radio station on their premises) will usually be required to pay for both (i.e., to obtain licences from both PPL and PRS for Music). Before the launch of the joint venture, though, they were approached by PPL and PRS for Music separately for licensing. Prior to the launch of the joint venture, each CMO licensed several hundred thousand businesses and organisations separately for the public performance/playing in public of recorded music.

(C) Introducing the concept of voluntary joint licensing

4. PPL and PRS for Music decided to simplify music licensing for UK businesses and organisations for public performance by creating a joint venture company, PPL PRS Limited, which offers “TheMusicLicence”, where the core concept is “One contact. One invoice. One licence”. With theMusicLicence, the customer gets a comprehensive licence to legally play music for employees or customers in their business or organisation when using radio, TV or other or analogue digital devices and for live performances (if applicable).

5. The simple, joint concept flows through the operations of PPL PRS Ltd. There is one enquiry form[142] with parameters linked to the relevant tariffs[143], a unified customer service operation, and a combined customer database to avoid any duplication. For the non-customer-facing side, efficiencies arise from combined staffing, combined debt collection as well as legal enforcement actions.

(D) The final cooperative structure and the set-up challenges

6. The joint venture was initially announced in February 2016. It required clearance from the UK Competition and Markets Authority (CMA), which considered whether it was or might be the case that the proposed joint venture had resulted in the creation of a relevant merger and, if so, whether the merger had resulted, or might be expected to result, in a substantial lessening of competition within any market(s) in the UK for goods or services. In September 2016, the UK CMA issued its decision, stating that PRS and PPL operated in separate markets (because they licensed the use of different copyrights for different categories of copyright owners) and did not overlap, so there were no direct horizontal unilateral effects arising from the joint venture. Furthermore, the CMA did not believe there to be a realistic prospect that the joint venture would result in a substantial lessening of competition as a result of indirect horizontal unilateral effects. The costs of purchasing licences from PPL and PRS are set out in published tariff lists and customers of both CMOs declared that they were not able to use the pricing of one of the CMOs to influence the pricing of the other. In the event of a dispute over pricing, a music user has recourse to the UK Copyright Tribunal and the Tribunal told the CMA that it did not believe that the joint venture would significantly impact its ability to resolve issues over licence fees. In all, the CMA concluded that the merger did not give rise to any substantive competition issues.

7. Great care was put into the final corporate structure of the joint venture company PPL PRS Ltd. External consultants were engaged to undertake a comprehensive data analysis and scoping exercise.

8. A detailed shareholders agreement was promulgated setting out how the company would be operated (including allocation of costs) and owned. PPL PRS Ltd is equally owned by PPL and PRS for Music. The PPL PRS Ltd Board comprises an independent chairperson, and representatives from both PPL and PRS for Music for depth of experience as well as for fair representation. The senior management team from the joint venture joins board meetings to present business matters.

9. PPL and PRS for Music continue to operate separately in the other areas of their respective businesses, including representing their members; collecting royalties outside the UK through agreements with their counterpart CMOs in other territories; developing, setting, and consulting on their respective tariffs and licensing schemes; licensing broadcast, online and recorded media customers, and their respective distribution policies and procedures.

10. A more practical challenge involved manpower costs and location costs. After reviewing a number of locations across the UK, a decision was made to base the joint venture in Leicester, a city with strong local culture presence. When choosing Leicester, PPL PRS Ltd looked at the number of benefits the city had to offer, the local talent pool, property availability and location, the links to London and also the rest of the UK. All of these factors made Leicester the most suitable choice. PPL PRS Ltd is now one of the city's largest employers working with local colleges, universities, and cultural and creative partners.

(E) The tariff structure and distribution policies

11. As explained above, businesses and organisations playing or performing music in public can now obtain a single licence, TheMusicLicence.

[142] https://pplprs.co.uk/get-themusiclicence/

[143] PPL and PRS each set their own respective tariffs.

12. Described in the simplest terms, PPL PRS Ltd issues TheMusicLicence on behalf of its parent companies (PPL and PRS for Music), acting as their agent. Licence fees invoiced to customers are recorded as revenue in its parent companies' accounts. PPL PRS Ltd's revenue stated in the financial statements is the recharge to its parent companies of the expenditure, plus a margin, incurred in respect of operating the joint venture. All operating expenditure is recharged back to its parents.

13. PPL then distributes the music licence fees for the use of recorded music less its operating costs, to its record company and performer members (and those CMOs representing record companies and performers in other territories with which it has agreements) while PRS for Music distributes music licence fees for the use of musical compositions and lyrics, less its operating costs, to its songwriter, composer and publisher members (and to those CMOs representing songwriters, composers and publishers in other territories with which it has agreements).

14. An important point is that the joint venture is not permitted to set or negotiate any tariff for UK public performance licences. In this respect, PPL and PRS for Music continue to consult on, negotiate and set their respective public performance tariffs independently for PPL PRS Ltd to license. The cost to each user of The MusicLicence varies from business to business and from sector to sector, and it is calculated, in each case, by reference to each of PPL and PRS for Music's respective tariffs. As such, there is no fixed split between the parent CMOs of the overall licence fee income that is collected, and the split varies from sector to sector and in some cases from licence to licence. By way of a couple of simplified examples to illustrate this point, 100% of the licence fee collected in respect of a TheMusicLicence granted by PPL PRS Ltd for a live music concert would be allocated to PRS for Music, while, for a hairdressing salon with 11-15 chairs that plays recorded music, the licence fee would be split (in accordance with PPL's and PRS for Music's respective tariffs) 57% to PPL and 43% to PRS for Music.

(F) Results

15. Aside from the continuous cost savings from the efficiencies mentioned above, the PPL PRS joint venture has generated strong results in 5 years of royalty collection, with 1 billion pounds of distribution facilitated. In 2021, the joint venture dealt with approximately 300,000 licensed customers, who operate over 400,000 venues.