



Educational Material on Collective Management of Copyright and Related Rights

Module 6: Management of rights in dramatic works

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PURPOSE OF THE MATERIAL

Management of copyright and related rights has become an increasingly important element in a well-functioning copyright infrastructure, alongside legislation and enforcement. Relevant information is needed both among governmental representatives, working for instance in copyright offices, and people working in the private sector, for instance in collective management organizations.

WIPO has therefore commissioned experts to write educational material to be used as reference material in conjunction with various training activities. The experts have, in close collaboration with many non-governmental organizations (NGOs), drafted a comprehensive set of materials that covers all areas where collective management is customarily applied. The contribution of NGOs has been invaluable and the experts wish to thank all representatives for their assistance and guidance.

The way rights are exercised and managed varies greatly in different creative sectors. This program focuses on collective management. It takes a modular structure and covers the following sectors:

1. Module 1: General aspects of collective management
2. Module 2: Management of copyright and related rights in the field of music
3. Module 3: Management of copyright and related rights in the audiovisual field
4. Module 4: Management of rights in print and publishing
5. Module 5: Management of rights for visual arts and photography
6. Module 6: Management of rights in dramatic works

Each module can be read independently, together with module 1. For instance a reader, who is interested in dramatic works, can study modules 1 and 6.

The experts are Mrs. Tarja Koskinen-Olsson (Finland/Sweden) and Mr. Nicholas Lowe (the United Kingdom). Their short biographies are enclosed.

How to use the material

In all modules, the material is written on different levels to serve the purpose of different readers:

- The text under each main heading offers a general overview and can be read separately for quick comprehension of the issues at stake.
- The next level is operational and offers a description of collective management of copyright and related rights in each sector.
- The third level offers detailed information, examples and experiences from various regions.

The needs and interest of the reader will determine the use of the program. Cross-references are used throughout the text, as many issues affect more than one sector.

Terminology

A list of terms and how they are used is enclosed. This list also offers some explanations and alternative terms that are used in various countries.



LIST OF TERMINOLOGY USED IN THE TRAINING MATERIAL

(EXPLANATION OR ALTERNATIVE TERM IN PARENTHESIS)

Blanket license (general license covering the repertoire of a CMO)

Cable-originated programs (initiated by cable operators; program content from many sources)

Collective management (also called collective administration)

Collective management organization (CMO) (also called collective rights management organization (CRM); earlier called collecting society)

Composer, lyricist and music publisher (rights holders of musical works)

Copyright (in common law countries; in civil law countries also called authors' rights)

Grand rights (dramatic and dramatico-musical works)

Individual exercise of rights and collective management of rights

Management based on legislative support (generic term for extended collective license, legal presumption and obligatory collective management)

Mechanical rights (right of reproduction in relation to musical works)

Non-voluntary collective management (management of rights under a non-voluntary license)

Non-voluntary license (generic term for compulsory license and statutory license)

Owner of rights (author or subsequent owner of rights)

Performing right (right of public performance, broadcasting, communication to the public)

Private copying remuneration (also called levy on recording equipment and media)

Reciprocal representation agreement (specific form of representation agreement)

Related rights (rights of performers, phonogram producers and broadcasting organizations; also called neighboring rights)

Remuneration right (right to equitable remuneration, fair compensation)

Reproduction rights organization (RRO) (specialized CMO in the text- and image-based sector)

Reprography (also called reprographic reproduction)

Retransmission of broadcast programs (simultaneous and unchanged retransmission by wire or by rebroadcasting)

Rights holder (generic name for authors, performers, producers, publishers and broadcasters)

Small rights (non-dramatic musical works)

Transactional license (work-by-work license)

Voluntary collective management (management of exclusive rights)



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MANAGEMENT OF RIGHTS IN DRAMATIC WORKS (MODULE 6)

Tarja Koskinen-Olsson

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CHAPTER 1

EXERCISE AND MANAGEMENT OF RIGHTS IN DRAMATIC WORKS

In the field of dramatic and dramatico-musical works – such as plays, musicals, ballets and operas – a large number of artists collaborate. Performances usually take place on stage. They may also be shown simultaneously on television or recorded for future dissemination.

Dramatic works, such as plays, are performed commonly in theaters. Dramatists and script writers, directors and choreographers, scenic designers, actors and singers are involved in the production of a dramatic work. All of them may have rights based on copyright, but their permissions and remuneration take place in different forms.

In the case of dramatico-musical works, such as operas, performances take also place on stage, in opera houses and equivalent. A large number of contributors participate in dramatico-musical works, the librettist and the composer having a central role.

A play may have been written by a playwright a long time ago, and now a team is putting that work on stage, under the leadership of a theater director. Dramatists, choreographers, scenic designers, actors and singers participate in the teamwork. They rehearse the performance and some of them are on stage every time a performance takes place. Their contribution is customarily agreed upon in individual contracts with the theater. These contracts also specify their working conditions and salaries.

The situation of a playwright is different. They can market their works themselves, but in many cases they have representatives or agents. In some countries collective management organizations (CMOs) function as such a representative. When this is the case, the CMO functions as an agent: brokering an agreement between the playwright and the theatre. In some countries the CMO concludes a framework agreement with the theater or an organization of theaters to establish general terms for using plays. In others, a license on its own terms is issued in each case.

This is an example of partial collective management, with elements of collective management mixed with individual exercise of rights. The CMO negotiates the general conditions for the use of plays in theatres, but the consent of a playwright is needed each time when his script will be used, and he can negotiate terms that are more favorable than the ones laid down in the general contract.

Collective management in the field of dramatic works dates back to 18th century France¹, when the predecessor to the Société des auteurs et compositeurs dramatiques (SACD)² was founded in 1777 to ensure recognition and respect for authors' economic and moral interests in theaters.

In 1910 in Argentina, Enrique Garcia Velloso (1880 – 1938), a renowned author of more than 100 dramatic works, gathered a group of prestigious Argentinean writers in his home and created the first collective management society in Latin America, which later became known as ARGENTORES.³ The history of ARGENTORES followed that of SACD in France – in both cases the authors of dramatic works pioneered the concept of collective management in their countries, paving the way for other artists and creators to benefit.

1.1 Economic and cultural contribution

Creative industries are among major contributors to the economic growth of a nation and to the creation of jobs. These industries represent on average 5.4% of the gross domestic product (GDP) of a country.⁴ In these measurements, music, theatrical productions and operas are grouped together.

Music, theatrical productions and operas are among so-called core copyright industries, i.e. industries that are wholly engaged in creation, production and manufacturing, performance, broadcast, communication and exhibition, or distribution and sales of works or other subject matter. Music, theatrical productions and operas together present 5.71% of the total contribution and their share of employment is on the same level. The figure does of course vary from country to country depending on the cultural mix of a country.

It is not, however, only the economic importance that counts; it is question of building economic wealth and cultural heritage. Creative works not only enrich the lives of people, they also collectively make up the national cultural heritage of a country and are an essential part of each nation's identity. A nation's cultural heritage can help attract visitors to a country, bringing tourists for theater or music festivals or other activities derived from the creative resources of the population.⁵

From a social perspective, the performances of school children at the end of their semester are something that most people remember long after, both the performers and their proud parents. It is important that permissions to use plays in such circumstances are easily accessible and that copyright provisions are in line with the

¹ From Artist to Audience, WIPO-CISAC-IFRRO Publication, 2004

² www.sacd.fr, France

³ Sociedad General de Autores de la Argentina (ARGENTORES), Argentina, www.argentores.org.ar

⁴ WIPO Studies on the Economic Contribution of the Copyright Industries, 2012

⁵ From Artist to Audience, WIPO-CISAC-IFRRO Publication, 2004



nature of the performance. In most cases there are specific rules and procedures for amateur performances.

1.2 About players in the market

Creators and performing artists are the rights holders in dramatic and dramatico-musical works. Their works and performances are used by professional theaters and other stages, but also by amateur troupes.

For plays performed on stage the creator is a playwright, also called a script writer. A dramatist may adapt an existing book into a stage play, with the permission of the original writer. In this case the dramatist obtains a copyright to the adapted version and may share any income from the performance with the writer, depending on the contract governing the basis on which the adaptation was made. Music may be specifically composed for the play or the music may consist of pre-existing melodies.

For ballets, the creator is a choreographer who sets the choreography for the performance and also often works as the director of the performance. Composers and other music rights holders are also involved.

For dramatico-musical works – such as operas, operettas and musicals – the musical element is important. Creators include composers and lyricists of the music and the librettist who writes the text or dialogue for a dramatico-musical work.

The visual element is important in stage performances. Scenic designers and costume designers are examples of people who are engaged in creating the visual environment, where lighting, sound and special effects may also play a major role.

Performing artists include actors, dancers, singers, musicians, conductors and musical directors. They are the ones engaged in each live performance, sometimes hundreds of times. Some very popular performances may have more than one cast to allow performances every day or even twice a day.

Theaters, opera houses and other places where performances take place organize the performances, select the works, take care of all permissions, hire the creative personnel and take the financial responsibility for the whole.

But performances also take place in less organized forms, by amateur groups, in schools, old people's homes, kindergartens, almost anywhere.

1.3 How is copyright exercised and managed in the field of dramatic works?

Playwrights may entrust the representation of their plays to an agent or to another representative. In a number of countries, a collective management organization functions as a representative of playwrights.

The number of theaters in a country may be limited and therefore individual exercise of rights by playwrights themselves can be possible. However, playwrights customarily entrust representation of their works to a professional body that markets plays and concludes the necessary contracts on their behalf. By so doing they can concentrate on their creative activity. The number and nature of representatives vary from country to country and in many countries CMOs fulfill such a representative role.

Performing artists and the creative personnel conclude agreements with the theater, specifying their working conditions and salaries. These contracts may be based on framework contracts negotiated by unions, such as an actors' union. Copyright stipulations can be part of the employment contract regulating, for instance, conditions for possible recording of live performances. If this is not the case, the terms and conditions need to be negotiated separately in the case of a recording. Recordings of live performances are not always favored by the cast, the argument being that live and recorded performances are two different forms that need to be rehearsed and performed separately. Any recording of live performances needs the permission of performing artists, in addition to the creators. Performers as owners of related rights customarily enjoy an exclusive right of authorizing the recording (reproduction) of their performances.

Also foreign works, for example major musicals, are performed locally. The marketplace of scripts is international and playwrights need representatives not only in their own countries, but worldwide. Collective management organizations can function as representatives as part of a network of similar organizations in other countries.

1.4 Collective management as a possible solution

Collective management has its genesis and roots in the field of dramatic works. Many CMOs throughout the world play a vital role in this sector and facilitate access to plays both in professional and amateur performances.

The role of collective management in the field of dramatic and dramatico-musical works is that of an agent, or a representative. The final say is with the playwright, since he decides in which theaters his play may be performed, whether to grant an exclusive license to a particular theater for a period of time, or a non-exclusive license



permitting several theaters to perform the same work at the same time, for instance in different parts of the country.

The advantage of professional CMOs negotiating general conditions for a play lies in their negotiating power. Even less well-known creators get good general terms and conditions and the responsibilities concerning reporting on performances, accounting, and paying royalties are handled in a professional way. The fact that the creator himself can decide whether or not to grant permission to a given theatre maintains an individual character in management. It is thus a combination of individual exercise and collective management, combining the best elements of the two in this unique environment.

It would be cumbersome and less cost-effective to have the same individual procedure for numerous amateur performances. For that reason, many CMOs have introduced simplified rules in this market sector, acting as a full-fledged CMO with a grant of licenses, collection and distribution.

CHAPTER 2

RIGHTS HOLDERS AND THEIR RIGHTS

Dramatic and “dramatico-musical” works are listed as examples of literary, scientific and artistic works, enumerated in the Berne Convention.⁶

Creators include playwrights, dramatists, choreographers, librettists and rights holders of musical works. They enjoy economic and moral rights to their works.

Economic rights may include the rights of public performance and any communication to the public. In cases where performances are recorded, a right of reproduction is involved.

Dramatico-musical works are often called “grand right” works in collective management context. These rights are not customarily managed by CMOs managing musical works, even though this varies from country to country. The underlying rationale is that the occasions where dramatico-musical works are performed are relatively rare when compared to other types of musical performances, called “small rights”. Rights holders themselves can manage their grand rights or this may be the task of a music publisher.

However, when parts of musicals, operettas and operas are played on radio or elsewhere, they become “small rights”, i.e. they are no longer in their original dramatic context and thus fall under the management of musical works’ CMOs. There are great variations in this practice and sometimes CMOs help composers of dramatico-musical works when assistance is required and requested.

⁶ The Berne Convention for the Protection of Literary and Artistic Works (1971)



2.1 Legislative framework

The Berne Convention has special provisions for certain rights in dramatic and musical works. The WIPO Copyright Treaty (WCT) reinforces the legal framework.

Article 11 of the Berne Convention deals with the rights of public performance and of communication to the public as follows:

1. *Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive rights of authorizing:*
 - a) *The public performance of their works, including such public performance by means of any process;*
 - b) *Any communication to the public of the performance of their works.*
2. *Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.*

Whereas dramatic, dramatico-musical and musical works enjoy the right of full communication to the public on the basis of the Berne Convention, the WIPO Copyright Treaty (WCT)⁷ ensured the same right for all categories of works. Furthermore, the WCT specified that this right also includes the right of “*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*”.

These two elements of the right of communication to the public cover transmission over the internet, such as webcasting, and also so-called on-demand services.

⁷ Article 8 of the WIPO Copyright Treaty (WCT) of 1996

2.2 Dramatico-musical works

Collective management of grand rights and small rights in relation to dramatico-musical works is a special area where praxis varies greatly in different countries.

The concept of grand rights covers customarily the performance of dramatico-musical works in its entirety. Examples of dramatico-musical works are musicals, ballets, operas and operettas performed on stage including music which is composed specifically for that work. The author himself or his publisher may grant the necessary licenses.

Certain CMOs license dramatic works only if specifically requested by their members to do so. The variety of ways in dealing with so called grand rights is illustrated by the following two examples.

2.2.1 Regional example from Asia-Pacific: Singapore

COMPASS⁸ manages rights to musical works in Singapore. This is how COMPASS advises their members in relation to grand rights (frequently asked questions by songwriters and music publishers):

Q: What are Grand Rights?

A: "Grand rights" generally refer to "dramatic" performing rights. This includes, but is not limited to, performances such as musical compositions in a dramatic setting in its entirety, where there is a narration, plot and/or costumes and scenery, as well as operas, operettas, ballets, musical comedies. The copyright owner(s) has the exclusive right to issue licenses and collect fees for such rights. The use of such musical works not in its entirety or in a non-dramatic performance is not considered Grand Rights.

Q: Does COMPASS administer grand rights?

A: As a matter of policy, COMPASS does not administer Grand Rights performance in Singapore in its licensing endeavors unless specifically requested by its interested parties to do so.

⁸ The Composers and Authors Society of Singapore (COMPASS), Singapore, www.compass.org.sg



2.2.2 Regional example from Europe: Germany

In Germany, the musical rights CMO GEMA⁹ specifies in its Deed of Assignment the exclusion of grand rights in the following way:

1. (a) *The performing rights in and to musical works with or without words, however to the exclusion of the stage performance of dramatico-musical works (whether completely, as cross-section or in major parts). The exclusion shall also cover the stage performance of other musical works (with or without words) forming integrated parts of dramatico-musical stage works, e.g. within the scope of ballets or hit musicals. It is immaterial whether the works have been created specifically for performance on the stage.*

Stage music, provided it is not an integral part of the stage work, stage shows, film accompanying music, interludes in revues, interludes in operettas, burlesques and comedies, melodramatic and cabaret performances are covered by this Deed of Assignment unless the performance of parts of dramatico-musical works in other stage works is involved.

2.3 Published plays

In some cases plays are published by a commercial publisher who has concluded a publishing agreement with the playwright.

This situation necessitates that a distinction is made between two types of contracts:

- A representation contract that the playwright concludes with the theater or other user to publicly perform the dramatic work;
- A publishing contract that is concluded between the playwright and the book publisher to bring a published version of the play to the market.

The latter contract customarily includes a transfer of rights to the book publisher for relevant rights: reproduction in graphic form, including distribution of copies of the literary work.

A distinction of these contracts and rights therein is important.

⁹ Gesellschaft für musikalische Aufführungs- und Mechanische Vervielfältigungsrechte (GEMA), Germany, www.gema.de

2.4 Individual exercise of rights

Collective management organizations do not cover management of dramatic rights in all countries. Associations or unions representing playwrights have a central role in many countries.

Playwrights can choose to exercise their rights individually or to engage an agent to do so. There are many professional representatives marketing plays in a given country and abroad. Thus in many countries permission to use plays can be acquired from various sources.

The role of associations or unions representing playwrights is essential in some countries. The organizations can negotiate framework contracts with theaters and these can be recommendations or minimum requirements for their members. In some countries unions also act as intermediaries, licensing their members' works.

Besides licensing, unions also can greatly enhance accessibility of plays. For example, Writers Guild of Sweden¹⁰ established an on-line library for Swedish dramatic works in 1997. Theaters and other professional users can easily download dramatic works as PDF-files, after completing password-procedures. The service is called DramaDirekt.¹¹ The aim is also to disseminate dramatic works as e-books or to download them to the mobile phones.

Foreign repertoire is represented by agents or representatives closely working with theaters facilitating access to the world repertoire in countries where there is no collective management.

¹⁰ Sveriges Dramatikerförbund, Sweden, www.dramatiker.se

¹¹ www.dramatiker.se/dramadirekt

CHAPTER 3

COLLECTIVE MANAGEMENT OF RIGHTS

Collective management of rights in dramatic and dramatico-musical works is best described as partial collective management or agent-type collective management.

This type of partial collective management consists of three main elements: general contract, specific contracts and actual collection and distribution of royalties on the basis of the specific contracts. There is a separate consultation included in the management as the CMO asks an individual author for his agreement before an authorization is given. Thus the CMO is only a representative of the author, not an assignee of rights as the case may be in the field of musical works.

In order to make the procedure simpler and more cost-effective, many CMOs have separate procedures for amateur theatres. Authors have the possibility to entrust the authorization or mandate to a CMO and, on the basis of this, the CMO can grant licenses on standardized terms.

3.1 History of collective management of dramatic works¹²

The first authors' societies were established in France. At the beginning, the functions of professional associations – fighting for full recognition and respect for authors' rights – were combined with emerging elements of collective management of rights.

The foundation of the very first society is closely linked to the French playwright Beaumarchais. He led the legal battles against theaters which were reluctant to recognize authors' economic and moral rights. On his initiative, that battle led to the foundation of the "Bureau de législation dramatiques" in 1777, which was later transformed into SACD – still flourishing today as one of the most well-known societies in the field of dramatic works.

SACD, under its present name, was established in 1829 and a General Agency was set up in Paris with representatives in major provinces. The authors informed the users, i.e. theaters, of the general conditions under which they were ready to negotiate about the authorization to use their dramatic works.

To honor the roots and its cultural mission, SACD has created a special association "L'association Beaumarchais" within the framework of its cultural activities¹³, to help

¹² Collective Management of Copyright and Related Rights, Dr. Mihály Ficsor, WIPO, 2002

¹³ www.beaumarchais.asso.fr/beaumarchais-sacd

creators of stage and audiovisual works in their projects. Support for the creation of new works is among the activities of the association.

3.2 Permissions: general and specific contracts

Management of dramatic works combines individual exercise and collective management and includes elements of both.

CMOs can negotiate general agreements with an organization representing theaters. These contracts are framework agreements and include minimum conditions for specific contracts with individual authors.

Theaters are often organized in their own associations that participate in the negotiations of general agreements. The same associations can also negotiate contracts with the creative staff, such as actors, musicians and theater directors. For a CMO in any creative field it is important to find a representative organization as a negotiating partner.

General contracts

The basic royalty rate is one of main elements of the general contracts. No conditions may be included in specific contracts with authors that are less favorable, but of course better conditions can and are agreed upon.

For live performances of professional organizers, a common tariff basis is a percentage of ticket sales. There is often a minimum per performance in cases where the ticket sales would be very low. Alternatively, the tariff can be a fixed price per seat in the venue.

In some tariff structures, there is a flat fee for a play per performance. If this is the case, the length of the play plays a role, the tariff being higher for long plays.

Specific contracts

Specific contracts are concluded theater by theater and work by work based on the minimum conditions in the general contracts. The CMO asks for the authors' agreement for all specific contracts and the society acts only as a representative.

The author may either accept the general tariff or ask for a higher remuneration. The CMO acts as an intermediary and informs the theatre about the conditions in each case.



3.2.1 Regional example from Europe: Switzerland

In Switzerland, SSA¹⁴ represents dramatic authors. Its basic tariff for professional theaters is based on a combination of parameters, and the royalty to be charged is the highest remuneration of three alternatives according to the following:

- 12% of ticket sales;
- 12% of the price of selling or purchasing the show;
- Flat fee of CHF 1.20 (USD 1.30) per seat in the theater.

In all cases there is a minimum of CHF 60 (USD 65) payable per performance.

3.3 Amateur performances

Licensing is based on a simplified procedure for amateur performance in many countries, for efficiency reasons: both to make access easier for the user and to make management more cost-effective for the CMO.

The number of amateur performances for a limited audience is often much higher than that of professional performances. To streamline the permission process, authors of dramatic works may entrust the CMO with a mandate to grant licenses for amateur theatres without asking for individual consent each and every time. There may be a general agreement with a representative of amateur theaters, if such a representative exists in the country.

The licensing procedure resembles genuine collective management for those authors who have chosen to entrust the CMO with their rights in this sector.

3.4 Documentation of works

The representation of playwrights is based on a mandate or another form of representation contract given to the CMO. The mandate also specifies what kind of documentation is needed from the author to the CMO.

As with any type of collective management, the CMO needs to know which works a playwright has written. Identification and documentation procedures are customarily standardized. As there may be a number of elements protected by copyright, the CMO needs guarantees that all permissions are at place.

Some organizations also provide for information about the works on-line and for that they need quite a number of details about the work. To illustrate the case, a concrete case study is presented.

¹⁴ Société Suisse des Auteurs (SSA), Switzerland, www.ssa.ch

3.4.1 Regional example from Africa: South Africa

DALRO (Dramatic, Artistic and Literary Rights Organisation) in South Africa informs playwrights in the following way.¹⁵

The work you submit must be original. If the play is based on an existing literary text, or on a derivative work such as a cinematograph film or translation based on an original work, and the existing or derivative work is protected, we'll need the permission of the rights holder – but we can help you to obtain this.

Musical numbers should also be original. You can sometimes get permission for existing musical numbers to be included in a dramatic work, but it's unlikely that you'll get clearance for music originally written for use in another dramatic context.

All we need from you is the following¹⁶:

- A complete copy of the text in electronic format;
- A complete piano-vocal score;
- A full score;
- A short synopsis of the storyline;
- A character breakdown;
- A breakdown of scenes;
- The estimated duration of the musical;
- If the work has been performed or recorded, provide us with information;
- A short biography of the author(s).

DALRO offers a catalogue of musicals and plays that are accessible on-line, with descriptions and highlights of each work.

¹⁵ www.dalro.co.za

¹⁶ Shortened version without technical details, for full version visit the website www.dalro.co.za

3.5 Licensing procedures and tariffs

For licensing purposes the CMO needs information from the theater both before the performance and after it.

For professional users there is customarily a fixed time-frame for requesting an authorization.

The case study of SACD in France illustrates the point:

- The application needs to be submitted six months before the start of the performances; the idea being that it should be in good time before the rehearsals begin.
- Another timeline is three months before the performance and at that time the location, its size, performance dates and number of performances as well as the name of the person who is liable for payment to SACD.
- After the agreed set of performances, information about the financial outcome needs to be delivered within 15 days for calculation of royalties.
- Any changes in program plans need to be reported, as they play a role in the procedure.

The case study of DALRO in South Africa illustrates the tariff structure. DALRO represents local repertoire and in addition major British and American publisher-agents in South Africa:

- Amateur performances of plays are normally licensed as a fixed fee per performance.
- Licenses for major dramatic-musical works are issued on the basis of a minimum fee per performance, subject to a percentage (10 – 12%) of gross box office income.
- Professional productions are always licensed at a non-refundable advance royalty payment, to be set off against a percentage, as above, of gross income from ticket sales.

3.6 Distribution of remuneration

The collected royalties can be distributed directly to the authors who own the rights in works that have been performed and paid for.

The CMO deducts its administrative costs and possibly social and cultural deductions that have been agreed upon by the governing bodies of the society. The cost deduction is often an agreed commission rate; the CMO follows the operational principles of agents also in respect of deductions.



CHAPTER 4

GOVERNANCE PRINCIPLES

There is a variety of different types of CMOs that manage rights in dramatic works, reflecting historical, cultural and social infrastructure of the country.

Only a few CMOs manage only dramatic works. Most are active also in other repertoires, be it audiovisual or literary works or works of visual art. Use of these repertoires in the digital environment is becoming an increasingly important task also for these specialized CMOs. Management of dramatic works may also be part of the tasks of multipurpose CMOs.

The CMO may have representation agreements with foreign equivalents and be in a position to grant permissions also for foreign repertoire. However, taking into account the fragmented representation – CMOs and agents – in different countries, permissions for foreign plays may need to be obtained from various sources.

It may not be the task of a CMO to manage rights in dramatic works, but rather that of agencies. There may be many such agencies in a given country, each for a different set of works in their representation. There can be a representative for foreign plays and another agency for national works. Sometimes the national representative works within the union of playwrights and dramatists. In this case, the union performs dual tasks: general representation of their members' interests and an agency-function in relation to theaters.

4.1 Different types of CMOs

Many CMOs managing dramatic works do so also in relation to audiovisual works. Literary works and works of visual art may also belong to the representation, as the case may be.

There is a natural tie between dramatic and audiovisual works, as the same writers often write plays for theaters and scripts for films. Also directors may work on stage, in television and film productions.

Economies of scale may lead to joint constellations, as management of one rights holder category alone may not be economically feasible.

In the following, the structure of some CMOs is presented to give an idea of various existing models:

Dramatic and audiovisual authors:

The first example of this model is SACD in France; as stated above the world's oldest CMO. It represents the rights of authors of dramatic works as an agent, collects remuneration on their behalf and distributes the collected revenue after agreed deductions. Many playwrights write also for the audiovisual media so there is a synergy to manage dramatic and audiovisual repertoires jointly. In the audiovisual field¹⁷ SACD assists rights holders in their primary contracts, if need be, and concludes licensing agreements with television stations, cable companies, etc.

Another example of this option is ARGENTORES in Argentina, the oldest CMO on the Latin-American continent, founded in 1910. ARGENTORES manages theater, cinema, television and new technologies vis-à-vis its constituency.

Dramatic, literary and visual authors:

DALRO (Dramatic, Artistic and Literary Rights Organisation)¹⁸ in South Africa is a copyright asset management agency, established in 1967. It administers or licenses various forms of copyright on behalf of authors, artists and publishers. The main areas of administration are:

- Reprographic reproduction from published editions;
- Public performance rights, including stage rights for book musicals and dramas;
- Reproduction rights in works of visual arts.

DALRO is the wholly-owned subsidiary of the Southern African Music Rights Organisation (SAMRO)¹⁹; a concrete example of a CMO for musical works assisting other repertoires to get off the ground.

Korean Society of Authors (KOSA)²⁰ is another example of CMOs which manages literary, dramatic and visual repertoire.

¹⁷ Collective management in the audiovisual field is described in Module 3

¹⁸ www.dalro.co.za, South Africa

¹⁹ www.samro.org.za, South Africa

²⁰ www.copyrightkorea.or.kr, Republic of Korea



Dramatic, literary, audiovisual and works of visual art together:

LITA (Society of Authors)²¹ was established in Slovenia already in 1949 as a regional agency. LITA exercises voluntary collective management of rights to literary, dramatic, music-dramatic, choreographic, audiovisual and photographic works and works of visual art on the basis and to the extent of agreements on representation with authors and their heirs. Foreign authors are represented on the basis of reciprocal representation agreements. Besides these voluntary licensing areas, LITA also manages a number of non-voluntary schemes, based on compulsory licenses on the law.

Multipurpose organizations:

AGADU (Asociación General de Autores del Uruguay)²² in Uruguay is a so-called multipurpose organization that manages several repertoires, including dramatic works. It has a list of represented dramatic works on its website where potential users can study a short description of each play.

In Africa, there are many multipurpose CMOs whose repertoire also includes dramatic works. BUMDA in Mali²³ and BUTODRA²⁴ in Togo are examples of such multipurpose CMOs in Francophone Africa.

4.2 Good governance standards

CMOs need to be run in a professional manner, fulfilling the requirements of accountability, transparency and good governance. CISAC²⁵ as an international, non-governmental organization (NGO) has defined standards of service that rights holders and users can expect.

CISAC represents altogether 231 CMOs in 121 countries (June 2012). Its members manage different repertoires, including dramatic and dramatico-musical works.

The Professional Rules of CISAC is a set of principles laid down by CISAC to ensure that all members operate according to the best governance, administrative, financial and technical practices. Compliance with the rules is mandatory for CISAC's members. Professional Rules for Dramatic, Literary and Audiovisual Arts (DLV) Societies specify the rules that are applicable for audiovisual authors' societies.

²¹ www.lita.sk, Slovenia

²² Asociación General de Autores del Uruguay (AGADU), Uruguay, www.agadu.com.uy

²³ Bureau Malien du Droit d'Auteur (BUMDA), Mali, www.bumda.cefib.com

²⁴ Bureau Togolais du Droit d'Auteurs (BUTODRA), Togo, www.butodra.org

²⁵ International Confederation of Societies of Authors and Composers (CISAC), www.cisac.org

The Professional Rules cover the following principles that all CISAC's members must apply and respect.²⁶

- Governance and membership: Establishes who can be members of a CMO, members' rights, Board of Directors composition and the organization's inherent compliance with the law and regulations.
- Transparency and confidentiality: Deals with the information that authors' societies are required to share with their members, sister societies and CISAC (annual report, licensing income, distribution rules, etc.) and policy concerning disclosure of confidential information to third parties.
- Licensing and collection: Details the different criteria for authors' societies related to the granting of licenses, the collection of royalties, and the monitoring of uses of their repertoires.
- Documentation and distribution: States that authors' societies must carry out all documentation of works in their repertoire and distribution of royalties in accordance with the Binding Resolutions.²⁷
- Compliance and conflicts: Describes the various principles related to compliance with the rules and the various procedures for dealing with litigation and dispute settlement.

4.3 Cultural and social activities

There may be a social security deduction that is deducted from the collected remuneration, as agreed by the governing bodies of the CMO and the rights holders. Many CMOs in the field of dramatic works also have cultural activities.

A CMO may charge a social security share in conjunction with the royalty rate, as is the case of SACD, France.

²⁶ CISAC News, June 2008

²⁷ The Binding Resolutions are a separate set of technical criteria applying to documentation and distribution practices.



The importance of cultural and social activities is, for instance, highlighted by ARGENTORES in Argentina in the following way²⁸:

- Argentores is much more than an reciprocal entity of professional authors that defends rights on a national and international level;
- It is much more than an effective collector;
- It offers a variety of services to its members;
- Examples are medical services, vacation facilities and legal counseling.

²⁸ Unofficial translation and short version, for full details visit: www.argentores.org.ar – Servicios para Socios

CHAPTER 5

FUTURE PERSPECTIVE IN THE MANAGEMENT OF DRAMATIC WORKS

New technologies are challenging CMOs managing dramatic repertoire in the same way as any collective management organizations.

The new media landscape, both online and mobile, offers both challenges and opportunities.

Unauthorized modes of exploitation can, for instance, include transmission of a show online, taken from a live performance without any permission and then distributed widely on a social media website. Randomly checking the internet, rights holders have found a number of cases where their works have been recorded without their knowledge and widely shared thereafter.

For that reason it is important that countries implement provisions concerning the liability of internet service providers (ISPs).²⁹ It makes enforcement of rights in the network environment possible and addresses the copyright violations that are committed by the connected users.

The network also offers new opportunities to disseminate dramatic works more widely than before. Many CMOs have established databases of their repertoire with attractive accompanying materials to draw the attention of users to the vast possibilities that theaters and live performances offer in today's ever more computerized and technical environment.

One of the opportunities is to teach young audiences about the importance of live theaters and cultural diversity by inviting them to performances during school hours. By offering them an opportunity to put together a performance at the end of the term has a social function. Some school projects in Sweden have proven that playing and acting together clearly enhances social cohesion and that children can better concentrate on their work after vigorously dancing or drumming.

In all areas of copyright and collective management, one of the challenges is to engage young audiences to better understand and appreciate copyright as a backbone of culture.

²⁹ Module 1, chapter 8.2. describes enforcement of rights in the network environment



CHAPTER 6

CISAC AS THE INTERNATIONAL REPRESENTATIVE

On an international level, CMOs managing dramatic repertoire are affiliated to CISAC. Within the federation, the International Council of Dramatic, Literary and Audiovisual Creators (CIADLV) brings together creators from the world of theatre, literature and audiovisual creation.

CISAC works towards increased recognition and protection of creators' rights. It was founded in 1926 and its headquarters are in Paris with regional offices in Budapest (Hungary), Santiago de Chile (Chile), Johannesburg (South Africa) and Singapore.

CISAC's main activities and member services aim:

- To strengthen and develop the international networks of copyright societies;
- To secure a position for creators and their collective management organizations on the international scene;
- To adopt and implement quality and technical efficiency criteria to increase copyright societies' interoperability;
- To support societies' strategic development in each region and in each repertoire;
- To retain a central database allowing societies to exchange information efficiently;
- To participate in improving national and international copyright laws and practices.

As of June 2012, CISAC has 231 authors' societies as members in 121 countries, and 15.4% of these also manage dramatic repertoire. This means that there are some 35 organizations around the world that collectively manage dramatic repertoire.

Within CISAC, the International Council of Dramatic, Literary and Audiovisual Creators (CIADLV) is the forum for creators from the world of theatre, literature and audiovisual creation. The members of dramatic societies' CMOs range from playwrights and choreographers to writers, film directors, and film adapters. The mission of CIADLV is to study all questions that are directly linked to the interest and to the status of those authors and their societies.

The CIADLV has discussed among others the important supportive role that CMOs should play vis-à-vis young authors in connection with model contracts, and the condition of employed authors. This is in line with the activities of many CMOs in

the field of dramatic works, as they customarily offer legal advice and assistance to members.

CISAC has approved Professional Rules as good governance standards for audiovisual societies and these standards are obligatory for the CMOs concerned. The standards are described in more detail in chapter 4.2.

The new vision and mission of CISAC, approved in March 2012, focus on a more proactive approach and promotion of authors' rights, rather than a defensive approach. The vision statement of CISAC indicates that CISAC and its constituencies "promote the interest of creators and rights holders worldwide and provide highest business standards to protect their rights".



ANNEX

About the authors

Tarja Koskinen-Olsson (Mrs)

International Adviser, Olsson & Koskinen Consulting, Finland/Sweden

Current position

International Adviser at Olsson & Koskinen Consulting, 2003 –

Board positions

- NORCODE (Norwegian Copyright Development Association, Vice-Chair, 2010 –
- Copyright Clearance Center, Board of Directors, 2009 –

Previous positions

- Chief Executive Officer at KOPIOSTO (Joint Copyright Organization in Finland), 1987 – 2003
- Assistant Director at TEOSTO (Finnish Composers' Copyright Bureau), up to 1986

Elected positions

- Chair of IFRRO (International Federation of Reproduction Rights Organisations), 1993 – 1999
- Honorary President of IFRRO, 2001 – 2009

Expert positions

- Member of the High Level Expert Group on the Digital Libraries Initiative of the European Commission, 2006 – 2009
- Member of WIPO Stakeholders' Platform facilitating access to copyright works for visually impaired persons, 2008 - 2010

Nicholas Lowe

Copyright and Collective Administration Consultant

Previously

Director of Legal and International Affairs and Director of Broadcasting Licensing at the Performing Right Society (PRS) in London.

Solicitor (admitted in 1977 in England and Wales and in 1993 in Ireland) in private practice specialising in intellectual property law.

Experience

Over 35 years' experience of copyright, contracts and litigation, the last 28 years having been in the field of music, related rights and collective management.

Advising collective management organisations, NGOs and music publishers in Europe, North America and the Caribbean on contractual matters, copyright and neighbouring rights.

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