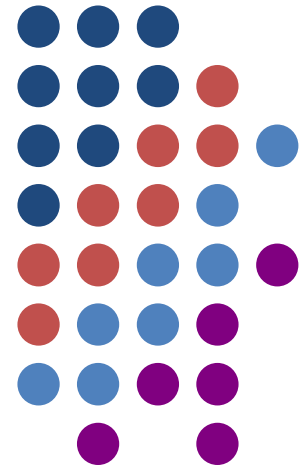


# An introduction to **Collective Rights Management in the UK**

WIPO – British Copyright Council  
Training Course 2021

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# General topics



- Collecting Societies – their purpose and their role.
- How should they be managed?
- Development of Statutory Regulation UK and EU.
- Regulation and Codes of Conduct.
- UK Collective Management Organisations.
- The future and possible new boundaries for CMOs.

# Collecting Societies

## What are they?



- Article 1(4) EC Cable and Satellite Directive - 93/83/EC.
- Any organisation which manages or administers copyright or rights related to copyright as its sole purpose or one of its main purposes.
- Now more complex:-
- Article 3 Directive 2014/26/EU on **collective management** of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.
- “**collective management organisation**” means any organisation which is authorised by law or by way of assignment, licence or other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose and which fulfils one or both of the following criteria
  - (i) owned or controlled by its members
  - (ii) it is organised on a not-for-profit basis.

# WIPO Good Practice Toolkit for Collective Management Organisations



- The WIPO Good Practice Toolkit for Collective Management Organisations (CMOs) brings together examples of legislation, regulation and codes of conduct in the area of collective management from around the world.
- [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_cr\\_cmotoolkit.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_cr_cmotoolkit.pdf)
- The Toolkit is a working document that will continue to be improved. Member states and other stakeholders may use relevant parts of the document to help them design and approach suitable for their own particular context.
- However, the principles behind the EU Directive are good standards to consider and provide helpful examples alongside initiatives taken by WIPO members around the world.



# What is their purpose?

- A not for profit body
- To help rights owners
- License rights collectively
- In a fair, clear and transparent way
- When individual rights owners cannot
  - Practically
  - Economically
  - Efficiently license the rights without help.

# Wider aims and application



- Promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market.(EU)
- Providing social, cultural and educational services for the benefit of right holders' and the public.(EU)
- Collective administration for rights which are difficult for owners to exercise effectively by themselves. (China)
- Protection of authors and holders of related rights, both national and foreign. (Mexico)

# Roles of Collecting Societies



- To address specific statutory requirements.
- Where laws provide that rights may only be asserted via a collecting society.
- Voluntary/contractual collective management to reflect practicalities and market efficiencies.
- A two way dialogue – right holder and user/licensee practicalities

# European Commission and Collecting Societies



- At EU level, provision is made for collective management in a number of existing Directives. **Directive 2014/26/EC** on collective management of rights concentrates upon improving transparency of governance and financial operation of collecting societies.
- Article 4(3) and (4) Rental Directive 92/100  
Rights of authors and performers to receive equitable remuneration for rental.
- Links with WIPO Performances and Phonograms Treaty 1996.



# National moves to increased statutory regulation as EU Directive was debated



- EU Member States were required to implement the provisions of Directive 2014/26/EU (the CRM Directive) by 10 April 2016.
- Within the UK initial steps were made.
  - The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 (S.I. No 898) were implemented from 6 April 2014
  - The Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 (S.I. No 2588) were implemented from 1 October 2014.

# Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market



- Move from “collecting societies” to address “collective management organisations”.
- An organisation authorised by law or by way of
  - assignment
  - licence
  - or any other contractual arrangement
- To manage copyright or rights related to copyright
- On behalf of more than one right holder
- For the collective benefit of these right holders
- As its sole or main purpose
- And which fulfils one or more/at least one of the specified criteria.

# Criteria for Management of Collective Management Organisations



- It is owned or controlled by its members
- It is organised on a not-for-profit basis.
- Regulation 2 in the CMO Regulations virtually transposes the definition of CMO from the Directive:
- **“collective management organisation”** means an organisation which
- (a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, **for the collective benefit of those right holders, as its sole of main purpose;** and
- (b) is either owned or controlled by its members or is organised on a not for profit basis, or both.

# Independent Management Entities



- Recognised under the Directive and the UK Regulations.
- An organisation which, as its sole or main purpose
  - is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders
  - is **neither owned nor controlled, directly or indirectly, wholly or in part**, by right holders; and
  - is organised on a not for profit basis.

# Only some obligations in the Directive apply to IME's



- Some obligations in the Directive which relate to dealings with licensees, as well as some information and transparency obligations, also apply to IMEs. In their entirety, those obligations are reflected in the UK transposition Regulations as follows:
  - paragraph (1) of regulation 15 (licensing);
  - regulation 17 (information to be provided to right holders);
  - paragraph (1)(b) of regulation 19 (information to be provided on request); and
  - paragraph (2) of regulation 20 (disclosure of information to the public).

# Directive 2014/26/EU – Interrelationship between Right Holders – CMOs and Membership of CMOs



- “Rightholder” means any person or entity, **other than a collective management organisation**, that holds a copyright or related right or who, under an agreement for the exploitation of rights, is entitled to a share of the rights revenue.
- Requirement for right holders to be “natural” persons or “legal” entities dropped from final wording.



# Members of CMOs

- The Directive defines “Member” as
- a right holder; or
- an entity representing right holders, including other collective management organisations and associations of right holders;
- fulfilling the membership requirements of the collective management organisation and admitted by it.



# Value chains and CMOs

- The Directive aims to ensure the right level of transparency for CMOs acting on behalf of members.
- Within the UK transparency and efficiency have to be addressed when looking at the way rights holders may allow for the delegation on mandates from one CMO to another more specialist CMO for specific areas of licensing.



# Directive 2014/26/EU– Article 5.2



- Rightholders shall have the right to authorise a collective management organisation of their choice.
- To manage the rights, categories of rights or types of works and other subject matter of their choice.
- For the **territories of their choice**, irrespective of the Member State of **nationality**, residence or of establishment of either the collective management organisation or the rightholder.

# Directive 2014/26/EU- Definitions



- Distinguishing “members” from “CMOs”.
- “member (of a **collective management organisation**)” means a rightholder or an entity directly representing right holders, including other **collective management organisations** and associations of rightholders, fulfilling the membership requirements of the **collective management organisation and admitted by it**.
- “representation agreement” means any agreement between **collective management organisation** whereby one **collective management organisation** mandates another to represent the rights it represents .....”(including agreements for multi-territorial licensing of on-line rights in musical works)

# Copyright Licences and UK Regulation



- S 116(3) CDPA 1988.
- “Copyright licences” means licences to do, or authorise the doing of, any acts restricted by copyright.
- CDPA 1988 provides a regulatory framework for the operation of licensing schemes and licensing bodies for certain activities.
- From 10 April 2016 – S.I. 2016 No.221 - The Collective Management of Copyright (EU Directive) Regulations 2016 have applied.

# The Collective Management of Copyright (EU Directive) Regulations 2016



- Provisions of Directive 2014/26/EU were transposed into laws applicable within the United Kingdom by S.I. 2016 No. 221.
- The Collective Management of Copyright (EU Directive) Regulations 2016.
- Regular dialogue with stakeholders took place between the IPO and CMO and rights holder representatives during the transposition process.
- Guidance on interpretation to address practicalities was very important.
- Guidance on implementing the Regulations was first issued in February 2016  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/518555/Guidance\\_on\\_CRM\\_Directive\\_implementing\\_regulations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518555/Guidance_on_CRM_Directive_implementing_regulations.pdf)

# Licensing Bodies and what they do.



- S 116 (2) Copyright, Designs and Patents Act 1988
- “licensing body” means a society or other organisation which has as its main object, or one of its main objects,
  - the negotiation or granting (of copyright licences)
  - either as the owner or prospective owner of copyright or as agent for him
  - and whose objects include the granting of licences covering works of more than one author OR
  - any other organisation which is a collective management organisation as defined by regulation 2 of the Collective Management of Copyright (EU Directive) Regulations 2016.

# UK Regulations applied on EU BREXIT day 31 January 2020



- S.I. 2019 No.605 – The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019
- S.I. 2019 No 265 – The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019.

# Regional rules with international implications



- The UK Regulations aim to ensure that, generally, copyright laws applied in the UK on exit day which are based upon EU laws, will be treated as “retained EU law” after exit day.
- In other words the same rules will apply in the UK on exit day unless specific changes are applied.
- Regional exhaustion rules currently continue to be recognised in the UK – but a genuinely reciprocal position is not currently in place.

# UK and EU Exit Regulations



- Part 3 of the 2016 Regulations initially applied to Multi-territorial Licensing and Collective Management Organisations.
- Since EU Exit Day the Part 3 provisions (concerning multi-territorial licensing) as included in the 2016 Regulations now apply against Part 1 of the Competition Act 1998 within the UK (rather than under Articles 101 and 102 of the Treaty on the Functioning of the European Union).



# Implications of BREXIT and WIPO Toolkit



- If regionally applied rules break up, questions have to be asked over the effect on competition between CMOs which find themselves operating in new separate marketplaces.
- Breakdown of regional rules put greater focus on the importance of Internationally agreed frameworks to maintain standards.
- The guidance and assistance provided by initiatives such as the WIPO Good Practice Toolkit for Collective Management Organisations.
- <http://www.wipo.int/copyright/en/management/#cmotoolkit>

# Overseeing Licensing Bodies in the UK



- The Copyright Tribunal oversees proper function of licensing schemes and the activities of licensing bodies generally.
- S 117 – licensing scheme relating to
  - copying
  - rental or lending of copies to the public
  - performing, showing, or playing the work in public
  - communicating the work to the public.

# But how should CMOs be run in general?



- Recital 45 – The transparency of the conditions under which **collective management organisations** manage online rights is of particular importance **to members of collective management organisations**.
- CMO's should therefore provide sufficient information to their **members** on the main terms of any agreement mandating any other **collective management organisation** to represent **these members'** online **music** rights for the purposes of multi-territorial licensing.
- Development of Codes of Practice and reporting on adherence to their terms was a central part of UK CMO operations in the lead up to introduction of the 2016 Regulations.

# Pressure for Regulation and Codes of Conduct preceded the Directive



- to provide a template for codes of practice for individual collective management organisations which will:
- summarise a collective management organisation's governance structure, licensing arrangements, royalty collection and distribution practices, administration charges;
- clarify service levels for members and licensees;
- set out requirements for rates to be fair and consistent across all users;
- provide for transparency in terms of access to licence tariffs;
- explain the implications of a member's mandate to a collective management organisation;
- clarify complaints/disputes procedures for members and licensees.

# Codes of Practice to apply to operation of CMOs



Codes of Practice should evolve and reflect best practice with the support of both right holders and licensees. Laws can help to shape development.

Minimum Standards for UK Collecting Societies were published in November 2012

<http://webarchive.nationalarchives.gov.uk/20140603093549/http://www.ipo.gov.uk/hargreaves-minimumstandards.pdf>

They added to Principles of Good Practice developed by the British Copyright Council to promote Voluntary good governance

<http://www.britishcopyright.org/page/36/principles-of-good-practice-for-cmos/>

“Voluntary” Minimum Standards were then “underpinned” by S.I. 2014 no 898 – The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 before introduction of the 2016 Regulations <http://www.legislation.gov.uk/uksi/2014/898/contents/made>

# Voluntary solutions led the way



- “Voluntary” Minimum Standards applied to:-
  - Membership
  - Representation
  - Obligations to licensees and potential licensees
  - Conduct of employees, agents and representatives
  - Information and transparency
  - Reporting Requirements
  - Complaints handling.

# Lessons from application of the 2016 Regulations



- Importance of dialogue with stakeholders.
- Allow for evolution of Guidelines as practical issues arise.
- Development of agreed procedures for audit provisions under the Regulations to assist auditors working with CMOs.
- Considering how the Regulations apply against wider company law and tax obligations relevant to CMO activities?



# UK Collecting Societies

- Representatives from most of the major UK collecting societies will give presentations during the Course.
- Licensing
- Provision of equitable remuneration
- Operating bilateral agreements
- Facilitating the collection of statutory payments.



# Information about Licensing Bodies



- Alongside application of the 2016 Regulations the UK government (with IPO leadership) have published high level guidance about the licensing bodies and collective management organisations operating within the UK.
- <https://www.gov.uk/guidance/licensing-bodies-and-collective-management-organisations>

# Literary and Dramatic Works



- ALCS – Authors Licensing and Collecting Society
- CLA – Copyright Licensing Agency
- PLS – Publishers’ Licensing Services
- NLA – NLA Media Access

# Musical works – Music and Lyrics



- PRS for music
- Performing Right Society (PRS)
- Mechanical Copyright Protection Society (MCPS) (originally Mechanical Copyright Licences Company Limited – Mecolico)
- PRS administer non-dramatic performing rights in musical works

<http://www.prsformusic.com/SiteCollectionDocuments/Membership/PRSforMusicUniverse.pdf>



# Some newer groups

- EOS (The Broadcasting Rights Agency)
- Eos (<https://eos.cymru>) has direct agreements in place with S4C and the BBC covering the broadcasting of music of its members.
- RadioPro Ltd operates as a music licensing CMO on behalf of its members (<https://radiopromusic.co.uk> )

# Music



- PMLL – Printed Music Licensing Limited
- Set up in 2013 to manage the licensing of the copying of printed music in the UK on behalf of music publishers.
- Its Schools Printed Music Licence (SPML) covers the copying of printed sheet music in schools. <https://www.pml.org.uk/licence-information/schools-printed-music-licence-spm/>

# Artistic Works



- Design and Artists Copyright Society (DACCS).
- Artists Collecting Society (ACS) – Artists Resale Right.
- Picture Industry Collecting Society for Effective Licensing – (PICSEL) – launched after introduction of the CMO Regulations.

# Sound Recordings



- PPL (Phonographic Performance Limited)
- BPI (British Recorded Music Industry) Limited
- Production music – PRS for Music



# Films

- FOCAL International Limited
- AGICOA – Association De Gestion Internationale Collective Des Oeuvres Audiovisuelles - (agencies) Compact Media – 560 Media.
- Directors UK Limited
- Video Performance Limited (VPL).





# Broadcasts

- Educational Recording Agency Limited (ERA)

Agency      560 Media Rights Limited -  
Discovery Inc.

ERA Members include CMO's and trade unions collectively representing underlying rights linked to ERA licensed broadcasts.



# Performers

- Equity
- Musicians' Union
- PPL
- British Equity Collecting Society (BECS)
- Incorporated Society of Musicians
- Collecting societies administering payments as equitable remuneration -v- application of collective bargaining agreements.

# New interrelationships for CMOs?



- PICSEL is a relatively 'new' collecting society responsible for collecting monies made from reprographic and secondary digital copying. Its main sources of income are received from the UK Copyright Licensing Agency (CLA) and the Educational Recording Agency (ERA) for onward distribution to visual arts rights holders based on an agreed distribution policy approved by its members.
- The Centre for Education and Finance Management (<https://cefm.co.uk/about-cefm/>) have been appointed as administrator for the issue of a range of licences for educational uses from different CMO's. The latest appointment covered the Schools Printed Music Licence (administered by CEFM from 1 April 2021). <https://cefm.co.uk/licensing/>

# New boundaries and CMOs



- Extended Collective Licensing.
- Identification and licensing of orphan works.
- Licensing and blanket licensing when uses may in part be covered by application of an exception or limitation but, in practice, users want a blanket licence which covers all use.

# Future and new boundaries for CMOs



- The new opportunities touched upon must complement the contractual assertion of rights by owners of copyright.
- Services must be seen to be efficient and useful.
- Equitable remuneration – how to pay in a diverging digital world?
- Appropriate and proportionate remuneration.
- What will this mean?

# CMOs and Limitations and Exceptions



- Practical licensing solutions when uses cannot take place without infringing the Three Step Test.
- Non-exclusive licensing safety nets.
- Beyond special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
- Is there an inherent conflict in these aims which must be considered in the wider WIPO debate about the future application of copyright exceptions and limitations?
- Allocation and distribution of equitable remuneration.
- Fair – appropriate and proportionate compensation to rights owners.

# Role for Collecting Societies



- Transparent
- Accountable
- Effective
- Responsible
- Answerable to complaints and disputes raised.

Application of the CRM Directive is an important example.

Recital 10 provides

“Nothing in the Directive should preclude a Member State from applying the same or similar provisions to collective management organisations which are established outside the Union but which operate in that Member State”.

# Practicalities



Reporting and transparency requirements must recognise practical difficulties faced by CMOs such as securing use data from licensees.

In practice it is important that CMO Regulations do not impose burdens on CMOs which disregard application of other areas of law relevant to the operation of companies (and the protections that this already affords under national legislation).

Flexibility in application of the Directive in terms of application at national level has been important to recognise the range of rights and sizes of repertoire represented by CMOs.

Some UK CMOs are “SME’s” – Small and Medium Sized Enterprises employing less than 10 people.



# Thank you



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