

Position Paper
on
Collective Societies of Authors' Rights – Norms and Standards
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Introduction

ECSA supports the principles of collective rights management and appreciates their overall role as an aggregator of rights. However, technological developments, increasing international activities of composers and songwriters and a fragmented European market are challenging the current models. It is therefore vital to establish a European legal framework and a playing level field under which collective societies operate.

The issue of **governance and transparency standards** of collective societies is of crucial importance to ECSA since its initiation.

Among others, the 2010 Bilbao Declaration called

- “upon the European Union to set minimum standards for the constitution and governance of, and the representation of authors within, Authors' Rights Management Societies, as well as minimum standards to qualify as such”,
and
- “to harmonize and simplify rules relating to the oversight of Authors' Rights Management Societies, including rate-setting tribunals, adopting best practices from member countries to ensure that the rate-setting process is speedy, certain, financially viable and guarantees adequate remuneration”

This paper sets out therefore minimum governance and transparency standards of collective societies, which should be considered in the upcoming EU legislative proposals.

Relationship with members

1. The key principle is that the author, as the creator of the works, has free choice of which society to entrust his or her rights and should be free to move repertoire between societies.

2. ECSA considers that where societies have put up barriers to free movement, such as unreasonable or excessive notice periods, or delays in the reported use of repertoire, these barriers must be removed.
3. In order to decide which society to mandate with their rights, authors should have access to information on how rights are licensed and distributed (money in-money out).
4. Any unreasonable restriction which hinders the movement of authors between CS acts against this principle and ECSA strongly opposed to it.
5. Distribution Rules should be transparent and members should expect to be sent detailed distribution statements by the CS explaining what specific payments are made to the member and from what sources those payments arise.
6. CS should commit to publish service standards (which should be at a granular level according to distribution type) and the adoption of a “Code” which sets out clearly the rights and obligations of the member and the society.
7. As with Licensees, members’ complaints should be dealt with according to a published procedure (which sets out time periods for responses and clear steps to escalate a complaint – culminating in some form of independent adjudication or arbitration)
8. Whereas CS play an important role in providing support for the promotion of new local and minority right holder, CS should retain the right to charge deduction¹;
9. ECSA believes that full information should be provided at annual general assembly’s on how deductions are applied, including
 - the specific use / destination of royalties deducted
 - the costs of administering said funds
10. Proceeding of how such deductions are used should be left entirely to individual societies and their members
11. CS should be managed on a not for profit basis.

¹ “Levai Report“, EP 2007

12. CS shall be owned and governed by their members – composers / authors / rights holders. It is understood however, that appointed and qualified managers shall be in charge of management and administration.

13. When publishers belong to a society, the rules of the society must ensure that authors sit with a qualified majority on the boards of those societies.

14. ECSA appreciates that threshold levels for becoming full member are often too high and a great majority of members have no voting rights.² It is important however to distinct between professional authors and authors who occasionally compose; voting rules must reflect this distinction

15. ECSA encourages further deliberations on finding new representation systems (for instance elected representatives) of non voting members at annual general assemblies.

16. New technologies can encourage a better information flow and a higher degree of participation. For instance, in countries with long distances and high thresholds CS should set up live streaming of their general assembly's (accessible only for members) and offer interaction possibilities such as through social media

Intra society relationships

17. Inter-society transparency should be fostered and encouraged

18. CS who have representation agreement with other CS abroad, should make available information regarding the administration of the rights of their repertoire.

19. Equal treatment of repertoire must be ensured

20. Annual audit reports must be published and made available to sister societies

² Report on a community framework for collecting societies of authors' rights (EP Committee of Legal Affairs and Internal Market, Rapporteur: Mercedes Echerer)

Relationship with licensees

21. ECSA supports the setting of published tariffs by CS, which provide standard licenses and clear tariff structures
22. CSs have a duty of non-discrimination as between users. This can be met by providing, where practicable, standard licenses and clear tariff structures. However, important differences in the services, business models of licensees (especially online) and EU member states militate against a “one size fits all model”.
23. Non-disclosure agreements severely compromise fairness and transparency and should be avoided
24. Appropriate complaints procedure models (especially for public performance sales) Complaint should be dealt according to a published procedure (which highlight concrete timeframes for responses and transparent dispute settlement procedures)

Conclusion

Whilst ECSA calls for an elaboration of minimum standards regarding governance and transparency, any legislative proposals must cautiously assess CS’s role in a highly competitive environment and consider their needs to adequately react to market developments.

Appendix: the exclusive assignment to CS - a necessity for composers and songwriters