

Collective Management of Copyright – a Good Governance Perspective

There are **seven collective management organisations (CMOs)** in Finland that administer copyright on behalf of creators and other rightholders. They play an important role in the Finnish copyright system: they distributed more than EUR 150 million in copyright revenue to rightholders in 2020.

The Act on the Collective Management of Copyright lays down obligations regarding the transparency and accountability of CMOs and the participation of rightholders in their activities. The realisation of the objectives of the law can be assessed using the principles of good governance. The Act on the Collective Management of Copyright (1494/2016) is based on the Collective Rights Management Directive (2014/26/EU).

In some situations, granting licenses and collecting remunerations from users of copyrighted works is impractical or impossible for individual rightholders. In such cases, holders of copyrights and related rights can authorise a CMO to administer and monitor their rights. This is called **collective management of rights**.

The activities of CMOs can also be based on extended collective licensing and compulsory licensing schemes as defined in the **Copyright Act** (404/1961). Some organisations have special responsibilities regarding public lending right, compensation for private copying, visual artists' resale right (droit de suite), and remuneration for the use of sound recordings.

Governance can be understood as the manner in which power is exercised both in decision-making and in the implementation of decisions. Governance can be considered good when it allows for a reliable and equitable oper-

ation that takes into account the interests of all parties involved. Cupore's earlier research (Kautio & Lefever 2018) identified eight **principles of good governance** applicable to the copyright system.



Cupore's suggestions

for measures to develop collective management of copyright and good governance

- **Review licensing fees and rules of distribution of remuneration from the point of view of equity.**
- **Improve the access to works in cases where uses are limited due to a lack of licensing solutions.**
- **Develop public supervision and dispute resolution activities.**
- **Clarify in which situations licenses can be acquired from foreign CMOs.**
- **Clarify the organisation of collective management in the audiovisual industry to avoid double assignments and licensing hurdles.**
- **Increase the awareness of stakeholders on collective management of rights.**

Source: Lefever & Oksanen-Särelä (2021)

Collective management organisation

The Act on the Collective Management of Copyright applies to CMOs whose

- **main purpose** is to manage copyright or related rights for the collective benefit of rightholders, and
- operation is **controlled by their members** or organised on a **non-profit basis**.

Good governance strengthens the relationship between a CMO and its key stakeholders: rightholders and users of works.

Extended collective licensing

Extended collective licensing makes it possible for a CMO to grant licenses **also on behalf of rightholders who have not explicitly authorised the CMO to represent their rights**. In Finland, the scheme applies to certain situations specified in the copyright law. Licenses can be obtained centrally through organisations approved by the Ministry of Education and Culture. Extended collective licensing can facilitate rights clearance when not all rightholders can be reached, and enables the mass use of works e.g. in educational institutions.

▶ Characteristics of good governance in the context of collective rights management

Do CMOs operate in accordance with the principles of good governance after the entry into force of the Act on the Collective Management of Copyright? Findings from Cupore's publication *Collective Management of Copyright and the Principles of Good Governance – A Finnish Perspective* (2021).

Transparency

PRINCIPLE Stakeholders are provided with clear and sufficient information to be able to participate and exercise their rights.

FINDINGS

- Information on the activities of the CMOs is publicly available: e.g. transparency reports, rules of operation, membership terms, licensing terms and tariffs, model licensing agreements, client agreements, and rules of distribution of remunerations.
- More information could be provided on pricing and remuneration criteria and on the use of works.

Accountability

PRINCIPLE CMOs are responsible to those whose rights they represent. The activities of the organisations are monitored internally and externally.

FINDINGS

- In CMOs, the activities and performance of the management are supervised by the CMO's board of directors. (internal supervision)
- The Finnish Patent and Registration Office (Patentti- ja rekisterihallitus, PRH) is the authority responsible for the supervision of CMOs. The Finnish Competition and Consumer Authority performs supervisory tasks in accordance with the Competition Act. (external supervision)

Responsiveness

PRINCIPLE Changes in the operating environment and the needs of stakeholders are addressed in an appropriate manner and without undue delay.

FINDINGS

- CMOs monitor their operating environment and develop their activities to varying degrees, depending on the available resources.
- In Cupore's survey for rightholders (n = 268), 84 % of respondents felt that they were receiving remunerations from CMOs within a reasonable time.

Equity & Inclusiveness

PRINCIPLE All rightholders have access to the services of a CMO active in their field. All rightholders and users are treated equally.

FINDINGS

- The CMOs' distribution rules promote equal distribution of remuneration to rightholders. In practice, equity is not always achieved between different rightholders or technologies.
- The ability of individual users to influence the terms of licensing contracts is limited compared to the bargaining power of umbrella organisations.

Participation

PRINCIPLE Rightholders have the possibility to participate and influence decision-making to ensure that the organization is acting in their best interests.

FINDINGS

- Members have the right to participate in decision-making at a CMO's general assembly.
- Rightholders' organisations are in the best position to influence the decision-making of CMOs. In fields less organized, individual authors' influence may be limited.

Coherence & Consistency

PRINCIPLE CMOs follow uniform and consistent guidelines or rules in their decisions regarding licensing and distribution of revenue.

FINDINGS

- CMOs' pricing criteria may vary inconsistently between different types of uses.
- If the use of works cannot be measured or reported, remuneration will be distributed on the basis of statistics and the CMO's distribution rules.

Effectiveness & Efficiency

PRINCIPLE CMOs perform their duties as well as possible and without consuming excessive resources.

FINDINGS

- Administrative costs vary widely between categories of works and types of rights managed. They typically represent 10–20 % of the copyright revenue collected.
- Insufficient metadata on works and authors makes it difficult to identify uses and distribute remunerations.

Separation of Powers

PRINCIPLE Responsibility is distributed in such a way that power is not concentrated. Stakeholders have access to an independent dispute resolution mechanism.

FINDINGS

- Disputes concerning the rights of rightholders or the relationship between a CMO and a user may be brought before the Market Court.
- Disputes are mainly resolved through negotiations between the parties. The role of the Patent and Registration Office in dispute resolution is not generally known.

**RIGHTHOLDERS
RECEIVED
THROUGH CMOs
MORE THAN**

€ 150 M

**IN COPYRIGHT
REVENUE
IN 2020.**

Sources:

- APFI. Transparency Report 2020.
- Filmex. Transparency Report 2019.
- Gramex. Transparency Report 2020.
- Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems – Second Edition*. Cupore webpublications 45.
- Kopiosto. Transparency Report 2020.
- Kuvasto. Transparency Report 2020.
- Lefever, N. & Oksanen-Säreä, K. (2021). *Collective management of copyright and the principles of good governance – A Finnish perspective*. Cupore webpublications 68.
- Filmex, email inquiry 29.3.2022.
- Sanasto. Transparency Report 2020.
- Teosto. Transparency Report 2020.
- Teosto. Annual Report 2020.

Representativeness of the Finnish CMOs and remunerations/compensations paid in 2020

		REPRESENTATIVENESS	REMUNERATIONS / COMPENSATIONS PAID
KOPIOSTO	Manages certain rights for authors, performers, and publishers in all areas of creative work	Represents more than 70,000 domestic rightholders	€ 65,3 M (incl. AVEK Grants)
TEOSTO	Represents music composers, lyricists, arrangers and publishers	Approx. 35,800 members	€ 51,5 M
GRAMEX	Represents artists performing on a recording and phonogram producers	Approx. 58,000 client agreements with rightholders	€ 19,3 M
SANASTO	Represents writers, translators, poets, editors and non-fiction writers	Represents more than 13,000 rightholders	€ 10,1 M
Audiovisual Producers Finland – APFI	Represents film and audiovisual producers	89 production companies as members	€ 7,2 M
FILMEX	Represents actors performing in audio and audiovisual works	Remunerations accounted for 755 right holders	€ 1,2 M
KUVASTO	Represents artists working in the field of visual arts	More than 2,700 artist clients	€ 0,66 M