

## Economics of collective management organisations in the creative industries

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1<sup>st</sup> draft

### Abstract

Collective Management Organisations (CMOs) manage the various rights granted in copyright law to creators and performers in a range of creative industries – broadcasting, live performance, journalism, publishing, the music industry, visual arts et al. They offer pooled services of rights administration in self-governing membership organisations that are non-profit monopolised collectives that have curiously been left out of the list of similar institutions studied. They have the added interest that they deal in copyright, itself an institutional response to an ‘intangible property’ problem that has become increasingly complex due to developments in technologies of producing and consuming creative works, such as literature, art and music. Without CMOs, access to ‘legal’ use would be prohibitively costly for users of protected works, an external benefit of the creators’ need to protect their rights.

Digitisation has provided both a threat to smaller CMOs and an opportunity for the larger ones. Increasing returns in rights management makes CMOs natural monopolies that are bolstered by the territorial nature of copyright. Digitisation enables transactional licensing to be feasible, threatening the solidarity of collective rights management (crm) by CMOs. It requires significant investment in IT, which may be too great for smaller CMOs in smaller markets. Regulation to promote multi-territorial licensing within the EU is likely to exacerbate the gap between the big and the smaller CMOs. The paper outlines the workings of and the operation of CMOs, drawing on the economics of collecting societies, a topic that the author has studied in some depth, extending previous work to include these effects.

**Keywords** Copyright, Collective Rights Management, Economics, Digitisation

### 1. Introduction

Collective Management Organisations (CMOs) – collecting societies – are interesting economic institutions. They were set up by composers, songwriters and music publishers to exercise their musical rights and exploit them financially. As technologies of reproduction expanded from printing to sound recording with transmission by radio, then television and now Internet, some means of collecting revenues from those reproducing and using music became necessary. While reproduction was solely by printing and the market was for sales of sheet music, contractual arrangements were sufficient to capture revenues.<sup>1</sup> Once others who were not party to the contract could copy the work in a ‘secondary’ market, new arrangements were needed to collect royalties. That service was provided

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<sup>1</sup> Though there was piracy on a massive scale (see Peacock and Weir, 1975; Ehrlich, 1989)

by CMOs, commonly known as collecting societies. They developed first in music and then were adopted for other copyright works as the means of copying became available to the public and business users, for example, photocopying literary works and downloading broadcasts. CMOs license works on behalf of their owners in these secondary markets.

The number and scale of CMOs has increased considerably over time, spreading across markets and territories, licensing copyright works of all kinds. Their operation was built on collective licensing which enables even small-time authors and publishers to collect royalties due to them. Now, however, this system is being challenged from two sources: the possibility of individual exercise of copyright in all circumstances, enabled by digital technologies; and by legislators concerned that copyright is now holding back creative innovation, in particular by the extremely complex web of licensing that has evolved with wider markets and new technologies.

This paper concentrates on the management of copyright and related rights in music, in particular by the Performing Rights Society (PRS) in the UK. It asks the question whether the mutual operation of CMOs can withstand the pressures of digitisation and carry out the same collective, cooperative function in the face of the changes needed to deal with it. Section 2 sketches the basic economics of copyright; section 3 deals with the role of CMOs and section 4 discusses their use of collective rights management (crm); section 5 evaluates the issue of monopoly and competition in CMOs; section 6 looks at the effects of digitisation on CMOs and crm; section 7 discusses the impact of multi-territorial licensing and the EU Directive on Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online Uses in the Internal Market on the economics of CMOs and section 8 concludes.

## **2. Economics of copyright**

Copyright is a statutory legal solution to the free rider problem inherent in markets for information goods. The exclusive rights awarded by copyright enable creators to control use and (maybe) obtain payment via the market. Copyright enables rights holders to charge a higher price than the marginal cost of producing a copy, thus recouping the fixed or sunk cost of creating and investing in the work, and that is regarded as an incentive to create. Legal copiers, eg creators of derivative works, such as a musical arrangement of use of a song in a film, require the copyright holder's permission and a deal can be struck over a payment. Illegal copiers ('pirates') are able to undercut the legal market by avoiding the usually high sunk costs that are associated with the creation of works of art, music, literature etc by copying works already in fixed form. They do not pay royalties to the creator and avoid the risk to the first publisher inherent in the creation of new work, since they copy only successful works. They have the same costs of reproduction and distribution but with digitisation and Internet these are now very low.

In practical terms, almost all works that are intended for the market are contracted to a publisher (record label, film company, broadcaster etc). Investment is needed to exploit the work and few creators have the means for that. Publishers routinely demand the transfer of the rights to prevent hold-ups and to protect their investment in getting the 'product' to market (Caves, 2000). In many cases, several 'works' in the copyright sense are combined into a product, such as a CD or a TV programme. A CD contains the separate rights of the composer, songwriter, performers, record label and the authors of any art work and commentary, which are administered by several CMOs.

Copyright is a bundle of rights that can be licensed separately and in different markets. Some rights are more valuable than others, depending on the market in which they are used; for instance, the film rights of a book may be more valuable than the sales royalties. Two types of market for products based on copyright works can be distinguished: primary (initial sales) and secondary (reuse of published works by third parties). In the primary market, a contact is made between the creator and the publisher who controls sales; depending on the terms of the contract, the creator is paid a royalty based on sales revenues. Secondary use cannot be controlled directly by the author or publisher and they license rights to a CMO to administer them on their behalf. In many of the creative industries, revenues from secondary use are growing faster than those from the primary market and in some, exceed them (Towse, 2016).

### **3. The role of Collective Management Organisations (CMOS)**

Collective Management organisations (CMOS) are private, non-profit, cooperative membership organisations set up by authors and publishers. They are a spontaneous response to the problem faced by authors (composers, dramatists, artists et al) and publishers (of books, sound recordings etc) of collecting royalties due to them from use of their work in a variety of situations which they cannot control – in secondary markets and increasingly, from compulsory licences. In some countries, CMOs have been set up by the state; however, they undertake the same functions as those organised collectively by the rights holders.

The principles are similar in most CMOs, however, whether they manage copyrights of broadcasters, journalists, literary and scholarly authors or performers (to give a few examples). The CMO licenses the rights for which it is responsible, negotiates rates for the various types of use and distributes the revenues to its members. The UK's Performing Right Society (PRS for Music), for instance, was founded 1914 by composers and music publishers to manage their performing rights; in 2014 it had over 115,000 writer and publisher members and controls nearly 15 million musical works, with revenues of £664m. from 250 billion uses.

These procedures are decided by the governing body of the CMO, which is made up of members. PRS members are writers (composers) and (music) publishers and successors<sup>2</sup> and there are three categories of members – provisional, associate and full members. PRS is governed by its Memorandum and Articles of Association and the Rules and Regulations.<sup>3</sup> There are requirements of new members: they must write or co-write songs or music that is being performed (live, broadcast, online, etc) but all who qualify may join. There is no restriction on the size of the membership. The business and operations of the Society are conducted and managed by the Board of Directors, consisting of 27 writer and publisher full members, who are elected by full members. The Chairman is elected by the Board as are two Deputy Chairmen, one being a publisher member and the other a writer member, all for fixed terms. These persons may be remunerated. The Board appoints the Executive Committee, which is made up of full members and voted in for a period. The Board also chooses the Chief Executive and the management team, who manage the Society, and the Secretary to the Board, all remunerated. There is an annual General Meeting to which full and associate members are admitted. Historically, an area of frequent lack of harmony within the Society has been the relative position of 'classical' and 'popular' composers and songwriters, which has been resolved

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<sup>2</sup> As copyright in a work endures (now) 70 years the life of the author, successors own the rights. Obviously, the longer the copyright term, the more successors there are likely to be, though of course, only a few works have lasting market value.

<sup>3</sup> <http://www.prsformusic.com/aboutus/ourpeople/governance/PRSboard/Pages/default.aspx>

internally in various ways over the years (see Ehrlich, 1989), though despite Ehrlich's claim to 'harmonious alliance', there is long standing friction between writer and publisher interests.

There are around 20 other CMOs in UK managing various rights. Each CMO typically manages a specific right of the bundle of the statutory rights collectively known as copyright: examples are public performance of music, use of images in film, photocopying literary works etc. Copyright is territorial and due to the global nature of markets for creative products, national CMOs make international agreements with their counterparts in other countries, forming a self-governing web of collecting societies, for example, PRS has bilateral agreements with CMOs dealing with performing rights in over 100 countries. There are also two collectively formed international bodies, CISAC (The International Confederation of Authors and Composers Societies), founded in 1926 and SCAPR (Societies' Council for the Collective Management of Performers' Rights), founded in 1986.

CMOs license members' works, negotiate with and collect licence fees from various types of users, distribute revenues to members, monitor uses and enforce rights. An essential feature of these services is that they are bundled (see sections 5 and 6). The services are financed by a deduction of an administration fee (usually a percentage) from members' revenues. Some CMOs require assignment of the rights they administer; others act as agents. The PRS, for example, requires the assignment of the performing right in all its members' repertoire or catalogue. The reason for this is so that it is able to issue a comprehensive licence. Though the origin of the requirement to assign all rights to the PRS (and not all CMOs require it) is not very clear (see Bellido and MacMillan, 2016), it has been the practice for many years. Following the EU Directive, however, changes have been made to this rule (section 7).

A CMO manages interacting datasets of licensees and of writer and publisher members and trades on its knowledge of the market in their territory for the products that include the rights it controls. Users of copyright works, ranging from broadcasters to the family for a wedding, require a licence to do so. CMOs enable users to obtain licences with a minimum of difficulty. Though CMOs were set up and are financed by members, they offer a service to users without which they would be unable, or would have great expense and difficulty, to legally use copyright works in many situations. Thus CMOs are an institution central the working of copyright law. CMOs also manage revenues from equitable remuneration payments mandated in copyright law for certain rights, such as the artists' resale right, the public lending right and rental rights. Again, without CMOs, such schemes could not work.<sup>4</sup> CMOs therefore, though private organisations, play an essential role in the operation of statutory copyright law.

#### **4. Economics of collective rights management (crm)**

CMOs collectively manage rights. Collective rights management (crm) reduces transaction costs of administering copyright for creators and users. Without it, transaction costs for managing rights would be prohibitively high for all but the biggest enterprises (creators and publishers); enforcement by rights holders and compliance by users would be prohibitively expensive. Thus crm promotes the economic aims of copyright law. A current question is if digitisation has changed this. Later we see

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<sup>4</sup> They could in principle work if new arrangements were set up by the state but the transaction costs would likely be greater than the revenues. This was the case with PAMRA (Performing Artists' Media Rights Association) set up in the UK as required by the EU Rental Directive. Taylor and Towse (1998) predicted its demise for that reason (these rights are now administered by PPL(Phonographic Performance Ltd) in conjunction with the MU (Musicians' Union) (Towse (2014).

that there have been organisational changes to deal with new technologies and what their impact is on rights management.

Crm benefits from economies of scale and scope based on sharing transaction costs of licensing, the size of repertoire covered and databases of works and members' details and network economies. With crm bargaining power is greater than that of an individual creator who is generally in a weak position in the marketplace (Kretschmer, 2002). And in addition, collective action pools and spreads risk, acting as a form of insurance (Snow and Watt, 2005). A recent paper by Watt (2015), which treats CMOs as syndicates, reasserts their risk pooling and risk sharing functions (while denying the significance of the transaction cost rationale).

Blanket licensing has been the main business model of CMOs since their inception, especially in music.<sup>5</sup> The blanket licence grants permission for a specific type of use for the whole repertoire controlled by the CMO. Blanket licensing has been accepted, including by courts, as the most administratively efficient means of licensing for both rights owners and users (Gallini, 2011). It has long been viewed by economists as economically inefficient, however, as it does not send accurate price signals to creators or users (Besen et al., 1992; Hollander, 1984). The advent of digitization has offered the possibility of individual transactional licensing and this forms the basis of the belief that competition can improve the administrative and economic efficiency of collecting societies, replacing crm. Before discussing this fundamental change, it is worthwhile to go into detail on how blanket licensing works.

Rights owners' incentive to obtain royalties and remuneration means almost all of those eligible to join a CMO do so. With assignment of all works in the member's catalogue, a CMO can then control use of the whole repertoire and, with its collaboration with foreign societies, it effectively controls the worldwide repertoire of the rights it administers. Licence fees are negotiated at varying tariffs according to usage and the revenues of users. Large-scale users are required by the terms of the licence to itemise the works they use and the amount of usage. Thus some of the administrative costs of crm are borne by the user. Small users are exempt from detailed reporting but then the cost of estimating usage falls on the collecting society (but see Watt, 2015). The CMO records use of works and distributes revenues to its members, net of its administrative costs. The amount paid out depends on the quantity of usage since the 'price' is same for every work in the blanket licence.

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## 5. The CMO monopoly issue and the drive for competition

CMOs have a monopoly of the services of administrating rights as part of copyright from two sources: the law and market forces (Handke and Towse, 2007). The exclusive right of copyright confers a **legal** monopoly to the creator of a work which is transferred or assigned to the collecting society; rights are territorial and hence, CMOs are nationally based. Thus they are **national** monopolies due to the law. In some jurisdictions, open access to CMOs is required (as a common carrier) to ensure that all creators are equally protected. As a club good, there would be an advantage to members to limit the number admitted. For political reasons, however, membership is open to most who qualify. The

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<sup>5</sup> The first CMO was SACEM, the French Société des auteurs, compositeurs et éditeurs de musique, founded in 1851 by composers. It adopted the blanket licence from the start and other CMOs followed suit. For the history of the performing right and the PRS, see Peacock and Weir (1975) and Ehrlich (1989).

Directive 2014/26/EU on collective rights management and multi-territorial licensing of rights in musical works for online uses calls for greater openness and the freedom of right-holders to choose which CMO to join. Therefore the monopoly does not exclude potential members. This somewhat raises costs to the CMO (though the marginal cost of adding extra members and repertoire is low - see later) but on the other hand, it raises the value of the CMO's licence as it includes more works.

A CMO is also a **natural** monopoly in economic terms. The natural monopoly is due to increasing returns to scale of administration and economics of scope in licensing. Marginal costs (adding one more work or member) are lower than average costs and, with digital registration, are very low indeed. The natural monopoly in CMOs lies in matching databases of works, owners, licensees, members' details for distribution etc. Bundling the services of licensing rights (setting the rate, collecting fees), distributing revenues and monitoring and enforcing rights is efficient for rights holders. As a result, the natural monopoly and blanket licensing of CMOs is widely accepted by governments and courts, in many official enquiries, law cases, etc. (Gallini, 2011). The external benefit is reaped by users, who can go to a single source for a licence to use a very large repertoire, thereby ensuring that use is legal. The natural monopoly, at least so far, relates to a narrow bundle of rights, such as the performing right, which is handled by one CMO. Therefore for multi-media uses, users must deal with several CMOs.

Thus a CMO has two sources of monopoly – national law and economic forces. Each has to be considered in the regulation CMOs. If copyright law were made EU wide, for instance, how would market forces react? As larger markets lead to lower costs, countries with small markets are at a disadvantage; administrative costs would be inevitably higher.

Blanket licensing also reinforces the CMO's monopoly power over pricing but some users also have strong bargaining power. Licence fees are negotiated usually with trade associations rather than with individual users, which provides countervailing power; the exception is large users, such as a national broadcaster (eg the BBC in the UK) which negotiate rates individually. The absence of a market means the price (licence fee) is often arbitrary especially for new uses and is often set according to analogous uses. This has been evident with new digital uses. Due to the monopoly they hold, rates are subject to regulation in one form or another by the state. In the UK, the Copyright Tribunal is the regulator.

The CMO's monopoly gives rights owners no choice over the price they would like to see applied to their works, though 'top' creators could earn more per unit (and lesser ones would earn less) than the 'average' price set in the blanket licence. However, cherry-picking by 'big' rights owners would weaken the 'solidarity' of collective bargaining (Kretschmer, 2002) and raise administration costs for others (Liebowitz and Margolis, 2009). In fact, rights owners may join 'foreign' (but rarely 'competing') collecting societies: what has held most back is language difficulties and problems with foreign tax withholding. There is therefore a trade-off between preserving the united bargaining power of the CMO and the desire of big rights holders, which are often the major publishers belonging to international conglomerates as well as a few superstar writers or performers, to maximise their royalties.

The call to increase competition in or between CMOs is vaguely linked to lower administration costs of licensing and greater transparency in distribution (Hargreaves, 2010; also the EU 'Collecting Society Directive' cited above). However, costs would not be lower if a natural monopoly is split up; on the contrary, they would be higher in each competing organisation. The issue for economists is whether monopolies are contestable, that is, if competitors can enter the market. New firms now exist

for servicing artists' copyright management, offering services of interpreting complex information about copyright law and tracking CMO pay-outs. Large publishers can choose between copyright licensing service providers. There are significant barriers to contestability, however. Ironically, the greatest barrier to competition is copyright law itself with its complexity of multiple rights, national laws and lengthy duration – hence the discussion proposing a Europe-wide copyright law.

## **6. Impact of digitization on crm and CMOs: case study of PRS for Music**

For digital supply of products (CDs, books and so on) online, licensing has replaced sales and rental fees replace prices. These changes have implications for administration costs and the basis for paying royalties to creators. In the music industry, debundling of albums into streamed tracks has resulted in vastly more transactions for a CMO dealing with performing rights. The analysis of the impact of digitization on a CMO in this section is based on my work on performing rights in music at the UK's PRS for Music (Towse, 2012; 2013a). Similar issues are likely to arise with other CMOs with other rights and products (for example, literary works), whether or not they require assignment of rights and works or simply act as the agent of the rights holder.

In 2014, PRS processed 250 billion uses of music (up from 126bn in 2012 and 22bn in 2010). Despite the huge growth of streaming and transactional licensing, blanket licensing fees still accounts for the bulk of its revenues, however, with large scale users of online music, such as the BBC, continuing to pay a blanket fee that includes online use.

Transactional licensing has been promoted in policy documents in the UK (Hargreaves, 2010; and the EU Directive discussed in section 7 below) as a means of introducing greater 'transparency' to copyright owners, combined with the view that it increases competition. It has, however, been a source of confusion for users over who controls which works, causing extra search costs for legal (or more illegal) use. Overall welfare is therefore affected. Multi-territorial licensing has been promoted by the EU to enable the development of cross-border streaming services due to concerns that online services are being held back by need to license in each EU country (since copyright law is territorial). The perceived need for both types of licensing led to the setting up in the UK of the Digital Copyright Exchange (DCE), supported by shaky evidence on its potential economic benefits - Towse, 2013b). While the DCE could provide an essential service of effective (voluntary) registration of copyright ownership, thus removing uncertainty about rights ownership, it is unlikely to fulfil the initial claims made for it (Hargreaves, 2010). Moreover, it seems to have been pre-empted in the case of the music industry by similar initiatives from the CMOs themselves.

Both transactional and multi-territorial licensing for digital use necessitate changes to 'front' and 'back' office procedures and their interaction. The front office deals with licensing and pricing and the back office with data management of distribution. New licences call for new 'back office' procedures and investment in IT (for details, see Towse, 2013). Economies of scale using digital back office procedures are reducing licensing costs but revenues per item for streaming in particular are very small and due to errors data on entitlements<sup>6</sup> etc, can result in the marginal cost of administration exceeding the marginal revenue.

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<sup>6</sup> With a copyright term of 70 years post mortem auctoris, there is scope for a lot of error. Of course, most copyrights are not active and this only affects the famous few. However, YouTube and other social media have revived many older works.

Data requirements for a fully electronic digital hub or copyright exchange are massive: a global standardised database of unique titles of works, a global standardised database of unique names of writers and publishers (International Standard Name Identifier, ISNI), detailed information about the contractual share of royalties between joint rights holders (writers/publishers/sub-publishers) for every territory for each work, users adopting the same system of work and name coding in its transmission of data to the CMO. Each element must be uniquely coded for every transaction along with the rate relevant to the usage. These are just the technical requirements. On the economic side pricing is necessary for transactions requiring negotiations and knowledge of products and markets. It seems unlikely that all that can be done electronically without human intervention, ie no digital Nirvana.

It is the CMOs who hold the mandates relating to splits of revenues and pricing and their cooperation is needed in order to establish a DCE or hub. Without that information, a competitor cannot enter the market and it seems unlikely that CMOs would voluntarily supply it to a competitor unless forced by regulation to do so; that is apparently the aim of one aspect of the EU Directive, however. As described in the next section, however, a private initiative on the part of collaborating CMOs has moved to solve the problem of multi-territorial licensing and that has spill-overs for domestic licensing.

### ***7. The EU Directive on Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online Uses in the Internal Market.***

The EC Directive on multi-territorial licensing may well further boost the strength of the big CMOs. The Directive requires every national CMO in the EU (all 28 of them) to offer equivalent services of digital licensing (as a common market objective) and those that cannot do so should buy-in services of CMOs that are able to provide them. As the huge investment in IT and database management are already barriers to entry, it is likely to boost the natural monopoly of those that can afford it, making it ever more difficult to contest the power of the leaders.

Indeed, economic incentives (and also the opportunity afforded by the draft Directive) had already led big players in music industry to instigate their own arrangements for cross-border licensing (front office) using various national CMO's back office facilities for processing revenues and their distribution, for which the CMO charges and administration fee (thereby assisting with economies of scale and the sunk costs of investment in IT). Thus there has been some debundling of front and back office procedures within some national CMOs.

Now, however, PRS for Music, GEMA (Germany) and STIM (Sweden) have collaborated to develop the so-called ICE (International Copyright Enterprise Services), controlled by a private consortium, with shares owned by its constituent CMOs.<sup>7</sup> It is significant that the UK and Sweden are the only non-US countries which are net exporters of music, while Germany has the biggest domestic market for music. This is therefore a powerful alliance. Its main function is the integration of licensing and processing (ie the integration of front and back office functions) with the particular benefit of multi-territorial licensing across the EU. ICE is described as a hub, which has integrated the repertoires of

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<sup>7</sup> STIM is Sweden's national CMO for composers and music publishers and GEMA is the equivalent CMO for Germany.



the constituent CMOs into a new database, capable of supporting over 250,000 rights-holders and multi-territory digital music companies. The PRS website claims that it could ‘expand to offer the world’s first integrated licensing and processing hub’<sup>8</sup>. Due to the considerable investment in new data and IT systems, it can achieve greater economies of scale, scope and networks. These integrated systems also benefit domestic licensing.

Given the increasing returns inherent in natural monopoly, there are clear winner-takes-all advantages to the ICE. Moreover, given the integrated nature of crm services, smaller CMOs with a smaller markets and repertoires are at a considerable disadvantage. Small national CMOs will still exist for domestic licensing but their costs per unit can be expected to rise, threatening ‘national cultures’, despite the EU’s (and the Directive’s) concern with them. As I have argued in the past (Towse, 2012), the failure to understand natural monopoly is significant here.

Related to the EC Directive is the requirement for CMOs to enable rights holders to take advantage of ‘competition’ by releasing some rights out of the blanket licence bundle. The PRS recently changed the Memorandum and articles of Association of PRS, amended May 19, 2015 as follows:

‘Each member may on admission exclude (subject to the Rules) and may at any time after admission require (subject to Article 9(f) and the Rules) the Society to assign to him one or more of the following categories of rights in all of his works:

- I. the live public performance right;
- II. the audio broadcasting right (other than the Online Right)
- III. the public performing right of audio broadcast works;
- IV. the televising (audio-visual) broadcasting right (other than the Online Right) right;
- V. the public performing right of televised works;
- VI. the right of public performance by means of the theatrical Exhibition of a film;
- VII. the public performing right of mechanically reproduced (sound bearing copies) works;
- VIII. the film synchronisation right;
- IX. the public performing right of works reproduced on video tape;
- X. the Online Right except for the Making Available Right;
- XI. the Making Available Right;
- XII. the exploitation rights resulting from technical developments or future change in the law’<sup>9</sup>

This would appear to further threaten the solidarity argument for crm and CMOs.

## 8. Conclusion

The formation of the CMOs as collectives owned and managed by their members was a spontaneous market response to the problem of obtaining revenues from secondary markets in copyright works. Most appear to have adopted crm with blanket licensing as a business model. CMOs also collaborated in international markets for the same purpose. Without these systems, copyright law would not have been able to work effectively. The system has been laborious, due essentially to the national territorial nature of copyright law. It has the disadvantage, much complained about by rights owners, that each ‘foreign’ CMO charges its own administration rate for licensing on top of the ‘domestic’ charge, thus

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<sup>8</sup> <https://www.prsformusic.com/iceservices/Pages/default.aspx>

<sup>9</sup> <http://www.prsformusic.com/SiteCollectionDocuments/About%20MCPS-PRS/prs-memorandum-articles.pdf> Article 7 cA, p. 15.

reducing the royalty paid to members. Moreover, some CMOs in the international field are apparently neither managed efficiently, leading to excessive administrative charges, nor are their operations sufficiently well reported ('transparent') to members or to affiliated societies. These complaints have motivated the EU Directive in addition to its other objectives of promoting cross-border licensing.

The demand for licensing services is derived from the use of products embodying copyright works and changes in product markets are reflected in licensing procedures. Markets in the creative industries are dominated by superstardom and blockbusters. These features result in a highly skewed distribution of royalties/revenues. For instance, 10% of PRS members earn 90% of online income. The size of the market for products impacts on CMOs: economies of scale and scope for licensing in larger markets lead to lower administration costs. CMOs operating in small markets are at a disadvantage if their repertoire is not competitive on the international market and administration costs will accordingly be higher. All CMOs are required to service foreign copyrights but most must inevitably have a negative balance of payments.

It has been suggested that digitization could reduce the monopoly of CMOs by introducing competition. Transactional licensing seems to head in that direction. In my view, centralising multi-territorial licensing risks the development of an even greater natural monopoly. Moreover, the IT needed for transactional and multi-territorial licensing requires huge investment in systems and know-how on the part of a CMO but requires also standards and compatibility over the whole market. Smaller societies will have to turn to the larger ones for those purposes thereby increasing their economies of scale, scope and networks. It all points to greater concentration not competition. It is also the case, however, that several private rights management companies besides the ones described above have entered the market, some which simply offer to monitor the flow of royalties and others that offer an individualised rights management service with their own data systems. It is not clear whether they are able to contest the position of the CMOs.

Has digitisation altered the environment for CMOs? Yes. Digitisation has accelerated a combination of market forces responding to new opportunities and led to new regulations to deal with them. It seems possible that these changes pose a threat to the mutuality of CMOs and to some extent also to the voluntary international collaboration that has existed between them for a century. One has to ask if members will still be able to represent their views effectively to ever larger consortia, which would likely be more efficient but at some cost to the tradition of cooperation and collective action.

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