



**The European Writers' Council Statement at the
Public Hearing on the Governance of Collective Rights Management in the EU**
European Commission, Internal Market and Services DG, Knowledge-based Economy,
Copyright
Friday, April 23, 2010

We thank the Commission for the opportunity to address today's topic. The European Writers' Council is the federation of national and trans-national associations of authors, including writers, playwrights, script-writers, and literary translators in 33 countries of Europe.

PANEL 1 – RELATIONSHIP BETWEEN COLLECTIVE RIGHTS MANAGERS AND THEIR MEMBERS

(1) the types of mandates that right-holders may grant to collective rights managers

To begin with, it is important to underline that there are many differences amongst collective management organisations in the EU. For this reason, our statement will refer to the key common ground, and if time allows I will provide a few examples.

Firstly, the author assigns the primary rights in the original language, and more often than not also translation, reproduction and adaptation, and other rights, to his/her publisher by means of a contractual agreement between both parties. These rights should, in principle, mostly cover the work in book form, manifestations of it, or in printed form, but increasingly nowadays they also include other forms and formats, including digital ones.

Collective rights managers may represent authors exclusively, or both authors and publishers as members. Some collecting societies administer the rights not only of their members, but also of all rights holders who sign a contract with them.

Writers grant collective rights management organisations non-exclusive authority so that they administer those rights **which cannot be handled or enforced on an individual basis**, or in cases in which it would be **impractical or legally impossible for writers to exercise the relevant rights on an individual basis**.

The mandate covers **secondary rights only**.

These secondary rights may generally include:

Photocopying; public lending right; press summaries; Internet printing at schools and universities and similar institutions; also online copying of articles, texts, broadcasts; public performance on radio and TV.

In France, collective management for books exists, and is managed by the official organisation entrusted with this aim, SOFIA, authorised by the Ministry of Culture, but its mandate is restricted to **two** areas:

- ❖ Public Lending Right and
- ❖ Photocopying.

Some significant recent additions:

Last year, following the situation caused by the USA Google Book Settlement Agreement several collective management organisations were mandated by authors to act as trustee, or representative on their behalf, in a number of countries.

Moreover, a new item was added to the standard contract between rights holders. For instance, VG Wort, the German collective society, added the right to **digitise** and **make available out-of-print works**. Following another recent trend in the EU, in France the remuneration for **digital private copy** has been added.

- ❖ Therefore, the most important change happening in the last two years is the extension of the mandate to include digital copying, and other digitisation activities related to secondary rights.

2) The substantive scope of such mandates

The authors' mandate usually covers the following:

- to collect fees, subscriptions or monies for the authorised use of any of the member's works,
- to grant licences on his/her behalf for the exercise of such rights;

less frequent but also part of the mandate are the following:

- to authorise or permit or forbid the exercise of the mandated rights administered by the collective manager on behalf of the member;
- to collect monies by way of damages or compensation for the unauthorised use of such works;
- to institute and prosecute proceedings against all persons infringing the said rights

(3) their territorial reach.

In general, the mandates apply to a list of rights and exploitations within the country of original publication and expand internationally to the extent that such rights/ exploitations are recognised in other countries.

Most collecting societies have bilateral agreements with similar societies in many countries in order to handle the income of authors and publishers.

Conditions according to which mandates are renewed, revoked or altered in scope, and the service levels members can expect from their collective rights managers in terms royalty payment terms, periodicity of payments, administrative and other charges deducted, and membership benefits.

Once a writer has decided to join, s/he applies for membership (the requirements vary from a minimum number of books published within a period of time up to the moment of the

application, to having received a minimum amount per year,¹ which is determined by the collecting society; if accepted, the writer then signs a contract to mandate the association.

In general, there is no need to renew the mandate. A membership may be terminated by the member or by the Board of Directors or committee with this role, and remains valid until cancelled.

Occasionally, the mandate can be altered in scope. This is usually discussed and approved (or not) at the General Assemblies in which all members participate.

As far as we are aware, the membership is **without cost**.

In most collecting societies the payments are executed on **an annual basis**.

Member representation in decision-making bodies, and dispute settlement mechanisms available to members.

The governance structures of collective management organisations (CMO) may vary according to the national contexts. To ensure the diversity and inclusiveness of the members' representation, some organisations have a large Board or Council, with a President, one or more Vice-presidents, and, as in the case of CEDRO in Spain, 22 members of the board.

When authors and publishers are members of the same association, the desirable or sometimes required or expected representation is then 50%. The balance in the governance is closely watched by its members and sometimes needs attention and compromise; the different parties rule for a given number of years.

Other associations have different hierarchies, including a council of administrators, a board of directors, etc. Thus, a variety of governance structures exists, in which the Board of Directors has positions that allow its members to take part in it. When a CMO represents authors only, the Board must always comprise a majority of writers elected by the membership.

In the event of disputes, the member's first point of contact is the assigned official for such purposes within the collecting society. If the matter remains unresolved, it is referred to the relevant committee or subcommittee, and usually it proceeds to the Executive Board for a decision.

We do not have concrete information about many CMOs concerning the next steps whenever a member remains aggrieved, about whether the matter is then referred to an external or independent arbitrator within the organisation itself, or whether it can step up outside of this domain.

¹ For example, VGWort requires that the author should have received 1000 Euro per year in the last 3 years.

Social benefits

Many organisations offer social services as well as cultural services of different kinds, including legal advice, grants, etc.

Some examples:

In Spain,² the assistive support for authors (an annual fixed amount of 600 Euro), covers costs which are not included in the social security system such as tele-assistance, dental work, special prosthetics, reading-glasses, and treatments. In Germany, VG Wort takes care of social issues for authors: A Benevolent Fund is aimed at supplementing voluntary contributions of free-lance authors to either a private pension scheme or the state pension insurance scheme. A Social Fund helps elderly authors in case of financial hardship, and also supports the families of deceased authors in cases of great need.

In conclusion, we believe that the system of national collecting societies is, in general, trustworthy, and most important for author's rights. Collecting societies are a safeguard for author's remuneration given that they facilitate the licensing of rights. Many of them also perform social tasks for authors. Many, yet not all, are supervised by state authorities to ensure transparency. This system should be supported and – if necessary – **improved**.

Our recommendation to the European Commission:

Multi-territory licensing in the digital world should be managed by reciprocal agreements between the national collecting societies to secure cultural diversity in Europe.

Myriam Diocaretz

Secretary-General

The European Writers' Council

Rue du Prince Royal, 87

B-1050 Brussels Belgium

<http://www.europeanwriters.eu>

The present statement includes the contributions from the following EWC member associations:

- AELC - Associació d'Escriptors en Llengua Catalana (Spain)
- ALCS - The Authors' Licensing and Collecting Society (United Kingdom)
- The Society of Authors (United Kingdom)
- UdE - l'Union des Ecrivains (France)
- Verband deutscher Schriftsteller (VS) in ver.di (Germany)

² According to a national law in Spain, 20% of the money collected has to be assigned to the assistive and promotional activities of its members.