

Rolling into Deep, Deep Details? An Overview on Obtaining Information from Copyright Collective Management Organisation

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ABSTRACT

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The primary goals of copyright collective management organisations (CMO) are to preserve authors' rights, ensure that they are compensated, and facilitate the lawful and seamless distribution of music to users and the general public. The new generation of authors or composers may find it troublesome to become a part of or members of CMOs when information is not easily accessible. However, as for the CMOs, to exercise transparency, it is essential to have access to information on issues impacting collective management organisations, especially for the general public and mainly for their members. In light of copyright legislation, this paper will address Malaysia's and Australia's approaches to accessing information about their collective management organisations, mainly through their official websites. This paper employs doctrinal analysis using secondary data from academic journals, books, and online databases. The findings will respond to the legal framework for the copyright collective management organisations, and the findings will also contribute to the body of knowledge and body of literature in this area.

Contribution/Originality: This study analyzes the structure and operation of collective management organisations in Malaysia and Australia on their websites in allowing users to access information about their organisations, using the WIPO Good Practice Toolkit for Collective Management Organisations as a reference. The findings will add to the body of knowledge and literature in this field.

1. Introduction

Collecting societies or collective management organisations are generally managed by a set of rules that govern their relations with members and other rights holders, rights users, and public authorities. Furthermore, special laws are in place to maintain sufficient transparency at all levels of a collecting society's operation, most notably the financial and

accounting aspects of the organisation's activity. Access to information, as codified in relevant laws, has numerous qualities. The cornerstone of any law on access to information is the option given to the individual to request, without having to justify or offer grounds for such a request, information about the existence of a document containing the sought information. The documents in question can take many forms, including reports, notes, meeting minutes, e-mail, and even unwritten documents such as telephone calls. As a result, the regulations governing access to information must specifically distinguish between available and unavailable data (Pasquier & Villeneuve, 2007). Transparency comprises the disclosure of information to aid in evaluation and decision-making. Thus, transparency is either necessary or sufficient for almost all other components of good governance. Thus, when it involves the music business, it is inherently a micro transactional, generating revenue from songs and albums in the fractions of pennies (Rethink Music Initiative, 2015). Therefore, the process of generating revenues should be transparent, and it starts with obtaining relevant and truthful information about the organisation.

The nature of CMOs is managing the licences for the copyright worked on behalf of the copyright owners, which involves collecting royalties from their works. As a result, copyright owners must have complete information about the management of licenses to maintain transparency between members and organisations and to avoid any misinformation that could foster distrust.

2. Literature Review

A well-governed, transparent, and accountable CMOs is part of the key factor in earning the trust of the copyright holders (Stokkmo, 2015). In assessing transparency vis-à-vis access to information, one needs to consider both the nature of the information itself – relevance, quality, consistency and so on – as well as the conditions surrounding the provision of such information, including the processes and procedures for recording, storing, granting access, and retrieval (Marais, Quayle, & Burns, 2017). Data provided to artists with royalty payments are often opaque, and artists often don't understand the payments and accountings they receive, and this opacity may benefit intermediaries (Rethink Music Initiative, 2015). Transparency obligations incumbent on the collective management organisations are expressly and exhaustively provided by law (Savu, 2016). However, it is essential to reiterate that information transparency demonstrated by CMO's website does not necessarily indicate effectiveness (Maggie, Arpita, & Anand, 2015). The rule of law, accountability, and transparency are technical and legal issues at some levels but also interactive to produce a government that is legitimate, effective, and widely supported by citizens, as well as a civil society that is strong, open, and capable of playing a positive role in politics and government (Johnston, 2016). In practice, there is a potential conflict between the property rights exercised by copyright owners and freedom of expression and information access (Bannister, 2011).

To prepare his quantitative analysis on CMOs, Klingner extracted the data publicly available (for musical performing rights, mechanical reproduction rights and both) from 35 European countries from their annual business and transparency reports (Klingner, Miller, Becker, & Schumacher, 2021). Transparency balances power, especially when money and influence are involved (Mogis, 2020; Schnackenberg & Tomlinson, 2016). For example, it has revealed the importance of having a good, updated version of the organisation's information for future endeavours and research. Another study examining the current economic and legal aspects of the exploitation of recorded music by streaming

platforms and the effects on the performers who help create it across national jurisdictions stipulate the need for access to information (Christian & Feijóo, 2021). Information on a summary of online music developments focusing on the infrastructure, the providers, and the diversity of music and services the region offers can only be collected if it is easily accessed (Calboli, 2021).

The best solution to improve the transparency of powers within collecting societies is by referring to the tribunal (Abdul Manap, 2020). Data showed that the more you are exposed publicly, mainly on social media, the higher your chances of popularity in the music industry (Szymkowiak, Antoniak, & Kubala, 2020). Also, several recent developments in popular music make the artist's production process more transparent to listeners (Renzo & Collins, 2017). One of the main reasons for the problematic management of music work copyrights is the number of stakeholders involved and the unorganised and ununified way of communication between them (Kapsoulis et al., 2020). When COVID-19 hits, the world is forced to rely on the internet for communication, work, commerce, education, and entertainment more than ever before, which heightened the need to find answers to numerous questions concerning the copyright law implications of actions taken on the internet (Trimble, 2020). COVID-19 also impacted the collection of royalties (Dredge, 2020).

3. Methodology

This paper is a qualitative research paper which adopts a library-based research methodology through conceptual and doctrinal legal analysis. The secondary data consists of primary sources, including the Copyright Act 1987. The primary source is triangulated with secondary sources, including academic books, journals, law reports, decided cases, online databases, official statistics and reports, and other library-based sources. Data analysis of these primary and secondary sources is conducted using thematic and content analysis from the official websites of the named collective management organisation in Malaysia and Australia.

4. Discussion

Trust must be earned to make well-governed CMOs work between the users and copyright owners. The WIPO-initiated TAG project, which began in 2013, proposes a program for ensuring the outside world and others of Collective Management Organizations' transparency, accountability, and good governance (CMO). The initiative aims to meet the needs of developed and developing countries alike. It considers the possibility of introducing a quality mark that CMOs can apply for voluntarily to demonstrate that they have met a defined standard of Transparency, Accountability, and Governance (the three initials that comprise the TAG acronym), as well as a program to assist CMOs in benchmarking and, when necessary, improving their governance. This should eventually assist CMOs in documenting a high standard of control and result in a greater appreciation and understanding of collective rights management and its benefits to rightsholders and users. In 2021, the TAG project is been established as WIPO Good Practise Toolkit for Collective Management Organisation (the Toolkit). For this paper, it highlights two out of the three elements from TAG Standard or the Toolkit ie transparency and accountability.

Additionally, it has the potential to assist CMOs in contributing to a more functional legal creative market for copyright works, which is critical in an environment where collective

rights management has grown in importance and CMOs are frequently criticised. A TAG compendium in the Toolkit is created for benchmarking and training purposes to assist a CMO in attaining the required operational quality level. Simultaneously, it makes recommendations for enhancing the transparency and governance of CMOs. This TAG Standard does not seek to replace existing national instruments but rather to illustrate the proper conduct of a well-governed CMO operation.

Regarding the WIPO-initiated TAG or the Toolkit, one of the Compendium's critical issues is providing information about the CMO and its operation. There are two main categories of providing information about the CMO and its operations: the acknowledgement of the role played by the CMO towards the rightsholders and the dissemination of accurate information about the CMO to the public.

However, since the general public typically lacks a clear understanding of what a CMO does, public perceptions and attitudes toward copyright may generally not be 100% positive. Still, it can play a substantial role in falling under the first category. Thus, including CMO roles in industry codes of conduct or regulations will help raise public awareness of CMO roles and functions.

For the second category, while stakeholders, such as rights holders, officials, politicians, and the media, should all have full access to the CMOs, information about them should also be readily available for them to be provided easy access. Additionally, providing basic information about CMO operations is a first step towards increasing the public's perception of CMOs. It is critical for each CMO to demonstrate that it operates in an open and accountable manner, even more so when the CMO operates not only based on direct voluntary mandates but also based on mandatory collective management provisions. The Compendium recommends a CMO to publish a summary of its role and function regularly; an explanation of each category of right holders and rights which it represents: its statute, membership terms and rules on termination of membership; its general distribution policy; its policy on deductions (such as any administration, social, cultural or educational deductions); its policy on the use of non-distributable rights revenue; its audited annual accounts; its complaint and dispute resolution procedures; a list of the persons who manage its business and who sit on its board; and the total amount of remuneration paid, and other benefits provided to the directors and senior management personnel. This paper has observed the websites of the selected CMOs in Australia and Malaysia and whether the CMOs follow the recommendations from the Compendium regarding access to information. The findings from the observation can be found in [Table 1](#).

5. Findings

This paper aims to delve into the structure and approach of two countries' collective management organisations, Malaysia and Australia, in disclosing the information about their organisations to the members precisely and the public.

Table 1: Observation of access to information on CMOs' websites.

	AUSTRALIA			MALAYSIA		
	APRA	AMCOS	PPCA	MACP	PPM	RPM
Role and Function	√	√	√	√	√	√
Statutes and	√	√	√	√	√	X
Membership Terms						

Policy on Use of Distributable Rights Revenue	√	√	√	√	X	X
Policy on Deduction Audited Annual Account	√	√	√	X	X	X
Complaints and Dispute Resolution Policies	√	√	√	X(members only)	X(members only)	√
Amount of Remuneration Paid	√	√	√	√	X	X
Information of the Board and Staff	√	√	√	X	√	√
Other Benefits Provided to the Directors and Staff	√	√	√	(members only)	X	X

5.1. Australian Position

The three leading CMOs in the music industry in Australia that will be discussed in this paper are Australasian Performing Rights Association Limited (APRA) and Australasian Mechanical Copyright Owners Society (AMCOS), and Phonographic Performance Company of Australia Limited (PPCA). These CMOs are being represented by the Australian Copyright Council, a non-profit organisation which was assisted and funded by the Australian government through the Australian Council, under its arts funding and advisory body of Ministry for the Arts, Australia. The Australian Copyright Council act as an advocate for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good and provides information to member organisations about developments and law reform issues affecting their members, co-ordinates responses from member organisations on certain issues, and assists member organisations with the preparation of submissions on copyright issues.

Referring to the WIPO TAG Standard, to have transparent governance, a CMO needs to provide the information to the public. The current way of looking into information is by browsing through the official websites of each CMOs. Hence, we conducted our research on the three main CMOs in Australia by browsing their official website in order to prove whether the CMOs have successfully followed the standard in giving access to information of CMOs to the public.

Table 1 shows that for APRA and AMCOS, on their website, they have detailed their role and functions as a CMO in putting the right authorisation for their existence. They also have to provide their constitution in order for the public to know their objectives and also the background of the CMO as a company. From the constitution, they detailed that there will be remuneration for their directors and other personnel involved in the operational part of CMOs. There are a few policies uploaded on the websites which play a vital role in giving accurate information to the public, which is their distribution policy and the complaint and dispute resolution policy. Under their distribution policy, they have mentioned the clause on deduction clause and also the use of non-distributable rights revenue. It was clearly explained, and there is no issue with ambiguity in that sense. From the website, they also put up the list of their members of the board and the personnel in charge of the operational part, which shows the integrity of the CMO is under the control of a known person and not anonymous. It is a good effort for APRA and AMCOS when they

initiate a Corporate Governance statement that supplemented their Collecting Societies' Code of Conduct and APRA's Distribution Rules and Practices. The statement is basically a summarisation of their roles and functions and their obligations in taking seriously being transparent as a CMO. In addition to that, since financial distribution is the crux of CMO business, from their website, the public can easily download their annual audited accounts from their financial reports, which include all the details, including payment for remuneration etc.

As for PPCA, they have similar information to APRA AMCOS. Information regarding the roles and functions of the CMO, their constitution, distribution and deduction policy, use of non-distributable rights revenue policy, the complaint and dispute resolution policy and their information on members of the board are clearly put up on their website. There are no difficulties in finding the information while browsing. This shows they have been transparent in disclosing information about their organisation. They also put up their audited annual accounts report with details on remuneration and distribution. Clearly, the CMOs in Australia have followed the recommendations by the WIPO TAG Standard.

5.2. Malaysian Position

As for Malaysia, we will also discuss three main CMOs, which are Music Authors' Copyright Protection Berhad (MACP), Public Performance Malaysia Sdn Bhd (PPM) and Recording Performers Malaysia Berhad (RPM). Those three CMOs have been declared as the licensing body under the Copyrights Act 1987, with the authorisation of the Intellectual Property Corporation of Malaysia (MyIPO), as one of the agencies under the Ministry of Domestic Trade and Consumer Affairs (KPDNHEP) Malaysia.

The same manner of research has been conducted for the three CMOs in Malaysia, i.e. by analysing their official websites in order to get access to the information that is recommended to be published by the WIPO TAG Standard. In Malaysia, we refer to the Copyright Act 1987 regarding the authorisation of licensing bodies. As of 2022, there is no specific Code of Conduct regulated under Malaysian law for the CMOs to refer to. One of the standards that are said to be voluntarily applied is the WIPO TAG Standard.

From our observation, [Table 1](#) shows that all three have given a piece of accurate information regarding their role and function as CMO. They also successfully list out all the members of the Board names and personnel showing the person in charge of running the CMO. Of the three CMOs, only MACP has been diligently updating the information on distribution policy and also their complaints and dispute resolution policies and procedures. However, there is no access to the audited annual financial report for MACP and PPM, which we assume the said organisation only gives access to the report to just members and not for public view.

RPM is a company limited by guarantee in Malaysia that represents recording artists and musicians. It is also representing the interest of stakeholders, namely local and national recording performers. Meanwhile, PPM, also a company limited by guarantee, represents all eligible Malaysian recording companies and international recording companies that have exclusively licensed PPM members to control their rights in Malaysia. However, for both CMOs, there is no access to information on policies on distribution, use of non-distributable rights revenue, and complaint and dispute resolution procedures. PPM is the only CMO that posts its constitution as well as its annual financial records. The majority of the content on the web pages is about licencing tariffs.

6. Conclusion and Recommendations

In this paper, 2 out of 3 elements in the WIPO TAG standards or the Toolkit for CMOs are discussed since music copyright has become part of everyday life and the public needs to have transparency and accountability in CMOs. One of the objectives in WIPO TAG or the Toolkit is to contribute to documenting quality and credibility and Australia has proved that they have been diligent in sharing the information needed not just for members, but also public at large as compared to Malaysia. The TAG standard or the Toolkit is to guide the CMO that it is allowable to provide such information with access to the public, and it will not breach any confidentiality details. Hence it promotes transparency to avoid any misunderstanding in the eyes of the public. The lack of information, especially on the important policies within the organisation, shows the lack of transparency in governance. Therefore, it is recommended for Malaysian CMOs to draft policies according to WIPO TAG or the Toolkit especially on the royalty payments. It is a good practise to have public consultation to discuss and to get feedback for the policies. For the efficacy of the websites, the CMOs need to share awareness and campaign as to inform the function of CMOs and make the public documents and information to be easily accessed. Malaysia may gain from Australia's efficiency in offering public access to vital information and documents within the organisation via its websites including the disputes resolution and the functions of Copyright Tribunal. In a nutshell, it is hoped that there is a regulation that will bind and enforce the CMO to be transparent in providing information on their organisation.

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Conflict of Interests

The authors reported no conflicts of interest for this work and declare that there is no potential conflict of interest with respect to the research, authorship, or publication of this article.

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