

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
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**THE LEGAL AND PRACTICAL BOTTLENECKS FOR THE FORMATION AND
OPERATION OF COLLECTIVE MANAGEMENT ORGANIZATIONS IN ETHIOPIA:**

**A Thesis Submitted to the School of Graduate Studies of Addis Ababa University in Partial
Fulfillment of the Requirements of the Degree of Masters of Law (LLM in Business Law)**

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Declaration

I, Bethlehem Fetene Shawil, hereby declare that this Thesis is my original work and has not been presented for degree in any other university, and all sources of materials used in this Thesis have been duly acknowledged and cited.

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Conformation

This Thesis has been worked by the student under my supervision, guidance and submitted for examination with my approval as an advisor to the student.

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Dedication

Dedicated to **SEGN YAZACHEW!**

Acknowledgement

God, this far you have brought me and for this I am very much indebted.

My sincere gratitude goes to my advisor, Biruk Haile (PhD) for patiently guiding me at every stage of this work and for his constructive and valuable comments.

List of Abbreviations

AoA – Article of Association

CMO – Collective Management Organization

COSBOTS – Copyright Society of Botswana

COSOTA – Copyright Society of Tanzania

COSOMA – Copyright Society of Malawi

ECNRCMS - Ethiopian Copyright and Neighbouring Rights Collective Management Society

EIPO – Ethiopian Intellectual Property Office

EMCNRCMS – Ethiopian Music Copyright and Neighbouring Rights Collective Management Society

MoA – Memorandum of Association

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Abstract

The system of collective administration of rights is introduced to Ethiopia by the Copyright and Neighboring Rights Protection (Amendment) Proclamation No. 872/2014. While this is a step forward, the adequacy of the legal framework governing the system leaves much to be desired. This Thesis has examined this legal framework using doctrinal and non-doctrinal methods and concludes that the legal framework is incomplete. By failing to define the key concept of 'sector association', the Proclamation has already complicated the establishment of two collective management organizations (CMOs). It also fails to provide for rules governing the relationship between right holders and CMOs, between CMOs and end users, and resale rights. Moreover, the failure of the Ethiopian Intellectual Property Office to adopt manuals on specific supervisory processes adds to the inadequacy of the legal framework. The Thesis recommends specific legal reforms that address these inadequacies through amending the Proclamation, and /or revising the draft Regulations before it is adopted.

Introduction

Background of the Study

In Ethiopia, the recognition for protection of literary and artistic works dates back to the 1960s.¹ Reaffirming the role of copyright in enhancing economic, cultural, social, scientific, and technological development, a new copyright and neighbouring rights law was promulgated in 2004 with extensive provisions.²

This law confers on the right holders exclusive rights over their work. This means the act of authorization and/or prohibition of an exploitation of a work is determined by the rights holders or their agents alone. Though the exclusive nature of copyright strengthens the protection of authors' works, it leaves the very task of administering rights on the shoulder of the right owners. This task is difficult, expensive, and at times impossible to handle. As a result, right holders may not benefit from their works to a great extent. By the same token, it would be difficult for users to contact right holders, negotiate terms, and make use of their works.

The difficulty of individual right management caused the amendment of the law in 2014. The Copyright and Neighbouring Rights Protection Amendment Proclamation No.872/2014 (Copyright Amendment Proclamation) introduced the idea of collective management society (CMS)³, with the objective of creating conducive environment that enables right holders to administer their rights in an organized and enhanced manner.⁴

After two years and a half of promulgation of the new law, the first Ethiopian Copyright and Neighbouring Rights Collective Management Society (ECNRCMS) was established on July 13, 2017 in Addis Ababa. Then after, on 24 December 2019 the second collective management society named Ethiopian Music Copyright and Neighbouring Rights Collective Management Society

¹ The Civil Code of Ethiopia Proclamation, 1960, Art.1647-1674, Proc.No 165, Neg. Gaz. Year 19 , no.2 (herein after Civil Code)

² Copyright and Neighboring Rights Protection Proclamation, 2004 , Preamble 1, Proc.No.410, Neg. Gaz. Year 10, no.55 (herein after Copyright Proclamation)

³ In this study collective management society (CMS) and collective management organization (CMO) is used interchangeably.

⁴ Copyright and Neighboring Rights Protection (Amendment) Proclamation 2014 , Preamble 1, Art.32(1) (herein after Copyright Amendment Proclamation)

(EMCNRCMS) was formed. A draft Copyright and Related Rights Collective Management Society Registration and Recognition Regulations (draft CMO Regulations) is also prepared.⁵

Statement of the Problem

The law as a matter of principle provides for the establishment of collective management organizations (CMOs) through the association of right holders of works protected under the copyright law to jointly administer their rights.⁶ These organizations need to be licensed by the Ethiopian Intellectual Property Office (EIPO) to operate.⁷

The copyright law (as amended) sets out certain requirements for formation of CMOs. One of such requirements is that at least three ‘sector associations’ have to come together to establish a CMO.⁸ However, the term ‘sector association’ is not defined under the law. Nonetheless, the draft CMO Regulations defines the term in a manner that hardly allows the formation of new CMOs thereby risking the legislative intent behind such requirement. In the process of authorizing a CMO, EIPO has practically defined the term ‘sector association’ in a way that discourages the formation of multi-disciplinary CMOs. Thus, the effect of the requirement of ‘sector association’ as a precondition for the formation of CMOs along with the definition provided under the draft CMO Regulations and the practice of EIPO have been examined.

CMOs are mainly membership-based organizations. As owners, right holders should participate in the decision-making process of a CMO. The copyright law (as amended) left governing structure of CMOs to be determined by the right holders, whereas the draft CMO Regulations provides general governance structure of CMOs. Thus, the extent of coverage of the draft CMO Regulations will be assessed. Moreover, the Memorandum of Associations (MoA) of the already established CMOs are examined.

Basically, right holders consent to the administration of their right by CMO. Such transaction creates a relationship between right holders and CMO. Whether such relationship emanates from

⁵ Interview with Ato Dereje Tsigu, Senior Legal Researcher, Ethiopian Intellectual Property Office (Addis Ababa, 15 May 2018)

⁶ Copyright Amendment Proclamation (n 4) Art.32(1)

⁷ Ibid Art 32(2)

⁸ Ibid Art 33(1)(d) and Art.33(2)

contract, law or both, the copyright law does not provide for the protection of the interest of the right holders. The draft CMO Regulations covers some of the issues in this connection. Thus, the extent of coverage of the draft CMO Regulations and the MoA of the two CMOs already formed is examined.

One of the duties of CMOs is to prepare royalty scheme. To this end, the draft CMO Regulations authorizes EIPO to come up with a working manual. EIPO has not yet adopted the manual. This thesis has examined the effect of the absence of royalty scheme on the operation of CMOs.

Once a CMO is duly established, it has the mandate to collect and distribute royalties. To this end, the draft CMO Regulations provides that EIPO will come up with a working manual for royalty collection and distribution. A CMO is duty bound to distribute royalty within two years of its establishment and annually then after. So far, royalty collection and distribution scheme has not been approved by EIPO. The effect of the absence of such a scheme in the operation of CMOs is assessed.

Though a CMO is entrusted to collect and distribute royalty per the copyright law, the draft CMO Regulations prohibits CMOs from collecting and/or distributing royalties from works that are not entrusted to their administration by right holders. However, during its operation a CMO may receive usage report of unknown works (works that do not belong to its repertory). The fate of unknown works in the event of royalty distribution has not been determined neither in the copyright law nor in the draft CMO Regulations. Thus, the effect of the draft CMO Regulations (if adopted) on unknown works has been analyzed.

CMOs are natural monopolies in their relations with right holders and users. Thus, States devised controlling mechanisms so that such market dominance may not be abused by CMOs. The copyright law does not oblige CMOs to administer rights for all right holders in the absence of reasonable ground to deny their services. Whereas, the draft CMO Regulations stipulates that a CMO shall be open for new members as long as they meet requirements prescribed under Article 33(1)(d) and Article 33(2) of the copyright law for formation of a CMO.⁹ The effect of extending

⁹ Draft Copyright and Related Rights Collective Management Society Registration and Recognition Regulations, Art. 17(2) (herein after draft CMO Regulations)

formational preconditions to admission of new members has been assessed. The copyright law has failed to incorporate mandatory provision regarding CMO's duty to license without discriminating users. The draft CMO Regulations somehow regulates such aspects. Thus, the extent of coverage of the draft CMO Regulations and its implication has been analyzed.

Finally, CMOs are under scrutiny of the EIPO beginning from time of formation. EIPO's regulatory mechanisms in terms of protecting the interests of right holders and users have been examined.

Research Questions

- i. What is meant by 'sector association'?
- ii. Is there a minimum standard set for governance of CMOs in the laws?
- iii. What is the effect of license/assignment of rights to CMOs?
- iv. What is the effect of entrusting the administration of jointly owned work by one of co-owners to CMO?
- v. Are there mandatory provisions that protect the interest of right holders?
- vi. Are right holders allowed to administer their rights parallel with a CMO?
- vii. Who determines licensing terms?
- viii. How is tariff applied?
- ix. How is collection and distribution of royalty made?
- x. How is dispute settled between a CMO and end users on licensing terms?
- xi. How is dispute settled that may arise on mandate of CMO?
- xii. Who adjudicates disputes that may arise in relation with royalty distribution?
- xiii. Who regulates the operation of CMO and what matters fall under regulation?

Objective of the Study

General Objective

This research aims to examine both the legal and practical challenges of the formation and operation of CMOs in Ethiopia.

Specific Objectives

The research specifically aims to examine and assess the below listed issues. The analysis is made in the light of the relevant provisions of the Copyright and Neighbouring Rights Protection Amendment Proclamation No. 872/2014 and the draft CMO Regulations.

- a. Preconditions for the formation of CMOs;
- b. Rules, if any, on governance of CMOs;
- c. Rules, if any, on the extent of coverage of mandate of CMOs;
- d. Rules on setting tariff, collecting and distributing royalty;
- e. Rules, if any, on adjudicating disputes that may arise between right holders & CMO and CMO & users;
- f. Rules, if any, on supervision of CMOs.

Literature Review

Research on the subject matter of this study is quite dearth. This is partly due to the fact that the introduction of CMOs into the Ethiopian legal system is a new phenomenon of 2014. The first CMO, ECNRCMS, under the new law was established only as late as July 2017.

Belay Bekele, however, made the first attempt to examine the subject since the adoption of the new law. He argued that the copyright law (as amended) does not determine the legal form of CMOs; that the formation of a CMO may base itself on different laws that may contradict the essential principles and rationales of CMOs.¹⁰ Moreover, he argued that the new law fails to incorporate a minimum number of right holders to form a CMO.¹¹ Besides, the absence of general and objective criteria by which EIPO evaluates the documents submitted to it for the establishment of a CMO poses uncertainty on the outcome and leads to possible abuse of power by EIPO.¹²

He also argued that the absence of legally established standards for membership, terms and conditions of licensing will render the services of CMO inaccessible.¹³ Moreover, he contended

¹⁰ Belay Bekele, 'System of Collective Management in the Ethiopian Copyright and Neighboring Rights: Implementation and Regulatory Concerns' (LLM Thesis, Addis Ababa University 2016)

¹¹ Ibid

¹² Ibid

¹³ Ibid

that the absence of mechanism to administer rights of non-member right holders puts limitation on the content of CMO's repertory.¹⁴He finally pointed out that the new law failed to incorporate a timeframe within which royalty is distributed, which may result in unreasonable delay of payment.¹⁵

Belay's study made a great contribution in identifying legal gaps that hinder the effectiveness of CMOs. However, he has not analysed the preconditions for the formation of CMOs. Moreover, the study was conducted before the establishment of ECNRCMS and EMCNRCMS. Currently, a draft CMO Regulations has been prepared which was not available when Belay conducted his study. These new developments warrant further research. The practical experiences in establishing ECNRCMS and EMCNRCMS under the new law offer an insight into the gaps in the law that affect formation of CMOs. ECNRCMS and EMCNRCMS attempt to address these gaps creatively in their memorandum of association (MoA) is a practice worth exploring to draw some lessons. Finally, the draft CMO Regulations purports to fill some gaps in the new law and this deserves critical review and analysis before it is finally adopted.

This study claims to be the latest attempt in examining the legal and practical challenges in the formation and operation of CMOs in Ethiopia in light of these recent developments. By doing so, it contributes modestly to the existing body of knowledge in copyright and neighbouring rights law.

Significance of the Study

CMOs protect right holders' economic interests, facilitate access to works thereby contributing to the dissemination of knowledge that greatly impacts the development of culture in general and copyright protection in particular.

The institution of CMO is a new phenomenon in the Ethiopian legal system. Thus putting in place an appropriate legal framework has a great contribution for the effective functioning of CMOs. Because both the law and the establishment of CMOs in Ethiopia are the latest developments in the field, exploring the legal and practical bottlenecks that impede the formation and effective

¹⁴ Ibid

¹⁵ Ibid

operation of CMOs in the country is a worthy enterprise. This will help us understand the real problems and how the law needs to be reformed to tap the potential benefits of CMOs. It also serves as a starting point for interested researchers to make further investigation on the matter.

Research methods

This study employs both doctrinal and non-doctrinal legal research methods. Doctrinal legal research is employed to explore laws that have a direct or indirect link with issue of formation and operation of CMOs. Accordingly, attempt has been made to examine domestic laws and documents such as the Civil Code of Ethiopia, Copyright and Neighbouring Rights Protection Proclamation (as amended), draft CMO Regulations, EIPO Establishment Proclamation, draft Proclamation Explanatory Note, and memorandum and article of associations of ECNRCMS and EMCNRCMS.

For comparative purpose, the copyright acts of Botswana, Malawi and Tanzania, as well as Botswana copyright subsidiary legislation and constitution of copyright society of Botswana have been examined. The copyright laws of the above countries are selected for comparison because they served as references while drafting Copyright and Neighbouring Rights Protection Amendment Proclamation.¹⁶

A non-doctrinal legal research method is used to collect first-hand information relevant to the study under consideration.¹⁷ To this end, interviews have been conducted with the Copyright Directorate Acting Director of the EIPO (to understand historical accounts and challenges for formation of CMO) and a Senior Legal Researcher at the EIPO (to elicit information regarding draft regulations) as well as with former staff of EIPO who participated in the drafting of the amended copyright law (to acquire information regarding the intent behind the requirement of ‘sector association’ for formation of CMO). The General Manager of ECNRCMS was interviewed to acquire information regarding the operation of ECNRCMS, while the Chairman of Musicians Association was

¹⁶ Copyright and Neighbouring Rights Protection Draft Proclamation (amendment) explanatory note (Ethiopian Intellectual Property Office, Genbot 2006 E.C, HPR Library) (here in after drafter’s explanatory note) 8

¹⁷ Salim Ibrahim Ali, Zuryati Mohamed Yusoff, Zainal Amin Ayub, ‘Legal Research of Doctrinal and Non-Doctrinal’(2017) 4(1) International Journal of Trend in Research and Development

https://www.researchgate.net/publication/316895684_Legal_Research_of_Doctrinal_and_Non-Doctrinal
accessed 18 May 2018

interviewed to elicit information regarding members. Finally, a right holder of musical work was interviewed to understand the disagreement among right holders of musical works with regard to the formation ECNRCMS.

Secondary data are obtained through analysis of various publications and study materials on the formation of CMOs, governance of CMOs, collection and distribution of royalty, dispute resolution and supervision of CMOs.

Scope of the Study

Though various issues are intertwined with the subject of the study, this research is limited to examine only the legal and practical impediments for the formation and operation of CMOs in Ethiopia.

Limitation of the Study

The researcher was not able to access documents, such as distribution rule of Copyright Society of Botswana (COSOBOTS), royalty setting and distribution rule of Copyright Society of Tanzania (COSOTA) and Malawi (COSOMA). As a result, membership rules, tariff setting mechanisms and distribution rules of these societies have not been assessed exhaustively.

Organization of the Study

This study is organized into five chapters. Chapter one provides brief overview of the nature of CMOs in general. Chapter two discusses formation of CMOs under Ethiopian law. Chapter three analyzes operation of CMOs under Ethiopian law. Chapter four examines supervision CMOs under Ethiopian law. The study ends by offering conclusion and some recommendations.

Chapter One

An Overview of the Nature of Collective Management Organizations

The Origin of the Concept of Collective Management of Rights

The story of collective rights management is linked to the French playwright, Pierre-Augustin Caron de Beaumarchais.¹⁸ He called a meeting of a group of authors to formulate a response to the under-remunerated use of their works by the Théâtre-Français.¹⁹ This meeting turned into a debate about collective protection of rights and led to the foundation of the Bureau de Législation dramatique in 1777, which was later transformed into the Société des Auteurs et Compositeurs Dramatiques to become the first society dealing with collective management of authors' rights.²⁰ In 1838, Honoré de Balzac and Victor Hugo established the Society of French Writers, which was mandated to collect royalties from print publishers.²¹ The concept of collective management spread slowly throughout the world and was considered as the efficient way of rewarding authors.²²

Collective Management of Rights

Copyright offers authors an exclusive right to exploit their works or authorize others to do so.²³ In other words, the permission or prohibition of usage or exploitation of such a work is under the mercy of an author of the right. This leaves an author with the task of individually administering rights.

Up until the advent of digital technology, individual management of rights was very much difficult as the work is used by a great number of users at various places and times. This puts at stake the capacity of individual to monitor all such uses, to negotiate with users and to collect remuneration.²⁴ Furthermore, users of creative works hardly address the proper right holder and

¹⁸ International Confederation of Societies of Authors and Composers (CISAC) 'The History of Collective Management' < <http://www.cisac.org> > accessed 22 May 2018

¹⁹ Ibid

²⁰ Daniel Gervais, 'Collective Management of Copyright: Theory and Practice in the Digital Age' in Daniel Gervais (ed), *Collective Management of Copyright and Related Rights (2nd ed, Kluwer Law International 2010)* 3-4; Ibid

²¹ Ibid

²² Ibid

²³ Mihaly Ficsor, *Collective Management of Copyright and Related Rights*, (WIPO Publication, 2002) 15

²⁴ Ibid 17

conclude license agreements.²⁵ Thus, collective administration has been introduced to overcome the difficulty associated with individual management of rights.

Collective administration is said to be the most effective means of transacting with multiplicity of users, while at the same time safeguarding the interest of the author; it also makes easier for users to legally access multiplicity of works.²⁶

The importance of collective administration has continued even after the introduction of Digital Right Management (DRM) for the following reasons: First, in the Internet era, the effect of globalization touches the cultural market thus the utilization of works could not be limited by national boundary. As a result negotiation, making and closing agreements are going to be made with global users which makes individual management not feasible in a technologically networked society.²⁷ Second, CMOs provide professional services that come with the knowledge of the copyright industry and its legal environment which is essential for administration of copyrights.²⁸ Third, a theory of risk-sharing syndicate makes collective administration of rights to be largely immune to digitization effects which increases the riskiness of a given work because of piracy that is easily organized.²⁹ Fourth, the advent of multimedia productions which contain multiple rights and right holders may require multiple permissions for their use, making CMOs much important in the digital era. Fifth, DRM complements the operation of CMOs and renders it more efficient and strong.³⁰

Economics of Collective Management Organizations

Copyright markets are places where multiplicity of creators and other right holders supply multiplicity of works that encompass a range of rights and at the same time diversified users

²⁵ Ibid

²⁶ Paula Schepens, *Guide to the Collective Administration of Authors' Rights* (UNESCO 2000) 15-16

²⁷ Barbara Dierickx and Dimitrios Tsolis *Overview of collective licensing models and of DRM systems and technologies used for IPR protection and management* (ATHEN Access to cultural heritage networks across Europe 2009) 13

²⁸ Ariel Katz 'The Potential Demise of another Natural Monopoly: Rethinking the Collective Administration of Performing Rights'(2005)1(3) *Journal of Competition Law and Economics* <<https://ssrn.com/abstract=547802>>553

²⁹ Richard Watt *Collective Management as a Business Strategy for Creators: An Introduction to the Economics of Collective Management of Copyright and Related Right* (WIPO Publication emat 2016) 22

³⁰ Hansen, G & Schmidt-Bischoffshausen, A 2007, "Economic Functions of Collecting Societies Collective Rights Management in the light of Transaction Cost - and Information Economics", *GRUR Int* vol 6 461.

demand for the usage of such works at a time. In such a market, a single transaction involves many costs that range from identifying users and copyright holder to enforcing rights when infringement occurs including the costs of negotiating terms of use, collecting royalty, monitoring usage, and overseeing the terms of contract.³¹ The presence of multiplicity of right holders and users coupled with such high ‘transaction costs’³² means that a considerable part of the revenue generated by individual administration of copyright is spent on these costs and may not cover the costs of original creation.³³

The economic justification for the existence of CMOs is their ability to effectively avoid high transaction costs through exploiting ‘economies of scale.’³⁴ CMOs play an intermediary role between right holders and users, whereby they help the right holders to pool their copyrighted work(s) in a single collective organization and reduce the transaction cost of searching, negotiating, monitoring and enforcing rights.³⁵ Reducing transaction costs enables an economic agent to secure a greater level of welfare without affecting the welfare of others- a phenomenon economists call “Pareto Efficiency”.³⁶ This gives CMOs a ‘natural monopoly’³⁷ status in the market.³⁸

³¹ Handke, Christian and Towse, Ruth, Economics of Copyright Collecting Societies (July, 12 2008) International Review of Intellectual Property and Competition Law, Vol. 38, No.8, pp.937-957, 2007. Available at SSRN:<https://ssrn.com/abstract=115> or <http://dx.doi.org/10.2139/ssrn.1159085> accessed 18 May 2018; Fabrice Rochelandet, ‘Are copyright collecting societies efficient? An Evaluation of Collective Administration of Copyright in Europe’(2002) The Society for Economic Research on Copyright Issues, Inaugural Annual Congress 2 <<http://www.serci.org/2002/rochelandet.pdf>> accessed 18 May 2018; Watt (n 29); Zijan Zhang, ‘Rationale of Collective Management Organizations: an Economic Perspective’ (2016)10:1Masaryk University Journal of Law and Technology https://journals.muni.cz/mujlt/article/view/3620_86-87

³²“Transaction costs are not payments made by the users for the exchange of use right to the right holder.....rather, they are amounts of money lost to the system or paid to other economic agents outside of the market.” Watt (n 29) 16

³³ Zhang (n 31) 74

³⁴ A situation where the users are the same or same information is searched to determine usage, the average cost of monitoring and enforcing copyrights works decline rapidly with the number of works represented. Handke and Towse (n 31) 939

³⁵ Zhang (n 31) 86-87; Richard Watt, Copyright and Contract Law: Economic Theory of Copyright Contracts, 18 JIntellPropL 173 (2010) available at <<http://digitalcommons.law.uga.edu/jipl/vol18/iss1/6>>200; Katz (n 28) 543

³⁶ Watt (n 29) 16

“If the entire demand within a relevant market can be satisfied at lowest cost by one firm rather than by two or more, the market is a natural monopoly, whatever the actual number of firms in it. “

Richard A. Posner, "Natural Monopoly and Its Regulation," 21 Stanford Law Review 548 (1968)

³⁸ Katz (n 28)

Chapter Two

Formation of Collective Management Organizations (CMOs) under Ethiopian Law

2.1 Brief Historical Background of CMOs in Ethiopia

The phrase “collective management society” has appeared for the first time in Ethiopian legal system in 2014 through the Copyright and Neighbouring Right Protection (Amendment) Proclamation No.872/2014.³⁹ Neither the 1960 Civil Code of Ethiopia nor the 2004 Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 recognized CMOs. Because of this gap right holders had to organize themselves under the charities and societies law like any other professionals to form a CMO.⁴⁰ The first and only association of such kind was the Ethiopian Copyright and Neighbouring Rights Collective Management Society (the “Society”) which was established in November 2009 by the initiative of nine professional associations, namely:⁴¹

- Ethiopian Musicians Association;
- Ethiopian Audiovisual Producers Association;
- Ethiopian Film Producers Association;
- Ethiopian Film Makers Association;
- Ethiopian Theatre Professionals Association;
- Ethiopian Book Publishers Association;
- Ethiopian Writers Association;
- Ethiopian Comedians Association, and
- Ethiopian Film Professionals Association.

This Society did nothing regarding licensing of works and collecting and distributing royalty as the very law under which it was established (the Charities and Societies Proclamation No 621/2009) would not support the nature of CMOs, that is, collecting royalty and distribution to

³⁹Copyright Amendment Proclamation (n 4) Art. 2(32)

⁴⁰ Kahsay Gebremedhn, ‘The emerging Ethiopian copyright and related rights collecting society: assessment of challenges and prospects’ (LLM Thesis, Addis Ababa University 2013) 65

⁴¹ Ibid

their members.⁴² The Proclamation simply had no room to accommodate CMOs with all their unique features. Therefore, the Society was basically engaging in capacity building activities for its members.⁴³

Even after the adoption of the new Copyright and Neighbouring Rights Protection Proclamation No.410/2004, infringements of rights were quite rampant.⁴⁴ Some right holders (specially right holders of audiovisual works) in collaboration with the police tried to stop the selling of unauthorized reproduction of musical works.⁴⁵ This did not succeed partly because of lack of clear understanding of the copyright law among law enforcement organs and lack of coordination.⁴⁶

The Ethiopian Intellectual Property Office (EIPO), on its part, launched an initiative to fight the sale of illegal copies of music. It organized some stakeholders including the Society and conducted operations banning the sale of unauthorized reproduction of music.⁴⁷ EIPO then held meetings with the stakeholders to review the success of the operations. These meetings opened the opportunity for the Society to discuss its inherent defects, and the need to have a legal framework that will enable the Society to function as a CMO.⁴⁸ Subsequently, EIPO took the initiative to lobby for a legal framework for the establishment of CMOs⁴⁹ and succeeded in its endeavor in January 2014 when Proclamation No. 410/2004 was amended, ushering in provisions for the formation of CMOs.

The first application to form a CMO based on the new law was filed with the EIPO by a group of professional associations (including Ethiopian Musicians Association) wishing to form what they called the ‘Ethiopian Copyright and Neighbouring Rights Collective Management Society’ (ECNRCMS).⁵⁰ While the application was still pending, a disagreement among members of the Ethiopian Musicians Association (right holders of musical works) broke out necessitating to define

⁴² Ibid

⁴³ Interview with Ato Elias Fikru, Former Staff of EIPO (Addis Ababa, 15 May 2018)

⁴⁴ Interview with Abirdu Birhanu, Copyright Directorate Acting Director, EIPO (Addis Ababa, 23 May 2017)

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ drafter’s explanatory note (n 16)

⁵⁰ Interview with Ato Tewedaj Zegeye, General Manager, ECNRCMS (Addis Ababa, 01 January 2019)

the term ‘sector association’ as one of the preconditions for the formation of CMOs under the new law.

The crux of the disagreement was that some of the right holders of musical works wanted to establish a separate and autonomous CMO for musical works alone, without associating with other works, such as, literature or film.⁵¹ These right holders raised the following arguments: (1) if all works were administered by a single CMO, right holders of all works would be represented in the board of the CMO. This would lead to the possibility of other right holders, which are not musicians, being given the opportunity to decide on matters that affect the interests of musicians simply because they are board members.⁵² (2) It is only musical works that generate huge royalty and 30% of such royalty is dedicated to cover administrative costs.⁵³ However, the cost of administering rights is expected to not consume the total 30% royalty allocated.⁵⁴ Thus, any balance ought to be used and invested to develop the music industry instead of being spent in subsidizing the cost of administering other works [than music] which cannot generate enough royalty of their own to cover their costs.⁵⁵ (3) According to Yordanos, sound recording companies have been exploiting right holders for a very long period and the joining of audiovisual producers in the CMO will perpetuate this exploitation of musicians.⁵⁶ (4) In the musical work ‘sector association’ has to be defined to allow composers, arrangers and even professionals, such as lead guitarist, basic guitarist, drummer to form their own CMOs as musicians.⁵⁷

This disagreement caused the preparation of draft CMO Regulations.⁵⁸ In the meantime, however, on 13 July 2017, the EIPO authorized ECNRCMS to operate. By doing so, EIPO has practically rendered definition of “sector association.” Again on December 24, 2019 EIPO also authorized the Ethiopian Music Copyright and Neighbouring Rights Collective Management Society (EMCNRCMS) to operate. It should be noted that the disagreement among right holders of musical

⁵¹ Interview with Ato Yordanos Yigezu, Songwriter (Addis Ababa, 03 January 2019)

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Interview with Ato Dereje Tsigu (n 5)

works along with the ambiguous precondition of coming under ‘sector association’ had posed a significant challenge for formation of CMOs.

Formation of Collective Management Organizations in Ethiopia

Who may form a CMO?

A CMO is a society established by owners of copyright and neighbouring rights for the purpose of joint administration of their rights.⁵⁹ Ownership is a requirement to form or join a CMO because the rights to be administered jointly are economic rights. Under Ethiopian copyright law, ownership follows where economic right resides.⁶⁰ Whosoever has an economic right over a certain copyright protected work, performance, sound recording or broadcasts is entitled to form a CMO. The minimum number of right owners to form a CMO has not been set in the law.. However, the draft CMO Regulations prescribes a minimum of 180 right holders to form a CMO.⁶¹ There are also certain other preconditions to form CMOs in Ethiopia.⁶²

Preconditions

One of the requirements to form a CMO is to have a minimum of three “sectors associations” under it. Alas, neither the copyright proclamation (as amended) defines ‘sector associations’, nor does the lawmaker’s deliberation indicate its meaning.⁶³ The disagreement of right holders over its meaning was a matter of public knowledge. According to Tewedaj, the disagreement of right holders, particularly right holders of musical works delayed the formation of ECNRCMS.⁶⁴ Even after the formation of ECNRCMS, Dawit Yifru contends, it took almost three years for right holders of musical works to re-organize themselves and to get license to operate.⁶⁵

ECNRCMS and EMCNRCMS met the ‘sector association’ precondition and secured their license to operate in Ethiopia. As it is indicated in their constitutive documents ECNRCMS and

⁵⁹ Copyright Amendment Proclamation (n 9) Art. 2(32)

⁶⁰ Copyright Proclamation (n 2), Art. 2(16)

⁶¹ draft CMO Regulations (n 9), Art 10(2)

⁶² The preconditions are descriptions of the types of members’ creative works, internal rule of regulations, memorandum of association, and list of at least three sectors association established under it and their respective individual members. Copyright Amendment Proclamation (n 4), Art 33(1)(a)

⁶³ drafter’s explanatory note (n 16)

⁶⁴ Interview with Tewedaj (n 49)

⁶⁵ Interview with Ato Dawit Yifru, Chairman, Ethiopian Musicians Association (Addis Ababa, 13 May 2020)

EMCNRCMS, professional associations were presented as sector associations.⁶⁶ And founding members are required to be members of such professional associations.⁶⁷ In both cases, the relevance of professional associations ended after the formation of CMOs.⁶⁸ Professional associations are not considered as members (representing their members) of ECNRCMS and EMCNRCMS; that the status of membership of ECNRCMS goes to individual members of such professional associations.⁶⁹ In other words, professional associations are used as a vehicle to bring their members to the ECNRCMS and EMCNRCMS. New members are not required to be a member of a certain professional association.⁷⁰

Looking at what these CMOs have presented as “sector association” to fulfill the precondition and subsequent approval of EIPO, “sector association” is taken to mean just an association.

In Botswana, Malawi and Tanzania right holders are not required to come up with “sector association” to form CMO. In Malawi and Tanzania a CMO is statutorily formed particularly to collect and distribute any royalties accorded to authors, performers, translators, producers of sound recordings, broadcasters, and publishers.⁷¹ In effect, a CMO is formed to serve all right holders.

In Botswana, a CMO is formed by the coming together of right holders; recognition by copyright office of Botswana culminates the formation process.⁷² CMO in Botswana has a duty to manage various categories of works protected under the copyright act.⁷³ This makes it to assume a multi-

⁶⁶ ECNRCMS presented the following associations as ‘sector association’: Ethiopian Writers Association; Ethiopian Painters Association; Theatrical Art Professionals Association; Ethiopian Film Producers Association; Ethiopian Film Performers Association; Ethiopian Women Writer Association; Ethiopian Musician Association; Ethiopian Audiovisual Producers Association; Alitinos Film Performers Association; Women Painters Association; Tigray Cultural Association; Tigray Performers Association; Tigary Region Writers Association. ⁶⁶ Article of Association of ECNRCMS, Art 11.1; EMCNRCMS has presented YeEthiopia Yemusica sira Amenchiwoch Maheber, YeEthiopia Yemusica Kewagonch Maheber, YeEthiopia Yedimitse recording produceroch maheber Art 3; Article of Association of EMCNRCMS

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Memorandum of Association of ECNRCMS, Art 9 and 10; Memorandum of Association of EMCNRCMS, Article 7

⁷¹ Copyright and Neighbouring Rights Act of Tanzania,1999, Section 47(a) (Herein after Copyright act of Tanzania); Copyright Act of Malawi,1989, Section 42 (a) (Herein after Copyright act of Malawi)

⁷² Copyright and Neighbouring Rights Act (Chapter 68:02) of Botswana,2000, Section 22(B)(i) (Herein after copyright act of Botswana)

⁷³ Ibid, Section 36(A)(3)(a)

disciplinary form. In all the three jurisdictions CMOs have been designed to serve all right holders. It is not, therefore, possible to form a CMO that administers a single work or right.

Ethiopia neither followed statutorily way of establishing a CMO like that of Malawi and Tanzania nor obliged right holders to administer all categories of work like that of Botswana. It has somehow designed its own way of bringing right holders together for formation of CMO, that is, through “sector association” though the law has failed to define this concept.

To understand the meaning of “sector association”, an assessment has been made on how associations, particularly, musicians’ association were organized around the period when preparations to amend the copyright law were underway. According to Dawit Yifru, primarily, musicians’ association was established to help performers (“Azemari”, as they were then called).⁷⁴ Later on, composers, songwriters, lyrists, and arrangers joined the musicians’ association.⁷⁵ Thus, during the drafting stage, the members of musicians’ association were composers, songwriters, lyrists, arrangers, and performers.

In addition to this, one of the reasons for initiating copyright law amendment was the fact that the establishment of former Society under charities and societies law made it dysfunctional.⁷⁶ As discussed earlier, this Society was established by a group of professional associations, namely, Ethiopian Musicians Association, Ethiopian Audiovisual Producers Association, Ethiopian Film Producers Association, Ethiopian Film Makers Association, Ethiopian Theatre Professionals Association, Ethiopian Book Publishers Association, Ethiopian Writers Association, Ethiopian Comedians Association, and Ethiopian Film Professionals Association.⁷⁷ This being the case, according to Elias, the requirement of ‘sector associations’ was to discourage frequent request of a small group of right holders for formation of a CMO and to attract right holders to come through professional associations.⁷⁸ The way the right holders organize themselves surely contribute to the understanding of professional associations when it comes to right holders of copyright works.

⁷⁴ Interview with Dawit (n 65)

⁷⁵ Ibid

⁷⁶ Interview with Abirdu (n 44)

⁷⁷ Gebremedhn (n 40)

⁷⁸ Interview with Elias (n 43)

On the other hand, one of the duties of EIPO is “to facilitate the establishment of, support and strengthen inventors’, authors’ and musicians’ associations as well as similar societies.”⁷⁹ This shows, for instance, that musicians’ association has been taken as a sector association.

Thus, the administration of rights under the copyright acts of Botswana, Malawi and Tanzania, the practical situation of right holders associations at the time of drafting of the law, and the experience with the Society already formed under the charities and societies law as well as EIPO’s declared duty under its establishment legislation have all impacted the drafting of the law.⁸⁰ With this understanding of “sector associations” as a requirement for the formation of CMOs, it might be possible to conclude that the law has intended a multi-disciplinary association to operate in Ethiopia.

However, EIPO, in recognizing ECNRCMS and EMCNRCMS, has committed an error in interpreting the requirement of “sector associations” ECNRCMS has presented about 9 professional associations as sector associations though some are within the same sector association, as for instance, the cases of Ethiopian Writers Association and Ethiopian Women Writers Association. This does not mean that ECNRCMS has not represented at least three “sector associations”, but the way it has presented “sector associations” has given a meaning to “sector associations” equivalent to professional associations.

In the case of EMCNRCMS, three professional associations are listed as “sector associations”.⁸¹ Two of them, i.e., Ethiopian Musical Works Producers Association (comprising songwriters, composers, arrangers and lyricists) and Ethiopian Music Performers Association are professional associations established by right holders based on their role in musical works. These professional associations should not be taken a “sector associations” for the purpose of the new copyright law.

On the other hand, the draft CMO Regulations defines the term ‘sector association’ to constitute at least two professional associations authorized by federal government to work for the protection

⁷⁹ Ethiopian Intellectual Property Office Establishment Proclamation, 2003, Art. 6(14), Proc. No 320, Neg. Gaz. Year 9, no. 40

⁸⁰ EIPO had initiated and drafted the copyright amendment proclamation. Drafter’s Explanatory Note (n 16)

⁸¹ AoA of EMCNRCM (n 66) Art 3 (3.1)

of copyright and neighbouring rights.⁸² Moreover, these associations have to meet other requirements under the draft CMO Regulations, meaning, they need to have branches or operate by proxy in five regions of the country.⁸³ This indicates that professional organizations should work almost at national level.

If the draft CMO Regulations is ratified, formation of a single CMO, therefore, requires at least six professional associations which operate almost at national level.⁸⁴ This definition neither ascertains legislative intent nor promotes administration of a single work. Rather, it will lead to another complication for formation of CMOs.

Legal Form

Under Ethiopian law, CMOs are societies formed for non-profit purpose.⁸⁵ Thus, CMOs are designed to manage copyrights of their members and collect royalty on behalf of right holders for the exploitation of works.⁸⁶ Right holders receive royalty from the exploitation of their works but not from the operation of CMOs.

In Ethiopia, CMOs cover their operational cost.⁸⁷ Government subsidy is another source of funding for public CMOs in other jurisdictions.⁸⁸

Generally, CMOs take various legal forms, such as associations, public organizations, semi-public organizations or private companies.⁸⁹ There is no unique or uniform legal form to be adhered to for the formation of CMO, though most jurisdictions require the approval of a government organ.⁹⁰

⁸² draft CMO Regulations (n 9) Art 2(6)

⁸³ draft CMO Regulations (n 9) Art 10(3)

⁸⁴ a 'sector association' should constitute at least two professional associations. draft CMO regulations, Art 2(6)

⁸⁵ Copyright Amendment Proclamation (n 4) Art 32(3)

⁸⁶ Nathalie Piaskowski, 'Collective Management in France, Collective Management of Copyright and Related Rights' in Daniel Gervai (ed) (Kluwer Law International,2006) 168

⁸⁷ The operational cost of CMO is covered through the contribution of right holders, membership fee and other related services; Copyright Amendment Proclamation (n 9) Art 35

⁸⁸ Copyright Act of Tanzania (n 69), Section Art 49 (c), Copyright Act of Malawi, Section 44(a)

⁸⁹ KEA European Affairs, *The Collective Management of Rights in Europe; The Quest for Efficiency* (July 2006) <http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/study-collective-management-rights-/study-collective-management-rights-en.pdf> 71

⁹⁰ Ficsor (n 23) 136 -137

Monopolistic or Competitive

Some jurisdictions provide for a monopolistic CMO while others opt for competitive atmosphere. With the exception of collective societies in the United State of America, different collective societies operating in other countries have specialized in various sets of rights and/or right holder instead of competing amongst themselves.⁹¹ Even in the United States where there exist three CMOs that manage the same category of rights, the market is monopolized as they provide a distinct product to the market.⁹² In other words, in the United States competition is limited to attracting rights holders. This is linked to a formational history of CMOs.⁹³

A monopolistic CMO is acclaimed for being more efficient through utilizing the economies of scale.⁹⁴ It also avoids suboptimal use of scarce resources that result from a tragedy of anti-commons that arises when multiple owners hold exclusionary right to a certain work and each owner fixes price without considering its effect on the other exclusionary right owner.⁹⁵ Moreover, it facilitates securing a license from a single source which would have been difficult, time consuming and costly for users in situations where there are multiple right holders of a single work.⁹⁶ Additionally, monopolistic CMO can engage in blanket licensing, which provides

⁹¹Handke and Towse (n 31) 940; Adolf Dietz, *COPYRIGHT LAW IN THE EUROPEAN COMMUNITY* (Sijthoff&Noordhoff 1978) 213

⁹² Namely, ASCAP (American Society of Composer, Authors and Publishers), BMI (Broadcast Music Inc.) and SESAC (the Society of European Stage Authors and Composers).

⁹³ ASCAP was the only Collective Management Organization established in 1914 in the United States and since it refuses to accept European right-holders as a member, they established SESAC in 1930 as the CMO of European right holders. In 1940, ASCAP tried to double its tariffs for radio broadcasts. This prompted the radio broadcasters to boycott ASCAP and to establish a separate CMO, namely BMI. During the boycott, the radio broadcasters started to play regional music and styles, such as rhythm and blues or country, since the authors of this music were not represented by ASCAP. Again, the restrictive membership policy of ASCAP enabled new competitors to enter the market by attracting the discontented. It was only in the consent decree of 1941 that ASCAP agreed to accept all right-holders on a non-discriminatory basis.

Max Planck Institute for Intellectual Property and Competition Law, *Copyright, Competition and Development* (2013) 216 <http://www.wipo.int/export/sites/www/ip-competition/en/studies/copyright_competition_development.pdf> 217

⁹⁴Handke and Towse (n 31) 937-957

⁹⁵Katz (n 28) 559-660

⁹⁶ Giovanni Maria Riccio and Giorgio GiannoneCodiglione, 'Copyright Collecting Societies, Monopolistic Positions And Competition in the EU Single Market' (2013) 7:1 Masaryk University Journal Of Law And Technology <https://www.researchgate.net/profile/Giovanni_Riccio2/publication/286454519_Copyright_collecting_societies_monopolistic_positions_and_competition_in_the_EU_single_market/links/566ab5f808ae62b05f039a82/Copyright-collecting-societies-monopolistic-positions-and-competition-in-the-EU-single-market.pdf> Accessed 18 May 2018 P.5-6

unlimited access to the licensor's entire repertoire through a single transaction that reduces the cost of searching and negotiation, and risk of a user being held liable for infringement.⁹⁷

The above advantages are counterbalanced by the risk of abuse of the dominant market position of CMOs. CMOs play a double monopolistic position vis-à-vis end users and their members, which can harm the interests of each of them.⁹⁸ Whereas, competition between different intermediation societies allows lower costs and market diversification.⁹⁹

Yet, scholars argue that the existence of several competing collective societies in the same field eventually work for the disadvantage of both authors and end users.¹⁰⁰ It may also destroy the very development of CMOs.¹⁰¹ In addition, it would make it impossible to separate the activity of one CMO from another, and the matter gets worse in the case of co-authorship of a work or in the case where different CMOs administer different rights of rights holders.¹⁰²

The effectiveness and efficiency of CMO, however, largely depends on the country's particular situation than the approach it follows, thus, one cannot for sure conclude that monopolistic approach is better than competitive or otherwise.¹⁰³

⁹⁷Katz (n 28) 572-576

⁹⁸Rochelandet (n 31) 3

⁹⁹Riccio and Codiglione (n 98) 4

¹⁰⁰ The reasons forwarded for these arguments are users will not be able to access the whole repertoire from a single source with less cost, and at the same time, having competing collective society gives chance for the users to play off against one another, which renders the cost of administration of rights expensive to CMO. Dietz (n 93) 213-214; Ang Kwee Tiang, *Establishment a Collective Management Organization – Critical Issues & Challenges, Governance, Finance Distribution, and Transparency* (2004)6
<[http://www.copyrightkh.org/imgs/EstablishingaCMO\[1\]_CriticalIssues,Governance,Finance,Distribution,Transparency.pdf](http://www.copyrightkh.org/imgs/EstablishingaCMO[1]_CriticalIssues,Governance,Finance,Distribution,Transparency.pdf) > accessed 18 May 2018

¹⁰¹Ulrich Uchtenhagen *The Setting-up of New Copyright Societies Some Experiences and Reflexions* (WIPO Publication 926(E)) 6

¹⁰² Ibid

¹⁰³Wenqi Liu, 'Models for Collective Management of Copyright from an International Perspective: Potential Changes for Enhancing Performance' (2012) 17 *Journal of Intellectual Property Rights* <<http://nopr.niscair.res.in/bitstream/123456789/13410/1/JIPR%2017%281%29%2046-54.pdf> > Accessed 18 May 2018 47

For instance, in Botswana and Malawi, the law prescribed for a single collective society.¹⁰⁴ In Tanzania, there are three CMOs though it is only COSOTA that is established under the copyright act of Tanzania.¹⁰⁵

Ethiopian law has not explicitly chosen one of the two approaches. It simply provides that right holders whose works are protected under the copyright law may form CMO.¹⁰⁶ In other words, the law does not prohibit the formation of multiple CMOs for the administration of same right. Currently, there are two different CMOs, namely ECNRCMS and EMCNRCMS, in Ethiopia that administer same right in relation to musical works. Taking into account severalty of right holders even in a single musical work, having such competing CMO will most likely deter the development of CMO in Ethiopia or destroy one of the two CMOs and results in *de facto* monopolistic CMO.

Governance Structure

CMOs are mainly membership-based organizations. As owners, right holders should participate in the decision-making process of CMOs. Now-a-days, the need for strong governance for CMOs is being promoted globally.¹⁰⁷

One way of governing a CMO is through its structural organization. The structure of a CMO can statutorily be determined, self-regulated or ‘co-regulated.’¹⁰⁸

Self-regulation encompasses the formal delegation of government’s control power to private entity and/or the initiative of private sector to regulate its own affairs.¹⁰⁹ In so doing, it withdraws the interferences of government under the name of control/regulation.¹¹⁰ Self-regulation is acclaimed for providing experts on the subject matter, for having rules that can easily be altered when demand

¹⁰⁴ Copyright act of Botswana, Section 36A; Copyright Act of Malawi, Section 41

¹⁰⁵ Keitseng Nkhalo, ‘Survey on the status of Collective Management Organizations in ARIPO Member States’,¹⁹ <<https://www.aripo.org/wp-content/uploads/2018/12/ARIPO-CMO-Survey-Mag.pdf>>

¹⁰⁶ Copyright Amendment Proclamation (n 4) Art 32(1)

¹⁰⁷ Council Directive 2014/26/EU of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, Art. 9 (herein after referred as council directive)

¹⁰⁸ It is also called regulated self-regulation and audited self-regulation

¹⁰⁹ Campbell, Angela J. (1999) "Self-Regulation and the Media," Federal Communications Law Journal: Vol. 51: Iss. 3, Article 11. Available at: <http://www.repository.law.indiana.edu/fclj/vol51/iss3/11>, p.714

¹¹⁰ Andreas Doelker, ‘ Self –Regulation and Co-regulation: Prospects and Boundaries in an Online Environment’ (Master of Laws, The University of British Columbia (Vancouver) 2010) p.5

arises, and for its design that completely fits the industry or profession.¹¹¹ Moreover, it is presumed to attract high compliance rate and shifts the cost of producing rules to the industry or profession itself.¹¹² Self-regulation is criticized for compromising public interest as experts may work for the profit of the company.¹¹³ In addition, there is a possibility of promoting business interest under the cover of self-regulation.¹¹⁴

Co-regulation, as the name indicates, combines state regulation with that of self-regulation. Co-regulation enables private sectors to administer their own affairs based on legally delegated power.¹¹⁵ Co-regulation can successfully be implemented when experts at the state level examine the soundness of the rule, check adherence to it and validate the accuracy of information provided to it.¹¹⁶

In Ethiopia, the law has left the structure of CMOs for possible determination by memorandum of associations of the CMOs.¹¹⁷ On the other hand, the draft CMO Regulations goes one step ahead and determines the structure of CMOs to include general assembly, board of directors, chief executive officer and other relevant employees.¹¹⁸ It further obliges CMOs to define the powers and duties of each organ.¹¹⁹ This is important because it may serve as a point of reference for EIPO to evaluate memorandum of associations of CMOs and standardize their governance structure thereby protecting the interest of right holders and users.

The structure of existing CMOs in Ethiopia comprises general assembly, board of directors, chief executive officer and auditor.¹²⁰ The practice of CMOs with regard to structural formation is in line with the draft CMO Regulations.

The Ethiopian copyright law and the draft CMO Regulations do not set a minimum standard on composition, size, role and responsibility of board of directors. It is expected that CMOs fill such gaps through their memorandum of associations. For instance, ECNRCMS has adopted a board of

¹¹¹ Campbell (n111), p.715

¹¹² Ibid

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ Doelker (n 112), p.6

¹¹⁶ Campbell (n 111) p.719

¹¹⁷ Copyright Amendment Proclamation (n 4) Art 32(4)

¹¹⁸ draft CMO Regulations (n 9) Art. 7(1)

¹¹⁹ draft CMO Regulations (n 9) Art. 7 (2)

¹²⁰ MoA of EMCNRCMS (n 70) Art 13(1); MoA of ECNRCMS (n 70) Art 23

directors composed of 13 right holders elected from its five sectoral units.¹²¹ Board members are elected in a secret ballot.¹²² Chairperson and deputy chairperson of the general assembly, electoral committees and election observers cannot be members of the board.¹²³ The power to elect board chairman and his deputy is vested with the general assembly as well as the board itself.¹²⁴ These are very confusing provisions. Such power should be given to one of the two organs. Office term of the board of directors is limited to four years and no member can serve beyond two terms.¹²⁵

Not all sectoral units have equal representation in the board.¹²⁶ Musical works, performers and sound recording works got the highest representation.¹²⁷ But ECNRCMS has no rule that determines how allotted seats are distributed within the same group. In the event that music publishers (in our case sound recording right holders) are member of CMOs, appropriate method is applied to prevent abuse of dominant position of music publisher.¹²⁸ One such instance of method of control is observed in the constitution of COSBOTS. It allocates different proportions of representation for the representatives of creators and performers on one hand and publishers and producers on the other.¹²⁹

Moreover, it is possible for a person to be a right holder of musical works, a performer, and a sound recording producer at the same time. If such right holder is elected for board membership, it might create conflict of interests. However, ECNRCMS has not defined what constitutes conflict of interests, nor does it oblige board members to disclose conflict of interest.

¹²¹MoA of ECNRCMS (n 70), Art 46 (1)(1.1); the five departments are musical, performers and sound recording producers; literature and related works; audiovisual /film; drama, theatre and stage plays; and photography and visual arts. Ibid, Art 37(2)

¹²²Ibid Art 46(3)(3.1)

¹²³Ibid Art 46(2)(2.1.2)

¹²⁴Ibid Art 33(1) and Art 37(3)

¹²⁵Ibid Art 38(5)

¹²⁶Ibid Art 46(1) (1.3); Right holders of Musical, performers and sound recording producers have got four (4) representation, right holders of literature and related works have got three (3) representation, right holders of Audiovisual /Film have got three (3) representation ; right holders of Drama, Theatre and stage plays have got two (2) representation; and right holders of Photography and Visual Arts have got one (1) representation. Ibid Art 37(2)

¹²⁷Ibid Art 46(1)(1.3)

¹²⁸ Ficsor (n 23) 133

¹²⁹Creators and performers will have at least one-half ($\frac{1}{2}$) of a seat in a board whereas the representatives of publishers and producers will have at least one-third ($\frac{1}{3}$) of a seat in a board. Constitution of Copyright Society of Botswana (herein after Constitution of COSBOTS), Section35

The board of directors of EMCNRCMS is composed of 11 right holders elected from 15 nominees¹³⁰ who are required to have basic knowledge of copyright and related right.¹³¹ Of the eleven seats of the board, songwriters and lyricists have three seats each, composers and performers have two seats each, and sound recording producers have one seat.¹³²

The same kind of disproportionate board representation is observed in the constitution of COSBOTS in Botswana. The board seat is divided among representatives of creators and performers that will have at least half of the seat in the board and representatives of publishers and producers that will have at least one-third of the seat.¹³³ The board of directors comprises of a representative of creators, performers, publishers, producers, and government department.¹³⁴ The government official in the board does not have voting right¹³⁵ and his presence in the board may help facilitate the task of COSBOTS especially where most works of right holders are consumed or used by a government-owned corporations. The board elects its own chair and vice-chair and either position should to composers, or authors, or performers.¹³⁶

On the other hand, the boards of COSOMA (Malawi) and COSOTA (Tanzania) are legally determined and comprise representatives of different government offices and that their association.¹³⁷ Board members are appointed by the minister responsible for copyright and neighbouring rights.¹³⁸ The appointment of board members becomes official when it is published in the Gazette.¹³⁹

Other matters that are left unregulated in the MoA of ECNRCMS are grounds of dismissal of the board member and mechanisms to fill vacancy in case of dismissal, resignation and leave of absence of a board member. Similar gap exists in the MoA of EMCNRCMS though two third of

¹³⁰ MoA of EMCNRCMS (n 70) Art 19 (2); Art 20 (4)

¹³¹ Ibid Art 20(2)

¹³² Ibid Art 19 (2)

¹³³ Constitution of COSBOTS (n 129) Section 35

¹³⁴ Ibid Section 36 and section 4 (4.3)

¹³⁵ Ibid

¹³⁶ Ibid Section 38

¹³⁷ Copyright Act of Malawi (n 71) Section 46(1) and schedule 46(1)(1) ; In Tanzania, Board members are Copyright Act of Tanzania (n 71) schedule under section 51(1)

¹³⁸ Ibid

¹³⁹ Copyright Act of Malawi (n 71) Schedule under 46(1) (1)(5)); Copyright Act of Tanzania (n 71), Schedule under Section 51(1) paragraph 1(5)

right holders can remove the board of directors on majority vote, grounds of removal of directors have not been specified. In Malawi and Tanzania the law defined grounds for dismissal or suspension of board members and provided for rules to fill vacancy.¹⁴⁰ The constitution of COSBOTS has specified grounds of disqualification of directors¹⁴¹ and excludes director's vote for conflict of interest although it does not provide for filling of vacancies.¹⁴²

In conclusion, Ethiopia seems to have adopted the approach of co-regulation when it comes to the governance structure of CMOs though the copyright law leaves much to be determined by the CMOs themselves. The draft CMO Regulations set out governance structure of CMOs framework, but it is not complete. ECNRCMS and EMCNRCMS have tried, in their constitutive documents, to regulate governance issues, but still left some issues unattended.

¹⁴⁰Copyright Act of Tanzania (n 71) Schedule under Section 51(1) paragraph 2(1)(2) and 3(1)(2); Copyright Act of Malawi (n 71) Schedule under Section 46(1) paragraph 2(1) and 3(1)

¹⁴¹ Constitution of COSBOTS (n 129) Section 54(a)

¹⁴² Ibid Section 54(b)

Chapter Three

Operation of Collective Management Organizations

Acquisition of Mandate

The role of a CMO is to act as a representative of right holders and to manage the various types of rights on their behalf. To do so, it must acquire the mandate to collect and create the repertory of works. A very critical stage in the operation of a CMO is securing this mandate. As Gervais said, “to a large extent, the credibility of CMOs vis-à-vis users depends on its ability to license the works and rights that users want.”¹⁴³

Under Ethiopian law, a CMO acquires the mandate to license the works of right holders in three different ways, namely, voluntary license, non-voluntary license, and reciprocal agreement. The paragraphs below explain each mode.

Acquisition of Mandate through Voluntary License

Voluntary license is a mechanism by which right holders willfully entrust a CMO to administer their exclusive rights on their behalf. This is done basically by way of assignment or license for purpose of collective administration.¹⁴⁴

Under Ethiopian law, the effect of an assignment of right is a transfer of ownership or sale.¹⁴⁵ The assignor will lose his/her ownership right over the work assigned; it is the assignee that will enjoy or exercise rights associated with ownership then after. Assigning rights to CMOs with such effect goes contrary to the purpose of CMOs. CMOs play an intermediary role between right holders and users by acting on behalf of right holders; and right holders by assigning their rights expect CMOs to administer rights on their behalf but not to own the rights for themselves. A contrario reading

¹⁴³ Daniel Gervais, *Collective Management of Copyright and Neighbouring rights in Canada: An international Perspective* (2001) 28

¹⁴⁴ Daniel Gervais, ‘Collective Management of Copyright: Theory and Practice in the Digital Age’ in Daniel Gervais (ed), *Collective Management of Copyright and Related Rights* (2nd ed, Kluwer Law International 2010; 6

¹⁴⁵ Civil Code (n 1) Art. 2266

of Art.17(4) of the draft CMO Regulations intends right holders to authorize a CMO to act on their behalf but not to transfer ownership.

The MoA of ECNRCMS requires members (right holders) to declare works along with associated rights and give consent for collective administration.¹⁴⁶ Such authorization does not forbid right holders neither to give simultaneous authorization of rights to other CMOs nor engage in parallel administration of rights.

In case of EMCNRCMS, members (right holders) are required to authorize EMCNRCMS their public performance right, broadcasting right, communication to public right and reproduction right upon approval of membership or anytime the Society so requests.¹⁴⁷ This restricts members' choice or preference. Right holders may only need to authorize EMCNRCMS one of the rights and maintain the other rights for their own administration or for delegation to another CMO. In other words, EMCNRCMS would force right holders to surrender all their rights in order to benefit from its service. This also contradicts another provision that requires right holders to notify EMCNRCMS of works and/or rights that they want it to administer.¹⁴⁸

Once the right holder lodges his/her membership request to EMCNRCMS or has got membership status, EMCNRCMS, by default, administers rights of such right holder until such time that formal transfer of rights is made.¹⁴⁹ Right administration is automatic in EMCNRCMS. Like ECNRCMS, EMCNRCMS does not forbid right holders neither to give simultaneous authorization of rights to other CMOs nor engaging in parallel administration of rights.

As far as parallel licensing is concerned, the draft CMOs Regulations clearly forbid members (right holders) from engaging in licensing of rights for commercial uses, which is the power of CMOs under the Copyright Proclamation (as amended).¹⁵⁰ There is no clear-cut line between commercial uses and non-commercial uses as neither of these terms is defined in the laws. This will pose a great challenge for the operation of CMOs unless it is regulated through a MoA of CMOs.

¹⁴⁶ MoA of ECNRCMS (n 70) Art. 10(1)(2)

¹⁴⁷ Ibid Art 11. (11.1)

¹⁴⁸ Ibid Art 10 (10.1)(10.2)

¹⁴⁹ Ibid Art 11 (11.4)

¹⁵⁰ draft CMO Regulations (n 9) Art. 17(3); Copyright Amendment Proclamation (n 4) Art. 34(1); Art. 38

There are two possible ways of defining the phrase ‘commercial uses’. A ‘commercial use’ may mean use made by traders or organizations formed for the purpose of profit under the Commercial Code.¹⁵¹ Second, reviewing the background laws of the Ethiopian Copyright law (as amended) and define the phrase ‘commercial uses’ contextually. In Botswana, for instance, royalty from musical work is collected from uses made by business establishments classified as essential, important and incidental users;¹⁵² in Malawi as well establishments that require license for public performance are business entities, meaning COSOMA is collecting royalty from business establishments that make public performance of music.¹⁵³

Interestingly, EMCNRCMS defines commercial users as any person who publicly performs, broadcast, communicates to the public music, and uses any other means to distribute and reproduce music for purpose of promotion of business.¹⁵⁴ Accordingly, EMCNRCMS makes it clear from whom it is going to demand royalty. Moreover, EIPO by authorizing EMCNRCMS, has accepted the definition given to commercial users. This, however, does not preclude a possible conflict that may arise in this respect.

With regard to parallel administration of rights by right holders, the constitution of copyright society of Botswana clearly forbids parallel administration of rights by members (right holders).¹⁵⁵

Assignment or Licensing for all Existing and Future Works of Right Holders

CMOs benefit from assignment or license of rights for all existing and future works of right holders to develop a large repertory. Having a large repertory makes right holders to benefit from its increased economic value of this repertory.¹⁵⁶

¹⁵¹ Commercial Code of the Empire of Ethiopia Proclamation, 1960, Art 5-10, Proc. No. 166, Gazette Extraordinary, Year 19

¹⁵² Essential Users are users whose business totally depend on music; important users are users whose business use music to lure customers to its business; incidental users are users who uses music to add value to the business by providing passive background entertainment. COSBOTS, Tariffs for the use of protected works (Music) as espoused by the copyright and neighbouring rights act cap 68:02 (hereafter COSBOTS Tariff), Section 1;

¹⁵³ Malawi Copyright (Licensing of Public Performances) Regulations under s. 56 G.N. 61/1994, Form App 1

¹⁵⁴ MoA of EMCNRCMS (n 70) Art 3 (3.17)

¹⁵⁵ Constitution of COSBOTS (n 129) Section (6)(A)

¹⁵⁶ Max Planck Institute for Intellectual Property and Competition Law, *Copyright, Competition and Development* (2013) 216 <http://www.wipo.int/export/sites/www/ip-competition/en/studies/copyright_competition_development.pdf> 240

So far there have been no laws that prevent assignment or license of rights for all existing and future works of right holders in Ethiopia. CMOs are at liberty to regulate such matter under their memorandum of association.

The Memorandum of Association of ECNRCMS along with its declaration form requires right holders to declare their work for possible administration by ECNRCMS whenever they create new works.¹⁵⁷ Member right holders cannot request royalty for works that they have not explicitly declared for administration.¹⁵⁸ In other words, declaration of work is a requirement for possible administration by ECNRCMS and there is no obligation to declare all the existing works unless members (right holders) want to dispose it to ECNRCMS. Being a member of ECNRCMS does not automatically entitle ECNRCMS to administer neither all existing nor future works of members (right holders).

Conversely, EMCNRCMS administers all existing and future works and/or rights of its members. Let alone membership status, lodging an application for membership automatically entitles EMCNRCMS to administer all existing and future works/rights.¹⁵⁹ EMCNRCMS will lose its administration power when membership terminates for any reason.¹⁶⁰

Administering all existing and future works of right holders is not unique to EMCNRCMS. In Botswana, for instance, COSBOTS has power to request members (right holders) to assign all existing and future works for collective administration.¹⁶¹

Effect of Assignment or License on Co-authors

A copyrighted work can be a product of several right holders having a distinct work in a jointly owned thing or a contribution of several right holders having equal or varying share on a distinct jointly owned thing. Ownership of such jointly owned work is upon all of the right holders.¹⁶²

¹⁵⁷ MOA of ECNRCMS (n 70) Art 20

¹⁵⁸ Ibid Art 21f

¹⁵⁹ MoA of EMCNRCMS (n 70) Art 11 (11.1) and (11.4)

¹⁶⁰ Ibid Art 12 (12.7)

¹⁶¹ Constitution of COSBOTS (129) Section 5

¹⁶² Copyright Amendment Proclamation (n 9) Art 21(2)

If ownership of a jointly owned work is upon all of the right holders, what will be the effect of assignment of right made to a CMO by one of the joint owners?

The Ethiopian copyright proclamation (as amended) does not govern the effect of assignment or license on co-authors if the other co-author authorizes a CMO to administer a jointly owned right. Article 1668(2) of the Civil Code on literary and artistic work requires a common agreement between authors to authorize a CMO to administer a jointly owned right. However, right holders are not obliged to secure the consent of the other co-owners with respect to separate utilization of a contributed work yet with precaution not to negatively affect the exploitation of a common work.¹⁶³

What if several right holders contribute for a production of a distinct work having equal or varying share on the thing produced? Applying the above provision *mutatis mutandis* to this scenario, the right holders can make utilization of their share on the work as long as it is exploitable separately, and it does not hinder the exploitation of a common work. Still, the utilization of a common work is upon the consent of all the right holders. Then, how is an assignment or license of a jointly owned work governed if it is made by one of the right holders? Article 1668(3) offered no solution. On the other hand Article 1265(2) of the Civil Code provides that decision concerning the administration of jointly owned thing is taken by majority votes of owners representing majority share. Thus, CMOs are expected to make sure that the right holder of a distinct work secures majority votes of owners representing majority share before engaging to administer such right so as to avoid possible dispute.

¹⁶³Civil Code (n 1) Art 1668 (3)

Other jurisdictions allow CMOs through the system of ‘legal presumption’¹⁶⁴ or ‘extended collective management’¹⁶⁵ to license works of non-member rights holders.¹⁶⁶ Ethiopian law has adopted neither system. Besides, the draft CMO Regulations clearly prohibits granting a license of works and /or collecting and/or distributing or purporting to collect and/or distribute royalties with respects to works for which a CMO is not authorized to administer.¹⁶⁷ Furthermore, the act of administering rights that are not entrusted to a CMO by the rights holders is considered as unethical practice and attracts penalty.¹⁶⁸

Other Concerns

A CMO administers rights of founding members as well as right holders who have acceded to it. But a CMO is not legally obliged to accept new members, nor is it bound to administer the rights of non-members. This raises the issue of availing protection for right holders whose application for membership to an existing CMO is rejected unreasonably. ECNRCMS allows right holders whose application is rejected to submit their grievance to its own board for review.¹⁶⁹ They can lodge petition to EIPO if they are not satisfied by the board’s decision.¹⁷⁰ However, EIPO establishment proclamation does not authorize it to hear such matters referred to it from CMO thus EIPO can refuse to hear such cases or its decision on the case may not be binding. So far, ECNRCMS has not rejected right holders membership application.¹⁷¹

¹⁶⁴ Presumption is made that CMO has secured the necessary authorization from right holders to license works. Thus, the burden of proof is on the users to show that it has no power to license a right. Right holders have to approach CMO in case of claimed infringement. Ficsor, ‘Collective Management of Copyright and Related Rights in the Digital, Networked Environment: Voluntary, Presumption-Based, Extended, Mandatory, Possible, Inevitable?’ in Daniel Gervais (ed) *Collective Management of Copyright and Related Rights* (KLUWER LAW INTERNATIONAL 2006) 47

¹⁶⁵ Extended collective management is a system by which CMO administer the rights of non-member right holders on condition that it sufficiently represent right holders of the same group in the same category of right, equally remunerate non-member right holders with that of those members right holders who have similar works, and provides manageable opting out mechanisms. Tarja Koskinen-Olsson, ‘Collective Management in the Nordic Countries’ in Daniel Gervais (ed) *Collective Management of Copyright and Related Rights* (Kluwer International Law 2006) 266

¹⁶⁶Ficsor (n 164)

¹⁶⁷draft CMO Regulations (n 9) Art 28(1)(3)

¹⁶⁸ Ibid Art 28(1); Art. 29

¹⁶⁹ MoA of ECNRCMS (70) Art 11 (2)

¹⁷⁰ Ibid

¹⁷¹ Interview with Tewedaj (n 50)

The draft CMO Regulations stipulates that CMOs shall be open for new members as long as they meet requirements of one of the preconditions for a formation of CMO.¹⁷² But extending a formational precondition to new members' admission unnecessarily complicates the admission process.

Acquisition of Mandate through Non-Voluntary License

Non-voluntary license is a mechanism by which users are allowed to use a copyrighted work with a certain fee without securing the right holders' consent.¹⁷³ It is a limitation on the exclusive right of right holders.¹⁷⁴ There are two ways of acquisition of mandate through non-voluntary license: statutory license and compulsory license.¹⁷⁵

Statutory license allows users to use the protected work by paying a statutory compensation to collecting societies without the need to secure license from the right holders.¹⁷⁶ The status of the right holders (whether or not they are members of a certain CMO) is irrelevant.¹⁷⁷

Compulsory license is essentially the same as a statutory license except that tariff is set through negotiation between users and right holders.¹⁷⁸ Compulsory license is an exception and arises only when there is no other way to use a protected work.

Ethiopian law does not expressly allow a CMO to administer rights that it is not authorized to do so by the right holders. One possible area where a CMO can operate on the basis of non-voluntary license is resale right of authors' original work of art or original manuscript of a writer or a composer.¹⁷⁹ The resale right makes visual artists to benefit from a portion of the selling price of all successive commercial re-sales of their artwork.¹⁸⁰

¹⁷² draft CMO Regulations (n 9) Art 17(2)

¹⁷³ WIPO, *Understanding Copyright and related Rights* (WIPO Publication, 2nd edition) 2016 17

¹⁷⁴ Under Berne Convention Article 11*bis*(2) and Article 13(1) it is a matter for legislation in the countries of the Berne Union to determine the conditions under which certain exclusive rights may be exercised. Such limitation should not, however, be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration.

¹⁷⁵ WIPO (173)

¹⁷⁶ Rochelandet (n 31) 3

¹⁷⁷ Ibid

¹⁷⁸ Ibid

¹⁷⁹ Copyright Proclamation (n 9) Art 7(3)

¹⁸⁰ Anthony O'Dwyer, *The Artists' Resale Right: The Greatest Good*, 3 *Edinburgh Student L. Rev.* 129 (2016) 130

Resale right is recognized in Ethiopia but its implementation is awaiting regulations.¹⁸¹ For example, ECNRCMS explicitly excluded the administration of resale right from its operational realm¹⁸²; invoking the absence of such regulation.¹⁸³

Acquisition of Mandate through Reciprocal Agreement

A CMO can collect royalty from users of works protected abroad.¹⁸⁴ The mandate of a CMO to license works protected abroad emanates from reciprocal agreement. It is a means by which CMOs secure the protection of their repertoires in another State by a CMO operating there without being obliged to add to that organization their own network of contracts with users and their own local monitoring arrangements.¹⁸⁵ The draft CMO Regulations clearly provide for this power.¹⁸⁶ This arrangement is very beneficiary for the users as they can access foreign works without difficulty within their national boundary. Nonetheless, not all foreign works are protected in Ethiopia; the country is not party to international convention, like Berne Convention in this respect either.¹⁸⁷ Thus, CMOs in Ethiopia will only benefit from reciprocal agreement to the extent of protection granted to foreign works at national level.

Tariff Setting and Licensing of Works

Once a CMO acquires the mandate to license works, it resorts to users to license works under its repertory. Usually, licensing is done on work-by-work basis¹⁸⁸ or blanket licensing.¹⁸⁹ A CMO has to set a tariff for usage of works under its repertory in either of the two forms.

¹⁸¹ Copyright Proclamation (n 2) Art. 7(3)

¹⁸² AoA of ECNRCMS (n 66) Art.8 (8.2)(8.2.5)

¹⁸³ Interview with Ato Getnet Yeshaneh, Attorney and Consultant (Addis Ababa, 01 January 2019)

¹⁸⁴ Copyright Amendment Proclamation (n 9) Art 34(1)

¹⁸⁵ Lucie b Guibault and Stef van Gompel, 'Collective Management in the European Union,' in Daniel Gervias (ed) *Collective Management of Copyright and Related Rights* (2nd edn, KLUWER LAW INTERNATIONAL 2006) 144

¹⁸⁶ draft CMO regulations (n 9) under Art 6(2)

¹⁸⁷ According to Art.3 of Copyright Proclamation, protection is given for works of authors who are nationals of, or have their principal residence in Ethiopia, works first published in Ethiopia and, works first published abroad and also published in Ethiopia within 30 days, irrespective of the nationality or residence of their authors and for works that are eligible for protection in Ethiopia by virtue of and in accordance with any international convention or other international agreement to which Ethiopia is a party.

¹⁸⁸ Work-by-work license deals with specific uses of a particular work, in a defined context, for a specified time. Daniel Gervais, (n 143) 9

¹⁸⁹ Blanket license is a licensing mechanism by which the user is entitled to make use of any or all works or other protected materials in the organization's repertoire for the purpose, and within the period indicated in the license. Glenn A. Clark, Blanket Licensing: The Clash between Copyright Protection and the Sherman Act, 55Notre Dame L. Rev.729 (1980) 732 <<http://scholarship.law.nd.edu/ndlr/vol55/iss5/5>> accessed 18 May 2018

Setting tariff requires various parameters to be taken into account, such as the economic value of the use of the rights in trade, the nature and scope of the use, as well as the economic value of the service provided by a CMO.¹⁹⁰ In Botswana a CMO is obliged to take into account acceptable international standards;¹⁹¹ and tariff rate for musical works, for instance, is set based on the value the usage of a music adds to user's business where users are classified as essential, important and incidental.¹⁹²

In Ethiopia it is the duty of a CMO to prepare and submit to EIPO a royalty scheme taking into account the country's objective reality.¹⁹³ In this connection, Article 24(2) of the draft CMO Regulations provides that the EIPO shall prepare a working manual for royalty scheme preparation and submission. As the actual tariff development requires the consideration of national, regional, continental, and international best practice, the unique local conditions applicable in the particular jurisdiction are important.¹⁹⁴ The support of EIPO from the very stage of royalty scheme development till the approval of the same will greatly contribute to take into account the national reality under consideration.

Most of European countries¹⁹⁵ copyright act oblige CMOs to negotiate with users or users associations during tariff setting procedure.¹⁹⁶ In Ethiopia, users have no role during royalty scheme development process. This puts greater responsibility on EIPO as a government body to balance the right holders' interest in remuneration and the users' interest to access works with less cost.

CMOs in Ethiopia have not yet submitted royalty schemes for EIPO's approval.¹⁹⁷

Licensing of Use by CMOs

¹⁹⁰ Art. 16(2)(2) and Recital 31 of Directive 2014/26/EU

¹⁹¹ Copyright Act of Botswana (n 72) Section 36(A)(2)(b)

¹⁹² COSBOTS Tariff (158) 6

¹⁹³ Copyright Amendment Proclamation (n 9) Art.34(2)

¹⁹⁴ Robert Hooijer and J. Joel Baloyi *Collective Management Organizations – Tool Kit, Musical Works and Audio-Visual Works* (WIPO Publication 2016) 45

¹⁹⁵ For instance, Hungary, Germany, Slovakia, Czech Republic, Romania, Bulgaria, Estonia, Lithuania, Latvia, Slovenia

¹⁹⁶ Romana Matanovac Vuckovic, Remunerations for Authors and Other Creators in Collective Management of Copyright and Related Rights, 66 Zbornik PFZ 35 (2016) 41-51 < <https://hrcak.srce.hr/file/232264>>

¹⁹⁷ Interview with Addis Seyoum, CMO follow up and support team leader , EIPO (Addis Ababa, 29 April 2020)

Once tariff is set for possible use of works, the next task of a CMO will be authorizing users for use of its repertory. It is at this stage that the relationship between users and a CMO is established. The Ethiopian copyright law (as amended) has failed to mandatorily require CMOs to license the use of works they administer. The draft CMO Regulations provides that CMOs are obliged to respond in writing to users' request within 15 days of receipt of request.¹⁹⁸ It also allows users to petition a court against a CMO's decision or for not receiving a response within 15 days.¹⁹⁹ This deters CMOs from arbitrary denial of services which is especially important in the event a CMO assumes a *de facto* monopoly.

The draft CMO Regulations further provides for non-discrimination of users either on licensing term or license tariff.²⁰⁰

Distribution of Royalty by CMOs

Accurate distribution of royalty to right holders by CMOs requires proper documentation of works, right holders and uses made of the works by licensees.²⁰¹ Each CMO needs to have rules that show how royalty is distributed among members.²⁰² In principle, royalties collected must be allocated to those owners whose works have been utilized on the basis of usage reports but this is not always feasible. Thus, CMOs base their distribution on statistically obtained data.²⁰³ They obtain usage data from users by way of full or partial reporting.²⁰⁴ Then, they match usage report with documentation on works and right holders. The matching process may reveal works which are not in the database of a CMO. The treatment of such unknown works is left for the CMO. Some CMOs remove the unknown works from the list of works used and thereby increase right holders of known

¹⁹⁸ draft CMO Regulations (n 9) Art 19 (3)

¹⁹⁹ Ibid Art 19 (4)

²⁰⁰ Ibid Art 28(2)

²⁰¹ Paul Berry, *An Introduction to Collective Management of Copyright and Related Rights: A Regional Approach*, WIPO Seminar on Collective Management of Copyright and Related Rights for OECS Countries (WIPO, 1999) 14-15

²⁰² Hooijer and Baloyi (n 200) 197

²⁰³ Tarja Koskinen- Olsson and Nicholas Lowe, *Educational Material on Collective Management of Copyright and Related Rights Module 1: General Aspects of Collective Management* (WIPO Publication 2012) 51; Tiang (n 100) 13

²⁰⁴ Koskinen-Olsson and Lowe (n 203) 51. Full reporting (users document every use of a copyright work), partial reporting (users document exploitation for a specified period of time or observation of usage is made for a certain period of time then this sample data is generalized to all the members through statistical methods. Ibid.

works remuneration; others immediately include the unknown works into their database with its state of documentation.²⁰⁵

Once the matching process is completed, royalty due to each right holder is calculated based on the distribution rule of each CMO. There are two ways of distributing royalty: direct payment to right holders, and bringing certain utilized works under same group or pool.²⁰⁶ In calculating royalty, differential treatment of works or performance is possible by assigning weights or values to different factors, for instance, performance time.²⁰⁷

Ang Kwee Tiang observed that “the distribution of royalties... is the most tangible manifestation of the effectiveness of collective management as a concept and of the collective management organization itself”.²⁰⁸ Thus, great precaution is required in formulating distribution rule. Moreover, distribution rules have to be clear and simple as much as possible to avoid possible dispute among right holders.²⁰⁹

In Botswana, for instance, by collecting usage report from the various categories of users, a CMO makes distribution of royalties for musical works based on the amount of time in which the musical work was aired.²¹⁰ The duration of usage of each work determines the royalty to be allocated to the work.²¹¹

In Ethiopian, CMOs have the duty to prepare manual for collection and distribution of royalty and implement same after approval by EIPO.²¹² The draft CMO Regulations obliges the EIPO to prepare a working manual for royalty collection and distribution.²¹³ It also obliges CMOs to distribute royalty based on type and amount of actual usage of work and in line with royalty

²⁰⁵ Ulrich Uchtenhagen, *Copyright Collective Management in Music* (Wipo Publication No. 789(E)) 93

²⁰⁶ Berry (n 201) 21

²⁰⁷ Ibid 18; Uchtenhagen (n 205) 86. Performances at night may be weighted lower than performances during the day because night-time audiences are typically smaller.

²⁰⁸ Tiang (n 100) 12

²⁰⁹ Uchtenhagen (n 205) 20

²¹⁰ Copyright Society of Botswana, Annual Report Year 2011/12, p. 12; The Monitor <<https://www.mmegi.bw/index.php?aid=73602&dir=2017/december/11>>

²¹¹ Ibid

²¹² Copyright Amendment Proclamation (n 9) Art 34(3); MoA of ECNRCMS (n 70) Art 30(3)

²¹³ draft CMO Regulations (n 9) Art 25(3)(4) 6(7)

distribution manual within 24 months after establishment, and once in a budget year then after.²¹⁴ This helps avoid unnecessary delay of royalty distribution.

ECNRCMS undertakes to distribute royalty at least a month ahead of the closure of a budget year.²¹⁵ However, if a dispute arises on the right administered and royalty collected, and ECNRCMS could not distribute royalty as a result, the amount shall be deposited in the bank account opened jointly in its and EIPO.²¹⁶ However, ECNRCMS has not developed royalty collection and distribution manual. Though these provisions are not yet tested in practice, having such framework in view of the absence of a regulatory framework in the Ethiopian copyright law (as amended) is quite commendable.

The other point worth mentioning here is that a CMO may receive report of the exploitation of works not belonging to its repertory.²¹⁷ This will create a situation whereby a CMO collect royalty for unknown works. The fate of such collection is not governed under our copyright law. However, the draft CMO Regulations prohibits collecting and/or distributing or purporting to collect and/or distribute royalties with respects to works for which a CMO has not been authorized to administer.²¹⁸ This hinders the operation of CMOs unless the administration of unknown works is somehow permitted.

Dispute Resolution Mechanisms

Disputes may arise at both layers of transaction, namely right holders versus a CMO, and users versus a CMO. These complex transactions need to have efficient means of resolving disputes.

States differ in the ways of settling disputes and on the scope of coverage of subject-matters. In European Union, for instance, only Hungary, Portugal and Slovakia provide dispute settlement mechanism for conflicts between members and the collecting society.²¹⁹ For disputes arising

²¹⁴ draft CMO Regulations (n 9) Art 25 (3) 6(7)

²¹⁵ MOA of ECNRCMS (n 70) Art 60(1)(2)

²¹⁶ MoA of ECNRCMS (n 70) Art 60(3)

²¹⁷ A good example for this is a broadcast log that shows usage of works

²¹⁸ draft CMO Regulations (n 9) Art. 28(1)(3)

²¹⁹ The dispute settlement mechanisms are supervision board (Hungary), mediation (Portugal), distribution rules (Slovakia). KEA European Affairs, *The Collective Management of Rights in Europe; The Quest for Efficiency* (July 2006) <http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/study-collective-management-rights-/study-collective-management-rights-en.pdf> 81

between users and CMOs, except in Slovakia where no ad hoc or general mediation procedure is provided to solve disputes, others go for mediation/arbitration procedure.²²⁰

In the United States of America, disputes, whether they are between right holders and CMO, or between users and CMO, are settled by federal court.²²¹

In Botswana, settlement of dispute under the copyright act is bestowed to the copyright arbitration panel which is composed of not less than three but not more than five persons.²²² The chairperson of the panel should be authorized attorney with a minimum of 7 years experiences or a person who has held judicial office in Botswana²²³ while other members are required to be knowledgeable in the field of copyright.²²⁴ No member is allowed to sit in any case in which he has conflict of interests.²²⁵

In Ethiopia, except cases related to extra-contractual liability, the Intellectual Property Tribunal, which is to be established under the auspice of EIPO, has power of adjudication of civil cases arising in relation to the Copyright Proclamation (as amended).²²⁶ Similarly, the draft CMO Regulations vested the power of adjudication of civil cases arising in relation to the Regulations to the Intellectual Property Tribunal.²²⁷ The federal high court have appellate jurisdiction on question of law.²²⁸

The Tribunal is not yet established in Ethiopia though there are efforts to this effect.²²⁹ Once established, it is expected to handle cases that arise between a CMO and users, or cases arising from reciprocal agreement concluded by a CMO, and disputes arising among right holders.²³⁰ The composition of the tribunal, the qualification, removal and term of its members have not been

²²⁰ Ibid 83

²²¹ Gervais (n 143) 49

²²² Botswana Copyright Act (72) Section 33A (2)

²²³ Ibid Section 33A (2) (3)

²²⁴ Ibid Section 33A (2) (4)

²²⁵ Ibid Section 33A (2) (5)

²²⁶ Copyright Amendment Proclamation (n 4) Art 44(1); draft CMO Regulations (n 9) Art 32

²²⁷ draft CMO Regulations (n 9) Art 27(3); Art 32

²²⁸ Copyright Amendment Proclamation (n 4) Art 44 (2)

²²⁹ Interview with Dereje (n 5)

²³⁰ Copyright Amendment Proclamation (n 4) Art 44(1); draft CMO Regulations (n 9) Art 32

provided for in the law although it is envisaged that its members comprise technical experts and lawyers.²³¹

²³¹ Drafter's explanatory note (n 16) 8

Chapter Four

Supervision of Collective Management Organizations

Through facilitating public access to copyrighted works, CMOs serve public interest; thereby contribute for the development of creative works and culture in a nation.²³² This calls for the involvement of government to support in the establishment and operation of CMOs.²³³ On the other hand, a CMO assumes *de facto* monopoly in each field of copyrights which warrants government's involvement to supervise such monopoly.²³⁴

States, either through sector-specific regulations, or through competition law, regulate the conduct of CMOs though with a varying degree of control.²³⁵ The different supervisory approaches are discussed hereunder.

i. Strict Supervision

In this case supervision by a competent government office starts from the very granting of authorization of establishment and remains throughout the operation of a CMO.²³⁶

Such supervisory mechanism protects both right holders and users even before the formation of a CMO by checking beforehand the representativeness of the organization in the category of right holders it seeks to represent, the number of potential users, the suitability of its status, and the mechanisms devised to accomplish its purpose both nationally and internationally.²³⁷ It also ensures that a CMO does not abuse its dominant power vis-à-vis right holders and users.²³⁸ Further, it guarantees that disputes with respect to tariff and licensing conditions are amicably settled by arbitration.²³⁹

ii. Intermediate Supervision

²³² Tiang (n 100) 14

²³³ Ibid

²³⁴ Ibid

²³⁵ Ibid

²³⁶ Guibault and Gompel (n 185) 128-129

²³⁷ International Confederation of Societies of Authors and Composers, 'The Supervision of Collective Management Organisations' <www.cisac.org> accessed 15 May 2018 2-3

²³⁸ Guibault and Gompel (n 185) 128-129

²³⁹ Ibid

Supervision is limited to the operation of CMOs. Basically, administrative body imposes a number of requirements of transparency and accountability on CMOs to protect the interest of right holders and users.²⁴⁰

iii. *De minimis* Supervision

Supervision is essentially limited to tariffs; the establishment and running of CMOs are not regulated.²⁴¹ Such controlling system is characterized by the absence of specific control, i.e., only competition and contract laws apply to CMOs.²⁴²

The Ethiopian Approach

Ethiopia follows ‘Strict Supervision’ approach as the EIPO supervises CMOs all the way from authorization of establishment till their dissolution. The supervisory processes of the EIPO are discussed below.

Authorization of Establishment

The blessing of EIPO is mandatory for CMOs in Ethiopia.²⁴³ This is because only well constituted bodies should be allowed to operate CMOs.²⁴⁴

As a result, EIPO checks the following before it recognizes a CMO:

1. Description of the types of-members' creative works.²⁴⁵ This shows the representativeness of the CMO in their respective works.
2. Internal rules of regulations.²⁴⁶ This indicates whether the objectives of the CMO are within the ambit of the law and depicts CMO's relation vis-a-vis right holders and users.

²⁴⁰ Ibid

²⁴¹ Ibid

²⁴² Rochelandet (n 31) 5

²⁴³ Copyright Amendment Proclamation (n 4) Art 32(2)

²⁴⁴ Tiang (n 100) 8

²⁴⁵ Copyright Amendment Proclamation (n 4) Art 33(1)(a); draft CMO Regulations (n 9) Art 11(3) (f)

²⁴⁶ draft CMO Regulations (n 9) Art 11(3) (a) further requires that such document should consist name and address of the CMO, the objectives of the CMO, and the scope of administered right.

3. Memorandum of association.²⁴⁷This helps the supervisory organ to evaluate whether the CMO has:
 - i. adopted a structure, power and duties envisaged under the law;²⁴⁸
 - ii. undertaken to administer works or rights that fall for joint management under copyright law;²⁴⁹
 - iii. a reasonable corporate governance structure;²⁵⁰
 - iv. legitimate source of income and the manner of its administration;²⁵¹
 - v. a decision making process allows right holders to play their role;²⁵²
 - vi. adopted amendment procedure that protects the interest of the right holders.²⁵³

The above points have paramount importance in securing right holders participation in the governance of a CMO and promote transparency, which in turn, safeguard right holders from possible abuse of monopolistic power of CMO.

Other preconditions stipulated in the draft CMO Regulations are:

- i. A minimum of 180 members to set up a CMO.²⁵⁴ This helps to avoid frequent rise and fall of CMOs and serves as reference if extended right management system will be introduced into Ethiopian copyright law in the future.
- ii. Non-discrimination: Membership should not based on the ground of race, nation, nationality or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.²⁵⁵ This safeguards right holders.

²⁴⁷Ibid, Art. 11 (3) (b) explicitly provided matters to be covered under memorandum of association.

²⁴⁸ Ibid, Art 7(1) requires that a CMO should consist of General assembly, Board of Directors, Chief of Executive and other relevant employees; Art. 6 outline power and duties of the CMOs; Copyrights Amendment Proclamation (n 4) Art 34.

²⁴⁹Ibid, Art 11(3)(b)(iii) (iv)

²⁵⁰ Ibid, Art. 7(1) requires that a CMO should consist of General assembly, Board of Directors, Chief of Executive and other relevant employees

²⁵¹ Copyright Amendment Proclamation (n 4) Art 35; draft CMO Regulations (n 9) Art. 11(3)(viii)

²⁵² draft CMO Regulations (n 9) Art. 11(3)(ix)

²⁵³ Ibid Art.11(3)(xi)

²⁵⁴ Ibid Art.10(2)

²⁵⁵ Ibid Art 16(1)

On the other hand, the EIPO should evaluate the memorandum of association of CMOs to see for any possible potential rule that put certain requirements for right holders to join CMOs. For instance, the memorandum of association of EMCNRCMS has a provision that require right holders to authorize EMCNRCMS to administer all existing rights.²⁵⁶ This provision, in effect, will not open EMCNRCMS service door to all right holders; right holders who do not want to authorize all of their existing rights will systematically left out.

Supervision of the Operation

The EIPO supervises the management of a CMO by the following instruments:

a. Approving tariff, method of collection, and distribution of royalty

Licensing of copyrights to users is one of the fundamental tasks of CMOs by which users and CMOs establish relationship. Under copyright law, users do not have role in setting tariff. Thus, unless tariff is regulated, users will most likely suffer monopolistic abuse of CMOs. EIPO, by approving tariff, protects the interest of users.²⁵⁷

b. Approving method of collection and distribution of royalty

One of the tasks of CMOs that affect right holders is collection and distribution of royalty. By approving method of collection and distribution, the EIPO protects the interest of right holders.²⁵⁸

c. Budgetary control

CMOs are established on a trustee basis. The administration of right is bestowed on them exclusively for the interest of right holders. Thus, they cannot allocate more than 30% of the royalty collected as an administrative expense.²⁵⁹ Through budgetary control, the EIPO protects the interest of right holders.

²⁵⁶ MoA of EMCNRCMS (n 70) Art 11(11.1)

²⁵⁷ Copyright Amendment Proclamation (n 4) Art34(2)

²⁵⁸ Ibid Art 34(3)

²⁵⁹ Ibid Art 35(3)

d. Approving category of works for which royalty payment is to be made and list of users subject to pay royalty

Though commercial users are obliged to pay royalty by law, EIPO should approve list of commercial users that CMOs can engage with.²⁶⁰

e. Requesting performance report

By requesting performance report, the EIPO ascertains that CMOs are functioning within their legal limit and rectify problems at early stage.²⁶¹

f. Examining audited financial report²⁶²

It enables the EIPO to check whether the administrative expenses fall under the legal limit and disbursement of royalty is made within the time framework stipulated under the law.²⁶³ Moreover, it shows any discrepancy or illegal practice.

g. Taking administrative measures

If CMOs are engaged in unauthorized licensing, discriminating users on the basis of licensing terms,²⁶⁴ and engaged or purport to engage in unauthorized collection and distribution of royalty,²⁶⁵ EIPO takes measures ranging from warning to revocation of certificate of registration.²⁶⁶

h. Revocation of recognition

²⁶⁰ Ibid Art.38(2)

²⁶¹ Copyright Amendment Proclamation (n 4) Art 34(8)

²⁶² Ibid Art 36(3)

²⁶³ draft CMO Regulations (n 9) Art 25(2) CMOs should disburse royalty within 24 months after authorization to operate

²⁶⁴ Ibid Art 19(2); Art 28 (2)(3)

²⁶⁵ Ibid Art 28(2)(3)

²⁶⁶ Ibid Art 29

The EIPO revokes a CMO's certificate of registration if the latter is found acting contrary to its powers and duties,²⁶⁷ or engaging in an unauthorized licensing, collecting and distributing of royalty, or discriminating users unwarrantedly and has failed to rectify these misdeeds.²⁶⁸

Finally, it should be remarked that the supervisory power of the EIPO has not been fully exercised as the two Ethiopian CMOs, i.e., ECNRCMS and EMCNRCMS, have not yet started licensing works to users.²⁶⁹

²⁶⁷Copyright Amendment Proclamation (n 4) Art 37

²⁶⁸ draft CMO Regulations (n 9) Art 29

²⁶⁹ Interview with Addis (n 197)

Conclusion and Recommendations

Utilizing right holders work without securing their authorization is a common phenomenon in Ethiopia. This is because individual management of rights is difficult or at times impossible. Such problem is not unique to Ethiopia, though. It was prevalent even in the developed world till the advent of the concept of collective management that has helped overcome the difficulty or impossibility of individual management of rights through the institution of collective management organizations (CMOs). The CMOs play intermediary role between right holders and end users, thus minimize transaction costs associated with identifying the right holder, negotiating licensing terms, monitoring usage, and enforcing rights. As a result, CMOs protect the interests of right holders and users at the same time, i.e., allowing end users to access copyrighted work, and helping right holders collect remuneration efficiently.

Collective administration of rights is a recent phenomenon to the Ethiopian legal system. It was introduced in 2014 with the Copyright and Neighboring Rights Protection (Amendment) Proclamation No.872/2014.

This Proclamation has set out preconditions for the formation of CMOs. Of these preconditions, the requirement that right holders should come up with “sector association” has posed a serious challenge for the formation of CMOs. The Proclamation does not define the term “sector association,” and thus has opened room for different understandings of the term. As a result, it took three years, after the promulgation of the Proclamation, for the formation of the ECNRCMS and additional almost three years for the EMCNRCMS to establish. In both cases, EIPO merely considered “professional associations” for purpose of fulfilling the requirement of “sector association”, thereby, practically shifted the requirement of “sector associations” to “associations”. Though such delimitation had not impacted the formation of multi-disciplinary association in the case ECNRCMS, it has risked the formation of multi-disciplinary CMO in the EMCNRCMS. The draft CMO Regulations, on the other hand, has defined the term “sector association” contrary to the spirit of the proclamation first, by requiring two professional associations to bring up a sector association, which in effect, demands six professional associations for the formation of a CMO; second, by narrowing what the Proclamation supports which is multiple CMO.

The Proclamation supports competitive atmosphere. As a result, currently there are two CMOs that administer same rights with respect to musical work. In a country where a single musical work attracts various right holders allowing competing CMOs for the same right will deter the development of CMOs. Moreover, CMOs have to determine their governance structure. Though the draft CMO Regulations set out CMOs structural framework, leaving all the details to CMOs has left some governance issues for instance, grounds of dismissal of the board member, unattended.

Right holders are required under the Proclamation to mandate CMOs to act on their behalf with regard to the administration of their right. Such authorization can be made on the basis of exclusive or non-exclusive license. The Proclamation does not regulate such matters. This will most likely burden users on the sphere of competing CMOs.

The draft CMO Regulations, rather than obliging CMOs to administer rights for all right holders who seek their service, extends the formational requirements to the right holders who want to join CMO after formation. This discourages right holders to join CMOs and gives room for CMOs to discriminate between right holders. Similarly, neither the Proclamation nor the draft CMO Regulations obliges CMOs to license works under their repertory. Thus, it opens room for CMOs to discriminate between users on licensing terms.

One possible area in which CMOs administer rights without securing right holders consent is the case of re-sale right. Alas, the absence of implementing law makes CMOs dysfunctional in this respect.

CMOs may receive, during their operations, report on the exploitation of works that do not belong to its repertory but utilized by users. Neither the Proclamation nor the draft CMO Regulations addressed the issue of the administration of unknown works by CMOs. Rather, the draft CMO Regulations strictly forbid the collection and/or distribution of royalties that CMOs have not been authorized to administer. If the administration of unknown works is not regulated one or other way, it will pose a great challenge to the operation of CMOs.

The Proclamation has granted the power to adjudicate disputes that arise between a CMO and users, and disputes among right holders to the Intellectual Property Tribunal. Despite the fact that

the ECNRCMS has become operational almost since the last three years, the Tribunal is not yet established. This will have effect on the proper settlement of disputes.

CMOs are regulated by EIPO. EIPO's regulatory power covers all issues from formation to dissolution of CMOs. It reviews memorandum and articles of association of CMOs and examines whether requirements of the Proclamation are complied with. However, EIPO has not yet adopted detailed guidelines with which it exercises its supervisory role uniformly and efficiently. These matters are left for the personal understanding of individual employee processing a given application which might lead to arbitrariness.

The introduction of collective administration of copyrighted works and subsequent establishment of CMOs are steps forward. However, there is still far to go to fully realize the benefits. This is due to the incompleteness of the law on certain aspects CMOs; either there are no specific rules on some issues, or it only partially addresses them.

Thus, the following major legal reforms are recommended to be introduced by way of further amendment to the Copyright and Neighboring Rights Proclamation No 872/2015 and/or inclusion in the draft CMOs Regulations before it is adopted :

1. Formation of CMOs:

- a. The concept of “sector association” needs to be clearly defined in the Proclamation, or the draft CMOs Regulation has to define it consistently with the Proclamation, meaning by;
- b. The draft CMOs Regulations should include provision regarding prohibition of multiple CMOs for the same category of rights;
- c. The draft CMO Regulations should set minimum governance standards or a directive should be issued by which EIPO is to check whether minimum governance standards have been met by CMOs before granting them license.

2. The Relationship between right holders and CMOs:

- a. The provision in the draft CMO Regulations that extend formational requirements for new membership admission should be taken out.
- b. The Proclamation should be amended to introduce rules that regulate scope of transfer of rights, duration of transfer, restrictions on the economic freedom of right holders, the effect of transfer of right on the co-authors, and transfer of future rights.

- c. The Proclamation should be amended to introduce rules that oblige collective management organizations to administer rights as requested unless the administration of such rights renders collective management organization inefficient.
- d. The draft CMOs Regulations should prohibit simultaneous administration of rights.

3. The Relationship between CMOs and end users:

- a. The Proclamation should introduce legal rules that oblige CMOs to license without discriminating users on licensing terms.

4. Dispute settlement:

- a. The Proclamation should introduce rules on the composition of members of the Intellectual Property Tribunal, their qualification, terms of office and removal;

5. Management of rights of non-members right holders:

The Proclamation should introduce rules on extended management system for administration of rights of non-members rights holders. However, sufficient controlling mechanisms along with the option of opting out of right holders should be designed.

6. Management of resale rights:

The Proclamation should introduce rules on:

- a. Resale rights, and conditions under which the rights do not apply;
- b. Who is obliged to pay royalty;
- c. The methods of calculation of resale royalty;
- d. Certain threshold price below which the resale right is not applicable, and
- e. How right of information is regulated.

7. The Ethiopian Intellectual Property Office

The Office needs to take the following measures as a matter of urgency:

- a. Develop working manual for the preparation of royalty scheme;
- b. Prepare royalty distribution working manual;
- c. Establish the Intellectual Property Tribunal;
- d. Issue directives that set clear criteria or standards for its supervisory role.

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