

In previous meetings of the Standing Committee on Copyright and Related Rights, States have suggested areas of action which the committee could address in future.

The IMMF believes that, whilst all of the areas suggested to date and detailed in SCCR/8/2 have much merit, the most important is in the area of Collective Management of Copyright and Related Rights – Point IX in that document.

In the IMMF's view, there are few - if any – areas that the relevant WIPO processes could become engaged with which could result in more real benefit to so many stakeholders than in the area of Collections Management.

Since our constituent members deal with collection societies worldwide on behalf of our clients on an almost daily basis, we are in a unique position to see both their strengths and their weaknesses, which affect all stakeholders in the music industry.

The main issues with regard to the current situation are as follows:

1. Since each society may (and generally does) use completely different systems to hold references to the rights they administer and the payments due on them, the multiplication of administration worldwide is enormous. This is in part due to the way in which States implement copyright legislation at the national level but is mostly due to the lack of any international standards for collections systems, or organised technical assistance programmes to allow societies in States throughout the world to implement best practices and work to converge their systems;
2. Since each society's internal controls processes develop independently, the process by which registration of new copyrights are made is different in each State. This multiplies the administrative overhead even further, as each collection society must, when registering a work abroad on behalf of the creators for which they are the society of first registration, understand and process the registrations in the manner required by all the societies which they are making a 'sub-registration' with;
3. Since the same copyright is held in so many systems with completely different unique identifiers, in systemic terms the same work is really a multitude of different works;
4. The maintenance of the same piece of copyright in so many separate systems guarantees errors and mis-registrations. This guarantees that rights-holders will not always be paid correctly for their creations, that in some jurisdictions the wrong right-holder will be paid, or in the case of registrations which are misplaced or otherwise not registered in a given society/State the right-holder will not get paid at all on commercial activity on that work in that society's jurisdiction;
5. When royalty payments are made between collection societies, the existing situation has the possibility of the receiving society misapplying the payment (because the sending society's record identifier is different from that of the receiver) – resulting in

rights-holders being paid someone else's royalty, or even being unallocated for long periods whilst records are investigated. In either instance the rights-holder is not being properly paid;

6. Since collection societies withhold a percentage of all royalties received for administration costs or other fees before passing those royalties along to the next step in the chain (and the percentage can vary between 5 to as much as 20 per cent), by the time that foreign royalties reach the creator or rights-holder a substantial proportion of the entire royalty has been lost to administration costs;
7. All the inefficiencies and opportunities for mistakes and delays, unsurprisingly, result in exactly that – it is not at all uncommon for delays of three years or more from the time a royalty is generated until the time it is received by the rights-holder when that royalty is generated outside the jurisdiction of the rights-holder's 'home' society.

The exact size of the problem in financial terms is unknown, but it is widely understood to be hundreds of millions of US Dollars for creators alone each year.

The situation outlined above is very much like that regarding trademark registrations – with the very substantial additional complication that the process is of course 'bi-directional' instead of 'uni-directional'.

Clearly, it is impossible for the copyright system to be successful unless the resulting infrastructure which supports the commercial exploitation of it is efficient, transparent, and results in the royalties which devolve from exploitation being paid to the parties which those royalties belong to. Unfortunately, at the present time this is not a reality.

Since the bulk of the problem is in relation to the foreign (from the perspective of any given work) exploitation of works and all the processes which facilitate that, it is only possible to meaningfully and substantively address the issue at the international level.

For further information please contact the Secretariat or the IMMF delegates to the 8th Session of the SCCR:

Peter Jenner (IMMF Chairman)
Peter.jenner@sinman.co.uk

Wim Reijnen (IMMF Vice-Chairman)
Wr@mbcnetworks.com

Nick Ashton-Hart (IMMF Representative to the UN)
Nashon@attglobal.net

David Stopps (IMMF Representative to the UN)
Davidayles@aol.com