

>> The Setting-up of New Copyright Societies

Some Experiences
and Reflexions

DR. ULRICH UCHTENHAGEN



In the framework of the activities related to collective management of copyright and related rights, and in view of the large number of questions linked to the setting up of national organizations responsible for managing such rights in the field of music, WIPO has decided to make available to its Member States, in a form of a booklet, a document entitled "Setting-up of new copyright societies; Some experiences and reflections" written by Dr. Ulrich Uchtenhagen a few years ago.

The document provides short explanations, on the different steps, conditions and on the various parameters indispensable for the creation of a collective management organization for musical works. It includes an interesting work plan indicating in a time frame the different stages necessary for achieving such goal.

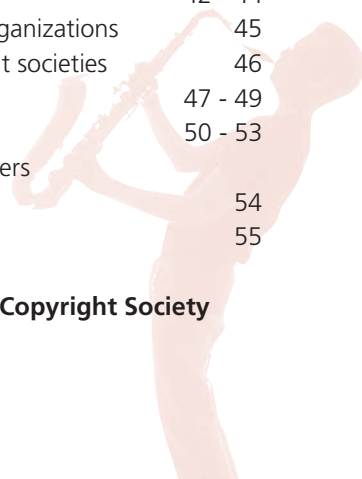
The opinions contained in this publication reflect only the views of the author and not necessarily those of WIPO.



May, 2005

TABLE OF CONTENTS

	Paragraphs
Introduction	1 - 3
1. The Prerequisites for Setting-up a Copyright Society	4
a. Legislation	5 - 6
b. The bundling of rights	7 - 12
c. Economic sufficiency	13 - 14
d. The role of government	15 - 18
e. Competent staff	19 - 20
2. Objectives	21
a. Financially efficient management	22 - 24
b. Solidarity in cultural life	25 - 26
c. Autonomy	27 - 28
3. The Stages in Setting-up a Copyright Society	29 - 30
a. The basic training of the manager	31 - 33
b. The work plan	34 - 36
c. Cost estimates and coverage	37 - 38
d. The legal framework, statutes and contracts with authors and publishers	39 - 41
e. Documentation	42 - 44
f. Contracts with radio and television organizations	45
g. Agreements with the foreign copyright societies	46
h. Distribution rules and procedure	47 - 49
i. Data processing	50 - 53
j. Social welfare for authors and publishers and cultural promotion	54
k. The fight against piracy	55
4. Model Work Plan for the Setting-up of a Copyright Society	



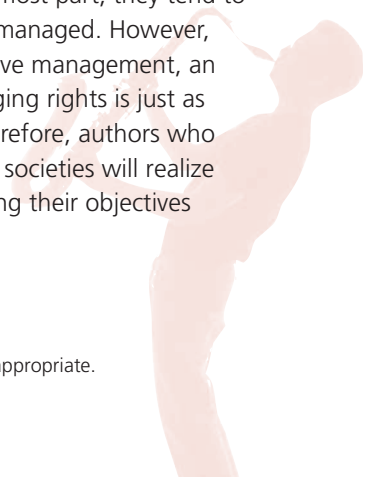
Introduction

1. When a country decides to set up a radio or television institution or to establish a national airline or to enter any other field that is technically or administratively unfamiliar, it seeks to make use of the experience already gained in countries with similar experiences and arranges for its potential staff to receive their initial training in those countries. Professions such as radio technicians, cameramen, pilots or aircraft mechanics require thorough and painstaking training for the necessary qualifications to be obtained.

2. The same applies to the setting-up of a copyright society. The collective management of author's rights is a profession that demands basic legal training, administrative capabilities, a well-founded knowledge of tariffs, the basic principles governing the collection of royalties (or remuneration for use of works), documentation, distribution, accounting and payments, data processing and social welfare. Anyone who sets about establishing a copyright society without having the necessary professional training runs the risk of rapidly running it aground as it would be a venture managed by an amateur. And since such problems frequently occur, it is important to point out that the successful establishment of a copyright society depends essentially on the professional training of its manager and of its staff.

3. Quite often, authors* feel capable of managing their own rights and the rights of their colleagues since, for the most part, they tend to have a clear idea of how their rights should be managed. However, experience has shown that in matters of collective management, an author who lacks professional training in managing rights is just as much an amateur as is a complete outsider. Therefore, authors who wish to act as successful managers of copyright societies will realize very quickly that there is no short cut to achieving their objectives without first acquiring the requisite knowledge.

* The word "author(s)" also includes the composer, when appropriate.



1. The Prerequisites for Setting-up a Copyright Society

4. A tree can only flourish when its roots are anchored in good soil, when it enjoys enough light, when it is sufficiently watered and is spared the attacks of parasites. Likewise, copyright societies are also dependent on specific “environmental conditions”. These prerequisites should be thoroughly examined by specialists before a decision is taken to set up a society. The most important of these conditions are briefly set out below.

a. Legislation

5. Author's rights can only be managed collectively if they are properly guaranteed by law. For instance, there is not much point in setting about managing broadcasting rights if there is no certainty that the radio and television stations are indeed obliged to pay royalties to the authors of the works which they broadcast.

6. Furthermore, collective management of copyright will only be successful if national and foreign works are protected in the same manner, that is to say, if the country undertakes to treat works by national authors and works by foreign authors on an equal footing by acceding to the international conventions. Where foreign works remain without protection, the users will refuse the obligation to pay royalties for national works. And if the protection of national works is lacking, a copyright society will degenerate into the representative of foreign interests and will never achieve full recognition in the country in which it operates.

b. The bundling of rights

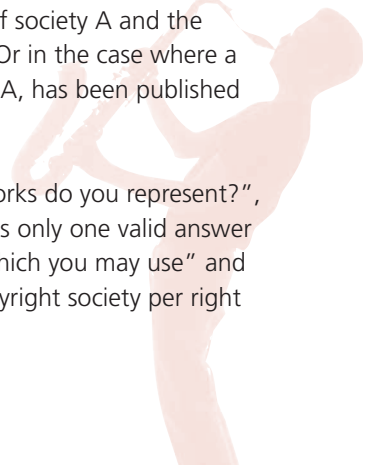
7. Decades of experience have shown that collective management of copyright will never flourish unless the society succeeds in uniting under its control all rights in a given legal area in respect of a given category of works, for instance all rights of public performance of

music. The society has to administer the so-called “world repertoire” of music, of literature, of dramatic works etc. This world repertoire can be achieved either by according a legal monopoly position to the copyright society in its country or by the voluntary union of all national and foreign rightholders, thereby leading to a de facto monopoly position.

8. The monopoly position of a copyright society is often countered with the argument that it is incompatible with the constitutional freedom of forming associations. However, authors are free to set up as many associations as they wish - these associations are not permitted to concern themselves with the collective management of copyright. The restriction in favor of a monopoly position affects the freedom of trade, not the freedom to constitute associations. Practically, every country has constitutional exceptions to the freedom of trade, which may be classified together under the term of “useful concentrations” such as transport, electricity, mail or water utilities. Copyright societies are also to be included amongst these useful concentrations, and that should open for them the possibility of a monopoly position.

9. Why is it not possible to set up a satisfactory collective management of copyright without a statutory or de facto monopoly position for the society? The reason is that where several societies for the same rights and the same works in a country exist, it is not possible to make a precise demarcation between their activities. Who manages the rights in a work that has been created by co-authorship, if one author belongs to Society A and the other to Society B? Or in the case where the composer of the music of a song is a member of society A and the writer of the song text a member of society B? Or in the case where a work, created by an author, member of Society A, has been published by a publisher belonging to Society B?

10. If a user asks a copyright society: “Which works do you represent?”, the society is unable to answer precisely. There is only one valid answer to this question: “We represent all the works which you may use” and this answer can only be given by one single copyright society per right



and category of works in a country, situated by this fact in a legal or de facto monopoly position. A plurality of copyright societies for the same rights and the same works in a country leads to uncertainty, discord and disputes, which, as experience has shown, has the potential to paralyze the development of the collective management of copyright.

11. Experience shows also that numerous rights, belonging to the field of activity of the copyright societies, are transferred by the authors to their publishers under the publishing contracts. As a result, the monopoly position of the copyright society can only be achieved if the publishers are also accepted as members and if they transfer the rights obtained from the authors to the copyright society. Recognition of the publishers as full members is an accepted fact in all European copyright societies, although authors in other parts of the world - particularly in Latin America - still hesitate to open the doors of the copyright societies to publishers. Without publishers as members, a copyright society forgoes the most important rights; the publishers try themselves - in a rudimentary way - to exercise the rights assigned to them by the authors and thus impair collective management. More often than not, the exercise of copyright by publishers on behalf of authors mostly means that the latter are left with empty hands. It is therefore highly recommended that when new copyright societies are set up, the basis should be a partnership between authors and publishers.

12. Finally, the matter of cohabitation of authors and performers has to be clarified in the field of music before any action is taken. It is conceivable that copyright and the so-called neighboring or related rights of the performers may be managed in parallel, by two different societies. However, if both societies have to deal with the same users, they will meet strong opposition. These users demand that the management of both types of rights be coordinated and this demand is quite reasonable. These experiences have led to cooperation in numerous countries. An example is where the copyright society collects both royalties and remits the amounts resulting from related rights to the performers' rights society; or in fact where in some countries, the two societies agree to build a common licensing and collecting mechanism.


c. Economic sufficiency

13. Even where the administrative outlay is as low as possible, the copyright society must nevertheless have a minimum amount of revenue flow in order to carry out its work efficiently and effectively. This applies in particular in those cases where the managed rights cover a large international repertoire implying extensive distribution and payments, and the resultant cost of such management. A copyright society would be incapable of achieving its tasks if, for reasons of costs, it was not able to carry out adequate distribution.

14. How is economic sufficiency, in this case, calculated? The estimated revenue of the copyright society is calculated either by forecasting the volume of expected royalty collections on the basis of average tariffs or by assuming the per capita revenue in countries with comparable circumstances. Following that, the staff required for collection and collation of documents necessary for effective documentation, distribution and payment must be determined, their salaries estimated, and the overheads forecast on that basis. If the cost remains within some 30 % of income from the management of performance and broadcasting rights or within 25 % of the income from the management of reproduction rights, then the management can be deemed economically sufficient and the collecting society viable.

d. The role of government

15. The stance taken by the government of a country where the establishment of a new copyright society is being considered is of extreme importance. Without the cooperation of the Government or at least without its goodwill, the attempts to set up a copyright society can very quickly become futile. The ground for stating this need for official support is simple: the activities of a copyright society extend to duties that also fall within the responsibility of the State. Both the State and the copyright society must ensure the exercise of individual rights as guaranteed by statute. This is because the activities of the copyright



societies impact on several State institutions such as the national radio and television companies, cultural programs, State registers, laws and regulations (for example anti-trust laws, civil and criminal procedures and currency regulations). In all these areas, the copyright society can get paralyzed if the State is not in favor of its activities. To prevent that from happening, it must be ensured from the very beginning that the State agrees with the principle of collective management of copyright and that it takes the copyright society under its wing.

16. The approach adopted by the State radio and television companies is of particular importance. If they refuse to accept a rapid and reasonable arrangement, this gives negative signals that are almost impossible to surmount. How can one convince the owner of a hotel that he must pay royalties or remuneration for the reception of music if the State broadcaster does not itself pay royalties for the broadcasting of this music? It is therefore recommended that no resources are spent on the set-up of the more costly aspects of the collective management infrastructure (such as technology requirements, rental of office space and employment of staff) until the agreements with the State radio and television companies have been signed and sealed.

17. The management of a "world repertoire", as explained before, and the corresponding legal or de facto monopoly position of the copyright society situates it within anti-trust legislation. The application of this legislation, in the case of collective management of copyright, would produce disastrous effects and has therefore to be avoided at all cost. The solution consists in State control of the copyright society by means of special legislation, excluding the application of general anti-trust rules.

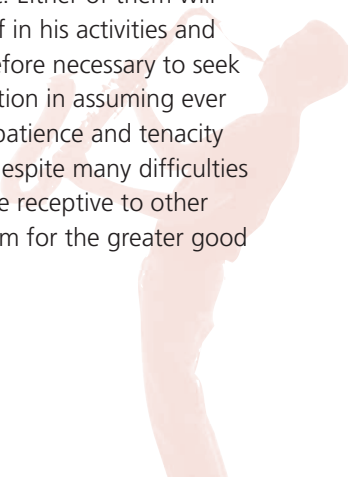
18. State control however has its "price". The goodwill of the State can only be obtained if copyright is managed correctly, impartially and economically. This means that the State must be granted the possibility of inspecting and supervising the operations. Authors and publishers should be advised not to try to avoid such supervision, at least for as

long as no political influence is exerted. A statement by the authorities that the operations of the copyright society have been correctly conducted and its finances are in order is of considerable value in any State. In cases where State supervision contributes to holding back the special interests of individual groups of authors or publishers in favor of the general interest, there is all the more reason to seek and to accept such supervision.

e. Competent staff

19. It was already mentioned in the introduction that the collective management of copyright is a profession and, like any other demanding occupation, has to be learnt. To achieve success, it is indispensable that candidates for executive positions in copyright societies satisfy the same stringent requirements as are set for management positions at a comparable level in any other responsible organization in the private or public sector. It is particularly important that a combination of legal analysis skills, practical problem solving ability and familiarity with the cultural terrain form part of the core criteria in the specifications drawn up for the person to manage the society.

20. The need for this combination is clear, as the "artist" will have to get used to spending a considerable part of his time dealing with calculations and planning, and the "lawyer" will realize that authors and publishers do not always follow his legal analysis and may prefer "irrational" approaches which do not fit his logic. Either of them will discover on occasion that he must rely on himself in his activities and will sometimes feel indeed quite alone. It is therefore necessary to seek and to find courageous people who find satisfaction in assuming ever changing tasks, who also possess the necessary patience and tenacity to successfully conclude what they have begun despite many difficulties and who, although they have clear objectives, are receptive to other opinions displaying the flexibility to integrate them for the greater good of the society.



2. Objectives

21. In all countries where authors and publishers expect to share in the revenue obtained from the use of their works, the copyright society constitutes an important element of cultural life. But a society providing services to its members must also take into account its place in the market conditions of its country and repeatedly examine whether and how its work can be further improved.

a. Financially efficient management

22. The most important task for a copyright society is to pay commensurate amounts to the authors and publishers for the use of their works. This task is not discharged if the society, instead of making payments, constitutes funds and reserves and pursues other objectives with these resources.

23. Whether or not the amounts paid are commensurate depends essentially on the calculation of the tariffs, constituting the calculation basis for the royalties or remuneration paid by the users. Guidance is given by national usage and international standards, particularly:

- the “10 % rule” according to which the authors and publishers are entitled to 1/10th of all income obtained by copyright users from the exploitation of the works;
- the “pro-rata temporis rule” according to which the 10 % share of the authors and publishers is proportionally reduced where protected and free works are exploited together;
- the “ballet rule” according to which the 10 % share of the authors and publishers is also proportionally reduced where several works are exploited at the same time.

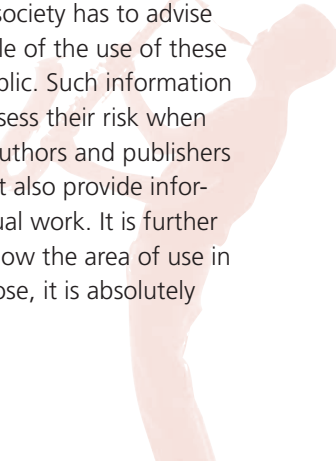
It is highly likely that a copyright society may be unable, at the beginning, to apply tariffs corresponding to the full recognition of these standards in each and every case. Tariffs have to be negotiated with the

main user associations (such as the hotel owners associations) and these negotiations result mostly in a compromise between the demands of the copyright society and the level of willingness of the users to pay. In all cases, the internationally recognized norms and standards should always direct the entire effort of the copyright society to approach the appropriate tariffs gradually.

24. A copyright society can only claim to have “efficient management” if the costs of that management remain within a reasonable range. Here again, international standards apply as already mentioned. The deduction of costs up to 30% for the management of performance and broadcasting rights and up to 25% for the management of reproduction rights, can be justified on condition that the distribution activities lead to regular, detailed and individual accounts for each author and publisher. These percentages can be provisionally exceeded in times of high inflation, for instance, or where there has been large-scale investment in facilities such as the procurement of a data processing system. Be that as it may, a copyright society whose deductions continually exceed the above-mentioned standards signals problems of sustainability and is therefore considered ripe for a review of its administrative structure.

b. Solidarity in cultural life

25. The use of musical or literary works should not be viewed as accidental, but rather seen as the result of planning and marketing efforts. When works are exploited, the copyright society has to advise the authors and publishers as accurately as possible of the use of these works and the level of their acceptance by the public. Such information makes it possible, particularly for publishers, to assess their risk when publishing new works. To this end, payments to authors and publishers should therefore not simply state overall sums, but also provide information on the amount generated by each individual work. It is further recommended that the accounts for each work show the area of use in which it was particularly successful. For that purpose, it is absolutely



essential that the copyright societies claim and obtain from the users the lists or log sheets of the performed, broadcast or reproduced works and that these lists and log sheets constitute the basis of the distribution activities.

26. In today's technologically connected global village, with its satellite broadcasts whose programs are received over and across whole continents, the cultural presence of a country depends on its ability to make available the best works of its authors in a high quality ready-to-use form. With increased competition in a world where works are so readily available and accessible, the copyright society has an important role to play in the early identification of works that could be suitable for international promotion, and in assisting with and facilitating the efforts of the authors and publishers to launch into the adventure of possible worldwide exploitation.

c. Autonomy

27. It is sometimes advised that a step-by-step approach to the establishment of a copyright society is adopted, meaning that, initially only licensing and royalty collection in the country itself is carried out, delegating the technically more demanding activities of distribution and payments to a foreign sister society or parent society. Even where such delegation is maintained over a number of years, this option is still not considered to be a panacea to the "teething" problems a young society may encounter. As long as a copyright society collects royalties within the country and then transfers it abroad as a whole, instead of itself conducting the distribution and payment, it cannot be considered as a national institution, but is quite often regarded by the public as an agency for foreign interests. The perceived lack of solidarity in the cultural life of the nation and the resistance amongst the user's circles to the inability of a society to carry out the functions of distribution and payment are the two main symptoms of the step-by-step approach to set up a society. In effect, the agency takes much longer, if ever, to achieve independent and successful management. That is also why there are no examples of flourishing agencies that have taken this approach.

28. An agency, as opposed to an independent society, hardly ever makes the effort to obtain lists or log sheets of performed, broadcast or reproduced works, from which the "life" of the national repertoire can be ascertained. This inertia is indeed a typical characteristic of any agency and the parent society has no reason to take steps to positively address that problem since that inertia saves it a considerable amount of distribution activities. Only a national, autonomous copyright society can therefore satisfy the needs of national authors and publishers.

3. The Stages in Setting up a Copyright Society

29. Once the prerequisites for setting up a copyright society as explained before have been clarified and the prospects of a successful operation have been favorably assessed, the courageous decision to jump in at the deep end, that is to say, to start with the society, has to be taken. Whether this decision is taken by the Government or by a group of concerned authors and publishers will depend on the situation in any given country. Whoever takes the initiative, it is advisable that they are certain of the commitment and the cooperation of their most important partners. It is highly recommended that any Government that intends to set up a national copyright society or a State copyright management involves the authors and publishers in the project from the very beginning to avoid leaving out the interests of the rightholders. Likewise, any association of authors and publishers that sets out on the stony path of collective management of their rights is encouraged to act in agreement with the Government authorities of their country so as not to forego State recognition and support of their endeavor.

30. The setting-up of a copyright society begins with the appointment of a manager responsible for that phase. It is sometimes attempted, for reasons of cost or other grounds, to postpone the appointment of such a manager at the initial stages of the society, proponents of this approach preferring to work in a "do-it-yourself group". Experience shows however that this practice largely results in considerable loss of time and is therefore not advisable.

a. The basic training of the manager

31. A condition precedent for the success of a collective management society is a well-trained manager vested with the essential specialized knowledge necessary to discharge his functions responsibly and effectively. Therefore, he or she must rapidly be given basic training. In many professions, for instance aviation, specialized schools have been set up; future directors or operational heads of airline companies acquire their basic knowledge in special courses tailored to their needs. In copyright, there are as yet no such specialized schools. In order to bridge this gap, the World Intellectual Property Organization, WIPO, offers adequate training, combining a theoretical part with a practical introduction to the subject at a well-running copyright society. This training is carried out individually or in small groups and usually lasts two weeks.

32. The training program for managers of copyright societies comprises, *inter alia*, the following subject areas:

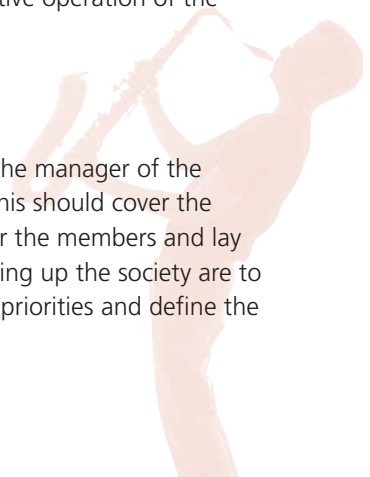
- basic legal concepts, introduction to the national copyright law, comparative law and introduction to the international copyright and related rights conventions;
- the major functions of the copyright society, structure and organizational chart of the management;
- relations between the copyright society and its authors and publishers, particularly with respect to membership contracts, assignment of rights, description of repertoires, declaration of works, pseudonyms, payments, transfers to associated societies;
- relations between the copyright society and the users of music, literature or dramatic works, including the contacts with their associations, with respect to tariffs, contracts, lists and log sheets of used works, collective agreements, joint measures and actions against piracy;
- relations between the copyright society and the State, with respect to general supervision, tariff supervision, monopoly situation, relations with the State radio and television companies;

- national documentation such as databases on authors, publishers and works;
- international documentation, such as the International Confederation of Societies of Authors and Composers (CISAC) documentation tools, and international data exchange;
- distribution with its rules, classes, procedures, forms and frequencies, accounts, payments;
- data processing, basic concepts, applications, database structures, standard software, development steps, international networks;
- social welfare protection for authors and publishers, cultural promotion;
- bookkeeping, cost calculation, treatment of ancillary revenue, use of non-distributed revenue, layout of balance sheets and operating accounts;
- relations with other societies such as reciprocal representation agreements, exchange of documentation, payments and accounts:
- CISAC structures, CIS Project, technical and legal commission, possible participation in international framework;
- BIEM structures, model contract for the phonographic industry;
- WIPO structures, cooperation programs.

33. This basic training has been proven to be very useful as it has enabled managers, on returning from the course, to work independently to a great extent, to take initiatives, to conduct tariff negotiations, to conclude contracts and to advance rapidly with the setting-up of the administrative structures necessary for the effective operation of the society.

b. The work plan

34. During or subsequent to the basic training, the manager of the copyright society should prepare a work plan. This should cover the period up to the first accounts and payments for the members and lay down the times at which the major steps in setting up the society are to be taken. The work plan should clearly indicate priorities and define the



means of measuring and assessing the results of the preceding steps. The gradual recruitment of staff also assists in keeping the cost of salaries at a modest level during the start-up phase. The work plan therefore constitutes one of the bases for establishing the cost estimates.

35. Experience gained in the last ten years has facilitated the development of a model work plan, which is provided at the end of the publication. This model is not presented to serve as a solution to all the needs of every new society, but rather to guide a new society to develop its own work plan suited to its own particular circumstances. It should therefore be carefully adjusted and adapted in each case to the actual local conditions in which the society operates, meaning that in some cases considerable changes will be involved.

36. From experience, the setting up of a new copyright society requires a 16 to 18 month time frame from the basic training of the manager through the preparation of the first accounts to the payments to the national authors and publishers. However this time frame can only be achieved if the work advances at a good pace and without any major hitches. It must also be pointed out that the sending out of the first accounts to the authors and publishers does not mean that the start-up period can necessarily be deemed completed.

c. Cost estimates and coverage

37. Any plans to set up a copyright society must include the preparation of cost estimates, and, by implication considerations on how these costs will be met. The coverage of costs is settled in the simplest manner in those cases where the Government agrees to bear the costs or to advance the necessary sums to cover them. This kind of assistance considerably facilitates the setting-up of a copyright society and it is therefore strongly recommended that such assistance be considered. The necessary amounts tend to represent a modest share of the budgets for education or culture ministries and even those States

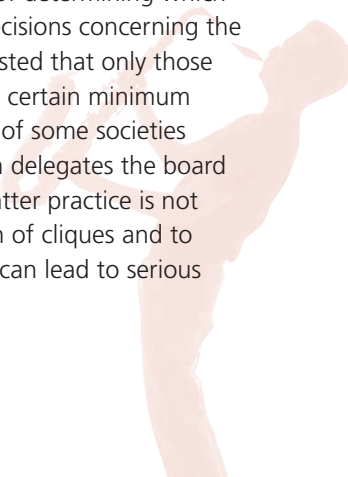
whose finances are not robust can assist with the initial funding. Where money is short, it can be agreed that the costs paid by the State will constitute advances and be subsequently refunded. Of course, it should be ensured in such cases that the advances are granted free of interest and a realistic repayment schedule set out taking into account expected collections.

38. Where State funds are not available to provide initial financial assistance, there remains the possibility of subventions or advances from associated societies. This approach has been frequently adopted. In some cases, CISAC contributes to the setting up of new copyright societies.

d. The legal framework, statutes and contracts with authors and publishers

39. It is the rights of authors that are assumed by collective management societies and therefore these authors - and the publishers - should be given a large degree of participation in the management of their rights. Experience has shown that establishing a cooperative best suits that type of participation and it is suggested that the setting-up of a copyright society should follow such a model as closely as possible. This implies that the most important decisions must be the preserve of the general assembly of authors and publishers and that this body should also appoint the board of the cooperative.

40. Special reference must be made to the issue of determining which authors and publishers should be able to take decisions concerning the collective management of their rights. It is suggested that only those authors and publishers whose accounts exceed a certain minimum value should have the right to vote. The statutes of some societies contain a clause, in lieu of such a solution, which delegates the board to decide on the granting of voting rights. This latter practice is not advisable since it is likely to lead to the formation of cliques and to discrimination, which, as experience has shown, can lead to serious problems.



41. The statutes of the copyright society should be submitted to the first meeting of the general assembly of its members and/or the respective rightholders and adopted by them. Once that is done, the assembly can proceed to appoint the board of the society, in compliance with the statutes. The authors and publishers that participate in the first general assembly should be accepted as foundation members, with the right to vote, and it is recommended that the membership contract also be submitted at the same time as the statutes.

e. Documentation

42. In all its activities, the copyright society will need to know the authors and publishers in its country and also their works. One of its first and most urgent tasks is therefore to obtain the data on national authors and publishers and on their works and to rapidly develop the respective databases. It is essential for this purpose that the authors and publishers be required to notify the society of their personal and professional details and to declare the works that they have created, alone or jointly, or published.

43. A young copyright society has to be well equipped with the full international documentation necessary to identify rights owners and their works. CISAC can assist new societies by facilitating the acquisition of this data of foreign authors, publishers and their works. More specifically, this documentation includes:

- IPI documentation (Interested Party Information), containing the names and the society membership of all authors and publishers in the fields of music, literature, dramatic works and other sectors that have joined a copyright society or are known in some other way;
- WID documentation (Works Information Database) giving basic particulars of millions of works that are most used in the international music repertoire.

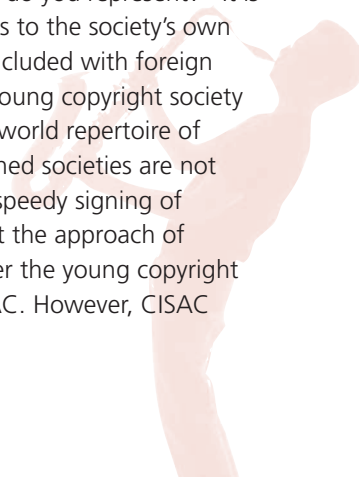
44. A new copyright society must give priority to providing the data of its own national authors, publishers and works as rapidly as possible to the IPI and WID documentation Centers. Revenue from abroad can only be expected for their members if such data are supplied, as these databases constitute the basis for identification of authors and their works.

f. Contracts with radio and television organizations

45. No copyright society is in a position to contact users, conclude contracts and collect royalties or remuneration from all categories of users at the same time. It is therefore recommended to proceed in stages, and in this regard, it has been proven that commencing collecting activities from the radio and television organizations offers certain advantages, the primary one being that these are important customers who pay considerable amounts in royalties even without the establishment of a sophisticated and expensive collecting structure. This allows the society to concentrate on its documentation and distribution activities. The effects of the good example given by contracts with the State radio and television organizations have already been referred to in earlier paragraphs.

g. Agreements with foreign copyright societies

46. The first contact with the users' associations almost invariably leads to the question: "Which authors and publishers do you represent?" It is important that the answer to this question refers to the society's own membership and to the agreements already concluded with foreign sister societies, to show the seriousness of the young copyright society and its potential and intention to represent the world repertoire of music or literature. Unfortunately, most established societies are not prepared to give "advance confidence" by the speedy signing of reciprocal agreements. They tend more to adopt the approach of entering into a contractual relationship only after the young copyright society has been accepted as a member of CISAC. However, CISAC



makes acceptance conditional, understandably, on a degree of proven evidence, which in itself is very difficult to establish without demonstrated competence for managing the foreign repertoire. It has been advocated that CISAC finds ways and means to assign to new copyright societies the representation of foreign authors and publishers without delay.

h. Distribution rules and procedure

47. Experience shows that a lack of clarity in the distribution process leads to considerable disputes between authors or between publishers. It is imperative that precise rules describe the distribution procedure in detail. The board of the society should approve the rules, before the first payments are made. Matters of distribution should not be dealt with in the general assembly of authors and publishers, since the subject of technical provisions is not suited to discussion in large meetings with diverging interests.


48. It is recommended that the distribution structures be kept as simple as possible, that the distribution classes are set up to correspond with the major type of use of works, for example: radio, television, restaurants and hotels, concerts, cinemas, as well as the production of records. Further distribution classes will depend on the special features of national cultural life. All provisions on distribution should correspond as far as possible with the principle of "suum cuique" - to each his own - that is to say, that each author and publisher should get the amount equivalent to the revenue that the copyright society has obtained for them.

49. When discussing the distribution provisions, one concern that is repeatedly expressed is that all the money or at least the major part of it will be remitted abroad. Ways and means are therefore sought to prevent such an outflow and it has been proposed, for instance, that national works be valued at a higher rate than works of foreign origin. It must however be emphasized here that all copyright societies are

obliged by law and by the contracts of reciprocal representation with their sister societies to apply strict equality of treatment to all national and foreign works. Indeed, the fears that only a little of the money will stay within the country are based to a great extent on ignorance of the payment procedures. These may be demonstrated by means of the following example in which it is assumed that national and foreign music is used on an equal basis, for example 50:50.

Revenue of the copyright society	1'000'000
Deduction of operating costs (30 %)	– <u>300'000</u>
	700'000
Deduction for social welfare and cultural promotion (10 % of net income)	– <u>70'000</u>
	630'000
Distribution	
- national works (fully identified)	315'000
- foreign works (60 % identified)	189'000
- distribution residue	126'000
Subsequent distribution of the residual amount in the form of an equal percentage supplement on all payments:	
- supplement for national works	78'750
- supplement for foreign works	47'250

Thus, in the example with strict equal treatment of national and foreign works and assuming a 50 % share of foreign music, only 23,5 % of the total revenue goes abroad. It should also not be forgotten that authors and publishers will receive amounts from foreign copyright societies and these will frequently exceed the amounts paid out.



i. Data processing

50. The view that a young copyright society should begin with manual operations and then convert to data processing once it has completed an "apprenticeship" is challenged in this paper. It is strongly recommended that, as much as possible, up-to-date and appropriate data processing should be used from the very beginning. This means that data processing should be ready for setting up the first databases, for the distribution and the printing of the accounts, for transactions with the users and for bookkeeping. Priority has to be given to documentation and distribution.

51. Today's data technology makes it possible to start at a low level with personal computers (PC) and with a correspondingly modest outlay. Such hardware is mostly sufficient to set up a database of the particulars of national authors and publishers and a database of particulars of the works in the national repertoire. Upgrades should only be considered when the distribution work begins, since acquiring a second or possibly even a third PC will depend on the volume of activities. WIPO's cooperation assistance includes the supply of data processing equipment to newly established copyright societies.

52. The software chosen by any society is of great importance. It is untenable for every new copyright society to undertake the full outlay required for programming. The tendency is to acquire licenses to use existing software, adapted to the needs of the society. In Africa, WIPO is currently assisting societies, free of costs, with the standard software AFRICOS that the organization has undertaken to develop in cooperation with one of the African societies. The software facilitates the development of the databases of authors, publishers and musical works of the African copyright Societies. AFRICOS software also contains adaptable standard programs for distribution and printing of accounts, with the aim of placing data programs for the most important tasks in the "cradle" of each new born copyright society.


53. The use of standard software will only be a success if their introduction is combined with adapted training. Reliable use of a PC and of standard programs can be acquired in courses lasting some 10 to 14 days and WIPO also facilitates such training.

j. Social welfare for authors and publishers and cultural promotion

54. The contracts of reciprocal representation between copyright societies, in accordance with the CISAC model, provide for the possibility of using 10 % of the net income from the management of performance and broadcasting rights - after the deduction of the administrative costs - for social welfare in favor of the national authors and publishers and for cultural promotion of the national repertoire. It is highly recommended that this practice be institutionalized at the inception of the society and that priority be afforded to the social welfare aspects. Although it may appear premature to develop the whole social welfare plan already in the initial years, it is in fact never too early to set up a contingency fund to alleviate difficult circumstances, for urgent medical treatment and for other social welfare benefits.

k. The fight against piracy

55. It is very frequently demanded with great precipitation that the new copyright society immediately launch, with "the highest priority", into the fight against piracy. A note of warning is sounded here. To survey the market (an activity that is unavoidable if pirate copies are to be identified) is an expensive undertaking that can very rapidly exhaust the financial means of a young society. It is therefore recommended that the fight against piracy should not be embarked upon, at the very earliest, before the copyright society has been firmly established in its core role, and even then, only get involved in general surveillance and monitoring of conditions of use. It is further recommended that any participation in the defense against piracy should be made as it relates to the collective management of reproduction rights.



4. Model Work Plan for the Setting-up of a Copyright Society

Month	Manager	Board	General Assembly	Authors Publishers
1	Appointment Basic training			
2	Draft: - statutes - membership contract - work declaration - author pamphlets			
3	Presentation letters: - CISAC - Sister societies - Author associations - User associations Preparation of radio and TV tariffs (statistics etc.)	Provisional Board Approval of: - statutes - membership contract		Presentation letters
4	Draft tariffs for State broadcaster			
5	Invitation to General Assembly	Approval of draft tariffs for State broadcaster	Invitation	National Seminar
6	Start tariff negotiations with State broadcaster	Election	First General Assembly, Approval of - statutes - membership contract Election of Board	

CISAC Sister Societies	Users	Staff	WIPO
			Manager's basic training
		Employment: 1 secretary	
Presentation letters	Presentation letters	Collect and collate addresses of authors	
		Print statutes Employment: 1 Head of Documentation	
		Basic training for Head of Documentation	National Seminar and basic training for Head of Documentation
	Start tariff negotiations with State broadcaster	1 PC software for databases	Supply 1 PC Supply and installation of software for databases

Month	Manager	Board	General Assembly	Authors Publishers
7	<p>Start membership campaign</p> <p>Application for CISAC membership</p> <p>Sister societies: invitation to sign contracts of reciprocal representation</p> <p>Tariff negotiations with State broadcaster</p>			<p>Start membership campaign</p>
8	<p>Draft Distribution rules</p> <p>Proposals for social welfare</p> <p>Tariff negotiations with State broadcaster</p>			<p>Start signing membership contracts</p> <p>Start work declarations</p>
9	<p>Tariff agreement with State broadcaster</p> <p>Preparation of tariffs for hotels, restaurants & private broadcasters</p>	<p>Approval of:</p> <ul style="list-style-type: none"> - tariffs for State broadcaster - distribution rules - social welfare 		
10	<p>Drafts of tariffs for hotels, restaurants & private broadcasters</p> <p>Draft contract</p> <p>Newsletter</p>			<p>Newsletter</p>

CISAC Sister Societies	Users	Staff	WIPO
<p>Supply IPI, WWL/WID Documentation</p> <p>CISAC Code numbers</p> <p>Sister societies: invitation to sign contracts of reciprocal representation</p>	<p>Tariff negotiations with State broadcaster</p>		
	<p>Tariff negotiations with State broadcaster</p>		
	<p>Tariff agreement for State broadcaster</p>	<p>Start databases</p> <ul style="list-style-type: none"> - authors - publishers - works <p>Tariff publication for State broadcaster</p>	
<p>Newsletter</p>		<p>Installation of Distribution software</p> <p>1 PC</p> <p>Employment: 1 Head of Licensing 1 Head of Distribution</p>	<p>Installation of Distribution software</p> <p>Supply 1 PC</p>

Month	Manager	Board	General Assembly	Authors Publishers
11	Elaboration of internal structures	Approval of: - draft tariffs for hotels, restaurants & private broadcasters - contract state broadcaster		
12	Start tariff negotiations hotels, restaurants & private broadcasters Meeting with Heads of departements; Internal structures			
13	Tariff negotiations hotels, restaurants & private broadcasters Draft annual report, balance			
14	Tariff negotiations hotels, restaurants & private broadcasters Invitation for Second General Assembly	Approval of: - annual report, - balance	Invitation	
15	Tariff agreements - hotels - private broadcasters Draft contracts hotels, restaurants & private broadcasters		Second General Assembly Approval of: - annual report - balance	

CISAC Sister Societies	Users	Staff	WIPO
		Basic training for Heads of Licensing and Distribution	Basic training for Heads of Licensing and Distribution
First data delivery for IPI- documentation	Start tariff negotiations with hotels, restaurants & private broadcasters Contract State broadcaster	First data delivery for IPI- documentation Employment: 1 Head Finance 1 Distribution Officer	
	Tariff negotiations hotels, restaurants & private broadcasters State broadcaster begins royalty payments	Collect and collate addresses of hotels, restaurants & private broadcasters Basic training Head of Finance	Basic training Head of Finance
	Tariff negotiations hotels, restaurants & private broadcasters State broadcaster begins log sheet delivery	Begin treatment of log sheets	
Data delivery for IPI-Documentation	Tariff agreements for hotels restaurants & private broadcasters	Data delivery for IPI-Documentation	

Month	Manager	Board	General Assembly	Authors Publishers
16	Newsletter	Approval of tariff agreements hotels, restaurants & private broadcasters		Newsletter
17	Contacts with performers' associations; problem of lists of performed works Preparation of remaining tariffs for - cinemas - concerts - record producers			
18	Press conference to present first distribution results Draft tariffs for - cinemas - concerts - record producers			First accounts and payments Trimester I State broadcaster
19	Newsletter	Approval of draft tariffs - cinemas - concerts - record producers		Newsletter
20	Start tariff negotiations with - cinemas - concerts org. - record producers			

CISAC Sister Societies	Users	Staff	WIPO
Newsletter	Newsletter	Last log sheet treatment for Trimester I State broadcaster Employment: 1 Licensing officer	
	Begin to contact hotels, restaurants & private broadcasters for signing of contracts	Tariff publication for hotels, restaurants & private broadcasters Distribution activities Trimester I State broadcaster	
First accounts and payments Trimester I State broadcaster Data delivery IPI-Documentation		First accounts and payments Trimester I State broadcaster Data delivery IPI-Documentation Employment: 1 Distribution officer	
Newsletter	Hotels, restaurants & private broadcasters begin royalty payments	Last log sheet treatment Trimester II State broadcaster 1 PC	Supply 1 PC
	Start tariff negotiations - cinemas - concerts org. - record producers Hotels, restaurants begin delivering lists of performed works Private broadcasters begin delivering log sheets	Distribution activities Trimester II State broadcaster Begin treatment of hotels & restaurants lists of performed works Begin treatment of private broadcasters log sheets	

Month	Manager	Board	General Assembly	Authors Publishers
21	Tariff negotiations - cinemas - concerts - record producers			Accounts and payments Trimester II State broadcaster
22	Tariff agreements - cinemas - concerts - record producers			
23		Approval of tariffs - cinemas - concerts - record producers		
24	Newsletter			Newsletter Accounts and payments Trimester III State broadcaster
25	Drafts - annual report - balance			

CISAC Sister Societies	Users	Staff	WIPO
<p>Accounts and payments Trimester II State broadcaster</p> <p>Data delivery IPI-Documentation and WID-Documentation</p>	<p>Tariff negotiations - cinemas - concerts - record producers</p>	<p>Accounts and Payments Trimester II State broadcaster</p> <p>Data delivery IPI-Documentation and WID-Documentation</p>	
	<p>Tariff agreements - cinemas - concerts - record producers</p>		
		<p>Collect and collate addresses of - cinemas - concert organizers - record producers</p> <p>Distributing activities Trimester III State broadcaster</p>	
<p>Newsletter</p> <p>Accounts and payments Trimester III State broadcaster</p> <p>Data delivery IPI-Documentation</p>		<p>Accounts and Payments Trimester III</p> <p>State broadcaster</p> <p>Data delivery IPI-Documentation</p>	
	<p>All - cinemas - concerts - record producers begin royalty payments</p>	<p>Last treatment of hotels & restaurants lists of performed works Semester I</p> <p>Last treatment of private broadcasters log sheets</p> <p>Semester I</p>	

Month	Manager	Board	General Assembly	Authors Publishers
26	Invitation third General Assembly	Approval - annual report - balance	Invitation	
27			Third General Assembly Approval of - annual report - balance	Accounts and payments Semester I hotels & restaurants Semester I private broadcaster Trimester IV State broadcaster

CISAC Sister Societies	Users	Staff	WIPO
		Distribution activities Semester I hotels & restaurants Semester I private broadcaster Trimester IV State broadcaster	
Accounts and payments Semester I hotels & restaurants Semester I private broadcaster Trimester IV State broadcaster Data delivery IPI-Documentation		Accounts and payments Semester I hotels & restaurants Semester I private broadcaster Trimester IV State broadcaster	

For more information contact WIPO at www.wipo.int

World Intellectual Property Organization
34, chemin des Colombettes
P.O. Box 18
CH-1211 Geneva 20
Switzerland

Telephone:
+41 22 338 91 11
Fax:
+41 22 733 54 28