Best Practices for Collective Management Organisations

Briefing for Libraries and Library Associations on the New WIPO Guide

- **The World Intellectual Property Organisation (WIPO) has published a collection of examples and best practices for collective management organisations**

- **While the document is not normative, it provides a useful reference point for libraries and library associations working to improve the way collective management works**

- **In particular, there are useful recommendations around protecting copyright exceptions, transparency, fair treatment of users, regulation, and use of money for lobbying and other activities**

A well-functioning copyright system is essential for libraries to achieve their mission. Exceptions and limitations play a key part in this, making it possible to carry out key public interest activities such as preservation, lending, and supporting research.

Yet libraries also carry out activities which can fall beyond the scope of exceptions and limitations.

Examples of Where Libraries Might Work with Collective Management Organisations

- *Clearing rights to copy large parts of books to create course-packs*
- *Mass-digitisation of in-copyright works (including orphan or out-of-commerce works) in order to place them online*
- *Public lending rights (in some countries)*
- *Reprographic rights (payments for copying by students or researchers in some countries)*

Examples include creating course-packs for students including large parts of books – see the inset box (left) for further examples.

In these situations, what matters for libraries is the ability to obtain appropriate licences quickly, easily, and at a reasonable cost.

In these cases, collective management organisations (CMOs) can play an essential role.

These organisations offer licences and collect revenues on behalf of their members (authors, publishers, other creators), and then distribute them. When they work effectively, they simplify the operation of copyright, to the benefit of creators and users (including libraries) alike.

In order to support the effective working of collective management, the World Intellectual Property Organisation (WIPO) has created a 'Best Practice Toolkit' in order to share examples of how collective management (and CMOs) works around the world. This brings together the results of WIPO's ongoing work to help CMOs improve their operations.

The Guide was put together under WIPO's leadership, with support from representatives of publishers and collective management organisations. Member States and other stakeholders – such as IFLA, EIFL and the International Council on Archives – were able to submit comments twice.

This brief summarises the document, and suggests how it may be useful for libraries and library associations.

The Guide

The Guide looks to cover different aspects of the work of CMOs, including their internal management and their relationships with different stakeholders.

There is a strong message that the document is not normative – in other words that it is not intended to recommend a certain governance model or regulatory regime.

However, by defining best practices – many of which draw on documents established by organisations representing collective management organisations – it provides useful reference points.

A chapter looks at the role of CMOs, noting that their primary function is rights management. It does suggest that some can have a role in promoting education and culture, as well as copyright in general. It also underlines that CMOs should be transparent about their governance and internal policies.

Three chapters then focus on the relationship with members, underlining the need for transparency, non-discrimination and openness. CMOs should only restrict the freedom of creators to decide what happens with their works if this is objectively justified.

Members, it argues, should be able to play a role in the governance of the CMO, including about who is on the board, how much they are being paid, and about how payments are calculated. The Guide also notes that CMOs should cooperate with each other on transparent and fair terms.

The key chapter for libraries looks at relationships with users and licensees. This covers the information CMOs should provide, the way they deal with users/licensees (including setting the prices for licences), and complaints mechanisms.

The final part of the document – six chapters – looks at governance, and in particular good practices around decision-making and regulation.

Contents of the Guide
1) Providing information about the Collective Management Organisation (CMO)
2) Membership: Information, Adherence, withdrawal
3) Members' Right to Fair Treatment
4) Particular Issues around the CMO-Member Relationship
5) Relationship between CMOs
6) Relationship between CMOs and Users
7) Governance
8) Financial Administration
9) Processing of Members' and Users' Data
10) Development of Staff Skills
11) Complaints and Dispute Resolution
12) Supervision and Monitoring

How the Guide is Relevant for Libraries

As set out above, the guide is clearly labelled as not being 'normative'. Nonetheless, it underlines that there are a number of key areas where CMOs should try to follow best practice. Many of these are relevant for libraries:

Transparency: given that libraries are often spending public money, clarity is important. From knowing clearly for which works CMOs can offer licences (vital for starting negotiations – point 39) to understanding how money is distributed (and how much is used to pay salaries (point 59f)), transparency helps build trust and credibility.

Fair Treatment: the guide includes many references to fair treatment both of members and of users/licensees (points 40-45). If licences are refused, there should be a written justification. Where the main users of a licence are not the negotiators (for example, if it isn't the library managing

discussions around licences), the Guide notes that they should be involved (point 45). Clearly libraries and other users are also expected to act in good faith. The Guide also stresses that prices should be set in a way that takes account of the uses that will be made of works (points 46-47), and it should be clear how to make complaints or question decisions (points 76-77).

Respect for Exceptions and Limitations: the guide underlines that improvements in collective licensing should not harm exceptions and limitations (page 5). This is an important point. Licensing and exceptions and limitations can coexist for different uses, but it should not be the case that licensing is introduced for activities which previously were possible without payment.

Regulation: the guide notes that both self-regulation and government regulation are possible. Clearly, given the monopoly powers that CMOs can exercise, external supervision would normally be preferable, but the guide suggests that involving users (i.e. libraries) in working groups which develop codes of conduct is advisable (point 78).

Use of Money for Lobbying: the guide underlines that it is possible for CMOs to use money in order to promote the importance of copyright in general, but also notes that if money is not distributed to members, these decisions should be agreed by members (point 57, point 66).

There are areas where the guide could be improved. There is little consideration of the specific characteristics of libraries and other cultural heritage institutions, or of specific types of works (unpublished or orphan works for example). Given their non-commercial, public interest mission, libraries should, arguably, not be treated in the same way as businesses.

How to make use of the guide?

Collective management does not operate perfectly everywhere, but as the Guide underlines, there are good practices. The Guide is therefore a useful reference for libraries and library associations keen to work to make improvements, and, importantly, has the 'badge' of WIPO.

The ideal situation, at least where licensing is necessary – i.e. fawhere uses go beyond what is possible under exceptions and limitations – is for there to be a positive relationship between libraries (or library associations) and CMOs.

In this case, the guide can be a helpful support for both sides in working together to find fair and effective solutions which ensure that libraries can fulfil their missions.

In other situations, the guide can help libraries in working with governments in order to make the case for a credible and efficient collective management system.