



and collecting societies (in Europe)

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collective rights management

- **there are two ways for an author to manage her/his copyrights:**
 - **individually: through contracts and licenses**
 - **collectively: through collecting societies:**
 - **collecting societies collect royalties for the use (public performance and copying) of copyright protected works of their members and distribute the royalties among the members**
 - **(in europe) there is typically one collecting society per country and type(s) of works.**
 - **the different national societies collect royalties on behalf of each other within their territories**

collective rights management - functions

- **‘one stop shop’ situation for users of protected works. this reduces transaction costs for users/distributers.**
 - **therefore a number of distributers (and regulations) require authors to be a member of the relevant collecting societies in order to be able to use their platform**
 - **the more successful an author the bigger the incentive to be a member of a collecting society.**
- **collective bargaining position of the authors. this strengthens the position of ‘weak’ authors as the same conditions are applied for them as for ‘strong’ authors (stars).**
 - **therefore collecting societies insist on an exclusive transfer of rights by the authors to them.**

statutory licensing of works

- **Collecting Societies also have the function to distribute the royalties for statutory licenses among their members (assuming that they represent a sufficient share of the rights holders in their ‘sector’)**
 - levies on recording/storage media to compensate for private copying
 - Cable and satellite TV programmes
 - Proposed equitable remuneration for p2p file sharing
 - Phonograms public broadcast neighboring rights
 - ...
- **these fees are collected from the users and intermediaries regardless of the intention of the rights holder (even if he/she has indicated that not to want to receive receive any royalties)**

problem 1: use of Creative Commons licenses by members of Collecting Societies:

- **the statutes of Collecting Societies force rights holders to make a choice between using Creative Commons licenses or collective management of their rights:**
 - **typically members have to assign their rights on all works (repertoire & future works) to the Collecting Society.**
 - **they cannot manage their rights individually and do not have the possibility to offer their works for free (even on their own website).**
 - **usually there is no opting-out provision for specific works or rights in Collecting Societies statutes**
 - **the only practical option is the use of a pseudonym to circumvent CS information system classification and fee collection**

problem 1: use of Creative Commons licenses by members of Collecting Societies:

- **Immediate need for opt-out clauses in the statutes of the various Collecting Societies, through negotiations with the Collecting societies.**
 - **possibility of entirely opting out of collective management for individual works (CC licenses that allow commercial use)**
 - **possibility of opting out of collective management for noncommercial uses of works licensed under a CC-NC license. commercial uses will continue to be managed by the national Collecting Societies.**

opting out for non commercial use in the CC licenses:

CC-BY 2.5:

- e. For the avoidance of doubt, where the work is a musical composition:
- i. **Performance Royalties Under Blanket Licenses.** Licensor waives the exclusive right to collect, whether individually or via a performance rights society (e.g. ASCAP, BMI, SESAC), royalties for the public performance or public digital performance (e.g. webcast) of the Work.
 - ii. **Mechanical Rights and Statutory Royalties.** Licensor waives the exclusive right to collect, whether individually or via a music rights agency or designated agent (e.g. Harry Fox Agency), royalties for any phonorecord You create from the Work ("cover version") and distribute, subject to the compulsory license created by 17 USC Section 115 of the US Copyright Act (or the equivalent in other jurisdictions).
- f. **Webcasting Rights and Statutory Royalties.** For the avoidance of doubt, where the Work is a sound recording, Licensor waives the exclusive right to collect, whether individually or via a performance-rights society (e.g. SoundExchange), royalties for the public digital performance (e.g. webcast) of the Work, subject to the compulsory license created by 17 USC Section 114 of the US Copyright Act (or the equivalent in other jurisdictions).

not present in 2.0 CC licenses for France, Germany, Spain, the Netherlands, Belgium, Italy, ...

CC BY-NC 2.5:

- i. **Performance Royalties Under Blanket Licenses.** Licensor reserves the exclusive right to collect, whether individually or via a performance rights society (e.g. ASCAP, BMI, SESAC), royalties for the public performance or public digital performance (e.g. webcast) of the Work if that performance is primarily intended for or directed toward commercial advantage or private monetary compensation.
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problem 1: use of Creative Commons licenses by members of Collecting Societies:

- **is it desirable to create the possibility of letting existing Collecting Societies collect royalties for commercial use of CC-NC licensed works?**
- **or should there be a new “free collecting society” for this task?**
- **do we need an official Creative Commons position on this issue (opt out clauses)?**
- **do we need coordinators for the negotiations?**
- **should we also directly negotiate with CISAC or only with individual national Collecting Societies?**

problem 2: statutory licensing royalties for Creative Commons licensed works

- **in order to receive royalties under statutory licensing agreements rights holders have to be registered members of the competent Collecting Society**
- **currently, there is no way of ensuring that no royalties will be collected for Creative Commons licensed Works (rights holders can only make sure not to receive them)**
- **Should there be a way of for CC authors to participate in this? this would come automatically if CC authors can become members of Collecting Societies (see problem 1).**

position of Collecting Societies vis a vis Creative Commons.

- **they have no incentive to make their statutes more flexible and integrate opt-out clause in their statutes ‘before they are forced’**
- **they say most members are not interested in using Creative Commons and they have to act in the interest of most of their members**
- **would require them to invest in updating their Information System**
- **Non-Commercial interpretation**
- **having the monopoly on all their members works enables them to negotiate a higher remuneration for works use.**

**background information and online discussion forum in the iTeamspace:
http://iteamspace.creativecommons.org/wiki/Collecting_Societies**



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