Models for Collective Management of Copyright from an International Perspective: Potential Changes for Enhancing Performance

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This article reviews models for collective management of copyright and related rights. From an international perspective, there are several models of managing and operating collective management organizations, and each of them has its own characteristics. Effectiveness and efficiency of a collective management organization (CMO) depends heavily on whether a country determines the legal status of the CMO appropriately, the approach of right acquisition, the system of dispute settlement, and the measure of controlling CMOs’ potential anti-competitive affects. Therefore, it is sensible for countries to develop a feasible model based on their unique situation. The article aims to describe different models under which CMOs operate, analyse the strengths, weaknesses, and conditions feasible for the CMO framework, and thereby suggest potential changes to enhance efficiency of controlling copyright.

Keywords: Collective management, copyright, right acquisition, dispute settlement

Collective management of copyright is conceived as an efficient way for authors and other right owners to exercise rights over their works that may be difficult to operate individually. This is in the interest of both the right owners and the users in view of its essential role of facilitating collection and distribution of royalties as well as negotiation of mass use of copyright resources. Collective effort is also a positive approach of strengthening enforcement of intellectual property rights.¹ There are many different models of collective management of copyright and related rights worldwide, each of them with distinct characteristics. However, due to the challenges from technological development, on some occasions, the practice of the collective management organization (CMO) seemingly lacks efficiency of exercising and controlling copyright and related rights. The purpose of this article is to describe different models for operation of CMOs, analyse the strengths, weaknesses, and conditions feasible for the CMO framework, and thereby suggest possible changes to enhance efficiency of controlling copyright. This work studies the elements influencing the efficiency of collective management, including legal status of CMOs, acquisition of rights, system of dispute settlement, and measures of controlling anti-competitive activities in collective management of copyright.

Legal Status of the CMO

Generally, a CMO refers to an entity that is lawfully established in the interests of right owners, and takes charge of collective management of the owner’s copyright or other related rights upon authorization by right owners or by means of a non-voluntary licence. The legal status of the CMO is determined by the legal rules of a country where it operates. Some countries impose a particular legal form for CMOs, while others do not. For example, an Italian CMO, Society of Italian Authors and Publishers, is defined as a public authority. Under Chinese statutory rules, the CMO should be a not-for-profit social organization. By contrast, Canada does not definitely stipulate the legal form of CMOs so that it is not surprising that there are different models in existence. Nowadays, a majority of CMOs are not-for-profit entities, but for-profit CMOs are allowed in many countries.

Another issue is the competition between CMOs in the relevant market. Plenty of countries choose a monopolistic approach, where certain CMOs are assigned the role of a public authority, or merely one CMO is allowed for registration in each field of business. The latter, namely, exclusive permission of

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Acquisition of Rights

Acquisition of rights from the right owners is substantially important for CMOs to carry out their activities. This is especially critical for a new CMO or a CMO attempting to license a new use in the case of non-voluntary licences.\(^2\) Meanwhile, acquisition of rights has a direct connection to the relationship between the CMO and the right holders, the scope of the business of CMOs, and competition in the relevant market. The main models adopted by countries concerning the CMOs' acquisition of rights include the full assignment of rights, non-exclusive licences, authorization to act as agents, a \textit{sui generis} system, and legal non-voluntary licences.

China has adopted the full assignment system. In China, CMOs' activities should be based on the mandates of the right holders except in case of statutory licences. Primarily, the mandate is entirely on a voluntary basis. Both the Copyright Law and the Regulations on Collective Administration of Copyright (RCAC) provide the right holders sufficient freedom to choose to participate in the CMO or exploit their rights individually, thus defining the scope of the mandate. The right holders may authorize the CMO to exercise the rights that are difficult to be effectively exercised individually by signing a licensing contract with the CMO.\(^3,4\) Further, such a mandate should be a full assignment of the right to the CMO. During the duration of the mandate, the CMO is the owner of the assigned rights and has the right to operate a licensing scheme on its behalf. Besides, by reason that such a licence is a statutory exclusive licence under China’s laws, the right holders of copyright and related rights cannot exercise themselves or permit other persons to exercise the assigned rights within the term of the authorization. Likewise, the full assignment of rights is also a common approach of acquiring mandates in Europe, especially for music performing rights.

In the US, only non-exclusive licences given to the CMO are allowed under its antitrust framework. Consequently, this arrangement on the one hand encourages potential competition among homogeneous CMOs since no CMO can ensure that it is a unique entity representing the right holders, which would benefit users and right holders to obtain their interest on reasonable terms. However, on the other hand, due to the co-existence of similar CMOs and the voluntary licensing basis, there is a possibility that no real blanket licences are available to users, making it difficult for users who use a mass of copyrighted materials to seek indemnity under the protection umbrella of a blanket licence. Furthermore, the CMOs herein usually act as agents to negotiate with users on behalf of the right holders rather than being entrusted with the task of exercising the assigned rights on behalf of themselves.

Germany adopts a \textit{sui generis} system for regulating acquisition of the CMO’s rights. The German Administration of Copyright and Neighbouring Rights Act, 1965, imposes an obligation upon the CMO that it has to administer the rights of all right holders on equitable terms provided that the request concerning collective administration is proposed by EU nationals and falls within the scope of its business (Section 6 of the Act). Meanwhile, under this Act, the CMO also has an obligation to grant licences on equitable terms to all users requesting for them.\(^5,6\) In fact, the RCAC of China has similar provisions such that a CMO should neither reject the request of a right holder to sign a collective management contract if the right holder satisfies the requirements of the constitution of this CMO, nor reject the request of users for licensing on reasonable terms (Articles 19 and 23).

The legal non-voluntary licence is another way to make the CMO eligible for exercising the relevant rights. Both the statutory licence and compulsory licence allow the use of some works through
particular means subject to the relevant regulations without explicit permission of the right holder on the condition that the users must pay for their use. Under the provision of non-voluntary licences, the CMO naturally has the right to use those allowed works, while accordingly it has an obligation of distributing the revenue accrued to their authors and other related right owners.

In some countries, all of these approaches of rights acquisition are used, leading to diversity in the collective management regime. For example, in Canada where an exclusive licence is allowed but not compulsory licence, CMOs may act as agents of the right holders for certain uses or exploitation of their rights. In addition, the sui generis regime of Canada provides adequate protection for non-member right owners who are granted the right to royalties in compliance with the approved tariff.²

At the legislative level, there are mainly four models in use for supporting acquisition of the rights of CMOs, namely implied licensing, legal presumption, mandatory licensing and extended collective licensing.

The implied licensing model, also called the indemnity approach, ‘limits the recourse available to a rights holder not covered by the collective scheme or, from the user’s perspective, his/her potential liability.’² This implied licensing technique is contained in the UK Copyright Design and Patents Act, the Section 136 (2) of which provides that the licensee can be indemnified against any liability caused by his copyright infringement in the circumstance that the infringed work falls within the ‘apparent scope’ of his licence. Under this provision, the licensee need not worry about potential infringement incurred by the works he/she uses as long as those works are apparently included in the licensed repertory, nor does need a careful check on whether the work he used or would use is really contained in such repertory. Moreover, the UK law gives little interpretation on the concept of ‘apparent scope’, generating the possibility of extended explanation for this vague expression thereby exaggeratedly benefiting the users. Obviously, it is substantially favourable to users since neither do they need authorization of the right holders in advance nor would they incur the liability of infringement. However, it is worth noting that the implied licensing model at the legislative level, in fact, creates a new form of non-voluntary licensing for those works not covered by the licensed repertory.

The technique of legal presumption works well in Germany. Under the German Administration of Copyright and Neighbouring Rights Act, it is presumed that the CMO administers the rights of all right holders at first where a CMO asserts a claim to information or remuneration [Section 13(b)]. It reverses the burden of proof on users to show that the CMO is not eligible for claiming the rights. If users fail to fulfill the burden of proof concerning rebuttal of the legal presumption, the CMO shall be regarded as the eligible entity to manage copyright of right holders. However, this leaves little room for right holders to choose whether to assign the CMO the task of representing them or not, and limits their freedom to opt out.

Mandatory licensing is the most common means for acquiring rights from the right holders in the regime of copyright collective management. For both the full assignment and the non-exclusive licence, authorization of right holders constitutes the legal basis of the activities of CMOs. The scope of the CMO’s business representing the right holders depends on the assignment contract, except in the case of non-voluntary licences. The model of mandatory licensing ensures the freedom of right holders in some degree, from the perspective that they can choose to join the CMO or not, as well as decide the type of assigned rights.⁷

Extended collective licensing is of essential significance in view of its effective function in facilitating the right acquisition process. The merits of extended collective licensing lie in its comprehensive mechanism that combines a legal extension and freedom of opting out with a voluntary licence. In countries where the technique of extended collective licensing is adopted, non-member right holders are treated in the same way as the members of the CMO, which is a legal extension from the voluntary members to non-represented right holders.⁸ However, distinguishing from the model of legal presumption, extended collective licensing clearly allows the right holders to opt out. This model properly balancing efficiency and justice is widely used in Nordic countries as well as Canada.⁹

Despite the advantages of the extended collective licensing system, it cannot be concluded that it would serve better than the mandatory licensing system. The former system may operate successfully in countries
where the right holders are well organized, the CMO is a substantial representation of the related industry, and has strong capabilities of management and coordination.\footnote{2,10,11} In this regard, even if there are some arguments that suggest countries adopt the approach of extended collective licensing,\footnote{12} it is not mature for them to do so if the necessary condition for implementing this system is absent, although, it does not deny the possibility of accepting such a system in future. Additionally, neither the model of implied licensing nor legal presumption demonstrates the intent to fully respect the will of the right holders. This is not consistent with the underlying assumption that a CMO is a private society or the basic principle of private autonomy in the private regime. Therefore, the mandatory licensing system is the first priority with respect to right acquisition for Chinese CMOs.

**Dispute Settlement**

Disputes may be caused by the conflict between the CMO and users or between the CMO and the right holders. Based on the different forms of supervision under specific legislation, countries have explored several methods for resolving such disputes. In addition to the ordinary civil procedure, there are at least three approaches for dispute resolution: decisions by special tribunals, arbitration, or administrative intervention and arbitration.

In UK, the Copyright Tribunal is established especially for the purpose of settling disputes between a CMO and its users. The British Copyright Tribunal has general jurisdiction to hear and determine the matters regarding an individual licence and a licensing scheme. As for the former, the Tribunal would examine the terms and conditions of an individual licence and make decisions based on the specific situation. With regard to the latter, the Tribunal has jurisdiction to handle problems related to a licensing scheme as a whole, including the system specifying the circumstances and terms under which the CMO would like to grant licences.\footnote{13} However, the Tribunal’s competence is limited only to disputes between the CMO and its users, and not to disputes arising between the CMO and its member.\footnote{13} In Germany, a special arbitration procedure is designed, according to which, an action cannot be brought to a civil court before the claim is defended in the Arbitration Broad (Shiedsstelle). Under this system, the Arbitration Broad, supervised by the Patent Office, endeavours to obtain an amicable resolution to disputes arising between the CMO and its user or its members [Section 16 (5) of its Copyright Act]. In order to guarantee the quality of the Arbitration Broad, all its members should ‘be competent to act as judges.’

However, Japan chooses the third option - the administrative intervention and arbitration in certain cases. The Law on Management Business of Copyright and Neighboring Rights of Japan provides that where a dispute arises by the reason of royalty rules proposed by the CMO, the Commissioner of the Agency for Cultural Affairs may designate a CMO, which collects a considerable share of royalty, to grant a request from a representative of users for consultation on the royalty rules [Article 23 (1), (2)]. The designated CMO should follow this request. In the circumstance that the CMO did not grant a request for consultation or the parties failed to reach an agreement, the Commissioner of the Agency for Cultural Affairs may order the CMO to start or restart a consultation upon application from a representation of users. If an agreement is eventually reached, the designated CMO should change the royalty rules according to the result of consultation. Where an agreement was not reached through the consultation, the parties could apply for arbitration with respect to royalty rules, by the Commissioner of the Agency for Cultural Affairs.

In comparison to the ordinary civil litigation procedure, the systems of special tribunal and arbitration are cost-effective and efficient.\footnote{14-16} Besides, another virtue cannot be ignored is that similar to a decision by civil courts, the decision made by the special tribunal and arbitration abroad is enforceable. However, the feasibility of adopting the system of the special tribunal and arbitration largely depends on the superiority of the CMO, the juridical tradition and litigation resources available in a country. In this regard, it would be more sensible to choose the route of administrative intervention for settling disputes relating to the royalty rule in a country where the existing circumstances constrain the establishment of the special tribunal and arbitration.

Unfortunately, the specific provision concerning the dispute settlement is absent in some countries. China is one such case. China’s RCAC remains silent on how to settle potential disputes between the CMO and its members in case that they fail to reach an agreement regarding the royalty collection and distribution. Furthermore, it does not mention how to
deal with the disputes in terms of licensing fee and royalty distribution between the right holders. In fact, both licensing fee and royalty distribution are important issues in the copyright regime. Consequently, resolving such disputes in China are subject to civil rules and civil procedures, except in case of disputes related to the standards of royalty rate which would involve administrative litigation. Therefore, it is practical to develop a ‘dual-track’ model. All the disputes involving copyright collective management can be divided into two categories: disputes over a licence scheme operated by the CMO, and disputes over individual licensing, royalty distribution and other issues. The licensing scheme as a whole, detailing the circumstances and terms under which the CMO is willing to grant licences to users, in fact acts as a reference to individual licensing. The most important issue of the licensing scheme is related to royalty rates. The CMOs cannot independently determine the royalty rates for exploiting copyrighted works in China, since the standard of royalty rates should be approved by the competent authority before it can be enforced. In this respect, the dispute over the royalty rate does not merely involve private rights, but administrative control over tariff settings. Even if the parties were allowed to file an administrative lawsuit, it is not the best recourse in view of its time-consuming nature and the judges who although have a general background of legal knowledge, are not specialists in IP matters. Therefore, a feasible way is to establish a Special Copyright Board under the supervision of National Copyright Administration to deal with the issues concerning the licence scheme. The members of Special Copyright Board could be composed of representatives from pertinent organizations and the copyright industry, scholars, and experts on accounting analysis, economics, information management, and so on. Under circumstances where the users believe the licence scheme breaches the principle of fairness and justice in the market, the representatives of the users should submit their claims to the Special Copyright Board before filing an administrative lawsuit. If the users remain unconvinced about the decision of the Special Copyright Board, they may bring an action before the court. On the other hand, as for the second category of disputes, the trial should be held in the civil court, taking into account that this kind of dispute purely involves individual property interests.

**Controlling Anti-competitive Activities**

Limiting a CMO’s anti-competitive activities is another essential problem because it is well recognized that good commercialization practices would promote creation and utilization of intellectual property rights. Sometimes, the exclusive permission for registration of CMOs creates natural monopoly because there is no direct competition between different CMOs. Especially, the full assignment model of right acquisition consolidates the monopoly position of the CMOs in view of the fact that such a right acquisition approach excludes the right holders’ control over the assigned rights once they agree to entrust such rights to that CMO. The common anti-competitive activities by a CMO include limiting its members’ freedom of right assignment and termination of the contract, discriminative treatment for its members, insisting on a blanket licence, and so on.

In some cases, the CMO exercises its monopoly power by imposing an unfair condition on its members regarding right assignment and termination of the contract. In the case of *GEMA v Commission*, the GEMA required its members to assign all categories of their rights to it within the duration of the contract and allow it to retain such rights for one year after the members’ withdrawal. The European Commission found it an unfair practice by ruling that members should be free to assign one or part of their rights and to withdraw their authorization when they wished. Likewise, in *Belgische Radio en Televisie v SABAM*, the European Court of Justice (ECJ) decided that, the fact that SABAM retained rights for five years after a member withdrew constituted an unfair conduct. ECJ explicitly stated that ‘a compulsory assignment of all copyrights, both present and future, no distinction being drawn between the different generally accepted types of exploitation, may appear an unfair condition, especially if such assignment is required for an extended period after the member’s withdrawal.’

Discriminative treatment of members with respect to distribution of royalties is a type of unfair practice as well. Where there is lack of an adequate system of information disclosure or a definite standard for distributing royalties between members, there is a possibility that some small members would be treated in a discriminative way. In practice, the factors that the CMO often takes into consideration when distributing the collected royalties to its members
include overall contribution of the members, length of membership, past income, artistic personality, and so on. This flexible standard does not create a fair environment for each member. In this regard, it is worth mentioning the decision of the Second Amended Final Judgment in the US. Section 11 (B) imposes obligations on the American Society of Composers, Authors and Publishers (ASCAP) to distribute its royalty revenues based primarily on performances of its members’ works and to disclose sufficient information for its members to understand how the payment to it was calculated.

In case of blanket licensing, sometimes users can do nothing but accept it grudgingly. The rationale behind blanket licensing can be observed from the perspectives of reducing negotiation costs and reducing risk of infringement. In BMI v CBS, the US Supreme Court deemed that the blanket licence is a practical means in the marketplace: ‘thousands of users, thousands of copyright owners, and millions of compositions.’ The Court went on to say that this licensing method offered users an unplanned, rapid, and indemnified access to all of the repertory of works.

Thus, it appears that the blanket licence resolves the problem of high negotiation costs by individual licences. On the other hand, a blanket licence usually serves as a risk management tool that reduces the risk of being held liable for infringement, especially if an indemnification clause against the lawsuits brought by third party is contained in the contract of the blanket licence. A similar ruling can be found in CBS v ASC that ‘there is not enough evidence in the present record to compel a finding that the blanket licence does not serve a market need for those who wish full protection against infringement suits or who, for some other business reason, deem the blanket licence desirable.’ However, the cost of the blanket licence should not be ignored. If the CMO insists blanket licensing and offers no alternative option to users, such an ‘all or nothing’ route makes it impossible for users to cut cost from other sources or refuse to buy some works included in the CMO’s repertoire they do not like. Even in case the CMO provides a separate licence for individual work, users still have no other choice but accept the blanket licence if the price of individual licences is significantly higher than the one of the blanket licence. Thus, without pertinent regulations, a blanket licence could impose an unfair condition on users. In Tournier, the ECJ held that the refusal of a licence of certain categories of rights would restrict competition if there was an effective way to offer a licence for some parts of the works. Although the system of copyright collective management has some natural characters of monopoly, the legislator should explore whether operation of the CMO can be implemented in a more competitive way. It is feasible to introduce some provisions that can prevent an anti-competition situation in the first place. First, members of a CMO should be granted the freedom of right assignment and termination of the assignment contract. Even if it is reasonable in practice that the CMO executes a minimum duration of the membership for ensuring the relatively stable amount of works under its administration, such a minimum duration should not be excessively long. Second, the CMO should have an obligation to disclose sufficient information, based on which its members can fully understand the standard of the royalty distribution and how the payment is calculated. Third, if possible, the CMO should provide users a separate licence for individual work as an alternative to the blanket licence for a reasonable term.

Some scholars also suggest cancelling the provision of exclusive registration and boosting non-exclusive licences for improving the competition in the market. However, it should be noted that this proposal is not feasible in every circumstance. China can be taken as an example, where the registration of all the social organizations is strictly controlled by the central government and local authorities. Legislators who believe that the social stability far outweighs economic efficiency, always assume quite a prudent attitude to the establishment of a new social organization. It is therefore, not surprising that the process of acquiring approval from the competent authority and registration is extremely time-consuming. On the other hand, unlike countries having a long history of developing the copyright collective management system and those allowing coexistence of various competitive CMOs, the exploration of collective management in China is still at the initial stage, which has only five CMOs to date. In fact, these collective societies appear immature in the aspects of business scale, cost control, application of modern technology, and management measures. Consequently, it would be sensible to develop anti-monopoly policies to constrain activities harmful to competition rather than
persuade legislators to consider non-exclusive registration of CMOs. Different models of CMOs with their unique characteristics are summarized in Table 1.

New Chances and Challenges for CMOs in the Digital Environment

In the digital environment, copyrighted works will be increasingly delivered in digital form, which brings challenges for the management of copyright. Digitized works can easily be compressed, copied and distributed through Internet. Mass storage and rapid delivery of digital information make accessible contents of books and music online and allow downloading of the contents quickly. On the other hand, the diversity of the online world also generates some new issues concerning exploitation and management of copyright and related rights.

Google’s Books Search settlement has invigorated the attention to collective management of copyright. Under the Google’s Books Search Project, collections of major US university libraries were to be digitized and some snippets of text made available for search engine enquiries. The US Authors Guild and Association of American Publishers, on behalf of rights holders of the contents, brought an action lawsuit against Google, claiming that Google’s project constituted copyright infringement. Google originally denied this argument by asserting a fair use defence. Later, the two parties eventually settled. Google was authorized to make available the full and digitized contents of the claimed materials, with the obligation of distributing revenues to the right holders through the Book Rights Registry. This settlement is a representative of a privately-orchestrated collective management system for books in the digital era. However, the ‘opt-out’ mechanism subverting the traditional procedure of obtaining permission from right holders before the commercialized use still remains controversy. Anyway, this example demonstrates that collective management of copyright can function as a solution to issues of fragmentation, scale, and complexity in the digital environment.

| Table 1 — Comparison of different models for CMOs |
|----------------------|---------------------|----------------------|----------------------|
| Models               | Representative countries | Merits                           | Weaknesses          |
| Legal status of the CMO | Monopolistic Approach | France, Belgium, Netherlands, China, etc, Canada | Not applicable since the effectiveness and efficiency depend on particular situations of the country | Not applicable since the effectiveness and efficiency depend on particular situations of the country |
|                      | Competitive approach |                                    |                      |
| Acquisition of rights | Indemnity approach | UK | Favourable to users | Creates a new form of non-voluntary licensing |
|                      | Legal presumption | Germany | Highly effective | Leaves little room for right holders to choose |
|                      | Mandatory licensing | China, US, Canada | Achieves party autonomy | Prejudices effectiveness |
|                      | Extended collective licensing | Nordic countries | Achieves a balance between efficiency and justice | Only feasible for countries where right holders are well organized |
| Dispute settlement | Special tribunals | UK | Cost-effective, efficient; with enforceable decision | Feasibility depends on juridical tradition and litigation resources |
|                      | Arbitration | Germany | | Administration mediates in the private sector |
|                      | Administrative intervention and arbitration | Japan | Highly effective | |
| Controlling Anti-competitive activities | Against limiting freedom of right assignment and termination of the contract | European countries | Achieves fairness | N/A |
|                      | Against discriminative treatment | US | | |
|                      | Against insisting on a blanket licence | European countries | | |
The complexity of the online world leads to some confusion as to what approach to determine the licensing rate is reasonable. In the US, recent interim and final decisions involving music use by Yahoo, YouTube, and others indicate that the revenue base for calculating licensing fee should be followed.\(^3\) Conventionally, revenue is an important indicator of measuring the value of public performance of the work. However, this is not always true in the digital space, since sometimes value and revenue are disconnected. For example, YouTube, an intensive user of music, videos and films, has poor revenue; but, it is a valuable entity which can be proved by the fact that Google bought it for US$ 1.65 billion, and it tremendously benefited Google as a special product. This phenomenon raises a question as to whether revenue base for determining licensing fee is really reasonable and if the right holder can share the value rather than merely the revenue.\(^4\) In this regard, perhaps, more relevant factors would be taken into consideration in the future.

In addition, in order to achieve an energetic and fair market, several new issues remain to be dealt with, such as fighting against circumvention and distortion of technological protection measures, managing online and mobile services, establishing a governance system, and so on.

**Conclusion**

There are several models of collective management of copyright and related rights in the world. These demonstrate countries’ endeavours to establish an effective and efficient system of collective management. In order to achieve this goal, it is important to appropriately determine the legal status of the CMO, the approach of right acquisition, the system of dispute settlement, the measure of controlling CMOs’ potential anti-competitive affects, besides other factors.

While there are mainly two models for legal status of CMOs including the monopolistic approach which only permits exclusive registration and the competitive approach which encourages co-existence of homogeneous CMOs, there is no definitive conclusion yet as to which one is superior because the function of a copyright collective system largely depends on particular situations of a country where it is implemented. As for acquisition of rights, countries adopt indemnity approach, legal presumption, mandatory licensing or extended collective licensing based on the different considerations including efficiency, justice, or interests of stakeholders. With regard to the system of dispute settlement, it is worth noting that the systems of the special tribunal, arbitration, and administrative intervention have merits of enforceability and efficiency under special circumstances. Furthermore, the approaches for controlling anti-competition activities have contributed to achieving fairness in the relevant market.

Despite multiple models in existence, the effectiveness and efficiency of the CMO’s operation are directly relevant to the circumstances under which the models operate. From this point of view, countries’ options of developing a suitable model would be sensible if it is based on their unique national situation. The main legislative and operational solutions mentioned in this article may serve to optimize the framework of CMOs and establish a sound and effective system. Besides, it may be an information tool for both practitioners in copyright management and legislatures seeking solutions to multi-territorial harmonization and international cooperation.

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5. Section 11, German Administration of Copyright and Neighbouring Rights Act, 1965 provides that the CMO must ‘grant exploitation rights or authorizations to any person so requesting on equitable terms in respect of the rights they administer’ and ‘should no agreement be reached with respect to the amount of remuneration to be paid for the grant of exploitation rights or of an authorization, the rights or authorization shall be deemed to have been granted if the remuneration demanded by the collecting society has been
paid subject to reservation or has been deposited in favour of the collecting society.’


7 It is not absolute freedom, in view of the fact that some CMOs unfairly set up barriers to opt out due to the absence of relevant provisions regarding prohibiting or restricting such conducts in some countries.


9 In Iceland, Denmark, Norway, etc., the model of extended collective licensing has been very successful.


12 Some members of Chinese People’s Political Consultative Conference, including Ji jagong Chen, Yicai Feng, Anyi Wang, Xiaosheng Liang, have put forward a proposal to adopt the extended collective management system in China, http://www.caijing.com.cn/2010-03-06/110390809.html (3 February 2011).


22 Second amended final judgment, United States v ASCAP, No 41-1395 (SDNY 2001).


29 Exclusive registration is not a new matter merely for CMOs. This rule is also applied for the registration of all the social organizations in China under the Regulations on the Registration and Administration of Social Organizations of China.


31 The five CMOs are China Music Copyright Association, China Audio-Video Copyright Association, China Works Copyright Association, China Images Copyright Association, and China Film Copyright Association respectively. The first CMO, namely, China Music Copyright Association, has a twenty-year history.

