

COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

*By Alhaji Tejan-Cole,
Deputy Registrar, BELIPO*

INTRODUCTION

This article focuses on the collective management of copyright and related rights. It starts by defining copyright and related rights, and then proceeds to defining the collective management of copyright and related rights together with stating the role of collective management organizations. Other areas covered in the article are the membership of collective management organizations, the types of rights under collective management and the mode of operation of collective management organizations. The article then examines the collective management of copyright and related rights in the Caribbean by examining the operation of the Copyright Organization of Trinidad and Tobago, and the regional project to develop collective management organizations in the Caribbean. The article concludes by restating the importance of collective management organizations, especially in the light of the increasingly negative impact of piracy on copyright and related rights owners.

WHAT IS COPYRIGHT?

Copyright is the legal protection given to the creator of an original work.¹ It is the legal term used to describe the rights given to creators for their literary and artistic works.² Copyright is the exclusive right granted by the law to the creator of an original work (or his or her assignee such as a publisher) to do, authorize, or prohibit certain acts in relation to such work.³

Such a creator is also known as the author or the owner of the rights. An original work is protected by copyright from the moment it is created, thus, formalities such as registration or deposit are not required for copyright

¹ Collective Management of Copyright and Related Rights, World Intellectual Property Organization, 1.

² What is copyright?, World Intellectual Property Organization, 1.

³ A Guide to COTT, Copyright Organization of Trinidad and Tobago, 1.

protection.⁴ Mere ideas do not qualify for copyright protection.⁵ For an idea to be protected, it must be expressed.⁶ In the words of Holyoak and Torremans “copyright is not about ideas, but about the way in which they are expressed.”⁷

The traditional subjects of copyright protection are literary and artistic works.⁸ According to Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works-

‘The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the form or mode of its expression...’.

Works covered under this category include novels, poems, plays, reference works, newspapers, and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisement, maps, and technical drawings.⁹

The creators of original works and their heirs have certain important economic rights. The first right is the right to reproduce the work in various forms, such as printed publication or sound recording.¹⁰ The second right is the public performance right.¹¹ The third right is the right of broadcasting the work, by radio, cable, or satellite.¹² The fourth right is the right to translate the work into other languages, or the right of adaptation of the work, such as adapting a novel into a movie.¹³ A case in point is the adaptation of John Grisham’s best-selling novel, “The Pelican Brief”, into a film of the same name. Another important economic right is the right of distribution. In exercising the right of distribution, creators of original works often sell the rights to their works to individuals and companies who have the resources to

⁴ Collective Management of Copyright and Related Rights, supra, 1.

⁵ Ibid.

⁶ Ibid.

⁷ Paul Torremans and Jon Holyoak, Intellectual Property Law, Second Edition, Butterworths, 165.

⁸ Coenraad Visser and Tana Pistorius, Essential Copyright Law, University of South Africa/WIPO Worldwide Academy, 1.3.2.

⁹ What is copyright?, supra, 1.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.,2.

¹³ Ibid.

mass market the creator's work in return for payments known as royalties.¹⁴ This is a common practice in the music industry.

These economic rights are exclusive in the sense that the author is vested with the sole power to do, authorize or prevent others from doing the acts comprising the above rights, in respect of the eligible categories of works. These exclusive rights are limited by the duration of protection of the copyright and by certain limitations and exceptions.

Creators of original works also have moral rights in their works. The aim of moral rights is to strike a balance between the interests of the commercial exploitation of a protected work and the interests of the creator of the protected work.¹⁵ Moral rights include the right of an author to claim ownership in his or her work (the paternity right), and the right of the author to oppose changes to the work that could have a negative effect on the author's reputation (the integrity right).¹⁶ With regard to the paternity right, the creator should be identified clearly and prominently in or on each copy of the work or in any other way that is sufficient to bring the identity of the creator to the attention of any person who acquires a copy of the work.¹⁷ In the case of the integrity right, the author's work must not be treated in any way which "involves the addition, deletion, alteration or adaptation which amounts to distortion or mutilation of the work or which is otherwise prejudicial to the honour or reputation of the author or the director."¹⁸

The Berne Convention is the most prominent international agreement in the field of copyright. The Berne Convention was adopted in 1886 and is administered by the World Intellectual Property Organization (WIPO). The Berne Convention generally gives copyright owners a term of protection of fifty years after the right owner's death.¹⁹ This general term of protection has been replicated in the laws of most Member States of the Berne Convention. According to section 10(1) of the Copyright Act of Belize²⁰ "...copyright in any literary, dramatic, musical or artistic work expires at the end of the period of fifty years from the end of the calendar year in which the author dies.". Countries have the freedom to grant longer periods of protection in

¹⁴ Ibid.

¹⁵ Paul Torremans and Jon Holyoak, *supra*, 212.

¹⁶ What is copyright?, *supra*, 2.

¹⁷ Paul Torremans and Jon Holyoak, *supra*, 213.

¹⁸ Ibid., 215.

¹⁹ Article 7(1).

²⁰ Chapter 252 of the Laws of Belize, Revised Edition 2000.

their national laws. The usual term of protection in Germany is seventy years, while the copyright laws of Spain give terms of protection between sixty to eighty years.²¹

WHAT ARE RELATED RIGHTS?

While copyright protects the rights of authors, another set of similar rights, known as “related rights” or “neighbouring rights”, protects the rights of other owners of rights, namely, performers, producers of phonograms and broadcasting organizations.²² The Copyright Act of Trinidad and Tobago defines neighbouring or related rights as the property rights subsisting in performances, sound recordings and broadcasts.²³ Related rights have been described as belonging to the intermediaries in the production, recording or diffusion of the works of copyright owners.²⁴ These intermediaries (performers, producers of phonograms and broadcasting organizations) facilitate the intellectual creation process by assisting authors to communicate their works to the public.²⁵

The interplay between copyright owners and related rights owners can best be described as follows- “A musician (related rights owner) performs a musical work written by a composer (copyright owner); an actor (related rights owner) performs a role in a play written by a playwright (copyright owner); producers of phonograms-or more commonly “the record industry” (related rights owners)- record and produce songs and music written by authors and composers (copyright owners), played by musicians or sung by performers (related rights owners); broadcasting organizations (related rights owners) broadcast works and phonograms on their stations.”²⁶

The main international agreement in the field of related rights is the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention). This Convention was adopted in 1961 and is jointly administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the

²¹ Paul Torremans and Jon Holyoak, *supra*, 195.

²² Collective Management of Copyright and Related Rights, *supra*, 2.

²³ Section 20 of Act No. 8 of 1997.

²⁴ Collective Management of Copyright and Related Rights, *supra*, 2.

²⁵ *Ibid.*

²⁶ *Ibid.*

International Labour Organization (ILO) and WIPO.²⁷ This Convention grants shorter terms of protection for related right owners than the terms of protection granted by the Berne Convention. According to Article 14 of the Rome Convention-

“The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which:

- (a) the fixation was made-for phonograms and for performances incorporated therein;
- (b) the performance took place-for performances not incorporated in phonograms;
- (c) the broadcast took place-for broadcasts.”

The laws of many countries grant longer terms of protection. The Copyright Act of Belize protects the rights of a performer or a person having recording rights in relation to a performance for a period of fifty years from the end of the calendar year in which the performance takes place.²⁸ The Copyright Act of Trinidad and Tobago protects a performance, a published sound recording, a fixed but unpublished sound recording, and a broadcast, from the moment the performance, publication, fixation, and broadcasting takes place until the end of the fiftieth year following the year in which the performance, publication, fixation, and broadcasting takes place.²⁹

WHAT IS COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS?

Collective management is the exercise of copyright and related rights by organizations and societies representing the interests of the owners of such rights.³⁰ These organizations or societies are usually referred to in national copyright laws as licensing bodies. The Copyright Act of Trinidad and Tobago defines a licensing body as-

²⁷ Ibid.,3.

²⁸ Section 115 of Chapter 252 of the Laws of Belize, Revised Edition 2000.

²⁹ Sections 21(4), 22(2) and 24(2) of Act No. 8 of 1997.

³⁰ Collective Management of Copyright and Related Rights, supra, 3.

“any society or organization which has as its main object, or one of its main objects, the negotiation or granting of general licenses in respect of protected works, sound recordings or performances either as the owner or prospective owner of copyright or neighbouring rights therein, or as agents for the owners or prospective owners thereof.”³¹

As was stated above, creators of original works have the exclusive legal right to do, authorize or prohibit certain acts in relation to such works. A classic case in point is the negotiating of a contract by a writer with a publisher for the publication of his or her book. However, the individual management of rights is virtually impossible with regard to certain kinds of works for practical reasons.³² A good example is the use of musical works in the Caribbean region. It would be practically impossible for a calypso or reggae musician to contact every single radio or television station to negotiate licences and remuneration for the use of his or her works. On the other hand it would be equally impractical for an FM radio station to contact every calypso or reggae musician in order to seek permission for the broadcasting of the musician’s work. This scenario underscores the need for collective management organizations, whose role is to serve as links between right owners and users. The existence of a collective management organization in a country provides a solution to the above-mentioned problems, since there is usually one collective management society per type of protected work and per country.³³

By serving as effective links between right owners and users, collective management organizations help in ensuring that right owners receive payment for the use of their works.³⁴ This payment serves as an incentive for composers, writers, musicians, singers and performers, who are among society’s most valuable assets. A look at the Caribbean would reveal that these creators of music and the arts enrich the Caribbean cultural fabric with their creative genius.

Another role of collective management organizations is to assist copyright and related rights owners to enforce their rights. Under the copyright laws of most countries, right holders are empowered to enforce

³¹ Section 49 of Act No. 8 of 1997.

³² Collective Management of Copyright and Related Rights, *supra*,3.

³³ Paul Torremans and Jon Holyoak, *supra*, 267.

³⁴ Collective Management of Copyright and Related Rights, *supra*,4.

their rights administratively and legally.³⁵ Copyright and related rights holders can obtain court orders to force the inspection of premises for evidence of production or possession of pirated goods.³⁶ Court orders can also be obtained in order to stop the activities of pirates.³⁷ The right holders can also seek remedies such as damages for loss of financial rewards and recognition.³⁸ However, experience has shown that the rights of copyright and related rights owners can only be effectively enforced through collective management organizations. This statement is especially true for rightholders in developing countries who are usually not as affluent as their counterparts in the more developed countries.

WHO ARE THE MEMBERS OF COLLECTIVE MANAGEMENT ORGANIZATIONS?

Any owner of a copyright or a related right can become a member of a collective management organization.³⁹ The general rule is that a person who creates an original work is the first owner of copyright in the work.⁴⁰ This rule also applies to commissioned works- the creator of a commissioned work is also considered as the owner of copyright in the work, in the absence of any written agreement to the contrary.⁴¹ An exception to this rule is a work created by an employee in the normal course of employment, in such cases, the employer is considered as the copyright owner.⁴²

As owners of copyright and related rights, authors, composers, publishers, writers, photographers, musicians, or performers qualify for membership of collective management organizations.⁴³ Broadcasters are not included in the list because of the fact that they are considered as users.⁴⁴ This is in spite of the fact that they are considered as owners of the related rights in their broadcasts.⁴⁵

³⁵ What is copyright?, supra,2.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Collective Management of Copyright and Related Rights, supra,4.

⁴⁰ A Guide to COTT, Copyright Organization of Trinidad and Tobago, 2.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Collective Management of Copyright and Related Rights, supra,4.

⁴⁴ Ibid.

⁴⁵ Ibid.

Upon joining a collective management organization, copyright or related rights owners assign the rights in their work to the collective management organization. The right owners are obliged to provide some personal particulars and declare their works.⁴⁶ This information is used by the collective management organization to create the documentation necessary to create a link between the use of works and payments for such use to the correct owner of the rights.⁴⁷ The declared works form part of what is known as the “local” or “national” repertoire.⁴⁸ Foreign works managed by a collective management organization under reciprocal agreements with other collective management organizations form part of what is known as the organization’s “international” repertoire.⁴⁹

WHAT ARE THE TYPES OF RIGHTS UNDER COLLECTIVE MANAGEMENT?

Collective management organizations administer several important rights on behalf their members. Firstly, collective management organizations administer performing rights for their members. The performing right has been defined as the right to perform works in public, to broadcast or communicate works to the public.⁵⁰ The International Confederation of Societies of Authors and Composers (CISAC) “Model Contract of Reciprocal Representation between Public Performance Rights Societies” (“CISAC Model Contract”) defines “public performances” as including any sound and performance that is rendered audibly to the public in any place and by any means.⁵¹

A public performance includes “in particular, performances provided by live means, instrumental or vocal; by mechanical means such as phonographic records, wires, tapes and sound tracks (magnetic or otherwise); by processes of projection (sound film), of diffusion and transmission (such as radio and television broadcasts, whether made directly or relayed, retransmitted, etc.), as well as by any means of wireless reception

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ A Guide to COTT, *supra*, 2.

⁵¹ Introduction to Collective Management of Copyright and Related Rights, Document prepared by the International Bureau, World Intellectual Property Organization, 8.

(radio and television receiving apparatus, telephonic reception, etc., and similar means and devices, etc.).”⁵²

Performing rights are administered by private, semi-public and public collective management organizations. A good example of the private management of performing rights can be found in the United States of America, where BMI (a corporation founded by broadcasting organizations) administers performing rights.⁵³ Another example is the Copyright Organization of Trinidad and Tobago (COTT), which is a national non-profit organization representing songwriters, lyricists, and music publishers in Trinidad and Tobago.⁵⁴

Examples of the public and semi-public administration of performing rights can be found in Eastern Europe and Africa.⁵⁵ Such organizations administer performing rights together with other categories of rights.⁵⁶ These organizations include the Hungarian Bureau for the Protection of Authors’ Rights (ARTISJUS) in Hungary, the Bulgarian Copyright Agency (JUSAUTOR) in Bulgaria, the National Office of Copyright (ONDA) in Algeria, the Moroccan Copyright Bureau (BMDA) in Morocco, the Senegalese Copyright Office (BSDA) in Senegal, the Copyright Society of Cameroon (SOCADRA) in Cameroon.⁵⁷

Secondly, collective management societies administer mechanical rights on behalf of their members. Mechanical rights refer to an author’s right to authorize the reproduction of his work in the form of mechanically produced recordings such as phonograms and audiovisual fixations.⁵⁸ This is the reproduction of mostly musical works in CDs, tapes, vinyl records, cassettes, mini-discs, or other forms of recordings.⁵⁹ Such musical works are usually used in feature films, television programmes, and television and radio commercials. According to WIPO, the most prevalent and economically important mechanical right “is the right of composers of musical works-and the authors of accompanying words-to authorize the sound recording of such works”.⁶⁰

⁵² Ibid.

⁵³ Ibid., 9.

⁵⁴ A Guide to COTT, *supra*, 1.

⁵⁵ Introduction to Collective Management of Copyright and Related Rights, *supra*, 9.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid., 14.

⁵⁹ Collective Management of Copyright and Related Rights, *supra*, 5.

⁶⁰ Introduction to Collective Management of Copyright and Related Rights, *supra*, 14.

Thirdly, collective management societies administer rights in dramatic works, which include scripts, screenplays, mime shows, ballets, theater plays, operas and musicals.⁶¹ These rights are usually administered using the agency type or partial collective management.⁶² It was originally developed by the first society dealing with the collective management of author's rights- the Societe des auteurs et compositeurs dramatiques (SACD) of France.⁶³

Fourthly, collective management societies administer the right of reprographic reproduction of literary and musical works. This type of collective management arose as a result of the copyright problems that were caused by the development of reprography or photocopying after the 1971 Paris Revision of the Berne Convention.⁶⁴

Fifthly, there is the collective management of the rights of performers and phonogram producers. The Rome Convention does not provide for an exclusive right for performers and phonogram producers with the regard to the broadcasting and communication to the public of their work.⁶⁵ Such related rights owners are only granted a right to equitable remuneration, in a system akin to non-voluntary licensing.⁶⁶ However, Contracting States to the Rome Convention are permitted to grant exclusive rights in this field to performers and phonogram producers.⁶⁷ Phonogram producers have been granted such exclusive rights in countries such as Brazil, Costa Rica, Guatemala and the United Kingdom.⁶⁸ Contracting States to the Rome Convention are also permitted to grant the right to equitable remuneration to performers alone, to producers of phonograms alone, or to both categories.⁶⁹

⁶¹ Collective Management of Copyright and Related Rights, *supra*, 6.

⁶² Introduction to Collective Management of Copyright and Related Rights, *supra*, 17.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, 21.

⁶⁵ *Ibid.*, 29.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

HOW DOES COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS WORK?

The operation of the collective management of copyright is usually based on licensing schemes. The United Kingdom Copyright, Designs and Patents Act, 1988, defines a licensing scheme as-

“a scheme setting out the classes of case in which the operator of the scheme, or the person in whose behalf he acts, is willing to grant copyright licenses, and the terms on which licenses will be granted in those classes of case.”⁷⁰

Collective management organizations administering performing rights usually base their work on three pillars- documentation, licensing and distribution.⁷¹ These organizations negotiate with users (such as radio stations, broadcasters, discotheques, cinemas and restaurants) or groups of users and authorize such users to use the works in its repertoire based on the payment of royalties and the observance of certain conditions.⁷²

A classic illustration of the way collective management organizations assess royalties can be seen in the rates of royalties charged by the Performing Rights Society of the United Kingdom. These rates are charged according to the way in which the protected music is used and the type of establishment using the protected music. The minimum annual higher royalty for pubs and bars is 82.25 (British Pounds), while the minimum annual standard royalty is 54.83 (British Pounds).⁷³ The annual higher royalty per room charged for background music in restaurants and cafes with up to thirty seats is 221.63 (British Pounds), while the annual standard royalty per room is 147.75 (British Pounds).⁷⁴ The higher royalty per session for establishments using protected music for discos and Karaoke competitions is 9.39 (British Pounds) per first one hundred persons capacity, while the standard royalty rate per session is 6.26 (British Pounds).⁷⁵ Establishments using protected music for discos and karaoke competitions also pay an additional per session higher royalty of 2.39 (British Pounds)

⁷⁰ Section 116(1).

⁷¹ Collective Management of Copyright and Related Rights, *supra*, 6.

⁷² *Ibid.*

⁷³ www.prs.co.uk/musiclicence/

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

and an additional per session standard royalty of 1.59 (British Pounds), for each additional twenty-five persons.⁷⁶

Performing rights organizations usually distribute royalties to its members based on their documentation (information on members and their works) and information about programs obtained from broadcasting organizations, for instance through logs of music played on the radio.⁷⁷ This sometimes involves the use of the census method, which is the requesting of full returns of all music played.⁷⁸

Alternatively, a sampling system is utilized. The justification of the sampling system is based on the fact that in many cases the cost of collecting and processing information on all performances would exceed the revenue to be obtained from such performances.⁷⁹ There are three types of sampling systems used by such organizations. The first type of sampling involves the inspectors of the organization visiting places where music is played, such as restaurants, music halls and bars, and collecting information on the musical works performed.⁸⁰ The second type of sampling is very selective and features the obtaining of only a relatively small amount of information, which is then considered to reflect the structure of use of works by certain types of users.⁸¹ In the third type of sampling, hardly any information is collected from certain types of users.⁸² In this case, the royalties paid by the users are distributed on the basis of repertoire information supplied by professional organizations or on the basis of information such as sales charts, top lists and radio logs.⁸³ The distribution rules of performing rights organizations usually involve a complex point system.⁸⁴ The aim of the point system is to reflect the relative importance of works and performances.⁸⁵

There are lots of similarities between the operations of collective management organizations administering mechanical rights and those administering performing rights. These similarities can be seen in the legal

⁷⁶ Ibid.

⁷⁷ Collective Management of Copyright and Related Rights, *supra*, 6.

⁷⁸ www.prs.co.uk/DocsRepository/1448/

⁷⁹ Ibid.

⁸⁰ Introduction to Collective Management of Copyright and Related Rights, *supra*, 12.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid., 13.

⁸⁵ Ibid.

status and management techniques of such organizations.⁸⁶ As a result, certain copyright organizations administering musical performing rights also administer mechanical rights in musical works. However, in certain other countries such as the United Kingdom, separate organizations have been established for the management of mechanical rights.⁸⁷ Mechanical rights in the United Kingdom are managed by the Mechanical Copyright Protection Society Limited (MCPS).⁸⁸

As was stated earlier, the collective management of rights in dramatic works features the agency type or partial collective management system.⁸⁹ Under this system, the collective management organization negotiates a general contract with the bodies representing theaters.⁹⁰ This contract specifies the minimum terms for the exploitation of particular works.⁹¹ The author authorizes the performance of each play through an individual contract containing the author's specific conditions.⁹² The collective management organization then notifies the user of the authorization and collects the royalties on behalf of the author.⁹³

The collective management of reprographic reproduction rights is usually done under the aegis of non-voluntary licensing arrangements. Under such arrangements, institutions such as libraries, public organizations, universities, schools and consumer associations, are allowed to photocopy printed works such as books, newspapers, magazines, reports and the lyrics of songs against the payment of equitable remuneration.⁹⁴ The collective management organization collects and distributes this remuneration.⁹⁵

With regard to the collective management of related rights, the copyright laws of Member States of the Rome Convention contain different prescriptions for the distribution of remuneration by users when commercial sound recordings are communicated to the public or used in broadcasts. Some copyright laws stipulate that it should be paid to the performers, or to the producers of phonograms, or to both, when such communication or

⁸⁶ Ibid., 14.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid., 17.

⁹⁰ Collective Management of Copyright and Related Rights, *supra*, 6.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid., 7.

broadcasts occur.⁹⁶ The remuneration for such use is collected and distributed either by joint copyright societies formed by performers and producers of phonograms or by separate copyright societies.⁹⁷ The operations of such societies are very similar to the operations of copyright societies administering performing rights.⁹⁸ Thus, both rights can be administered through an appropriate collective management scheme.⁹⁹

Collective management organizations usually deduct between 10 to 30% of the amount of royalties collected in order to cover the organization's administrative costs. Also, most organizations deduct not more than 10% of the amount of royalties collected for cultural and social purposes.¹⁰⁰ The amount collected is partly used for health insurance and pension funds for the members and for socio-cultural promotion activities such as bonus payments for outstanding creative activity, prizes and fellowships.¹⁰¹

COLLECTIVE MANAGEMENT IN THE CARIBBEAN: THE TRINIDAD AND TOBAGO EXPERIENCE

As was stated earlier, the collective management of copyright and related rights in Trinidad and Tobago is done under the aegis of the Copyright Organization of Trinidad and Tobago (COTT).¹⁰² This body was incorporated in 1984 as a private company limited by guarantee.¹⁰³ COTT has the honour of being the first national collecting society in the Caribbean, and represents over six hundred composers, lyricists, songwriters and music publishers.¹⁰⁴ It is managed by a Board of Directors comprising six writer members elected by members, two publisher members elected by members, two appointees of the Performing Rights Society of the United Kingdom, one Government appointee and two persons who are neither COTT employees or members.¹⁰⁵

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Introduction to Collective Management of Copyright and Related Rights, *supra*, 30.

⁹⁹ Ibid.

¹⁰⁰ Ibid., 13.

¹⁰¹ Ibid.

¹⁰² A Guide to COTT, *supra*, 1.

¹⁰³ Ibid.

¹⁰⁴ Paul Berry, Report of the Project for the Establishment of a Regional System for the Collective Management of Copyright and Related Rights in the Caribbean, WIPO/HIP/PBM/02/4,8.

¹⁰⁵ Ibid., 11/12.

The main function of the organization is to collectively manage the performing and reproduction rights of their members in their copyright music.¹⁰⁶ COTT negotiates with users and authorizes them to use the copyrighted works from its repertoire against payment of royalties. COTT's users include persons or organizations who broadcast copyright music such as "radio and television stations, cable service operators; premises or places which use music such as – bars, clubs, discotheques, calypso tents, cinemas, theatres, restaurants, shops, malls, factories, offices, banks, hotels, doctors' and dentists' waiting rooms, beauty salons, barber shops, trade shows and exhibitions, taxis, aeroplanes, elevators, telephone 'holding' systems, fete and concert promoters, etc." ¹⁰⁷

Other COTT users are persons or organizations which record musical works in COTT's repertoire such as "record and video companies, advertising agencies, television and film producers, record manufacturers, importers and distributors, etc." ¹⁰⁸ The list of COTT's users also includes disc jockeys. ¹⁰⁹

As was stated earlier, COTT negotiates with its users for the use of its local repertoire (which includes calypso, soca, chutney, ballads, R&B, rapso, East Indian, dub, reggae and gospel music) and its international repertoire (which consists of music from all over the world). ¹¹⁰ COTT is empowered to administer its international repertoire by virtue of its reciprocal representation agreement with the Performing Rights Society (PRS) of the United Kingdom and through the reciprocal representation arrangements of the PRS with performing rights societies throughout the world. ¹¹¹ The members of COTT benefit from this reciprocal representation arrangement because the foreign performing rights societies monitor the use of the copyright works of COTT members, collect royalties on their behalf and send the royalties to the PRS for onward remittance to COTT. ¹¹²

COTT authorizes users to use its repertoire by issuing various types of licences to such users. COTT's performing right licence authorizes the

¹⁰⁶ Ibid., 1.

¹⁰⁷ Ibid., 4.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., 5.

¹¹⁰ Ibid., 4.

¹¹¹ Ibid., 5.

¹¹² Ibid., 9/10.

public performance of its repertoire.¹¹³ COTT's mechanical or synchronization licence authorizes the use of its members' repertoire in the form of audio or audio-visual recordings.¹¹⁴ However, the most common licence issued by COTT is the annual "blanket" licence, which is an annual licence authorizing COTT's licensees to use all of the musical works in COTT's repertoire.¹¹⁵ A blanket licence is more convenient for the licensee because he or she is not required to account and pay separately for each performance or use of the musical works in COTT's repertoire.¹¹⁶

The factors that determine the cost of a COTT public performance licence are the types of premises licenced and the extent of music usage.¹¹⁷ COTT uses different tariffs when calculating the appropriate licence fee for different kinds of premises.¹¹⁸ In a bid to ascertain the extent of music usage and accurately calculate the licence fee, COTT employs Licensing Inspectors to monitor the public performance of the music in COTT's repertoire.¹¹⁹ The Inspectors also locate unlicensed music users and facilitate the obtaining of COTT licences by such users.¹²⁰

With regard to the distribution of the collected mechanical rights royalties, COTT deducts a commission before distributing the balance to its members.¹²¹ As far as the distribution of performing rights royalties are concerned, the royalties are placed in two "pools"- the COTT Members Pool and the International Repertoire Pool.¹²² The COTT Members Pool is further sub-divided into three "sub-pools" for eventual distribution.¹²³ COTT distributes all of the collected royalties after deducting its operating costs.¹²⁴

The first COTT sub-pool is the special events sub-pool.¹²⁵ This sub-pool is comprised of all revenues related to the Trinidad and Tobago Carnival events featuring music by COTT members or composers of

¹¹³ Ibid.,4.

¹¹⁴ Ibid.,4/5.

¹¹⁵ Ibid.,7.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.,8.

¹²⁰ Ibid.

¹²¹ Ibid.,11.

¹²² Ibid.,10.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.,10.

Caribbean origin.¹²⁶ The second COTT sub-pool is the broadcasting sub-pool into which all revenues received from radio and television stations and cable service operators are paid.¹²⁷ The royalties in the broadcasting sub-pool are allocated on the basis of samples.¹²⁸ COTT relies on such samples because the royalties received from broadcasting stations is not sufficient to warrant a complete and thorough analysis.¹²⁹ The third COTT sub-pool is the general performance sub-pool.¹³⁰ The general performance sub-pool includes all revenues received from general licensees such as bars, restaurants and shops.¹³¹ COTT distributes the general performance sub-pool revenues to members proportionately to the amount distributed to its members from the broadcasting sub-pool.¹³²

Apart from the collective management of the performing rights and reproduction rights of its members, COTT hosts the Annual COTT Music Awards, organizes copyright seminars and lobbies the government of Trinidad and Tobago for improvements to the copyright laws of the country.¹³³

COLLECTIVE MANAGEMENT IN THE CARIBBEAN: THE CARIBBEAN COPYRIGHT LINK C.C.L

This Project traces its roots to a request, by Caribbean intellectual property Ministers to WIPO in June 1999, for assistance in the creation of a regional system for the collective management of copyright and related rights in musical works.¹³⁴ The main objective of the Project is the creation of a system that will allow the effective and efficient management of intellectual property rights in musical works in the Caribbean by local Caribbean collective management organizations.¹³⁵

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid., 11.

¹²⁹ Ibid.

¹³⁰ Ibid., 10.

¹³¹ Ibid.

¹³² Ibid., 11.

¹³³ Ibid.

¹³⁴ Paul Berry, *supra*, 3.

¹³⁵ Ibid.

The Caribbean Copyright Link was formally established in August 2000, and operates from an office in Trinidad and Tobago.¹³⁶ It is presently comprised of JACAP of Jamaica, COSCAP of Barbados, HMS of St. Lucia, and COTT of Trinidad and Tobago.¹³⁷ WIPO has installed, in each of these collective management organizations, a printer, office software and the related hardware and software required for connection to the high-capacity regional server.¹³⁸ The operating costs of the CCL (approximately US\$40,000 in 2002) are share by the CCL members in proportion to their annual gross revenues.¹³⁹

The Spanish collective management organization, SGAE, manages the system hardware and software for CCL.¹⁴⁰ Based on an agreement with WIPO, SGAE made the modules of its collective management software available to WIPO for use by the members of CCL.¹⁴¹ This software is based on the latest data and data exchange standards used by the international network of CISAC collective management organizations.¹⁴²

WIPO has also organized introductory seminars and meetings with local artists and government officials in Antigua and Barbuda, Surinam, the Bahamas and Dominica with the aim of exploring the potential for the organization of collective management societies in these countries.¹⁴³ However, it must be noted that the local market in a country should be able to generate a minimum annual license fee revenue base of US\$200,000 for the national collective management organization.¹⁴⁴ Nevertheless, in the case of countries with local markets that cannot support such minimum revenue levels, WIPO has recommended the formation of “sub-regional clusters” grouping such countries in order to attain the required minimum revenue level.¹⁴⁵

¹³⁶ Ibid., 5.

¹³⁸ Ibid.

¹³⁹ Ibid., 5.

¹⁴⁰ Ibid.

¹⁴¹ Ibid

¹⁴² Ibid.

¹⁴³ Ibid., 7.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

CONCLUSION

It has been rightly stated that “copyright and related rights are essential to human creativity, by giving creators incentives in the form of recognition and fair economic rewards.”¹⁴⁶ As a result of this recognition and fair economic reward, the enjoyment of culture, knowledge and entertainment is enhanced all over the world.¹⁴⁷

A good illustration of the above-mentioned point can be seen in the value of music. The effect of this art form on our lives can best be summed up in the following statement-

“Music is every where around us: on radio and television, in films, bars, clubs, discotheques, gyms, restaurants, hotels, offices, shopping malls, concerts, fetes, festivals, aeroplanes and taxis. Recordings of music are manufactured, sold, and distributed on a large scale. Music is an important facet of modern life.”¹⁴⁸

The method of ensuring that the creators of this important facet of modern life gain recognition and fair economic rewards for their talent is the collective administration of copyright and related rights. As was stated earlier, the widespread use of works of copyright and related rights makes it virtually impossible for right owners to individually issue licences and collect royalties.¹⁴⁹ A classic example is the difficulties faced by composers, lyricists, songwriters and publishers in countries without collective management societies, with regard to tracking the illicit exploitation of their works. The existence of collective management societies in such countries would automatically create a mechanism for monitoring the use of copyright works, issuing licences, collecting licence fees and distributing such fees to its members and the members of affiliated societies.

The role of collective management organizations have become more pivotal in the light of the increasingly negative impact of piracy on copyright

¹⁴⁶ What is copyright?, supra, 3.

¹⁴⁷ Ibid.

¹⁴⁸ A Guide to COTT, supra, 3.

¹⁴⁹ Collective Management of Copyright and Related Rights, supra, 3.

stakeholders like musicians and record companies. According to figures released by the International Federation of Phonographic Industries (IFPI) in April 2002, global music sales fell by 5% in 2001 because of the combined effect of piracy and the global economic recession.¹⁵⁰ The IFPI Chairman Jay Berman said that there was a “massive increase” in domestic and commercial compact disc (CD) piracy.¹⁵¹ Sales of recorded music fell in 2001 to \$33.7 billion, while total units sold also fell by 6.5%.¹⁵² According to IFPI estimates, one out of every three recording sold throughout the world is an illegal copy.¹⁵³ This state of affairs has cost the music industry \$4.2 billion.¹⁵⁴

Another threat to owners of copyright in musical works is the recent emergence of internet file-sharing services such as Napster. Napster’s software enables its users to access music and media files hosted on other computers through a single interface.¹⁵⁵ This system is based on the MP 3 format, which is a form of digital compression, which enables recordings to be compressed into relatively small and good quality computer files.¹⁵⁶ Napster became so popular that it had fifty million registered users-who were downloading mostly copyright protected music without the permission of the right holders.¹⁵⁷ This had a negative effect on record sales and forced the record industry to engage in legal action against Napster-A&M RECORDS ET AL v. NAPSTER.¹⁵⁸ In its ruling, the 9th United States Circuit Court of Appeal held that “Napster by its conduct, knowingly encourages and assists the infringement of the plaintiffs’ copyrights.”¹⁵⁹

It goes without saying that one of the most effective means of fighting this global scourge of piracy, whether in cyberspace or not, is through the formation of new collective management organizations and the strengthening of existing organizations.

¹⁵⁰ Global music sales drop, <http://news.bbc.co.uk/1/hi/english/entertainment/music/> Tuesday, 16 April, 2002, 1.

¹⁵¹ Ibid.

¹⁵² Ibid., 2.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Court blow to Napster, <http://news.bbc.co.uk/1/hi/english/business/> Monday, 12 February, 2001, 2.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., 3.

¹⁵⁸ A & M Records, Inc.; Geffen Records, Inc.; Interscope Records; Sony Music Entertainment Inc.; MCA Records, Inc.; Atlantic Recording Corp.; Island Records Inc.; Motown Record Co.; Capitol Records, Inc. v. Napster, Inc., No. 00-16401, D.C. No. CV-99-05183 – MHP.

¹⁵⁹ Ibid., Beezer, Circuit Judge, 26.