

# COLLECTIVE MANAGEMENT OF COPYRIGHT AND THE PRINCIPLES OF GOOD GOVERNANCE

A FINNISH PERSPECTIVE

**NATHALIE LEFEVER & KATJA OKSANEN-SÄRELÄ**

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## EXECUTIVE SUMMARY

This report examines the operation of collective management of copyright in Finland from the point of view of the principles of good governance. Collective management offers a solution to situations where individual licensing of copyright is impossible or impractical. Authors and other right-holders mandate collective management organisations (CMOs) to manage their rights, monitor the use of their works, conclude licensing agreements with users on their behalf, and collect and distribute their remunerations. Since collective management is essential for licensing certain uses of copyrighted works, it is important to ensure that the system's actors follow efficient decision-making processes that meet their legal, social and ethical responsibilities. The current report implements a methodology for assessing governance in the context of copyright systems developed at Cupore.<sup>1</sup>

The study was based on publicly available information on the CMOs, a survey of rightholders whose rights are managed by them, as well as interviews of CMOs representatives and users who negotiate licensing agreements. The data collected was used to determine whether and in what manner the system of collective management as a whole was conducive to the respect of eight principles of good governance: transparency, participation, accountability, coherence and consistency, responsiveness, effectiveness and efficiency, equity and inclusiveness, as well as separation of powers. The study also covered the manner in which the principles of good governance are implemented in the relationship between the three main stakeholder categories: rightholders, CMOs, and users.

In the Finnish copyright system, collective management plays a very important role. It has been built in a social, cultural and artistic context where rightholders are strongly organised into unions and associations representing their interests. CMOs are conceived as structures to unite these associations around the collection and distribution of copyright revenue, as well as other services for their members and clients. This system works on the principle of collaboration and negotiation between associations members of CMOs, between CMOs and users, and between CMOs and public authorities. It has the advantage of professionalism and of balancing power between a limited number of strong actors. It also has the disadvantage that smaller actors, such as users negotiating individual licenses or rightholders in less organised areas, might not have the same negotiation powers and

<sup>1</sup> Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45.

advantages. However, the current legislative framework offers strong rights and protections to all parties, although not all persons involved might know them or how to enforce them. The principles of good governance are respected in general, even though some improvements could be made. The report concludes with suggestions for corrective action.



## INTRODUCTION

This report examines the operation of collective management of copyright in Finland from the point of view of the principles of good governance. Authors, creators and other copyright holders obtain remunerations for the use of their works by contracting licences, i.e. granting authorisations for use against a fee. While rightholders should, in principle, retain an individual right to licensing the use of their works, this might not be possible or practical in practice.<sup>2</sup> The costs for granting authorisations can vary to a large degree, and in some cases, individual licensing is not profitable. For example, authors, performers and producers cannot contact every single radio station to negotiate licences and remunerations for the use of their songs. In such cases, the collective management of rights offers a solution. Without collective management, authors would not be able to obtain a reward for certain uses of their creative works, and these works would not be legally accessible to the public.

Collective Management Organisations (CMOs)<sup>3</sup> position themselves as intermediaries between rightholders and users. Authors and other rightholders mandate CMOs to manage their rights, monitor the use of their works, conclude licensing agreements with users on their behalf, and collect and distribute their remunerations. Users obtain from CMOs licences covering at once a large amount of works, which greatly simplifies rights clearance. Domestic CMOs also collaborate with foreign ones to simplify cross-border licensing of rights. In other words, "collective management organisations enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets."<sup>4</sup>

2 For a discussion on the articulation between individualistic copyright principles and collective management, see Vilanka, O. (2010). *Rough Justice or Zero Tolerance? – Reassessing the Nature of Copyright in Light of Collective Licensing (Part I)*. In *In Search of New IP Regimes*. Publications of IPR University Center.

3 In the European Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (Article 3), CMOs are defined in the following terms: "Collective management organisation' means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria: (i) it is owned or controlled by its members; (ii) it is organised on a not-for-profit basis."

4 Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, recital 2.

Because collective management is crucial for licensing certain uses, the system of collective management offers an essential service for rightholders, users, and the public at large. As such, it should operate efficiently and in fairness. Complying to generally recognised good governance principles is one tool for ensuring that a system's actors follow efficient decision-making processes that fulfil their legal, social and ethical responsibilities. Governance can be understood as "the manner in which [the] power is exercised, the process of decision-making, and the process by which decisions are implemented".<sup>5</sup> Good governance is defined by a set of characteristics that help achieve balanced, equitable and reliable management; a well-governed system is more likely to succeed at reaching its goals while taking into account the interests of all the actors involved. The importance for CMOs of following the principles of good governance has been understood by public actors at the international level. The 2014 European Directive on collective management of copyright and related rights imposed legal obligations promoting CMOs' transparency and accountability as well as the possibilities for rightholders to participate in their operation. The World Intellectual Property Organization<sup>6</sup> has developed a non-binding Good Practice Toolkit for CMOs for the same purpose.<sup>7</sup>

As part of Cupore's continuous work for offering reliable and objective data on copyright and related rights systems, a methodology for assessing governance in the context of copyright systems was developed in 2017.<sup>8</sup> Its purpose was to define good governance in the context of the copyright system, select and describe generally recognised good governance principles particularly applicable to the copyright system, and present a list of questions for assessing governance in public institutions and CMOs. The current report endeavours to implement this methodology and assess whether the Finnish system of collective management as a whole follows the eight principles of good governance listed in the methodology: transparency, participation, accountability, coherence and consistency, responsiveness, effectiveness and efficiency, equity and inclusiveness, and separation of powers.

5 Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45. P. 6.

6 <https://www.wipo.int/publications/en/details.jsp?id=4561>

7 World Intellectual Property Organisation (2021). *Good Practice Toolkit for CMOs*. <https://www.wipo.int/publications/en/details.jsp?id=4561>.

8 Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45.

The study focuses on the operation of the system since 2017. That year saw the coming into force of the Finnish Act on the Collective Management of Copyright, which implemented the 2014 European Directive on the same topic. The purpose of this study is not to verify whether Finnish CMOs operate according to the new rules, but to ascertain whether the operation of the system follows the principles of good governance after the implementation of the new legislation.

Although CMOs are at the core of the system of collective management and therefore of the current study, the assessment takes into account all the actors involved, including the CMOs' members, rightholders, users, and public authorities in charge of copyright. Its purpose is to provide a general overview of the system as a whole. For example, efficiency covers not only the efficiency of CMOs in managing the rights of their clients, but also the efficiency of the system in general in supporting and promoting the licensing of rights. We attempted to include in the analysis all the entities and actions that significantly influence the system's governance.

One goal of this study is to ascertain whether the system offers rightholders, copyright users and CMOs the benefits of good governance in a balanced manner. Not all principles apply in the same way to all categories; for example, transparency requirements are different for users and for rightholders as their need for information varies. However, each principle is assessed from each stakeholder category's point of view. The conclusion offers a summary of the balance of interests in the system of collective management.

The final purpose of this study is to offer objective information to build an assessment of the system's strengths and weaknesses. The assessment results in a list of suggestions for improvement. We hope to provide readers and public actors with a practical outlook that can be translated into action for developing the collective management of copyright in the interest of rightholders, users and the general public.

## Data collection methods

The data was collected from three sources of information: a preliminary desktop study, a survey addressed at individual rightholders, and a series of interviews with representatives of collective management organisations, users, and public actors.

The desktop study was based on information publicly available. This includes primarily the information offered on each Finnish CMO's website, including transparency reports for 2019, rules of operation, conditions for membership, licensing conditions and tariffs, model licensing agreements, client agreements, rules of distribution of remunerations, and other information. Information on the legislative background and on public actors involved in collective management was also collected. The complete bibliography is available at the end of this report.

The point of view of rightholders was studied by collecting experiences through a survey. The survey was available online from 1 to 31 December 2020. The survey included 12 questions and was available in Finnish, Swedish and English. Most of the questions were multiple-choice questions, completed by open-ended questions requesting for more details (see questionnaire in the appendices). It was addressed to all Finnish creators and distributed through CMOs and by contacting rightholders', arts students' and other associations in various artistic fields. 292 respondents completed the survey. 94 % were current clients of CMOs; 39 % of them were clients of Teosto, 33 % of Sanasto, 14 % of Kopiosto, 8 % of Kuvasto, 4 % of Gramex and 2 % of Filmex. The survey responses cannot be considered as a representative view of the opinions of Finnish rightholders in terms of numbers. It was designed to collect experiences and obtain an overview of the types of issues that raise questions and remarks in rightholders.

Representatives of collective management organisations were interviewed in January and February 2021. The interviews were semi-structured and followed a questionnaire that was made available to the interviewees beforehand. The questionnaires followed a general structure available in the appendices but were adapted to each CMO's specific situation. The point of view of users was explored through interviews conducted from February to April 2021. Thirteen organisations representing users were selected to cover all types of works and rightholders as well interaction with each CMO. Finally, two additional interviews covered public actors involved in the collective management of copyright: a representative of the Finnish Patent and Registration Office<sup>9</sup>, and a copyright expert at the Ministry of

9 <https://www.prh.fi/en/index.html>

Education and Culture. All interviews lasted about one hour; they were conducted by videoconference and recorded, except for one that was conducted by email. Interviewees were given the chance to rectify their quotes before publication of this report. The questionnaires used are available in the appendices.

## 1. COLLECTIVE MANAGEMENT OF RIGHTS AND THE ROLE OF COLLECTIVE MANAGEMENT ORGANISATIONS

This chapter presents the legal and organisation framework for collective management of rights in Finland. The Finnish collective management organisations are also introduced below.

### ON TERMINOLOGY:

Various sources use different terms to refer to the main actors in collective management. In the present document, the following terms are used:

**Collective management organisation (CMO):** organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria: (i) it is owned or controlled by its members; (ii) it is organised on a not-for-profit basis.<sup>10</sup>

**Rightholder:** creator of copyrighted works or person to whom these rights have been transferred.

**User:** person or organisation using copyrighted works.

**Client:** person or organisation that has mandated a collective management organisation to grant licences and collect copyright remunerations on their behalf.

**Member:** person or organisation who has the power to vote or is represented at a CMO's general assembly.

**Customer:** person or organisation who obtains licences to use copyrighted works from a CMO.

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<sup>10</sup> Definition from Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, Article 3.

## 1.1. Legal and organisational background

As explained above, collective management organisations (CMOs) play a crucial role as intermediaries between rightholders and users of works in areas where licensing copyrights on an individual basis is excessively costly or impossible. They also benefit the general public by facilitating access to creative works. As such, they are subject to a specific legislative framework.

The primary role of CMOs is to facilitate the operation of the licensing markets, in particular when individual management of rights is impossible or very inconvenient for practical reasons. Collective management organisations monitor the use of works and act on the rightholders' behalf. Rightholders can voluntarily mandate CMOs as representatives to arrange licensing for their works. Additionally, in Finland and some other countries, CMOs' operations can also be based on non-voluntary licensing, such as extended collective licences and statutory licences. In these cases, CMOs are granted by law the right to collect remunerations on behalf of rightholders who have not explicitly provided them with a mandate. CMOs must be approved by the Ministry of Education and Culture to manage specific types of extended collective licences for a limited period of time. Rightholders have the right to prohibit the use of a work or other protected material in extended collective licensing, except for photocopying or retransmission. Some CMOs also play a role in managing the rights of remuneration and compensation in specific cases, such as public lending, resale of works of fine art and private copying.<sup>11</sup>

In Finland, there are seven CMOs who manage copyright and related rights by monitoring the use of works and by acting on the rightholders' behalf: APFI (representing film and audiovisual producers), Filmex (representing actors performing in audio and audiovisual works), Gramex (representing performing artists whose performances have been recorded, and producers of phonograms), Kopiosto (managing certain rights of authors, photographers, performing artists and publishers in all fields of creative work), Kuvasto (representing artists working in the field of visual arts), Sanasto (representing all writers: authors, translators, poets, editors and non-fiction writers), and Teosto (representing composers, lyricists, arrangers and music publishers).

<sup>11</sup> For more information on collective management and extended collective licensing in Finland, see Koskinen-Olsson, T. & Sigurdardóttir, V. (2016). Collective Management in the Nordic Countries. In Gervais, Daniel (ed.). *Collective management of copyright and related rights*. Kluwer Law International. 3rd edition. P. 243.

Collective management in Finland is regulated by the Act on the Collective Management of Copyright<sup>12</sup>, which entered into force on 1 January 2017. The Act transposed into Finnish law Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. The Directive's purpose, regarding collective management of copyright, was to improve the transparency, governance and efficiency of collective management throughout Europe. Accordingly, the Finnish Act added to the national legislation provisions regarding the rights of rightholders and the supervision of their interests in CMOs, members' rights in CMOs, the organisational structure of CMOs, as well as the administration of copyright remunerations.<sup>13</sup> Among the most important practical changes resulting from the new Act are the obligations of Finnish CMOs to produce a yearly transparency report, organise representation agreements for rightholders who are not affiliated to their member organisations, propose partial representation mandates (covering only certain rights or certain geographical areas), etc. The provisions of the Act will be presented in more details throughout the analysis.

All CMOs in Finland are non-profit organisations and therefore subject to the Finnish Associations Act<sup>14</sup>. The Finnish Competition Act<sup>15</sup> also has an important impact on their activities: since in Finland, there is only one CMO for each type of work or right, they hold a de facto dominant market position and must ensure that clients and customers are treated fairly. The Consumer and Competition Authority monitors their activities in that respect. CMOs' annual transparency reports must also be audited in accordance with the provisions of the Auditing Act<sup>16</sup>.

Among the changes brought about by the Act on the Collective Management of Copyright is the creation of the Advisory Board for the Development of Collective Management (Yhteishallinnon kehittämisen

12 Act 1494/2016.

13 For more information, see <https://minedu.fi/en/collective-management-of-copyright>

14 Act 503/1989. Unofficial English translation available at <https://www.prh.fi/en/yhdistysrekisteri/act.html>

15 Act 948/2011. English translation available at <https://www.kkv.fi/en/facts-and-advice/competition-affairs/legislation-and-guidelines/competition-act/>

16 Act 1141/2015. English translation available at <https://www.finlex.fi/en/laki/kaannokset/2015/en20151141.pdf>



neuvottelukunta).<sup>17</sup> This consultative organ is set by the government to monitor and assess the development of practices related to the collective management of copyright. Its task is to promote compliance with good practices and make recommendations on the procedures and standards in the field, develop the use of alternative dispute resolutions, and otherwise assist public authorities. It is composed of representatives of CMOs, rightholders, authorities and users. Since its establishment in 2017, the Advisory Board has been used as a forum to discuss the implementation of the new legislation, exchange information between different categories of stakeholders and the authorities, as well as raise and explore questions related to the current legislative framework. The Advisory Board is a unique feature of the Finnish collective management system.

In general, the Finnish copyright system is characterised by a high level of organisation and cooperation. Artists and rightholders have long assembled in associations modelled on labour unions and tasked with representing their interests through negotiation. The Finnish system of collective management of copyright has originally been built as part of the collective labour agreement system, and some of its features have been influenced by Finnish labour law.

## **1.2. APFI**

Audiovisual Producers Finland – APFI was established in 2018, when the Finnish copyright society for audiovisual producers (Tuotos), and three other representative bodies – the Association of Independent Producers in Finland (SATU), Finnish Film Producers (Elokuvatuottajat/COFFPA), and Audiovisual Finland – joined their operations. According to APFI’s representative, the main purpose of the organisation is the general improvement of the industry’s operating conditions. This includes promoting internationalisation (selling Finnish productions abroad and attracting foreign productions to Finland), negotiating with operators on behalf of the members, arranging industry competitions and events, and collecting licensing fees and distributing them to the rightholders. The organisation’s mission is therefore twofold: it acts both as the producers’ representative body and as a collective rights management organisation.

APFI’s membership is composed of audiovisual content production companies. Any Finnish entity in the field of audiovisual content production and active in audiovisual production, having legal capacity and agreeing with APFI’s purpose and rules may be accepted as a member of the

<sup>17</sup> Section 62 of the Act on the Collective Management of Copyright (1494/2016).

organisation. Anybody who holds rights defined in APFI's rules or is entitled to remunerations resulting from such rights can become a client. At the end of the 2019 operating year, APFI had 77 members entitled to member services and 283 clients having signed a copyright management agreement.<sup>18</sup>

APFI's activities as a collective management organisation include the distribution of copyright remunerations payable for private copying, retransmission, private online storage, and educational use. APFI does not license these rights alone, but together with Kopiosto. The only exception is APFI's mandate to grant public performance licences for educational and other non-commercial uses of Finnish films.

APFI's Board is composed of representatives of audiovisual content producers. In addition to the Chair, the Board consists of four to twelve full members and two to six alternates.

### 1.3. **Filmex**

Filmex is an independent association established in 2012 by the Union of Finnish Actors (Suomen Näyttelijäliitto – Finlands Skådespelarförbund). It operates as part of the union's representation and collective bargaining activities. Filmex was founded for the purpose of collecting and distributing copyright remunerations due to the members of the Union of Finnish Actors.<sup>19</sup> Its role is not to conclude licensing agreements but to negotiate agreements on actors' copyrights and to distribute copyright remunerations to actors in accordance with their employment conditions. Filmex also distributes the remunerations it receives from foreign productions to their actors residing in Finland. Its broader objective is to improve the copyright position of actors in cooperation with the Union of Finnish Actors. In 2019, remunerations were distributed to 844 rightholders.<sup>20</sup>

Anyone who has worked or will be working as an actor in an audiovisual production may become a client of Filmex; membership of the Union of Finnish Actors is not required. According to Filmex's representative, all applications have been accepted.

Filmex's rules were modified in 2017 to comply with the Act on the Collective Management of Copyright, but according to Filmex's representative, it no longer pursues activities subject to the Act, i.e. pure collective

18 APFI Annual Report 2019.

19 Cupore (2016). *Collective Management of Rights*. Report on Piloting in Finland. Cupore webpublications 39:21. P.17.

20 Filmex Transparency Report 2019.

management or licensing of rights, unlike other CMOs.<sup>21</sup> In Filmex's own view, it does not act as an extended collective licence organisation referred to in section 26 of the Copyright Act. At the time of writing, Filmex's status is unclear and being reviewed by the Patent and Registration Office.<sup>22</sup> Kopiosto acts as the actors' extended collective licence organisation. It distributes the remunerations it collects (e.g. compensations for private copying and online recording service remunerations) directly to the actors.<sup>23</sup> These remunerations do not pass through Filmex and do not constitute revenue for Filmex.<sup>24</sup>

The members of the Filmex Board are elected at a meeting where the Union of Actors is represented. Board members must be actors having mainly worked in audiovisual productions.

#### 1.4. Gramex

Gramex, founded in 1967, is the copyright organisation for phonogram music, representing performing artists and phonogram producers. According to its rules,<sup>25</sup> the purpose of Gramex is to promote and improve the rights of performers, particularly actors, under the Copyright Act and all their other rights pertaining to the use and the different forms of use of audio fixations and audiovisual programmes. The activities of the organisation consist of the collection and preservation of remunerations due to performing artists in accordance with the Copyright Act or on the basis of licensing agreements on the use audio fixations and audiovisual programmes, as well as their distribution to the rightholders. In addition, Gramex uses undistributed funds to support the operation of Esittävän säveltaiteen edistämissäätiö, a copyright foundation for performing artists.<sup>26</sup> Gramex

21 According to its representative, Filmex is an organisation attached to the Union of Actors, and its primary function is to carry out financial operations and distribute remunerations; all agreements under which remunerations are collected are the Union's agreements.

22 On 1 June 2018, the producers' copyright association APFI submitted a request for measures provided for in section 56 of the Act on the Collective Management of Copyright to the Finnish Patent and Registration Office with regard to Filmex and Kopiosto. Filmex Transparency Report 2019.

23 <https://www.filmex.fi/toiminta/> (in Finnish).

24 Filmex Transparency Report 2019.

25 <https://www.gramex.fi/wp-content/uploads/2021/04/Gramex-ry-saannot-2021.pdf> (in Finnish).

26 Interview of Gramex representative and Gramex Transparency Report 2019, p. 27.

has two member organisations: Muusikkojen liitto ry (Musicians' Union) and Musiikkituottajat ry (IFPI Finland). At the end of 2019, Gramex had approximately 56 000 clients.<sup>27</sup>

A rightholder who has produced a recording (producer) or whose performance has been recorded (performing artist or conductor) may be accepted as a client of Gramex.<sup>28</sup> In addition, registered non-profit associations whose members are entitled to copyright remunerations as performers or phonogram producers may become members of Gramex under terms described in more detail in Gramex's rules.<sup>29</sup>

The Board of Gramex is composed of the Chair and six other members. Three members are elected from among phonogram producers and three from among performers.<sup>30</sup>

Gramex manages two types of use: the public performance and the broadcasting of phonograms. Licensing concerns radio and television use, retransmission, use of background music<sup>31</sup>, internet and network use, audio fixation and audiovisual programme use and use of music videos, in addition to which Gramex receives private copying levies.<sup>32</sup> The Ministry of Education and Culture has approved Gramex to manage the following extended collective licences:

- educational use and use in scientific research of audio fixations and performances recorded on them (other than those included in television or radio programmes) (section 14 of the Copyright Act)<sup>33</sup>
- ephemeral recording (section 25f of the Copyright Act)
- online storage service for television programmes (section 25l of the Copyright Act)<sup>34</sup>.

27 Gramex Transparency Report 2019, p. 11.

28 Interview of Gramex representative.

29 Cupore (2016). *Collective Management of Rights. Report on Piloting in Finland*. Cupore webpublications 39:21. P.19.

30 Gramex Transparency Report 2019.

31 Concerning background music, Gramex and Teosto have set up a common organisation, GT Musiikkiluvat Oy, which jointly proposes licences.

32 Gramex Transparency Report 2019, p. 11.

33 Kopiosto provides licences for the retransmission and certain uses of audio fixations and audiovisual programmes on behalf of rightholders represented by Gramex on the basis of an extended collective licence. Kopiosto forwards the rights revenue from licensing to Gramex (Gramex Transparency Report 2019, p. 28).

34 Kopiosto invoices remunerations related to online storage services on behalf of Gramex and passes them on to Gramex (Gramex Transparency Report 2019, p. 28).

The remunerations collected by Gramex are distributed to performers and producers according to the amount of use and the rules of distribution.<sup>35</sup> The Board of Directors is in charge of applying and interpreting these rules.

## 1.5. **Kopioisto**

Kopioisto is an association for creative industry organisations, representing rightholders in several different creative industries and arts. It was founded in 1978. According to its representative, Kopioisto's primary purpose is copyright management. Kopioisto also promotes the joint interests of the authors and rightholders that it represents and seeks to influence relevant legislation in Finland and internationally, e.g. through CISAC<sup>36</sup> and IFRRO<sup>37</sup>. It has 45 member organisations, including copyright organisations and associations representing various artistic fields. Kopioisto represents over 50 000 Finnish and a much larger number of foreign authors, performers and publishers in the creative industries. Rightholders who are not members of a member organisation may also mandate Kopioisto either through a member organisation or, in some cases, directly. The representation of foreign rightholders is based on reciprocal agreements with sister organisations in other countries.

Kopioisto grants licences for digital copying, digital use, and limited copying of publications protected by copyright, as well as for various ways of using audiovisual works.<sup>38</sup> Since private copying does not require licensing, Kopioisto's customers (users obtaining licences) are educational establishments, companies, public administration organisations, associations and other organisations. Kopioisto also monitors the use of works and the needs of its customers in order to distribute the remunerations to the rightholders and to develop their licences.

Because Kopioisto deals with rights that are best organised through mass licensing, its operation is largely based on the system of extended

35 [https://www.gramex.fi/wp-content/uploads/2018/10/Tilityssaannot\\_final\\_2021\\_fi\\_low.pdf](https://www.gramex.fi/wp-content/uploads/2018/10/Tilityssaannot_final_2021_fi_low.pdf) (in Finnish).

36 International Confederation of Societies of Authors and Composers.

37 International Federation of Reproduction Rights Organisations.

38 This includes licences for copying material and works in teaching, companies and public administration; licensing of online recording services; retransmission of TV channels; use of TV programmes in teaching; library and institutional use of recorded TV and radio programmes; as well as use of old newspaper materials. Source: <https://www.kopioisto.fi/en/kopioisto/for-users-of-works/licences-for-the-use-of-works/>

collective licensing. Kopiosto is currently approved by the Ministry of Education and Culture for the following extended collective licences:<sup>39</sup>

- photocopying (section 13 of the Copyright Act)
- use for internal communication (section 13a of the Copyright Act)
- use for educational activities and scientific research (section 14 of the Copyright Act), except for the rights of audiovisual producers and broadcasters, and including digital uses
- certain rights of reproduction and communication to the public by archives, libraries, museums (section 16d of the Copyright Act)
- re-use of an archived programme, concerning audiovisual works (section 25g, subsection 1 of the Copyright Act), in collaboration with APFI
- re-use of works included in newspapers and periodicals (section 25g, subsection 2 of the Copyright Act)
- retransmission (section 25h of the Copyright Act), in collaboration with Teosto
- certain rights of online storage service for television programmes (section 25l of the Copyright Act).

Besides the revenue collected through licensing, Kopiosto shares the responsibility for distributing the public lending remuneration, which is paid to authors of literary works, musical works and works of visual art for the lending of copies of their works to the public from public libraries maintained by the municipalities and from university libraries. The public lending remuneration is paid by the Ministry of Education and Culture and distributed to each author depending on the total number of loans of the publication concerned. Kopiosto distributes remunerations for works of visual art and photographic works, Sanasto the remunerations to authors of literary works and Teosto to authors of musical works.<sup>40</sup>

Kopiosto operates in part as an umbrella organisation for other CMOs: it distributes revenues either directly to rightholders or through member organisations. Gramex, Teosto and Kuvasto are members of Kopiosto. Remunerations collected for the use of audiovisual works are primarily distributed as individual remunerations to the authors and performers of these works, while remunerations for the copying of books, newspapers, magazines and works published online are distributed to member organisations, who forward them to authors and publishers in the form of various grants and awards, for instance. Distribution is based on statistical analysis

39 <https://minedu.fi/en/extended-collective-licensing>

40 <https://minedu.fi/en/special-tasks-related-to-remunerations>

of the uses and on negotiations between member organisations. Because of the large number and variety of works, rightholders and uses represented by Kopiosto, its operation is complex and requires effective collaboration between its different member organisations.

## 1.6. Kuvasto

Kuvasto, founded in 1987, is a copyright society for artists working in the field of visual arts, representing individual rightholders. According to its representatives, Kuvasto's main tasks are, as those of many other CMOs, licensing and the management of copyright remunerations. In addition, its purpose is to promote awareness of copyright and influence relevant legislation. Kuvasto has ten member organisations in the visual arts field and represents approximately 2 700 Finnish artists and rightholders.<sup>41</sup> There are no particular criteria for being accepted as a client: the uniqueness of the potential client's artistic work is not assessed, for instance, and therefore also not whether the works meet the threshold of originality.<sup>42</sup>

Clients who are members of Kuvasto's member organisations are represented in the Board of Directors through their organisations. Each member organisation has one seat at the Board.

Kuvasto provides licences for the use of visual works of its clients as well as for their display in exhibitions. Kuvasto also manages the visual artists' right to remuneration for the resale of their works (section 26j of the Copyright Act), a special compensation scheme for which it has been approved by the Ministry of Education and Culture.<sup>43</sup> Additionally, Kuvasto has been approved for the distribution of revenues resulting from the following extended collective licences:<sup>44</sup>

- use of visual art works by archives, libraries, museums (section 16d of the Copyright Act)
- use of works of art included in a collection (section 25a of the Copyright Act)
- broadcast on radio and television of works of visual art (section 25f of the Copyright Act)
- ephemeral recording by a broadcasting organisation of works of visual art (section 25f of the Copyright Act).

41 <https://kuvasto.fi/in-english/>

42 According to Kuvasto's representative, there has been one case where it has rejected a client application.

43 <https://minedu.fi/en/special-tasks-related-to-remunerations>

44 <https://minedu.fi/en/extended-collective-licensing>

Kuvasto's licensing fees are mainly negotiated with customers and distributed directly to clients based on statistical information on the amounts of use, as well as on reporting from the customers. Resale rights are based on a tariff determined by law, corresponding to a percentage of the resale price.<sup>45</sup>

## 1.7. Sanasto

Sanasto represents authors and translators and was founded in 2005. Its main task is the management of copyright remunerations. As a professional organisation, Sanasto also seeks to influence writer-related copyright legislation in Finland and at the EU level. In addition, it informs clients and user groups of its operations and offers advice in copyright matters. Sanasto represents over 14 000 authors and translators, and its member organisations represent approximately 5 000 authors.<sup>46</sup> Sanasto has four member organisations: the Society of Swedish Authors in Finland, the Union of Finnish Writers, the Finnish Association of Translators and Interpreters, and the Finnish Association of Non-Fiction Writers.

Writers and translators are accepted as clients; potential clients have usually written at least one work. Sanasto's clients don't have to belong to one of its member organisations, and the latter's members are not necessarily Sanasto's clients.

Sanasto provides direct licences for uses of literary works, including for performances and use on Finnish radio and television. Sanasto also distributes the compensations paid for Finnish public library lending of literary works and is currently approved by the Ministry of Education and Culture for the management of the following extended collective licences:

- use of literary works by archives, libraries, museums (section 16d of the Copyright Act), concerning works which are not represented by Kopiosto
- use of literary works in a radio or television broadcast (section 25f of the Copyright Act)
- reproduction of literary works for ephemeral recording by a broadcasting organisation (section 25f of the Copyright Act)
- re-use of literary works in an archived programme (section 25g, subsection 1 of the Copyright Act).

45 <https://kuvasto.fi/jalleenmyyntikorvaus/> (in Finnish).

46 Numbers: Sanasto Transparency Report 2019; interview of the representative of Sanasto.



Licensing fees are determined on the basis of usage information, such as parts used and the extent of the usage. Remunerations are distributed to rightholders according to the same principles.

Sanasto operates under the direction of a six-member Board and the Executive Director.<sup>47</sup> The largest member organisations<sup>48</sup> both have two representatives on the Board, and the two others<sup>49</sup> both have one representative.

## 1.8. Teosto

Teosto, which was founded in 1928 by music creators and music publishers, is the copyright society for composers, lyricists, arrangers and music publishers. Its task is to manage music copyrights and to promote creative musical art in Finland. Teosto collects remunerations for the public performance, communication to the public, and recording of music and distributes them to music creators and publishers and grants licences to users for these purposes. It represents approximately 35 000 Finnish music creators and publishers.

Teosto has 770 ordinary members who have the right to participate in and vote at the General Meeting (general assembly). Teosto's membership mainly consists of music authors and music publishers, but professional registered associations representing music authors or music publishers can also become members. Among those are three organisations representing the main groups of Finnish music rightholders: Suomen Säveltäjät (concert music composers), Suomen Musiikintekijät (composers, lyricists, arrangers) and Suomen Musiikkikustantajat ry (MPA Finland, music publishers). Membership criteria for authors and publishers are based on clientship and distribution amounts received.<sup>50</sup> The three member organisations representing music authors and publishers take part in Teosto's internal working groups, and their chairpersons are usually members of Teosto's Board. Member organisations do not have a formal position in Teosto's Statutes

47 Sanasto Transparency Report 2019.

48 The Union of Finnish Writers and the Finnish Association of Non-Fiction Writers.

49 The Finnish Association of Translators and Interpreters and the Society of Swedish Authors in Finland.

50 An applicant must be a client of Teosto who, in no more than six distribution periods immediately preceding the year of application, has received distributions totalling at least €3 000 (authors) or €7 500 (publishers). In addition, publishers have to fulfil a certain representativity criterion.

or governance structure, but they play an important role in its operations by e.g. conveying the views of rightholders to support decision-making.

Teosto's activities as a CMO include marketing, negotiations and sales of user licences, collecting user reports for different types of uses (from broadcasters, web services, live events organisers, etc.), registering work and rightholder data in domestic and international databases, collecting copyright fees from users, distributing remunerations to music authors and publishers, and maintaining a network of representation agreements with foreign CMOs for the licensing of Finnish rights on EU and global markets and for the licensing of foreign rights in Finland. Teosto also conducts public affairs activities to advocate for the rights and interests of music rightholders, particularly in matters relating to copyright law, but also in matters of e.g. legislation governing the tax treatment of royalties. Teosto promotes and supports Finnish music through funds and foundations, including the Finnish Music Foundation. Finally, Teosto conducts anti-piracy activities through the Finnish Copyright Information and Anti-Piracy Centre<sup>51</sup>.

As to its services to its clients, Teosto is responsible for the management of the rights of composers, lyricists, arrangers and music publishers. Teosto specifically manages the right of public performance and making available to the public (offline, e.g. music played and performed in public places, transmissions of live and recorded performances on radio and television, online use) and the mechanical reproduction rights in musical works (the reproduction of works in CDs, tapes, vinyl records, cassettes, mini-discs, or any other form of copying, including digital formats/online use). In addition, Teosto has been appointed to manage several extended collective licensing schemes in the field of musical works, currently the following:<sup>52</sup>

- reproduction of musical compositions for radio and television broadcasts (section 25f of the Copyright Act)
- reproduction of musical compositions for ephemeral recording by a broadcasting organisation (section 25f of the Copyright Act)
- re-use of musical compositions as part of an archived programme (section 25g, subsection 1 of the Copyright Act)
- retransmission (section 25h of the Copyright Act), together with Kopiosto
- use of musical compositions in online storage services for television programmes (section 25l of the Copyright Act).

51 <https://ttvk.fi/en/front-page>

52 <https://minedu.fi/en/extended-collective-licensing>

Teosto also has the responsibility of distributing the portion of the private copying levy allocated by the Ministry of Education and Culture to the rightholders represented by Teosto. In addition, Teosto distributes the compensations paid for Finnish public library lending of music works (records and sheet music) to music authors.

Teosto serves its customers by proposing a large variety of licences for the use of music. Teosto and Gramex have created a service to propose joint background music licences accessible online.<sup>53</sup> Teosto itself grants licences to various public and private customers, including radio and television companies as well as organisers of concerts and other activities involving public use of music. Tariffs are calculated based on the significance of the music to the business operation of its users as well as other criteria related to the type and extent of the use. The general rules for distribution of remunerations to rightholders are decided by the General Meeting in accordance with the Act on the Collective Management of Copyright. Executive day-to-day decisions on various matters relating to distribution are made by the Board of Directors, the CEO and designated internal working groups. Distributions are based on reporting from users as well as on statistical information and, where necessary, on other relevant information sources.

53 <https://www.musiikkiluvat.fi/>

## 2 GOOD GOVERNANCE

Good governance can be defined as a standard for high-quality decision-making processes. It requires for governance to be exercised according to a series of principles. The principles of good governance used in this report have been selected on the basis of good governance definitions presented by several international bodies and on their applicability to the copyright system.<sup>54</sup> The list includes the principles of transparency, participation, accountability, coherence and consistency, responsiveness, effectiveness and efficiency, equity and inclusiveness, and separation of powers. This chapter examines the meaning of each principle in the context of collective management of copyright and assesses whether they can be considered as fulfilled in Finland.

### 2.1. Transparency

Transparency of governance refers to "the availability of information concerning public actions, and clarity about government policies, regulations, and decisions".<sup>55</sup> Transparency ensures that stakeholders are provided with sufficient information to exercise their rights; it is a prerequisite for participation and accountability. In the context of collective management of copyright, transparency requires that the manner in which copyright remuneration is collectively managed is clear for all interested parties, in particular copyright holders and users.

Section 9 of the Act on the Collective Management of Copyright states that CMOs must inform rightholders of their right to choose a collective management organisation, to grant licences for non-commercial uses and to withdraw their mandate. Chapter 8 of the same Act details a range of information that must be provided to rightholders (section 39) or published on the CMO's website (section 40) or in the annual transparency report (section 41).

The purpose of the current assessment is to verify whether the operation of CMOs is transparent towards all stakeholders, including rightholders, clients, customers acquiring licences as well as the general public. The first section covers a series of general information items necessary for

54 See Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45. Pp. 10-12.

55 Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45. P. 15.

understanding CMOs' operation and the contracting of licences, and verifies whether this information is publicly available and accessible. The following section explores the opinions of CMOs, rightholders and users on the system's transparency and their experiences of it.

### 2.1.1. PUBLICLY AVAILABLE INFORMATION ABOUT CMOS

For this report, we compiled a list of information items considered most useful for understanding the operation of CMOs and for contracting with them, either as a client (rightholder) or customer (user of licences). The table below indicates which of this information is publicly available for each one of the CMOs. The location of each item of information is indicated in the list of sources at the end of this report.

TABLE 1.  
Publicly available information for each CMO

Information	APFI	Filmex	Gramex	Kopiosto	Kuvasto	Sanasto	Teosto
Statutes of the organisation	Yes	No	Yes	Yes	Yes	Yes	Yes
Terms of membership/to become a client	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Terms for withdrawal	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Standard licensing contracts, tariffs and pricing criteria	Yes	– <sup>56</sup>	Yes	Yes	Yes	Yes	Yes
Governance structure of the organisation and list of persons responsible for management	Yes	Yes	Yes	Yes	Yes	Yes	Yes
General policy on distribution of remunerations to rightholders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts	Yes	Yes	Yes	Yes	Yes	Yes	Yes
List of cooperation and representation agreements	Yes	No	Yes	Yes	Yes	Yes	Yes
Dispute resolution procedures available	Yes	Yes	Yes	No	No	Yes	Yes
Annual reports and accounts	Yes	Yes	Yes	Yes	Yes	Yes	Yes

<sup>56</sup> Filmex does not provide licences.

As can be noted, almost all the information listed was available on the CMOs' websites. The dispute resolution procedures available in case of conflicts with clients or customers are not always described or mentioned, but none of the CMOs offers dispute resolution procedures other than those applicable in general legislation; when the information is available, it refers to the possibility of contacting the CMO's representatives for negotiation and/or to the normal jurisdiction of the Market Court.<sup>57</sup> Filmex also offers less information than other CMOs, which can be explained by the fact that they do not offer licences to users and operate in tandem with the Actors' Union.

The manner in which the information is provided also varies to some extent, principally according to the type of potential clients or customers of each CMO. Those who contract mainly directly with individual rightholders or users, such as Teosto or Gramex, tend to provide more detailed and accessible information on practical matters such as conditions for remuneration or licensing terms and tariffs. In other cases, some important information must be looked for in the client/membership agreement, the general terms and conditions, the rules of distribution, or other documents that are only available for download and are formulated in a language which might be less accessible for users.

### **2.1.2. TRANSPARENCY FROM THE VIEWPOINT OF DIFFERENT STAKEHOLDERS**

This section provides an overview of the opinions of the different stakeholders (CMOs, rightholders and users) on the transparency of the CMOs' activities.

According to the **CMOs**, compliance with transparency-related legal obligations guarantees the openness and transparency of their operations. The CMOs didn't consider the obligations difficult to comply with, although their workload might have increased in the period immediately following their introduction, when the CMOs had to ensure that certain conditions regarding e.g. the content of the transparency report would be fulfilled. According to the CMOs, information on their activities or e.g. remuneration criteria is available on their websites, or, if necessary, it can be requested by contacting them directly. In their view, the threshold for rightholders and users to contact them is low and enquiries are responded to in sufficient detail. CMO representatives explained that information needs mostly concern remunerations, and an enquiry or contact may be

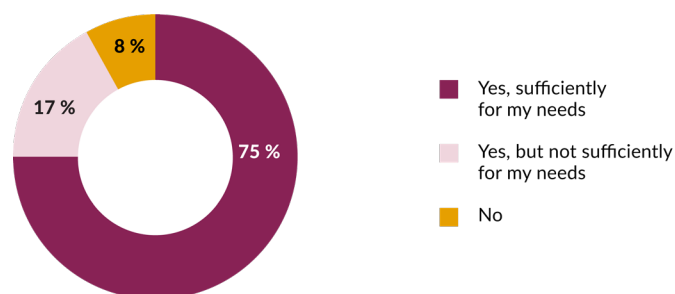
<sup>57</sup> For more information, see section on [separation of powers](#).

triggered by, for instance, a remuneration perceived as missing or uncertainty about calculation criteria.

**Rightholders'** views on transparency were investigated through a survey. 75 % of the respondents considered there to be enough information available on how CMOs operate and collect and distribute remunerations.<sup>58</sup> 17 % felt that even though there is information available, it is not enough for their needs, and according to less than one in ten (8 %), information is not available. Although three out of four respondents felt that there is enough information available, the replies revealed uncertainties and information needs.

FIGURE 1.

**Do you consider that there is enough information available on how the copyright society operates, collects and distributes copyright remuneration?** n= 277



Some respondents found copyright difficult to understand in general and considered copyright questions complicated. They were therefore also unsure about how the CMOs' activities and role relate to those of other actors in the field and found this difficult to grasp. Furthermore, it was not clear to all how copyright remuneration criteria were defined in general or in connection with different types of use, such as various performances, or in the digital environment.

In some comments, CMOs' activities were considered too closed or non-transparent, and a wish for more information was expressed. In addition, many respondents mentioned that the accuracy of remunerations would be easier to check if the information provided was more concrete; it would also help them to plan their own activities.

The payments should show the revenue from different works.

I mean, not a lump sum or so that you have to ask for a breakdown

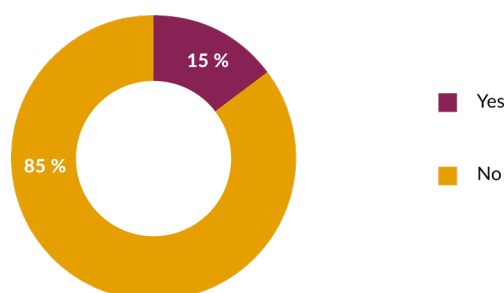
58 Question 5. Do you consider that there is enough information available on how the copyright society operates, collects and distributes copyright remuneration?

specifically. Many don't even know that you have to request it specifically – they don't tell you that. It is, however, important for an author to know how "successful" one's different books are, and that's why this information should be indicated in a transparent manner.

The respondents were also asked whether they had encountered difficulties obtaining information regarding their copyright remuneration.<sup>59</sup> The majority (85 %) had not had such difficulties. Most of those who had encountered difficulties wished for more detailed data on the use of their works.<sup>60</sup> This was referred to also in the replies to the preceding question. In that case, the information was considered inadequate or not detailed enough.<sup>61</sup> In general, it was not felt that the information given was presented in an inaccessible way by using, for instance, difficult legal terminology. The perceived problems had more to do with information not being available openly enough in the first place, or the information given not being sufficiently detailed. At the same time, it is worth noting that despite the problems set out above, most rightholders were satisfied with the availability of the information they needed, its level of detail and that it could be obtained upon request.

FIGURE 2.

**Have you encountered difficulties obtaining information from the copyright society regarding your copyright remuneration?** n= 277



From the point of view of **users** acquiring licences, the situation is different for those who contract using standard terms and tariffs, and users in a position to negotiate individual conditions. The first category includes, for example, establishments in the hospitality industry acquiring licences for the use of background music. The hospitality industry organisation MaRa

59 Question 6. Have you encountered difficulties obtaining information from the copyright society regarding your copyright remuneration?

60 Question 6, first subquestion. What kind of information was difficult to obtain?

61 Question 6, second subquestion. What kind of difficulties did you encounter?



reports no problems of transparency as the licensing terms and pricing presented by Teosto and Gramex are clear and easy to comprehend.

Other users are able to negotiate individual terms and conditions, for example as an umbrella organisation representing smaller users or as a large player at the national level. The interviews conducted with users indicate that in these cases, the most important information in the negotiations are the standard licensing conditions and pricing criteria, although all the information items listed in the table above are potentially useful. While some respondents were perfectly satisfied with the information publicly available or received upon request, some others pointed out that they wished for more transparency on some topics.

One of these is the topic of pricing criteria. When tariffs are negotiated individually, the basis for the amount requested by the CMO is not always clear for its customers. In several cases, tariffs are based on the financial capabilities of the user, such as a percentage of a private company's turnover or the budget available to a public organisation.<sup>62</sup> A few users interviewed expressed a wish for more detailed information on the basis of the tariffs, which would be useful to them during negotiations. They would like to understand how the amounts to be paid are arrived at and whether there is any room for taking into account their own business situation in the pricing models.

Pricing is the most obscure thing. Teosto and Gramex have quite open pricing models but I can't know for sure whether they are applied as such or whether there is room for negotiation. If there is, the end result can be anything.<sup>63</sup>

We sent our estimation about the amount of copyright material in art museums' collections that comes under this agreement, and they told us how much this would cost. I don't know what kind of calculation they made, but there was no room for negotiation. We just received the price.

The different terms could be set out more openly. The fact that tariffs are published but there is no information on the kind of exceptions that are made with regard to various actors makes it possible to have secret agreements. They can give the impression that the tariff is the same for all, but we know that it isn't. It isn't the same and it is not meant to be the same for everybody.

62 See section on [coherence and consistency](#).

63 Original quote: Hinnoittelu on se hämärin asia. Teostolla ja Gramexilla on suht koht avoimia hinnoittelumalleja mutta mulla ei ole varmuutta että sovelletaanko niitä sellaisenaan vai onko siellä neuvotteluvara. Jos on neuvotteluvaraa niin se lopputuloksen voi olla ihan mitä vaan.

Some mentioned that it would be more meaningful to base licensing fees on the actual monetary value of the use of copyrighted works in the licensing party's activity. Others wished they could have access to pricing conditions in other countries. Users in some fields, in particular the music and the audiovisual industry, consider that licensing tariffs in Finland are significantly higher than in other European or Nordic countries. As licensing agreements are confidential and the conditions can be different with foreign CMOs, comparisons are difficult, but some users in these industries expressed a wish to understand these differences in pricing and to know more on the possibilities to contract with other European CMOs.

The audiovisual industry also presents particular challenges concerning the availability of information. The system of rights is complex, and production companies have difficulties determining what rights they have to license, from whom and at what price. One interviewee explained:

It is a kind of jungle still, music rights for example, and would need further clarification. Who should be enquired about what rights, where should the payments be made, when do we know that everything is all right. Producers who have done it longer have a clearer view of it. If you go to Teosto's website, it mentions audiovisual productions, but it just says that agreements concerning films will be made on a case-by-case basis. There are no tariffs, and that's ok, but that should be stated, so that it would be more clear.<sup>64</sup>

Another type of information that was missing in some negotiations is the destination of the fees: to whom they were distributed and what shares of the licensing fees were actually received by rightholders. This information would be useful to some umbrella organisations who negotiate terms on behalf of individual users to whom they need to explain the fees. In other cases, users are particularly interested in supporting artists and wish to know to what extent their financial contribution will result in a meaningful remuneration for those whose work they licensed.

I'm afraid I don't know what principles they use when they divide the money between the artists. I don't know how much money is paid to the artists and how much is administrative costs. I assume that the admin costs are not very high.

64 Original quote: On se sellainen viidakko edelleen esim. musiikkioikeudet että se vaatisi selkeyttämistä edelleen. Eli mitä oikeuksia pitää keneltäkin kysyä ja minne se maksu suoritetaan. Milloin olen turvallisilla vesillä. Niille tuottajille jotka tehneet sitä enemmän se on selkämpää. Jos menee vaikka Teoston sivuille niin siellä on kohta av-tuorannot mutta sitten siellä kuitataan että elokuvista sovitaan tapauskohtaisesti. Siellä ei ole tariffeja siihen ja hyvä ettei olekaan, mutta se pitäisi sanoa että siinä olisi selkeämpi.

Some users might not have a sufficient understanding of collective management rules in general.

It would be useful to some people if the creation of the rights management structure was described. (...) Not everyone has that background, so it would be a good idea to clarify the mechanisms by which rights are created and the manner in which they are managed.<sup>65</sup>

One interviewee mentioned that the procedures available in case of dispute were not generally known by users, although it could be important information if such a dispute was to arise. Indeed, some interviewees who were not experts in legal issues, even when they were responsible for negotiating licensing in their organisations, were not aware of the dispute resolution mechanisms available to them. However, this did not seem a general cause of concern; so far, only very few disagreements had not been resolved through negotiation with the CMOs.

Thus, there was some perceived lack of transparency especially regarding pricing criteria, as many wished for more detailed information on the basis for the tariffs. However, none of the users felt it was impossible to reach an agreement because of that. It is also worth noting that licensing negotiations and processes require transparency not only by CMOs toward users but also the other way around. Users must provide information on their licensing needs (works involved, extent of their use, etc.) during licensing negotiations for the tariffs and conditions to be calculated, and some types of licences require reporting by users. Issues regarding the provision of information by users are covered in the section on effectiveness and efficiency.

## 2.2. Participation

Participation, in the context of governance, is defined as "the possibility of concerned parties to generate legitimate demands, and take part in the decision-making process".<sup>66</sup> Participation can be exercised through groups or associations, but all groups affected by a measure should be able to participate so that their needs and interests can be considered. Participation is distinct from the principle of inclusiveness: participation means that a fair possibility to participate is available; inclusiveness requires this possibility to be accessible to all members of the group.

65 Original quote: Se miten oikeuksien hallinnon rakenne syntyy olisi hyvä kuvata joillekin. (...) Kaikilla ei ole sitä tekijänoikeustaustaa ja siksi olisi hyvä avata niitä mekanismeja joilla oikeudet syntyvät ja miten niitä hallinnoidaan.

66 Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45. P. 1.

Participation in the context of collective rights management takes the form of the rightholders' possibility to take part in the decision-making of the CMO representing them. It is particularly important in situations where CMOs have a de facto monopoly in a certain category of rights over a certain geographical location. Participation of rightholders in the CMO's management is a way to ensure that the CMO behaves in the best interests of its clients. The European Directive on collective management explicitly states that "collective management organisations should act in the best collective interests of the rightholders they represent. It is therefore important to provide for systems that enable the members of a collective management organisation to exercise their membership rights by participating in the organisation's decision-making process."<sup>67</sup>

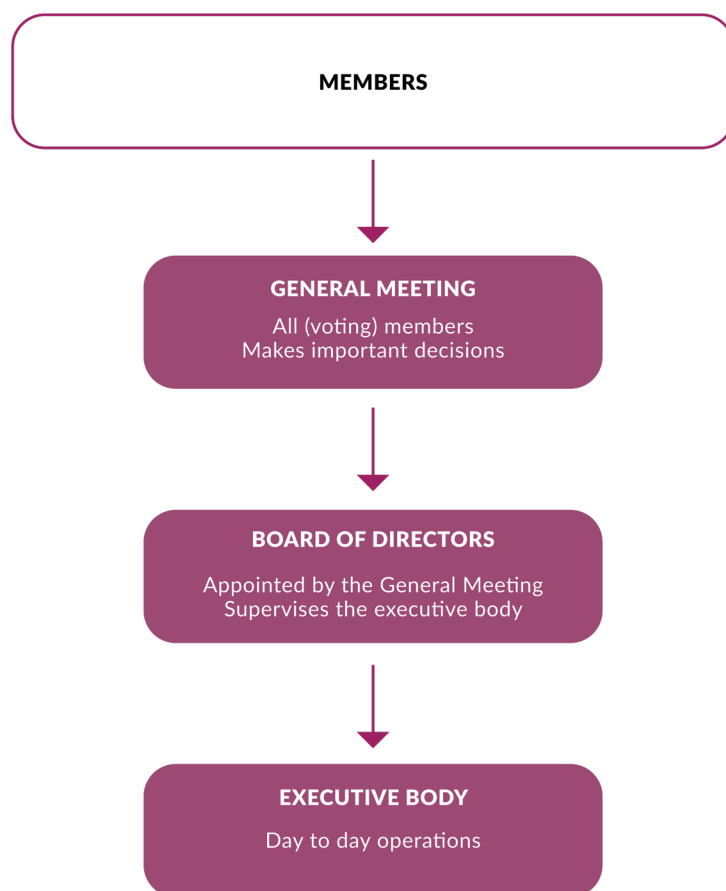
The Finnish Act on the Collective Management of Copyright<sup>68</sup>, in its section 12, provides that CMOs must enable their members to participate in the decision-making of the organisation. The participation of members takes the form of their right to attend, vote or be represented at a yearly general assembly, which decides on important matters pertaining to the operation of the CMO, such as amendments to the statute and membership terms, appointment or dismissal of directors, the general policy of distribution of amounts due to rightholders, approval of the transparency reports, etc. In principle, all members of a CMO should have the right to participate in and vote at the general assembly, either directly or by proxy. Members belonging to different categories of rightholders must be represented fairly and harmoniously in the decision-making process.

Section 15 of the Act on the Collective Management of Copyright requires that the general assembly appoint a supervisory body, either the board of directors or the supervisory board, in which different categories of rightholders are represented equally and harmoniously. This board is responsible for supervising the activities of the executive management body, making the decisions entrusted upon it by the general assembly and reporting to it annually.

<sup>67</sup> Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. Recital 22.

<sup>68</sup> Act 1494/2016.

FIGURE 3.  
Organisational structure of CMOs



Additionally, the Directive leaves the possibility for Member States to decide that, in cases of CMOs whose members are entities representing rightholders, all or some of the powers of the general assembly of members may be exercised by an assembly of those rightholders. Although several Finnish CMOs only accept organisations representing categories of rightholders as members, the Finnish Act did not create a general assembly of rightholders. The different categories of rightholders must be represented fairly and harmoniously at the supervisory body.<sup>69</sup>

The following section endeavours to verify whether, in practice, the current structure and operation of CMOs give rightholders the possibility to take part in the decision-making of the CMO representing them, and through which mechanisms.

69 Act on the Collective Management of Copyright (1494/2016), section 15.

### 2.2.1. MEANS OF PARTICIPATION OF RIGHT HOLDERS IN THE DECISION-MAKING OF CMOs

Depending on the CMO, rightholders have different means of participating and having their interests represented.

Finnish CMOs all have a structure divided between a general assembly, a supervisory body and an executive branch, as prescribed by the Act on the Collective Management of Copyright. The first possible means of participation is therefore attendance and vote at the general assembly. However, the right to attend and vote at the general assembly is accessible only to those rightholders who are members (instead of just clients) of CMOs. It is not often possible for individual rightholders to become members; in five out of seven Finnish CMOs, only organisations representing rightholders can obtain membership. As a result, in only two CMOs, individual rightholders have the possibility to cast a vote at the general assembly.

TABLE 2.  
Categories of members for each CMO

CMO	Members
APFI	Individual rightholders
Filmex	Organisations
Gramex	Organisations
Kopiosto	Organisations
Kuvasto	Organisations
Sanasto	Organisations
Teosto <sup>70</sup>	Individual rightholders who meet certain criteria and request to become ordinary members, as well as professional registered associations representing rightholders

Another means of participation for individual rightholders is through their representative organisations or societies. The role of member organisations is to represent their own members' interests within the CMO. Rightholders can therefore communicate their demands and suggestions concerning

<sup>70</sup> In the case of Teosto, the General Meeting (general assembly) is constituted of ordinary members, who are individual author and publisher rightholders who meet a certain, rather accessible, threshold of income and have requested to become ordinary members, or professional registered associations representing rightholders. In particular, Teosto has among its members three professional societies representing the main categories of music copyright holders. These organisations have no official status but their chairpersons are usually members of Teosto's board.

the management of the CMO to the organisation or society of which they are a member. This means of participation is reserved to rightholders who are members of representative organisations; it is not an option for rightholders who have provided a mandate directly to the CMO and are not members of member organisations.

Finally, depending on the practices of each CMO, individual rightholders can also participate in their operation by being involved in other activities or by providing voluntary feedback. For example, Teosto allows non-ordinary members to be appointed as members of internal working groups discussing issues such as the rules of revenue distribution. However, candidates for such positions usually come forward through Teosto's member societies. The only option available to all rightholders without exception is to contact directly the CMO of which they are a client. Several CMOs' representatives stated that they welcome rightholders' and users' input and suggestions, and some actively seek feedback through customer satisfaction surveys (see section on responsiveness).

### **2.2.2. RIGHTHOLDERS' EXPERIENCES ON PARTICIPATION**

The Finnish collective management system takes a specific stance on participation: the main means of participating in a CMO's management is not, in many cases, through direct involvement or representation at the general assembly. Even when individual rightholders have this possibility, interest remains rather low: at Teosto, among 35 000 clients there are currently only 770 ordinary members with a right to participate in General Meetings, even though the conditions to become an ordinary member are rather accessible.<sup>71</sup> Efforts have been made both by Teosto and its member societies to recruit new ordinary members, including a revision of statutes enabling full remote participation and voting. However, according to Teosto's representative, it seems that rightholders pursuing an active career as authors or performers often have little interest in organisational activities.

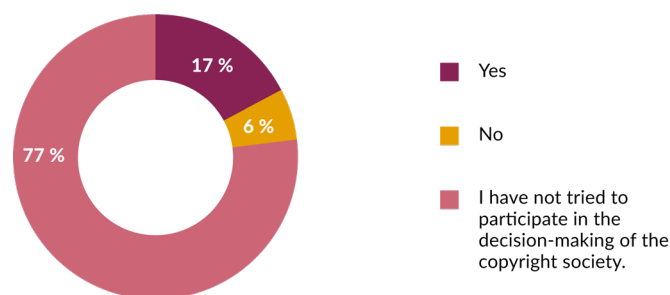
This lack of interest seems confirmed by the results of the rightholders survey: 77 % of respondents declared that they had not tried participating

<sup>71</sup> Conditions for membership are based on accrued distribution revenue. Authors must have had a revenue of €3 000 and publishers of €7 500 in the preceding six-year period. In addition, a publisher must meet certain criteria relating to representativeness. The application process consists in filling in an application form on Teosto's website, and there are no extra membership fees besides the normal membership (client) fee.

in the decision-making of the copyright society.<sup>72</sup> Only 6 per cent of respondents felt that they could not sufficiently participate in the organisation's decision-making. Most of them presented complaints related to the distribution of revenues rather than to the conditions of participation.

FIGURE 4.

**Do you feel that you can/could sufficiently participate in the decision-making of the copyright society?** n=276



Altogether, it seems that a vast majority of rightholders are either uninterested in or satisfied with the means to participate in the operation of the CMO they are a client of. In such a context, the Finnish system's peculiarity of having CMOs managed by rightholders' organisations provides an efficient solution, as the collective management of rights is supervised by dedicated professionals representing most categories of rightholders. These representatives are in an excellent position to convey the views of rightholders to the CMOs' boards and find balanced solutions acceptable to all interested parties in complicated governance issues such as drafting distribution rules. Representatives of CMOs stated during interviews that this system of participation seems to function to satisfaction. However, it is worth noting that those rightholders who feel that their interests are not properly represented have little direct recourse. This would be especially the case when an artistic field is insufficiently large and organised to have direct representation at a CMO's board, or when the member organisation representing their category of rightholders is not able to influence a CMO's operation.

<sup>72</sup> Question 7. Do you feel that you can/could sufficiently participate in the decision-making of the copyright society?



### 2.3. Accountability

Accountability is crucial in effective governance. It requires that organisations charged with a public mandate be held to account for their actions to the public from whom they derive their authority. Accountability requires criteria to measure performance as well as oversight mechanisms.<sup>73</sup>

In the context of collective management of copyright, actors whose accountability could be measured include public actors in charge of copyright administration and collective management organisations. The accountability of public actors can only be assessed as part of the general accountability of national authorities in general.<sup>74</sup> This section therefore focuses on the accountability of CMOs. CMOs should be firstly accountable to their members and clients, whose rights they represent. Additionally, because they fulfil a unique and crucial role in the operation of copyright licensing markets and, in certain cases, a public mandate, CMOs should also be accountable to other stakeholders who depend on them, such as users, and to the general public. Their activities should therefore be supervised in a manner that ensures that the needs of all relevant stakeholders are met as well as possible and in accordance with applicable laws.

The Act on the Collective Management of Copyright proposes two types of specific accountability systems: internal and external. Internal accountability covers the internal supervision practices by which CMOs' management is made responsible towards its members and clients. External accountability includes the supervision by public authorities to ensure that CMOs operate according to laws. The following section will cover separately these two levels of accountability, describing the legislative framework and assessing its practical implementation.

#### 2.3.1. INTERNAL SUPERVISION

Internal accountability is covered in chapter 4 of the Act on the Collective Management of Copyright. As discussed in the previous chapter, sections 15 and 16 impose the existence, in each CMO, of a supervisory body, appointed by the general assembly, where all categories of members are represented. This board is responsible for supervising the activities and performance

73 For a definition of accountability in the context of copyright systems, see Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45, pp. 21-22.

74 On this topic, see for instance European Commission (2018). Public administration characteristics and performance in EU28: Finland. <https://op.europa.eu/en/publication-detail/-/publication/621cdf55-9611-11e8-8bc1-01aa75ed71a1>

of the management as well as the implementation of the decisions of the general assembly. The general assembly can delegate some of its decision power to the board, which reports at least annually to the general assembly. Section 17 of the Act states that a managing director or another person is responsible for the day-to-day management of the organisation, in accordance with the instructions and regulations issued by the board. In other terms, Finnish CMOs must follow a structure that includes, at minimum, an executive body reporting to a board reporting to the general assembly.

In practice, the main supervisory organ of Finnish CMOs is a board of directors composed of representatives of all or some of its member organisations. The general assembly's role in terms of supervision consists mainly in receiving and approving the board's reporting once or twice a year. Board meetings take place more often than the yearly minimum (from three times a year to once a month) and, in most cases, the board has a constant discussion and sharing of information process with the management. Boards in Finnish CMOs are not only conceived as fulfilling a supervisory function but also as providing a forum for negotiations between stakeholders' representatives. The relationship between the board and the executive body has often been described during interviews as taking the form of dialogue and collaboration. Board members are professionals in relevant industries often in place for long stretches of time and, as a result, are knowledgeable about the issues at hand. Additionally, some CMOs organise working groups or task forces on distribution rules, which negotiate separately on practical issues. As a result, none of the CMOs interviewed reported significant conflicts between board, general assembly and management. It has however been noted that, in the Finnish system, member organisations represented at the board have a crucial role as they collect rightholders' mandates and decide, within the framework of their cooperation agreement with the CMO, to what extent they are willing to transfer those rights to the CMO. As a result, they might withhold the mandates of whole categories of rightholders if they are not satisfied with the manner in which the organisation is run. As a representative of a CMO put it,

Member organisations have the rights in their hands. In principle they could state: "If you don't obey us, we will take these rights away." (...) That puts the member organisations in a strong position; they can facilitate and promote the interests of their right owners effectively. On the other hand, it is an interesting sign of a tradition of consensus and well-functioning procedures that this kind of direct pressure is actually very rare.

### 2.3.2. EXTERNAL SUPERVISION

The supervision of CMOs is described in the Act on Collective Management of Copyright<sup>75</sup>, in its chapter 10. According to section 53, new CMOs have to notify the Patent and Registration Office (Patentti- ja rekisterihallitus, PRH) prior to the commencement of their activities. PRH then monitors CMOs' compliance with the Act, provides advice on its application and promotes good practices (section 54). In its supervisory duties, PRH may take measures on its own initiative, respond to a request for action from third parties alleging an act in breach of the Act's provisions (section 56), or be notified of any interesting facts or decision of a CMO by its auditor (section 59). When a request for action is made, PRH may dismiss it (in conditions laid out in section 57), request information and carry inspections at the CMO's premises (section 58), and issue a remark or a warning or impose a penalty payment to a CMO (section 59). Such decisions can be appealed to the Administrative Court of Helsinki (section 61). Additionally, PRH responds to requests for information from the authorities of other EU Member States as part of the collaboration system under Article 37 of the Directive on collective management of copyright.

Since there is only one CMO for every type of work or use in Finland, Finnish CMOs hold a dominant position in their respective markets. As such, they are submitted to the Finnish Competition Act<sup>76</sup>, which prohibits certain restraints on competition and any abuse of dominant position. The Finnish Competition and Consumer Authority is in charge of investigating claims of infringement on competition (section 31 of the Competition Act) and cooperates with PRH when carrying out supervisory tasks (section 55 of the Act on the Collective Management of Copyright).

Additionally, all Finnish CMOs operate in the form of an association and as such are submitted to the provisions of the Associations Act<sup>77</sup>, under the supervision of PRH. CMOs must also publish annually a transparency report including financial statements, which must be audited in accordance with the provisions of the Auditing Act<sup>78</sup>.

As a result, PRH is the main organ in charge of monitoring the activities of CMOs. CMOs reported in interviews that since the Act came into force, there have been regular meetings with PRH to discuss the contents of the new transparency reports. Some work was necessary to adapt the

75 Act 1494/2016.

76 Act 948/2011.

77 Act 503/1989.

78 Act 1141/2015.

requirements of the European Directive to the Finnish context, and this was made in close cooperation between PRH and CMOs. The resulting administrative burden was considered heavy by the smaller CMOs with fewer resources, but they all agree that the new legislative framework necessitated an adaptation period and that the requirements, once fully clarified, are reasonable.

Besides the discussions concerning the content of the transparency reports, few CMOs mentioned other types of external supervision procedures. PRH has stated that so far, requests for action based on the Act on the Collective Management of Copyright have resulted in six cases, four of which are still pending. PRH also receives informally information and hints from various types of stakeholders that might lead, after investigation, to further action. As such actions are submitted to secrecy according to the Act on the Openness of Government Activities<sup>79</sup>, it is not possible to obtain information on pending requests for action or investigations. It seems, however, that most concern chapter 2 of the Act on the Collective Management of Copyright, which covers the rights of rightholders. A representative of PRH stated during our interview that, at the moment, supervision is mainly based on requests for action, but PRH has also started investigations and other supervision duties on its own initiative.

Since the number of cases past and pending is still low, it is difficult to assess the efficiency of the current supervision system at this point. However, some interviewees expressed a feeling that external supervision was not optimal because of a lack of resources. For example, one user representative explained:

External supervision should be much more effective and the resources of the competition authority and PRH as the supervision authority should be increased, and they should be required to act in a more proactive manner. At the moment, although these two apply slightly different legislations, one applying copyright legislation and the other competition legislation, they seem to feel that if one authority receives a complaint on an issue already pending at the other, the former won't handle it, even though the complaints are based on

79 Act 621/1999. For more information, see <https://oikeusministerio.fi/en/act-on-the-openness-of-government-activities>.

different legislations. And processing time is years at worst. Supervision is insufficient.<sup>80</sup>

#### 2.4. Coherence and consistency

A coherent system is one that keeps a systematic set of elements and values to ensure a consistent approach. Consistency requires that these elements and values work in harmony and are asserted without contradiction. Coherence and consistency are important in the operation of complex systems and are particularly crucial for the operation of markets whose actors must be able to anticipate the future behaviour of key variables affecting the investment climate. Coherence and consistency do not preclude a necessary amount of flexibility to respond to changing circumstances.<sup>81</sup>

In the context of collective management of copyright, coherence and consistency require that the decisions of CMOs relating to their relationships with rightholders and users follow consistent and coherent guidelines or rules. Among the most impactful decisions made by CMOs are the decisions on granting licences and on the rules concerning the distribution of remunerations. Coherence and consistency in these two types of decisions are examined below.

**Licensing tariffs and conditions** are important for users and also for rightholders, as they determine the amounts available for distribution. For the sake of both users and rightholders, decisions on licensing tariffs and conditions must be coherent and consistent. From a legal point of view, CMOs are required, according to the Finnish Competition Act, to avoid abusing their dominant position. In practice, this means that they must treat all customers consistently and offer them equivalent conditions.

80 Original quote: Ulkoista valvontaa pitäisi tehostaa todella paljon ja kilpailuviranomaista ja PRH valvovan viranomaisen resursseja pitäisi kasvattaa ja niiltä pitäisi edellyttää proaktiivisempaa toimintaa. Nyt siellä on vähän sellaista että vaikka nämä kaksi soveltaa vähän eri lainsäädäntöä, toinen soveltaa tekijänoikeuslainsäädäntöä ja toinen kilpailulainsäädäntöä, niin siellä koetaan että jos toisessa viranomaisessa on samaa asiaa koskeva valitus niin toinen viranomainen ei käsittele sitä vaikka ne perustuu eri lainsäädäntöön ja käsittelyajat on vuosia pahimmillaan. Niin se on riittämätön se valvonta.

81 For a more elaborate definition, see Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45. P. 24.

As part of the information to be included in the yearly transparency reports, CMOs must provide information and refusals to grant licences.<sup>82</sup> In their reports concerning 2019, all Finnish CMOs stated that they had not refused any licence.

When licences are provided to a large number of customers, they are granted according to objective criteria and tariffs that facilitate automatization of decisions. These criteria vary according to the type of works and uses; for example, use of music can be based on the type of use (as background music or in musical events) and the type and size of establishment (number of seats in a restaurant, number of concert tickets sold). Representatives of users have stated that the pricing models are clear.

However, even objective and clear criteria can lack neutrality. For example, representatives of RadioMedia, the umbrella organisation for commercial radio channels, have noted that tariffs are higher for using musical works online than for distributing them on air. Some CMOs have mentioned that they make particular efforts to modify their tariffs when inconsistencies are detected. For example, according to representatives of Kuvasto:

We aim to be neutral, so that the customers that are similar to each other get rights on the same terms. (...) But how do we, in practice, guide ourselves towards coherence and consistency in pricing? This is a complicated and very practical question. It's an interaction with customers and it's also getting feedbacks from rightholders. For instance, we changed our exhibition pricing last year (...). We removed the "genre" factor from the pricing. Now, when works are being used in exhibition, they all cost the same amount, irrespective of the category of the work.<sup>83</sup>

Moreover, as uses and licences vary greatly, so do licensing conditions and pricing methods. In some cases, tariffs are calculated more on the basis of the financial capabilities of the users than on the amount of use or its importance in the business model of users. For example, according to the framework agreement made by the Finnish Museums Association (Suomen Museoliitto) on the online use of reproductions of artworks, licensing fees depend on the number of museums participating and the size of their

82 Annex of the Directive on collective management of copyright (2014/26/EU), point 1(c).

83 According to the Copyright Act (section 20), the public display of a work is allowed without permission from the author, but only after the work has been sold or otherwise permanently transferred. Kuvasto collects exhibition fees for the display of works still owned by the artists.

collections; it is not connected to the number of works displayed online. Tariffs for the use of music on commercial radio channels negotiated by the umbrella organisation RadioMedia are calculated as a percentage of each radio channel's advertising revenue. These kinds of arrangements are practical but can raise questions on their coherence with the general purpose of remunerating uses of copyrighted works. Some representatives of users stated that the most obvious consistency in tariffs lies in the fact that they increase consistently:

Are tariff consistent over time? The answer is: yes, they are consistently rising. Like we say in Finnish: "hihastat vedettyjä".

The starting point, on collection societies' side, is basically that tariffs shall increase every time, in every round. It's out of the question to have discussions about market situations where tariffs would need to come down sometimes. The feeling is that it is something that they are not willing to discuss at all, it's non-negotiable. This may lead to a situation where the price level through collecting society is higher than the price level through direct licensing, and collective licensing will replace direct licensing. That will strengthen the position of collecting society in a market and may lead to a distortion of competition in the sense of competition law. That been one of the issues with licences for retransmission.

Decisions concerning the **distribution of remunerations** face the same types of difficulties as the decisions on tariffs. In some cases, CMOs distribute revenues according to strict legal rules, which are mechanically applied and leave no room for decisions. This is the case with, for example, resale rights for works of visual art. Some CMOs deal with a small number of rights or types of works, and distribution rules can be relatively straightforward. But in other cases, remunerations have to be equitably distributed among a large number of rightholder categories covering many types of works. For most types of uses, the amounts available for distribution are linked to licensing tariffs, but as we have seen, these tariffs are not always directly comparable to the amount of use or linked to specific works. Some uses cannot be measured or reported, meaning that distribution has to be based on statistical information and executive decisions.

In these cases, all CMOs use sets of distribution rules and processes, which are publicly available (see above, Transparency). In several CMOs, such as APFI or Teosto, an internal distribution committee, where all rightholder groups are represented, is in charge of applying the distribution rules. All CMOs aim at following distribution rules that are fair towards all rightholder categories. A representative of Kuvasto stated:

The remuneration that comes in is distributed to various rightholders on equal terms. This is the basic procedure that we have.

Despite these organisational precautions, coherence in the distribution of remunerations is sometimes questioned by rightholders. The objective factors affecting revenues reflect a licensing value of the work that can be contested. For example, the level of remuneration for private copying and copying for educational purposes collected and distributed by APFI varies according to the genre of the audiovisual work:<sup>84</sup>

For the educational copy and for the private copy, we have the type of works which affects how much money they get, meaning that if you have a movie or a documentary, it gets more per minute than the other types of audiovisual works. This could be an area where a customer comes up and says "hey, it should be different" and if it's not clear, we have to go to the tilitystoimikunta (task force on distribution).

In general, it seems that coherence and consistency in the operation of CMOs is enhanced by the fact that guidelines and procedures are necessary for the good operation of the organisations, especially with regard to the most difficult decisions, such as those concerning the rules on the distribution of revenues. As a result, there are few ad hoc decisions, and those are often made by the board, which reports to the general assembly. CMO representatives stated that

more guidelines is the best way to operate. It makes our functions more effective and more accurate. It's also more pleasant for the staff, because people can be sure of what they are doing, they don't have to waste time to ask other people and walk around asking questions, finding who remembers "is this case the same as was last year", etc. People are pleased of this environment with all kinds of principles to help with the work.

We couldn't manage this without procedures.

At the same time, several CMO representatives expressed difficulty in balancing the need to be consistently neutral towards clients and customers through clearly defined guidelines, and the need to remain proactive and flexible.

We have guidelines for almost everything and we are creating new guidelines almost all the time, but we have to be careful that we are not creating the kind of system where we have very many guidelines

84 The categories of works are described here (in Finnish): <https://apfi.fi/tuottajalle/teostyyppien-selitykset/>



for specific situations; we must have guidelines that can be adapted to many kinds of situations.

The CMOs interviewed described no formal process for reviewing past decisions, even though it happens upon request. Most stated that they welcome any feedback on past decisions. Additionally, at least in the case of Teosto,

auditors appointed by the General Meeting make regular and thorough checks on key internal decisions and preparatory documents. In addition to the decisions of Teosto's Board, numerous internal day-to-day decisions are made by Teosto's CEO and staff. Major or noteworthy decisions are covered in auditor's' interim report to the Board. Auditors may also include this information in their statement to the General Meeting.

However, the complexity of managing rights and the need to use practical licensing fee criteria challenge the consistency of criteria used for tariffs and remuneration. Some users in particular have expressed dissatisfaction with the tariff criteria, and inconsistent tariffs can directly translate into the amount received by different categories of rightholders. The biggest challenges for coherence and consistency are faced in situations where the rights managed are particularly numerous and complex, as well as when the amount of use cannot be directly measured.

## 2.5. Responsiveness

Where the principle of participation refers to the possibility of participating in or influencing the decision-making process, responsiveness refers to the way suggestions or needs for changes are responded to.<sup>85</sup> This implies a capability to respond to the developing needs of different stakeholders in an appropriate manner and without undue delay. It is also about whether the system's actors are interested in monitoring the evolution of their operating environment, sensitive to signals telling about possible needs for changes, and able to adapt their activities where necessary. The signals of and needs for change may manifest themselves directly as requests and suggestions put forward by stakeholders, or they can be revealed by e.g. impact assessments or other monitoring of the operating environment.

In a constantly changing operating environment with new digital applications and the internationalisation of the copyright market, it is particularly important for the copyright system and the CMOs to be responsive. One measure of the CMOs' responsiveness is therefore whether they

85 [https://www.cupore.fi/images/tiedostot/2018/assessing\\_governance\\_in\\_the\\_context\\_of\\_copyright\\_systems\\_ed2.pdf](https://www.cupore.fi/images/tiedostot/2018/assessing_governance_in_the_context_of_copyright_systems_ed2.pdf) p. 26.

systematically monitor and evaluate their operating environment, e.g. the copyright market, the digital transformation, or consumer behaviour. Responsiveness also covers the manner in which rightholders' and users' suggestions and requests concerning, for instance, new services are responded to and whether they are responded to within a reasonable time.<sup>86</sup>

The Act on the Collective Management of Copyright refers to responsiveness in sections 24, 30 and 32, according to which CMOs must distribute copyright remunerations due to rightholders as swiftly and accurately as possible (section 24, settlement with rightholders), and regularly and accurately (section 30, settlement with mandating CMOs). Responsiveness is also referred to in section 33, under which CMOs must reply to licensing requests from users without undue delay and, upon receipt of all relevant information, either offer a licence or – if the request is denied – provide the user with a reasoned response in writing. CMOs may also grant short-term pilot licences for new types of services, allowing them to respond to new emerging needs in a more flexible manner (section 36, licensing on a trial basis).

### 2.5.1. ANALYSIS OF THE OPERATING ENVIRONMENT BY CMOS

CMOs carry out systematic monitoring and analysis of their operating environment in various ways depending on their size and operational resources, and the focus of their activities. CMOs whose clients are individual rightholders do not, for instance, monitor and identify their clients' needs in the same way as CMOs with other organisations as clients. Bigger organisations, such as Teosto, carry out specific studies and analyses of their operating environment, but even CMOs who do this consider monitoring part of their everyday activities.

Our place is in the market to make things possible. If we do not understand that well enough and if we don't have discussion with the users and understand them, it can be dreadful for the system.

APFI produces information for its clients and in support of its own activities but does not carry out actual studies or reviews of the industry's operating environment. The information it produces tends not to relate to collective management but the audiovisual field more generally. Filmex does not gather information on its operating environment. According to its representative, it is not one of Filmex's purposes, since its primary function is to distribute copyright remunerations, and no resources have been allocated

86 [https://www.cupore.fi/images/tiedostot/2018/assessing\\_governance\\_in\\_the\\_context\\_of\\_copyright\\_systems\\_ed2.pdf](https://www.cupore.fi/images/tiedostot/2018/assessing_governance_in_the_context_of_copyright_systems_ed2.pdf) p. 27.

for this purpose. Gramex has been mapping its operating environment for a few years and, according to its representative, it interacts constantly with its clients and customers to gather information on their needs. The interaction is mostly non-structured and based on personal contacts. Kopiosto has conducted monitoring activities for about 40 years, and it has a dedicated research department. It monitors and maps the development of the copying and use of copyright-protected material and, in addition, it carries out specific studies on different topics. Kuvasto has carried out studies of its operating environment particularly since 2014, when it renewed its strategy, and in connection with updating its remunerations for use. Sanasto regularly conducts surveys, to, for example, find out whether new types of licences are needed, and when planning its licensing activities. It also performs more general analyses of its operating environment, but, according to an interviewee, its resources for this are limited. Sanasto's activities having increased in the last decade, the need for monitoring the environment has also increased. Teosto's representative, too, said that the monitoring and analysis of market and music industry developments are one of the organisation's main tasks and play an increasingly important role. Monitoring is an integral part of everyday work and has been carried out for at least 20 years. Overall, Finnish CMOs consider it important to monitor the changing operating environment and develop their activities. The intensity of the monitoring is, however, dependent on available resources.

### 2.5.2. RESPONSIVENESS TO INITIATIVES PROPOSED BY RIGHTHOLDERS AND USERS

Responsiveness covers the way in which suggestions and requests by various stakeholders are handled and responded to. There may be set procedures and structures for this, or the interaction may be less formal.

According to their representatives, CMOs are open to requests and suggestions but have no specific procedures for dealing with them. **Clients** contact them mostly to request for specific information or enquire about, for instance, the distribution of remunerations. Enquiries are received particularly on distribution dates. According to the CMOs, they respond to enquiries and are able to meet information needs. Clients' suggestions have resulted in, for instance, changes in the distribution schedule and a clarification of the content of the distribution report. Gramex has changed its procedure on the basis of a proposal and now informs all rightholders of any phonogram it becomes aware of. At the request of the film industry, Kuvasto has modified its licensing conditions to make them more precise. Publishers proposed licences for digital use to Sanasto, and now such pilot

licences have been introduced. The client and organisational structure of a CMO affects the way it communicates with rightholders; in the case of Kopiosto, for instance, proposals and requests may be addressed to its member organisations.

A pre-set procedure for handling complaints has also not been considered necessary, since complaints are very rare if not non-existent. Some CMOs have defined standard measures for cases where, for instance, a rightholder demands a larger share, or for certain disputes between authors and publishers. In general, complaints may be referred to the Board and, in principle, even brought before the courts.

The extent to which rightholders make suggestions was explored in our survey, as well as rightholders' experiences of the CMOs' responsiveness. Of the respondents, slightly more than one in ten (13 %) had contacted a CMO to e.g. make a complaint, propose a change in operation or suggest a new service;<sup>87</sup> the clients of the different CMOs to an equal extent. Half of them had received a reply within what they considered a reasonable time. While four in five were satisfied with the reply, contrary views were also expressed. The replies imply that rightholders do not typically contact CMOs and that most of those who do have been reasonably satisfied with the organisation's responsiveness and swiftness.

Responsiveness also covers the swiftness with which copyright remunerations are paid to rightholders. The majority of respondents (84 %) felt they received remuneration for the use of their works within a reasonable time.<sup>88</sup> Rightholders are thus generally satisfied in this regard, but some found the waiting time inconvenient.

The remuneration arrives in the summer of the next year, which means that, sometimes, one has to wait for over a year. It's difficult to have to explain things to e.g. Kela (Social Insurance Institution of Finland) afterwards when the remunerations are distributed.<sup>89</sup>

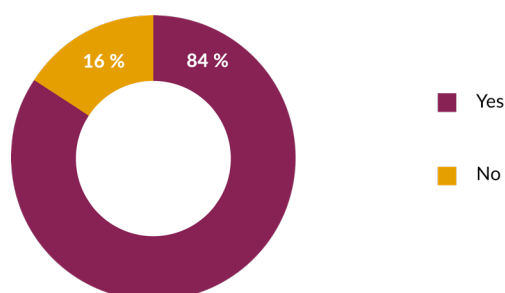
87 Question 9. Have you submitted (since 2017) any request to the copyright society, such as made a complaint, proposed a change in operation or suggested a new service.

88 Question 8. In your opinion, is copyright remuneration distributed within a reasonable timeframe?

89 Original quote: Korvaus tulee seuraavan vuoden kesällä, joskus saa odottaa siis yli vuoden. On hankalaa joutua selvittämään esim. Kelalle vanhoja asioita jälkikäteen, kun korvaukset tulevat.

FIGURE 5.

**In your opinion, is copyright remuneration distributed within a reasonable timeframe?** n=268



CMOs' **customers** were reasonably satisfied with their interaction with the organisations and their responsiveness. Many held a constant dialogue and negotiations with CMOs. In some cases, CMOs had also proactively moderated their terms of use, for example when they modified the licensing conditions and tariffs for music played in restaurants during the Covid crisis. Customers generally found interaction effective and felt that their suggestions were responded to within a reasonable time.

As to the response time, I'd say that both respond effectively within an adequate timeframe; both genuinely wish to build solutions that serve our purposes and fit our timetables as well as theirs. Both ask whether the matter is urgent, and together we try to build a schedule to deal with it in a way that is reasonable for the operation of both parties.<sup>90</sup>

From the customers' point of view, the licensing negotiation process was, however, not always successful. The reasons vary. CMOs were not always willing to offer licences if they considered the administrative costs or the costs of the negotiation process itself too high in view of the potential financial gain. In such cases, access to material that is very important for some categories of users can be compromised. For example, access to research material in libraries is not well served by collective licensing because transaction costs for this type of use are too high compared to the potential revenue. In addition, according to some customers, when they proposed new practices that could open up innovative or wider types of content use, the CMOs did not necessarily understand the underlying market potential.

90 Original quote: Reagointiajasta sanoisin että kyllä molemmat reagoi ihan tehokkaasti riittävässä aikataulussa, molemmissa on aito halu rakentaa ratkaisuja niin että se palvelee myös meidän tarkoituseriä ja aikatauluja. Kysytään molemmissa että onko tämä kiireellinen asia ja pyritään yhdessä aikatauluttamaan tätä asian hoitoa sillä tavalla että se on molempien toiminnan kannalta järkevää.

They don't have any financial incentive to negotiate with us because there is not too much money to be gained and these negotiations take a lot of effort and meetings. So often they say that "[if] it doesn't pay for us, it is not useful to us to negotiate".

So [the licensing agreements we already have cover] consumer behaviour that has been present for ages. But sometimes, when we have a new phenomenon or new technology or new business possibilities, we occasionally smash our head in the wall and are not able to acquire any licence at all. The other party does not understand the market environment or the possibilities there. Or the licence fees demanded are so high that they do not reflect the risks of the markets, and few subscribers can afford them. This may lead to a situation where market players have no incentive to develop the service or product with the use of a licence.

Contrary experiences were also described, however, including cases where, in the end, experimental pilot licensing was used to test new services. In these cases, customers felt that the CMO understood that such activities may, in the long run, benefit all parties even if the revenue was not necessarily high in the beginning.

Customers who were not clients of an umbrella organisation, through which they could negotiate, found that negotiation processes with CMOs could be trying. They saw the long, continuous negotiation processes as putting quite a strain on resources, when added to other activities. It is also worth noting that many customers found that even if CMOs were willing to negotiate as such, the power balance in the negotiations was uneven. This will be discussed in more detail in section 4.7.

## 2.6. Effectiveness and efficiency

A well-governed system must be effective, i.e. fulfil its roles as well as possible, and efficient, i.e. meet its goals with the least amount of resources. In the context of collective management of copyright, effectiveness and efficiency translate into a system where CMOs are able to efficiently collect and redistribute revenues from the use of works to rightholders, with the smallest amount of administrative costs. From the point of view of the relationship between CMOs and users, effectiveness and efficiency are attained when the licensing process results in agreements that satisfy all parties involved without requiring too many resources.

Section 1 of the Act on the Collective Management of Copyright provides that one of the purposes of the Act is to ensure the efficient management of copyright and related rights vis-à-vis rightholders and users. Section 19 further states that CMOs should be "diligent" in the collection and management of copyright remuneration. This aspect can be assessed through an analysis of the financial information provided by CMOs concerning the collection and administration of copyright remuneration. This topic is covered in the first section below. The second section, based on interviews with representatives of CMOs and their licensing partners, describes the challenges that impact the efficiency of CMOs and the licensing process.

### 2.6.1. FINANCIAL EFFICIENCY OF COLLECTIVE MANAGEMENT OF COPYRIGHT

From the point of view of rightholders, the most obvious measure of a CMO's efficiency is the amount of copyright remuneration collected and distributed. Since 2017, Finnish CMOs have had to publish as part of their yearly transparency reports a number of figures related to their role in collecting and distributing remunerations. The Finnish Act on the Collective Management of Copyright refers for this to the Annex of the European Directive on collective management of copyright, which lists a large amount of financial information to be disclosed. This includes the amount of remunerations and compensations collected, attributed and paid to rightholders for each category of rights, the level of operating and financial costs, deductions made from rights revenue, amounts received from other CMOs, etc.

For the purpose of this report, we have selected four indicators that can be considered as most informative:

- Figure number 2 (a) in the Directive's Annex: financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance), including information on the income arising from the investment of rights revenue and the use of such income (whether it is distributed to rightholders or other collective management organisations, or otherwise used);
- Figure number 2 (c) (ii) in the Directive's Annex: the total amount paid to rightholders, with a breakdown per category of rights managed and type of use;
- Figure number 2 (b) (ii) in the Directive's Annex: operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs, only with regard to the management of rights, including management fees deducted from or offset against rights revenue or any income arising from the investment of rights revenue;
- Figure number 2 (b) (vi) in the Directive's Annex: the percentages that the cost of the rights management and other services provided by the collective management organisation to rightholders represents compared to the rights revenue in the relevant financial year, per category of rights managed.

These figures are given below for each Finnish CMO for the year 2019, as presented in the transparency reports.<sup>91</sup> All figures are in euros. They provide an overview of the revenue sources, amounts distributed and administrative costs for each CMO. Figures that do not appear in the transparency reports are indicated as n/a. It is, however, important to note that these figures cannot be fully understood on their own. For example, the amounts paid can be higher than the amounts collected when some of the amounts paid correspond to revenues collected in previous years. Readers are invited to refer to the transparency reports for further details.<sup>92</sup>

<sup>91</sup> At the time of writing this report, 2019 was the last year for which all CMOs had published their transparency report.

<sup>92</sup> See list of sources at the end of this report. Missing figures are those which are not included in the transparency reports.



TABLE 3.  
**Figures on financial efficiency: APFI**

	Revenue collected (2a)	Revenue paid (2c(ii))	Administrative costs (2b(ii))	Percentage of administrative costs as compared to rights revenue (2b(vi)) <sup>93</sup>
Recording for educational activities	585 887	321 250	24 996	4.3
Compensations	434 461	278 257	24 887	5.7
Retransmission in Finland	602 188 <sup>94</sup>	446 619	6 654	1.2
Retransmission abroad		59 763	19 888	33.8
Other non-commercial showing	64 869 <sup>95</sup>	0	29 633	45.7
Online storage	4 873 457	0	108 616	2.2
<b>Total</b>	<b>6 560 863</b>	<b>1 105 889<sup>96</sup></b>	<b>214 676</b>	<b>n/a</b>

93 A representative of APFI indicated that the percentage of administrative costs includes only direct costs of rights management, i.e no premises, management costs, etc; the percentage across the uses is 16 %, and 10 % for online storage.

94 Remuneration for retransmission.

95 Non-commercial showing of films.

96 Total calculated by the researchers.

TABLE 4.  
**Figures on financial efficiency: Filmex**

	Revenue collected (2a)	Revenue paid (2c(ii))	Administrative costs (2b(ii))	Percentage of administrative costs as compared to rights revenue (2b(vi))
Rights managed by Kopioisto	0	0	n/a	16.3
MTV Oy's dvd recordings	0	0	0	0
Collected abroad: TROMB	30 110,74	42 332,19	0	0
Collected abroad: Mora	227,56	227,56	19 888	33.8
Use of archived material by Yle	1 000 000	797 112	37 590,27	3.76
Seasons 1 to 6 of Yle's "Uusi päivä" series	210 000	0	0	0
<b>Total</b>	<b>1 240 338,30</b>	<b>839 671,75<sup>97</sup></b>	<b>n/a</b>	<b>n/a</b>

97 Total calculated by the researchers.

TABLE 5.  
**Figures on financial efficiency: Gramex**

	Revenue collected (2a)	Revenue paid (2c(ii))	Administrative costs (2b(ii))	Percentage of administrative costs as compared to rights revenue (2b(vi))
Radio and television use	8 899 178	6 816 735,17	1 441 134	n/a
Retransmission	52 250		8 461	n/a
Background music	9 024 336	7 397 438,26	1 461 402	n/a
Internet and data network	2 995 470	1 409 391,60	485 087	n/a
Audio fixations and audiovisual programmes	1 057 354	1 976 140,48	171 228	n/a
Private copying levies	1 077 194	1 142 111,17	174 441	n/a
Music videos	37 807	0,05	6 122	n/a
Term of protection	34 465	n/a	5 581	n/a
Remunerations from abroad	431 089	281 251,15 + 24 022,98 <sup>98</sup>	n/a	n/a
Others	n/a	49 196,02	n/a	n/a
<b>Total</b>	<b>23 609 143</b>	<b>19 809 786,24<sup>99</sup></b>	<b>3 753 456</b>	<b>16.2</b>

98 281 251.15 "Foreign representation agreements" and 24 022,98 for "Abroad (organisations)".

99 This figure also includes 711 582.77 for "Back to distribution" and 1 916.60 for "Payments originating from Heureka".

TABLE 6.  
**Figures on financial efficiency: Kopiosto<sup>100</sup>**

	Revenue collected (2a)	Revenue paid (2c(ii))	Administrative costs (2b(ii))	Percentage of administrative costs as compared to rights revenue (2b(vi))
Use of audiovisual works	22 612 000	-	n/a	n/a
Photocopying and digital use	20 726 000	16 011 000	n/a	n/a
Online recording service remunerations for Gramex, Teosto, and APFI	-	8 091 000	n/a	n/a
Compensation for private copying	5 612 000	-	n/a	n/a
Remuneration for the educational use of audiovisual works and online recording services as well as compensation for private copying for creators	-	11 354 000	n/a	n/a
Remuneration for the copying of foreign works paid to sister organisations abroad	-	1 287 000	n/a	n/a
Public lending right scheme and brokerage services	1 644 000	-	n/a	n/a
Public lending right scheme remuneration for visual artists	-	866 000	n/a	n/a
Creative grants to AVEK from the Ministry of Education and Culture	1 554 000	-	n/a	n/a
Funding awarded by AVEK from the compensation for private copying and from creative culture funds	-	3 402 000	n/a	n/a
Service revenue	85 000	-	n/a	n/a
Other revenues	1 040 000	-	n/a	n/a
Remuneration for the use of the Elektra service for the authors and publishers of scholarly articles	-	45 000	n/a	n/a
Remuneration for the educational use of audiovisual works as grants and rewards through the KOURA educational fund	-	567 000	n/a	n/a
Remuneration for the retransmission of foreign TV channels, paid to sister organisations abroad, producers, and broadcasting companies	-	2 087 000	n/a	n/a
<b>Total</b>	<b>47 019 000</b>	<b>43 711 000</b>	<b>3 278 000</b>	<b>n/a</b>

<sup>100</sup> In its transparency report for 2019, Kopiosto presents remunerations collected and distributed in separate tables where few items correspond directly. This table merges them. No administrative cost per type of revenue is specified.

TABLE 7.  
**Figures on financial efficiency: Kuvasto<sup>101</sup>**

	Revenue collected (2a)	Revenue paid (2c(ii))	Administrative costs (2b(ii))	Percentage of administrative costs as compared to rights revenue (2b(vi))
Individual copyright remunerations <sup>102</sup>	865 631	n/a	n/a	n/a
Collective copyright remunerations <sup>103</sup>	148 054	n/a	n/a	n/a
Other income <sup>104</sup>	295 398	n/a	n/a	n/a
<b>Total</b>	<b>1 309 083</b>	<b>865 631</b>	<b>377 683</b>	<b>22</b>

101 In its transparency report for 2019, Kopiosto presents remunerations collected and distributed in separate tables where few items correspond directly. This table merges them. No administrative cost per type of revenue is specified.

102 Including "Remunerations for use" (484 836), "Exhibition remunerations" (199 367) and "Resale remunerations" (181 427).

103 Including "Private copying levies" and "Photocopying remunerations". These revenues are not directly paid to rightholders but given in the form of grants and by other means.

104 Rental, investments, etc.

TABLE 8.  
**Figures on financial efficiency: Sanasto**

	Revenue collected (2a)	Revenue paid (2c(ii))	Administrative costs (2b(ii))	Percentage of administrative costs as compared to rights revenue (2b(vi))
Lending remunerations	11 986 317	9 076 122	999 206	8.34
Audiobook lending remunerations	166 464	200 161	14 982	9
Remunerations for radio and tv use	122 611	128 428	11 035	9
Remunerations for radio and tv use collected abroad	-	-	-	5
Remunerations for the use of archived material in radio and television programmes	166 000	104 755	14 940	9
Celia textbook remunerations	-	1 635	-	9
Library, archive and museum remunerations	-	800	-	9
Licences for performances of literary works	8 923	5 704	803	9
Publishing licences	52 305	37 655	4 707	9
<b>Total</b>	<b>12 502 619</b>	<b>9 555 260</b>	<b>1 045 673</b>	<b>9</b>

TABLE 9.  
**Figures on financial efficiency: Teosto**

	Revenue collected (2a)	Revenue paid (2c(ii))	Administrative costs (2b(ii))	Percentage of administrative costs as compared to rights revenue (2b(vi))
TV	22 290 807	16 907 119	4 173 249	18.7
Radio	9 287 581	7 987 285	1 566 807	16.9
Concerts and other events	11 360 758	6 999 125	2 277 668	20.0
Background music	9 562 488	6 471 796	2 437 602	25.5
Online, audiovisual	4 934 046	2 114 117	493 405	10.0
Online, audio	4 525 498	3 182 866	362 458	8.0
Reproduction and synchronisation	764 861	n/a	114 729	15.0
Compensation for private copying	1 116 332	1 069 198	184 195	16.5
Compensation for private copyright – collective share	1 090 200	n/a	0	n/a
Remuneration for public lending	622 981	494 980	116 497	18.7
Performing royalties from abroad	3 322 821	3 184 489	94 241	2.8
Rebroadcasting (Nacka) TV Finland	109 371	n/a	5 469	5.0
Gramex performance and reproduction	159 426	n/a	0	n/a
NCB	2 965 218	2 965 218	0	n/a
Online audio - expenses	n/a	n/a	362 458	n/a
<b>Total</b>	<b>72 112 388</b>	<b>51 376 192</b>	<b>11 463 863</b>	<b>15.4</b>

As can be seen from the tables above, CMOs vary greatly in terms of the amounts collected: from €1 240 000 for Filmex to €72 112 388 for Teosto. Their sources of copyright revenue are also very varied, some requiring direct licensing, some mass licensing. Some revenue is collected as lump sums from national remuneration schemes. Administrative costs differ vastly between these types of revenue: for example, APFI's administrative costs vary from

1.2 % to 45.7 % of the rights revenue for different types of rights, which are licensed or remunerated differently. Moreover, administrative costs heavily depend on various factors such as the size of the organisation, the types of rights managed, the revenue sources and the types of licences provided, which means that the percentage of costs compared to the rights revenue is not directly an indication of the efficiency of rights management. For example, smaller organisations who license most works individually have higher administration costs than bigger ones offering pre-set tariffs. Expenses can also be dependent on single events; for instance, in 2019, Kopiosto's expenses concerning rightholders of audiovisual works were significantly higher than the previous year because of the Market Court's processing of a dispute over retransmission of domestic television channels.

As a result, financial information alone cannot be used to evaluate the efficiency of collective management in Finland. A better indication of each CMO's financial efficiency would be a comparison of these amounts over several years; however, as the figures published before 2017 cover financial data that is not directly comparable to the contents of transparency reports, available time series are too limited for the purpose of comparison.<sup>105</sup>

The complexity of financial information provided in transparency reports also makes it difficult to read and interpret the figures without expert knowledge. For example, the categories of "amounts collected", "amounts attributed", "amounts distributable" and "amounts distributed", all legally required information, are difficult to differentiate. In some cases, the categories of rights revenue collected and distributed do not correspond, and income collected in a given year is not necessarily distributed in the same year. All this makes comparison between income and payments to rightholders difficult. As a result, individual rightholders who wish to assess the efficiency of a CMO when considering joining as a client might not get much practical information. Administrative costs per categories of rights are provided directly, but they differ to such an extent even within the same organisation that they cannot be used as an indication of financial efficiency without a thorough understanding of rights management processes. Transparency reports were made a requirement in the Directive on collective management of copyright for the express purpose of ensuring that rightholders are in a position to monitor and compare the respective performances of CMOs;<sup>106</sup> in practice, the amount of information required

105 For such financial data before 2016, see Cupore (2016). *Efficiency of Collective Management Organizations. Report on Piloting in Finland*. Cupore webpublications 39:22.

106 Recital 36 of the Directive.



is so detailed and technical that, paradoxically, it impairs transparency for non-specialists. Transparency reports might be more informative when used for comparison between CMOs operating in the same rights area at the international level, for instance.

### **2.6.2. FACTORS LIMITING EFFICIENCY AND THEIR SOLUTIONS**

There are a few factors that undermine the efficiency of CMOs' operations. Some of them are mainly practical and therefore more easily solved, but some call for more extensive, multilateral solutions. In this section, we will examine the views expressed by CMO representatives. Some challenges, such as those posed by lacking metadata, are typical for certain sectors (particularly the audiovisual industry and, to some extent, the music industry) and not as relevant in others.

Many key factors affecting the efficiency of copyright management have to do with the lack of metadata on authors or works, which makes it difficult to identify uses and distribute remunerations. Some remunerations are left undistributed because of inadequate or incorrect metadata concerning the author or the work. The automatising of metadata is being developed constantly, but data is still partly handled manually, which drains resources and slows down processes. In addition to technical factors, some challenges relating to data on uses also impact the functioning of the system. According to CMO representatives, it's sometimes difficult to obtain information on the use of works. For example, online use of phonograms is not reported in the same way as airplay. Moreover, users are not necessarily motivated to apply for licences for uses that are not at the core of their operations (e.g. background music). Content use data may not be submitted because of the perceived complexity of the system. In addition, efforts to increase awareness of copyright are found to drain resources from other activities to some extent, even though it is an important focus of the organisations' activities. Finally, legal disputes and rights management controversies have also tied up a lot of resources.<sup>107</sup>

In the period immediately following the entry into force of the Act on Collective Management, efforts to meet the Act's requirements taxed the CMOs' resources heavily. Among other things, the reporting obligations under the Act resulted in new kinds of duties. The CMOs could, however, see that the Act would boost efficiency in the long run by leading to the

<sup>107</sup> For example, a dispute between programme creators and producers on the remuneration shares of domestic audiovisual productions in online storage services continued for many years until the dispute between Kopioisto and APFI was settled in arbitration in 2019.

harmonisation and simplification of many processes. The heavy burden posed by administrative duties was particularly pronounced in small organisations with proportionately less resources. Administrative costs, too, tend to increase more easily in smaller organisations and organisations who manage individual licences instead of collective licences. As has already been noted, the dissimilarity of the CMOs makes it impractical to compare the efficiency of CMOs by looking at their administrative costs.

At present, solutions are being sought for several of the challenges described above. Licensing processes are being streamlined by creating umbrella organisations, which negotiate collectively: among the users interviewed, the Museums Association, and RadioMedia, the umbrella organisation for commercial radio channels, represent such actors; and scientific libraries have similar plans. The handling of metadata is being further automatised, and solutions for the automatised metadata in the digital environment are being developed.

No one has better systems than we do on metadata and on information we need, but I think that in bigger picture, all the Finnish CMOs they have big task in this. The amount of information increases so fast that it is almost impossible to handle this with old methods, manually.

## 2.7. Equity and inclusiveness

Equity requires that all individuals be treated similarly in similar situations. Inclusiveness demands that all individuals are allowed to be involved in a system or society. When achieved, equity and inclusiveness result in a system where all groups, particularly the most vulnerable, are treated fairly.<sup>108</sup> In the context of collective management of copyright, equity and inclusiveness require that all rightholders and all users have the possibility to participate in collective management and are treated equally when they do. In practice, this means that all rightholders must have the possibility to join a collective management organisation if one exists in their field, to leave it, or to limit its mandate. It also means that all rightholders and all users must be treated equally; and that the licensing process must be equitable for all parties involved.

108 Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45. P. 30.

### 2.7.1. INCLUSIVENESS

For some works or types of uses collective management is the only practical way to license and collect remuneration; inclusiveness in the system of collective management of rights therefore requires that rightholders are able to join a collective management organisation in their field. According to the Act on the Collective Management of Copyright, rightholders have inter alia the right to choose a collective management organisation and directly or indirectly mandate it to manage their rights.<sup>109</sup> CMOs must manage such rights provided that the rights fall within their purview and they have no justified grounds for refusing it.

During interviews, CMOs stated that the rules concerning the admittance of rightholders are generally straightforward and do not present major difficulties. All CMOs seem to welcome clients without reservation, in accordance with their rules of operation. The threshold for accepting a representation mandate is very low: one only needs to own rights administered by the CMO and request to be represented. CMOs do not assess whether the work of a potential client is sufficiently original to qualify for copyright protection. Sanasto stated that they accept as client any writer having written at least one work, which doesn't even need to be published. Kuvasto's representatives stated that the only case where a mandate was refused concerned a student who had no artistic activity outside of school assignments.

The lack of problems related to the admittance of rightholders as clients seems supported by our survey of rightholders. Among 292 respondents, only two stated that they had tried becoming member of a copyright society but had not been able to.<sup>110</sup> Both provided further explanations that made it clear that there was no refusal of admittance on the part of the CMO.<sup>111</sup>

As for membership, most CMOs only accept rightholders' organisations as members, which means that they rarely receive new membership requests. The decision to admit or refuse them is taken through discussions with all existing members. Those CMOs who accept individual rightholders

<sup>109</sup> Section 5.

<sup>110</sup> Question 1. Are you currently member of a copyright society (APFI, Filmex, Gramex, Kopiosto, Sanasto, Teosto)? Options: Yes/No/I have tried becoming member of a copyright society, but have not been able to/I was a member before (after 2017) but I am not anymore.

<sup>111</sup> When asked for what reason they were unable to join the society, one stated that "paperwork failed" (Paperityö ei onnistunut) and the other referred to the "annoying operation of the organisation" (Järjestön ikävä toiminta).

as members have set procedures and requirements for admittance. For example, Teosto's representative stated that

qualifications for membership laid down in Teosto's statutes are applied on a strictly objective, transparent and non-discriminatory basis.

Inclusiveness also demands that rightholders may join a CMO without their own ability to manage their rights being restricted beyond what is necessary in practice, and that they retain the right to revoke their mandate should they wish to. The Act on the Collective Management of Copyright states, in section 5, that rightholders are entitled to mandate a CMO to manage their rights, categories of rights or type of work, or other protected subject matter in the area of their choice. They therefore have the right to limit their mandate, which has to be specific and detailed. They also retain, in any event, the right, as stated in section 7, to grant licences for non-commercial uses. Finally, section 8 provides that rightholders have the right to revoke the mandate of the CMO without any other condition than a reasonable notice period.

Our survey examined these issues from the point of view of rightholders. When asked whether they had ever tried granting an authorisation to use a work directly to a user, without intervention from the copyright society,<sup>112</sup> 87 respondents (32 %) out of 275 answered positively. Among them, one in six declared that they had encountered difficulties. Some of them were due to a lack of information on their rights or the process:

I don't know what rights I have to share my own works.<sup>113</sup>

I would like to answer "I don't know", I don't know if I've bypassed some system.<sup>114</sup>

Communication by the CMO was inconsistent and unclear.<sup>115</sup>

Only few comments described situations where an author wished to conclude an agreement directly with a user but could not because of the CMO's mandate. Some feared that they would not be able to opt out of the public lending compensation organised as a compulsory licence. Others wished

112 Question 12. Have you ever tried granting an authorization to use your work directly to a user, without intervention from the copyright society?

113 Original comment: En tiedä mitkä ovat oikeuteni jakaa omaa tuotantoani.

114 Original comment: Haluaisin vastata "en tiedä", en tiedä olenko toiminut ohi jonkin systeemin.

115 Original comment: Järjestön viestintä oli epä johdonmukaista ja epäselvää.

to provide licensing at a higher or lower price than the one granted by the CMO as part of its mandate:

The customer contacted both me and Sanasto and then entered into a much cheaper agreement with Sanasto than I requested, without Sanasto contacting me. Although Sanasto could do this under our agreement, it was unfair in my opinion. With Sanasto's tariffs, I got paid less than the translator for my text.<sup>116</sup>

I would have wanted to license my composition for a small art film under my own contract without the intervention of Teosto. It was impossible then.<sup>117</sup>

No respondent described a situation where they had been prevented, after 2017, to limit the CMO's mandate or to grant a licence for non-commercial use.

When asked whether they had tried leaving a CMO,<sup>118</sup> only eight respondents out of 274 answered that they had, and among them five had encountered difficulties. The explanations provided did not indicate a situation where the CMO itself had prevented them from revoking the mandate. Instead, the respondents had been encouraged to stay by the lack of an alternative CMO or the need to be part of a CMO to obtain compensation from extended collective licensing or other remuneration schemes.

It seems therefore that rightholders have had, at least since 2017, the possibility to join a CMO in their field if they wish to, limit its mandate, or leave it without undue restrictions. Rightholders who might have a serious complaint on this account would have the possibility to request action from the Patent and Registration Office, but confidentiality prevents obtaining information on ongoing investigations on this issue. Rightholders who responded to our survey described a very limited number of difficulties when they wished to provide licences without involving the CMO to whom they had granted a representation mandate, all related to a lack of information or to specific situations.

116 Original comment: Beställaren kontaktade både mig och Sanasto och slöt sedan ett mycket billigare avtal med Sanasto än vad jag begärde utan att Sanasto tog kontakt med mig. Även om Sanasto enligt vårt avtal kunde göra detta var det mot min känsla för rättvisa. Med Sanastos tariffer fick jag mindre betalt än översättaren för min text

117 Original comment: Olisin halunnut antaa sävellystyöni pieneen taide-elokuvaan omalla sopparilla ilman tekijänoikeuksien kierrättämistä Teoston kautta. Oli silloin mahdotonta.

118 Question 11. Have you tried leaving the copyright society?

### 2.7.2. EQUITY BETWEEN Rightholders

The principle of equity between rightholders is expressed or implied throughout the Act on the Collective Management of Copyright. Rightholders should not be subject to discrimination on admittance as client or as member (sections 5 and 11), in participating in the decision-making process of the CMO (section 12), in access to services and benefits (section 23), or when managing rights on behalf of other CMOs (section 28). Non-discrimination is also an obligation resulting from the Competition Act.

One area where equity might be more difficult to achieve is the distribution of revenue to rightholders. Equity is enhanced by the existence of distribution rules based on objective criteria, which, as was described in the section on coherence and consistency, underlie the operation of all CMOs. Difficulties might arise when there is not enough information on the actual amount of use:

Basically the principal rules of Sanasto's licensing and distribution of remuneration is that we are distributing the remunerations individually, and we have gathered exact information on the use, so we are not basically making that many decisions that are based on anything other than the actual information from the users. So we don't face that kind of fairness questions, because we are always relying on the reports. But there may be in the future some areas where the information on the use is not that accurate, for example digitizing big databases from the National Library's collections into electronic form; there are a lot of titles, a lot of authors, and not as accurate information as we have nowadays. There could be some decisions to be made in the future also that we have to distribute remunerations based on something else than exact reports.

Interviews also highlighted challenges related to the management of rights and remunerations in the audiovisual industry, which involves different actors and requires difficult decisions to be made when sharing remunerations:

What isn't quite clear or fair is how the CMOs of authors and producers mutually... Are they treated equally in all organs? We have, for instance, the private copying levy; around the world it has been felt that authors and producers have an equal right to it, but in Finland, authors must get more than producers; that's defined by the Ministry of Education and Culture. The basis for this ought to be reviewed. At the Ministry, they say we must come to an agreement between ourselves. It doesn't work if both sides just want more. Rightholder associations have more members because they are individual persons,

whereas in producer associations, you cannot compare the number of members.<sup>119</sup>

However, CMOs declared taking fairness into particular account when dealing with clients (rightholders):

We don't have any process to make that sure, but it's one of our main guidelines. We, all the time, we are talking about that when we are making whatever decision; we are always telling to each other in our organization that maybe the most important thing is to make the decisions so that no one's rights are infringed and every rightholder, every customer have the same value for us. We can't make a difference if someone gets a lot of money from us or a small amount, if someone is paying a lot to us, we have to have the same rules or principles for all.

Another area where equity is important is cross-border licensing. The representation of foreign rightholders in Finland and Finnish rightholders abroad is organised through mutual representation agreements between CMOs or similar systems. Representation agreements include reciprocal treatment clauses, according to which revenues are distributed to foreign rightholders in accordance with the rules and procedures applied to domestic rightholders. Most CMOs consider that these agreements are efficient and ensure fairness between domestic and international rightholders, leaving only differences of treatment resulting from copyright limitations being interpreted and practised differently in different countries. For example, according to one interviewee:

In the Nordic countries, remuneration distribution is better organised; actors receive their payments more efficiently from other Nordic countries than when working in Finland.<sup>120</sup>

Only one CMO mentioned doubts on the manner in which remunerations collected abroad are distributed to Finnish rightholders:

119 Original quote: Se mikä ei ole ihan selvää eikä oikeudenmukaista on tekijöiden ja tuottajien tekijänoikeusjärjestöjen keskinäinen... Ovatko tasavertaisesti kohdeltuja kaikissa elimissä. Meillä on esimerkiksi hyvitysmaksu, maailmalla on koettu, että tekijöiden ja tuottajien oikeus siihen on tasavertainen, mutta Suomessa on niin, että tekijöiden tulee saada enemmän kuin tuottajien, mikä on OKM:n määrittelemä. Pitäisi katsoa että millä perustella näitä tehdään. OKM:ssä sanotaan, että teidän tulee keskenänne päättää. Siitä ei tule mitään, jos kumpikin vain haluaa enemmän, tekijänoikeusjärjestössä on faktisesti enemmän jäseniä koska he ovat yksittäisiä ihmisiä, tuottajajärjestöissä tuotantoyhtiötä ei voi verrata että montako jäsentä on.

120 Original quote: Pohjoismaissa korvausten saaminen on paremmin järjestetty, näyttelijät saavat rahansa paremmin muista pohjoismaista kuin työskennellessään Suomessa.

Yes, we have reciprocity agreements. That's a very steady system (...). We are not counting on the fact that all the organisations around the world have the same sense of doing things right than we do in Finland. But in general it's working, and money is passing through borders. Money comes to us and we send money for them. But we think that maybe there is some amount of money somewhere in this world which actually belongs to our rightholders, but we have not gotten it yet.

Rightholders' opinions on the fairness of treatment by CMOs was covered in our survey. Ten per cent of respondents declared that they, or someone else, had been treated unfairly.<sup>121</sup> Only a few respondents offered further explanations, which were both relevant to the issue of equity between rightholders and provided sufficient information. All of them described differences of treatment between categories of rightholders in the distribution of copyright revenue:

For example, remunerations for radio airplay of recordings are distributed to only a few artists. Moreover, no royalties are paid for online airplay.<sup>122</sup>

It's not a big deal, but it feels a little unfair that comic book translators get a fraction of what other translators do (4.901 cents vs. 26 cents or 13 cents). Even though translating a text-driven challenging science comic or graphic novel can be much more demanding than some lightweight nonsense book.<sup>123</sup>

In some cases, income distribution is unfair and favours large players. Even on small radios, an actual remuneration model should be introduced instead of the station's annual fee being a lump sum that does not relate to the music played. Same problem with Spotify, for example. Absolutely fundamental grievances that would be easy to solve in the digital age.<sup>124</sup>

121 Question 10. Has the copyright society treated you or anyone else unfairly?

122 Original comment: Esim. Levytyksistä radiosoihtoista saatavat korvaukset jaetaan vain muutamille artisteille. Lisäksi nettiradioiden levysoitoista ei makseta tekijänoikeuskorvauksia.

123 Original comment: Ei ole iso juttu, mutta tuntuu hieman epäoikeutetulta että sarjakuvien kääntäjät saavat murto-osan siitä mitä muut tekijät (4,901 senttiä vs. 26 snt tai 13 snt). Vaikka tekstivetoisen haastavan tietosarjakuvan tai sarjakuvaromaanin kääntäminen voi olla paljon vaativampaa kuin jonkun kevyen hömppäkirjan.

124 Original comment: Tulonjako on joissakin tapauksissa epäoikeudenmukainen ja isoja toimijoita suosiva. Pienissäkin radioissa pitäisi päästä faktuaaliseen korvaamismalliin sen sijaan, että aseman vuosimaksu on könttämaksu, joka ei kohdistu soitettuun musiikkiin. Sama ongelma esim. Spotifyssa. Aivan perustavaa laatua olevia epäkohtia, jotka digiaikana olisi helppo ratkaista.



### 2.7.3. EQUITY BETWEEN USERS AND AS A BALANCE OF POWER BETWEEN RIGHTHOLDERS AND USERS

Equity requires that users are able to obtain equitable licensing conditions. Section 35 of the Act on the Collective Management of Copyright requires that licensing terms be based on objective and non-discriminatory criteria; tariffs must be reasonable while at the same time rightholders must receive appropriate remuneration for the use of their rights. In other words, from the point of view of users, equity requires on the one hand that all users be treated fairly, and on the other hand that the relationship between users' and rightholders' interests is equitable.

During interviews, CMOs' representatives did not mention any serious complaints by users on this ground. There is no information on actions or investigations by the Patent and Registration Office on issues of fairness or discrimination. Because of the dominant position of CMOs in Finland, the Competition and Consumer Authority is also responsible for dealing with cases of discriminatory practices; in 2000 and 2001, Gramex<sup>125</sup> and Teosto<sup>126</sup> were fined by the Authority for abuse of dominant position when their licensing tariffs were considered discriminatory. There have, however, been no other convictions although more recent complaints and investigations have been made.<sup>127</sup>

When asked whether they were aware of unfair treatment or discrimination in tariffs, most users interviewed answered that since they cannot know the licensing terms obtained by other users, they are not in a position to determine whether the conditions that they have obtained are comparable. When users are assembled into umbrella organisations that are able to negotiate framework licensing contracts, the terms they obtain are automatically similar for all members. However, a few users expressed fears that licensing terms are not always fair and that competitors might obtain lower tariffs. For example:

Radio channels are treated equally, but the question is: Is radio as a media treated equally towards other users that use music? In what kind of situation are we towards Spotify, TV and streaming services? If we talk about that we are using music and others are using music,

125 See <https://www.kkv.fi/ratkaisut-ja-julkaisut/julkaisut/arkisto/kilpailu-uutiset/2002/1/kivi-esitti-gramexille-kilpailunrikkomismaksua/>

126 Case number 142/61/2000. See <https://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2000/muut-ratkaisut/142612000/>.

127 See for example case number 1127/61/2002 with a decision on 4.2.2010: <https://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2010/muut-ratkaisut/1127612002/>

do we pay more for the music compared to somebody else? (...) I know that radio is really important to rightholders, to the artists and so on because we pay well, and they see that they receive the money well from radio, because radio has been there forever, and these users that are coming up, then we don't want to be the ones which are the cash cow, which pay the most, have the biggest tariffs and so on. That's what we are looking into, trying to monitor if that's the situation. The suspicion is there, but I don't have a proof.

Equity is more difficult to assess when considered from the point of view of the **balance of power between CMOs and users**. Section 34 of the Act on the Collective Management of Copyright states that licensing negotiations should be conducted in good faith by both CMOs and users. However, the context alone in which these negotiations take place largely influences the bargaining power of each party. Interviews with CMOs and users have highlighted the different positions.

CMOs represent a large amount of rightholders in their field and have a powerful negotiating position in their area. They are able to benefit from the advantages of a system where rightholders have long been strongly organised and some users are used to paying licensing tariffs. On the other hand, CMOs can only conclude agreements within the mandate received from rightholders and the associations that represent them, which limits their negotiating range.

On the other side of the table, individual users in many areas have organised into umbrella associations, which are able to offer a counterweight to the CMOs' negotiation power: public libraries under the National Library, commercial radio channels under RadioMedia, operators providing television services under their industry organisation represented by FiCom, operators in the hospitality industry under MaRa, museums under the Finnish Museums Association (Suomen Museoliitto). Framework agreements concluded by these umbrella organisations have proven an efficient solution to balance the power between rightholders and users. In the words of one user representative:

Unfair terms or unfair demands for the next tariffs, that has been quite common throughout the years (...). Basically it has been quite ok, but if I think throughout twenty years of time, yes we have had a couple of times where they have had unreasonable demands regarding some other topics than tariffs. But as long as we have the negotiation power also on our side, we mostly reached reasonable results in the end.

Most of these umbrella organisations consider that the agreements they have obtained are satisfactory, and several recognise that the de facto monopoly

of CMOs in their field allows for a system of one-stop-shop licensing, which is very practical. However, some have also expressed concern that when licensing negotiations are not successful, access to works that are important for some users is limited (see section on responsiveness). In that case users would have no alternative course of action other than contacting each rightholder individually.

Another difficulty is that individual users who are not represented by an umbrella organisation often find they have little or no influence on the tariffs and conditions they might obtain from CMOs. As one interviewee put it:

A basic precondition for effective negotiation is that if there is kind of one monopoly of one side, there shall be kind of a joint collective on the other side as well. It's really a disastrous situation where an individual person or company would need to negotiate with collecting society, because there is no negotiation power on the other side then.

Interviewees representing individual users, even in the form of organisations prominent in their field, expressed the most dissatisfaction with the balance of power during licensing negotiations. For example:

The tariffs are, after all, set unilaterally by the authors' representative. It should be a starting point for the negotiations rather than an assumption that the price level they dictate is inherently reasonable or proportionate.<sup>128</sup>

Such users expressed the wish for a method of supervision that would monitor the fairness of licensing agreements on their behalf through a more responsive procedure than those available at the moment:

It would be great to have an easy and light version, for instance the Patent and Registration Office, a public authority to whom you could explain these matters, an independent authority to evaluate whether equality is achieved in all CMO activities. Not so much the operational side, but whether all pay the same amount, and whether that is equitable; yes, it does interest us, because the market is intensely competitive.<sup>129</sup>

128 Original quote: Hinnastot kuitenkin yksipuolisesti asettaa tekijäpuolen edustaja. Sen pitäisi olla enemmänkin neuvottelulähtökohta kun olettama siitä että heidän sanelema hintataso on lähtökohtaisesti kohtuullinen tai oikeasuhtainen.

129 Original quote: Olisi mahtavaa jos olisi joku helppo ja kevyt versio esimerkiksi PRH [patentti- ja rekisterihallitus] viranomainen, jolle avata nämä asiat, riippumaton viranomaistaho joka arvioisi että toteutuuko järjestöjen toiminnassa tasapuolisuus kaikilta osin. Ei niinkään se toiminnallinen puoli vaan se että maksaako kaikki saman verran ja onko se tasapuolista, kyllä se meitä kiinnostaa koska kilpailutilanne markkinoilla on tosi tiukka.

Equity is therefore difficult to ensure in licensing negotiations. Users have little information on the conditions obtained by other users, which for some raises doubts on the fairness of the agreements they have obtained. The balance of power during negotiations is also a sensitive aspect of the licensing process, especially for users who are not organised into umbrella organisations, as the CMOs' de facto monopoly in their area of rights raises concerns from users on the weakness of their own bargaining position.

## 2.8. Separation of powers

Separation of powers is an important principle of good governance, demanding that responsibilities are divided among distinct authorities or branches with separate and non-overlapping duties. It is a means to prevent the concentration of power and provide for checks and balances.<sup>130</sup> In the context of collective management of copyright, separation of powers protects right-holders' interests as it promotes efficient and responsible rights management in CMOs. For this purpose, CMOs should be organised in such a way that management and supervision organs are independent. Separation of powers also requires that an impartial dispute resolution mechanism is available to all stakeholders in case of conflicts.

### 2.8.1. SEPARATION OF POWERS WITHIN CMOS

As has been described in the section on accountability, all Finnish CMOs follow the same structure prescribed by the Act on the Collective Management of Copyright: an executive body is supervised by a board, which is appointed by and reports to the general assembly. Such a structure has been specifically designed in the European Directive on collective management of copyright to promote sound management through an independent executive management body and a supervisory function appropriate to the organisational structure.<sup>131</sup>

Although the Finnish legislation implementing the Directive did not fundamentally change the structure of existing CMOs, the Directive seems to have clarified their legal obligations. One interviewee explained that

since the introduction of the new law and the Collective Management Directive, we have organised governance structures in line with the laws and principles that are included in the law. We understand that meeting the requirements by the law is a benchmark for the

<sup>130</sup> Kautio, T. & Lefever, N. (2018). *Assessing Governance in the Context of Copyright Systems - Second Edition*. Cupore webpublications 45. P. 34.

<sup>131</sup> Recitals 24 and 25 of the Directive.

separation of power. It has kept us busy for the last few years but it has also brought some clarity to things that perhaps were not so clear before.

All CMOs interviewed reported that the governance structure operates efficiently. The different organs are clearly distinct with separate functions, and there is a sufficient amount of cooperation and negotiation to prevent paralysing conflicts.

The legislation stipulates that the board should not intervene into operational activities; that's the basic principle and it's one thing to consider here (...). The more relevant question is the relation between the board and the executive body: in that sense I would say that it works very well in practice. It's a kind of naturally interrelated relation. It works well, I think.

Another aspect of the separation of powers is the need to avoid or mitigate the effects of potential **conflicts of interests**. Good governance requires that measures are in place to avoid conflicts between the interests of persons in power in an organisation and the interests of the organisation or its stakeholders. When conflicts of interests cannot be avoided, there should be appropriate measures to identify, manage and disclose them in order to prevent them from adversely affecting the organisation.

In the case of collective management of copyright, this principle is put into practice in section 18 of the Act on the Collective Management of Copyright. CMOs are required to put in place and apply reasonable procedures to identify and prevent conflicts of interests or limit their impact on the collective interests of the rightholders whom they represent. The Act also requires an annual statement concerning "any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations owed to the collective management organisation and any obligation owed to any other natural or legal person". This statement, which concerns at least all members of the executive management and of the board, has to be submitted to the general assembly by the managing director and by a member of the supervisory body. The information it must contain is also defined in the Act.

During interviews, some CMO representatives described internal tools for preventing or managing conflicts of interests or abuse of power, which, in their opinion, have proved efficient. These tools include, besides the mandatory declaration of interests, internal codes of conduct, decision-making processes including rules on incompetence in case of possible bias, limits to mandates, or unofficial procedures to deal with conflicts of interests. No CMO seems to have developed formal procedures for

preventing or managing conflicts of interests. However, all CMO representatives declared that conflicts of interest are not an issue in their organisation. In some cases, the possibilities for abuse of power are limited:

Potential conflicts of interests and whether they might have any effect is quite difficult, and that's because the principles are so simple. There are not so many points where you can try and change things at your benefit. (...) Basically something could happen but it would be so obvious because there really aren't so many moving parts in this model of ours. There was never any problem of that kind before.

Several CMO representatives emphasised that the structure of the organisation and the constant communication between member organisations and the management of the CMO are considered sufficient to prevent any possibility of abuse of power:

We have not faced any problems in this area. I think the only kind of procedure that we have in place for avoiding these conflicts of interest is the annual individual statements that are mentioned in the collective rights management law now. (...) Until now we have considered that we have a very simple structure, there are board members and then the board makes a presentation or statement to the general assembly and basically our member associations are supervising us constantly, even outside of these exact processes.

The general opinion seems to be that the declaration of interests as well as the structures and rules of the organisations are sufficient to prevent conflicts of interests; were they to arise, they would be dealt with on a case-by-case basis.

### **2.8.2. DISPUTE RESOLUTION**

Access to an independent dispute resolution mechanism is an important aspect of the principle of the separation of powers. Rightholders, customers and the CMOs themselves must have access to an efficient and impartial recourse in case of conflicts.

If rightholders or users were to be dissatisfied with the rights management or licensing process, the first step, according to all CMO representatives interviewed, would be to contact the CMO and communicate their complaint. Most of the time, an agreement can be reached through discussion and negotiation. If not, most CMOs have semi-formal or formal internal dispute resolution procedures, which generally involve the board. However, all CMOs declared that complaints are rare and that formal complaint procedures are rarely, if ever, used.

[Is there a procedure if customers want to make a complaint?] There is no specific procedure. There are rules according to which, if there are questions or grievances, I should be contacted, or if the matter is not resolved with me, then the board will deal with it. If the board does not resolve it, the matter can be taken to court. It has not happened yet, there has been no need to organise a process for this.<sup>132</sup>

It depends a little bit about the type of complaining they want to do. If it concerns the licensing and the remuneration, we have distribution rules where there is a set procedure for making a complaint about our distribution, for example. But of course authors can also contact directly our board, for example, if they have other things they want to complain about. (...) We have a lot of questions about our distribution, but not complaints; normally those questions are addressed by our customer service. In a normal situation, what authors want to ask is solved in that way, through discussion. We haven't had that many actual complaints, really only a few throughout our history.

If a disagreement arises that cannot be resolved using the CMOs' internal processes, customers and rightholders must pursue legal remedies in front of the courts.<sup>133</sup> According to section 67 of the Act on the Collective Management of Copyright, the Market Court is responsible for dealing with disputes concerning rightholders' rights as well as the relationship between CMOs and their users.<sup>134</sup> However, the process is expensive and takes too long to provide a satisfactory solution. One user declared:

We emphasise negotiations. The solutions from the courts don't work. Especially solutions concerning pricing models, in the courts it takes too much time. I think negotiation is the best way to solve these things.

132 Original quote: [Menettelytapa jos asiakkaat haluavat tehdä valituksen?] Ei ole määriteltyä. On ohjeet, että jos on kysyttävää tai valitettavaa, niin ottaa yhteyttä minuun, tai jos asia ei ratkea minun kanssani niin sitten hallitus käsittelee asian. Jos ei sillä ratkea, niin asian voi viedä tuomioistuimeen. Ei ole ollut tällaisia, ei ole tarvinnut järjestää prosessia tähän.

133 It appears that some licensing contracts permit the use of arbitration, but the authors did not have access to such document.

134 The Finnish Copyright Council also offers a procedure, free of charge and accessible to all individuals, which results in a non-binding opinion on the application of the Copyright Act. Although these opinions are non-enforceable, they offer a possibility for 'pre-checking' the possible outcome of a large-scale dispute before going to court. For more information on dispute resolution in the field of copyright in Finland, see Cupore (2016). *Enforcement by Public and Private Actors – Focus: Public Authorities*. Cupore webpublications 39:14.

As noted earlier, if a stakeholder finds their rights as stated in the Act on the Collective Management infringed upon by a CMO, they have the possibility to file a complaint with the Patent and Registration Office. However, few interviewees were aware of that possibility:

I know that there is something in the law related to the Patent and Registration Office, I think that it goes through there somehow (...), but this is something that people do not know.

In general it seems that disputes between rightholders or customers and CMOs are, by a large majority, resolved informally, through negotiation. The alternative is recourse to the Market Court, which is not considered satisfactory.



## CONCLUSION

Throughout this report, we have discovered that the seven Finnish CMOs are key actors in the management of copyright at national level. Six of them represent categories of rightholders, while the last one, Kopiosto, manages a large set of rights categories. Their range of activities varies widely. While Filmex only distributes collectively managed remunerations, all others also propose licences on behalf of their clients, and some are, to various extents, involved in the extended collective management system or in redistributing the proceeds of special remuneration schemes. Besides their involvement in collective management of copyright, most CMOs also engage in activities in the interest of the categories of rightholders they represent, such as supporting the development of their artistic field, advocating for their rights, or conducting copyright-related information activities. Finnish CMOs also vary greatly in terms of the number of rightholders they represent (from 283 for APFI to 56 000 for Gramex), the length of their experience (Teosto was founded in 1928 and Filmex in 2012), or the amount of remuneration managed (in 2019, Filmex collected around €1 240 000 while Teosto collected around €72 000 000). They share similarities in their organisation, however: almost all Finnish CMOs have a membership composed exclusively of associations representing rightholders,<sup>135</sup> a specificity of the Finnish system. Another specificity is the existence of an advisory board for the development of collective management (yhteishallinnonin kehittämisen neuvottelukunta), a consultative organ uniting CMOs, rightholders, users and institutional actors to discuss the development of the collective management of copyright.

The purpose of this report was to assess whether the collective management system as a whole was conducive to the respect of eight principles of good governance.

Concerning the principle of **transparency**, the first part of the assessment covered a series of general information items necessary for the understanding of the CMOs' operation and of contracting licences; they were found to be almost entirely available on the CMOs' websites, although some items, especially those used by rightholders and users with more expertise in copyright issues, were more difficult to locate and formulated in a less accessible language. The second part of the assessment analysed the opinions of CMOs, rightholders and users on the transparency of the system.

135 Teosto also accepts as members individual rightholders who meet certain revenue criteria and APFI's members are all individual audiovisual production companies.

CMOs' representatives considered that they were able to respond to clients' and customers' needs for information and fulfil legal transparency requirements without particular difficulties. Most rightholders who responded to the survey were satisfied with the information they received, although some wished that the principles of compensation were presented more transparently or had requested more detailed data on their remunerations. On the users' side, transparency issues were reported mostly by those who were able to negotiate their own licences; some of them perceived a lack of information on the basis for tariffs, and on how and to whom the fees were distributed.

When assessing the application of the principle of **participation**, it was discovered that rightholders can participate in the management of the CMO representing them through different methods depending on the situation. Members of CMOs have the possibility to attend the general assembly and vote there, but individual rightholders can obtain membership only in Teosto and APFI; in other cases, all members are associations representing rightholders. If rightholders are affiliated to a representative society that is a member of the CMO, they can participate through this society. Additionally, all rightholders affiliated to a CMO have the possibility to contact the CMO directly to provide feedback or suggestions and, in some cases, to participate in internal working groups. This system somewhat limits the possibilities for individual rightholders to directly participate in or supervise the management of the CMO they are affiliated to. However, very few rightholders seem dissatisfied with this situation. It seems that a vast majority are uninterested in being involved in CMOs' governance. In such a context, the Finnish system's peculiarity of having CMOs managed by rightholders' organisations provides an efficient solution, as the collective management of rights is supervised by dedicated professionals representing most categories of rightholders.

The topic of **accountability** was divided into two different areas: internal accountability, covering the internal supervision practices by which a CMO's management is made responsible towards members and clients, and external accountability, the supervision by public authorities to ensure that CMOs operate according to laws. Internal accountability is ensured by the legal requirement for all CMOs to have, as a supervisory organ, a board composed of representatives of its members. In Finnish CMOs, boards are not only conceived as fulfilling a supervisory function but also as providing a forum for negotiations between stakeholders' representatives. This system has proved generally efficient. External accountability is mainly the responsibility of the Patent and Registration Office, as well as the Competition

and Consumer Authority as regards issues related to competition infringements. The Patent and Registration Office's role is difficult to assess as it has had this responsibility only since 2017. CMOs have reported a satisfactory atmosphere of collaboration, but some interviewees expressed a feeling that the supervision was not optimal because of a lack of resources.

**Coherence and consistency** were approached by examining the manner in which decisions are made when granting licences and distributing remunerations. In general, it seems that coherence and consistency in the operation of CMOs are enhanced by the fact that guidelines and procedures are necessary for the good operation of the organisations, especially concerning the most difficult decisions, such as those on the rules of distribution of revenues. The few ad hoc decisions are often made by the board, which reports to the general assembly. The biggest challenges are faced in situations where the rights managed are particularly numerous and complex, as well as when the amount of use cannot be directly measured.

Collective management organisations can practise **responsiveness** by monitoring their operating environment and by responding to requests and suggestions within a reasonable timeframe. Finnish CMOs generally monitor and analyse their operating environment in various ways, depending on their operational resources and the focus of their activities. Their representatives all stated that they welcome requests and suggestions from clients, customers or members, and respond to them as part of their normal services. Complaints are dealt with through discussions and negotiations, generally without pre-set procedures. According to our survey, few right-holders contact CMOs and half of the respondents who did were satisfied with the responsiveness of the organisation. Most users interviewed were generally satisfied with their interaction with the CMO, but some suggested that CMOs were not always interested in developing their services when they could not see immediate profitability. Some users also considered that negotiation processes can be long and consume a lot of their resources.

**Effectiveness and efficiency** relate to the capacity of CMOs to efficiently collect and distribute revenues, as well as to the effectiveness of the collective management system as a whole. The first aspect was studied by examining the amounts of revenue collected and distributed and the amount and percentage of administrative costs for each CMO by category of rights managed and type of use. It appeared that these are difficult to read and interpret by themselves and do not provide sufficient information to assess the efficiency of individual CMOs. Interviewees were also asked to list factors which, in their opinion, limit the effectiveness of the system as a whole; they listed technical factors such as lack of metadata and data

on uses as well as other duties diverting resources, such as adaptation to the requirements of the Act on Collective Management, copyright information activities and disputes on the management of rights. Solutions are being sought through framework licensing agreements and automation of data processing.

**Equity and inclusiveness** were considered separately. *Inclusiveness* was assessed through the rightholders' ability to join or leave a CMO in their field or limit its mandate. It seems that, at least since 2017 when the Act on Collective Management clarified the rights of rightholders and the duties of CMOs, these aspects have not raised significant difficulties. *Equity* was addressed through equity between rightholders, equity between users, and the balance of power between users and CMOs. Between rightholders, equity issues mainly relate to the distribution of revenues; equity is generally achieved satisfactorily through distribution rules based on objective criteria, but some rightholders described a few situations where those criteria allowed for differences of treatment that were considered unfair. They cited cases of different remuneration levels between competing rightholders (such as between those involved in airplay production), technologies (different remunerations level applicable to music distributed online or on air) or genres of works (translations of comic books as compared to other works). Users interviewed were not aware of unfair treatment or discrimination in tariffs, but did not know the licensing terms obtained by other users and therefore had to trust that the Competition and Consumer Authority would effectively prevent discrimination. Users raised more concerns with regard to their position in the balance of power with CMOs during licensing negotiations, especially individual users not represented by an umbrella organisation. The de facto monopoly held by CMOs in their field makes this a sensitive aspect of the licensing process.

Finally, **separation of powers** seems to be generally well achieved within the CMOs through the legally mandated structure of an executive body that is supervised by a board appointed by and reporting to the general assembly. Besides the mandatory declaration of interests, no CMO seems to have developed formal procedures for preventing or managing conflicts of interests as these conflicts seem to be rare and easy to detect. A large majority of disputes are resolved through negotiation; few interviewees were aware of the possibility to file a complaint with the Patent and Registration Office, and legal remedies that can be obtained through the Market Court were considered unpractical.

One important aspect of the system of collective management of copyright is the **relationship between the three main stakeholder categories:**

**rightholders, collective management organisations, and users.** Their situation in relation to the principles of good governance varies in ways that were highlighted during the analysis.

**Rightholders** seem to be generally satisfied with the manner in which CMOs operate on their behalf. The Act on Collective Management has reinforced their rights and protection. The Finnish collective management system is organised in such a way that rightholders' interests are mainly defended through societies representing them; as a result, individual rightholders who are not represented by these societies have limited options to participate in or directly influence their CMO's operations. However, few rightholders are interested in being involved in CMOs' management. Their representative societies are also able to provide professional supervision of CMOs' management and, when backed by a significant amount of rightholders in a field, hold a strong position in a CMO's general assembly and board. Rightholders who expressed dissatisfaction generally disagreed with the equity of the rules of income distribution. There also seems to be a lack of knowledge on the manner in which collective management of copyright is organised and on the rights retained by clients of CMOs, for example the right to limit their mandate or conclude licences for non-commercial uses. Although our survey did not capture high levels of discontent, it is possible that in such a strongly organised structure of collective management, some individual rightholders are dissatisfied with the system as a whole but have no other option than to participate.

**Collective management organisations** constitute the core of the system because of their position as intermediaries between rightholders and users. Most operate as associations of rightholders in their field and consider supporting the interests of their clients an important part of their activities. Some CMOs represent a large variety of rightholders, which can cause internal conflicts, especially when determining the rules of revenue distribution. However, it seems that negotiations and close collaboration between the board and management help prevent paralysing conflicts. Their relationship with users can be more complicated when the interests of rightholders and the interests of licensees are in opposition.

One challenge to CMOs' efficiency is, in some cases, the difficulty to collect usage data from users, in part because of a lack of metadata. Additionally, the Act on the Collective Management of Copyright has necessitated some adjustments in their operation, which have required resources, in short supply in the smallest organisations. However, after a period of adaptation in collaboration with the Patent and Registration Office and the Ministry of Education and Culture, the implementation of the Act has not

resulted in significant difficulties. Some interviewees even noted that the new legislation has increased transparency as it has clarified the operation of Finnish CMOs and might have helped users understand the situations in which the use of copyrighted works must be remunerated. Among the few difficulties expressed during interviews is the organisation of remunerations between CMOs who share responsibilities for extended collective licensing or other remuneration schemes; here too the rules on distribution of remuneration can result in disagreements. On the other hand, some interviewees highlighted the positive role of the Advisory Board for the Development of Collective Management in promoting collaboration.

**Users** form the category of stakeholders that expressed the most dissatisfaction, although their opinions varied to a large extent. This study focused on the opinions of users able to negotiate individual licences with CMOs. Among those, users organised into umbrella organisations, who conclude framework licensing agreements on their behalf, seemed the most satisfied with their relationships with CMOs. Umbrella organisations find themselves in a strong negotiation position similar to the de facto monopoly of CMOs and generally consider the negotiations fair and balanced, although sometimes long and resource-intensive. In such cases, some users wished for more transparency on the calculation bases for their fees and on the destination of the amount paid. Some users also noted issues related to responsiveness. In their opinion, CMOs were reluctant to grant licences that were not obviously or immediately profitable for the rightholders. This means that some users may not have access to uses that could be important in their own operations, for example access to research material through libraries. Others claimed they were prevented from developing new business models in response to new market opportunities, or that constantly rising collective licensing fees discourage individual licensing even when feasible.

Users who conclude licensing agreements without the support of umbrella organisations were the most critical. They tend to feel that the terms of their agreements are imposed by CMOs, with little margin for negotiation on their part and no responsiveness to changes in their own situations. Their situation was compounded by the fact that they have no other option: contracting with other European CMOs who offer lower fees, if technically possible in some fields, is of uncertain legality. Users also feel that negotiation with the CMOs is the only manner to solve a disagreement: not all of them are aware that the Patent and Registration Office can receive complaints, and those who do consider that the Office does not have sufficient resources to be efficient; as for the process in front of the Market Court, in charge of copyright-related disputes, it is considered

too long and expensive to offer a suitable remedy. Finally, the audiovisual field has its own challenges: the complexity of the rights structure makes it difficult to determine fair rules of distribution and to know with certainty who, between individual rightholders and CMOs, is in charge of collecting remunerations. This adds a layer of bureaucracy for producers to avoid double assignments, in a field already complicated by powerful business interests and international collaborations.

**In summary**, collective management is a very important aspect of the Finnish copyright system. It has been built in a social, cultural and artistic context where rightholders are strongly organised into unions and associations representing their interests. CMOs are conceived as structures to unite these associations around the collection and distribution of copyright revenue, as well as other services for their members and clients. This system works on the principle of collaboration and negotiation between CMOs' member associations, between CMOs and users, and between CMOs and public authorities. It has the advantage of professionalism and of balancing power between a limited number of strong actors; it also has the disadvantage that smaller actors, such as users negotiating individual licences or rightholders in a less organised area, might not have the same negotiation powers and advantages. However, the current legislative framework offers strong rights and protection to all parties, although not all persons involved might know them or how to enforce them. The principles of good governance are respected in general, even though some improvements could be made.

We therefore suggest the following actions:

- **Review licensing fees and rules of distribution of remunerations from the point of view of equity.** Rightholders and users have both cited examples where similar types of works and uses are apparently remunerated differently, for example between competing rightholders, technologies or genres of works.<sup>136</sup>
- **Improve access in cases where uses are limited by a lack of licensing solutions.** This concerns, for example, access in libraries to older newspaper material, or access to research material.<sup>137</sup> Rightholders, through their representative associations or CMOs, could be encouraged to respond to developing markets by increasing the use of new pilot and long-term licences when requested by users.

<sup>136</sup> See above, section on equity and inclusiveness.

<sup>137</sup> See above, section on responsiveness.

Other solutions, such as new extended collective licences or limitations to copyright, could also be considered.

- **Provide more resources for supervision to the Patents and Registration Office and to the Competition and Consumer Authority, as well as better advertise their role in supervising the operation of collective management of copyright.** This is important not only to increase their efficiency in monitoring and solving disputes, but also to improve the confidence of stakeholders, especially users, in the legitimacy and equity of collective management. Alternatively, a new, accessible and efficient dispute resolution mechanism could be designed to provide quick resolution in disputes related to collective management, similar to the role of the Copyright Council.
- **Clarify the situations in which licences can be acquired from foreign (European) CMOs to cover uses in Finland.** If international competition is technically possible, rightholders and users should be aware of this option and able to compare fees.<sup>138</sup>
- **Clarify or simplify the organisation of collective management, especially in the audiovisual industry,** to limit the possibilities of double assignments and remove licensing hurdles. The Finnish Competition and Consumer Authority has highlighted, already in 2014, the problems of the complexity of copyright legislation and agreement practices in this field and others. This results in obscurity of ownership and cashflow pertaining to copyright or components of copyrighted works.<sup>139</sup> It seems that, at least in the audiovisual industry, the issue is still a hurdle in the operation of licensing markets.
- **Increase the awareness of stakeholders (in particular users and individual rightholders) on collective management in general and the operation of CMOs in their field,** including their rights, the scope of the mandates, the organisation of extended collective licensing and other remuneration schemes, and distribution rules. Although CMOs already provide a large amount of information,

<sup>138</sup> This is one of the recommendations of a 2014 report by the Finnish Competition and Consumer Authority: Kuhlberg M. and Castrén M. (2014). *Tekijänoikeusjärjestöt ja teosmarkkinoiden toimivuus*. Kilpailu- ja kuluttajavirasto. <https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2014/kkv-selvityksia-2-2014.pdf>

<sup>139</sup> See <https://www.kkv.fi/en/current-issues/press-releases/2014/finnish-competition-and-consumer-authority-numerous-problems-on-the-copyright-market/> and the report linked on the same page.



its accessibility varies. Several requests for improvement expressed during our research are the product of misunderstandings or lack of information.

## SUGGESTIONS FOR FURTHER RESEARCH

This is the first study on collective management based on the methodology for assessing governance in the context of copyright systems. The functionality of the research questions and methods had not been tested before, but our experience indicates that they can be used to gather useful information about the activities of collective management in Finland. In some areas, the analysis would benefit from an update of this report in a few years. For example, the current legal framework is too recent to yet allow for an evaluation of the new supervision and dispute resolution responsibilities of the Patent and Registration Office. The analysis of the financial efficiency of CMOs would also be more meaningful as a comparison of financial information over several years starting in 2017.

The study also revealed some areas that would benefit from further research. The Finnish system of collective management of copyright is characterised by extended collective licensing schemes. The system allows collective management organisations to collect certain remunerations on behalf of all rightholders that have not expressly refused their mandate. Each extended collective licence requires an authorisation from the Ministry of Education and Culture. These authorisations play an important role in the operation of collective licensing in general and have a direct impact on rightholders, especially those who are not clients of CMOs. Further research could examine the authorisation process from the point of view of good governance. In particular, the principles of transparency, inclusiveness, efficiency, responsiveness, participation, accountability and coherence should be respected to ensure that public authorities meet their legal and ethical responsibilities.

Another area for further research is the impact of collective management organisations on their industry. This current report highlights the ways in which CMOs have a crucial role in facilitating the access to works in their area of competence. As types of creative works and modes of access are in constant evolution, collective management must be able to keep up with the development of creation and distribution processes. Future studies could evaluate whether CMOs' services fulfil the needs of both users and rightholders in different industries.

Finally, the research interviews highlighted the copyright-related challenges in the audiovisual sector. The organisation of licensing markets for audiovisual works is made difficult by a complex copyright legislation, multiple actors with copyright claims involved in the production of the same

works, various agreement practices, and a high level of internationalisation. This situation creates licensing and administrative difficulties that impair creation and production of audiovisual works. Further research could facilitate audiovisual creation by clarifying the current copyright situation and identifying the main licensing hurdles as well as their root causes. Such work could serve as a basis for proposing legislative or practical solutions to support individual and collective management of rights.

## SOURCES

### Interviews

#### COLLECTIVE MANAGEMENT ORGANISATIONS

APFI representative interviewed on 11.1.2021.  
Filmex representative interviewed on 19.1.2021.  
Gramex representative interviewed on 27.1.2021.  
Kopioisto representative interviewed on 18.1.2021.  
Kuvasto representative interviewed on 19.1.2021.  
Sanasto representative interviewed on 1.2.2021.  
Teosto representative interviewed on 14.1.2021.

#### COPYRIGHT USERS

Dionysos Films representative interviewed on 10.2.2021.  
DNA Oyj representative interviewed on 6.4.2021.  
Hospitality Association MaRa representative interviewed on 22.4.2021.  
Legal consultant involved in licensing negotiations on behalf of organisations in the audio and audiovisual industries interviewed on 2.3.2021.  
Museums Associations representative interviewed on 25.3.2021.  
National Agency for Education representatives interviewed by email on 27.4.2021.  
National Gallery representatives interviewed on 24.2.2021 and 9.3.2021.  
National Library representatives interviewed on 10.2.2021.  
RadioMedia representative interviewed on 1.3.2021  
Sanoma Media Finland representative interviewed on 9.3.2021.  
YLE representative interviewed on 5.2.2021.

#### OTHERS

Finnish Patent and Registration Office representative interviewed on 11.2.2021.  
Ministry of Education and Culture representative (copyright expert) interviewed on 17.3.2021.

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Competition and Consumer Authority's caselaw:

<https://www.kkv.fi/ratkaisut-ja-julkaisut/julkaisut/arkisto/kilpailu-uutiset/2002/1/kivi-esitti-gramexille-kilpailunrikkomismaksua/>

Case number 142/61/2000. <https://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2000/muut-ratkaisut/142612000/>.

Case number 1127/61/2002. <https://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2010/muut-ratkaisut/1127612002/>.

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### APFI:

Statutes of the organisation: [https://apfi.fi/wp-content/uploads/Sa%C-C%88a%CC%88nno%CC%88t\\_APFI.pdf](https://apfi.fi/wp-content/uploads/Sa%C-C%88a%CC%88nno%CC%88t_APFI.pdf)

Terms of membership: <https://apfi.fi/tuottajalle/nain-ryhdyt-asiakkaaksemme/>

Terms for withdrawal: Asiakassopimus 11§

Standard licensing contracts, tariffs and pricing criteria: <https://apfi.fi/elokuvien-esitysluvat/lupahakemukset/>

Governance structure of the organisation and list of persons responsible for management: <https://apfi.fi/organisaatio/>

General policy on distribution of remunerations to right holders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts: <https://apfi.fi/tuottajalle/korvauslajit/> and <https://apfi.fi/wp-content/uploads/Tilitysohjesa%CC%88a%CC%88nto%CC%88-29.6.2018.pdf>

List of cooperation and representation agreements: <https://apfi.fi/vienninedistaminen/>

Dispute resolution procedures available: Asiakassopimus 12§ and <https://apfi.fi/tuottajalle/korvauslajit/>

Annual reports and accounts: <https://apfi.fi/missio/>

### Filmex:

Terms of membership: Client agreement (asiakassopimus): <https://www.filmex.fi/asiakkuus/>

Terms for withdrawal: Client agreement (asiakassopimus) 8§

Governance structure of the organisation and list of persons responsible for management: <https://www.filmex.fi/toiminta/> and <https://www.filmex.fi/yhteystiedot/>

General policy on distribution of remunerations to right holders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts: <https://www.filmex.fi/toiminta/>

Dispute resolution procedures available: Client agreement (asiakassopimus) 11§

Annual reports and accounts: <https://www.filmex.fi/toiminta/>

**Gramex:**

Statutes of the organisation: Gramexin säännöt

Terms of membership: <https://www.gramex.fi/en/gramex-eng/>

Terms for withdrawal: Client agreement (asiakassopimus) 13§

Standard licensing contracts, tariffs and pricing criteria: <https://www.gramex.fi/kayttoluvat/>

Governance structure of the organisation and list of persons responsible for management: <https://www.gramex.fi/portfolio-items/gramex-ryn-hallitus/> and säännöt.

General policy on distribution of remunerations to right holders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts: <https://www.gramex.fi/portfolio-items/gramexin-tilityssaannot/>

List of cooperation and representation agreements: <https://www.gramex.fi/en/portfolio-items/remunerations-from-abroad-2/>

Dispute resolution procedures available: Client agreement (asiakassopimus) 15§

Annual reports and accounts: [https://www.gramex.fi/?avada\\_portfolio=vuosikatsaukset](https://www.gramex.fi/?avada_portfolio=vuosikatsaukset)

**Kopiosto:**

Statutes of the organisation: <https://www.kopiosto.fi/app/uploads/2018/08/31150618/Kopioston-s%C3%A4%C3%A4nn%C3%B6t.pdf>

Terms of membership: <https://www.kopiosto.fi/kopiosto/tekijoille-ja-kustantajille/liity-kopiostoon/kopiosto-valtakirja/>

Terms for withdrawal: <https://www.kopiosto.fi/kopiosto/tekijoille-ja-kustantajille/liity-kopiostoon/kopiosto-valtakirja/>

Standard licensing contracts, tariffs and pricing criteria: <https://www.kopiosto.fi/kopiosto/teosten-kayttajille/teosten-kayttoluvat/>

Governance structure of the organisation and list of persons responsible for management: <https://www.kopiosto.fi/kopiosto/kopiosto/organisaatio/>

General policy on distribution of remunerations to right holders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts: <https://www.kopiosto.fi/app/uploads/2018/08/25132736/Tilinpaatos-2019-hyvaksytyt.pdf> and <https://www.kopiosto.fi/app/uploads/2018/10/19125341/Korvausten-jaon-yleiset-periaatteet.pdf>



List of cooperation and representation agreements: <https://www.kopio-osto.fi/kopioosto/kopioosto/toiminta/>

Annual reports and accounts: <https://www.kopioosto.fi/kopioosto/kopioosto/toiminta/>

**Kuvasto:**

Statutes of the organisation: <https://kuvasto.fi/kuvaston-saannot/>

Terms of membership: <https://kuvasto.fi/miksi-liittya-kuvastoon/>

Terms for withdrawal: Client agreement (asiakassopimus) 11§

Standard licensing contracts, tariffs and pricing criteria: <https://kuvasto.fi/kuvankayttokorvaus/>

Governance structure of the organisation and list of persons responsible for management: <https://kuvasto.fi/kuvaston-saannot/> and <https://kuvasto.fi/yhteystiedot/>

General policy on distribution of remunerations to right holders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts: <https://kuvasto.fi/korvausten-tilitys/>

List of cooperation and representation agreements: <https://kuvasto.fi/kansainvalinen-verkosto/>

Annual reports and accounts: <https://kuvasto.fi/oppaatjulkaisut/>

**Sanasto:**

Statutes of the organisation: <https://www.sanasto.fi/sanaston-saannot/>

Terms of membership: <https://www.sanasto.fi/asiakkuussopimuksen-sopimusehdot/>

Terms for withdrawal: Asiakkuussopimuksen sopimusehdot 7§

Standard licensing contracts, tariffs and pricing criteria: <https://www.sanasto.fi/luvat/>

Governance structure of the organisation and list of persons responsible for management: <https://www.sanasto.fi/en/sanasto/>

General policy on distribution of remunerations to right holders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts: <https://www.sanasto.fi/tilitysperaatteet/> and <https://www.sanasto.fi/tilitykset-ja-korvaukset/>

List of cooperation and representation agreements: <https://www.sanasto.fi/tekijanoikeuskorvaukset-ulkomailta/>

Dispute resolution procedures available: Asiakkuussopimuksen sopimusehdot 9§

Annual reports and accounts: <https://www.sanasto.fi/julkaisut/>

**Teosto:**

Statutes of the organisation: <https://www.teosto.fi/en/about-teosto/statutes-of-teosto/>

Terms of membership: <https://www.teosto.fi/en/members/join-teosto/>

Terms for withdrawal: Membership agreement, article 19.

Standard licensing contracts, tariffs and pricing criteria: <https://www.teosto.fi/en/licences/get-a-licence/>

Governance structure of the organisation and list of persons responsible for management: <https://www.teosto.fi/en/about-teosto/organisation/>

General policy on distribution of remunerations to right holders, on management fees and other deductions from right revenues, and on the use of non-distributable amounts: <https://www.teosto.fi/en/members/music-royalties/>

List of cooperation and representation agreements: <https://www.teosto.fi/en/work-internationally/agreements-with-foreign-performing-rights-organizations/>

Dispute resolution procedures available: For clients: Membership agreement, article 20, and for customers: General Terms and Conditions, article 22.

Annual reports and accounts: <https://www.teosto.fi/en/current-topics/annual-report/>

All links were visited on 11.11.21.

## APPENDIX. SURVEY QUESTIONNAIRE

### Data collection on the operation of copyright societies

Copyright societies (collective management organizations) issue licenses and manage copyright revenue on behalf of rightholders. This survey examines how these organizations operate in terms of transparency, inclusiveness, equity and accountability. The survey is aimed at current or recent members of copyright societies, i.e. artists and rightholders whose rights are managed by a Finnish copyright society (APFI, Filmex, Gramex, Kopiosto, Kuvasto, Sanasto, Teosto) and who may receive (or have received) copyright remuneration through them. Your experiences are important so that we can obtain information on the activities of copyright societies to identify development needs.

The survey is part of the project Collective Management of Copyright, which is being carried out at the Center for Cultural Policy Research CUPORE. The aim of the project is to assess how the activities of copyright societies comply with principles of good governance.

The questionnaire is anonymous, and the results are reported in such a way that an individual respondent cannot be identified. Anonymous data collected through this questionnaire will be archived in the Finnish Social Science Data Archive upon completion of the study, from where it will be available for teaching, study and research purposes. For more detailed information about the survey, please contact Nathalie Lefever.

Completing the questionnaire takes about 5-10 minutes.

**The questionnaire can be answered until 31.12.2020.**

Thank you in advance for your participation!

The survey link may be forwarded to other persons who are or were members of a copyright society.

## BACKGROUND INFORMATION

### 1. Are you currently member of a copyright society (APFI, Filmex, Gramex, Kopiosto, Kuvasto, Sanasto, Teosto)?

- Yes

*If this option is selected:* If you are member of more than one copyright society, please select one and answer the survey from the perspective of your experience with that copyright society. You can answer the survey multiple times, once for each society.

- No

*If this option is selected:* For what reason?

- I have tried becoming member of a copyright society, but I have not been able to.

*If this option is selected:* Which society?

*Options:* Audiovisual Producers Finland APFI; Filmex; Gramex; Kopiosto; Kuvasto; Sanasto; Teosto.

For what reason where you unable to join the society?

- I was a member before (after 2017) but I am not anymore

*If this option is selected:* If you are member of more than one copyright society, please select one and answer the survey from the perspective of your experience with that copyright society. You can answer the survey multiple times, once for each society.

*If the answer to question 1 is "yes" or "I have tried becoming member of a copyright society, but I have not been able to":*

Which copyright society?

- Audiovisual Producers Finland (APFI)

- Filmex

- Gramex

*If this option is selected:* In what capacity? (you may choose several options). *Options:* as a musician; as a singer; as a producer; in another capacity: what?

- Kopiosto

- Kuvasto

*If this option is selected:* In what capacity? (you may choose several options). *Options:* as a painter or graphic artist; as a sculptor; as a designer; as an illustrator; as a cartoonist; as a photographer; as a new media artist; in another capacity: what?

- Sanasto

*If this option is selected:* In what capacity? (you may choose several options). *Options:* as a fiction writer; as a non-fiction writer; as a translator or interpreter; as a journalist; as a critic; in another capacity: what?

- Teosto

*If this option is selected:* In what capacity? (you may choose several options). *Options:* as a composer; as a lyricist; as an arranger; as a publisher; in another capacity: what?

How long have you been/were you a member of that copyright society?

- Less than a year
- 1-3 years
- 4-10 years
- 11-20 years
- Over 20 years

By your estimation, how much was the share of revenue received through that copyright society in your total income of 2019 (before taxes)?

- 0 %
- 1 - 10 %
- 11 - 25 %
- 26 - 50 %
- 51 - 75 %
- 76 - 99 %
- 100%

**2. Did you work as an artist in 2019?**

- yes, it was my main professional activity

*If this option is selected:* In what artistic field? (you may choose several options)

*Options:* Architecture; Cinema; Literature; Art criticism; Fine arts; Illustration and comics; New media arts; Design; Music; Theater; Live art and performance; Circus arts; Dance; Photography; Other, what?

- yes, but I had other professional activities

*If this option is selected:* In what artistic field? (you may choose several options)

*Options:* Architecture; Cinema; Literature; Art criticism; Fine arts; Illustration and comics; New media arts; Design; Music; Theater; Live art and performance; Circus arts; Dance; Photography; Other, what?

- no

In 2017 entered into force a law to promote the implementation of the principles of good governance in the operation of copyright societies. The following questions explore how these principles are now implemented from the perspective of copyright societies' members. When answering, please only take into account events that took place after the entry into force of the law (2017).

## TRANSPARENCY

Copyright societies should act openly and transparently towards rightholders and provide them with the information they need to enforce their rights.

**5. Do you consider that there is enough information available on how the copyright society operates, collects and distributes copyright remuneration?**

- Yes, sufficiently for my needs

- Yes, but not sufficiently for my needs

*If this option is selected:* Please explain.

- No

*If this option is selected:* Please explain.

6. **Have you encountered difficulties obtaining information from the copyright society regarding your copyright remuneration?**

Yes

*If this option is selected:*

What kind of information was difficult to obtain?

- Detailed information on the use of your works
- Information on how the remuneration is calculated
- Statement of administrative and other costs
- Information on how the remuneration is distributed
- Other, what?

What kind of difficulties did you encounter?

- I didn't get any information
- The information was incomplete or not sufficiently detailed
- The information was presented in a too complex manner
- I did not receive answers to my questions
- Other, what?

No

**PARTICIPATION**

Copyright societies represent rightholders and thus rightholders have the right to influence their operation. In some cases, rightholders are represented in decision-making by their member organizations. In other cases, some members can participate directly in decision-making; the possibility is offered according to criteria which vary from society to society.

7. **Do you feel that you can/could sufficiently participate in the decision-making of the copyright society?**

Yes

No

*If this option is selected:* Please explain.

I have not tried to participate in the decision-making of the copyright society.

## RESPONSIVENESS

Copyright societies should serve their members, for example by answering to questions and suggestions, within a reasonable timeframe.

**8. In your opinion, is copyright remuneration distributed within a reasonable timeframe?**

- Yes
- No

*If this option is selected:* Please explain.

**9. Have you submitted (since 2017) any request to the copyright society, such as made a complaint, proposed a change in operation or suggested a new service?**

- Yes

*If this option is selected:* Did the copyright society reply to your request?

- I got a reply within a reasonable timeframe
- I got a reply, but it took too long. – How long?
- I have not (yet) received a reply
- I got a reply, but I was not satisfied.

*If this option is selected:* Please explain.

- No
- I wanted to but I was not able.

*If this option is selected:* Please explain.

## EQUITY AND INCLUSIVENESS

Members of a copyright society should be treated equally, transparently and in a non-discriminatory manner. Rightholders have the right to join or leave a copyright society in their field.

**10. Has the copyright society treated you or anyone else unfairly?**

- No
- Yes

*If this option is selected:* Please explain.



**11. Have you tried leaving the copyright society?**

- No  
 Yes

*If this option is selected:*

Did you encounter any difficulties?

- No  
 Yes

*If this option is selected:* Please explain.

**12. Have you ever tried granting an authorization to use your work directly to a user, without intervention from the copyright society?**

- No  
 Yes

*If this option is selected:*

Did you encounter any difficulties?

- No  
 Yes

*If this option is selected:* Please explain.

Thank you for your answers! The survey report will be released in the autumn of 2021. For more information, please see our website at [www.cupore.fi](http://www.cupore.fi) or follow us on Facebook and Twitter.