

## **Collective Management Organizations as Fiduciaries and Blockchain's Potential for Copyright Management**

### Background:

As widely acknowledged by academics<sup>1</sup> and European legislators<sup>2</sup>, Collective Management Organizations (CMOs) play an important role as promoters of creativity and key contributors to the quality of culture<sup>3</sup>. Collective management of copyright is not just a technical problem, dealing with licensing of works or collection and distribution of royalties. CMOs are the intermediaries that act on behalf of their members<sup>4</sup>; but uncertainties may occur due to the monopoly position, on the basis of which these organizations operate.

### Research question & objective:

CMOs should meet high levels of transparency to better reach their goals. While some minimum standards are set by laws, perhaps, new ideas could be implemented to better manage copyright in the interest of rightsholders and the culture itself. Although collective management comes in many shapes and sizes, it is generally acknowledged that CMOs should act in the best interests of their members. So, the introduction of fiduciary laws is proposed to treat CMOs as trustees, who would act to promote the beneficiaries' (i.e. the rightsholders') interests. In such relationships, CMOs could manage copyright with duties of loyalty and care<sup>5</sup>, which could probably ensure the optimal level of transparency. Fiduciary laws deal with relationships based on trust<sup>6</sup>; and trust could be strengthened by promising blockchain, whose potential for copyright management<sup>7</sup> is also examined.

### Methodology:

First, an overview of the current regime is provided to detect CMOs' duties and understand their role in the copyright arena. They have special power over others and special relationship to others. This could justify the application of fiduciary laws to address risks of mismanagement or lack of transparency.

Furthermore, fiduciary duty is analyzed. This is a legal term referring to the type of duty that a person or an organization, who/which manages someone else's power or property, has in relation to the owner or the beneficiary of that power or property. Trust is at the heart of such relationships; it enables an individual to be willing to make herself vulnerable to another party, despite potential risks that the latter will act in a way that can harm the former<sup>8</sup>. In case of copyright management, trust could mean the willingness to become vulnerable to a CMO, which would manage its members' rights. An author would be the entrustor; the act of becoming a CMO's member would be the entrusting; and the CMO would be the trustee, the fiduciary.

Moreover, promising blockchain, another "trust-related" mechanism, is examined to test its potential for copyright management. Advantages could include traceable ownership, fair distribution of royalties, direct payment, or smart contracts to allocate revenue shares. But blockchain is still evolving<sup>9</sup>, so its intrinsic properties are distinguished from its emergent features<sup>10</sup>. While experimenting is most probably needed to better understand possibilities and limitations, further discussion is conducted to draw some safe conclusions as regards opportunities and challenges for copyright management.

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<sup>1</sup> Ruth Towse, *The Economic Effects of Digitization on the Administration of Musical Copyrights*, *Review of Economic Research on Copyright Issues*, 2013, Vol. 10, No. 2, pp. 55-67, at p. 56.

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<sup>2</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.

<sup>3</sup> Mihály Ficsor, *Collective Management of Copyright and Related Rights*, 2002, World Intellectual Property Organization, at p. 21, paragraphs 33-34.

<sup>4</sup> Laurence R. Helfer, *Collective Management of Copyrights and Human Rights: An Uneasy Alliance Revisited*, in Daniel Gervais (ed.), *Collective Management of Copyright and Related Rights*, 2010 Kluwer Law International BV, The Netherlands, pp. 75-103, at p. 75.

<sup>5</sup> The European Commission, *Resource Efficiency and Fiduciary Duties of Investors*, Final Report, ENV.F.1/ETU/2014/0002, DG Environment.

<sup>6</sup> Tamar Frankel, *Fiduciary Law*, *California Law Review*, 1983, Vol. 71, No. 3, pp. 795-836.

<sup>7</sup> Ignacio De Leon & Ravi Gupta, *The Impact of Digital Innovation and Blockchain on the Music Industry*, Nov. 2017, Inter-American Development Bank, at p. 19.

<sup>8</sup> Eli Bukspan, *Trust and the Triangle Expectation Model in Twenty-First Century Contract Law*, 11 *DePaul Bus. & Com. L.J.*, 2013, pp. 379-415, at pp. 382-383.

<sup>9</sup> Maurice Herlihy, Mark Moir, *Blockchains and the Logic of Accountability: Keynote Address*, LICS '16 Proceedings of the 31st Annual ACM/IEEE Symposium on Logic in Computer Science, New York, USA, July 05-08, 2016, pp. 27-30, at p. 27.

<sup>10</sup> Daniel Conte de Leon, Antonius Q. Stalick, Ananth A. Jillepalli, Michael A. Haney, Frederick T. Sheldon, *Blockchain: properties and misconceptions*, *Asia Pacific Journal of Innovation and Entrepreneurship*, 2017, Vol. 11, Issue 3, pp. 286-300.