

CODE OF CONDUCT

This Code is intended to promote:

- *standards of good practice,*
- *democratic structures,*
- *transparency towards all parties involved,*
- *fair and effective licensing, collecting, distributing,*
- *dispute settlement procedures.*

INTRODUCTION

EVA represents collective management societies for authors of fine art and photography. 26 societies from 24 countries are gathered under its roof. They administer copyrights from over 100.000 authors.

This code of conduct applies to the activities of member societies in relation to administration of the visual repertoire. It is the usual practise of the societies which is exercised for many years and in some countries this is also based on laws on collective management.

Most collective management societies can afford to offer further services, apart from the licensing, for artists and to some extent also to users, such as legal advise, information on national and international legal development and pursuing of legal cases which have a general impact on the legal situation (Case law) and information for users about authors who are not members and were otherwise difficult to access.

However, the basic function of collective management societies is to administer rights on works of their members: the authors. They licence uses on a collective basis applying tariffs, collect royalties and distribute those royalties in a timely fashion to the authors. They are not-for-profit entities and operate as fiduciaries.

The collective management societies recognise that transparency is an important tool to build confidence towards authors, users and other collective management society. In relation to the author, the information on the society's operation rules and results is fundamental for democratic decision taking in the general assembly of members. Transparency encourages constant improvements in the performance and prevents disputes.

In many countries the law already provides stringent transparency rules in particular on the accounts. Within this code of conduct such rules and further transparency are generally accepted.

Collective management societies for visual arts are an important intermediary in the culture scene. Their members are the authors themselves or heirs and most important users are museums, publishers specialised in art publications and art market professionals.

This code of conduct comprises two sections:

- A. General Objectives
- B. Specific Aspects, in particular: Transparency

A. General Objectives

Collective management societies act as fiduciaries for the artists and should always operate in best practise models which strike the balance between efficiency and cost effectiveness, while reaching the highest possible level of transparency. Their main objectives are the following:

- Efficient licensing of primary rights, such as reproduction and broadcasting,
- Efficient collection of remuneration for secondary rights,
- Fair and quick distribution to authors, nationally and internationally,
- Facilitating the dissemination of works, without active promotion,
- Protecting authors rights,
- Promoting further economic and moral interests of their members.

B. SPECIFIC ASPECTS

I. STATUTES AND MEMBERSHIP

(1) Most collective management societies are established by authors and they should be democratically controlled by authors and estates (in the following only "authors") whose rights they manage, or their representatives. The statutes should as a minimum provide that:

- The collecting society does not aim to make profit and that it acts in a fiduciary capacity,
- The governing body reflects the membership appropriately,
- Effective mechanism for control by members or their representatives is in place,

- A members' general assembly is held at least once per year,
- Every author receives full membership, a vote and
- All members are treated equally.

(2) Collective management societies are as a minimum prepared to adhere any author who is a national of, or resident in, their country of operation.

(3) The individual contract with authors clearly defines rights and obligations of both parties. Authors are allowed to cancel contracts with the collecting society within the reasonable delay of three years or less.

II. TRANSPARENCY

(1) Most of the below information is published (on hard copies and on the Internet) and thereby made available to the broad public.

(2) Authors are entitled as a minimum to:

- A copy of the statutes and/or internal regulations,
- A copy of the distribution rules,
- A copy of the annual report of accounts, as approved at a general meeting,
- Information concerning complaints procedures,
- Invitation to the annual general assembly,
- Information on legal cases and development in national and international copyrights.

(3) The information given enables the authors to recognise which costs were deducted before distribution.

(4) Users are entitled as a minimum to be informed on:

- The repertoire represented,
- The tariffs,
- Model agreements if applicable,
- The general distribution rules.

(5) Other collective management society receives as a minimum all information, which facilitates distribution of royalties collected abroad.

III. LICENSING AND TARIFFS

(1) Collective management societies recognise a general obligation to license works and rights in their repertoire on reasonable terms.

(2) Collective management societies do not discriminate between users, and grant licences on the same conditions to all users in the same category. However, collective management societies are not forced to license works to users who fail to comply with their obligations, especially as regards payment and the provision of information.

(3) In case of primary rights and in particular when moral rights are involved due account of the individual author's interest is taken which may, in exceptions, lead to justified rejection of a license (example: use of works for advertisements).

(4) Tariffs or fees correspond to the value added by the use of a protected work in a product. Authors and users are consulted if appropriate.

IV. DISTRIBUTION RULES

(1) Each collective management society adopts a fixed distribution plan for each category of rights and/or source of income which it administers, which explains the principles of calculation and the nature of any charges or deductions. Rules, and changes to the rules, are determined by the governing body which comprises representatives of authors concerned.

(2) Revenues from individual licenses of primary rights are distributed to the individual author, after deduction of administrative costs.

(3) Distribution keys for secondary uses are subject to democratic decision procedures. They are based on objective criteria and aim to identify actual use as closely as possible. Data on licensing for primary rights and market studies are taken into consideration.

(4) Distribution rules require that remuneration be distributed as soon as possible after it has been collected, and that distributions are made at least annually.

(5) The distribution plans are made available to members, other societies and the public on request and/or via the Internet. Summaries explain the distribution rules clearly, avoiding the use of jargon or technical language.

V. TREATMENT OF REMUNERATION WHICH IS NOT DISTRIBUTED

(1) Where a collective management society is in possession of remuneration which cannot be distributed either because the authors cannot be identified or because they are not represented by a collective management society (in case of secondary rights), it deals with such monies on a fiduciary basis and give the authors entitled a reasonable opportunity to claim it. The collective management society does its utmost, within reasonable economic boundaries, to identify these authors.

(2) The governing body decides on how remuneration which is not claimed after the expiry of a reasonable period shall be utilised.

VI. ADMINISTRATION COSTS

Collective management societies ensure that administration costs are kept to a minimum, both overall and in relation to each sector of rights managed, in accordance with state of the art economic practice and technology.

VII. NATIONAL AND INTERNATIONAL ONE-STOP-SHOPS

(1) In the field of territorial uses each collective management society actively seeks to establish reciprocal agreements with foreign collective management societies so that on one side the repertoire offered to users is as broad as possible and on the other side resident and foreign authors benefit from rights management in other territories.

(2) Collective management societies operating reciprocal agreements aim to distribute monies collected on behalf of each other's repertoire as soon as possible after collection, as applying the same rules as for national distributions, at least one per year and more frequently where possible.

(3) Collective management societies gather in agreements facilitating licensing in multi media products.

(4) In case of Internet uses collective management societies consider solutions, which facilitate cross-border licensing in an efficient, cost effective and transparent way. Collective management societies in this respect consider an international one-stop-shop to meet the particular market demands and the interest of the authors. As far as digital rights management systems are to be employed interoperability and development of technical standards are included in the project.

VIII. SOCIAL AND CULTURAL DEDUCTIONS

(1) In many countries collective management societies are required by law to fulfil a cultural and social role. However, such a role is subordinate to the role of distributing remuneration to authors according to entitlement.

(2) The amount of any such deductions is comprised in the distribution rules and also communicated to other collective management society in the context of bilateral agreements.

X. DISPUTE SETTLEMENT

(1) Each collective management society establishes fair procedures for dealing with complaints and resolving disputes that could arise between the collective management societies and its members or with other collective management societies or between the collective management societies and users.

(2) Notwithstanding the previous paragraph, neither authors and estates nor users is precluded by the rules of the collective management society, the contract between the collective management society and authors, or by licensing terms, from pursuing disputes or complaints in the ordinary courts if they so choose.