



SERVING AUTHORS WORLDWIDE  
AU SERVICE DES AUTEURS DANS LE MONDE  
AL SERVICIO DE LOS AUTORES EN EL MUNDO

# The Functioning of CMOs under the CRM Directive & the CISAC Professional Rules: Membership Rules, Relationship with Right Holders & Users, Transparency & Reporting

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Online Workshops on Efficient Collective Management of Copyright and Related Rights

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**Добрый день!**

# CISAC – Who we are

- International Confederation of Societies of Authors and Composers
- Founded in 1926
- Non-governmental, not-for-profit organisation
- The leading worldwide network of authors' societies
  - 231 societies
  - 120 countries
  - Over 4 million creators
  - All artistic repertoires

# Repertoire managed by CISAC members

MUSIC



DRAMA



AUDIOVISUAL



LITERATURE



VISUAL ARTS



# CISAC – What we do

- Key goals:
  - Promote the rights and protect the interests of creators
  - Promote and strengthen the system of collective management of authors' rights
  - Support the network of collective management organisations

- Main activities:
  - Government relations and lobbying - Advocate for favourable laws & policies
  - Technical and legal support to our members
  - Establishing and maintaining information networks to support accurate collection and distribution of royalties
  - Work on governance of members, to help ensure good governance and efficient collection and distribution of royalties



# Global Collection Report 2020

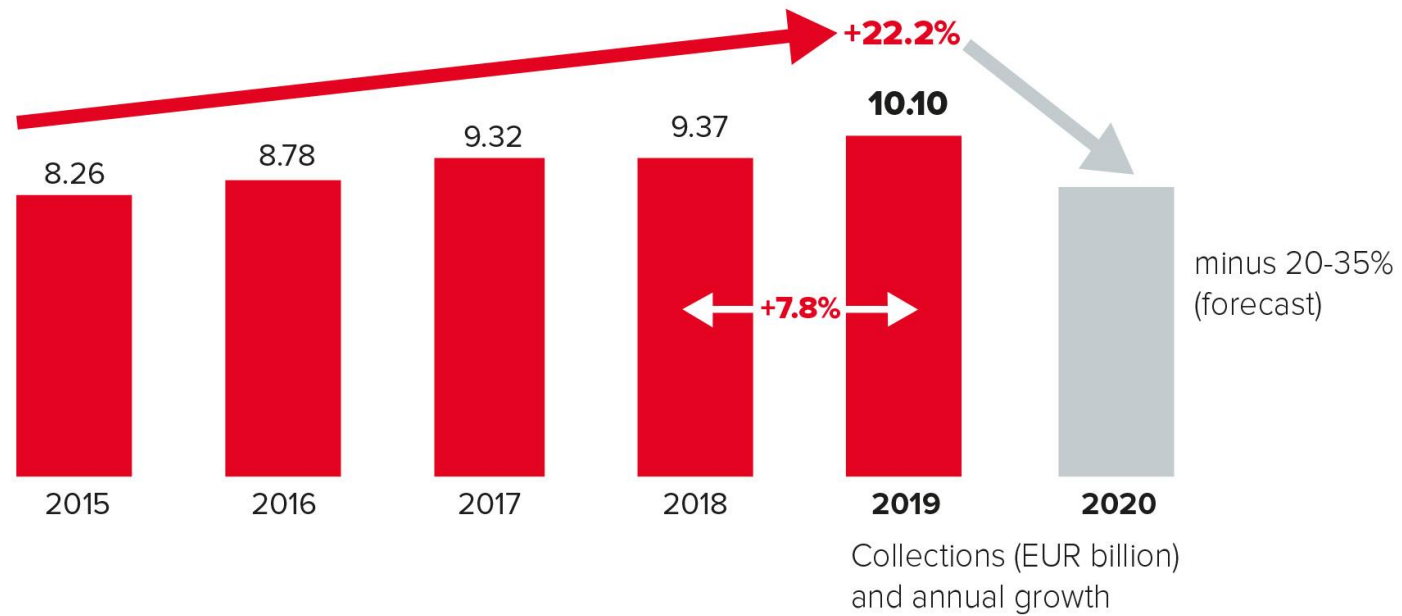


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# Global Collection Report 2020 – COVID's impact

## Global royalty collections will slump in 2020

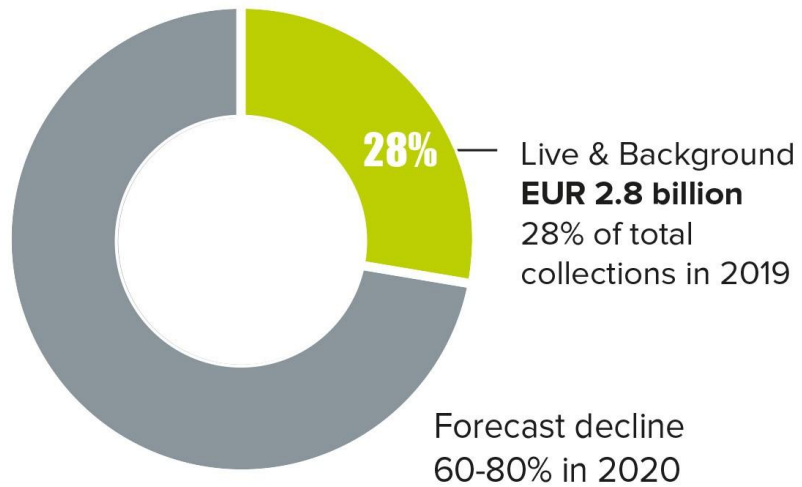


GLOBAL COLLECTIONS  
REPORT 2020



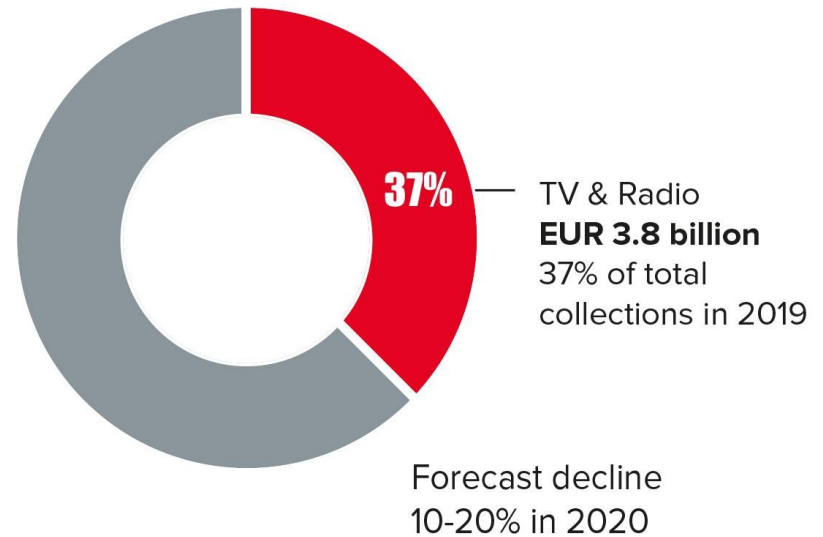
# Global Collection Report 2020 – COVID's impact

## COVID-19's impact on Live and Background royalties in 2020



GLOBAL COLLECTIONS  
REPORT 2020

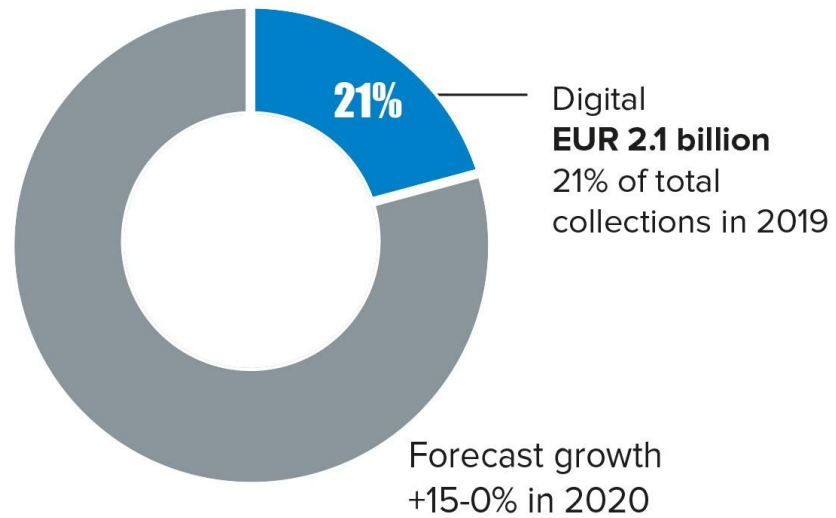
## COVID-19's impact on Broadcast royalties in 2020



GLOBAL COLLECTIONS  
REPORT 2020

# Global Collection Report 2020 – COVID's impact

## COVID-19's impact on Digital's royalties in 2020



GLOBAL COLLECTIONS  
REPORT 2020

# Role and importance of CMOs



# Copyright basics

- In most countries, copyright laws have been adopted to protect creators and creative works
- These laws allow creators to:
  - Control the use of their works
  - Receive an income derived from the use of their works
- Creators get specific rights with respect to their works:
  - Moral rights
  - Economic rights
- Only the creator can do the acts protected under the law or authorise others to do these acts (i.e. granting a license)

# Types of authors' rights

- Moral rights:
  - Paternity: claim authorship or maintain anonymity
  - Integrity: object to distortion, mutilation or any other modification of the work
- Economic rights:
  - Reproduction: make a sound recording of the work - copy
  - Broadcasting/communication to the public
  - Public performance
  - Making available online
  - Other rights
    - Rental & lending
    - Resale Right
    - ....



# Collective & individual management

- RHs may choose between individual & collective management:
  - Decision depends on category of RH & nature of the use
- Some rights can be exercised on individual basis
  - Publication of literary works – Performing rights in dramatic works
- For other rights individual management is difficult (if not impossible)
  - Public performing, making available online, broadcasting, PC remuneration, etc.
- Entrusted to CMOs by RHs, to be exercised on their behalf on a collective basis

# CMOs – What are they?

- Private/public organisations
- Formed by creators who share common interests
- Usually owned by creators and managed on their behalf
- Usually run on a not-for-profit basis
  - Some exceptions exist:
    - For-profit entities (RMEs recognised in the EU CRM Directive)
- Legal incorporation & registration are subject to national law
- Monitored by public bodies



# CMOs – What they do?

- Enter into agreement with copyright owners (usually of the same category) to administer certain rights on their behalf
- The nature of these agreements differs by countries assignment-mandate from the copyright owner
- Rights that the creator will prefer to have the society administer

# CMOs – What they do?

- Core functions:
  - Negotiate tariffs
  - Issue licenses
  - Monitor use
  - Collect royalties
  - Distribute collected royalties to its members
  - Social and cultural activities
  - Enter into representation agreement with foreign societies

# Benefit of collective management to rights holders

- Provides a solution where **granting** individual licenses is impractical
- Difficulties for individual creators:
  - Identifying and contacting potential users
  - Negotiating license fees
  - Monitoring use
- Collective management offers:
  - Reduced administration costs - cheaper than negotiating with every user
  - Better negotiating position and greater bargaining power
  - Other functions: educating users, lobbying and public activities, social and cultural functions



# Benefit of collective management to users

- Provides a solution where **obtaining** individual licenses is impractical
  - Broadcasters, online services, operators of commercial establishments where music is played in public - use a large number of works
  - Impossible for these users to contact rights holders and negotiate separate licenses
  - Easier and cheaper to obtain a broad license from one entity
- Collective management offers:
  - One point of contact
  - No need to negotiate with many individual rights owners
  - Access to wide repertoire, through blanket licensing
  - Saves costs of securing individual licenses

# Benefit of collective management to society at large

- Ensure legal access
- Fosters national creativity and cultural diversity
- Creative industries contribute to the economic wealth and the social well-being of a nation
- Knowledge & culture add value to human life

# Structure & Governance of CMOs



# CMO Statutes & scope of their operation

- Statutes define governance structure, objectives & scope of operation
  - objective
  - rights managed
  - membership qualification and fees, if any
  - governance structure
  - statutory meetings

# Overarching principles in CISAC Statutes & Professional Rules

- **Art. 8 CISAC Statutes - A society will qualify as a member if it:**
  - Effectively ensures the advancement of creators' interests
  - Has at its disposal effective machinery for the collection and distribution of royalties
  - Assumes full responsibility for the administration of the rights entrusted to it
  - Carries out its activities for the common good of creators and not for any specific segment or group of creators
  - Carries out its activities in accordance with the **Professional Rules**



# CISAC Professional Rules

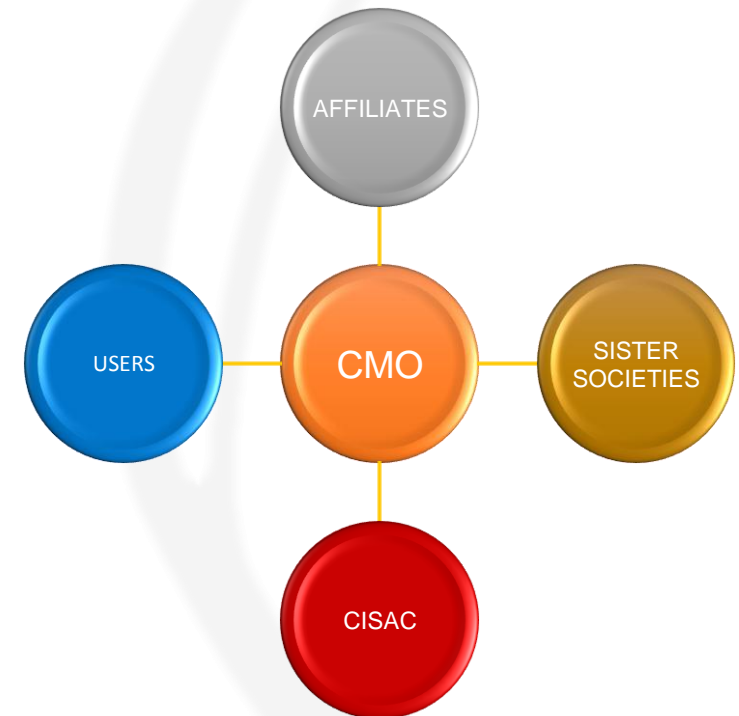
# CISAC Professional Rules

- Professional Rules and Binding Resolutions existing for each category of repertoire (Music, AV & Literary, Visual arts)
- Developed by CISAC and adopted on a voluntary basis by CMOs
- Compliance to the rules is a condition for CISAC membership
- Aims:
  - ✓ ensure that all CISAC societies meet high thresholds of business practices in their internal governance, collection and distribution methods; and
  - ✓ oblige societies to participate in the network of information systems to facilitate accurate identification of works and ensure prompt distribution of royalties.

# CISAC Professional Rules – Area covered

## ■ Deal with:

- Corporate governance
- Membership
- Documentation
- Complaints dispute resolution
- Licensing
- Collection
- Distribution
- Transparency



# CISAC Professional Rules



# CISAC Professional Rules – Membership (Rule 5)

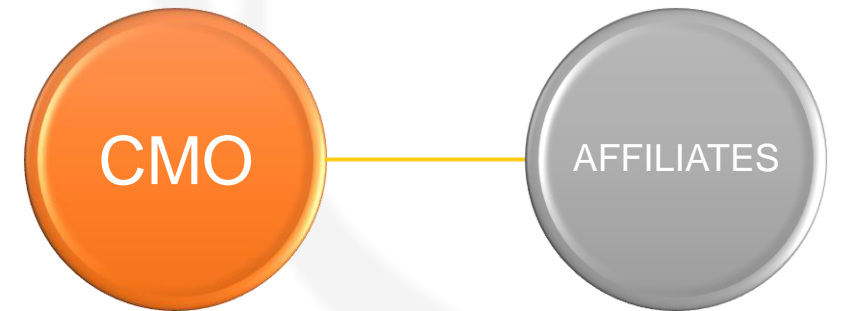
- Rights of Rightsholders – Principle of non-discrimination
- Each CISAC member shall at all times:
  - be open to creators & publishers of all nationalities
  - Refrain from discriminating between creators, publishers & sister societies
  - permit a creator & publisher to terminate their membership
  - maintain a fair balance between creators and publishers
- Purpose
  - Non-discrimination is a key element
  - There should be equal treatment of:
    - Creators
    - Publishers
    - Sister societies
  - Ex: voting power, distribution rules, deductions, frequency of distributions...



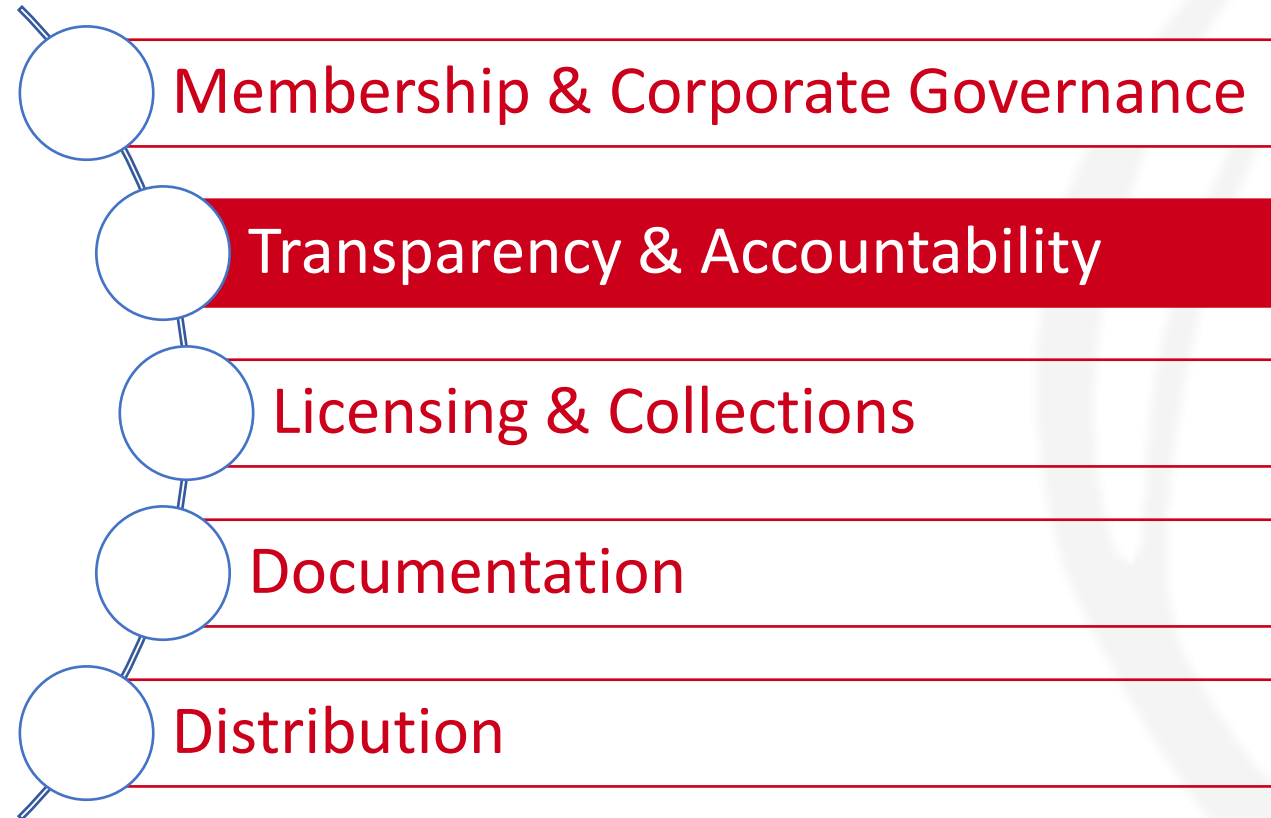


# CISAC Professional Rules – Corporate Governance (Rule 5)

- **Supervisory Body**
- Each CISAC member shall provide for a Supervisory Body (SB)
  - SB supervises the activity of the management bodies
  - Separate role & functions of SB members from the management bodies
  - SB must not improperly interfere with decisions falling within the scope of the management body

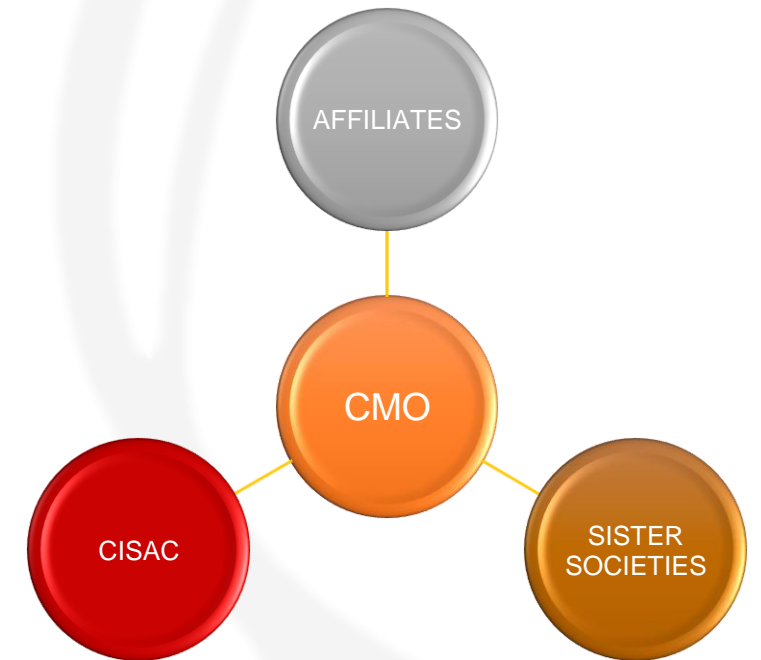


# CISAC Professional Rules

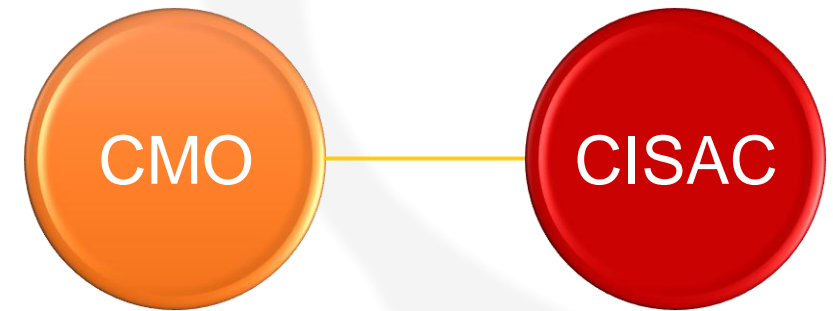


# CISAC Professional Rules – Transparency & accountability (Rules 7-12)

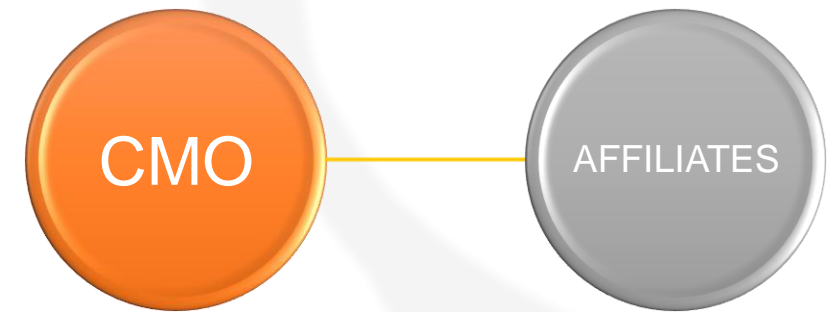
- Information to be provided year by year to:
  - CISAC
  - Its Affiliates
  - Sister Societies



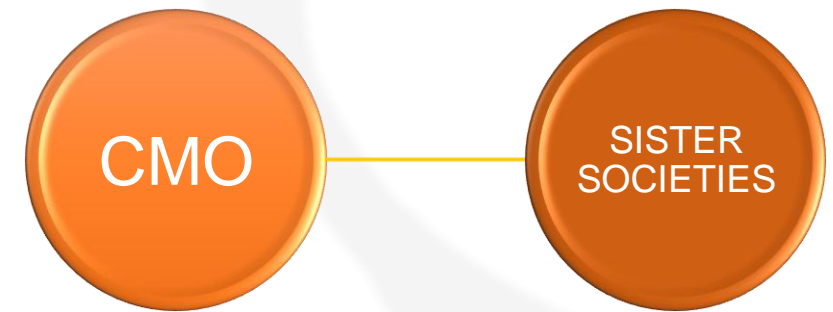
- Information to be provided to CISAC
  - Online declaration stating that it has complied with all applicable laws & regulations
  - Audited accounts
  - Annual report
  - Information on Sister Societies & mandated territories
  - Statement of its distribution rules



- Information to be provided to its affiliates
  - Annual report
  - Summary of domestic & international licensing income
  - Explanation of purpose & amount of deductions
  - Explanation of distribution rules
  - Internal rules on treatment & management of unidentified uses/works



- Information to be provided to sister societies
  - Annual report
  - Internal rules concerning financial & other non-copyright related income
  - Internal rules on treatment & management of unidentified uses/works



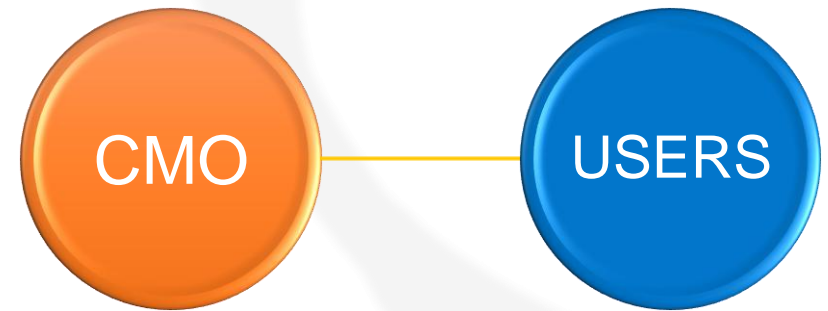


# CISAC Professional Rules



# CISAC Professional Rules – Licensing & Collections (Rules 15-16)

- A CISAC Member must:
  - license only in accordance with scope of mandates
  - use its reasonable endeavors to license all uses of its repertoire
  - grant licences on the basis of objective criteria
  - not unjustifiably discriminate between users
  - promptly collect all income due under the licences which it issues
  - take all appropriate steps to collect unpaid income

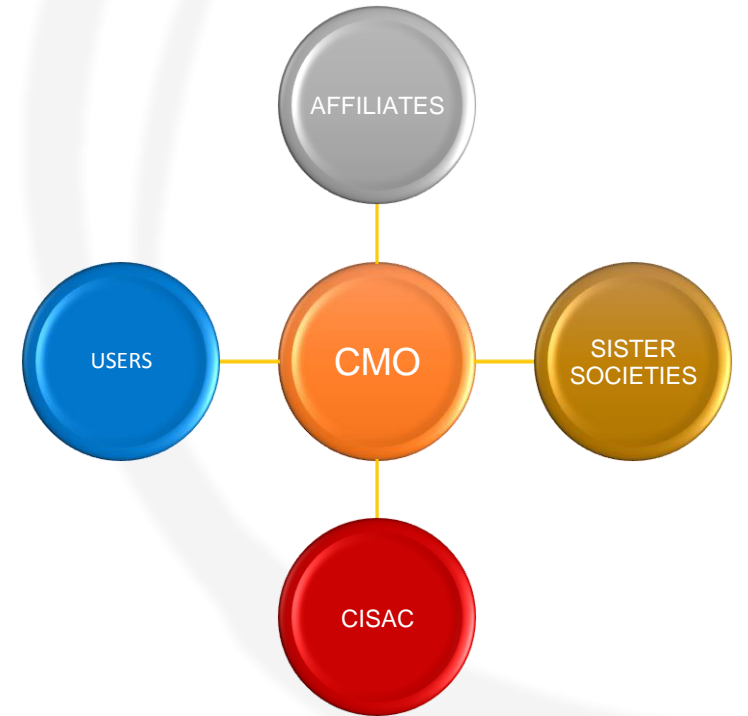


# CISAC Professional Rules



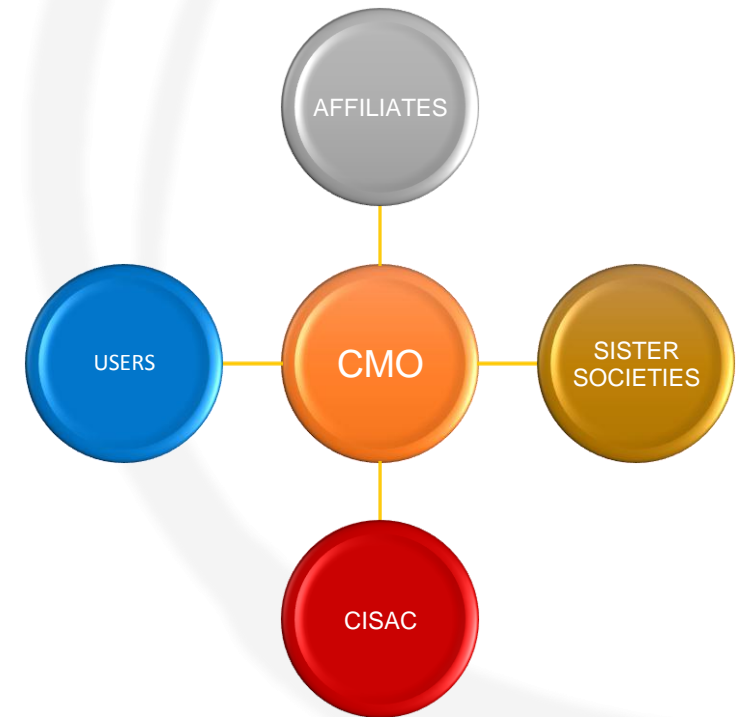
# CISAC Professional Rules – Documentation (Rule 17)

- Each CISAC member must shall keep accurate and up to date documentation relating to the scope of:
  - a) its repertoire;
  - b) the rights which it is mandated to administer
  - c) the territory in which it is mandated to administer



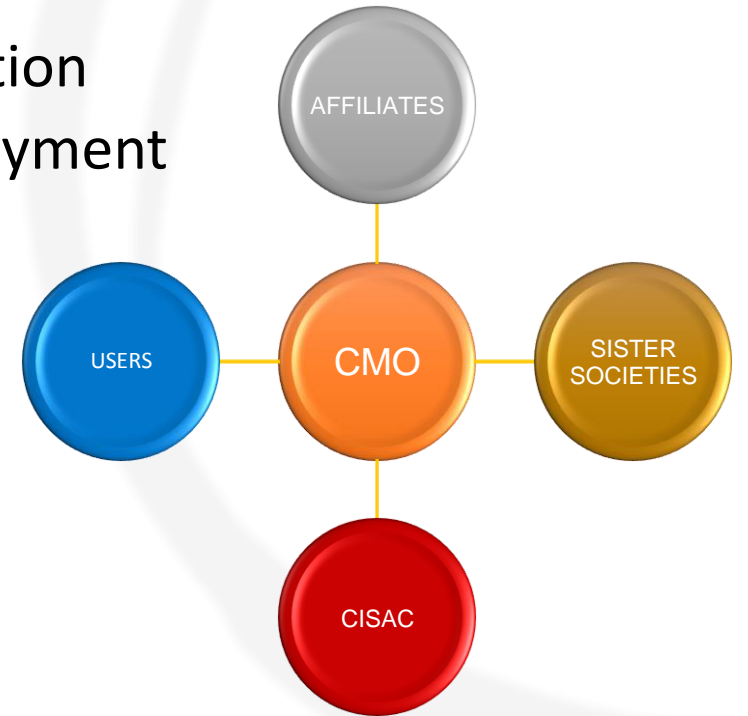
# CISAC Professional Rules – Documentation (Rule 17)

- Growing importance of documentation
  - Rapid development of new digital business models
  - Huge number of small transactions
  - Explosion of micropayments
  - Data is key
    - Efficient and accurate identification of works is crucial
    - Extensive data processing is essential
  - Globalization of the entertainment landscape
    - Online services expand to new territories
    - Seek cross-border and multi-repertoire licenses



# CISAC Professional Rules – Documentation (Rule 17)

- Authors societies play a key role
- Continue to increase efficiency
- Co-investment in technological tools
  - Common Information System (CIS) to exchange information
  - Identifiers to facilitate prompt & accurate invoicing & payment



# CISAC Professional Rules





# CISAC Professional Rules – Distribution (Rule 18a)

- Distribution shall be based on actual usage or on a statistically valid sample
- CMOs shall apply the same level of diligence & fairness to all distributions
- CMO shall provide accurate documentation of its distribution methods
- CMO shall distribute royalties due to its Sister Societies or to its Affiliates in accordance with the Binding Resolutions
- If total annual GC are over 10M€, CMO shall target quarterly distribution



# CISAC Professional Rules – Monitoring & enforcement

- Compliance reviews
  - By the CISAC Secretariat
  - On a random basis
  - And in addition: on the basis of identified priorities
- Procedure for hearing complaints from other societies
- Support from Secretariat in helping societies meet the rules
- Sanctions for non-compliance
- Possible expulsion from CISAC

# CISAC Professional Rules – Positive effects

- Increases efficiency of overall system
- Guarantees a professional approach to the management of creators' rights among CMOs
- Instill confidence between the society and:
  - Sister Societies
  - Affiliates - creators and publishers
  - Users
  - Governments and state agencies
- Reinforce the legitimacy of collective management of rights

# The EU CRM Directive

- 26 February 2014: adoption of the Directive 2014/26/EU on Collective Management of Copyright and Related Rights and Multi-territorial Licensing of Rights in Musical Works for Online Use in the Internal Market
- Came into force on 10 April 2014 and Member States had until 10 April 2016 to bring into force the Directive in their domestic legislation
- First time the structure & functioning of CMOs are regulated at the EU level in detail

# EU CRM Directive - Purpose

## 2 Core objectives:

- ensure that CMOs act in the best interests of the right holders they represent

**How?** By implementing minimum standards of governance, financial management and transparency that all CMOs must fulfil

- Improve market conditions for the development of online music services across the EU

**How?** By creating the legal framework to facilitate cross-border online licenses

# EU CRM Directive - Scope

The Directive applies :

- to **CMOs**

*« 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”*

- to **IMEs** (to a certain extent, mainly for some of the information and transparency requirements)

*« 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 is:*

- (i) neither owned nor controlled, directly or indirectly, wholly or in part, by rightholders; and*
- (ii) organised on a for-profit basis”*



## Collective Management

- Important role and functions of CMOs (Rec. 2, 3 & throughout the text): remunerate rightholders, control and enforce the rights of right holders, promote the diversity of cultural expression
- Legal structure of CMOs (Rec 14): not require to adopt a specific legal form

# EU CRM Directive – Rights of rightsholders – Art. 5

- Exclusivity / work-by-work management (5.2): right to entrust CMOs of any EU territory with rights (categories of rights and types of work)s and territories of their choice
- Termination / withdrawal of rights (5.4 & 5.6): idem
- Right to grant licenses for non-commercial uses (but not of individual works) (5.3 & 5.8)

# EU CRM Directive – Membership rules – Art.6

- Membership criteria: objective, transparent and non discriminatory
- Appropriate and effective mechanisms for the participation of the members in the decision making process/ « fair and balanced representation » of each categories
- Set up electronic means to allow members to communicate, in particular for exercising their rights

## ■ General Assembly (art 8)

- Takes the most important decisions, at least the framework of the management activities and the general policy, in particular on the use of rights revenue
- Certain decisions can be delegated to the supervisory function
- All members can participate and vote (restrictions may be set out), and appoint a proxy holder

## ■ Supervisory Function (art 9)

- Mandatory whatever the model adopted by the CMO
- Duties: monitoring of activities and performance of persons managing the business. Report to the GA (if any).
- Composed of directors who don't manage the business of the CMO. Fair & balanced representation
- Annual conflict of interest statement to GA

- Managing body (art 10)

- Elected directors or hired professionals who managed the business of the CMO
- Duties: act in sound, prudent, appropriate manner (sound administrative, accounting procedure and internal control mechanisms)
- Annual conflict of interest statement to GA ( + one before taking the position)

# EU CRM Directive – Governance – Main bodies





- Rules for Collection & Use of Right Revenues

- act in a diligent manner

- keep separate in their accounts :

- ✓ rights revenues and income arising from the investment (shall not be used for other purpose than the distribution to rights holders, except if specially allowed by the GA)

- ✓ its own assets and income arising from such assets

# EU CRM Directive – Management of rights revenue– Art.12-13

- Deductions (art 12)

- Clear information on management fees (or other deductions) to RHs
- Reasonable and based of objective criteria

- Distribution Rules (art 13)

- Distribute regularly, diligently and accurately
- Distribution period: 9 months.
- Take all necessary measures to identify and locate RH

- Non- distributable revenues (art 13)

- Amounts to be kept in a separate account
- Information to be made available in 3 months to RH represented, member entities, other CMOs
- 1 year after, info made available to public
- 3 years after, it is deemed as “non-distributable”

GA decides on the use of non-distributable (MS can limit or determine the permitted uses, inter alia, by ensuring that they’re used in a separate and independent way)

## ■ Licensing and tariff setting criteria

- Negotiation in good faith
- Objective and non-discriminatory licensing terms
- CMO cannot be required to use existing tariffs for new online services (more than 3 years)
- Reasonable tariffs in relation to, inter alia:
  - ✓ Economic value of the use of rights in trade
  - ✓ Nature and scope of the use of the work
  - ✓ Economic value of the service provided by CMO

## ■ Specific obligations for CMOs

- Inform user of the criteria used for the setting of tariffs
- Reply to user without undue delay with information on the licence and then, on the approval or refusal of licence (justification)
- Allow for the use of electronic means to communicate and report

## ■ Specific obligations for Users

- Provide info on the use of right within agreed/pre-established time frame & format (voluntary industry standards to be considered)
- Requirement is limited to what is reasonable, especially for small & medium sized businesses

# EU CRM Directive – Transparency– Art. 18-22

- Towards their RHs:
  - once a year, make available amounts attributed and paid per category of rights and type of use, per period, and the deductions
- Towards other CMOs under representation agreements:
  - once a year, make available amounts attributed and paid per category of rights and type of use, per period, and the deductions + license granted or refused
- Towards CMOs, RH and Users on duly justified request: information relating to their repertoire, the rights managed and the territories covered

# EU CRM Directive – Transparency– Art. 18-22

- On their public website: statutes, membership terms, standard licensing contracts and tariffs, distribution rules, management fees, annual transparency report, representation agreement, etc.



## ■ Aims

- Creating conditions conducive to the most effective online MTL practices for musical works

Rules on ability to MTL in an accurate, quick & transparent manner

- Setting up a framework facilitating voluntary aggregation of rights and repertoires

Different ways are provided

# EU CRM Directive – MTL of musical rights in digital– Art. 23-32

- Capacity to process MTL:
  - minimum conditions and quality standard to process electronically, in an efficient and transparent manner, data needed for the administration of such licence
  - rules on identification, transparency, accuracy of information, timely payment to RH, etc.
- Ensure aggregation of repertoires for MTL
  - Voluntary representation agreement between CMOs & non-exclusive
  - “Tag-on” obligation to accept, licensing under the same conditions as its own repertoire
  - Inclusion of all repertoires in the offer
  - Derogation for broadcasting organisations

# EU CRM Directive vs CISAC Rules

Field	Article of the Directive	Text of the Directive	CISAC relevant rule	Text of the CISAC rule
Governance / Rights of Rights holders	Article 5.4	« Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject-matter granted by them to a collective management organisation or to withdraw from a collective management organisation any of the rights, categories of rights or types of works and other subject-matter of their choice, as determined pursuant to paragraph 2, for the territories of their choice, upon serving reasonable notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal is to take effect only at the end of the financial year. »	PR n°5	« Each member shall at all times:  (...)  c. permit a Creator and a publisher to terminate his affiliation agreement with such Member, provided that such member may impose reasonable conditions in relation to the termination of such agreement; »

# EU CRM Directive vs CISAC Rules

Field	Articles of the Directive	Text of the Directive	CISAC relevant rule	Text of the CISAC rule
Transparency obligations/ Documentation	<b>Article 6.5</b>	<i>« A collective management organisation shall keep records of its members and shall regularly update those records. »</i>	<b>PR n°17</b>	<i>«Each Member shall, in accordance with the Binding Resolutions, keep accurate and up to date documentation relating to the scope of:</i>  <i>a. its repertoire;</i>  <i>b. the rights which it is mandated to administer in respect of such repertoire; and</i>  <i>c. the territory in which it is mandated to administer in respect of such repertoire. »</i>
	<b>Article 20</b>	<i>“Without prejudice to Article 25, Member States shall ensure that, in response to a duly justified request, a collective management organisation makes at least the following information available by electronic means and without undue delay to any collective management organisation on whose behalf it manages rights under a representation agreement or to any rightholder or to any user: (a) the works or other subject-matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or (b) where, due to the scope of activity of the collective management organisation, such works or other subject-matter cannot be determined, the types of works or of other subject-matter it represents, the rights it manages and the territories covered.”</i>		

# EU CRM Directive vs CISAC Rules

Field	Article of the Directive	Text of the Directive	CISAC relevant rule	Text of the CISAC rule
Management of Rights Revenues / Distribution	<b>Article 13</b>	<i>« Without prejudice to Article 15(3) and Article 28, Member States shall ensure that each collective management organisation regularly, diligently and accurately distributes and pays amounts due to rightholders in accordance with the general policy on distribution referred to in point (a) of Article 8(5).»</i>	<b>PR n°18</b>	<p><i>«Each Member shall:</i></p> <p><i>a. base its distributions on actual usage of Works or, if not practicable, on the basis of a statistically valid sample of actual usage of Works;</i></p> <p><i>b. apply the same level of diligence and fairness to all distributions, including, but not limited to, the frequency of distributions, irrespective of whether such distributions are being made to its Affiliates or to its Sister Societies;</i></p> <p><i>c. provide, and keep current, accurate documentation of its distribution methods in the CISAC Distribution Methods Database; and</i></p> <p><i>d. distribute any Royalties due to its Sister Societies or to its Affiliates in accordance with the Binding Resolutions.»</i></p>



# Conclusions CRM Directive & CISAC Professional Rules

- CRM Directive recognizes the fundamental role of CMOs in serving creators, defending their rights & their remunerations, fosters creativity & promoting cultural diversity
- To a large extent, the thresholds set by the Directive are already incorporated in CISAC's Professional Rules and thereby form a condition for CMOs' membership in CISAC
- MTL rules' implementation means that CMOs are able to adapt their process to the digital environment

# CLOSURE OF THE MEETING

**Дякую!**

**Thank you!**