



Comparative Analysis of Collective Management Organizations of Copyrights and Related Rights; with Special Reference to Sri Lanka

W.A. Sanath S. Wijesinghe*

Department of Legal Studies, Faculty of Humanities and Social Sciences, The Open University of Sri Lanka

**Corresponding author: Email: waswi@ou.ac.lk*

1 INTRODUCTION

This research aims to review the existing models of collective management of copyrights and related rights, with particular reference to the Sri Lankan Intellectual Property (IP) framework. At international level different models of Collective Management Organizations (CMOs) can be identified which provide an effective platform for utilizing the results of the creativity of the human mind. CMOs are authorized to manage copyrights and related rights by the right holders as an economically efficient means of managing their rights (Richard, 2016). In this context, CMOs carry out the task of monitoring, licensing, collecting and distributing royalties relating to copyrighted works on behalf of the right holders. Such an initiative would immensely contribute to strengthen the intellectual property rights of the owners who may find it difficult to do so individually on the one hand, and such a system offers advantages to the users or the prospective users of such works on the other. However, we cannot identify a comprehensive and authoritative system of CMOs in Sri Lanka that is comparable to other more sophisticated jurisdictions where CMOs are functioning effectively. It should be noted that the effectiveness and the efficiency of the CMOs depends heavily on whether a country determines the legal status of the CMOs appropriately

(Liu, 2012). It indicates that there should be a country specific and unique system established in order to reap the maximum benefits from CMOs. Therefore, this research aims to describe the importance of CMOs, identify the different models under which CMOs operate, analyses the existing Sri Lankan legal regime on CMOs, identify the weakness of existing Sri Lankan law, and finally to make suggestions to enhance the effectiveness of CMOs in Sri Lanka

2 METHODOLOGY

This research is a normative research that is primarily based on an extensive literature review. The research engages in comparative analysis of the law relating to CMOs in other jurisdictions such as India, China and United Kingdom (UK). The purpose of selecting comparative methodology is to identify the recent developments in this field and discuss its applicability in the Sri Lankan context. As primary sources, international legal instruments and legislation of selected jurisdictions, and particularly the Intellectual Property Act No.36 of 2003 of Sri Lanka have been used. Furthermore, the World Intellectual Property Organization's (WIPO) publications on CMOs, journal articles, web resources and



text books have been referred to as secondary sources in order to enrich the research.

3 RESULTS and DISCUSSION

3.1 CMO's scope and functioning

Authors' organizations or performing rights societies were established in European countries in the 19th century and gradually spread to other jurisdictions also. The main objective of such societies was to ensure and advance the moral interests of the authors and defense of their material interests. (Section 05, 1926). With the expansion of international norms relating to IP such as Trade-Related Aspects of Intellectual Property Rights in 1994 (TRIPS Agreement) and WIPO Copyrights Treaty in 1996 (WCT), and WIPO Performances and Phonograms Treaty in 1996 (WPPT), as well as the development of new technologies and new modes of communication, the task of CMOs became considerably highlighted in the sphere of IP. However, as "there are no direct provisions governing CMOs in these international conventions; the enjoyment and exercise of copyrights and related rights are left to national legislations" (Tarja and Nicholas, 2014). Therefore we can identify different types of CMOs which function in different regions and countries.

In the modern context the functioning of CMOs is considered as a part of the comprehensive copyright protection in some countries (Dietz, 2000). As some commentators pointed out, CMO is the exercise of copyrights by statutorily established organizations and societies that represent the interests of the owners of such rights (Ficsor, 2002). Thus, the main role of the CMO is to serve as a link or an agent between copyright owners and users to cater to the interests of both parties. Therefore, it can be argued that the CMOs serve as a vehicle which carries the creativity to the end users and the benefits

of creativity to the right holders. However, the entire functioning of a CMO is heavily dependent on the acquisition of the rights from the rights owners because the task of CMOs begins with the acquisition of the rights from the right holders under different contractual arrangements such as compulsory licenses and voluntary licenses. Remarkably, international as well as domestic copyright law does not put any barrier on rights owners to alienate their rights to a third party by entering into a contract. As an example, the economic rights of a copyright owner encapsulates certain rights which can be exploited by the owners on their own or to authorize others to do so. Thus, by joining a CMO the copyright owners can assign CMOs to exercise their rights on their behalf. Upon the authorization of the rights owners, the CMO can exercise their power to monitor the use of their works, to negotiate with prospective users, to grant licenses to the prospective users under certain conditions, to collect remunerations and distribute it among the owners of rights (Ficsor, 2003). The efficiency and the effectiveness of CMOs can be evaluated under four broad themes namely, legal status of the CMO, acquisition of rights, dispute settlement and controlling anti-competitive activities in any jurisdiction (Liu, 2012).

3.2 CMOs from a perspective of comparative jurisdictions

Though it is hardly possible to find international consensus in the international IP instruments on CMOs, some initiatives of WIPO concerning CMOs can be identified. Though, TRIPS, WCT and WPPT provides no direct provisions relating to CMOs, the sub-committee to the Rome Convention of Performers Rights adopted a recommendation which contained guidelines for the operation of collective societies for related rights in 1979 (Ficsor, 2002). However, in the last two decades CMOs have acquired a considerable



importance in managing copyrights and related rights worldwide. In the modern context we can identify public CMOs, private bodies of CMOs and semi-public CMOs functioning and administering copyrights and related rights (Helfer, 2010). However, all CMOs have a legal basis which empowers their functioning and defines their scope of application which have been drafted based on the needs of the particular country.

When analyzing the Indian experience, it can be seen that the Section 33(3) of the Indian Copyright Act No.14 of 1957 provides a legal mandate to register collective administration societies. A copyright society can issue or grant licenses in respect of literary, artistic, cinematographic works etc. as per Section 33(1) of the Indian Copyright Act. Issuing licenses, collecting fees and distribution of fees are the main functions of Indian CMOs. The most noteworthy fact is that the Indian Copyright Act provides a comprehensive legal framework for CMOs.

The Chinese context also encapsulates a rich legal basis for establishing and functioning of CMOs. The amendments that were brought in 2001 and 2010 respectively to the Copyrights Law of the People's Republic of China introduced these significant changes into Chinese law. The changes made by the 2010 amendment to Section 08 of the Copyrights Law are important in various aspects as it offered a legislative basis for CMOs and provided provisions to establish CMOs based on the examples drawn from other countries (Chao, 2005). Also, in China the right holders have the freedom to join with a CMO or exploit their rights individually.

The UK experience of CMOs can be considered as a more pragmatic example when compared to the other two jurisdictions because it provides a new type of licensing system of collective management of copyrights and related rights, and a cost-effective and efficient

dispute settlement system by the Copyrights, Designs and Patent Act of 1988. Nonetheless, the Collective Rights Management Directive (CRMD) published by the UK Intellectual Property Office in 2016 provides a comprehensive guideline for the smooth management of CMOs. Therefore, this CRMD can be used as a guideline in designing a law relating to CMOs in Sri Lanka.

Also, it is worth noting that the CMOs can be considered as a good solution to issues of fragmentation, scale and complexity in protecting copyrights and related rights in a digital environment (Liu, 2012). Interestingly, it can be argued that CMOs would provide a better vigilance for the rights holders as they are unable to look into each and every type of exploitation of their creations.

3.3 Recognition of CMOs under Sri Lankan IP law

When analyzing the Sri Lankan law, a direct reference to CMOs can be found in Section 25 of the Intellectual Property Act No. 36 of 2003 (the Act). Section 25(1) tries to streamline the process of CMOs by putting a general restriction on the functioning of CMOs subject to the later provisions of the Act. Section 25(1) (c) provides a discretion to the Director General of Intellectual Property to grant permission to commence or carry on businesses in respect of collective management of copyrights and related rights. Accordingly this section provides legal parameters on the Director General's scope, function and powers relating to monitoring of CMOs. Furthermore, Section 25(2) (b) indicates that such society can enter into any agreement with foreign societies or organizations which administer copyrights and related rights. These provisions open up an avenue for cross-border transactions of domestic works. Thus, although these provisions are not very details they provide considerable recognition to CMOs. However, a possible question may arise on

the adequacy of such non-descriptive provisions in an era where the history of man is written in the electronic medium.

The scope of Section 25 has been expanded by Section 5 of the Gazette Extraordinary No. 1415/18 dated 19.10.2005 (Gazette). The Gazette addresses some untouched areas relating to CMOs in the principle enactment viz. the nature of the license, auditing of yearly financial reports of the societies and dispute settlements. The Director General has been entrusted with the power of inquiry relating to the matters connected with such collective management societies. Thus, it can be argued that both the Act and the Gazette provide some legal certainty for CMOs in the Sri Lankan context. The Sri Lanka Performing Rights Society was the first established society in this particular field, and consequently Authors, Composers and Performers Organization of Sri Lanka was established. Thus, it can be argued that CMOs have been granted considerable legal recognition in Sri Lanka.

3.4 What are the weaknesses of law relating to CMOs in Sri Lankan context?

However, when compared to other jurisdictions the existing legal framework for CMOs in Sri Lanka has a lesser effect on collective management of copyrights and related rights. The lack of participation of the right holders, concerns on transparency and reliability and functioning on CMOs can be considered as root causes for the unpopularity of the CMOs in the Sri Lankan IP paradigm. Nonetheless, the lack of a descriptive and comprehensive legal regime that governs CMOs, also may dilute the effective functioning of the CMOs in Sri Lanka. Moreover, the lack of institutional support also would adversely affect the performance of CMOs in the Sri Lankan context. Thus, it is worthwhile to consider possibilities of expanding the framework of CMOs in Sri Lanka in order to

overcome the above mentioned weaknesses.

4 CONCLUSIONS

The entire discussion of this research reveals that the existing framework of the collective management of copyrights and related rights in Sri Lanka is inadequate to address the contemporary challenges posed by new technology and digitalization of copyrights and related rights. It can be argued that CMOs can make a considerable contribution to protect the legitimate interests of the rights holders as well as the general public in a digital era.

The most important factor is the involvement of both rights holders and users in the CMO process. Thus, the transparency, credibility and authenticity of the CMOs should be enhanced in order to provide wider participation. Nonetheless, there is a need to establish a platform with the participation of other stakeholders in relevant fields such as Sri Lanka Film Corporation, Broadcasting and Television Corporations, Governmental and non-governmental institutions etc. which supports the smooth functioning of CMOs. Also, it is worth considering the legal status of the CMO, acquisition of rights, dispute settlement and controlling anti-competitive activities in legislating for CMOs in Sri Lanka. The examples drawn from comparative jurisdictions can be effectively used to draft a country specific model of CMOs in Sri Lanka. Finally it can be suggested that the existing legal provisions relating to CMOs in Sri Lankan IP law should be revisited and redesigned either as a separate law or as an amendment to the Act in order to facilitate the smooth functioning of CMOs in Sri Lanka.



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