

# Code of Conduct

## 2. Code of Conduct for Performers' Rights Collective Management Organisations

### Whereas:

Performers must be able to enjoy intellectual property rights wherever such rights are established, independent of national borders, modes of use, or technical means of exploitation, and during the whole term of protection;

Performers shall be treated indistinguishably from their peers within all the categories of rightsholders, in the respect of the principles of equality and non-discrimination;

Performers' rights, whether audio or audiovisual rights, exclusive rights or equitable remuneration rights are administered by organisations established for collective management of individual rights;

Effective collective management of performers' rights and facilitating licensing provide users easy access to worldwide repertoire;

Performers' Collective Management Organisations ("CMOs") are indispensable elements for the protection of intellectual property rights of performers;

Performers, hereinafter called "members", are those performers who are either members of or associated with a CMO in a comparable manner;

A CMO is authorised by performers to represent them and act on their behalf in its country of operation and in such other countries as the performers direct, through the CMO's agreements with other CMOs;

A performer shall, for the same category of main economic rights (as defined above in the section "Main Economic Rights Managed Collectively by CMOs") in a particular territory, be a member of one CMO only, in order to give users easy access and to further the efficient and cost-effective management of performers' rights related to large scale use;

In practice the CMO in the country of residence of the performer is the most accessible for the performer and close to the basic recording data for the proper management of performers' rights;

Notwithstanding the foregoing, performers residing in or nationals of any country may join any CMO; and their applications shall be treated by the CMO equally to those submitted by performers resident in its territory of operation.

Activities of CMOs must be based on the principle of equal treatment of all represented rightsholders, without any discrimination based on nationality or domicile;

CMOs may not impose on their members, under their statutes, general regulations or contracts, any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights;

Bilateral (or Multilateral) Agreements are an efficient and cost-effective means of internationally exchanging remuneration payable to performers;

CMOs may generally enter into Bilateral or Multilateral Agreements, for the reciprocal exchange of remuneration;

Alternatively, where two or more CMOs operate in the same territory and one of them has entered into a Bilateral Agreement with a CMO in another territory, the other CMO(s) may enter into a "Unilateral" Agreement, under which they receive, on behalf of their members, remuneration from the other territory's CMO;

National and foreign performers shall be treated and remunerated by CMOs on equal terms unless otherwise agreed under their Agreement and limited to the start-up phase of one or both of them.

**Therefore:**

SCAPR Members CMOs have agreed to comply with the above-mentioned principles and to adhere to the following

## CODE OF CONDUCT

### 1

CMOs shall encourage performers to entrust the management of their rights to a CMO of their own choice.

### Relations with rightsholders

### 2

The managerial services of a CMO shall be open to all performers enjoying rights in the territory of its operation.

Membership is a personal right of the performer.

### 3

In order to avoid duplicate claims for the same rights in the same territory, a CMO shall be obliged upon a membership application to confirm the identity of the performer, establish the specific performer's rights mandated and, by reference to the IPD, verify that the performer is not a member of another CMO for the same rights and territories. If the CMO discovers a conflict, the CMO shall follow the procedures established under the IPD Business Rules.

### 4

CMOs shall act under the democratic control or supervision of their members. Members shall be represented in a fair and balanced way in the decision-making process of their CMO. A CMO shall be accountable and transparent to the performers it represents and make available to them all relevant information regarding the organisation's activities, particularly its management, collection and distribution policies, along with its business relationships with sister organisations in other countries.

In this respect, CMOs shall provide a direct line of contact with all their members, as appropriate.

Basic information on membership and the activities of a CMO shall be made available in English.

## Management of rights

### 5

CMOs should normally be established as non-profit organisations for the collective management of performers' rights. For-profit organisations may also be established but only if they are owned or controlled by their members. The performers shall pay only the costs which are objectively necessary for the protection of their rights and interests and for the effective management of their rights.

### 6

Remuneration collected from users and any interest earned thereon shall, to the highest degree possible, be distributed individually amongst the performers concerned in proportion to the uses of their performances, according to reports by users or other available relevant information enabling calculation, and according to the distribution rules adopted by the CMO in the country of collection.

### 7

Each CMO shall deduct its own management costs incurred in the collection and distribution of remuneration derived from its own territory. In the event that a receiving CMO wishes to make management cost deductions from incoming remuneration from another CMO, both CMOs shall agree on the specific and clear conditions upon which such deductions will be based.

### 8

Deductions from the remuneration collected by a CMO (or from income from any investment of that remuneration by or on behalf of that CMO) may also be made for purposes intended to promote the general interests of performers.

Any such deductions shall be subject to the authorisation of the members of the CMO unless required under local legislation.

### 9

Distribution of remuneration to all performers shall be based on the principle of equal and non-discriminatory treatment.

### 10

A CMO shall pay other CMOs at the same time as it pays its members.

### 11

A new CMO shall start distributing to performers, ideally within 3 years of its first collections but in no event more than 5 years after its first collections.

When a new CMO starts paying its members, the CMO shall also distribute to foreign performers represented under a Bilateral Agreement.

CMOs shall develop specific action plans with proper regard to the trans-border exchange of remuneration on a regular basis.

## 12

CMOs shall continually strive for the development of systems for the identification of rightsholders and uses and for the trans-border exchange of information and data enabling individual distribution according to the principles mentioned above.

Based on the principle of equal and non-discriminatory treatment, CMOs shall identify all protected rightsholders involved, both national and foreign. The parties to any Representation Agreement shall assist each other in the process of identifying all rightsholders.

CMOs shall concurrently register the uses of both national and foreign performers' performances subject to the rights in their respective territories of operation, mainly based on the following sources:

- Reports from users providing comprehensive play lists or from reliable surveys;
- Regular exchanges of information using appropriate information systems, preferably VRDB;
- Exchanges of information through their respective repertoire databases.

## 13

Individual remuneration, due to performers but not paid out because the rightsholder cannot be identified or located, shall be reserved during the relevant national period of limitation and, after such a period, dealt with according to the rules of the CMO in the country of collection.

CMOs shall exercise reasonable prudence and due care when investing reserved funds.

## 14

CMOs shall act in a consistent and transparent manner with regard to users and the public in general.

## International cooperation

### 15

Representation Agreements by which the CMOs exchange remuneration collected are an efficient and cost-effective means of managing performers' international rights.

Accordingly, CMOs shall maintain continuous contact and cooperation with other organisations representing performers.

### 16

A newly admitted CMO shall use its best efforts to negotiate and sign Representation Agreements and start to exchange remuneration with the other SCAPR Members within 3 years of admission to Membership, unless the contracting parties mutually agree to extend the 3 year period to a maximum of 5 years. The other SCAPR Members shall also use their best efforts to facilitate the afore mentioned goals.

These Agreements should be in substantial conformity with the relevant model contract adopted by SCAPR and should clearly specify which rights and rightsholders are covered by the Agreement and how remuneration due to those rightsholders shall be handled. CMOs shall cooperate to solve transitional problems for their members arising when such Agreements enter into force. A copy of the relevant Agreement shall be sent upon request to the SCAPR Secretariat.

When new principles are adopted within SCAPR, any such changes shall be deemed to be incorporated into the Representation Agreement currently in force between or among two or more CMOs. Such changes shall be Implemented within a maximum of 3 years.

### 17

It is a condition of Ordinary Membership that a CMO participate in the SCAPR Information Systems, notably IPD and VRDB. CMOs shall abide by the confidentiality and data protection requirements set forth in the rules and the user agreements governing the information systems.

### 18

CMOs shall act in good faith and in the spirit of cooperation and shall uphold the principles and recommendations adopted by SCAPR. Misunderstandings and disputes shall, as far as possible, be settled within SCAPR in accordance with the established complaints procedure.