

Preface

The purpose of this study is to analyze to what extent collective rights management legal provisions reflect and accommodate the paradigmatic shifts in social behavior and in the ways of producing, consuming, and administrating intellectual content subject to copyright protection, changes that were brought by the technological development, digital tools and interaction mechanisms introduced in recent years. It assesses from a critical perspective the legal framework, particularly the recently introduced European 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, as well as other instruments that are available to discipline the issue, in order to determine strengths, weaknesses, and possible improving directions for the existing legal model of management of rights over the digital use of protected human creation.

The work starts contextualizing the environment of networked digital technologies in which the investigation takes place, where first information, and then interconnection is considered one of the main social assets, to understand the reasons, structures, mechanisms and channels that allow the paradigmatic shift in human behavior from two basic points of view. The first one is the broader shift in the way this new social architecture communicates, interacts, demands, produces and distributes information and impacts in economy, politics, citizenship and other general aspects. The second one is the more particular, legally-related impact of the wide sharing and collaboration possibilities that technologies introduce in the creation of artistic, scientific, and literary content, and consequently, in the ordinary economic, cultural, and legal notion of intellectual property.

In the following chapter, prior to initiating the legal analysis of the theme, the advent of digital technologies and how they allow new forms of social expression is covered. Collaborative mechanisms that are made possible through this enhanced social interaction are examined, and their economic dimension is identified as opportunities that emerge both in the form of the sharing logic of the discussed collaboration model, and in the disruptive effects that the creation and introduction of digital technologies may have in various aspects of everyday life.

The subsequent chapter turns eyes to digital networked and collaborative technologies in their particular projections in the creative industry, and how they irradiate effects so as to be perceived as relevant legal circumstances and addressed by legal mechanisms.

Chapter 4 analyzes the specificities of the activity of collective management of rights over digital content, primarily from the perspective of the relationship between Collective Management Organizations (CMOs) and the authors they represent. Since it is an essentially intermediation activity, it is inevitable to touch, and at times focus on their relationship with the publishers and the consumers who should be the final recipients and users of the service that these entities intermedicate. Issues of transparency, accountability, and alternatives to multi-territorial licensing have been points of strong criticism and tension involving these undertakings, and especial attention will be devoted at the end of this section to analyze how these main controversial aspects were addressed in the scope of the new European Directive 2014/26/EU, which recently imposed significant transformations in this legal framework. The study is essentially an attempt to understand and analyze the differences between how the controversial issues of transparency and multi-territorial licensing were addressed before the entry into force of Directive 2014/26/EU and how they should be addressed after the adoption of the new legislation.

At the end it was possible to conclude that although digital networked and collaborative tools exponentially enlarged the possibilities of electronic use of creative content, the inability of CMOs to give better responses to modern market demands and, in consequence, to provide better services puts them in a delicate business position and defies their legitimacy to continue as intermediating agents between artists and content users. Insisting merely in traditional practices for the management of rights over new forms of electronic use of creative content will not allow these undertakings to attain the necessary level of efficiency and will create serious obstacles for them to preserve the viability of their economic activity. In spite of the impossibility to reach a conclusive position, since the Directive has just been adopted and transposition procedures by Member States have only started, it is possible to conclude that, by adopting a new framework addressing, among other important aspects, transparency concerns and multi-territorial licensing of online works, the new European Directive 2014/26/EU creates sufficient conditions and improves legal certainty so that CMOs can provide better and more efficient services from which every player in the field can benefit, while at the same time fulfills a historic demand from artists and users concerning the enhancement of the monitoring and control over the operation of these companies.

Collective Rights and Digital Content

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and Multi-territorial Licensing of the New European
Directive on Collective Rights Management

Lucena, C.

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