

## COLLECTIVE MANAGEMENT ORGANIZATIONS IN THE UNITED STATES OF AMERICA

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### ABSTRACT

A singer, author, producer, composer, etc. creates a work, communicates it to the public, exercises their rights. Now, are they also going to go around and fight the people who infringe their rights? Are they supposed to put a hold on their creativity and intellect and manage the rights they own in their copyrighted works? The answer is no. The world today which consumes so much creative work cannot afford such intellectuals to stop utilizing their minds in making more of such works. Thus, comes into the scenario the role of what we call the Collective Management Organizations. This article aims at discussing the functioning of the Collective Societies in reference to the United States of America which is said to have the most developed copyright law in the world. The article starts with a small introduction describing what a performance rights organizations and copyright collectives are, what status do they hold legally in the United States, what role does the government have in their status, etc. The author then discusses some features of such societies and how the extant societies comply with them. Finally, at the end of this article, some of the famous organizations have been discussed briefly.

*Journal of Legal Research and Juridical Sciences*  
**Keywords:** License, Monopoly, Royalty, Tariff, Performing Rights, etc.

### INTRODUCTION

Performance rights organizations, or PROs, are organizations in the United States that act as intermediaries between copyright holders and performers of works such as music. Artists' rights organizations, for example, license and collect royalty for the reproduction of works such as paintings by living or recently dead artists whose work has not yet reached the public domain. In the United States, Performance Rights Organizations guarantee that rights holders receive their fair portion of public performance royalties by providing licenses to various firms and institutions and tracking where and how frequently their affiliates' music is performed in public settings. Copyright collectives are registered corporations in the United States that

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operate as representatives for the copyright holders. The government neither accords collective management companies monopoly status nor has specific legislation governing collective administration of copyright. In the public performance of music compositions in the United States, there are three copyright collective management organizations that compete with each other to prevent monopolization of any single organization, offering additional alternatives for copyright owners and consumers.

### **COLLECTIVE MANAGEMENT ORGANIZATIONS IN THE UNITED STATES**

Collective Management Organizations can be classified as a not-for-profit organization owned by its members, a for-profit organization owned by music users, or a for-profit organization privately owned by shareholders. The United States, where antitrust law applies, is an outlier, having all three:<sup>1</sup> American Society of Composers, Authors, and Publishers (ASCAP) is a "voluntary association" of its members. Broadcast Music Inc. (BMI) was established as an alternative to ASCAP by the National Association of Broadcasters. The Society of European Stage Authors and Composers (SESAC) is a for-profit organization that is now managed by BlackRock, the world's largest asset management firm. In the United States, copyright holders are allowed to select the Collective Management Organization that they believe is most efficient or aligned with their personal values or requirements. However, for this flexibility to be successful, Collective Management Organizations must publicly disclose information about their operations in such a way that meaningful comparisons can be made. The crucial point here is that non-members should have access to this information. Otherwise, potential members will be unable to evaluate the benefits of several Collective Management Organizations, impeding effective competition. A composer, for example, would be interested in the Collective Management Organizations' membership thresholds, detailed distribution policies, or social advantages. The same information is also useful for academics since it gives the detail needed to compare Collective Management Organizations. An author can only be a member of one Performance Rights Organization since the extant Performance Rights Organizations in the US have different tariff and royalty payment methods because they compete in the market. American Society of Composers, Authors, and Publishers (ASCAP), Society of European Stage Authors and Composers (SESAC), Broadcast Music Inc. (BMI), Harry Fox Agency (HFA) and Sound Exchange are the five largest Performance Rights Organizations in the

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<sup>1</sup> Achille Forler, *COLLECTIVE MANAGEMENT ORGANIZATIONS 101*, TUNECORE ( Mar. 24, 2022, 7:36 PM), <https://www.tunecore.in/guides/collective-management-organizations-101>

United States. The performance rights group's website contains a memorandum, articles of incorporation, and pricing policy. In United States, all Collective Management Organizations have made their membership data public, either as complete lists or as a searchable repertoire database pertaining to the specific work.<sup>2</sup> Knowledge about the governing members controlling the functioning of the Collective Management Organizations may assist rights holder members guarantee decision making occurs in a representative, responsible way. With the exception of SESAC, all Collective Management Organizations in the United States have disclosed information about their governing or executive boards.<sup>3</sup> The appointment of the CEO is mentioned in SESAC's 'news' section, but not in an immediately accessible area.

S. 370.5 (c) of the Code of Federal Regulations requires Collective Management Organizations collecting and distributing for statutorily licensed sound recordings in the United States to disclose their annual income report. Sound Exchange complies, whereas HFA willingly does so. ASCAP and BMI occasionally upload their reports with a few years missing, however SESAC's report appears to be missing, probably owing to the private incorporated corporation status. In the United States, some of the existing Collective Management Organizations includes the American Society of Composers, Authors, and Publishers (ASCAP): It is a philanthropic performance-rights organization in the United States which safeguards the copyright of musical work owners who are the members of the organization using due process of monitoring and paying for publically performed music either through broadcasting or live. It collects license payments from the people who consume the work of their members and those payments are given back to the members as a form of royalty. Long story short, the working of ASCAP is a kind of a pact wherein in the case of a musical work neither the consumer is required to reimburse the owner of the copyright himself nor does the producer need to go after the radio stations for using their songs. The organization has relationships whether direct or indirect with similar organization in more than 30 countries and when any of the associated foreign copyright society gets information about unauthorized use of copyrighted works, royalty due to the owner is collected and transmitted to the organization through which the owner of the work is represented.<sup>4</sup>

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<sup>2</sup> Maggie Huang, Arpita Sengupta, Paavni Anand, *Comparative Transparency Review of Collective Management Organisations in India, United Kingdom and the United States*, THE CENTRE FOR INTERNET & SOCIETY (Mar. 25, 2022, 7.46 PM), <https://cis-india.org/a2k/blogs/comparative-transparency-review-of-collective-management-organisations-in-india-uk-usa>

<sup>3</sup> Daniel J. Gervais, *Collective Management of Copyright and Neighboring Rights in Canada: An International Perspective*, 1 Canadian Journal of Law and Technology. 21, 31-32 (2002), <https://scholarship.law.vanderbilt.edu/faculty-publications/852/>

<sup>4</sup> ASCAP, <https://www.ascap.com/about-us> (last visited Mar. 25, 2022).

**BROADCAST MUSIC, INC. (BMI):**

This is an American performance rights organization. It collects blanket licensing payments from companies that utilize music, allowing them to use a song in the organization's catalogue of more than 18 million works.<sup>5</sup> Royalty is given on a quarterly basis in the form of money to the writers, composers and publishers of the song.

**SOCIETY OF EUROPEAN STAGE AUTHORS AND COMPOSERS (SESAC):**

SESAC was created in 1930, making it United States' second-oldest performance-rights organization. SESAC's database includes 30,000 composers and over 1 million works.<sup>6</sup> It was established by Paul Heinecke, an immigrant from Germany in New York. Its basic aim was to give the European stage authors and composers representation by providing them with royalties for the use of their works.

**SOUND EXCHANGE:**

This is a company that is not commercially motivated and manages the rights of its members collectively. The United States Congress has designated it as the exclusive body responsible for collecting and distributing royalties for digitally performed recordings of sound. It makes good the loss due to non-collaborative usage of recordings to the artists as well as the majority rights holders. Sound Exchange is a champion organization in the field of licensing of musical work and is governed by a board comprising of the creator, their representatives and the rights owner of the recordings.<sup>7</sup> The royalty paid by the organization exceeds 6 billion dollars as of 2020.

**HARRY FOX AGENCY (HFA):**

In the United States, the HFA is a supplier of rights management as well as a collector and distributor of mechanical licensing payments on behalf of music publishers. HFA has approximately 48,000 music publishing clients and issues the most licenses for physical and digital music formats. The National Music Publishers Association established it in 1927. In

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<sup>5</sup> BMI, <https://www.bmi.com/about> (last visited Mar. 26, 2022).

<sup>6</sup> SESAC, <https://www.sesac.com/our-history> (last visited, Mar. 26, 2022).

<sup>7</sup> Ben Sisario, *Rise of SoundExchange Shows the Growth of Digital Radio Royalties*, NEW YORK TIMES ( Mar. 26, 2022, 9:04 PM), <https://www.nytimes.com/2015/08/05/business/media/rise-of-soundexchange-shows-the-growth-of-digital-radio-royalties.html? r=0>

<sup>8</sup> Arnold, M.E., *A Matter of (Anti) Trust: The Harry Fox Agency, the Performance Rights Societies, and Antitrust Litigation*, 81 TEMP. L. REV 1169 (2008).

2015, the agency was sold to SESAC9, which was then purchased by The Blackstone Group in 2017. The Copyright Act of the United States only interprets performing rights society as an “association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works.” The US situation is somewhat different from that of other countries. Controlled mostly under antitrust (competition) law judicial, several collective management organizations compete in the same area of licensing, namely, the public performance of music.



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<sup>9</sup> Ed Christman, *SESAC Buys the Harry Fox Agency*, BILLBOARD (Mar. 27, 2022, 3:17 PM), <https://www.billboard.com/music/music-news/sesac-buys-the-harry-fox-agency-6620210/>