

Code of Conduct

Definitions and Interpretation

In this Code:

A **Collective Management Organisation** is any legal entity validly constituted or incorporated in Singapore and appointed as the exclusive licensee, owner or prospective owner of rights belonging to Rights Holders to collect license fees on the Rights Holders' behalf;

Non-profit Collective Management Organisations are Collective Management Organisations who receive a portion of licence fees collected on a periodic basis and are non-profit as defined by their Constitution;

For-profit Collective Management Organisations are any other Collective Management Organisations who are not defined as a non-profit by their Constitution. For avoidance of doubt these may include, but are not limited to, Collective Management Organisations that pay Rights Holders a sum of money in exchange for the right to collect and retain licensing fees as the exclusive licensee of the Rights Holder;

Constitution means the constituent documents that establish and govern the operations of a Collective Management Organisation:

- (a) In the case of a Collective Management Organisation that is incorporated, this would include the Memorandum and Articles of Association of the Collective Management Organisation;
- (b) In the case of a Collective Management Organisation that is constituted as a Society or Association, the governing document would include that Society's or Association's constitution and Rules of the Organisation, or any other relevant document;

The Memorandum of Understanding shall refer to the Memorandum of Understanding between Collective Management Organisations on Agreed Industry Standards through a Code of Conduct signed on 5 April 2012;

Licensee means:

- (a) a person granted permission by a Collective Management Organisation to use copyright material;
- (b) a person entitled to use copyright material under a statutory licence in the Copyright Act; and
- (c) a person who requires a licence from a Collective Management Organisation to use copyright material; and

Rights Holder means a person who creates copyright material, or who owns or controls copyright material. This includes creators of copyright material, such as authors, publishers, playwrights, musicians, composers, artists, computer programmers, producers or broadcasters, as well as people or organisations to whom the rights in copyright material have been assigned.

Interpretation

- (a) Where there is any doubt about the intent or scope of this Code, it should be interpreted in the light of the objectives set out in clause 3.
- (b) Where this Code requires a Collective Management Organisation to make information or documents available on request, such request is generally satisfied by making the information or documents available on a website. Where a person requiring the information or documents advises that they cannot access the Internet, the Collective Management Organisation should take reasonable steps to satisfy their request in another way.

1. Background

- (a) Collective Management Organisations provide a range of valuable services to both Rights Holders and Licensees. By administering copyright on behalf of Rights Holders, Collective Management Organisations:
 - (i) promote the creation and dissemination of copyright material;
 - (ii) represent the interests of creators and/or owners of copyright material;
 - (iii) make it easier for people to obtain permission to use copyright material;
 - (iv) streamline the process of collecting remuneration and/or licence fees for the use of copyright material; and
 - (v) reduce the transaction costs for both Rights Holders and Licensees associated with the use and exploitation of copyright material.
- (b) Each Collective Management Organisation aspires to:
 - (i) achieve best practice in the conduct of its operations;
 - (ii) be responsive to the needs of Rights Holders and Licensees; and
 - (iii) ensure transparency and accountability in the conduct of its operations.

2. Scope

- (a) This Code applies to those Collective Management Organisations that have agreed to be bound by the Code.

3. Objectives

- (a) The objectives of this Code are:
 - (i) to promote awareness of and access to information about copyright and the role and function of Collective Management Organisations in administering copyright on behalf of Rights Holders;
 - (ii) to promote confidence in Collective Management Organisations and the effective administration of copyright in Singapore;
 - (iii) to set out the standards of service that Rights Holders and Licensees can expect from Collective Management Organisations; and
 - (iv) to ensure that Rights Holders and Licensees have access to efficient, fair and low cost procedures for the handling of complaints and the resolution of disputes involving Collective Management Organisations.

4. Legal Framework

- (a) Each Collective Management Organisation will comply with:
 - (i) the Copyright Act and all of its subsidiary legislation and related instruments;
 - (ii) its Constitution; and
 - (iii) any other applicable legislation, as well as relevant decisions of courts or tribunals (including the Copyright Tribunals), and other binding legal requirements, conditions or guidelines that apply to the Collective Management Organisation.

5. Rights holders

- (a) Each Collective Management Organisation will treat associated Rights Holders fairly, honestly, impartially, courteously, and in accordance with its Constitution, any membership agreement or any other contractual agreement for rights.
- (b) Each Collective Management Organisation will ensure that all of its dealings with Rights Holders and their copyright works are transparent to the Rights Holders.
- (c) Each Collective Management Organisation will provide a copy of its Constitution to an associated Rights holder at the time that the Rights Holder first joins the Collective Management Organisation, or at any time on request. A Collective Management Organisation will also provide a copy of its Constitution to a potentially associated Rights Holder on request.

6. Licensees

- (a) Each Collective Management Organisation will treat Licensees fairly, honestly, impartially, courteously, and in accordance with its Constitution or Memorandum of Association and any licence agreement.
- (b) Each Collective Management Organisation will ensure that its dealings with Licensees are transparent.
- (c) Each Collective Management Organisation will:
 - (i) make available to Licensees information about the licences or licence schemes offered by the Collective Management Organisation, including the terms and conditions applying to them, and about the manner in which the Collective Management Organisation collects remuneration and/or licence fees for the use of copyright material;
 - (ii) to the extent it reasonably can, having regard to the complexity of the questions of fact and law necessarily involved, take steps to ensure that all licences offered by the Collective Management Organisation are drafted so as to be plainly understandable to Licensees, and are accompanied by practical and suitable explanatory material;
 - (iii) inform and obtain feedback from relevant trade associations in relation to the terms and conditions applying to licences or licence schemes offered by the Collective Management Organisation;¹
 - (iv) make available at the request of Licensees all agreements through which the Collective Management Organisations derive their right to licence the works being licensed, or if such documents are confidential in nature, all the key information on these agreements that fully describe how the CMO derives its right to licence or if such documents are confidential in nature, official authorisation letters from the Rights Holder expressly affirming that the Collective Management Organisation has the right to collect license fees for specified protected works
 - (v) answer within a reasonable time all reasonable requests from Licensees for information about its repertoire of works.²
- (d) Licence fees for the use of copyright material will be reasonable in the circumstances. In setting or negotiating such licence fees, a Collective Management Organisation may have regard to the following matters:
 - (i) the value of the copyright material;

¹ CMOs satisfy this obligation if reasonable attempts are made to speak with trade associations or other representatives of relevant industries and no response is received.

² A reasonable time to answer requests will vary depending on the size and the number of such requests currently being processed by a CMO.

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- (ii) the purpose for which, and the context in which, the copyright material is used;
 - (iii) the manner or kind of use of the copyright material;
 - (iv) any relevant decisions of the Copyright Tribunals; and
 - (v) any other relevant matters.
- (e) The terms of any and all Licenses and license schemes for the use of copyrighted works will be reasonable in all the circumstances and shall:
- (i) make a warranty to the Licensee that the Collective Management Organisation is authorised, licensed or otherwise empowered (based on the authorisations that were provided to them by their Right Holders) to collect license fees for the works (or where applicable, for a particular right in copyright for that work), stated in the license or license scheme; and;
 - (ii) indemnify the Licensee from any claims in copyright by the owners of the copyright in the event the Collective Management Organisation is not authorised, licensed or otherwise empowered (in accordance with the authority, licence or power to collect licence fees provided to the Collective Management Organisation by the Rights Holder) to collect license fees for the works, on the condition that the Licensee use the works exactly as provided for in the License or License scheme.

7. Distribution of Remuneration and Licence Fees

- (a) Each non-profit Collective Management Organisation will maintain, and make available to associated Rights Holders on request, a distribution policy that sets out from time to time:
- (i) the basis for calculating entitlements to receive payments from remuneration and/or licence fees collected by the Collective Management Organisation;
 - (ii) the manner and frequency of payments to Rights Holders; and
 - (iii) the general nature of amounts that will be deducted from remuneration and/or licence fees collected before distribution.
- (b) Each non-profit Collective Management Organisation will distribute payments to its associated Rights Holders in accordance with its Constitution and distribution policy. The distribution plan shall be so devised that the proceeds of the Collective Management Organisation, to the greatest extent possible, is distributed among the Rights Holders on the basis of objective criteria such as, but not limited to, the number of performances of the work, playing time, the place of performance, the duration of the work, or the efforts behind the creation of the work.

8. Governance and Accountability

- (a) Each Collective Management Organisation will at all times maintain proper and complete financial records.
- (b) Each Collective Management Organisation will ensure that its financial records are audited at least annually.
- (c) Without prejudice to the generality of Article 8(a) and 8(b), each non-profit Collective Management Organisation shall maintain proper and complete financial records in relation to:
 - (i) the collection and distribution of payments from remuneration and/or licence fees collected by the non-profit Collective Management Organisation as applicable;
 - (ii) the payment by the non-profit Collective Management Organisation for:
 - (1) the expenses of managing and operating the Collective Management Organisation; and
 - (2) any other amounts authorised by its Constitution. These may include, for example, the costs of promotional activities, educational programs, cultural funds, donations in support of creators and owners of copyright material, membership of industry associations, or other charitable purposes;
 - (iii) Consistent with any applicable duty of confidentiality, a non-profit Collective Management Organisation will provide an associated Rights Holder, on request, with reasonable information about that Rights Holder's entitlement to receive a payment from remuneration and/or licence fees collected by the non-profit Collective Management Organisation;
 - (iv) Each non-profit Collective Management Organisation will include in its Annual Report information about:
 - (1) total remuneration and/or licence fees collected by the non-profit Collective Management Organisation during the reporting period; and
 - (2) the total sum and general nature of expenses and other amounts described in Article 8(c)(ii).
- (d) For-profit Collective Management Organisations shall maintain and submit all necessary documents, including audited accounts, to the relevant authorities, in line with their obligations under any applicable legislation.

9. Staff Training

- (a) Each Collective Management Organisation will take reasonable steps to ensure that its employees and agents are aware of, and at all times comply with, this Code. A Collective Management Organisation will ensure its employees and agents are properly trained in Singapore's copyright regime and are familiar with the portfolio of works managed by the Collective Management Organisation. In particular, a Collective Management Organisation will take reasonable steps to ensure that its employees and agents are aware of the procedures for handling complaints and resolving disputes set out in clause 11, and are able to explain those procedures to Rights Holders, Licensees and the general public.

10. Education and Awareness

- (a) Each Collective Management Organisation will engage in appropriate activities to promote awareness among Rights Holders, Licensees and the general public about the following matters:
- (i) the importance of copyright;
 - (ii) the role and functions of Collective Management Organisation in administering copyright generally;
 - (iii) the role and functions of that Collective Management Organisation in particular; and
 - (iv) will make information about these matters available, on reasonable request, to Rights Holders, Licensees and the general public.
- (b) In deciding what activities are appropriate for the purposes of paragraph (a), a Collective Management Organisation will take into account the following factors:
- (i) its size;
 - (ii) the number of associated Rights Holders it has;
 - (iii) the number of Licensees it has;
 - (iv) the amount of remuneration and/or license fees it collects annually; and
 - (v) the possibility of undertaking activities jointly with another Collective Management Organisation.
- (c) Without limiting paragraph (a) or any other obligation in this Code, each Collective Management Organisation will produce and make available appropriate information about the following:
- (i) the eligibility criteria for association with the Collective Management Organisation, where applicable;

- (ii) the benefits of association with the Collective Management Organisation, where applicable;
- (iii) the responsibilities of Rights Holders under the Constitution of the Collective Management Organisation and any Associated Rights Holders Agreement, where applicable;
- (iv) any policies and procedures of the Collective Management Organisation that affect associated Rights Holders;
- (v) the benefits to Licensees of obtaining a licence from the Collective Management Organisation;
- (vi) the responsibilities of Licensees under a licence granted by the Collective Management Organisation, and under the Copyright Act and other applicable laws; and
- (vii) any policies and procedures of the Collective Management Organisation that affect Licensees.

11. Complaints and Disputes

- (a) Each Collective Management Organisation will develop and publicise procedures for:
 - (i) dealing with complaints from associated Rights Holders and Licensees; and
 - (ii) resolving disputes between the Collective Management Organisation and:
 - A. its associated Rights Holders; and/or
 - B. its Licensees.
- (b) The procedures developed under paragraph (a) will apply to any complaint about a matter covered by the Code which adequately identifies the nature of the complaint and the identity of the person complaining.
- (c) In developing its procedures, a Collective Management Organisation will have particular regard to the following principles:
 - (i) The procedures should define the categories of complaints and disputes they cover and explain the way in which each will be dealt with;
 - (ii) Information on how to make complaints should be readily accessible to associated Rights Holders and Licensees;
 - (iii) Each Collective Management Organisation should provide reasonable assistance to an associated Rights Holder or Licensee in the formulation and lodgement of a complaint;

- (iv) The procedures should recognise the need to be fair to both the person complaining and the Collective Management Organisation to which the complaint relates;
 - (v) The procedures should specify by position who in the first instance will handle complaints on behalf of the Collective Management Organisation;
 - (vi) The procedures should indicate time frames for the handling of complaints and disputes;
 - (vii) Each Collective Management Organisation should provide a written response to a complaint that is made in writing;
 - (viii) Each Collective Management Organisation should establish appropriate alternative dispute resolution procedures;
 - (ix) Each Collective Management Organisation will ensure that adequate resources are made available for the purpose of responding to complaints and resolving disputes.
- (d) Each Collective Management Organisation will regularly review its complaint handling and dispute resolution procedures to ensure that they continue to comply with the requirements of this Code.

12. Publicity and Reporting

- (a) Each Collective Management Organisation will:
- (i) take appropriate steps to publicise this Code and the fact that it has agreed to be bound by it; and
 - (ii) make copies of the Code available to associated Rights Holders, Licensees and the general public on request.
- (b) Each Collective Management Organisation will include in its Annual Report a statement about its compliance with this Code.

13. Code Reviewer

- (a) The Collective Management Organisations that have agreed to be bound by this Code will appoint a Code Reviewer with specialist expertise in administrative law, copyright law and/or licensing practices to perform the functions conferred by paragraph (c).
- (b) The Code Reviewer will be independent of the Collective Management Organisations and will have no association with any of them. Neither a lack of independence nor any “association” will, however, be inferred purely by virtue of that person having provided professional services to a Collective Management Organisation of a kind that does not, or

did not, relate to a matter covered by the Code. The Code Reviewer will be appointed for a minimum period of three years.

- (c) The functions of the Code Reviewer are:
 - (i) to monitor and prepare annual reports on the level of compliance by Collective Management Organisations with the obligations imposed on them by this Code;
 - (ii) as part of the functions under sub-paragraph (i), to consider complaints from associated Rights Holders or Licensees in accordance with clause 14 (c).
- (d) Each Collective Management Organisation will bear their own costs in relation to the Code Reviewer unless otherwise agreed by all Collective Management Organisations who have agreed to be bound by the Code of Conduct.

14. Annual Compliance Monitoring and Reporting

- (a) For the purposes of performing his or her functions under Article 13 the Code Reviewer may undertake such consultations as he or she considers appropriate. Without limiting his or her discretion, the Code Reviewer may:
 - (i) call for submissions from associated Rights Holders, Licensees and the general public, and from groups representing them, on the level of compliance by Collective Management Organisation with the obligations under this Code;
 - (ii) convene meetings with such individuals or groups as he or she considers appropriate; and
 - (iii) consult with IPOS and such other Government agencies and statutory boards as he or she considers appropriate.
- (b) In addition to the consultations undertaken in accordance with paragraph (a), each Collective Management Organisation will report annually to the Code Reviewer on that Collective Management Organisation's compliance with this Code, including:
 - (i) its training of employees and agents in accordance with Article 9;
 - (ii) the activities it has undertaken under Article 10; and
 - (iii) the number of complaints it has received and how those complaints have been resolved;

And to assist Collective Management Organisations in complying with this paragraph, the Code Reviewer will develop templates and/or guidelines for the preparation of reports.

- (c) The Code Reviewer may, subject to the terms of this paragraph, receive and consider complaints from associated Rights Holders or Licensees to the effect that a complaint made

by the associated Rights Holder or Licensee to the Collective Management Organisation under Article 11 of this Code was not addressed in the manner required by Article 11(c) of the Code.

- (d) Upon receipt of a complaint from a Member or a Licensee of the type referred to in paragraph (c) above, the Code Reviewer must:
- (i) request of the complainant sufficient information and documentation as to the specific breaches alleged as may be required to elucidate the nature of the complaint;
 - (ii) provide the relevant Collective Management Organisation with full details of the complaint as so elucidated and allow the Collective Management Organisation a reasonable period within which to provide a response;
 - (iii) to the extent that the Collective Management Organisation's response makes allegations against the complainant, provide full details of that response to the complainant and allow the complainant a reasonable time within which to reply to those allegations.
- (e) Having considered the views of both the complainant and the relevant Collective Management Organisation under paragraph (d), the Code Reviewer must form a view on the merits of the complaint that the Collective Management Organisation failed to comply with Article 11 (c): namely,
- (i) whether it is wholly or partly justified;
 - (ii) whether it is wholly or partly unjustified; or
 - (iii) whether some other view is appropriate and if so, what view and for what reason and inform the complainant and the Collective Management Organisation of that view, making such recommendations as may be appropriate in the circumstances. If the Code Reviewer considers it appropriate, he or she may also report on that complaint in the annual report produced pursuant to paragraph (f).
- (f) Following his or her consultations, and consideration of the Collective Management Organisations' reports, the Code Reviewer will prepare annually a report on compliance generally by Collective Management Organisations with this Code. The Code Reviewer will make a copy of the report available to:
- (i) each Collective Management Organisation;
 - (ii) IPOS;
 - (iii) each individual or group that made a submission to the Code Reviewer; and
 - (iv) members of the public

15. Review and Update of the Code of Conduct

- (a) The Collective Management Organisations who are members to the Code of Conduct will conduct a review of the Code of Conduct with the assistance of the Intellectual Property Organisation of Singapore and, where appropriate, revise and update the Code. The Collective Management Organisations shall conduct the review:
- (i) six months from the signing of the Memorandum of Understanding;
 - (ii) twelve months from the signing of the Memorandum of Understanding;
and
 - (iii) on an annual basis thereafter.
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