



2023 AIPPI World Congress – Istanbul
Adopted Resolution
25 October 2023

Resolution

2023 – Study Question – Copyright

Collecting Societies

Background:

- 1) This Resolution concerns the rules under which collecting societies operate in various jurisdictions and aims to harmonise certain aspects of those rules. This Resolution concerns the collective administration of both copyright and related – or neighbouring – rights.
- 2) This Resolution is the first by AIPPI in studying collecting societies. A harmonised framework is important when, as is the case with collecting societies, not all jurisdictions have an existing framework and there is no harmonised framework in international law.
- 3) This Resolution does not aim to re-examine certain exceptions to copyright laws already considered in Q246 – “Exceptions and Limitations to Copyright Protection for Libraries, Archives, and Educational Research” (Rio de Janeiro, 2015), or those considered in

Q216B and Q216A – “Exceptions to Copyright Protection and the Permitted Uses of Copyright Works in the Hi-tech and Digital Sectors” (Hyderabad, 2011; Paris, 2010) nor any other exceptions.

4) This Resolution does not address the issue of mandatory collective administration. It has become clear from discussions within the Study Committee at the AIPPI World Congress in Istanbul in 2023 that mandatory collective administration would engage a range of further factors, including competition law and constitutional considerations, which would require a more detailed review than that conducted to-date. It is therefore proposed that mandatory collective administration be considered as a further, standalone topic in a further AIPPI Study Question.

5) In this Resolution:

- a) "Collecting Society" means an organisation that facilitates the collective administration of copyright and/or related rights on behalf of one or more categories of Rightholders for their collective benefit. Such organisations grant licences to use Protected Material, collect royalties from users, distribute revenues to Rightholders and, if necessary, enforce the copyright and/or related rights in the Protected Material.
- b) "Protected Material" shall mean the material subject to copyright protection and/or protection by related rights.
- c) "Rightholder" shall mean any person, other than a Collecting Society, who holds a copyright or related right or is otherwise entitled to receive a royalty in respect of use of Protected Material.

6) This Resolution addresses:

- a) the interaction of Rightholders and users of Protected Material with Collecting Societies; and

- b) the regulation of Collecting Societies, including accountability, transparency, the setting of royalty rates, distribution of revenue and enforcement by Collecting Societies.
- 7) More than 36 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. Thirty-six Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (see link below).
- 8) At the AIPPI World Congress in Istanbul in 2023, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

Legal Framework for Collecting Societies

- 1) National law shall allow for the existence of and provide a framework for the operation of Collecting Societies.

Scope of Regulation of Collecting Societies

- 2) Rules and regulations on Collecting Societies shall, to the greatest extent possible under national laws, be harmonised to provide an efficient and fair remuneration for Rightholders, to enhance predictability, reasonableness of terms and ease of obtaining a licence for users and to ensure transparency, equal access and fair distribution to Rightholders, and to improve governance.

Selection of Collecting Societies

- 3) If more than one Collecting Society is available, Rightholders shall be free to select a Collecting Society of their own choosing.

Royalty Rates

- 4) Collecting Societies shall provide a framework for setting royalty rates that is fair, reasonable and transparent and enables Rightholders and users to calculate the royalty rates that apply to a particular use. Controversies over the fairness of a royalty rate should be heard before an impartial entity. To the extent possible, the entity shall be specialised in the field of royalty rate setting.

Periodic Review

- 5) Collecting Societies shall periodically review and, where appropriate, adjust licensing terms, including royalty rates for users and remuneration to Rightholders. The time intervals for review shall be set considering the type and sector of the licensed Protected Material.

Enforcement

- 6) Collectively administered and non-collectively administered copyright and related rights shall be enforced according to the same procedures.
- 7) To enforce a collectively administered copyright or related right, Collecting Societies shall be:
 - a) contractually authorised by the Rightholder; or
 - b) authorised by statute.
- 8) The Rightholder shall not need to be joined as a party to enforcement proceedings. If necessary, evidence required to prove originality and ownership of the copyright and / or related rights may be obtained from the Rightholder.
- 9) Collecting Societies shall not be entitled to collect royalties where the application of copyright exceptions does not require the payment of royalties. However, where the application of certain copyright exceptions is contingent on the payment of a royalty, a Collecting Society may be designated as the organisation collecting that payment.