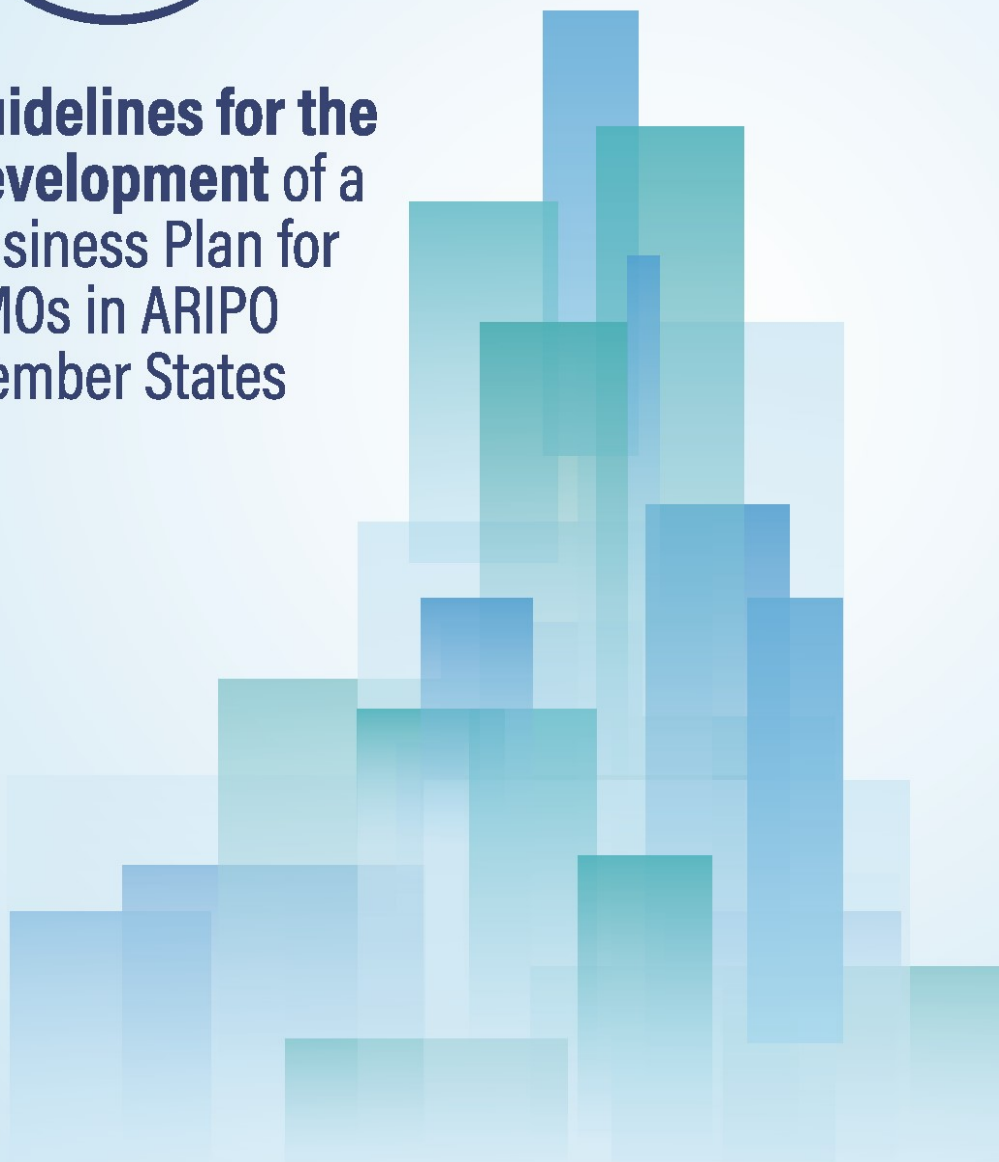




Guidelines for the Development of a Business Plan for CMOs in ARIPO Member States



**Guidelines for the Development of a
Business Plan for Collective
Management Organizations in
ARIPO Member States**

**ARIPO Office
Harare, Zimbabwe
2021**

Guidelines for the Development of a Business Plan for Collective Management Organizations in ARIPO Member States

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EXECUTIVE SUMMARY

The Consolidated Comparative Study on Copyright Laws of ARIPO Member States (2018)¹ shows that all ARIPO Member States do have relevant provisions in their Copyright Laws for the establishment of CMOs in their countries. Currently, there are 23 CMOs across 15 ARIPO Member States and the most recent to be registered in 2019 is the Lesotho Copyright Society of Authors and Artists (LESCOSAA). Member States such as Eswatini, São Tomé and Príncipe, Sierra Leone and Sudan are yet to establish a CMO, despite having provisions for such in their national copyright legislations. However, ARIPO is looking forward to facilitating the establishment of CMOs in the remaining Member States.

The fact that CMOs are mostly not-for-profit Organizations, does not mean they should not be run along professional and business lines. ARIPO has developed this tool so that it may be used to inform the Member States and the general public on how CMOs can operate as businesses and encourage the CMOs to develop strategic business plans to guide their operations.

A business plan is a roadmap that details where the CMO is going and how it will get there. It explains what the CMO is and how it will be operated. Having a good business plan will help the CMOs take advantage of the new developments and trends in the CMO market and minimize risks of failure to the advantage of the rights holders. A business plan may be used to seek for Public, Private, Partnerships (PPP) or engage international organizations to support the CMO initiatives. CMOs should endeavour to review and update regularly their business plans to reflect changes in the national, regional and international environment that they operate.

¹ <https://www.aripo.org/wp-content/uploads/2018/12/ARIPO-Comparative-Study-Report-V-1-2-Proof-13.11.18-1.pdf>

We hope that the Guidelines for the Development of CMOs Business Plan will be a useful tool for the success of all CMOs in the ARIPO Member States and Africa as a whole.

Bemanya Twebaze

Director General

1.0 INTRODUCTION

ARIPO received the mandate on Copyright and Related Rights during the Eighth Session of the Council of Ministers held from 29 to 30 August 2002 in Mangochi, Malawi. Since then the Organization has implemented strategies to ensure that copyright and related rights benefits its Member States. Over the years there has been improvement in the oversight role played by the Copyright Offices (COs) and significant developments in the management, and administration as well as increase in the number of CMOs.

During the Sixth Session of the Technical Committee on Copyright and Related Rights (TCCR) that was held at the ARIPO headquarters, Harare, Zimbabwe, from 7 to 9 August 2019, the TCCR recommended that the secretariat offer technical support to CMOs by developing a guide on business plan for CMOs, which would go a long way in the approach and manner CMOs carry out their activities to facilitate their development and growth.

CMOs in the ARIPO Member States, and Africa at large, have the potential to contribute to the growth and development of the creative and cultural industries. Recent studies show that creative industries contribute significantly to the Gross Domestic Products (GDP) of a country². However, they need to be supported, guided and supervised to ensure that they achieve the purpose for which they were created.

It is against this background that ARIPO has prepared these guidelines on the development of business plan to assist start-up and established CMOs to develop and regularly review their plans.

² An economic study commissioned by CISAC and prepared by EY in 2015 shows that Africa's creative and cultural industries were worth \$58bn and employed 2.4 million people. Within ARIPO Member States Botswana, Malawi, Kenya and Tanzania's creative industries contribute 3-5% GDP of national economy

2.0 DEVELOPMENT OF COLLECTIVE MANAGEMENT ORGANIZATION BUSINESS PLAN

2.1 Background

ARIPO developed the guidelines for the development of a business plan with the view to enhance the effective management of the rights of creators, authors, performers, producers and other rights holders. It is believed that a vast majority of businesses fail due to lack of a proper business plan. A business plan can help the CMO in achieving its goals in a more organised way. It facilitates the accomplishment of targeted activities and ultimately its objectives. A complete and a structured business plan will provide an overview of the CMO business, the challenges ahead and measures to transform those challenges into opportunities.

CMOs like any other business are exposed to repeated changes, innovations and all sorts of constraints. Every now and then the development of new technologies poses new threats and opportunities to the activities of the CMOs.

Policy makers across the globe including ARIPO Member States continue to grapple with the frequency at which new technologies are affecting CMOs operating environment, which calls for continuous reforms by lawmakers. For instance, the exploitation of works has been compromised, as users can easily reproduce works from the internet or digital spaces at their convenience without seeking any permission from right holders. The frequency at which copyright works are produced has forced copyright management systems to try and keep pace by embracing the use of technology and the enabling software. This however requires constant reformation of copyright policies and the deployment of effective monitoring mechanisms for the individual and collective management of copyright to the benefit of rights holders.

These and so many other challenges oblige each CMO to ac-
custom or adjust itself to “constant change”. This means that
planning, in the sense of preparation of future processes, los-
es its sporadic nature and is transformed into a permanent
activity.

2.2. Justifications

The value of creativity should not be underestimated. The
value chain of creative works can be realised through the col-
lective management of rights. Starting a CMO is like setting
up any other business, but what makes a CMO different
from other businesses is that the CMO is mostly a not for
profit society, which is shaped through collective effort and
group decision-making as well as a set of legal frameworks,
regulations and statutes or bye-laws that help to guide the
activities of the CMO for the benefit of right holders and soci-
ety at large.

The main reason for developing the guidelines for the devel-
opment of a business plan, is to emphasize the need to align
the activities of the CMOs to the organization's mission of
ensuring that its members and right holders benefit from
their works. It is also for the CMOs to coordinate and collabo-
rate effectively with clients, stakeholders, other entities, or
people with an interest in the CMO.

There is every need to ensure that CMOs are supported with
the right tools when executing their responsibilities in the
interest of not only their members, but also to encourage the
continuous creation of works for human consumption and
payment of royalties and remunerations to the rights holders.

2.3 Benefits of Developing a Business Plan

Most of the ARIPO Member States' CMOs are faced with the challenge of developing a business plan. The business plan allows the CMO to see the changing dynamics or complexities of the CMO business and whether the CMO is accomplishing its goals.

It also helps CMOs to keep on track by upgrading their membership, documentation, collection and distribution instruments, licensing mechanisms, communications, user's database, negotiations techniques among others. The vast uncertainties in businesses including CMOs needs proactive and flexible approach. This can only be achieved if CMOs plan properly. In principle, a perfect business plan is what would help to organise the business in a more proactive manner. It would help the CMO to foresee the unforeseen circumstances and take corrective actions even before it faces the actual situation.

This is the kind of approach ARIPO Member States CMOs should consider going forward. They need to start developing business plans which take into account the strategies on how to run the CMO, mitigate possible risk factors and foresee potential opportunities available in the future. These could be the opportunities and challenges of the digital environment and new emerging technologies such as artificial intelligence, block chains, 3D printing, or text and data mining, among others.

3.0 GUIDELINES FOR DEVELOPING A CMO BUSINESS PLAN

3.1 Profile of the Collective Management Organization

This section requires vital details about the CMO, such as the name of the CMO, its location, contact details, legal status, membership criteria, strength in terms of total registered members, human resource capability, the rights the CMO manages or intends to manage and what it hopes to accomplish and how it intends to carry out its mandate.

The business profile should also capture the vision, mission statements and core values of the CMO. This typically provides a clear understanding as to what the CMO wants to achieve based on its goals or objectives as the case may be. The plan should be bound to a specific timeline, for example, three to five years, short or long-term.

This section should also be able to highlight in detail the purpose for which the CMO was created. It should indicate how it will effectively enhance rights management for their members and ensure its clients, which may include users and intermediaries comply by paying royalties. It is also important to introduce in brief the initial plan that facilitated the establishment of the CMO. This will include; feasibility studies conducted, the legal framework and specific provisions for the establishment of the CMO, supervisory mechanism or the regulatory and institutional frameworks that govern the CMO.

Table 1 below is a guide to complete the business profile of the CMO. In the table, column one has questions that may help to build the profile, the second column provides an example of the expected answers to guide the CMO. Answer the question as it is read. Write the answer in column 3. Many of the answers to the questions can be found in your feasibility study reports.

Table 1: CMO Business Profile

| Question | Example | Answer |
|---|--|---------------|
| Background information | | |
| Name of CMO? | | |
| Address of CMO? | XX Alexandra Street, XXXX P.O BOX | |
| Contact details of CMO? | <ul style="list-style-type: none"> • Telephone No: • Email: • Website: • Social media handles: | |
| Legal status | Company LTD by guarantee, parastatal or part of a government ministry. | |
| Rights managed? | Musical works, sound recordings, audiovisual, literary, etc. | |
| What is the membership criteria? | <ul style="list-style-type: none"> • Musicians (composers, lyricists, performers [singers, session musicians, choirs]), track producers and music publishers • Profile • Actors of films and series • Pay a non-refundable fee membership or application fees. • Valid contact and banking details • National ID | |
| Number of registered members with the CMO | 2000 | |

| Purpose/Objective of the CMO | | |
|--|--|--|
| What is the objective of the CMO? | To ensure rights holders benefit from their works | |
| Vision and Mission of the CMO | <ul style="list-style-type: none"> • Vision statement: To become a global CMO. • Mission statement: Fostering creativity, production and better livelihood for creators and performers in XXXX | |
| Services offered by CMO | | |
| What type of CMO? | Single discipline or multi-purpose CMO | |
| Rights managed or intends managing. | Musical works, sound recordings, literary, audiovisual works | |
| Legislative framework | | |
| Provisions in legislation | Section (36), (40) Copyright and Related Rights 2000 | |
| Are there implementing regulations or rules or directives? | Yes: XXXXX Regulations | |

3.2 Marketing Plan

The marketing of any business is very crucial for its survival. It strategically provides the description of the services it offers with emphasis on the value that the CMO would be providing to rights holders, users and the public at large. It also presents a summary of the results of the creative cultural sector analysis (conducted as part of the feasibility study) with a focus on the available users of creative content and the opportunities and benefits of legal usage of creative works.

For the above reason, CMOs should endeavour to design their marketing plan in such a way that it captures the attention of key stakeholders, such as right holders, the users or clients, enforcement agencies and other relevant players within the repertoire they manage and the public at large.

The roles and responsibilities of the CMO should also be clearly defined and the services rendered need to be explicitly outlined for the benefits of members, clients and the public.

3.2.1 Communication Strategy

Traditionally, three forms of organizational communication flows have been recognized, namely; vertical (downward or upward), horizontal or lateral and diagonal. Often this is guided by the type of organizational structure adopted by a CMO, that is, how authority and responsibility is devolved within the society, the CMO's 'corporate culture' and how information is generally transmitted³.

The CMO will describe their strategies on how to reach the target membership and users or clientele by developing or

³ https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_2.pdf (see unit para.6 p.143, Unit 4.3)

revising the communication and information policies and procedures regarding the dissemination of information. Appointing a spokesperson, through which all communication is derived from is prudent, to avoid sending multiple and sometimes confusing information to the public. The medium of channelling communication should be well structured and frequently updated with relevant information such websites, newsletters or annual reports.

3.2.2 Medium of Communications

In recent times, mediums such as sms, official websites and social media platforms like Facebook, Twitter, WhatsApp, YouTube, Instagram, etc., have proven to be very efficient for visibility and service delivery. It is also very important to effectively utilize the electronic and print media. CMOs should develop “easy to read” manuals or flyers, which clearly provide very comprehensive information on how the CMO operates. It must provide solutions to the challenges faced by rights holders and creators.

The communication strategy may also include awareness creation initiatives by making available to the public relevant information through broadcasting, simulcasting and webcasting. Furthermore, the communication strategy may include measures to be undertaken in terms of publishing anti-piracy statements, increase awareness on anti-piracy issues, mechanisms for the development or procurement of Technological Protection Measures (TPMs), procedures or policies on take down notices and capacity building for rights holders and creators on managing their rights either collectively or individually.

3.2.3 Image of the CMO

Another crucial element is consistency. Whatever services the CMO claims to provide in the marketing strategy should be actualised and practiced as claimed. CMOs should not be over ambitious. They should always be honest and transparent by observing good governance systems. This will develop the confidence and trust of not only their membership, but also their clients and the public at large. The marketing strategy should be aligned to and be consistent with the goals or objectives of the CMO to enable compliance by users and trust from its members. Table 2 below outlines a sample plan for communicating the key messages about the CMO. A range of parties may be interested in your policy change, and you will need to determine:

- i. who they are;
- ii. what to tell them;
- iii. how to tell them;
- iv. who is going to tell them; and
- v. when to tell them.

Table 2: An example of the CMO Communication strategy

| Target audience: Who do the CMO want to inform? | Key messages: What do the CMO want to tell them? | Communication methods: How are we going to tell them? | Who is responsible for doing it? | Deadline: By when this needs to happen? |
|--|--|--|---|---|
| <ul style="list-style-type: none"> • Right holders • Users • Government • Partners • General Public | <ul style="list-style-type: none"> • About the CMO and its mandate • Collections and distributions • Awareness creation initiative • Stakeholders engagement • CMO projects, e.g. SACCOS, welfare program, medical scheme • Annual report • Anti-piracy statements and activities | <p>Through the following:</p> <ul style="list-style-type: none"> • Website • Social media platforms like: Facebook, Twitter, YouTube, WhatsApp Messages, etc. • Newspapers, broadcasting platforms like radio and TV • Advertisement. • Easy to read manuals and flyers | <ul style="list-style-type: none"> • Communication Department. • Appoint a spokesperson | <p>Develop a communication plan which will include:</p> <ul style="list-style-type: none"> • Time for engaging the mainstream media. • When to publish annual report and approved budget. • Social media can be engaged as and when necessary. |

4.0 OPERATIONS PLAN

The operations plan for the CMO should describe how the CMO will carry out its services or activities. It also provides details on the physical resources, which includes land, buildings and other structures, vehicles and other equipment the Society may require to execute its duties. These are the tangible assets that the CMO will use to provide or deliver effective services to its clientele and the creative cultural sector at large. The operations plan must present how the (CMO) will ensure adequate and quality service delivery and risk mitigation and safety of the whole operation.

Apart from securing significant domestic mandates from national rights holders, CMOs should also consider initiating and entering into bilateral and multilateral agreements with other CMOs. Under the scope of public, private partnership, the Society can engage or sign cooperation agreements with private entities to; increase awareness and capacity building, lobbying on behalf and in the interest of its members on matters of their concern and develop effective negotiations strategies for licensing and tariff agreements.

The operations plan should describe how the CMO will be operated regarding logistics, revenue mobilization, sourcing of inputs from experienced peers in the form of mentorship and the health and welfare of staff and members of the CMO. The process will vary depending on the type of CMO, that is, whether it's a multi-purpose CMO, like the Copyright Society of Malawi (COSOMA), which deals with all rights or a CMO mandated to manage specific category of rights, for example, CopyGhana, which only deals with certain Reproduction Rights. The business plan should show how the CMO intends to provide quality services in fulfilment of its mandate. Table 3 contains guiding questions the CMO may need to answer to inform the operations plan.

4.1 Physical Resources: Facilities and Equipment

The CMO should identify the facilities and equipment that are required for its operations. The CMO must make such basic considerations in choice of location, as identifying the source of electricity, that is, whether it will be from the national grid, generators, solar or any other renewable energy source. Water supply is very important for sanitary and healthy working environment. Its sources could be municipal supplies or borehole water facilities. Another very important element is easy access to communication facilities, like telephone lines, fibre optic or internet lines.

It is also very important for the CMO to plan for the easy mobility of its staff members, especially those in the licencing departments by providing transport in the form of official vehicles or motor bikes. Other facilities for its staff and society members may include, conference/boardrooms for meetings and seminars, canteen/kitchen for refreshment purposes, health and well-being. These among others, are needed to positively enhance staff moral and performance. For instance, the lack of mobility to users can seriously affect the execution of duties and in turn, low collection of royalties and inadequate or no enforcement of rights holder's rights. The business plan should show how the CMO is going to acquire these facilities and equipment for it to operate effectively.

Most importantly, the location of the CMO's offices should be very strategic and easily accessible to rights holders, users, the public including disabled men and women. Parking bays and waiting rooms also have to be clearly defined. Finally, the advantages and disadvantage/s of the location should be clearly identified in the plan and measures put in place to mitigate the disadvantages.

4.1.1 ICT Infrastructure

Another important factor that will ensure smooth operation is proper ICT infrastructure. This should be well planned and show how the CMO intends to develop its ICT to match with modern day technologies. This may include developing meta data for easy monitoring systems to facilitate royalty collections. Systems such as (bmat Music Innovators, 2020) <https://www.bmat.com/>: can be deployed. BMAT Music Innovators, which started in 2005, is engaged in the monitoring and reporting of music that is played on televisions, radios, entertainment venues such as night clubs and digital services globally. The system can tell when and where any song is played and provide the metadata that describe who owns the rights to each track⁴.

The proposed business plan should be able to identify essential software tools, equipment required and policies on maintenance and procurement of assets and software licenses. Communication accessories such as phones, domain names and others should be clearly planned for in the Business Plan.

4.1.2 Work Process

After achieving the above, it is also prudent that the CMO incorporates the work process in the operational plans. This will clearly define the day to day running of the CMO and how departments would work together to achieve the goals or objectives of the CMO. In this regard, criteria for membership, negotiation mechanisms, policies or procedures guiding the collection and distribution of royalties to rights holders, reporting templates, procurement policies and other related activities should be well planned and documented.

⁴ The music identification uses audio fingerprinting for music monitoring to report every music usage across radios, TVs, clubs and digital services), and other available online systems

Having all this in mind, a new CMO requires guidance from other CMOs. This should be well catered for in the CMO business plan. The guidance can be in the form of mentoring, which means “a long-term relationship where an established CMO function as a mentor for an emerging CMO, based on an agreement between the two. It is very important for the start-up CMO to identify in the plan the approach for the engagement of a mentor, taking into consideration the experience of the CMO, rights and bundle of rights it manages or administers, legal systems, and the like. The mentorship agreement, can be defined in the plan, as a continuous relationship over a period of time or specific period. Typically, mentorship arrangement starts when concrete plans exist to establish CMO and a working party has been established, and lasts until the newly established Collective Management Organization is fully operational”⁵.

4.1.3 Tariff Guidelines

In the case where the CMO is already in operation, it will be very important to include in the business plan examples of the principles and methodologies used to come up with different tariffs the CMO uses, how the collected royalties from different usage are distributed, how the CMO intends to utilise its social and cultural funds and the administrative cost derived from the collected royalties and other sources of income.

For example, in tariffing there are important things to take into account, these include the type of business, the value to the business of the rights being licensed, where the business is located, inflation rate, economic growth, coverage, environment, size of business in terms of new business or old business and the activities of the business whether they have the

⁵ http://www.ifrro.org/sites/default/files/BAT_IFRRO_navigable_0.pdf (p.7 para. 1.3) of the IFRRO Mentoring Handbook)

potential to attract customers in the shortest time or not; number of customers the business can accommodate; what actually happens in the business (the services and products provided), late payment fee (can be in percentage or double the tariff) and infringement fee (can be in percentage), etc. It is worth noting that tariffs need to be reviewed every now and then to accommodate the above.

In short, the CMOs have to demonstrate in this section that the proposed business plan is beneficial to all stakeholders involved including society at large. This can be achieved by allocating some percentage of the generated income to social and cultural funds, welfares and medical scheme for the rights holders and wider promotion of culture or production of cultural goods. Considering that the CMOs are not for profit organizations, it is good to have in mind the main objectives of a CMO, which are primarily the collection and distribution of royalties to rights holders and creators. The users of the repertoire or bundle of rights that the CMO manages is the lifeline in achieving the CMO goals.

Table 3: Guiding questions and examples to develop operation plan for the CMO

| Question | Example | Answer |
|--|---|---------------|
| Where the CMO will be located? | Main office and branch address | |
| What are the advantages and disadvantages of the location? | <ul style="list-style-type: none"> ● Very close to town ● Not accessible to physically disabled person | |
| Which facilities and equipment the CMO needs? | <ul style="list-style-type: none"> ● Offices for employees; ● ICT infrastructure; ● Conference room; ● Board room ; ● Mobile devices for licensing activities; ● Kitchen; ● Security; ● Energy supplies; and ● Transport (vehicles/ motorbikes). | |

| | | |
|--|--|--|
| Which software the CMO need to procure? | <ul style="list-style-type: none"> ● WIPOCOS ● WIPOCONNECT, COSIS, DISTRO, WISE ● Software to store meta data. ● Bmat music monitoring system or any other effective monitoring and matching system | |
| What type of training the CMO needs for staff and right holders? | <ul style="list-style-type: none"> ● WIPO Academy: DL courses on Copyright and Collective Management, Professional courses, Summer school courses. ● CISAC future learn courses. ● NORCODE Copyright and Collective Management courses. ● ARIPO Academy courses, etc. ● Secondments/attachments to other CMOs | |
| Whether mentorship is needed and who will mentor the CMO? | <ul style="list-style-type: none"> ● XXXX Copyright Society of XXXX | |
| What is the work process? | <ul style="list-style-type: none"> ● Organogram, workflow and working procedures. | |
| Who can be a member of the CMO? | <ul style="list-style-type: none"> ● Local and foreign rights holders. | |
| Who are the clients and licencing process? | <ul style="list-style-type: none"> ● Users database to be created, with key meta data and updated every time, setting of licensing techniques, negotiation skills and good practice tariff guidelines or prices. | |
| When and how to distribute each category of collected royalties? | <ul style="list-style-type: none"> ● Broadcasting royalties: may need to collect data from users or monitoring systems to distribute royalties to rights holders at an agreed frequency. ● Public performance royalties ● Reproduction rights royalties ● Audiovisual royalties ● Rental royalties ● Communication to the public royalties ● Resale rights royalties ● Frequency of distributions with published dates | |

5.0 MANAGEMENT PLAN

The basic structural arrangement of a Collective Management Organization is made up of the following authorities: General Assembly, Board of Directors, Director, Chief Executive Officer or General Manager, as the case may be.

The General Assembly of members is the societies supreme authority. However, it is not responsible to make decision on every important issues. The Assemblies' powers relate to the election of the CMOs' other bodies like the Board of Directors and external auditors. The General Assembly also approves or rejects the annual report, balance sheet and operating accounts, in addition to that it deals with the main issues affecting the CMO, such as: approving and amending the statutes and by-laws relating to membership and distributions, designating rights covered by CMO and fixing the administration deductions and allocations to social protection and cultural promotion and the dissolution of the CMO⁶.

The make-up of a CMO, may depend on the type of society under operation based on the national legislation. It can either be a company limited by guarantee, parastatal or part of a ministry setup somewhere in the state administration, or an agency.

Collective Management Organizations' Board of Directors consists of members elected by the General Assembly and one of its members is appointed as chairman by the assembly or the Board of Directors. The composition of the board varies and depends on the legal system of the jurisdiction in which, the CMO operates. For example in Common Law systems the Board of Directors is usually a unitary or single board appointed by shareholders or general assembly, which in turn delegates its authority to various levels and components of management usually led by a General Manager, Chief

⁶Para.96-97 of Copyright Collective Management in Music- WIPO Publication NO.789(E)

Executive Officer or Managing Director⁷. Members of the Board may include, authors or right holders, government or corporate representatives, individuals and professionals. The Board is mainly responsible for the sound operation of the CMO.

However, initial and subsequent training of the Board of Directors and Director of the Collective Management Society is very important and should be well-structured in the business plan, According to Dr Ulrich Uchtenhagen in his WIPO Publication titled “Copyright Collective Management in Music” noted that, the Director will then facilitate the drawing up of the Statutes or the principles of the Copyright Collective Management Society, such as and not limited to:

- i. Equal treatment of all rights held by national and foreign authors;
- ii. Taking into consideration the moral rights of authors;
- iii. The reservation that the society can abandon the exercise of the rights entrusted for social or other reasons;
- iv. The principle that the society authorises client to use the music in its repertoire when the client offers assurances that the music will be used correctly and properly, and when he is solvent;
- v. Equal treatment of all clients and the principles that all remuneration is calculated based on approved and published tariffs;
- vi. The society non-interference in the selection of works by clients for e.g. musical works.
- vii. The principle of fair distribution of royalties as per the use of their works;

⁷ https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_2.pdf (See p.25, para.39)

-
- viii. The principle of complete distribution and pay the fees to authors, performers, producers and publishers at least once in a year;
 - ix. The obligation to draw up distribution rules and enforce them to the latter;
 - x. The allocation of an agreed percentage of the net collection proceeds to social protection and cultural promotion⁸.

5.1 Preliminary Stage

For a start-up Collective Management Society, it is also advisable to wait for the outcome of the negotiations of licensing and on the main tariffs and a receipt of the first copyright payments before recruiting too many staff. Notwithstanding, some CMOs do receive seed capital from government or other forms of subvention and can therefore recruit staff so that they can start the licensing activities. Usually it takes some time before most users or clients pay the invoiced amount. Other CMOs receive donations from partners to support their activities for a certain period of time.

In terms of purchasing equipment such as computers and the like, it would be risky to equip oneself with sophisticated and very expensive computer systems when a simple personal computer could be sufficient at first for setting up databases. The CMO should also be cautious on the priorities given to clients. This should be done with a cautious approach, without rushing. For instance, the CMO dealing with musical works may consider starting with broadcasting organizations and telecommunications companies. The later have proven to be a quick revenue stream for CMOs through ringtones, caller ring back tones and reproduction rights. An example is

⁸ Para.93-94 of the Copyright Collective Management in Music
- WIPO Publication NO.789(E)

that some telecom services pay for these rights to the CMOs. Users such as broadcasters and chain stores are mostly classified as big clients or users, while night clubs, hotels, bars, restaurants are classed as medium or smaller users. In most cases broadcasting organizations and telecoms have proven to be the most important client, whose payments will enable documentation and distribution services to be set up without being crippled by collection costs. As a new CMO, this simple client may suffice, before considering others such as: phonographic industries, hotels, restaurants, etc.

5.2 Human Capital

The management plan describes how the CMO will be structured in terms of organogram, criteria and number of selected board members, recruitment process, tenure and succession plan for the Executive Director, CEO or Manager as the case may be. It also identifies the human resources and skills required for employability, duties and defined responsibilities of staff Members. The organogram is mostly drawn using boxes for the job titles or functions and vertical lines to demonstrate the reporting relationships of supervisors and their reporting staff. The below organograms are samples that may be customized to fit in different cases. Figure one (1) below is a sample of a start-up CMO organization chart, while figure two (2) is a sample organization chart for an already operating CMO.

Figure 1: Sample organogram for a start-up musical work CMO

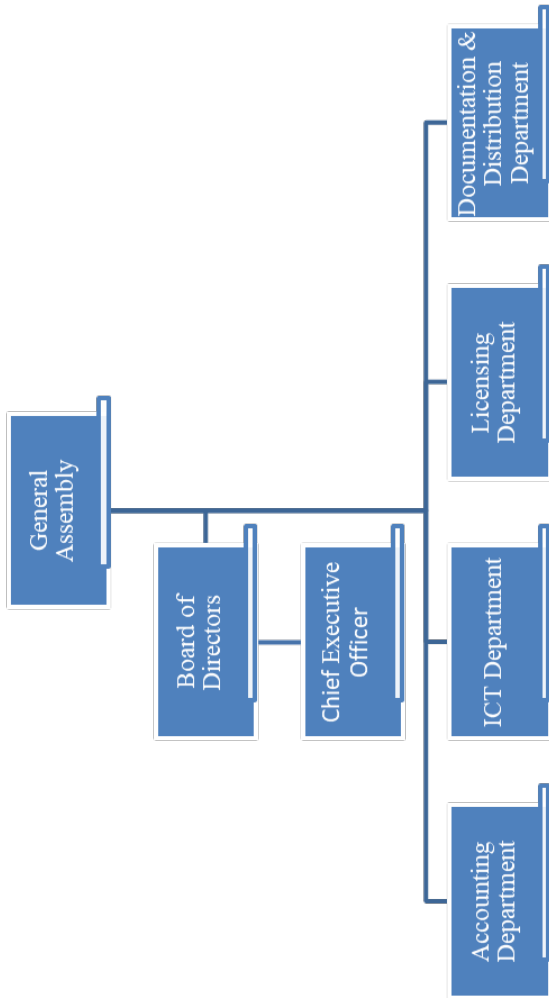
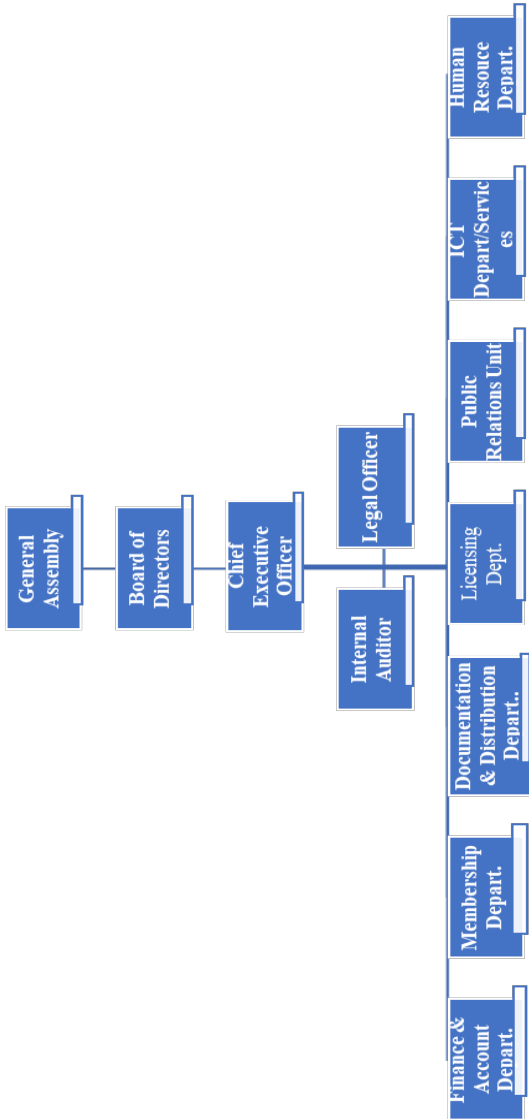


Figure 2: Sample organogram for an operational musical work CMO



After completing the CMO organizational chart, which shows the structure of the CMO, a description on the specific duties of each of the positions and the required skills, experience, and other qualifications should also be documented. Procedures for the recruitment of staff, procurement and other administrative processes should be identified and included in the business plan. For this activity, only describe positions starting from the Director/CEO/ Manager as the case may be, to the workers. Consideration should also be given to staff training and most importantly, a plan for the health and social security welfare for members and employees of the CMO. This will enable the CMO to develop a very strong and effective work force to deliver efficient services to its members and clientele.

6.0 FINANCIAL PLAN

The Financial Plan section of the CMO business plan provides details on how funds will be generated for the initial operation of the CMO, prior to the full operations of a start-up CMO and already existing CMO. This could either be subvention from government or other international partners for a start-up CMO, while existing CMO should consider reviewing their membership, documentation, collection and distribution instruments including tariff guidelines. This could be in a form of planned activities and budget required for the implementation of the same. The plan should also provide projections that would show the survival of the CMO until it starts licensing users and enhances the effective collection and distribution of royalties to rights holders. It is recommended that the CMO reviews its financial standings and annual budget before finalizing the business plan.

6.1 Income Generation

It is also very important to know whether the CMO can secure significant income to pay royalties for authors, composers and publishers, and also to cover the management cost. For a long time, a certain opinion was of the view that autonomous collective management of copyright was risky in a country with smaller population of inhabitants. Development in information technology and international cooperation on documentation have changed this perspective. For example, twenty-five years ago, Namibia, a country covering some 825 600 Km² which then had 1,6 million inhabitants began with an autonomous private Collective Management Society; the experience seems to have produced increasing returns for rights holders in musical works. The basis of the success was the preparation of realistic plan, including estimates of income anticipated by the Namibian Society of Composers and Authors of Music (NASCAM⁹) which is still providing services today.

⁹See <http://www.nascam.org/index.php/about>

In preparing a projected income statement for a new CMO, the statements should show how much it will earn or lose during a given period of time, how many licensed users the CMO has and amount expected to collect from them, estimated amount of royalty collection from international income, projected membership drive of the CMO, expenses incurred in the running or operation of the society and income from other sources. The cash flow projection from those revenue streams should include the amount of money that the CMO is expecting as income and money that will be going out to members as royalties and social cultural funds and welfare medical schemes and administrative expenses.

It is also good to plan for royalties collected on behalf of affiliated organizations that the CMO has agreement with. The projection is useful to determine the viability of the CMO, particularly its capability and frequency of distribution of royalties, running cost needed for the day to day operations of the CMO or services such as contributions to the development of the socio-cultural development of the country and the overall operations of the CMO. The cash flow statement monitors the flow of cash over a period of time (a year, a quarter, a month) and shows you how much cash is at hand during a given period. It also shows you whether the cash position has improved and by how much during a given period (for example start of CMO and after 24 months of operation).

6.1.1 How Can the Probable Income of Collective Management Society be Examined?

The accounts of the state broadcasting and television organization should be examined as a priority in order to know what its income is and, if that income is treated as a state secret, the income from advertising should be estimated. According to Dr. Uchtenhagen, a supplement of 1 to 1.5% will be applied to the amount of the income, the product will be considered to be the copyright royalty which the organization

would pay from the very beginning. If a third of these fees is sufficient to cover cost of a small administration “being setup”, a Collective Management Society will be considered viable¹⁰.

In ARIPO Member States the tariff for broadcasting organizations varies. For example, in Zimbabwe the community radio stations are charged 1% of their gross revenue per annum and commercial radio stations are charged between 2.5 to 3% from gross revenue per annum for the use of musical works. In Malawi, the Copyright (Licensing of Broadcasting and Public Performances) Regulations 2016, stipulates that the broadcasting tariff is calculated by the percentage of musical content and the percentage of gross revenue or gross operating costs as per the below formula:

| Tariff Classification | Fees per year | | Infringement fee |
|---|--|---|-------------------------|
| Tariff B For radio/television broadcasts in Malawi | Percentage of gross air time revenue or gross operating costs if revenue is less than operating costs as follows:- | | 3% per annum |
| | % of musical content | % of gross revenue or gross operating costs | |
| | 1-10 | 1% | |
| | 11-20 | 2% | |
| | 21-30 | 3% | |
| | 31-40 | 4% | |
| | 41-50 | 5% | |
| | 51-60 | 6% | |
| | 61-70 | 7% | |
| | 71-80 | 8% | |
| | 81-90 | 9% | |
| | 91-100 | 10% | |

| <i>(Subject to minimum fee per annum as follows)</i> | | |
|---|--------------|-------------|
| • Religious, educational or community station broadcasting within 200kms radius | 3% per annum | K200,000.00 |
| • Religious or educational station broadcasting in more than 200kms radius | 3% per annum | K400,000.00 |
| • Commercial stations including public broadcasters | 3% per annum | K600,000.00 |

In Tanzania, the Copyright (Licensing of Public Performances and Broadcasting) Regulations 2003, provides that the broadcasting tariff is calculated in the same formula as Malawi on the percentage of musical content and percentage of gross revenue/ operating costs. For example, if the musical content is between 1 to 10% the broadcaster will pay 1% of either the percentage of gross revenue or the percentage of operating cost if musical content is between 51 to 60% of musical content the broadcaster pays 6% while 91 to 100% of musical content the broadcaster will pay 10% of either the percentage of gross revenue or the percentage of operating cost.

To prepare an income statement, you need to know how to compute profit and loss, that's why in the human resource recruitment plan a qualified financial officer and accountant should be catered for. The CMO will need to review its previous outputs and write them in an income statement template. The internal and external audit system should be included in the plan, this is to ensure transparency and accountability as the funds managed by the CMO are effectively owned by the rights holders and should be accounted for professionally. Hence the need for proper valuation of rights and usages; discourage arbitrary interference in rate setting between CMOs and Users without reference to economic studies, valuations of usages, good practice and where disputed, a reference to the Copyright Tribunal or Competent Authority is essential.

While the income sheet shows what the CMOs earning, the balance sheet shows the total worth of the CMO. A balance sheet adds up everything the CMO owns, subtracts everything the CMO owes, and shows the difference as the net worth of the society. The balance sheet reflects the financial position of the business at a given period (for example end of the year), this includes the assets, liabilities and retained income of the CMO.

7.0 RISK MITIGATION PLAN

The CMO business like any other business, is susceptible to incidents that will hinder the success of the initiative. The fact that there are many potential disruptive threats, which can occur at any time and affect the normal business process, calls for proactive planning.

This can be caused by internal or external factors. The external factors can be natural disasters or health pandemics such as the Covid-19 pandemic that has affected the entire globe. It is very easy to focus on external risks and ignore the internal risks that could be very costly and damaging. As Diana Walker indicated, the top internal risks are; lack of communication and integration, prioritising rules over dialogue, cyber information systems compromises, not looking to the future and risk aversion¹¹.

In the risk mitigation or aversion plan, it is very important to identify and critically examine each potential external and internal risk, be it environmental or emergency situations and focus should be on the level of disruption it may cause and actions to be taken to mitigate such from occurring. The mitigation plan should cover all aspect of the CMO business from legal status, membership drive, licensing, collection and distribution, enforcement, etc. It is only when there is an awareness of these risks that when they occur, they can be quickly addressed to avoid their potential adverse effect. Table 4 is a sample of risk mitigation plan:

¹¹ <https://www.readinow.com/blog/crucial-organisational-risks-you-need-know>

Table 4: Risk Mitigation plan

| Risk identified | Comments on Risk | Mitigation | Action to be taken | Frequency |
|--------------------------------------|--|---|---------------------------|------------------|
| Legislative environment | Outdated legislations and regulations | Advocate for the updating of national copyright laws and regulations. | | |
| Statutory CMOs | Government established CMOs | Guideline in the law to ensure non-interference and the independence of CMOs. | | |
| Political instability | Civil unrest and government interference | <ul style="list-style-type: none"> • Develop well-tested business continuity and crisis management plan. • Identify and assess potential impact of unrest in the environment they operate, taking into consideration, rights holders, creators, users and other key stakeholders. | | |
| Membership drive | Lack of membership or their mandates makes it difficult for licensing agreements | <ul style="list-style-type: none"> • Initial and frequent engagement of rights holders to register and assign their rights to the CMO. • Nationwide sensitization drive. | | |
| Transparency & Good Governance (TAG) | Lack of TAG for any CMO affect right holders and public trust. | <ul style="list-style-type: none"> • Develop effective institutional frameworks to enhance TAG • Increase capacity on TAG issues. • Government to provide adequate support and effective supervisory role to CMOs | | |
| Low income | Lack of seed money or non-payment of royalties by users | Engage users and seek government support to enable royalty collection and seek support from NGOs or partners. | | |

| | | | | |
|-------------------------------------|---|--|--|--|
| Distribution | Lack of distribution instrument or failing to distribute on time and transparently | <ul style="list-style-type: none"> • Develop effective <ul style="list-style-type: none"> - distribution rules - usage monitoring and matching systems • Transparency, accountability and good governance | | |
| Inadequate communication | Communication gap or inconsistencies | <ul style="list-style-type: none"> • Effective communication flow | | |
| Digital environment and Cyber crime | The digital environment is evolving at a faster pace and cybercrime is at the high. | <ul style="list-style-type: none"> • Engage authorities to update national laws to meet the current digital environment. • Acquire the necessary tools to exploit the digital environment | | |
| Extreme government interference | Government interfering in CMOs daily activities may cause delays to implement some of the activities. | <ul style="list-style-type: none"> • Put in place guidelines or provisions in laws to guide the extent that the government may be involved in the CMOs activities | | |

8.0 ENFORCEMENT

In most countries the fight against piracy is under the purview of the Copyright Office (COs), notwithstanding that, the COs do cooperate with CMOs and other enforcement agencies. As the main duty of a CMO is the collection and distribution of royalties, the last step should be the fight against piracy as that is very expensive and has little or no effect if the society is not supported by other organizations or authorities. CMOs however, should endeavour to include in their business plans how they will engage in enforcement activities as prescribed by their national legislations.

CMOs should consider engaging authorities and relevant stakeholders in the fight against digital piracy and online infringement of copyright. It is also important to include in the plan, strategies on potential infringements of copyright in emerging technologies and anticipate future disruption in the copyright environment.

9.0 MONITORING AND EVALUATION PLAN

The monitoring and evaluation (M&E) plan helps to track and assess the results of the interventions throughout the implementation of CMOs planned activities or strategies. It is a document that should be referred to and updated on a regular basis. While the specifics of each planned activity of the CMO will look different, they should all follow the same basic structure and include the same key elements.

CMOs may consider the following steps in developing their M&E plan; firstly, the CMO should identify strategic goals and objectives within the mandate of the CMO and the strategic plan of the CMO. This step pinpoints the challenges and the measures put in place to address or solve the said challenges and success rate in percentage. Secondly, the M&E plan may define the indicators and data collection methods and timelines. The indicators should be a mix of those that measure processes and outcomes. Thirdly, to identify M&E roles and responsibilities, that is, who is responsible for collecting data for each indicator. An easy way to put this into the M&E plan is to expand the indicators table with additional columns for who is responsible for each indicator. Penultimately, the CMO should create and analyse the M&E plan, reporting template and disseminate or report findings and provide a conclusion to the entire process.

10.0 REVIEW OF THE IMPLEMENTATION OF THE BUSINESS PLAN

Finally, there is every need for CMOs, especially those already operating to consider reviewing the CMO business plan after a certain period of time. This could be annually, two years or three years. The plan should describe the outcome of annual reports, including financial and other qualitative performance. A review should be made on available monitoring mechanism to identify gaps, capture membership strength or weaknesses, documentation accuracy, tariffs, collection and distribution instruments, visibility and public perception and more importantly hold the General Assembly consistently.

It is highly recommended to use the SWOT¹² analysis to review the entire activities of the CMO, which can help to identify what the CMO is doing right and what needs to change. SWOT analysis is also a source of guidance on the opportunities available and treats that may be faced. Lastly, CMOs should ensure corrective measures to be taken into consideration and immediate actions taken regarding revised outcomes and recommendations from supervisory authorities, General Assembly and Board of Directors.

¹² SWOT analysis (strengths, weaknesses, opportunities and threats analysis) is a framework for identifying and analysing the internal and external factors that can have an impact on the viability of a project, product, place or person. (<https://searchcio.techtarget.com/definition/SWOT-analysis-strengths-weaknesses-opportunities-and-threats-analysis>)

11.0 CONCLUSION

CMOs can only succeed and serve their purpose if they are considered as any other professional business. The guidelines will go a long way in assisting CMOs develop their own business plan. The conclusion of a business plan should be precise and brief, reiterate the opportunities, highlight the key strengths of the plan, summarise the vision, and remind the public why the CMO business is in a position to successfully execute the plan.

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