

# Exposé

**Titel der Dissertation**

## **System and Functioning for Collective Management of Copyright and Related Rights in EU and EAEU**

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## Introduction

*"We should strive to harmonize the standards of the EAEC and the EU ...  
There are so many technical problems that should be solved a decade"<sup>1</sup>*

*Alexander Mashkevich, chairman of Eurasian  
Resources Group Board of Directors.*

A tremendous amount of work was carried out on the development of copyright until it became the modern system of copyright protection which we recognize today. The invention of printing machines allowed a huge number of people to receive information in a short time. However, humanity doesn't tend to remain complacent. On the contrary, society moves forward at a rapid speed, especially with the full integration, for example, of the internet into our lives, so that we constantly have to adjust and keep up with all the changes along the way. We send and get information immediately, and have to make decisions in response faster than ever before. This means that we have to analyse situations around us as well as our feelings about how to behave more appropriately, all much faster. As a result, we have to be online almost all the time, which keeps us in a stream of the changes all around us. The task of being in that stream is more complicated for business people, companies and those who are providers of information and innovation. It is also complicated due to the political and economic situation all over the world. In one place, we have sanctions, in others brutal repression. Meanwhile, politicians of many countries are struggling for access to energy resources, solutions to the world economic crisis and many of other global problems. However, at the same time, people continue to come up with wonderful creations protected by copyright almost all over the world. Today, as humanity is already far ahead from the time of the beginning of globalisation and we already live in a world of smart phones and smart homes on top of the world of the internet, where users mostly transcend borders—it is of paramount importance to create an effective legislative basis for providing authors, users, copyright holders and collective management organisations (hereinafter the "CMOs") with smart instruments to protect and defend both exclusive rights and moralrights, and to try to find the most efficient way to pass legislation which would be universally applicable. The main jobs devoted to CMOs involve responsibility not only for the provision of remuneration, but likewise for providing authors and copyright holders with information on copyright (legal) novellas. Here I would like to point out that the world we live in is mostly unpredictable, and indeed quite changeable.

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<sup>1</sup>On June 1, 2017 at SPIEF 2017 was held the section "European and Eurasian integration. conjugation prospects". During the section were made various conclusions concerning the EA and EAEU business collaboration. Information on the section and speeches can be found here - <http://eurasian-studies.org/archives/3832>

In accordance with a list of European Union (hereinafter the "EU") CMOs per Member State, more than 260 CMOs exist in Europe<sup>2</sup>. To date, they are supposed to comply with the requirements of the Directive On Collective Management of Copyright and Related Rights and Multiterritorial Licensing of Rights in Musical Works for Online Uses in the Internal Market, which entered into force from 5 May 2016 (hereinafter the "CMO Directive"). The Directive still raises questions among CMOs concerning the integration into daily work. In particular, they are about objective criteria for rejecting membership of a right holder or CMOs' concerns about transparency, governance and the handling of revenues collected on behalf of right-holders, about new online business models, which might lead to incorrect invoicing, dual invoicing, or sometimes no invoicing at all, and other questions, which I would like to highlight throughout the course of this thesis.

On 10 November 2017, an agreement, the Procedure for Collective Management of Copyright and Related Rights, was subsequently signed by vice-premiers of the Member States of the EAEU (hereinafter the "CMO Agreement")<sup>3</sup>.

The CMO Agreement envisages a uniform approach to the aspects of Collective Management in Eurasian Economic Union (hereinafter the "EAEU"). Among the most important provisions are those which deal with the economic issues of collective management of copyright. In particular, they include questions of establishment of a maximum amount of deduction from the collected remuneration as well as questions of regulation of accountability and public reporting. It comprises provisions of compulsory audit of the procedure for collection, distribution and payment of remuneration and regulation of the timeline for the distribution and payment of remuneration to authors and other right-holders collected by the organization charged with the collective management of copyright and related rights. It furthermore introduces a law governing the procedure for the deduction of payments for social, cultural and educational goals by the organization charged with the collective management of copyright and related rights. The CMO Agreement also assures further harmonization of the legislation of the Member States through the incorporation of responsibilities for the violations into the legislations of those respective Member States. Responsibilities are related to the use of objects of copyright and related rights without a right holder's consent, a failure of the user of a copyright object or related rights object to pay remuneration and/or reluctance on the part of the user to transfer funds designated for the

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<sup>2</sup>List of Collective Management Organisations per Member State can be found on Web-site of European Commission following this link <https://ec.europa.eu/digital-single-market/en/news/publication-collective-management-organisations-competent%20authorities-collective-rights-management-directive>

<sup>3</sup>News feed of Official Web-Site of Eurasian Economic Commission - <http://www.eurasiancommission.org/ru/nae/news/Pages/13-11-2017-1.aspx>

payment of remuneration, as well as a failure of the organization charged with the collective management of copyright and related rights to pay collected remuneration to the right-holder resulting from violation of the collective management procedure by the given organization.

## **Preliminary Table of Contents**

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## **Research Problem**

CMOs are criticized for their structure, operation system, provision of licences to users and to other organizations, profit transfer to the authors and holders of copyrights and etc. In this practical realm, we must admit that all the aforementioned problems are rooted in reality. There should be more transparent management of copyright as well as effective application of the legal instruments provided at the EU level and at the EAEU level. These legal instruments will be considered and analysed during the research process.

## **State of Research**

This research will consider the positive and negative aspects and probable prospects for further development. Issues include questions of the application as well as issues raised by organizations for the collective management of copyright.

### *1. Implementation of the CMO Directive into national legislation*

In this part of this thesis, I will examine and analyse the processes of implementing the norms of the CMO Directive and issues related to the harmonization of national legislation on CMOs in accordance with the CMO Directive as well as questions raised concerning the issuance of the licenses among CMOs, users and other organisations. Methods of the integration of the legal provisions in question into CMOs' daily work along with changes in their structures will be considered. Topics of special interest in this research are as follows: provisions of social, cultural and educational services for the benefit of their right-holders and the public, freedom of choice of a *collecting* society and the obligation to manage rights, unless objectively justified reasons are present, withdrawal or termination of authorisation to manage rights and consent for each right or category of right or type of work, as well as case laws.

### *2. Harmonisation of the CMO Agreement with national legislation*

The Eurasian Union is a fairly new union aimed at regional economic cooperation. In this regard, the regional integrations as EU the EAEU vary by the fact that the EU is not only an economic integration, but also a political one in nature. However, since the management of copyright in terms of business is an economic issue, it would be of great interest to consider the extent of the difference or similarity in the development of legislation on CMOs between the aforementioned Unions.

Of course, countries in their law-making processes are trying to adopt the best practices of both foreign states and possibly their own, which from the historical point of view would have the most positive impact. Nevertheless, in this work I would like to consider such large and serious regional integrations as the EU and EAEU. It is important to understand that the EAEU is seriously preoccupied with the experience of the EU from inception through development and up to now, including both negative and positive experiences.

It is therefore important to analyse the CMO Agreement in terms of adopting the best practices of the EU. However it must also be kept in mind that the countries of the EAEU have historical and geopolitical differences. This, at least, can be seen from the number of CMOs as well as the number of registered rights in EAEU member countries, despite the fact that in principle, objects protected by copyright do not have to be registered. It is possible that in spite of the fact that the

EAEU represents a rather new mechanism of regional integration, positive practices of its legal norms will be revealed, which in its turn can be assessed as effectively applicable and moreover have positive effects on the development of copyright.

### **Summary of Central Issues/Questions to be Resolved**

1. Analyse the CMO Directive and the CMO Agreement and other legal acts in question for harmonisation and applicability in these regional integrations.
2. Identify important similarities and differences regarding paths of development and implementation of the EU and EAEU legislation in the territories of application.
3. Analyse the key judgments of the European Parliament and the Council as well as of the Eurasian Economic Commission.
4. Examine case law and legal practices on the part of EU and EAEU in relation to the CMOs.
5. Synthesise the findings in order to determine and to identify the positive and / or negative aspects of the development of the CMOs which could be considered best practice to date
6. Consider feasible new ways of developing cooperation between regional integration measures on CMOs.

### **Disciplinary Significance of Thesis**

It is hoped that the research will allow study and identification of which stages of development of regional integration measures constitute the best practices that in their current form or would be the most effective and successful in collective management of copyright and related rights at the regional level, taking into account the complexity of implementation and the application of regional legislation. I would venture to hope that the work will allow identification of the most effective and beneficial paths of cooperation for both levels of regional integration.

### **Foreseeable Setbacks**

One setback lies in dealing with the complexity attached to the process of accessing official documents, judicial decisions and case laws in some of the Member States of the regional integration (EU and EAEU) measures. There is likewise a high probability of facing language barriers. Of course, in case of an indispensable need, the services of translators will be involved.

### **Relevant Literature**

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### **Work Plan**

Within the first year of research, I am going to collect and locate necessary and available research materials on the historical analysis of the emergence and development of collective management organisations. I will analyse in appropriate detail the pursuits of the collective management organisations' development in the areas of modern territories of the EU and EAEU. I will make notes and critical assessments as well as categorise them into key issues and sub-issues accordingly. I am going to collect and locate necessary information and available research materials on the development of the CMO Directive and CMO Agreement as well as case laws and practical application. I am going to choose the most prosperous and the least prosperous CMOs and collect information on them in order to demonstrate what kind of difficulties CMOs face. I will analyse in appropriate detail the management of the copyrights by governments and CMOs as well as by users and copyright holders. I will make notes and critical assessments as well as categorise them into key issues and sub-issues.

Within the second year of research, I am going to synthesize various sources as well as update and verify authorities (where is needed). I will draft a conclusion of all the research involved and then defend and publish the thesis.