"NICOLAE TITULESCU"
UNIVERSITY OF BUCHAREST
FACULTY OF LAW
DOCTORATE SCHOOL

DOCTORATE THESIS

COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

SUMMARY

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Bucharest
2021

Collective management represents one of the most important pillars of copyright and related rights system without whom the rightholders would not fully benefit from the fruits of their intellectual labour.

Paraphrasing Ion Creangă "I don't know how others are, but I, (...)"[1] cannot imagine my life without music, books, movies, theatre, paintings and many other creations of the spirit, which make our lives happy and beautifies it. At the same time, the exercise of imagination connects these creations with their creators - legally determined by works and protected objects, respectively authors and related rights holders - original, inspired, brilliant, delightful and full of talent thinking without being subjective among others to Mihai Eminescu, Ion Creangă, Tudor Arghezi, Marin Preda, Emil Cioran, Dostoevsky, Tolstoy, Proust, Gabriel García Márquez, Mario Vargas Llosa… George Enescu and the "Romanian Rhapsody", Ludwig van Beethoven and the "9th Symphony" or the "Ode to Joy", Johann Strauss Son and the "Blue Danube" waltz, Beatles or Elvis Presley and their wonderful songs, the singer and songwriter Freddie Mercury / Queen and the "Bohemian Rhapsody" song, the singer and songwriter Michael Jackson and his "Thriller", the singer and composer Luis Fonsi and his song "Despacito" .... Vincent van Gogh and his "Irises", his "Sunflowers" or his "Starry Night", Pablo Picasso and "Ladies of Avignon" or "Guernica ", Constantin Brâncuși and his "Bird in Space", "Mademoiselle Pogany" or "Sleeping Muse "... Amza Pellea and the incarnation of "Mihai Viteazu" or "Nea Mărin Miliardar ", Tom Hanks and "Forrest Gump", Al Pacino and his performance in the "Scent of a Woman" film, Robert de Niro and "The Taxi Driver" ... Cornel Porumboiu director and his films „A fost sau n-a fost?", „Polițist, adjectiv" sau „La gomera", Mircea Drăgan and his "B.D"s („B.D. în alertă", „B.D. la munte și la mare", „B.D. intră în acțiune"), the director and producer Martin Scorsese and his "Casino" or "The Wolf of Wall Street ", the director, screenwriter and producer Steven Spielberg and his films "Schindler's List" or "Indiana Jones"... and the list it can go on indefinitely, because the spirit, imagination and the human creation are immeasurable, unlimited in time and space.

The exercise of imagination continues without being able to realize what our life is like without the "dependence" on televisions, radios, cable operators, Internet, mobile phones, computers, laptops, Youtube, Netflix ... or even the lived experience during Covid-19 pandemic of concerts, shows, festivals and other events of this kind lack or the rupture of museums, theatres, opera, cinemas ... all these being just some

[1] Ion Creangă, *„Amintiri din copilărie"*, Floarea Darurilor Publishing House, Bucharest, 1996, 152.

of the ways in which the works and other protected objects - wonderful creations of the spirit - reach our hearts, enjoy our hearing and eyesight, life and faith.

In this imaginary frame, the legal logic imposes us to think about the fact that all these creators – authors and related rights holders – must benefit of a proper remuneration for the use and exploitation of their protected works and objects, because only in this way they will collect the „fruits" of their intellectual work and they will continue to create.

The last sequence of the imaginary film transposes us, for example in the „skin" of a song composer that should go to all the restaurants, bars, clubs or hotels where his works/songs are used by public communication or to all radios and/or televisions that are broadcasting his works/songs, respectively to all cable operators that are retransmitting the radios and/or televisions broadcastings in order to negotiate with each of them the remuneration to be paid and the use conditions, to verify the compliance with the agreed conditions of use, to monitor uses and to collect the remunerations resulted from the use of his composed songs. The imaginary exercise becomes almost impossible given that his songs can be used not only on the national territory, but also outside the borders of his country of residence.

The narrative thread of the exercise reveals the collective management as the most efficient way to exercise the rights of the copyright and related rights holders and the collective management organisations as the main means by which the collective management is done in the supreme interest of the rightsholders welfare and respect of their rights.

In short, collective management and collective management organisations have a particularly important role to play in the copyright and related rights system, as, on the one hand, they ensure the proper remuneration of rightholders for the use of their protected works and objects, and, on the other hand, guarantees the representation of the rights and interests of the holders in a unitary and efficient way.

The topic of the thesis is even more current as addressing creations of the spirit and various ways of using them it is inconceivable that the rightholders, legislators and even users can ensure and regulate another system that fulfils and/or replaces the functions of the collective management and/or the activity of the collective management organisations.

At the same time, the topic of the thesis becomes even more important in the context in which, since their establishment in France [2] in 1777, the collective management organisations have developed steadily, now becoming the cornerstone of the copyright and related system. The proof of this is the adoption by the European Parliament and Council on 26 February 2014 of the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market[3], unique and special regulatory instrument at the European Union level regarding the collective management, setting out matters concerning: the possibility of the rightholders to choose the collective management organisation, non-discrimination, the principle of the equal treatment between the categories of rightholders (members, non-members, nationals, foreigners) and the proper distribution of the collected remunerations and/or rights revenue, including the management fees, and, also, governance measures and/or transparency that have to be fulfil by the collective management organisations: information that have to be communicated to the users regarding the remunerations to be paid and the managed repertoire (especially in the negotiation procedures for establishing the amount of the remunerations and licensing), the collective management organisations responsibility, the government and the control of the collective management organisations and the disputes settlement.

The research topic considered in the thesis is practically justified considering both the fact that my professional activity has been dedicated to the field of copyright and related rights collective management for over 17 years, and because the subject of collective management has not been studied separately in the specialized Romanian literature, to collective management being dedicated only chapters from other specialized scientific papers[4].

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[2] Beaumarchais founded the Bureau of Dramatic Legislation, which later became the Society of Dramatic Authors and Composers (SACD) in 1829, the first collective management body created in the world, which still operates today (http://www.sacd.fr/). In 1837, Honoré de Balzac, Alexandre Dumas, Victor Hugo, and other French writers founded the Société des gens de lettres (SGDL), a society that continues to exist today (http: //www.sgdl. org /).

[3] Published in the Official Journal of the European Union L84/72 from 20 March 2014.

[4] To be see in this sense: Viorel Roș, Dragoș Bogdan, Octavia Spineanu Matei, *„Dreptul de autor și drepturile conexe. Tratat”*, All Beck Publishing House, Bucharest, 2005, 489-507; Viorel Roș, *„Dreptul proprietății intelectuale – Vol. I. Dreptul de autor, drepturile conexe și drepturile sui-generis”*, C.H. Beck Publishing House, Bucharest, 2016, 567-689; Ioan Macovei, *„Tratat de drept al proprietății intelectuale”*, C.H. Beck Publishing House, Bucharest, 2010, 515-528; Ciprian Raul Romițan, Mariana Liliana Savu, *„Drepturile artiștilor interpreți sau executanți”*, Universul Juridic Publishing House, Bucharest, 2008; Constantin Anechitoae, *„Introducere în dreptul proprietății intelectuale”*, the 7 edition, Bren Publishing House, Bucharest, 2012, 216-226; Teodor Bodoașcă, *„Dreptul proprietății intelectuale”*, Universul Juridic Publishing House, Bucharest, 2010, 188-199; Yolanda Eminescu, *„Dreptul de autor – Legea nr. 8 din 14 martie 1996 - comentată”*, Lumina Lex Publishing House, Bucharest, 1997, 278-286.

Collective management is imposing as an actual and modern field analysed in the thesis from a multidisciplinary point of view, having links with other branches of law, such as civil, financial-fiscal, community or international law, but also with other scientific subjects, such as mathematics, marketing or management.

The topic of the thesis is of interest both for scientific research in the field of copyright and related rights, including the field of law in general, and for rightholders, members or non-members of the Romanian collective management organisations, professionals/experts in the field, public authorities and the collective management organisations itself that function and operate in Romania, including through their representatives and/or employees.

Therefore, the research envisaged, its deepening, with reflections at European and international level, will have a particular impact on the scientific and practical activity in the field of copyright and related rights, in general, and of collective management, in particular.

The terminology used to refer to the terms of "collective management" and "related rights" has changed over the years, replacing the old expressions used for "collective administration" and "neighboring rights"[5].

Three reasons justified the replacement of the word "administration" in the expression "collective administration" with "management": the first is determined by the need not to confuse "collective management" with the state copyright organizations ("copyright administration"), respectively the governmental authorities of the state's responsible for exercising certain attributions in the field of copyright and related rights; second, because it does not sufficiently express the proactive nature of functioning of the organizations that collectively exercise the individual rights of holders; and, thirdly, because in English the "collective management" expression corresponds better to the expression used in French "gestion collective" or in Spanish "gestion colectiva"[6].

The term "related rights" has been used in various legal studies, presentations or documents of international or non-governmental organizations as an alternative to the expression "neighboring rights" in English or "droits voisins" in French, but no international treaty or convention in the field has used either of the two terms in its terminology[7].

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[5] Mihály Ficsor, *„Gestiunea colectivă a drepturilor de autor şi a drepturilor conexe"*, translated by Rodica Pârvu, all the rights reserved to WIPO, the book was published by WIPO in 2002, Universul Juridic Publishing House, Bucharest, 2010, 11.

[6] Ficsor, *cited work*, 11-13.

[7] Ficsor, *cited work*, 13. For example, the Rome Convention, which is the basic legal instrument in the field of related rights, simply refers to the rights of performers, phonogram producers and broadcasting organizations, without calling them "related rights".

Following the adoption of the TRIPS Agreement[8], the international community has chosen the official term “related rights” in English or “derechos conexos” in Spanish, because, under the title of Section 1 of Part II, the Agreement refers to "related rights"[9].

The situation of the possibility for the rightholders to authorize, in all cases, individually the protected works and objects has changed at the time of the emergence of the international copyright system - there were certain rights that seemed impossible to exercise individually, at least satisfactorily and effectively - and, subsequently, with the uninterrupted influx of the new technologies, the areas in which the individual exercise of rights has become impossible or at least impracticable have not ceased to expand[10].

In this context, collective management has grown: the rights of the holders cannot be exercised individually, because the works and the objects of related rights are used by a very large number of users, in different places and times, and the holders cannot individually pursue all these uses, to negotiate with users and collect the remuneration due to them[11]. For example, hundreds of songs or videos are broadcast daily on national and foreign radios and televisions, which means thousands and millions of uses in a year, making it impossible for an author to have the material capacity to monitor all uses of his works - he cannot contact every single radio or television station to authorize uses, negotiate the licenses and collect the remunerations for the use of his works. As a result, it is virtually impossible for a broadcaster to apply for the specific permission/to obtain the authorization or the license from each individual rights holder for the use of each work or related object.

In the book *"Collective management of copyright and related rights"*, the author Mihály Ficsor points out that under the collective management system, the rightholders authorize the collective management organisations to control the exploitation of their exclusive rights, works and objects of related rights, to negotiate with potential users, to license users in return for remuneration, to collect the remunerations due and to distribute them to the rightholders[12]. Next, the same author points out that the above-mentioned enumeration can be considered a basic definition of collective management, which encompasses, by its very collective nature, other

[8] Trade Related Aspects on Intellectual Property Rights. https://publications.europa.eu/code/ro/ro-5000400.htm.
[9] Ficsor, *idem*.
[10] Ficsor, *idem*.
[11] Ficsor, *cited work*, 17.
[12] Ficsor, *idem*.

functions that go beyond the framework of the collective exercise of rights in the strict sense of the term[13].

In the collective management system, the rightholders have only an indirect control over some elements of the exercise of their rights, which, however, essentially serves the interests of the copyright and related rights holders. At the same time, collective management offers multiple advantages to users who will have easily access to works and related rights products that they usually need, from one place and at a low cost, because collective management simplifies negotiations with users, the operations control and the rights revenues/remunerations/tariffs collection [14]. Therefore, the way in which collective management is carried out is not neutral[15], on the one hand, ensuring the legitimate interests of rightholders, as works and related rights-bearing products can be used in a wide range of ways, especially in the conditions of the new technologies development and, on the other hand, it is the easiest way to facilitate the dissemination of protected works and objects to the public when a user intends to exploit a multitude of works and related rights products[16]. At the same time, a user who faces a multitude of rightholders will consider that the collective management is the only solution, even if they use a single work or related product, therefore the users must have a legal and secure possibility to have access to all works and related rights products[17].

Once the work or related product has been authorized and used - commercially exploited - the interest of the rightholders is to maximize their paid remuneration[18], including through collective management organizations, case in which the other components of the system intervene, such as: retained management fees, periodicity of distributions or distribution rules, given that, although the system involves the collective management of rights, the principle that must prevail is that of individual distribution[19], meaning according to the use per work/related product, respectively author or related rights holder.

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[13] Ficsor, *idem*.
[14] Ficsor, *cited work*, 17-18.
[15] André Lucas, Henri-Jacques Lucas, *„Traite de la propriété littéraire et artistique”*, 3 édition, Paris, Ed. Lexis Nexis, 2006, 559.
[16] UNESCO *„Guide to the collective administration of authors' rights”*, CLT-2000/WS/4, author Paula Schepens, UNESCO Publishing, 2000, 15.
[17] UNESCO *„Guide to the collective administration of authors' rights”*, 16.
[18] Daniel Gervais, *„Collective Management: Theory and Practice in the Digital Age”*, volume *Collective Management of Copyright and Related Rights*, third edition, edit by Daniel Gervais, Netherlands, Wolters Kluwer Publishing House, 2016, 44-45.
[19] UNESCO *„Guide to the collective administration of authors' rights”*, 15.

In the work *"Traite de la propriété littéraire et artistique"*[20], the authors André Lucas and Henri-Jacques Lucas underline that the collective management is not only a technical matter, but also a matter of expertise, of "savoir-faire", which depending on the types of works, protected objects and rights, as well as the way of exploitation or use, is in a continuous transformation, becoming more and more fine and individualized, being able to reach new systems or the improvement of the existing ones, such as the one-stop shop - grouping all the collective management organisations and granting licenses for a certain type of rights[21] - or clearing house systems[22] - centralizing all or a part of the management operations, starting with the granting of the authorization/license.

The "savoir-faire" is a concept for which the "world" of collective management must thanks to the "father" of collective management and Figaro - Beaumarchais - defined in "Figaro's Wedding", by the very voice of the main hero "to win money, knowing how to make them is worth more than you would make them". Metaphorically, this definition is also valid for the collective management and, philosophically, for any human activity.

The complex nature of collective management and collective management organisations is captured in each chapter of the thesis, summarizing the regulation, functions, areas and activities carried out by the collective management organisations, offering practical solutions and arguing proposals *de lege ferenda*.

Rather than being a "necessary evil" [23], the collective management organizations are presented throughout their all-operating regime, guarantees and benefits brought to the rightholders.

Thus, in ***Chapter I*** of the thesis, ***Emergence and evolution of collective management***, the scientific research has focused, as the name of the chapter indicates, on the **analysis of the emergence and evolution of the collective management, taking into account the first collective management organisations and the role of the World Intellectual Property Organization (WIPO) in the regulation of the**

[20] Lucas, Lucas, *cited work*, 558.

[21] For example, in Romania the one-stop shop could be applied to the right of cable retransmission, bringing together all the collective management organisations designated to collect the remunerations for this type of use of works and related rights products and issuing a single authorization for all the rightholders or in the case of the right of public communication of musical works and phonograms, bringing together the collective management organisations of authors of musical works, those of performers and phonograms producers and issuing a single authorization for all the rightholders concerned.

[22] Copyright Clearance Center (CCC) is one of the most well-known centers of its kind, operating in the United States for more than 40 years and granting centralized licenses for copyrighted text material on behalf of copyright holders, including academic structures, business and governmental organizations; http://www.copyright.com/about/.

[23] Glynn Lunney, *„Copyright Collectives and Collecting Societies: The United States Experience"*, Volume *Collective Management of Copyright and Related Rights*, third edition, edit by Daniel Gervais, Netherlands, Wolters Kluwer Publishing House, 2016, 493-494.

modern collective management, as well as the examination of collective management in relation to conventional regulations in the field[24].

The first chapter therefore presents the history of the collective management, born in France in the eighteenth century, as a result of the difficulties encountered in maintaining authors' control over the public representation of their works[25].

Consequently, the first societies of authors were created in France, originating from the professional associations of authors, which fought for the full recognition and observance of their rights[26], as well as to obtain their regulation by law[27].

In 1777, Pierre de Beaumarchais set up the Bureau of Dramatic Legislation[28] as a result of "legal battles" against "theatres reluctant to recognize and respect the patrimonial and moral rights of authors"[29], given that the theatres and the performers refused to communicate to the authors the data they had on the performances and the revenues obtained, therefore the authors had difficulties in obtaining the accounting data necessary for their remuneration in relation to the use degree of the works created[30].

In 1829, after the recognition in France of the rights of authors and their corresponding remuneration according to the use degree of their works, the Bureau established by Beaumarchais became the Society of Authors and Dramatic Composers (SACD) [31], the first collective management organisation for authors, which still operates in France today, more than 200 years after Beaumarchais' initiative in 1777.

However, the role of the collective management organisations - like the one that still exists today - was given by a "famous process: authors of works versus users of works in restaurants"[32]. The composers Paul Henrion and Victor Parizot and the lyricist Ernest Bourget, supported by their editor Jules Colombier, filed a lawsuit against the "Les Ambassadeurs" location, where "café-concert" music programs were held[33].

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[24] Berne Convention for the Protection of Literary and Artistic Works, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, TRIPS Agreement, „Internet Treaties": WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), Beijing Treaty on Audiovisual Performances and Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

[25] Roș, Bogdan, Spineanu-Matei, *cited work*, 489.

[26] Ficsor, *cited work.*, 2010, 18.

[27] Roș, *cited work*, 570.

[28] Roș, *cited work*, 571 – the current name is Society of Dramatic Authors and Composers (SACD).

[29] Ficsor, *idem*.

[30] Roș, *idem*.

[31] www.sacd.fr

[32] Roș, *cited work*, 572.

[33] Located on the Boulevard Champs-Elysées in Paris; Musical genre specific to performances presented in a restaurant; https://dexonline.ro/definitie/concert.

The case and its effects on the collective management are described in detail in the chapter, as is the *„Furtwängler case”* [34], which has contributed to the recognition of the related rights of performers.

Regarding the history of collective management, ***the conclusions of Chapter I*** *highlight the fact that the first forms of organization of the collective management bodies evolved from a social necessity to a general interest in defending the rights of authors and performers, as fundamental property rights, with the scope of their adequate remuneration for the use of their works and related products, as well as the fact that the evolution of the first forms of organization of collective management bodies also took into account the progress made in both national and international regulations in the field. The Berne Convention for the Protection of Literary and Artistic Works of 1886 and the subsequent conventions and treaties that followed it created the international framework necessary for the protection of copyright and related rights, including collective management, by expressly recognizing the property rights of holders and other elements that were necessary for the evolution of collective management, for example the duration of property rights protection, which is currently 70 years since the death of the author, calculated from 1 January of the year following his death. The national framework of each state in the field of collective management has developed depending on the accession of that state to international conventions and treaties in the field, the practice of other states or specific social needs.*

Chapter I also presents the ***Role of the World Intellectual Property Organization (WIPO) in the modern regulation of the collective management***, beginning with **WIPO history and organization, then continuing with the functions, services and activities developed by the organization**. Are presented in detail the actions undertaken by WIPO and which have contributed to the development of the modern collective management, the role of WIPO being from this point of view extremely nuanced, in order to create strong copyright and related rights systems, having as fundamental element the collective management thus ensuring the growth of creativity and the interest of the general public in all areas of copyright and related rights, in particular and intellectual property, in general[35].

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[34] Described in detail by Yolanda Eminescu in the paper *„Dreptul de autor – Legea nr. 8 din 14 martie 1996 - comentată”*, Lumina Lex Publishing House, Bucharest, 1997, 92-94.

[35] Including the *"respect for exploited works, as well as fair remuneration for the creative effort for cultural enrichment, facilitating rapid public access to a living and constantly enriching culture, as well as increasing creativity and the interest of the general public in all areas copyright and related rights, in particular and intellectual property in general".* Salah Abada, director of the Creativity and Copyright Section of UNESCO, at that time - quoted from Romițan, Savu, *cited work*., 129.

Chapter II, Collective management in conventional law, is dedicated to the ***analysis of international conventions and treaties in the field of copyright and related rights and their connection with the collective management,*** taking into account aspects regarding the legal nature of collective management, respectively the principles that must govern the protection and respect of copyright and related rights, in general, and collective management, in particular, the property rights which are regulated and recognized in favour of the rightholders and, subsequently or not, subject to collective management and the protection term of the property rights.

Therefore, the scientific research is dedicated to the analysis of: **Berne Convention for the Protection of Literary and Artistic Works** (1886) – considered the basic convention of protection in the field with the aim *"to protect, in the most effective and uniform manner possible, the rights of authors over literary and artistic works"*; **Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations** (1961) – considered as deriving from the Berne Convention and aimed at the international legal regulation of performers, sound recordings producers and broadcasters, creators who constitute the category of related rights holders, joining them, as technology evolved, the producers of audiovisual recordings; **Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms** (1971) – unlike the Rome Convention, the Geneva Convention has a special character, as it does not regulate all related rights holders, but only considers the protection of sound recordings producers *"against unauthorized reproduction of their phonograms"*, respectively the piracy[36] and is different from the Rome Convention in relation to the eligibility criteria, the purpose and the measures granted to ensure protection; **Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite** (1974); **TRIPS Agreement** (1994) – which includes as a structure, inter alia: general principles, minimum standards of protection to be granted by each state, including for copyright and related rights, and the sanctioning of infringements thereof; **„Internet Treaties" [37]: WIPO Copyright Treaty (WCT)** (1996) **and WIPO Performances and Phonograms Treaty (WPPT)** (1996) - Mihály Ficsor, who at the time of the adoption of the two treaties held the position of Deputy Director General of WIPO, is recognized as the most important person in the

[36] See in this regard the data provided by the Special Report 301 prepared each year by the US Office of Commerce (USTR) and on the basis of which are identified those countries that do not offer effective protection of intellectual property rights: https: / /ustr.gov/sites/default/files/2019_Special _301_Report.pdf
The report reflects the US administration's efforts to address, encourage and ensure effective protection of intellectual property rights. Romania remained on the "Watch List" in 2019 due to online piracy, the use of unlicensed software and the decrease of confiscated counterfeit goods.
[37] Their name was given by the international press.

preparation, negotiation and adoption of the two treaties[38], which led to changes that influenced the collective management future, clarifying the existing property rights, exceptions and limitations to these rights and adopting complementary rights according to the new regulated needs, including the famous *"umbrella solution"* of including the right to make works available to the public, interpretations set on phonograms and phonograms by wire or wireless, so that members of the public can access them from a place and at a time individually chosen by them in the right of communication to the public[39]; **Beijing Treaty on Audiovisual Performances** (2012) – which was a restarting point for WIPO's work in the field[40], as since the adoption of the "Internet Treaties", the organization had not adopted any international treaty in the field of copyright and related rights, the organization's officials declaring[41] that the treaty would have as a result, on the one hand, the increase of the patrimonial rights of actors and other performers, materialized by ensuring additional revenues resulting from their work and, on the other hand, the establishment of the international conventional framework for the audiovisual creative sector; and **Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled** (2013) – which, according to WIPO, includes a cultural, humanitarian and social development dimension[42], highlighted also in its preamble: affirming the principle of non-discrimination, equal opportunities and accessibility; recognizing the challenges that visually impaired people face due to the lack of accessible materials, which cannot thus complete their vocational, human and educational training; stressing the importance of copyright protection as an incentive and reward for literary and artistic creation; aware of the barriers that visually impaired people face in accessing published works in order to have equal opportunities in society and at work, and of the need to increase the number of works in accessible formats and to improve the circulation of such works.

The conclusions of Chapter II *highlight the fact that the conventional law in the field has created the appropriate framework for the protection, defence and capitalization of copyright and related rights belonging to all categories of holders. At the same time, laying the foundations for the property rights regulation, the methods of use and the limits and exceptions, the international conventions and*

[38] http://fordhamipinstitute.com/wp-content/uploads/2018/03/Mih%C3%A1ly-Ficsor-short_bio.pdf
[39] Art. 8 WCT and art. 10 WPPT.
[40] http://www.ip-watch.org/2012/06/29/wipo-lauded-for-new-beijing-treaty-on-audiovisual-performances/
[41] http://www.wipo.int/pressroom/en/articles/2012/article_0013.html The same officials pointed out that *"for the first time, in the evolution of related rights, it will provide performers with the necessary protection in the digital environment. The Treaty will also help to protect the rights of performers against the unauthorized use of their performances in the audiovisual environment"*.
[42] https://www.wipo.int/treaties/en/ip/marrakesh/

treaties in the field have allowed the development of collective management in an adapted manner at international and national level, by establishing rules according to the managed rights and their term of protection.

The nature of the impact of the conventional framework in the field on collective management takes into account, on the one hand, its implementation in the national legislations and, on the other hand, the international relations and exchanges of remunerations between the collective management organisations. Thus, based on them, as well as the EU directives in the field, the collective management organisations were able to collect remunerations for the managed rights, the types of collective management were established (mandatory, optional, extended, under the law), were concluded authorizations with users and reciprocal contracts between the collective management organisations, in the end the remunerations being distributed to the rightholders.

An important part of the thesis, respectively ***Chapter III***, is dedicated to the **analysis of *Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market***, essential part of EU legislation in the field of copyright and related rights, that have as main scope the insurance of an adequate framework for the rightholders in order to manage their rights and a better functioning of the collective management organisations[43]. The Directive has two principal objectives laying down, on the one hand, the requirements necessary „to ensure the proper functioning of the management of copyright and related rights by collective management organisations" and, on the other hand, the requirements „for multi-territorial licensing by collective management organisations of authors' rights in musical works for online use".

Chapter III presents **the history of Directive 2014/26/EU** on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market adoption' and **its interference with Directive 2006/123/EC of 12 December 2006 on services in the internal market (Services Directive) and competition law**.

Regarding the competition law, the comparative analysis highlights, as has been pointed out in the specialized scientific literature[44], the three types of competition: the first rivalry between the collective management organisations, if they are organized and operate more in the same creative field, manifested in the form of the holders and the represented repertoire; the second as an effect of the collective

[43] https://ec.europa.eu/digital-single-market/en/collective-rights-management-directive
[44] Adriana Almășan, *"Dreptul concurenței"*, Ed. C.H. Beck, București, 2018, 1.

management organisations behaviour towards both users and rightholders (members and non-members, nationals and foreigners); and the third explained by the "concept of economic freedom" [45], meaning the possibility of the collective management organisations to operate in an economic market, of users to obtain authorizations or licences and of rightholders to choose between collective management organisations.

Also, from the point of view of competition, are analysed the notions of **"enterprise", "relevant market" or "dominant position", Articles 101 and 102 of the Treaty on the Functioning of the EU, as well as CJEU most important cases in this field**, with a special attention to the **European Commission's Decision of 8 October 2002[46] in the IFPI[47] "Simulcasting" case** - which aimed granting licenses for the related rights of phonogram producers in simulcasting cases, representing the simultaneous online transmission by radio and television of the included audio recordings in broadcasting, which involves the transmission of radio and / or TV signals in several territories at the same time - **and the CISAC Decision on the "membership clause" and the "territoriality clauses"**.

Subsequently, the doctoral research in ***Chapter III*** presents the **analysis of the connection of all EU copyright and related rights directives** - divided into four generations - **with the collective management**, respectively: **Council Directive 91/250/EEC from 14 May 1991 on the legal protection of computer programs**[48] replaced by **Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs** (codified version)[49] – which does not contain information on collective management, as computer programs are not subject to authorization by collective management organisations, and their use is licensed directly by the rightholders[50]; **Council Directive 92/100/CEE from 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property**[51] replaced by **Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related**

[45] *Idem*.
[46] Commission Decision of 8 October 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No COMP/C2/38.014 — IFPI „Simulcasting"), C (2002) 3639, OJ L 107, 30.4.2003, 58–84: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0300
[47] International Federation of the Phonographic Industry (IFPI).
[48] Published in the EEC Official Journal no. L 122 from 17 May 1991.
[49] Published in the OJ no. L 111 from 5 May 2009: https://eur-lex.europa.eu/legal content/ro/TXT/?uri=CELEX%3A32009L0024
[50] Neither private copy is possible in case of computer programs, are only permitted safety copies.
[51] Published in the OJ no. L 346 from 24 November 1992: https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:31992L0100&from=PL

to copyright in the field of intellectual property (codified version)[52] – harmonizing the rights of fixation, reproduction, broadcasting and communication to the public as regards related rights above the minimum rules of the Rome Convention and contains rules on the collective management of rental and lending rights, and of a fair remuneration recognized in favour of rightholders; **Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission**[53] - one of the most important features of the directive is that it introduces a mandatory collective management scheme for cable retransmission and broadcasting rights; **Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights**[54] replaced by **Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights** (codified version)[55] – does not contain express mentions of collective management, but they can generally be deduced as principles, namely that the collective management can only be performed for works and other protected objects that have already been made public and for which the terms of protection have not expired; **Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases**[56] - does not contain dispositions regarding collective management; **Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society** (consolidated text)[57] – harmonizing the rights of reproduction, distribution, communication to the public, the legal protection of anti-copying and rights management systems and as a novelty introduces a legal exception for technical copies made on the Internet for network operators in certain circumstances, a list comprehensive, optional, copyright exceptions that include private copying, the introduction of the concept of fair compensation of rightholders and a mechanism to ensure the uses in the case of certain exceptions for which anti-copying systems are provided; **Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001on the resale**

[52] Published in the OJ no. L 376 from 27 December 2006: https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX%3A32006L0115

[53] Published in the OJ no. L 248 from 6 October 1993: http://www.orda.ro/fisiere/directive/Directiva%2093_83%20Cablu%20Satelit.pdf

[54] Published in the EU Official Journal no. L 290 from 24 November 1993: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX%3A31993L0098

[55] Published in the OJ no. L 372 from 27 December 2006.

[56] Published in the OJ no. L 077 from 27 March 1996: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:31996L0009

[57] Published in the OJ no. L 006 from 10 January 2002: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32001L0029

right for the benefit of the author of an original work of art[58] - with regard to collective management, the resale right can be administered compulsorily or optionally[59], therefore, the directive left to the Member States discretion the manner of managing the resale right, the solution implemented by the Romanian legislator at art. 145 para. (1) lit. c) of Law no. 8/1996 on copyright and related rights, republished, amended and supplemented, being that of compulsory collective management[60]; **Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights**[61] - calls on the Member States to apply effective, deterrent and proportionate measures and sanctions against those who commit acts of counterfeiting and piracy, and, as regards collective management, recital 18 pointing that *"the persons entitled to request application of those measures, procedures and remedies should be not only the rightholders but also persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible",* by consequence, also the collective management organisations can request the application of these dispositions, aspect that is regulated in art. 4 lit. c) of the directive[62]; **Directive 2011/77/EU OF the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights**[63] - which extended the term of protection for performers and phonograms producers from 50 to 70 years, therefore the Directive eliminated the difference between the term of protection in the case of copyright (life plus 70 years after the death of the author) and the term of protection for the related rights holders, the consequence being the remuneration for a longer period of time of this category of

[58] Published in the OJ no. L 272 from 13 October 2001: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX:32001L0084

[59] Art. 6 (2) Directive on the resale right. In that regard, recital 28 in the preamble to the Directive states that it is for the Member States to regulate the exercise of the resale right, in particular as regards its administration, for example the management of the right by a collective management body. The same recital in the preamble to the Directive requires Member States to ensure that collective management organizations operate efficiently and in a transparent manner, including as regards the collection and distribution of remuneration resulting from the resale right.

[60] Implemented by O.U.G. no. 123/2005 for amending and supplementing Law no. 8/1996 on copyright and related rights (see, art. 24-26 or art. 145 (1) lit. c).

[61] Published in the OJ no. L 157 from 30 April 2004: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32004L0048

[62] Member States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Chapter: (…) c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law (…).

[63] Published in the OJ no. L 265/1 from 11 October 2011: https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX:32011L0077

rightsholders; **Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works**[64] - regarding the collective management, art. 6 para. (5) of the Directive regulates a fair remuneration in favour of the rightholders *"who terminate the status of orphan work (...) for use by"* the beneficiary entities; **Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society**[65] - from the perspective of collective management, it has to be mentioned the implementation of compensation systems for the uses allowed under art. 3 para. (6) and recital 14, according to which compensation systems *"should not require payments from beneficiaries"*; **Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC** [66] - a complex document devoted exclusively to copyright and related rights, which has caused much controversy and is likely to continue to arouse them until its implementation in all the national laws of the EU Member States[67] and which includes many elements of collective management and extended licenses issued by the collective management organisations; and **Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC** [68] - ensuring a greater protection for rightholders by extending the compulsory collective management provided for in

[64] Published in the OJ no. L 299/5 from 27 October 2012: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32012L0028

[65] Published in the OJ no. L 242 from 20 September 2017: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32017L1564

[66] Adopted by the European Parliament on 26 March 2019, by the Council on 15 April 2019 and published in the OJ no. L 130/92 from 17 May 2019: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32019L0790 To be underline that the Directive was adopted during the Romanian presidency of EU Council.

[67] Maria-Luisa Creață, Ana-Maria Marinescu, *„Directiva (UE) 2019/790 a Parlamentului European și a Consiliului din 17 aprilie 2019 privind dreptul de autor și drepturile conexe pe piața unică digitală și de modificare a Directivelor 96/9/CE și 2001/29/CE"*, în *Revista Română de Dreptul Proprietății Intelectuale* no. 2 (59)/2019, 40-59. The Directive is not implemented yet into the Romanian legislation, although there were organised consultations, in this scope, between the interested parties, including the collective management organisations.

[68] Published in the OJ no. L 130/82 from 17 May 2019: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32019L0789

Directive 93/83/EEC to the online environment and introducing a number of new principles and concepts, such as the country of origin principle and the transmission of programs by direct introduction[69].

As regards the **Directive 2014/26/EU** on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market itself, it is analysed according to its structure as follows: subject-matter and scope; definitions; governance rules including: the relation with members and the structure of the collective management organisations, rules regarding the general assembly of members of the collective management organisations, rules on the supervisory function, obligations of the persons who manage the business of the collective management organisations, rules on the management/administration of the collected/received rights revenue (rules on the collection and use of rights revenue, deductions and distribution of amounts due to rightholders), management of rights on behalf of other collective management organisations (rights managed under representation agreements, deductions and payments in representation agreements), relations with users (licensing and users' obligations), transparency and reporting (information provided to rightholders on the management of their rights, information provided to other collective management organisations on the management of rights under representation agreements, information provided to rightholders, other collective management organisations and users on request, disclosure of information to the public and annual transparency report); enforcement measures (complaints procedures, alternative dispute resolution procedures, dispute resolution, compliance, exchange of information between competent authorities and cooperation for the development of multi-territorial licensing); reporting and final dispositions; and multi-territorial licensing of online rights in musical works by collective management organisations (granting multi-territorial licences of online rights in musical works on the internal market, capacity to process multi-territorial licences, transparency of multi-territorial repertoire information, accuracy of multi-territorial repertoire information, accurate and timely reporting and invoicing, accurate and timely payment to rightholders, agreements between collective management organisations for multi-territorial licensing, access to multi-territorial licensing and derogation for online music rights required for radio and television programmes).

[69] Neither this Directive is implemented yet into the Romanian legislation, although there were organised consultations, in this scope, between the interested parties, including the collective management organisations.

According to the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, the **collective management organisation means** *"any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria: (i) it is owned or controlled by its members; (ii) it is organised on a not-for-profit basis"*[70].

The supervisory function is a new concept introduced by Directive 2014/26/EU in the field of collective management, until the date of adoption of the directive this function was performed by auditors, specialised entities or other internal bodies of the collective management organisation or it was used in relation to the work carried out by the Member States' authorities to supervise, control and monitor the collective management organizations activity.

Also, as it was mentioned in the specialised literature[71], the **Directive 2014/26/EU introduce a new concept in the copyright and related rights *acquis* namely independent management entity** meaning *"any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which is: (i) neither owned nor controlled, directly or indirectly, wholly or in part, by rightholders; and (ii) organised on a for-profit basis"*[72].

Regarding the monitoring of Directive's compliance, article 36 of the Directive has been defined in the specialised literature[73] as a major step in the practical implementation of the principles set out in the Directive.

Thus, according to art. 36 para. (1) that compliance by collective management organisations with the provisions of national law adopted pursuant to the requirements laid down in the Directive *„is monitored by competent authorities designated for that purpose"*. **It is also for the first time in the copyright and related rights *acquis* when it is mentioned a competent national authority to ensure that the collective management organisations comply with the national rules implementing the Directive 2014/26/EU.**

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[70] Art. 3 (a).
[71] Lucie Guilbault, Stef van Gompel, *"Collective management in the European Union"*, volume *Collective Management of Copyright and Related Rights*, the third edition, edit by Daniel Gervais, Netherlands, Wolters Kluwer Publishing House, 2016, 239-240.
[72] Art. 3 (b).
[73] Guilbault, Gompel, *cited work*, 263-264.

Title III of the Directive deals in detail with the *"multi-territorial licensing of online rights in musical works by collective management organisations"*, with a construction structured in nine articles, which specifically deals with aspects of the Directive's title. Articles 23-26 take into account general aspects in the field, such as the capacity to process multi-territorial licenses, the "transparency and accuracy of information on multi-territorial repertoires", art. 27 concerns the accuracy and timely reporting by users and invoicing by the collective management organisations, and, art. 28 is dedicated to the payments made by the collective management organizations to the rightholders.

The cross-border rights management can be achieved either through the traditional system of reciprocal contracts, or on the basis of a **new mechanism created under the directive called passport construction**[74]. Articles 29-31 govern this new construction which **is the most innovative aspect of the Directive**[75] and allows any collective management organisation which does not wish or does not meet the conditions to grant multi-territorial licenses directly for the repertoire of musical works it manages *"to apply to another collective management to represent its repertoire at multiteritorial level"* [76].

*The conclusions of **Chapter III** on the analysis of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market concern, on the one hand, the criticisms brought to the Directive (such as the fact that the Directive does not regulate specific or structural issues regarding the authorization, accreditation or registration of the collective management organizations, or the application of compulsory or optional collective management, or regulates in a lapidary manner aspects such as the distribution of the rights revenues/amount collected or even the definition of the collective management organisations), and, on the other hand, the quantification of its impact on the activity of collective management organisations, the certainties being given only by the fact that the way in which collective management is carried out is not neutral[77] and that the role of collective management does not seem to be diminishing, but on the contrary tends to amplify in the universe of digital networks[78], the proof in this sense being the last two directives adopted in the field of copyright and related rights with major implications for collective management (Directive (EU) 2019/790 of the European Parliament and of the*

[74] Guilbault, Gompel, *cited work.,* 265-266.
[75] *Idem*, 280-281.
[76] Art. 29 and 30.
[77] Lucas, Lucas, *cited work*, 559.
[78] Ficsor, *cited work*, 165.

Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC and Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC).

Despite its shortcomings and criticisms, Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market retains the attribute of being the first supranational act regulating collective management.

Chapter IV, Implementation in Romania of the Directive on collective management, presents in detail the way in which **Directive 2014/26/EU** on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market **was implemented in Romania in Law no. 8/1996** on copyright and related rights, republished, amended and supplemented. The implementation in Romania of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market has been long overdue after the deadline set in the directive for transposition internally, respectively April 10, 2016[79], this being achieved only by Law no. 74/2018[80], but also after Romania was sent together with Bulgaria, Luxembourg and Spain before the CJEU by the European Commission for not notifying, by the aforementioned deadline, the full transposition into national law of the rules set down by the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market[81].

Chapter IV also presents the **history, organization and functioning of the competent national authority, namely the Romanian Copyright Office (ORDA)**, which, since its establishment and until now, has played the most important role in the protection, defence and implementation of copyright and related rights, in general and collective management, in particular, in our country. Even if *de facto*, ORDA has no regulatory attributions in the field, these belonging to the Government and the Parliament, it is the institution that initiated all the acts regarding the amendment and

[79] Given that other EU countries have implemented since 2016 the Directive, for example, the United Kingdom by Regulation no. 221 / 24.02.2016, entered into force on 10.04.2016, Ireland by Regulation no. 156/2016, published on 12.04.2016, Germany by the Law on collective management bodies of 28.04.2016 or the Czech Republic by the amendment made in 2016 of Law no. 121/2000 on copyright and related rights.
[80] Law no. 74/2018 for the amendment and completion of Law no. 8/1996 on copyright and related rights, published in the Official Gazette. no. 268 of March 27, 2018.
[81] https://ec.europa.eu/romania/news/20170712_gestiune_colectiva_drepturi_de_autor_ro

completion of Law no. 8/1996 on copyright and related rights, republished, amended and supplemented, implying its adaptation and revision in accordance with the relevant international conventions and treaties, as well as EU directives.

As a state public institution, ORDA was closest to the copyright and related rights and collective management essence, best understanding international and EU developments in the field, as well as, most importantly, the practical situation in Romania both in terms of the collective management organisations activity and of users, constantly pursuing the defence and capitalization of creators' rights.

The activities carried out by ORDA at national and international level were multiple and numerous, recalling: participation in meetings and committees of WIPO and of the European Commission, conferences, seminars and other similar events organized at national and international level; the establishment of national registers as a measure to combat piracy; carrying out actions to confiscate pirated products; making findings and expertise in the field; issuing holographic markings/sticks; training of other institutions with responsibilities in the field representatives and of their own employees; organization of study visits, conferences, seminars, etc; carrying out controls regarding the activity of collective management organisations; preparation of documents amending and supplementing Law no. 8/1996 on copyright and related rights, republished, amended and supplemented; issuing decisions of the director general regarding the regulation in the field (format of repertoires, reporting, etc.); formulating strategies in the field or participating in the elaboration of the national strategy in the field of intellectual property[82]; or drafting complementary normative acts (for example, targeting national registers).

*The conclusion of **Chapter IV** highlights the fact that Law no. 8/1996 on copyright and related rights, republished, amended and supplemented, fully transposes Directive 2014/26/EU on the collective management of copyright and related rights and the granting of multi-territorial licenses for rights in musical works for online use on the internal market, however, it is necessary to bring a series of revisions to the national normative act for which we made proposals for de lege ferenda in the chapter, and which, at a future revision of the law, will be the subject of proposals to amend and supplement it.*

[82] H.G. no. 1424/2003 for the approval of the national strategy in the field of intellectual property for the period 2003-2007 (Official Gazette no. 905 / 18.12.2003, entered into force on the date of publication), amended and supplemented by H.G. no. 1174./2005 on amending and supplementing the Annex to H.G. no. 1424/2003 and regarding the approval of the Action Plan for the implementation of the national strategy in the field of intellectual property (Official Gazette no. 927 / 18.10.2005, entered into force on the date of publication).

The most important chapter of the thesis, ***Chapter V*** - with technical and practical elements, presented as comparative according to the applicable legislation - is dedicated to the ***Role and functions of collective management***, **exhaustively analysing all aspects of the collective management organisations**, as follows: justifying the collective management fields; the role and functions of the collective management organisations; setting up and the legal form of the collective management organisations; the state control; the legal contractual nature between rightholders and collective management organisations; members and non-members; the foreign collective management organisations; the affiliation to the representatives structures in the field (under this aspect are presented the international and/or European organisations of the collective management organisations: CISAC, BIEM, IFPI, ICMP, IMPALA, International Federation of Musicians, International Federation of Actors, SCAPR, AEPO-ARTIS, AIDAA, SAA, FERA and IFFRO); setting up a collective management organisation – essential elements; the organisational structure and the intern control pointing elements like: governance and control (general assembly of members, the executive organ, director general or executive, supervisory function, censors, other organs or commissions) or the departments and territorial structure.

At the same time, ***Chapter V*** presents in detail **the activities carried out by collective management organisations** - one of the most important reference elements for the research topic -, respectively: the documentation which designates in the activity of the collective management organisations all the information regarding the rightholders, works and related products, an essential basic activity of the collective management organization, which subsequently enables the collection and distribution activities to be carried out[83]; authorisation or licensing the users; principles for establishing and the structure of the remunerations/tariffs; negotiations for establishing the remunerations/tariffs; licence/authorisation of use; administrative aspects regarding the licence/authorisation of use; users obligations and collecting the remunerations/tariffs; disputes resolution for establishing the remunerations/tariffs – are presented the alternative dispute resolution procedures between the collective management organisations and users: mediation and arbitration (including the most representative examples in the field: German and UK Copyright Tribunal or Canadian Copyright Council) or a less know alternative dispute resolution procedure in the intellectual property field done by the World Trade Organisation (WTO); information regarding the used repertoire; distribution/repartition of the remunerations / tariffs /

[83] OMPI, *„Introducere în proprietatea intelectuală”*, Rodica Pârvu, Laura Oprea, Magda Dinescu (translation), revision of the translation done by Mihai Mănăstireanu, Rosetti Publishing House, Bucharest, 2001, 450.

rights revenue being analysed the following aspects: the criteria/rules used for the distribution with concrete examples on categories of economic rights/works and/or related products, calculation/composition of the distributable amount, the distribution process (respectively matching of the collective management repertoire – declared by the members and rightholders in the format establish by the collective management organisations – with the information regarding the uses provided by the users, resulted from its own monitoring or done by the members or rightholders, received from the foreign collective management organisations and/or in another way established as a distribution rule – sample, analogy and/or survey from usage sources – with the distributable net income, respectively on various distribution categories and classes corresponding to the distribution rules for the managed patrimonial rights and the works / other protected objects from the repertoire), the frequency of distributions and the payment of the remunerations and the use of adequate distribution means.

The doctoral research within ***Chapter V*** also includes **financial and administrative aspects regarding the collective management**, highlighting those key practical areas with impact in the activity of the collective management organisations, namely: cost management, deductions / management fees, non-allocation of collected amounts / non-distributable revenue and other accounting and financial aspects. This last aspect of the doctoral research concerns in particular the quality of VAT payer of the collective management organisations with the presentation of the CJEU Judgments pronounced in cases C - 37/16 and C - 501/19, revealing their opposite character, and of the tax on profit payment, as a rule, the collective management organisations being non-profit legal entities are exempted from the payment of this tax, each rightholder being taxed separately for the income they realize.

Subsequently, ***Chapter V*** presents in detail **the collective management organisations obligations** classified into seven main categories, as follows: 1) transparency; 2) in relation to members; 3) to the collective management organisations with which they have concluded bilateral / representation / reciprocity contracts; 4) to the rightholders to whom they have distributed rights revenue or for the benefit of whom they have made payments; 5) to non-members, as well as in relation to the collective management organisations with which they have concluded bilateral / representation / reciprocity contracts; 6) towards the rightholders, the collective management organisations with which they have concluded bilateral / representation / reciprocity contracts and users; and 7) in relation to the competent authority.

In the specialised scientific literature, prof. univ. dr. Viorel Roș in the treatise *„Dreptul proprietății intelectuale – Vol. I. Dreptul de autor, drepturile conexe și drepturile sui-generis”* [84] , classifies the collective management organisations obligations also in seven categories: a) obligations towards the public; b) obligations towards the rightholders; d) obligations towards users; c) the common obligation towards the rightholders and the users: elaboration of the methodologies for the use of the works and protected objects from the field of activity; e) collection of amounts owed by users or other payers; f) distribution of the amounts collected to the rightsholders; and g) the obligations of collective management organizations towards the competent authority and other authorities.

Specifically, the collective management organisations obligations take into account three main action levels: 1) rightholders, regardless of whether they are members or non-members; 2) other collective management organisations to which they have obligations to distribute and pay the rights revenue, including in relation to the collective management organisations from abroad with which they have concluded representation agreements; and 3) users by establishing the remunerations / tariffs / methodologies for the used works and protected objects, respectively the authorized / licensed patrimonial rights.

At the same time, the general obligation[85] is that of transparency towards rightholders, users, the public, users and the competent authority. Transparency - one of the main objectives of a collective management organisation -, respectively its resulting obligations, must always cover all the factors involved in the collective management activity, including the competent authority, especially if it approves the establishment and monitors the functioning of the collective management organizations.

Obligations towards the competent authority and/or other public authorities have a special character resulting from the right they have in most legislations to control the activity carried out by the collective management organisations, the latter aiming at ensuring the authorities' right of access to information and/or the documents requested in the control and monitoring actions performed.

The effective functioning of the collective management organisations establishes their obligations towards rightsholders, other collective management organisations, the public and users, thus demonstrating that one of the collective management aims is to harmonize the interests of rightsholders and the public through users[86].

[84] C.H. Beck Publishing House, Bucharest, 2016, 595-601.
[85] Roș, *cited work*, 595.
[86] *Idem*.

The doctoral research presented in ***Chapter V*** continues through the **analysis of the rightsholders protection done by the collective management organisations**, taking into account distinctly the litigations of contractual, non-contractual nature and other legal aspects.

Chapter V ends with the presentation of other activities that can be carried out by the collective management organisations, namely: communication and marketing.

*The conclusions of **Chapter V** emphasize that collective management is generally intended to facilitate the fulfilment of the protected and recognized rights by the rightsholders themselves and to promote the lawful exploitation of protected works and objects[87], especially that this activity must give the rightholders the possibility to choose between the collective management organisations[88], if they already manage rights or categories of rights[89].*

It is thus incumbent on the collective management organisations - regardless of the form in which they are organized - to perform this task, meaning that they will carry out a number of activities, including documenting, licensing / authorizing / auditing users, monitoring uses, ensuring the compliance of rights they manage, rights revenue collection and distribution to the rightholders[90]. The activities will be carried out respecting the criteria of non-discrimination or equal treatment between rightsholders, regardless of whether they are nationals or foreigners.

Within these activities carried out by the collective management organisations, an important role will be played by establishing the remunerations/tariffs for the use of works and/or protected objects from the repertoire managed by the collective management organisation or the patrimonial rights subject to users' authorization / licensing.

In order to carry out the activities meant to ensure the collective management, the collective management organisations must have a well-defined organizational structure - of the departments and/or in the territory - and qualified personnel. Also, the collective management organisations will ensure the functioning of the management and control bodies, in the structural hierarchy of their attributions and decision-making power: the general assembly[91], the executive body, the general or

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[87] UNESCO *„Guide to the collective administration of authors' rights"*, preface.

[88] Managing their *"rights, whether they are rights of communication to the public or reproduction, or categories of rights related to forms of exploitation such as broadcasting, theatrical performance or reproduction for online broadcasting"*.

[89] Recital 19 Directive 2014/26/EU.

[90] Recital 2 Directive 2014/26/EU.

[91] For example, the general assembly of members will be convened regularly, at least once a year, and the most important decisions of the collective management organisation are decided by the general assembly, ensuring the right of all members to attend and vote at the general assembly.

executive director, the supervisory body, the audit committee or the auditor and other bodies or commissions.

The thesis presents in ***Chapter VI*** the ***Forms, conditions and fields of collective management***, the research materializing on the **collective management of copyright and related in the field of music, on dramatic and dramatic-musical works, on graphic, visual or plastic art works, on written works and the right to compensatory remuneration for the private copy**.

At the same time, in ***Chapter VI***, it is analysed, from the collective management point of view, the difference between "les petits droits" or "small rights" for the rights of musical works execution, in which case we are dealing with musical small duration works, but with very numerous uses by a large number of users, which are mainly managed collectively and "grands droits" or "big rights" applicable to dramatic and musical works individually authorized, because this kind of works are used in a relatively small number of places, which makes it possible for the authors, individually, to take care of the necessary authorisations[92].

An important part of the analysis made in the same ***Chapter VI*** considers the main operational forms of collective management and their subcategories: firstly, voluntary, optional or based on a mandate / authorization from the rightholders; secondly, collective management based on legislative support with three subcategories: a) extended or expanded collective management; b) legal presumption; and c) compulsory collective management; and, thirdly, non-voluntary collective management with two subcategories: a) non-voluntary licensing; and b) the compensatory remuneration for private copy. For each of them, the doctoral research highlights the characteristics and the patrimonial rights that are applicable to them, being formulated proposals to modify and complete rt. 145-147 provisions of Law no. 8/1996 on copyright and related rights, republished, amended and supplemented, which regulates in our country the cases of compulsory, optional and special mandate collective management.

The last chapter of the thesis, respectively ***Chapter VII***, is dedicated to the analysis of ***Collective management of copyright and related rights at European and international level*** by concretely exemplifying the collective management systems and organisations in countries such as: France, Germany, Brazil, Argentina, Nigeria, China, Japan, New Zealand or Australia.

[92] Ficsor, *cited work*, 39-40.

The end of ***Chapter VII*** and of the thesis is dedicated to the ***presentation of the collective management organisations in Romania and to certain conclusions regarding the collective management in our country***, of which I emphasize the following:

- the number of authorised collective management organisations in Romania is evenly distributed between the two categories of copyright and related rights: 7 collective management organisations for copyright (AOTO, COPYRO, OSRO, DACIN-SARA, PERGAM, UCMR-ADA, VISARTA) and 7 collective management organisations for related rights (ADPFR, ARAIEX, CREDIDAM, SOPFIA, UNART, UPFAR-ARGOA, UPFR);

- the collective management organisations structure by activity fields shows that in most of them there are two or more collective management organisations - for the authors of written works there are 4 collective management organisations: COPYRO, PERGAM, OSRO and AOTO, being the only collective management field in Romania where such a large number of collective management organisations operate, although the remuneration sources of the rightsholders are very low compared to other fields, for example that of music; for performers, there are 3 collective management organisations: CREDIDAM, ARAIEX and UNART; in the case of phonograms producers, there are 2 collective management organisations: UPFR and ADPFR, the same being the case for videograms producers: UPFAR-ARGOA and SOPFIA - with the exceptions for musical, cinematographic and other audiovisual works and plastic and visual arts works, fields in which only one collective management organisation operates, namely UCMR-ADA, DACIN-SARA and VISARTA;

- collective management organisations in the related rights field of performers and phonograms producers are organized separately, and those of performers are open to all the rightsholders in the field, without a delimitation between them, for example singers or actors;

- the Romanian collective management organisations exercise obligatory, optional or special mandate collective management according to the norms of the law, with the mention regarding the cable retransmission right which is collected by a single collective management organisation, if several collective management organisations are functioning in the same creative field;

- the collection of the compensatory remuneration for private copy is carried out by a single collecting collective management organisation for the works reproduced after sound and audiovisual recordings - UPFR and by another single collecting collective management organisation for the reproduced works on paper -

OSRO, which have the obligation, subsequently, to distribute and pay the collected remunerations to the beneficiary collective management organisations according to the percentages established between them by agreements or court decisions;

- it is necessary to revise and/or modify the provisions of Law no. 8/1996 on copyright and related rights, republished, amended and supplemented (art. 168) regarding the manner, time and conditions in which the criteria for the distribution of the remunerations collected between the beneficiary collective management organisations are established, in the situation when in that creative field several collective management organisations operate (for example, de written works authors' field of creation, where, as I mentioned above, are authorised and function four collective management organisations), as practice has shown that many problems have arisen in this regard, which in the end do nothing but create legal uncertainty and harm the rightsholders, who do not receive on time their collected remunerations or these are distributed to them after a very long time;

- the provisions of Law no. 8/1996 on copyright and related rights, republished, amended and supplemented regarding collective management are not coordinated, uniform and require numerous revisions, which can be improved by adopting a law on collective management and collective management organisations, separate from Law no. 8/1996, taking as an example the German model, an aspect that would strengthen the position of the collective management and collective management organisations, especially given that the implementation of certain directives in the field greatly burdens the general provisions of the law;

- implementation of the European copyright and related rights directives and any legislative amendment regarding the provisions of Law no. 8/1996 with an impact on the collective management activity, should be done by consulting all the involved factors, especially the users, who must understand for what they will be authorized by the collective management organisations and will pay the remunerations to the collective management organisations and it also have to be taken into account the Romanian specificity and practice. Under this last aspect, the Romanian practice in the field of copyright and related rights collective management or the claims either of the collective management organisations against users or of the rightsholders against the collective management organisations, is not always uniform, which would imply a better information of all the involved factors in the contentious issues and a systematization of the applicable concepts and principles.

The general conclusion regarding the collective management in our country highlights the fact that in Romania a modern collective management system is developed, but which can be improved, unified and even simplified. The Romanian collective management organisations must constantly align themselves with the collective management organisations' practice from other EU countries and/or at international level and face the challenges arising from the use of works and related products in the information society and online environment, as well as those determined by the emergence of the Directive 2014/26 / EU on the collective management of copyright and related rights and the granting of multi-territorial licenses for rights in musical works for online use in the internal market.

The doctoral research took into account the documentation and in-depth analysis of the applicable legislation to each addressed subject (for example, the special laws on the collective management in France - Intellectual Property Code, Germany, Spain, Austria or Chile), statutes and other documents applicable to the collective management organizations (all collective management in Romania, as well as those from abroad such as: SACD, SACEM, SGAE, GEMA or PRS) and international organizations representing collective management organisations (such as: CISAC, BIEM, IFPI, SCAPR, AEPO-ARTIS or IFFRO), as well as the relevant specialized scientific literature in Romania and abroad. At the same time, the thesis aimed to exemplify each subject analysed and, as the case may be, to report to the jurisprudence of the European Union Court of Justice (CJEU) or in our country.

At the same time, the analysis aimed at formulating proposals regarding the amendment and completion of Law no. 8/1996 on copyright and related rights, republished, such as:

- for the proper implementation of the public lending right in Romania, it is necessary to amend paragraph (3) of article 18 as follows: "(3) The fair remuneration provided in para. (2) shall not be due, *if the lending is made through the school libraries with free access*";

- regarding the compensatory remuneration for private copy in the digital environment/domain, it is necessary to amend Law no. 8/1996 under two aspects: elimination of publishers' associations from the 2nd thesis of article 116 par. (2), the text shall read as follows: *"In the case of registered children, by analogous procedure, on paper, the remuneration shall be divided equally between authors and publishers."* and the modification of art. 116 provisions by including the written and visual arts works rightsholders in the distribution of the fair remuneration collected for the works reproduced on digital support, respectively the inclusion together with the copies made after sound and audiovisual recordings of those made on paper;

- the definition of the term „representative" collective management organisations or the conditions under which a collective management organisation becomes „representative";

- modification and/or completion of art. 146 para. (2) second thesis, in the sense of eliminating the "works" notion - "(...) In order to fulfil these obligations, the collective management organisations will allow, at the request of users, access by electronic means to the *works* managed repertoire, from the one *used* by the applicant, as well as to the list of rightsholders (...), Romanians and foreigners, whom he represents. (...)" - or supplemented by the phrase "and other protected objects" - "(...) In order to fulfil these obligations, the collective management organizations shall allow, at the request of users, access by electronic means to the repertoire of works and *managed protected objects*, from those used by the applicant, as well as to the list of copyright and related rightsholders, Romanian and foreign, they represent. (...)" - because, as these legal provisions are currently drafted, it is understood that they apply only to the collective management organisations in the field of copyright holders, but not to those in the related rights field;

- regulation of the making available to the public right independently in the Romanian legislation;

- extending the compulsory collective management cases also to the online retransmission of television and radio programs.

The general conclusions of the thesis consider that the collective management activity must focus on the collection and distribution of the remunerations which must aim at maximizing the income, therefore, in commercial terms, more authorized users and payers, more rights revenue distributed to the rightsholders and an appropriate management fee for the collective management organisations.

The activities carried out by the collective management organizations must be limited to the principles of transparency, non-discrimination and unity of application of the legal and statutory rules.

Collective management always must generate the best and most useful results for the rightsholders, being, in some cases, the only means by which they can exercise their protected and recognized rights.