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### The Status of Reproduction Rights Organisations (RROs) in Africa

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# THE STATUS OF REPRODUCTION RIGHTS ORGANISATIONS (RROs) IN AFRICA

*Desmond Oriakhogba<sup>1</sup> and Dick Kawooya<sup>2</sup>*

## ABSTRACT

This report is based on desk research conducted from June 2021 to May 2022 by way of a survey of publicly available information on Reproduction Rights Organisations (RROs) in all 55 African Union (AU) member states. It is the first of a two-part study. The second part of the study will be conducted as empirical research where data will be obtained from relevant stakeholders in the collective management systems of African countries to address key issues flagged in this report as requiring further evidence.

This report examines the current status of RROs in Africa to help inform policy and legislative efforts in support of education, research and access to knowledge. The evidence is gathered on the basis of key criteria drawn from the World Intellectual Property Organization's Good Practice Toolkit for Collective Management Organisations (CMO) 2021 (WIPO Toolkit). The WIPO Toolkit contains eighty-five (85) good practices to help ensure accountability, transparency, good governance, and effective financial management of RROs. The 85 good practices are clustered into thirteen (13) broad categories of key issues relating to collective management of copyright. The examples of good practice are distilled from laws, regulations, and codes of conducts relating to CMOs from WIPO member states, and regional and international organisations. Although the examples of good practice are formulated in the form of model codes of conducts, they can also be used as criteria for assessing the effectiveness of RROs. In particular, this report focuses on the practice of RROs relating to membership, openness in operation, reciprocal representation agreements (RRA), governance, finances, data management, dispute resolution mechanisms, and supervision of RROs.

Of the fifty-five (55) countries surveyed, nineteen (19) (making up 34.5%) have not established collective management of copyright. Thirty-six (36) countries, making up 65.5%, have established collective management of copyright. Of the 36 countries, twenty-eight (28) have organisations that perform the functions of RROs either as general purpose CMOs or as specific RROs. The countries are Algeria, Benin Republic, Botswana, Burkina Faso,

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Republic of Congo, Ethiopia, Gambia, Guinea, Ivory Coast, Lesotho, Liberia, Madagascar, Mauritius, Morocco, Malawi, Mali, Senegal, Tanzania, Togo, Tunisia, Zimbabwe, Zambia, Uganda, Cameroon, Ghana, Kenya, Nigeria, and South Africa. The organisations in the other eight (8) countries do not perform the function of RROs. In order to keep the research manageable and focused, the findings discussed in the report focus on the 28 countries. However, as discussed further in the report, the RROs in many of the 28 countries, such as Zimbabwe, and Nigeria, have been inactive in some or most of the practices, such as collection and distribution of royalties, covered in this report. In a way, collective management of copyright in such countries is as inactive as is the case in the 19 countries without CMOs.

Save for a few countries, notably, Botswana, Cameroon, Ivory Coast, Malawi, Senegal, and South Africa, RROs the study reveals that RROs across Africa remain weak in all areas of the WIPO's Toolkit best practices. As an indicator of a functional and relatively better run RROs, in the above countries, annual meetings (AGMs) are held frequently to give members opportunities to understand the health of the organisations. There is some form of cooperation, through reciprocal representation agreements (RRAs), among RROs in Africa, and between them and RROs outside the continent, in the area of royalty collection and distribution. However, without an effective international copyright limitation and exception system, such cooperation has the potential to hinder cross-border non-commercial uses of copyright works. The study also shows the existence of government supervisory mechanisms for RROs in the countries surveyed. Nonetheless, the overall findings point to a relative lack of openness and data management systems. There is also largely infrequent royalty collection and distribution by the RROs. Indeed, the majority of the RROs are not doing well in the area of royalty collection and distribution locally. RROs in countries, such as Liberia, Gambia, Zimbabwe, Uganda, Madagascar, among others, did not show evidence of royalty distribution and collection. Finally, there is absence of a regional normative framework or guideline or code of conduct regime to support the practice of RROs in Africa.

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## INTRODUCTION

The research project was conceived following a workshop organised by the African Union Permanent Mission in Geneva in 2019 where delegations of some African countries expressed interest in understanding the status of Collective Management Organisations (CMOs) in Africa. One of the authors of this report attended the workshop as an expert and helped to conceptualise the current study. The delegates noted that while CMOs are considered central to the licensing infrastructure in Africa, little was known about the working of these organisations and how best they can support access to information on the continent. This report, based on the World Intellectual Property Organisation (WIPO's) Good Practices Toolkit for CMOs as the benchmark, forms the first part of the study of CMOs in Africa. It is drawn

from publicly available information and not first-hand accounts of the different stakeholders that work with or are served by CMOs. The second part of the research project will focus on such first-hand accounts from individuals that work with and interact with CMOs across Africa.

Generally, collective management organisations (CMOs) perform legal and economic, and socio-cultural functions, within the copyright industry.<sup>3</sup> CMOs enable copyright owners to exercise their exclusive rights, and assist users of copyright works to get authorised access to protected works through licensing. CMOs also assist copyright owners to derive remuneration for the use of their works by the public, and assist users in the payment of royalties for the usage of those works. CMOs perform these functions through negotiation of royalties with users on the copyright owners' behalf, issuance of licences to users on behalf of copyright owners based on the negotiated royalties, collection of royalties from users and distribution of such royalties to the copyright owners. The copyright owners are usually, but not always, the members of the CMOs. The socio-cultural function of CMOs manifest in the form of talent development annuity funds, general distribution of royalties, public enlightenment, among others. CMOs are able to perform these roles because of the economies of scale, scope and network which they possess both offline and on the internet.

The legal and economic functions of CMOs are the most important and have historically served as the justification of their establishment.<sup>4</sup> These functions can be surmised as the negotiation and collection of revenue, in the form of royalties, from users on behalf of individuals or entities that own copyright and related rights in diverse works like music, film, literary works, artistic works, software, and other creative works; and the distribution of such revenue to the copyright owners. The performance of the legal and economic functions by CMOs are still relevant in this digital era despite the opportunities for individual copyright management that digitisation affords.<sup>5</sup> For performing these tasks, CMOs are entitled to deduct a certain percentage, as administration fees, from the revenue collected. Such percentages are determined by the relevant copyright regime. However, a maximum of 30%

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<sup>3</sup> For a general discussion of collective management of copyright and related rights and the functions of CMOs, see DO Oriakhogba *Copyright, Collective Management Organisations and Competition in Africa: Regulatory Perspectives from Nigeria, South Africa and Kenya* (Juta, 2021); DJ Gervais (ed.) *Collective Management of Copyright and Related Rights* (Kluwer, 2015); T Koskinen-Olsson and N Lowe *Educational Materials on Collective Management of Copyright and Related Rights, Module 1: General Aspects of Collective Management* (WIPO, 2012), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_emat\\_2014\\_1.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2014_1.pdf) (accessed 29 May 2022); U Uchtenhagen *Copyright Collective Management in Music* (2011, WIPO), [https://www.wipo.int/edocs/pubdocs/en/copyright/789/wipo\\_pub\\_789.pdf](https://www.wipo.int/edocs/pubdocs/en/copyright/789/wipo_pub_789.pdf) (accessed 29 May 2022); M Ficsor *Collective Management of Copyright and Related Rights* (WIPO, 2002), [https://www.wipo.int/edocs/pubdocs/en/copyright/855/wipo\\_pub\\_855.pdf](https://www.wipo.int/edocs/pubdocs/en/copyright/855/wipo_pub_855.pdf) (accessed 29 May 2022).

<sup>4</sup> Uchtenhagen, *ibid* 1-23.

<sup>5</sup> Oriakhogba, note 1 at 22-26.

or higher has been canvassed as ideal deduction especially in territories where CMOs are newly established, but in a well-established system deduction should not be higher than 20%.<sup>6</sup> However, it is expected that CMOs operating in poor countries, such as we have in Africa, should be willing to put in a lot of hard work and sacrifice to develop their collective management systems and be willing to deduct lesser percentages as administration fee at the early stages of their establishment. Moreover, the CMOs are not established for profit-making and administrative fees should not be a leeway to make profit through the backdoor.

If not managed well, however, CMOs can have negative consequences for different actors in the content industries. For instance, members who depend on the revenue collected by CMOs may not benefit from their work if the CMOs are not run efficiently and effectively. Arguably, CMOs if well run can have a positive impact on the livelihood of creators of literary, dramatic and artistic works. On the flip side, institutions, such as education, research, libraries, archives, and others, that rely on flexibilities (copyright exceptions and limitations) in copyright law, especially for cross-border uses, have been negatively impacted by the licensing practices of CMOs in Africa.<sup>7</sup> In this regard, the activities of Reproduction Rights Organisations (RROs), the class of CMOs specifically dealing with works produced within the print, publishing and arts industries (i.e., literary, dramatic and artistic works), deserve special attention. RROs specifically interface with libraries, universities and research institutions and other users of literary, dramatic and artistic works. In some cases, however, the role of RROs are performed by general-purpose CMOs (i.e., those operating as single entities for all copyright works within a national jurisdiction).<sup>8</sup> To ensure that the activities of CMOs do not shrink the public domain space, and, thereby, negatively impacting the work of libraries, archives, and research institutions, the European Union (EU), for instance, has put a legal mechanism in place which prohibits CMOs within the EU from preventing copyright owners (their members) from granting non-commercial licences, such as the creative

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<sup>6</sup> Ficsor, note 1 at 47.

<sup>7</sup> For instance, see EIFL submission to the WIPO for the Information Session on the Impact of the COVID-19 Pandemic on the Copyright Ecosystem, <https://www.wipo.int/export/sites/www/meetings/en/docs/electronic-information-for-libraries.pdf> (accessed 29 May 2022); D Chiweza et al 'Libraries and COSOMA: Is the Marriage Stable' (August 2007) World Library and Information Congress: 73rd IFLA General Conference and Council, <http://origin-archive.ifla.org/IV/ifla73/papers/153-Wella-en.pdf> (accessed 29 May 2022); J Band and B Butler 'Cautionary Tales about Collective Rights Organizations, Part 2' (May 2018), <http://infojustice.org/archives/39886> (accessed 29 May 2022); J Band and B Butler 'Cautionary Tales about Collective Rights Organizations' (2013) 21 *Michigan State International Law Review* 687.

<sup>8</sup> T Koskinen-Olsson and N Lowe *Educational Materials on Collective Management of Copyright and Related Rights, Module 4: Management of Rights in Print and Publishing* (WIPO, 2012), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_emat\\_2014\\_4.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2014_4.pdf) (accessed 29 May 2022).

commons licences, for the use of their works.<sup>9</sup> Similar legal mechanism is found in the Kenyan copyright regime.<sup>10</sup> There is some lesson to draw here in relation to the activities of RROs at the regional level in Africa.

It suffices now to note that the last few years has witnessed a growing interest of international organisations in the operation of RROs in Africa. For instance, the International Federation of Reproduction Rights Organisations (IFRRO) has invested a lot of resources to establish and promote RROs in Africa.<sup>11</sup> IFRRO is not the only organisation interested in the development of RROs in Africa. A few IFRRO members are actively supporting the establishment of new, or enhancing the work of existing, RROs in Africa.

In 2019, there were reports of the Copyright Clearance Center (CCC),<sup>12</sup> an RRO based in the USA, extending support to RROs in Ghana (CopyGhana) and Zambia (Zambia Reprographic Rights Society – ZARRSO).<sup>13</sup> Kopinor, the Norwegian RRO is another active foreign player in this regard. Kopinor actively supported the formation and operation of the Reproduction Rights Society of Nigeria (REPRONIG)<sup>14</sup> until 2007 when the Norwegian Copyright Development Association (NORCODE) was established and the function of promoting the cultural sector in Africa, Asia and South America was assigned to it.<sup>15</sup> NORCODE, which was formed by a group of Norwegian CMOs including Kopinor, was actively involved in the revitalisation of REPRONIG in 2015.<sup>16</sup> In 2014, NORCODE concluded an agreement with the Rwandan Society of Authors (RSUA), the general-purpose CMO in Rwanda established in 2010, for the provision of training and operational support to RSUA.<sup>17</sup> Other international organisations, such as the International Confederation of Societies of Authors and Composers

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<sup>9</sup> Article 5 of the Directive 2014/26/EU of the European Parliament and of the Council of 24 February 2014 on Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online use in the Internal Market

<sup>10</sup> Regulation 13 of the Copyright (Collective Management) Regulations 2020 (Kenya).

<sup>11</sup> For a list of RROs supported by IFRRO, see <https://www.ifrro.org/RRO> (accessed 29 May 2022)

<sup>12</sup> <https://www.copyright.com/> (accessed 29 May 2022)

<sup>13</sup> P Anderson 'Copyright Clearance Center and CopyGhana: Building Rights Organizations' (May 2019), <https://publishingperspectives.com/2019/05/ipa-nairobi-seminar-copyright-clearance-center-copyghana-africa-rights-organizations/> (accessed 29 May 2022).

<sup>14</sup> A Adebambo *Nigerian Copyright System: Principles and Perspectives* (Odade Publishers, 2012) 88; O Ola *Copyright Collective Administration in Nigeria: Lessons for Africa* (Springer, 2013) 20.

<sup>15</sup> See <https://norcode.no/about-us/> (accessed 29 May 2022)

<sup>16</sup> See NORCODE 'Annual Report 2015', <http://norcode.no/wp-content/uploads/2016/11/NORCODE-Annual-Report-2015.pdf> (accessed 29 May 2022)

<sup>17</sup> See NORCODE 'Annual Report 2019', <http://norcode.no/wp-content/uploads/2020/09/NORCODE-ANNUAL-REPORT-2019.pdf> (accessed 29 May 2022); UNESCO 'Rwanda 2017 Report', <https://en.unesco.org/creativity/governance/periodic-reports/2017/rwanda> (accessed 29 May 2022).

(CISAC),<sup>18</sup> also play similar roles especially through their dealings with general-purpose CMOs in Africa.

However, the concern of the foreign entities like IFRRO, NORCODE, and CCC in the establishment and promotion of RROs in Africa includes the expansion of licensing of the contents of the foreign CMOs and, therefore, generate revenue from the new markets. It is not driven by altruism on their part. As Healy – CCC’s Executive Director for International Affairs – aptly put it, following training for CopyGhana’s executive director, “CopyGhana completed the journey from being a recipient of aid from people like us at CCC and IFRRO,” to a “donor of aid, paying money into the IFRRO development fund and paying royalties to us.”<sup>19</sup>

That being said, there is now an increasing domestic interest in the state of RROs in Africa, in terms of their effectiveness, since they promise to improve the livelihood of creators of literary, dramatic and artistic works; and serve as a medium of equitable access to those works by users such as library, archives and research institutions.<sup>20</sup> Investigating the status of RROs in Africa is important because it will help to determine the extent of policy and legislative efforts required to establish, promote, operate and manage RROs at the regional and national levels in a manner that their activities do not hinder non-commercial uses of literary and artistic works in Africa. Such investigation requires a review of evidence, based on objective criteria, on the activities of RROs in Africa. Indeed, not much is known about the activities of RROs in Africa concerning their governance structures, licensing practices especially from a cross-border perspective,<sup>21</sup> financial management, among others. Most recently, IFRRO touted the successes of RROs in Africa. However, IFRRO provided no evidence to support the claims beyond a few anecdotes.<sup>22</sup> This underscores the importance of the study leading up to this report.

Based on desk research conducted by way of survey of publicly available information on the 55 African Union (AU) member states from June 2021 to May 2022, this report offers evidence on the state of RROs in Africa. The report is the first of a two-part study. The second part of the study will be

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<sup>18</sup> For instance, see CISAC ‘Partnering to Grow Capacity of African CMOs’, <https://www.cisac.org/Newsroom/articles/partnering-grow-capacity-african-cmos> (accessed 29 May 2022)

<sup>19</sup> Anderson, note 11.

<sup>20</sup> WIPO Report on Regional Seminars and International Conference on Limitations and Exceptions (September 2020: SCCR/40/2) 73, [https://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_40/sccr\\_40\\_2.pdf](https://www.wipo.int/edocs/mdocs/copyright/en/sccr_40/sccr_40_2.pdf) (accessed 29 May 2022)

<sup>21</sup> IFRRO has pressured governments and institutions to rely on licensing where other flexibilities would suffice. See <https://ifro.org/page/article-detail/educational-institutions-in-zambia-are-required-to-sign-a-collective-licence-with-zarrso-3526/> (accessed 29 May 2022)

<sup>22</sup> Unpublished flier by IFRRO titled ‘Why Collective Licensing Matters in Africa’ distributed at various conferences in 2019-20 (in file with authors).



conducted as empirical research where data will be obtained directly from relevant stakeholders in the collective management systems of African countries to address key issues flagged in this report as requiring further evidence. The evidence gathered will ultimately help to determine the effectiveness of African RROs in achieving the key objectives of enabling access to literary, artistic and dramatic works, and ensuring equitable remuneration for copyright owners. In particular, the report provides evidence on the state of RROs in Africa that would inform and support policy and legislative efforts aimed at the establishment, promotion, operation and management of RROs and positioning them in performing their core functions, without creating barriers to cross-border uses of works for education and research in Africa.

The evidence is gathered on the basis of key criteria drawn from the World Intellectual Property Organization's Good Practice Toolkit for CMOs (WIPO Toolkit).<sup>23</sup> The WIPO Toolkit contains 85 good practices that will ensure accountability, transparency, good governance, and effective financial management of RROs. The 85 good practices are clustered into 13 broad categories of key issues relating to collective management of copyright. The examples of good practice are distilled from laws, regulations, and codes of conducts relating to CMOs from WIPO member states. Although the examples of good practice are formulated in form of model codes of conducts, they can also be used as criteria for assessing the effectiveness of RROs. This is so because compliance with such good practices has been held to constitute evidence of effectiveness.<sup>24</sup> In particular, this report focuses on the practice of RROs relating to membership, openness in operation, reciprocal representation agreements (RRA), governance, Finances, data management, dispute resolution mechanisms, and supervision of RROs. The report is divided into seven parts, including the introduction as the first. The second highlights the objectives of the study. The third part discusses the methodology. The fourth part discusses the legal background to the study, while the fifth part highlights and discusses the findings. The sixth part contains the recommendations. The seventh part is the conclusion.

## I. OBJECTIVES OF THE STUDY

The main aim of the study was to address the knowledge gap that exists in understanding the activities and operation of RROs in Africa when determining the question of their effectiveness in promoting equitable access

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<sup>23</sup> WIPO *WIPO Good Practice Toolkit for Collective Management Organizations (The Toolkit): A Bridge Between Rightsholders and Users* (2021), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_cr\\_cmotoolkit\\_2021.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_cr_cmotoolkit_2021.pdf) (accessed 29 May 2022) (WIPO Toolkit).

<sup>24</sup> CI Okorie 'Corporate Governance of Collecting Societies in Nigeria: Powers of the Copyright Sector Regulator' (2018) 6 *South African Intellectual Property Law Journal* 24-46.

to literary, artistic and dramatic works for libraries, archives and research institutions; and ensuring appropriate reward for owners of copyright in those works. In particular, the report provides evidence on the status of RROs in Africa that would inform policy and legislative efforts aimed at the establishment, promotion, operation and management of RROs in Africa. To this end, the report offers evidence of the practice of RROs in Africa based on key criteria, such as

- membership;
- openness in operation and data management;
- reciprocal representation agreements (RRA);
- governance;
- finance;
- dispute resolution mechanism; and
- supervision.

The criteria are drawn from the examples of good practice outlined in the WIPO Toolkit and they form the basis for assessing or analysing the effectiveness of RROs in Africa in this report.

## II. RESEARCH METHODOLOGY

The research was conducted by way of a desk survey of publicly available information on the activities of RROs in Africa. The publicly available information was sourced from the internet, official reports, and existing literature on the practice of CMOs and RROs in Africa. The internet sources were drawn from the membership databases of the IFRRO, CISAC and other international association of CMOs. However, the IFRRO membership database was used as a starting point. Other internet sources include the official social media handles (twitter, Facebook and LinkedIn) and websites of the RROs surveyed, and the official websites of the key IP organisations in Africa: The African Regional Intellectual Property Organization (ARIPO) and The Organisation Africaine de la Propriété Intellectuelle (OAPI).

The research, which covered the 55 member countries of the AU,<sup>25</sup> was conducted between June and May 2022. Data obtained from the survey was exported into a Google spreadsheet for analysis.<sup>26</sup> The analysis of the available data is conducted using key criteria drawn from the WIPO Toolkit as mentioned in part 2 above. The study is limited by the fact that some of the publicly available information was in French, Arabic, Portuguese or

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<sup>25</sup> African Union Member States, [https://au.int/en/member\\_states/countryprofiles2](https://au.int/en/member_states/countryprofiles2) (accessed 29 May 2022)

<sup>26</sup> RROs in Africa, <https://docs.google.com/spreadsheets/d/1Z19rgEyML2sKrHVK-xaa2rJvkCseyT7PiGo8HRoDdCc/edit#gid=0> (accessed 29 May 2022).

Swahili. Although the researchers relied on Google translate, the translating machine could not assist in translating PDF documents. Also, the study did not investigate specific details about issues such as actual annual revenues generated by RROs and actual amounts distributed annually by them. The research is the first of a two-part study. The second part of the study will be conducted as an empirical research of in-country field work where data will be obtained directly from relevant stakeholders in the collective management systems of African countries to address key issues flagged in this report as requiring further evidence.

### III. LEGAL BACKGROUND FOR THE STUDY

The main aim of the study was to address the knowledge gap that exists in understanding the activities and operation of RROs in Africa when

There is currently no legal instrument setting norms or codes of good practice for collective management of copyright and related rights at the regional level in Africa. Normative issues are currently handled at the national level in the form of copyright laws and regulations governing collective management of copyright. Indeed, the development of norms or codes of good practice for collective management of copyright and related rights is not part of the ongoing negotiations aimed at adopting an IP protocol under the Agreement Establishing the African Continental Free Trade Area (AfCFTA Agreement).<sup>27</sup> Nonetheless, there are indications that the IP protocol may designate areas for regional cooperation, which may include strengthening of the mechanisms for copyright holders to secure a fair share of the proceeds from adaptation, distribution, rental, communication to the public and other commercial use of their work.<sup>28</sup>

That being said, The AU Charter for Cultural Renaissance 2006, which came into force in 2020, offers some broad legal basis for this report. In article 23, it enjoins member states to "prepare an inter-African convention on copyright in order to guarantee the protection of African works" and to "intensify their efforts to modify existing international conventions to meet African interests". Specifically, article 24 tasks the member states to "enact national and inter-African laws and regulations guaranteeing the protection of copyright and set up national authors' associations and copyright offices". Article 24 also obligates member states to "encourage the establishment of authors' associations responsible for protecting the material and moral

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<sup>27</sup> Agreement Establishing the African Continental Free Trade Area, 2018. See DO Oriakhogba and CI Okorie 'Multi-territorial Digital Copyright Licensing within the AfCFTA: Considerations for Appropriate Guiding Principles' (2021) 43(11) *European Intellectual Property Review* 710-720.

<sup>28</sup> UNECA, AU, ADB and UNCTAD *Assessing Regional Integration in Africa - ARIA IX: Next Steps for the African Continental Free Trade Area Report* (2019) 129, [https://www.uneca.org/archive/sites/default/files/PublicationFiles/aria9\\_report\\_en\\_4sept\\_fi\\_n.pdf](https://www.uneca.org/archive/sites/default/files/PublicationFiles/aria9_report_en_4sept_fi_n.pdf) (accessed 29 May 2022)

interests of those who produce cultural goods and services".

ARIPO neither has a broad-based copyright treaty nor a specific binding legal instrument on collective management of copyright and related rights. However, it recently adopted a protocol on voluntary registration of copyright, which does not speak to collective management. Nonetheless, the ARIPO Model Law on Copyright and Related Rights 2019 (a soft law) contains some model provisions on the establishment, operation, management and regulations of CMOs.<sup>29</sup> The OAPI situation is different. OAPI has a legally binding instrument on copyright, which makes provisions relating to collective management. Specifically, article 60 of annex VII of the Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of OAPI adopted in 1999 provides as follows:

(1) The protection, exploitation and administration of the rights of authors of works and the rights of holders of related rights as defined in this Annex together with the defense of their moral interests shall be entrusted to a national collective rights administration body of which the structure, tasks and operation are to be determined by the competent national authority of each member State of the Organization.

(2) The provisions of paragraph (1) above shall in no event prejudice the faculty enjoyed by the authors of works and their successors in title and by the holders of related rights to assert the rights afforded them by this Annex.

(3) The national collective rights administration body shall administer on its national territory the interests of the other national and foreign bodies within the framework of conventions or agreements that it may conclude with them.

Taken together, the foregoing instruments evince some form of 'policy and legislative awareness' of the importance of CMOs, especially RROs, within the African regional context and the need for policy and legislative support for their establishment, promotion, operation and management both at the regional and national levels. To be effective, such policy and legislative efforts must be informed by evidence-based research which shows the state of play with regards to RROs in Africa in line with internationally developed good practice. This report provides the required evidence on the state of RROs in Africa.

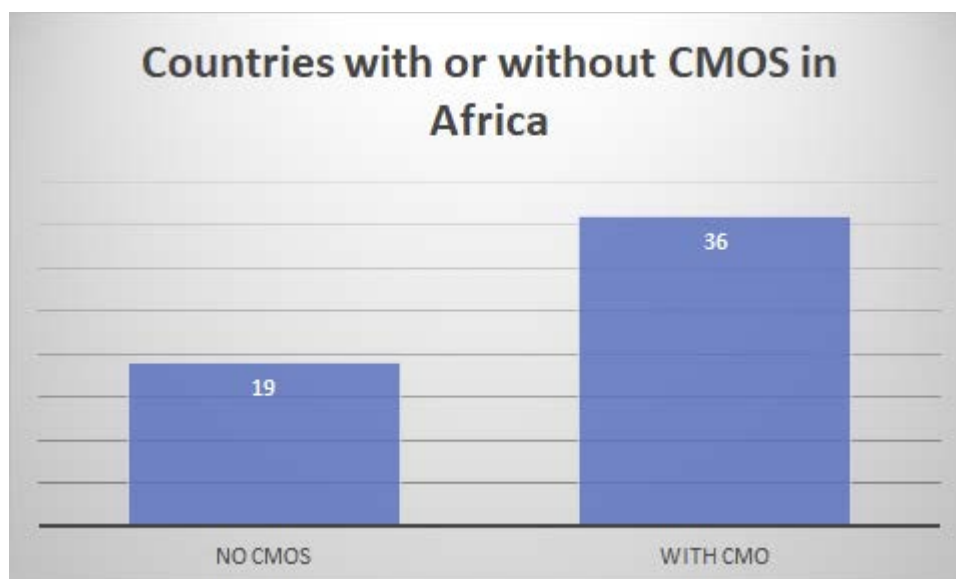
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<sup>29</sup> See paragraphs 38 and 57 of the African Intellectual Property Organization (ARIPO) Model Law on Copyright and Related Rights, 2019 <https://www.aripo.org/wp-content/uploads/2019/10/ARIPO-Model-Law-on-Copyright-and-Related-Rights.pdf> (accessed 29 May 2022).

#### IV. FINDINGS

##### A. General finding

The study surveyed the 55 member states of the AU. For the purpose of this report, the countries are broadly categorised into two groups. As demonstrated in the graph below, the first category consists of 19 countries, making up 34.5% of the AU member states, that have not established collective management of copyright and related rights. As such, they have no CMOs or RROs.<sup>30</sup> The second category, consisting of 36 countries, making up 65.5% of the AU member states, have established collective management of copyright and related rights.<sup>31</sup>



The second category is further classified into three groups. The first class is made up of 6 countries that have established CMOs focusing only on rights in music, sound recordings and audiovisuals, excluding the publishing and print sector;<sup>32</sup> and 2 countries with general purpose CMOs which have not started RROs activities at the time of the research.<sup>33</sup> The second class consists of 20 countries that have established general-purpose CMOs administering rights in literary, artistic, and dramatic works, as well as musical works,

<sup>30</sup> Burundi, Central African Republic, Chad, Comoros, DR Congo, Equatorial Guinea, Eritrea, Eswatini, Gabon, Guinea-Bissau, Libya, Mauritania, Niger, Sahrawi Republic, Sao Tome and Principe, Sierra Leone, Somalia, South Sudan, Sudan

<sup>31</sup> Angola, Cabo Verde, Egypt, Mozambique, Seychelles, Namibia, Algeria, Benin Republic, Botswana, Burkina Faso, Republic of Congo, Djibouti, Ethiopia, Gambia, Guinea, Ivory Coast, Lesotho, Liberia, Madagascar, Mauritius, Morocco, Malawi, Mali, Rwanda, Senegal, Tanzania, Togo, Tunisia, Zimbabwe, Zambia, Uganda, Cameroon, Ghana, Kenya, Nigeria, South Africa

<sup>32</sup> Angola, Cabo Verde, Djibouti, Egypt, Mozambique, Rwanda, Seychelles, and Namibia

<sup>33</sup> Djibouti and Rwanda.

sound recordings and audiovisuals.<sup>34</sup> The third class is constituted by 8 countries that have established different types of CMOs, including RROs.<sup>35</sup>

Table 1: Countries with CMOs and RROs in Africa

| Countries that have not established CMOs   | Countries that have established CMOs   |   |   |
|--|--|---|---|
|  | <b><i>Countries with CMOs on music, sound recording and audio-visuals only</i></b>         | <b><i>Countries with general purpose CMOs</i></b>   | <b><i>Countries with specific RROs</i></b>  |
| Burundi<br>Central African Republic<br>Chad<br>Comoros<br>DR Congo<br>Equatorial Guinea<br>Eritrea<br>Eswatini<br>Gabon<br>Guinea-Bissau<br>Libya<br>Mauritania<br>Niger<br>Sahrawi Republic<br>Sao Tome and Principe<br>Sierra Leone<br>Somalia<br>South Sudan<br>Sudan | Angola<br>Cabo Verde<br>Djibouti<br>Egypt<br>Mozambique<br>Rwanda<br>Seychelles<br>Namibia | Algeria<br>Benin Republic<br>Botswana<br>Burkina Faso Republic of<br>Congo<br>Ethiopia<br>Gambia<br>Guinea<br>Ivory Coast<br>Lesotho<br>Liberia<br>Madagascar<br>Mauritius<br>Morocco<br>Malawi<br>Mali<br>Senegal<br>Tanzania<br>Togo<br>Tunisia | Cameroon<br>Ghana<br>Kenya<br>Nigeria<br>South Africa<br>Uganda<br>Zambia<br>Zimbabwe |
| Total: 19 countries  | <b>Total: 8 countries</b>  | <b>Total: 20 countries</b>  | <b>Total: 8 countries</b>   |
| Percentage: 34.5%  | <b>14.54%</b>  | <b>36.36%</b>   | <b>14.5% = 50.9%</b>  |
|  | <b>Total: 36 countries</b>   |   | <b>Percentage: 65.5%</b>  |

The rest of the report highlights and discusses the findings in respect of the countries in the second and third classes of the second broad category since the countries have established RROs practice. The countries are 28 in number,<sup>36</sup> and they make up 50.9% of the 55 AU member states surveyed. The general finding is represented in the table below.

### *B. Specific findings*

This part of the report focuses on Algeria, Benin Republic, Botswana,

<sup>34</sup> Algeria, Benin Republic, Botswana, Burkina Faso, Republic of Congo, Ethiopia, Gambia, Guinea, Ivory Coast, Lesotho, Liberia, Madagascar, Mauritius, Morocco, Malawi, Mali, Senegal, Tanzania, Togo, Tunisia,

<sup>35</sup> Zimbabwe, Zambia, Uganda, Cameroon, Ghana, Kenya, Nigeria, South Africa

<sup>36</sup> Algeria, Benin Republic, Botswana, Burkina Faso, Republic of Congo, Ethiopia, Gambia, Guinea, Ivory Coast, Lesotho, Liberia, Madagascar, Mauritius, Morocco, Malawi, Mali, Senegal, Tanzania, Togo, Tunisia, Zimbabwe, Zambia, Uganda, Cameroon, Ghana, Kenya, Nigeria, South Africa

Burkina Faso Republic of Congo, Cameroon, Ethiopia, Gambia, Ghana, Guinea, Ivory Coast, Kenya, Lesotho, Liberia Madagascar, Malawi, Mali, Mauritius, Morocco, Nigeria, Senegal, South Africa, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe. These countries have established general purpose CMOs and specific RROs. The table below contains the names of the CMOs and RROs and the year of their establishment.

Table 2: Names of CMOs and RROs

| Country           | Name  | Year established   |
|-------------------|---|--|
| Algeria           | National Office for Copyright and Related Rights (ONDA)                             | 1973   |
| Benin Republic    | Beninese Copyright and Neighbouring Rights Office (BUBEDRA)                         | 2007   |
| Botswana          | Copyright Society of Botswana (COSBOTS)   | 2008, but started RRO operation in 2016                            |
| Burkina Faso      | Burkinabè Copyright Office (BBDA)   | 1985   |
| Cameroon          | Civil Society of Literary and Dramatic Rights Arts (SOCILADRA)                      | 2002   |
| Republic of Congo | Congolese Copyright Office (BCDA)   | 1986   |
| Ethiopia          | Ethiopian Copyright and Neighbouring Rights Collective Management Society (ECNRCMS) | 2009   |
| Gambia            | Collecting Society of the Gambia (CSG)  | 2013   |
| Ghana             | Reprographic Rights Organization of Ghana (CopyGhana)                               | 2002   |
| Guinea            | Guinea Copyright Office (BGDA)  | 1980   |
| Ivory Coast       | Ivorian Copyright Office (BURIDA)   | 1981   |
| Kenya             | Reproduction Rights Society of Kenya (KOPIKEN)                                      | 2005   |
| Lesotho           | Lesotho Copyright Society of Authors (LESCOSAA)                                     | 2018   |
| Liberia           | Copyright Society of Liberia (COSOL)  | 2019   |
| Madagascar        | Malagasy Copyright Office (OMDA)  | 1984   |
| Malawi            | Copyright Society of Malawi (COSOMA)  | 1992, but started RRO operation in 2000                            |
| Mali              | Malian Copyright Office (BUMDA)   | 1978   |
| Mauritius         | Mauritius Society of Authors (MASA)   | 1989 as RMS (Rights Management Society); incorporated 2018 as MASA |
| Morocco           | Moroccan Copyright Office (BMDA)  | 1965   |
| Nigeria           | Reproduction Rights Society of Nigeria (REPRONIG)                                   | 2000   |
| Senegal           | Senegalese Society of Copyright and Neighbouring Rights (SODAV)                     | 2013   |
| South Africa      | Dramatic, Artistic and Literary Rights Organisation (DALRO)                         | 1967   |
| Tanzania          | Copyright Society of Tanzania (COSOTA)  | 2001   |
| Togo              | Togolese Copyright Office (BUTODRA)   | 1991   |
| Tunisia           | Tunisian Organization of Copyright and Related Rights (OTDAV)                       | 1997   |
| Uganda            | Uganda Reproduction Rights Organization (URRO)                                      | 2010   |
| Zambia            | Zambia Reprographic Rights Society (ZARRSO)   | 2010   |
| Zimbabwe          | Reproduction Rights Organization of Zimbabwe (ZIMCOPY)                              | 1995   |

### 1. Membership

The questions covered here were distilled from good practices 11-18 of the WIPO Toolkit. For membership, the study focused on RROs' practices concerning types of mandate (or authority) that RROs require from prospective members. In other words, how do RROs derive their mandate from rights holders? Such a mandate could either be direct (that is, by way of assignment, exclusive or non-exclusive license from the copyright owners) or indirect (that is, through representation agreements executed between the RROs and the copyright owner's association). Mandates can also be derived from the legislation or regulation governing collective management of copyright in the respective countries. Such legislative mandate may make membership of RROs compulsory (mandatory collective management), voluntary (in which case the RROs will have to obtain direct or indirect mandate from copyright owners), or extended (a system where obtaining of the mandate of a statutorily determined number of copyright owners enables the RRO to represent all rights owners falling within their repertoire).<sup>37</sup> The study also focused on whether the RROs engage in discriminatory practices concerning membership. Here, the focus is whether the RROs' membership criteria allow them to discriminate against classes of rights owners they can admit into their membership and in the treatment of admitted members.

The study does not find discriminatory practice in the membership criteria of the RROs in the 28 countries covered. For ease of reference and clarity, the findings on mandate are discussed under two broad categories: namely countries with general purpose CMOs and those that have established specific RROs. Based on the findings, the general purpose CMOs can be further grouped into four. First, there are those operating as public agencies regulating the copyright industries and as general purpose CMOs in their respective countries.<sup>38</sup> Algeria, Benin Republic, Burkina Faso, Republic of Congo, Guinea, Madagascar, Malawi, Mali, Morocco, Tanzania, Togo, and Tunisia belong to this group. Secondly, there are those statutorily established as semi-public general purpose CMOs in the sense that they are statutorily established as non-profit private CMOs but with government funding and

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<sup>37</sup> DO Oriakhogba, 'Collective Management of Copyright in Nigeria: Should it Remain Voluntary, may it be Mandatory or Extended?' (2019) 6 *NIALS Journal of Intellectual Property* 43-75.

<sup>38</sup> National Office for Copyright and Related Rights (ONDA), Algeria; The Beninese Copyright and Neighboring Rights Office (BUBEDRA - Bureau Béninois du Droit d'Auteur), Benin Republic; Burkinabè Copyright Office (BBDA, Bureau Burkinabé du Droit d'Auteur), Burkina Faso; Congolese Copyright Office (Bureau Congolais du Droit d'Auteur, BCDA), Republic of Congo; Guinea Copyright Office (Bureau Guinéen du Droit d'Auteur - BGDA), Guinea; Malagasy Copyright Office (Office Malagasy du Droit d'Auteur, OMDA), Madagascar; Copyright Society of Malawi (COSOMA), Malawi; Malian Copyright Office (Bureau Malien du Droit d'Auteur - BUMDA), Mali; Moroccan Copyright Office (BMDA, Bureau Marocain du Droit d'Auteur), Morocco; Copyright Society of Tanzania (COSOTA), Tanzania; Togolese Copyright Office (BUTODRA, Bureau Togolais du Droit d'Auteur), Togo; Tunisian Organization of Copyright and Related Rights (OTDAV, Organisme Tunisien des Droits d'Auteur et des Droits Voisins), Tunisia.



public officials in their board.<sup>39</sup> Gambia, Liberia and Mauritius are in this group. Thirdly, there are those statutorily established as non-profit organisations.<sup>40</sup> Falling in this group are Botswana, and Lesotho. The last group are those established as non-profit organisations but authorised by the government to operate as general purpose CMOs.<sup>41</sup> Ethiopia, Ivory Coast, and Senegal fall into this category. The approach to membership mandate in this broad category is not uniform. Some countries, such as Algeria, adopted the voluntary approach (direct or indirect mandate or both).<sup>42</sup> Others, such as Guinea, adopt the mandatory approach.<sup>43</sup> Only Malawi adopts the extended approach.

The countries with specific RROs are generally non-profit companies operating as RROs under the authorisation of the relevant government agency in the respective countries and they all adopt the voluntary membership mandate.<sup>44</sup> Cameroon, Ghana, Kenya, Nigeria, Uganda, Zambia and Zimbabwe are in this group. However, the Dramatic, Artistic, and Literary Organisation (DALRO) of South Africa requires special mention. DALRO is a private for profit RRO that operates the agency-type collective management system (although it describes itself as a multi-purpose CMO),<sup>45</sup> wherein its mandate is limited to acting as a right clearing house: that is, simply to collect and transfer royalties to copyright owners. DALRO does not require government authorisation to operate. It gets its mandate mainly from publishers. DALRO's membership structure is not mandate-based. It is based on shareholding. It has only one shareholder. Until September 2020, its sole shareholder was the leading music CMO in South Africa - Southern African Music Rights Organisation (SAMRO). In September 2020, SAMRO sold its shareholding in DALRO to a management consortium led by DALRO's

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<sup>39</sup>Collecting Society of the Gambia (CSG), Gambia; Copyright Society of Liberia (COSOL), Liberia; Mauritius Society of Authors (MASA), Mauritius.

<sup>40</sup> Copyright Society of Botswana (COSBOTS), Botswana; Lesotho Copyright Society of Authors (LECOSAA), Lesotho.

<sup>41</sup> Ethiopian Copyright and Neighboring Rights Collective Management Society (ECNRCMS), Ethiopia; Ivorian Copyright Office (Bureau Ivoirien du Droit D'Auteur - BURIDA), Ivory Coast; Senegalese Society of Copyright and Neighboring Rights (SODAV, Société Sénégalaise du Droit d'Auteur et des Droits Voisins), Sénégal.

<sup>42</sup> Algeria, Benin Republic, Burkina Faso, Botswana, Ethiopia, Ivory Coast, Lesotho, Liberia, Malawi, Mauritius, Morocco, Rwanda, Senegal,

<sup>43</sup> Republic of Congo, Djibouti, Gambia, Guinea, Madagascar, Mali, Tanzania, Togo, Tunisia

<sup>44</sup> Civil Society of Literary and Dramatic Rights Arts (Société Civile des Droits de la Littérature et des Arts Dramatiques – SOCILADRA), Cameroon; Reprographic Rights Organization of Ghana (CopyGhana), Ghana; Reproduction Rights Society of Kenya (KOPIKEN), Kenya; Reproduction Rights Society of Nigeria (REPRONIG), Nigeria; Uganda Reproduction Rights Organization (URRO), Uganda; Zambia Reprographic Rights Society (ZARRSO), Zambia; Reproduction Rights Organization of Zimbabwe (ZIMCOPY), Zimbabwe.

<sup>45</sup> DALRO, <https://www.dalro.co.za/index.php/about-us/about-dalro> (accessed 29 May 2022).

managing director.<sup>46</sup>

## *2. Openness in operation and data management*

The openness criteria are covered by good practices 9 and 10, 28 to 33, 45 to 48, 58, 59, 62, 63, and 82 of the WIPO Toolkit. The study examined the extent of openness in the operation of RROs in Africa. The focus here is on how the RROs manage the information in their database, allow access to information about their operations by prospective members, current members, users of the works in their repertoire, other CMOs, stakeholders in the copyright sector, and the general public.

Openness by RROs about issues such as their finances, tariff structure and licensing, membership criteria and repertoire data, royalty collection, distribution and deduction policy, RROs constitutive documents, data management, governing body and governance issues, complaint and dispute resolution procedures, contracts and reciprocal representation agreements, among others, is an important indication of transparency and accountability. For instance, the applicable national legislation would usually require RROs to file and/or publish annual reports, which would include information about their royalty collection, distribution, returns on investment, among others. Accordingly, RROs are expected to have a functional website where such information should be available; or where such a website is not functional, be willing to make the information available upon demand by electronic (via emails) or other means of disseminating information. Openness can also be achieved through the publication of such information on the social media platforms of the RROs.

The study did not find a functional website for the RROs in 13 of the 28 countries covered.<sup>47</sup> However, some of the RROs, such as COSOL (Liberia), publish information about their governing board and public engagement activities on their social media platform (Facebook). The RROs in the remaining 15 countries have functional websites.<sup>48</sup> However, only 13 of them frequently publish information on the items listed above, and have developed data management systems. The 13 countries are Algeria, Botswana, Cameroon, Republic of Congo, Ivory Coast, Malawi, Mali, Morocco, Senegal, South Africa, Tanzania, Tunisia, Zambia. CSG's (Gambia) website, which is still a work in progress, contains only information about its contact addresses and governing board. MASA's (Mauritius)

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<sup>46</sup> SAMRO Integrated Report 2020, <https://www.samro.org.za/sites/default/files/Annual%20Report%202020.pdf> (accessed 29 May 2022).

<sup>47</sup> Benin Republic, Burkina Faso, Ethiopia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Nigeria, Togo, Uganda, Zimbabwe

<sup>48</sup> Algeria, Botswana, Cameroon, Republic of Congo, Gambia, Ivory Coast, Malawi, Mali, Mauritius, Morocco, Senegal, South Africa, Tanzania, Tunisia, Zambia

website does not contain adequate and up-to-date information, especially in relation to their finances, royalty collection and distribution.

### *3. Reciprocal representation agreements (RRA)*

These issues are covered by good practices 57-62 of the WIPO Toolkit. The study surveyed the extent of reciprocal representation agreements (RRAs) entered into by RROs in Africa. This will help to gauge the efficiency of RROs in facilitating cross-border licensing and aid in determining the movement of licensing revenues generated from the authorised use of literary, dramatic and artistic works in Africa. However, the study did not access and examine the content of the specific RRAs since it is beyond its scope. This will be addressed in the second study, which will be conducted empirically.

RRAs are bilateral or multilateral contracts executed by two or more RROs, in which each of them commits to administer the rights in the repertoire of the other in their national jurisdictions. For this purpose, each of the contracting RROs authorise the others to deal with the rights in their repertoire for the purpose of collective management within their national territories. The administering RRO is obligated to transmit royalties collected on the foreign works in its national territory to the foreign RRO and vice-versa. Through RRAs, foreign copyright owners enjoy representation in other countries through the RROs in those countries. To this end, each RRO is required to not discriminate against the foreign copyright owners, especially on issues of distribution of royalties, and to provide each other with information that would be useful in executing their obligation under the RRA.<sup>49</sup>

The study could not find information on RRAs involving the RROs in 10 out of the 28 countries surveyed.<sup>50</sup> The study found that the RROs in the other 18 countries have concluded different RRAs with other RROs in Africa and outside the continent.<sup>51</sup> For instance, CopyGhana (Ghana) has concluded RRAs with ZARRSO (Zambia) and REPRONIG (Nigeria). KOPIKEN (Kenya) has 13 RRAs, including those with REPRONIG, MASA (Mauritius), ZARRSO and DALRO (South Africa). COSOMA (Malawi) has 39 RRAs including those entered with MASA, ZARRSO, and it was proposing another with DALRO at the time of research. MASA (Mauritius) concluded 43 RRAs with foreign RROs including COSOMA, URRO (Uganda), REPRONIG and KOPIKEN. REPRONIG executed 17 RRAs with

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<sup>49</sup> WIPO ToolKit, note 21 at 8 and 83; Oriakhogba and Okorie, note 23.

<sup>50</sup> Benin Republic, Cameroon, Ethiopia, Gambia, Ivory Coast, Lesotho, Liberia, Senegal, Togo, and Tunisia.

<sup>51</sup> Algeria, Botswana, Burkina Faso, Republic of Congo, Ghana, Guinea, Kenya, Madagascar, Malawi, Mali, Mauritius, Morocco, Nigeria, South Africa, Tanzania, Uganda, Zambia, Zimbabwe

foreign RROs including CopyGhana, KOPIKEN, URRO and ZARRSO. URRO concluded 5 RRAs, including with COSOMA, ZIMCOPY (Zimbabwe), ZARRSO and KOPIKEN. ZARRSO (Zambia) has 20 RRAs with foreign RROs including URRO, ZIMCOPY, COSOMA, KOPIKEN, CopyGhana, and REPRONIG. On its part, DARLO (South Africa) had 25 RRAs, while ONDA (Algeria) concluded 47 RRAs, 16 of which were with African CMOs. Nonetheless some RROs, such as BBDA (Burkina Faso) concluded RRAs with foreign CMOs focusing mainly in the area of music rights. Of the 40 RRAs concluded by BBDA, only one was executed with an RRO (ProLiteris, Switzerland).

It is important to emphasise that the conclusion of RRAs among RROs is often facilitated through the international networks of RROs, such as IFRRO. This is demonstrated by the multilateral RRA concluded by mechanical rights CMOs in the African music industry that led to the creation of a multi-territorial licensing hub for the use of music in the digital space. The hub connects over 17 music CMOs across Africa and is operated by the Composers, Authors and Publishers Association (CAPASSO) in South Africa.<sup>52</sup> Being that RRAs relate to licensing to facilitate the economic rights of copyright owners, they are not useful for the facilitation of cross-border uses of copyright that are covered by L&Es. This is because RROs generally operate outside the context of L&Es. As such, RRAs cannot provide the necessary framework for cross-border non-commercial access to information covered by copyright for research and education in Africa, especially given the challenges faced by researchers, educators, libraries, and archives in this regard. Worse still, reports based on empirical study show instances where RROs refuse to grant licenses to libraries for uses of copyright works covered by exclusive rights.<sup>53</sup> An international mechanism providing minimum standards on L&E would more effectively support cross-border access to information for research and education in Africa.

#### 4. Governance

The questions covered here are distilled from good practice 34 to 42 of the WIPO Toolkit. The study surveyed the internal governance of RROs in Africa. Here the study sought to confirm the frequency of the convening of general meetings by RROs and whether they have in place a governing board or board of directors that supervises their management and operations. It also focused on the composition of the boards, and whether there is fairness and balance in the membership of the board. Here the concern is whether owners

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<sup>52</sup> DO Oriakhogba & CI Okorie 'Multi-territorial Digital Copyright Licensing within the AfCFTA: Considerations for Appropriate Guiding Principles' (2021) 43(11) *European Intellectual Property Review* 710-720.

<sup>53</sup> Request for contributions for the information session on the impact of the COVID-19 pandemic on the copyright ecosystem. <https://www.wipo.int/export/sites/www/meetings/en/docs/electronic-information-for-libraries.pdf>.

of the copyright and other stakeholders in literary, artistic and dramatic sectors are adequately represented in the boards. Furthermore, the study determined whether the RROs have management teams separate from their boards.

Internal governance structures are mechanisms to ensure transparency and accountability in the management and operations of RROs. The general meeting is an important organ of RROs as it is the general assembly of the members and the highest decision-making organ of RROs. As such, it is a good practice for general meetings to be convened annually by RROs. Matters such as appointment of board members, approval of policies, annual reports, general investments, among others, are usually handled by the general meeting. On the other hand, the board supervises the management team, which handles the daily administration and operations of the RROs. The management team is usually separate from the board, even though the head of the team (usually a director general or executive director) usually is a member of the board. For efficiency, it is good practice to have the management team constituted by experts who may not necessarily be members (copyright owners) of the RROs.<sup>54</sup>

The study did not find information on the internal governance of the RRO in Ethiopia. Due to language barrier, the study could not ascertain the frequency of annual general meetings (AGM) for the RROs in Algeria, Benin Republic, Burkina Faso, Republic of Congo, and Mali, while there is no information on AGM for RROs in Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Mauritius, Morocco, Nigeria, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe. There is also no information on the governing board and its composition of the RRO in Morocco. However, the study finds that RROs in countries, such as Botswana, Cameroon, Ivory Coast, Malawi, Senegal, and South Africa have been holding AGMs frequently. For instance, while the RRO in Senegal had an AGM in 2021, that of Botswana held virtually in 2022. It should be noted that DALRO (South Africa) has a single shareholder, which is a consortium led by its managing director. Apart from Ethiopia and Morocco for which no information was found, the study revealed that the RROs in the other countries have boards of directors or governing board/council (Management and Reconstruction Council in Ivory Coast), and management teams.

It appears there is no separation between the board and management team in Benin Republic and Zimbabwe. This is not so in other countries, but the heads of the management teams of the RROs in these countries (executive director, managing director, executive director, chief executive officer, director general, or just director as the case may be) are members of the board.

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<sup>54</sup> Generally, see RA Hooijer and JJ Baloyi Collective Management Organizations - Tool Kit: Musical Works and Audio-visual Works (WIPO, 2016) 188-156, [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_emat\\_2016\\_1.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf) (accessed 29 May 2022).

As revealed by the study, there is a mix of equal and unequal representation of copyright owners in the board of the RROs in the countries where information was found. For instance, while majority have more authors representatives on the boards,<sup>55</sup> Zimbabwe has more publishers. The RROs in other countries have equal representation of authors and publishers.<sup>56</sup> Due to language barrier and lack of information, the study could not ascertain the composition of the board in some countries.<sup>57</sup>

### 5. Finance

The study focused on collection and distribution of, and deduction from, royalties by RROs in Africa. The criteria discussed here are distilled from good practices 43 to 56 of the WIPO Toolkit. The frequency of royalty collection and distribution are important criteria for assessing the effectiveness of RROs. This is so because royalty collection and distribution are part of the core functions of RROs, and these are required to occur annually (each financial year). RROs collect royalties from users, in form of payment for the use of copyright works, based on licensing tariffs predetermined by agreement between the RROs and users or set by the relevant national regulation. On the other hand, distribution is the payment made by the RROs to the local and foreign copyright owners (usually, members of the RROs) of the works forming part of the RROs' repertoire. Distribution may be general or specific. General distribution is made to all members of the RRO regardless of actual usage of the works of the members. This type of distribution is hinged on mere membership of the RROs. Specific distribution is based on actual usage of the members' works. Here, only members whose works are used based on the usage data derived from users get paid for the financial year.<sup>58</sup>

Before royalties are distributed, the RROs would usually deduct certain percentages from the collected royalties as administration or management fees. Although the amount deducted by RROs varies, it was stated in part 1 above that a maximum of 30% or more is allowed for newly established RROs, while already established RROs should not deduct more than 20%. Other deductions, such as for social and cultural purposes would usually be made by RROs before distribution of collected royalties. The percentage deducted by each RRO is determined either by their members in a general meeting, stipulated by regulation, or in the case of RRAs, determined by agreement between the RROs concerned. CISAC model RRA provides for a

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<sup>55</sup> Algeria, Burkina Faso, Cameroon, Botswana, Kenya, Madagascar, Mauritius, Nigeria, Togo, Tunisia, Uganda, and Zambia.

<sup>56</sup> Benin Republic, Gambia, Ghana, Ivory Coast, Lesotho, Malawi, South Africa, and Senegal (colleges of authors, publishers, performers and producers).

<sup>57</sup> Republic of Congo, Djibouti, Guinea, Liberia, Mali, and Tanzania.

<sup>58</sup> CI Okorie 'Royalty distribution in Nigeria: Must collective management organisations distribute royalties only to members whose works were used?' (January 2021), <https://ipkitten.blogspot.com/2021/01/royalty-distribution-in-nigeria-must.html> (accessed 29 May 2022).

10% deduction from the royalties collected on foreign works by the local RROs before the funds belonging to the foreign RROs are repatriated abroad. The 10% deductions are for social and cultural purposes in the country of the local RRO.<sup>59</sup> The study also focused on deductions made by RROs in Africa.

Finally, it is important to note that apart from royalty collections, RROs usually derive revenue from the investment of monies collected as royalties. Ideally, such investments should be sanctioned by the members in a general meeting or authorised in the RRO's constitutive documents. Nonetheless, it must be noted that profits from such investments must form part of the amount for distribution. This is so because monies collected as royalties by RROs belong to their members and the RROs merely hold the monies in trust.<sup>60</sup> The amount of royalties collected and distributed, the deductions made, and investments of RROs are important issues that should form part of, or accompany (as a financial statement), their annual reports which should be published as an indication of transparency and accountability. Thus, the study also focused on the frequency of publication of annual reports by the RROs.

The finding of the study is presented in table 3 below. Nonetheless, it is important to highlight the commendable level of frequency in royalty distribution by the RROs in countries such as Algeria, Botswana, Burkina Faso, Cameroon, Ghana, Guinea, Malawi, Mali, Morocco, Kenya, Senegal, South Africa. The study revealed distribution by the RROs between 2010 and 2021. This also connotes the level of frequency of royalty collection. The RROs in this category also performed well in the publication of annual reports. Of this class, KOPIKEN (Kenya) deserves special mention. The evidence shows that it distributed royalties last in 2015 for collections made in 2014.<sup>61</sup> However, there is no evidence of renewal of its operating license by the Kenya Copyright Board (KECOBO) since 2016.<sup>62</sup> That being said, the majority of the RROs are not doing well in the area of royalty collection and distribution as shown in the table below. For instance, Nigeria belongs to this class. There is no information on distribution by REPRONIG (Nigeria) since its establishment, even though it collected royalties in 2007. The same is true of COSOTA (Tanzania), which collected royalties in 2014. RROs in countries, such as Liberia, Gambia, Zimbabwe, Uganda, Madagascar, among others, did not show evidence of royalty distribution and collection.

Concerning deductions, the study found that while the majority of the RROs are allowed to deduct between 25 and 30% for administrative costs,

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<sup>59</sup> Ficsor, note 1 at 152.

<sup>60</sup> See *Shapiro v South African Recording Rights Association Limited*, case no. 14698, 6 November 2009, reported as 2008 (4) SA 145 W.

<sup>61</sup> IFFRO, <https://iffro.org/page/member-details/KOPIKEN/?k=rod6b3044f1f9b4b27e7545260096d1faf> (accessed 12 May 2022).

<sup>62</sup> IP Kenya, <https://ipkenya.files.wordpress.com/2016/02/kecobo-public-notice-on-renewal-registration-license-kamp-prisk-mcsk-kopiken-february-2016-collecting-society-kenya-copyright-board.jpg> (accessed 12 May 2022).

BGDA in Guinea deducts 35%. The lowest deduction of 20% is recorded for COSOL in Liberia. Majority of the RROs are allowed to make 10% deductions for social and cultural purposes. CopyGhana is allowed to deduct 15% for projects. There is no indication in the enabling law as to what project covers. However, given the practice in collective management of copyright, this may be applicable to social and cultural purposes, among others, as

Table 3: Annual reports, royalty collection and distribution, and deductions by RROs

| COUNTRY: RRO            | ANNUAL REPORT   | COLLECTION AND DISTRIBUTION   | DEDUCTION   |
|-------------------------|---|---|---|
| Algeria: ONDA           | Bound by law to give annual reports, accompanied by auditors reports and statements of accounts, to the Minister of culture. Latest report of 2020 was for the year 2019. | Bi-monthly/annual distribution. First distribution for copyright was done in 1973. Distribution for related rights was done in 2002. Cannot ascertain subsequent distribution due to language barrier | Makes 10% deduction for authors' and performers' social fund  |
| Benin Republic: BEBUDRA | Cannot ascertain because of language barrier  | No information  | Cannot ascertain because of language barrier  |
| Botswana: COSBOT        | Annual report for the year 2020,  | First collection & distribution in 2014. Last distribution done in 2020, as per the 2021 annual report  | Deducts varying administrative costs based on the revenue collected, but usually not more than 30% of collection. Deducts 10% for social and cultural purposes: |
| Burkina Faso: BBDA      | Cannot ascertain because of language barrier  | Year of first collection 2003. First distribution 2010. Last distributed in 2019.   | 25% administrative cost. 10% social and cultural deductions (5% for each).  |
| Cameroon: SOCILADRA     | Last published a financial report for the year 2018   | 2005 was the year of first collection and distribution. Distribution is done twice yearly. There are indications of distribution in 2012 and 2018   | No deduction for social and cultural purpose  |
| Republic of Congo: BCDA | Cannot ascertain because of language barrier  | 4 times a year. Cannot determine the first and last year of distribution because of language barrier  | Cannot ascertain because of language barrier  |
| Ethiopia: ECNRCMS       | No information  | No information  | 30% administrative deduction as required by law   |
| Gambia: CSG             | The law requires annual reports, but no   | None since 2013   | None required by the law  |



|                     |  |   |  |
|---------------------|--|---|--|
|                     | information on whether CSG has published any since 2013  |   |  |
| Ghana: CopyGhana    | Required by law to submit annual reports to its members and the Minister, but no information on this             | First collection was in 2011. First distribution was in 2012. Distributed in 2020.  | 30% administration cost. 15% for projects.   |
| Guinea: BGDA        | No information   | Quarterly distribution. There is indication of collection and distribution in 2017,   | 35 % administration cost   |
| Ivory Coast: BURIDA | No information   | Quarterly distribution. The last was in June 2021   | Deductions are determined annually by the Board of Directors subject to Ministerial approval           |
| Kenya: KOPIKEN      | Required by law to file annual reports, but no information on that   | Annual distribution. Last done in 2015. 2007 year of first collection   | 30% for admin cost. None for social and culture  |
| Lesotho: LECOSAA    | No information   | No information  | No information   |
| Liberia: COSOL      | No information   | It has not become fully operational. In 2020, it flagged off a data collection survey to gather information on the generation and usage of copyright materials, | The law requires it to deduct 20% administrative cost, 10% for trust fund                              |
| Madagascar: OMDA    | It is required by law to file annual reports, but no information on that   | Law requires it to be distributed 7 times yearly. No information on the last collection and distribution  | No information   |
| Malawi: COSOMA      | Required by law to prepare and forward annual reports to the Minister. Presented a report to members in 2019 AGM | First collection was in 2003. 2015 year of first distribution. Last distribution was July 2021  | 30% administrative cost. 10% (only from musical royalties) deduction for social and cultural purposes. |
| Mali: BUMDA         | 2020, adopted by 40 <sup>th</sup> session of the board in 2021   | 4 times a year. Last distribution was in 2020   | No information   |
| Mauritius: MASA     | No information   | No information  | No information   |
| Morocco: BMDA       | Cannot ascertain due to language barrier   | Distributes quarterly. Last distribution in 2021  | No information   |
| Nigeria: REPRONIG   | No information, but the law requires filing of annual reports  | First collection in 2007. No distribution since inception   | No social and cultural deduction. Legally required to deduct not more than 30% admin cost.             |

|                     |                        |  |  |
|---------------------|------------------------|--|--|
| Senegal: SODAV      | Last published in 2019 | Last distributed in 2020   | Administrative, social and cultural deductions allowed by law, but no limit stated.  |
| South Africa: DALRO | Last published 2020    | First collection and distribution was in 1990. Last distribution was in 2018 | 25% administrative cost.   |
| Tanzania: COSOTA    | No information         | First collection 2014. No distribution so far                                | None   |
| Togo: BUTODRA       | No information         | No information   | By law, the Governing board determines annually the admin cost to be deducted. However, a cultural promotion fund to be established and 3% of collected royalties to be deducted for it. |
| Tunisia: OTDAV      | No information         | No information   | Required by law to operate a social and cultural fund, but no information on %   |
| Uganda: URRO        | No information         | No information   | None   |
| Zambia: ZARRSO      | No information         | First collection 2016. No information on distribution                        | 30% admin cost. No social and cultural deductions  |
| Zimbabwe: ZIMCOPY   | No information         | No information   | None   |

determined by the RRO. BUTODRA in Togo is empowered by the enabling law to establish a cultural promotion fund and to deduct 3% for this purpose.

### *6. Dispute resolution mechanism*

The establishment of a dispute resolution mechanism as a criterion for an effective collective management system is stipulated in good practices 82 and 83 of the WIPO Toolkit. Disputes are bound to arise in collective management of rights in literary, artistic and dramatic works. Such disputes may be between RROs and their members or non-members (copyright owners), between RROs and users of copyright works, or between RROs and their supervisory agencies or the government functionary exercising regulatory oversight over them. For effectiveness, it is important to have a clearly defined mechanism with clearly stated procedural rules to resolve such disputes when they do arise. The mechanism may be an alternative dispute resolution (ADR) approach that is basically party driven, an administrative procedure, a traditional adjudicatory system through a tribunal or the normal courts or a mix of any of the systems. The advantage of an ADR (including a mix of ADR and adjudicatory) system is the possibility of enhancement of the jurisprudence of the national collective management regime since the strong presumption is that the ADR panels will be

constituted by experts in the field of copyright and collective management. Whatever the approach, dispute resolution mechanisms are defined by the applicable national legislation or agreed to by the parties (especially in cases where ADR is adopted).

Due to language barrier, the study could not find any information about the dispute resolution system in Morocco. Nonetheless, the study found the existence of the different dispute resolution mechanisms in Africa. Countries such as Algeria, Botswana, Ivory Coast, Uganda, and Zambia adopt the ADR approach for the resolution of disputes involving RROs. Burkina Faso, Republic of Congo, Ethiopia, Ghana, Guinea, Lesotho, Liberia, Madagascar, Mali, Mauritius, Senegal, South Africa Tanzania, Togo, and Tunisia subject disputes involving RROs to the traditional adjudicatory system either through Copyright or IP tribunals, or through the civil courts. Furthermore, Gambia, Kenya, and Nigeria adopt a mix system of ADR as first instance and, where it fails, the traditional adjudicatory system is resorted to through the civil court or the Copyright Tribunal in the case of Kenya. Finally, Benin Republic, Malawi, Zimbabwe adopted the mix system of administrative procedure in the first instance and the court subsequently. In Malawi and Zimbabwe, disputes first go to a separate administrative body before the court. In the case of Benin Republic, however, BUBEDRA acts as the administrative body of first instance, before unsettled disputes are referred to the court. In Cameroon, the Permanent Mediation and Control Commission (PMCC), which acts as the supervisory agency, is also the forum for dispute resolution. It can, thus, be regarded as a mix of ADR and administrative procedure.

### *7. Supervision*

Government supervision is distilled from good practices 84 and 85 (erroneously listed as 70 and 71) of the WIPO Toolkit. Governmental supervision is important to ensure good governance, effective financial management, transparency and accountability in the practice of RRO. The role of government in this regard is not to unduly get involved or unreasonably burden the operation of RROs, but to ensure, through clearly enacted legislation, regulations or codes of conduct, that the normative standards of accountability, transparency, good governance and financial management are adhered to by RROs operating in their domains. The overall goal is to ensure that RROs effectively perform their key roles of ensuring access to copyright works for users, and generate revenue for copyright owners through licensing. Government supervision can be achieved through government ministries or specialised agencies established to oversee the copyright sector.

As found by the study, all 28 countries have established national supervisory mechanisms for RROs. In this regard, two approaches were identified. First, is the group of countries wherein RROs are under the direct supervision of a dedicated ministry (usually ministries of culture, tourism,

youth, sports, information, trade, industry, investment, higher education and research, and justice [law and constitutionality]). Countries in this category are majority of those with general purpose CMOs doubling as regulators of the copyright industry. The countries in this group are Algeria, Benin Republic, Burkina Faso, Republic of Congo, Guinea, Ivory Coast, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Senegal, Tanzania, Togo, and Tunisia. In the second group of countries, RROs are supervised by a specialised agency established to regulate the copyright sector in the country. Here, the type of agency varies from country to country. Some have the Registrar of Copyright as the supervisor (Uganda, Zambia and Zimbabwe), while others have bodies such as the Company and IP Commission (South Africa) or Agency (Botswana). Some others have special copyright commissions, offices, or boards (Nigeria, Ghana, and Kenya), or IP offices (Liberia and Ethiopia), or a broad-based agency with copyright function (Cameroon and Gambia).

In addition to such supervisory mechanisms that are based on legal regulation regimes, countries, such as Kenya have developed policy frameworks that address the different aspects covered by the WIPO Toolkit to guide RROs in their territory on how to comply with regulation regimes.<sup>63</sup>

## V. RECOMMENDATIONS

The recommendations below are aimed at closing the gaps between the best practices in the WIPO Toolkit and the realities of CMOS and RROs in Africa discussed in the previous section. Findings in that section show that there is some form of cooperation, through reciprocal representation agreements (RRAs), among RROs in Africa in the area of royalty collection and distribution. The study also shows the existence of government supervisory mechanisms for RROs in the countries surveyed. Nonetheless, the overall findings point to a relative lack of openness and data management system. Also, there is largely infrequent royalty collection and distribution by the RROs, and absence of a regional normative framework or guideline or code of conduct regime to support the practice of RROs. The recommendations below primarily focus on these areas.

### A. Openness

Of the 28 countries with functional RROs, only 13 have a data management system and frequently publish information on their website about their finances, tariff structure and licensing, membership criteria and repertoire data, royalty collection, distribution and deduction policy, RROs constitutive documents, data management, governing body and governance issues, complaint and dispute resolution procedures, contracts and reciprocal representation agreements, among others. Thus, it can be said that there is

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<sup>63</sup> For instance, see KECOBO *Medium Term Collective Management Organisations (CMOs) Policy Framework* (2021).

substantial lack of openness on the operation of RROs in Africa. This may be because of non-compliance with regulatory stipulations by the RROs, ineffective enforcement of regulatory provisions by supervisory bodies, lack of the requisite digital infrastructure in the national territory of the RROs, or lack of technical know-how and capacity on the part of the RROs. While the issues of non-compliance and lack of enforcement of rules can be remedied by effective enforcement strategies such as awareness campaigns targeted at the RROs and appropriate sanctions where necessary, digital infrastructure can be made available through public (government) and private (RROs) investment. Training and technical support are needed to build the capacity and know-how of the RROs.

#### *B. Reciprocal Representation agreements and cross-border licensing*

Eighteen (18) of the 28 countries with operational RROs have concluded reciprocal representation agreements (RRAs) within and beyond Africa. Thus, it can be said that there is some form of cooperation among the RROs in Africa in the area of cross-border licensing. However, such licensing activities are limited to authorised uses of copyright works and do not cater for cross-border uses of copyright works covered by L&Es for education, research, libraries, archives and museums. Thus, a special regime that will promote user rights and support cross-border uses within the context of L&E in Africa is required to be developed outside the licensing activities of RROs.

#### *C. Royalty collection and distributions*

Despite the substantial presence of RRAs involving RROs in Africa, an indication of active licensing operations, only 12 countries (Algeria, Botswana, Burkina Faso, Cameroon, Ghana, Guinea, Kenya, Malawi, Mali, Morocco, Senegal, and South Africa) show commendable frequency in royalty collection and distribution. The implication of this is that the majority of RROs in Africa are failing in their core function of generating revenue for copyright owners. The reason for this state of affair may be inadequate, or lack of, capacity and technical know-how in royalty collection, or financial impropriety by the RROs in managing collected royalties. To solve these, capacity building and training, and effective enforcement of the governing rules by supervisory bodies are important strategies.

#### *D. Regional normative framework*

Finally, a regional normative framework in the form of guiding principles, code of good practices, or a protocol under existing regional regimes is required to provide minimum standards that will ensure good governance, accountability, transparency and effective financial management by RROs in Africa. Alternatively, and as canvassed elsewhere,<sup>64</sup> the ongoing negotiations under the AfCFTA Agreement can offer a platform for the

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<sup>64</sup> Oriakhogba and Okorie, note 50.

development of such a normative framework. Such intervention can be supported by the existing ongoing regional cooperation among African RROs as revealed by the study, as well as the national regulatory frameworks enacted by the AU member states.

#### CONCLUSION

RROs perform important functions of revenue generation for the owners of copyright in literary, artistic and dramatic works in Africa. They also ensure national and regional authorised access to the works for users. RROs perform these important tasks within the licensing framework provided by copyright regimes. As such, RROs operate outside the L&Es mechanism that support national and cross-border access to information for education and research, and the important work of libraries, archives and museums. Even so, evidence-based and informed legal and policy actions to ensure that RROs continue to perform their important function is needed at the regional level in Africa. This report provides the requisite evidence.