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Assessing Governance in the Context of Copyright Systems

SECOND EDITION

Nathalie Lefever Tiina Kautio

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Introduction

The present document endeavors to study the possibility of assessing the governance in copyright and related rights systems. The characteristics of processes for making and implementing decisions are an important part of the copyright system's operation. The quality of governance can be regarded as a separate research area in the larger context of the copyright system's assessment.

Copyright is an essential part of intellectual property rights that protects the rights of authors who are the creators of original works in the field of literature and the arts (including written works, musical compositions, works of visual arts and other creations of the mind).[1] The copyright system seeks to foster the interest of the public at large by determining the level of protection so that it would support the availability, abundance and diversity of culture through its incentive function, and at the same time encourage further creativity and innovation as well as access to works. The copyright system's operation is the result of the actions of the legislators preparing new copyright law, the authorities in charge of the administration of copyright (government departments, government agencies and other public actors), the authorities in charge of copyright enforcement (courts, prosecutors, police, customs and public supervisory or anti-piracy bodies), as well as private parties involved in copyright-related activities (authors, performers, professional copyright users, intermediaries, end-users, experts, etc.).[2]

The present document explores the possibilities for assessing governance in national copyright systems. Its purpose is to 1) define good governance in the context of the copyright system, 2) select and describe generally recognized good governance principles particularly applicable to the copyright system, and 3) present a list of questions to be answered when assessing the compliance of the copyright system to good governance principles.

This document is linked to an extensive methodological work to study and assess the operation of national copyright and related rights systems, conducted in Finland by the Foundation for Cultural Policy Research Cupore.[3]

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[1] In a broader sense, copyright also includes the so-called related or neighbouring rights: the rights of performers, producers of phonograms or films, and creators of computer programs or databases.

[2] For a definition of copyright stakeholders, see See Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*, Cupore publications 26, May 2016, p.21–22.

[3] For more information on the work, see the website of Cupore at http://www.cupore.fi/en/research/research-projects/assessment-of-the-copyright-system-to-support-decision-making.

Section 1
The Reasons for Assessing and Improving Governance

Governance is a broad concept that covers a wide range of actions depending on the context. Generally speaking, governance can be understood as the manner in which the power is exercised, the process of decision-making, and the process by which decisions are implemented. Governance covers the management of public affairs and resources, policy formulation and accountability of public authorities. Governance is also closely connected to human development and human rights.

Governance can be considered as "good" when it is defined by a set of characteristics generally considered as recommendations that will help achieve a balanced, equitable and reliable management power. These characteristics apply to the mechanisms of governance, the processes used, and the outcomes achieved.[4]

In the field of national governance and specifically legislation and policy making, good governance is the one that will succeed at satisfactorily reaching public goals taking into account the interests of all the actors involved. However, "it is widely acknowledged that a single model of governance cannot and should not be imposed. Governance varies across contexts and cultures, and has evolved in response to a number of socio-cultural and economic factors."[5]

Good governance has been qualified as "an ideal which is difficult to achieve in its totality".[6] However, complying with generally recognized good governance principles is important because it provides an ethical basis for governance, and leads to improved decision-making processes, helping the government meet its legislative responsibilities. Principles of good governance encourage consensus, and their respect results in better confidence from stakeholders in decision-making. Moreover, it has been noted that "'getting policies right' may not, in itself, be sufficient for successful

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[4] Definition by the United Nations Development Programme, *Discussion Paper: Governance for Sustainable Development – Integrating Governance in the Post-2015 Development Framework*, March 2014, p.4.

[5] United Nations Development Programme, *Discussion Paper: Governance for Sustainable Development – Integrating Governance in the Post-2015 Development Framework*, March 2014, p.5, available at http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Discussion-Paper--Governance-for-Sustainable-Development.pdf.

[6] United Nations Economic and Social Commission for Asia and the Pacific, *What is Good Governance?*, http://www.unescap.org/sites/default/files/good-governance.pdf, p.3.

development, if standards of governance are poor";[7] policy decisions, in particular those designed to respond to specific problems, have been proven to be undermined by the absence of good governance.[8] Ultimately, good governance is crucial for achieving better efficiency in the management of public affairs.

[7] Asian Development Bank, *Governance: Sound Development Management* (August 1995), published in 1999, p.4, available at http://www.adb.org/documents/governance-sound-development-management.

[8] See *African Development Bank Group Policy on Good Governance*, November 2, 1999, §4.3: "The absence of good governance has proved to be particularly damaging to the "corrective intervention" role of government. Programs for poverty alleviation, for example, have been undermined by corruption, lack of public accountability and participation of the beneficiaries."

Section 2
Defining Good Governance in the Context of the Copyright System

A. The Scope and Means of the Assessment

Since the term "good governance" is used to cover different purposes in many different contexts, its definition, as well as the principles to be followed, will need to be adapted to the context and the goal of the assessment.[9] The purpose of this paper is to define questions and tools for assessing good governance in the field of copyright at national level.

The scope of activity to be assessed is therefore the copyright system, including the policies and processes designed to encourage creativity by enabling authors to control and to obtain reward from the use of their creative works, and to ensure a certain level of access to the works by the public.[10] The copyright system is based on law, and its rules are enforceable in public courts; public authorities in charge of copyright are therefore the main actors whose activities will be assessed for compliance with good governance principles. Among them are state and government agencies in their actions for preparing copyright policies, implementing them through laws, regulations and other measures, as well as public forces in charge of copyright enforcement. The governance of copyright will therefore be closely connected to the general national context, in particular the system of government, an aspect which must be taken into account in the assessment.

Before engaging into the analysis of governance, the public actors to be the subject of assessment have to be determined with particular care, depending on the country context and the system of public administration. The assessment will only be particularly meaningful when covering authorities that remain relatively constant throughout political changes. In addition, the effect of political decisions on the public administration has to be taken into account. In some cases, it will be necessary to focus on the assessment of specific processes rather than bodies whose composition vary over time. For example, the activities of Parliament can only be assessed with a focus on the procedures that remain constant throughout different parliamentary sessions, and after new elections. Authorities in charge of the public administration of copyright might include actors in charge of designing and implementing copyright

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[9] In the context of International Monetary Fund recommendations, for instance, it will often be understood as a set of tools to improve financial aspects of the governance and to fight against corruption.

[10] For a definition of the copyright system's operation, see Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*, Cupore publications 26, May 2016, p.18–19.

policies, public courts in charge of copyright disputes, public bodies determining licensing fees, overseeing collective management organizations or providing official opinions concerning the interpretation of copyright rules, as well as legislative bodies related to the preparation of copyright legislation.

It is also important to recognize that the operation of the copyright system is organized differently in different countries and according to subject matter. In some cases, private actors play a crucial role in managing or enforcing copyright. For example, in some national systems, private copyright organizations such as collective management organizations have a mandate to collect and redistribute copyright revenues in the name of right holders. Collective Management Organizations (CMOs) are organizations representing a group of copyright and related right holders for the purposes of arranging licenses and collecting remunerations on their behalf. The role of collective management organizations has been recognized by the European Union when it was decided to regulate their operation to ensure their good governance.[11] Insofar as such organizations, albeit private, fulfil a crucial role in the copyright system, there might be a need to include them as objects of an assessment of good governance.[12] This is why this document includes questions for assessing the quality of governance of CMOs alongside with the general governance of the copyright system by public actors.[13]

The assessment of the governance of copyright could therefore cover the public actors in charge of copyright administration as well as some private actors that have a particularly important role in the copyright system. Moreover, in order to assess the quality of governance, it is important to take into account all the actors involved, since "understanding governance at the national level is made easier if one considers the different kinds of entities that occupy the social and economic landscape".[14] Many actors that are not in charge of the governance of the copyright system, and therefore

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[11] Directive 2014/26/EU of the European Parliament and of the Council of February 26, 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. See for example "whereas" number 3: "Collective management organisations play, and should continue to play, an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their right holders and the public." Or "whereas" number 9: "The aim of this Directive is to lay dozen requirements applicable to collective management organisations, in order to ensure a high standard of governance, financial management, transparency and reporting."

[12] It could be argued that private corporations that provide services essential for the operation of the copyright system should be assessed in the same manner as state corporations. On the subject, see for instance *The importance of good governance in the management of public affairs especially state enterprise*, Speech by Huguette Labelle (Transparency International), March 10, 2010 – Hilton Hotel, Yaoundé, Cameroon, available at http://www.transparency.org/news/speech/the_importance_of_good_governance_in_the_management_of_public_affaires_espe: "State corporations are the extension of governments: just as citizens rely on governments, they trust state enterprises to manage public resources and provide essential services in today's complex societies. (…) The importance of these roles and responsibilities, underscores the importance of the trust we place in those who undertake them on our behalf. People have a right to expect that these service providers carry out their duties mindful of those for whom they are in essence working: all citizens."

[13] Another example where private organizations play a crucial role in the governance of the copyright system could be cases of jurisdictions where copyright disputes would be primarily resolved through private dispute resolution mechanisms instead of public courts. The organizations providing such private dispute resolution mechanisms could then be subjected to an assessment of the quality of their governance.

[14] John Graham, Bruce Amos & Tim Plumptre, *Principles for Good Governance in the 21st Century*, Policy Brief No. 15 – Institute On Governance, Ottawa, Canada (August 2003), p.1, available at http://unpan1.un.org/intradoc/groups/public/documents/UNPAN/UNPAN011842.pdf.

will not be subject to good governance assessment, do nevertheless play an important role in the system's operation. They might influence the way the system is governed and the results of specific actions of governance. For instance, the level of organization of right holders (whether their interests are represented by unions or professional associations) is likely to affect their level of participation in the system, and their ability to influence its operation. In some countries, citizens concerned about their interests as users have created associations or political parties with the purpose of representing their position in the copyright system. Media and the school system play an important role in the transparency of the copyright system. Professional copyright users as well as intermediaries[15] are in a position to influence the efficiency of the markets for copyrighted products and services. The actions of these actors and the effect they might have on the governance of the copyright system need to be recognized in the assessment.

B. Good Governance Principles Applicable to Copyright Systems

In order to assess the quality of governance in the field of copyright, it is first necessary to define the principles of good governance applicable to a national copyright system. This attempt will be based on the definitions of good governance presented by the following international bodies: the African Development Bank Group (ADBG), the Asian Development Bank (ADB), the European Union (EU), the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD), the United Nations' Development Programme (UNDP), the United Nations' Economic and Social Commission for Asian and the Pacific (UNESCAP), the United Nations' Office of the High Commissioner for Human Rights (OCHCR) and the Worldwide Governance Indicators (WGI) project of the World Bank. These institutions and their work in the field of good governance are presented in more detail in appendix 1.

These international organizations have identified several characteristics governance needs to possess in order to be considered as "good". These characteristics, some of them strongly connected to each other, are here used as the basis for an outline of generally recognized good governance principles that can be used to evaluate the quality of governance at national level.

Listing good governance principles can be difficult and controversial. However, the principles selected in this document are those that

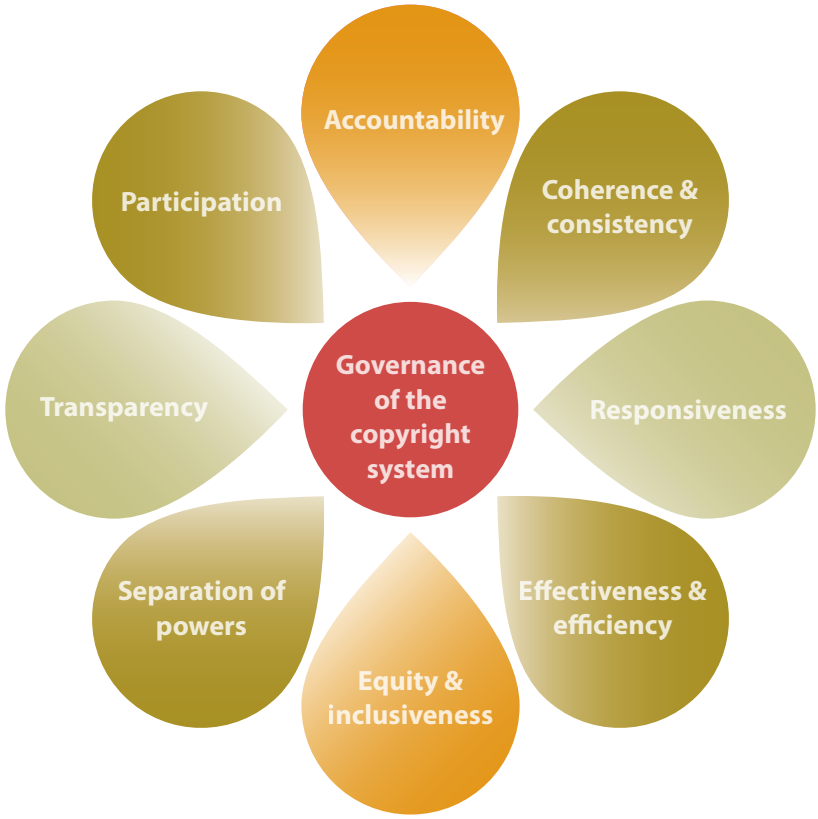
a) are recognized by most of the international organizations listed, and
b) can be considered as particularly applicable in the study of the governance of a copyright system.

[15] For definitions of professional copyright users and intermediaries, see Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*, Cupore publications 26, May 2016, pages 21 and 22.

The proposed list of good governance principles applicable to copyright systems used in this document includes:

1. transparency
2. participation
3. accountability
4. coherence & consistency
5. responsiveness
6. effectiveness & efficiency
7. equity & inclusiveness
8. separation of powers.

They are presented in more detail in Section 3.



As a result of this selection, some good governance principles that are recognized in different contexts have not been included. Such is the case of the often cited need to combat corruption[16], the need to curb violence and transnational organized crime[17], the requirement of predictability[18], or the requirement for political stability and absence of violence or terrorism[19]. These aspects are important in a well-functioning system of government, but do not particularly apply to the copyright system. Lists

[16] Cited by ADBG, UNP and WGI. However, the issue of corruption is covered under the principle of compliance with the Rule of Law.

[17] Cited by UNDP.

[18] Predictability is cited as a good governance principle by the ADB.

[19] Cited by WGI.

of good governance principles also often include compliance with the rule of law,[20] referring to all aspects that result in a power based on a fair legal system whose rules are respected and enforced equally and efficiently. However, the aspects of this broad principle of governance which are specifically applicable to the copyright system are already covered through other principles that are examined in this document, such as the principles of transparency, equity and accountability and separation of powers.

C. Methodological Tools to Support the Assessment of Copyright Governance

One methodological tool that can support the assessment of the governance in the field of copyright is the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, published by the Foundation for Cultural Policy Research Cupore in 2016.[21] The primary objective of the methodological work was to establish a set of guidelines for the assessment of national copyright systems' operation in order to support the development of copyright and related rights policies and strategies. However, the information collected on the basis of some of the indicators of the methodology could also be useful in assessing the respect of good governance principles relevant to the field of copyright legislation and policy. The indicators from the Methodology Framework that are most useful in assessing the compliance of copyright systems to good governance principles are listed in Section 3, together with the good governance principles they are related to. The Methodology Framework is presented in more detail in appendix 2.

In addition, several tools have been designed to improve the governance of collective management organizations. The TAG of Excellence Project, initiated in 2013 by the World Intellectual Property Organization, intends to promote transparency, accountability and governance for CMOs. International organizations in the field of collective management of rights have also produced codes of conduct addressed to their members: the International Confederation of Societies of Authors and Composers (CISAC) has published a set of Professional Rules for musical societies,[22] the International Federation of the Phonographic Industry (IFPI) has introduced a Code of

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[20] The United Nations' Security Council, in its Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616, August 23, 2004, §6, defines the Rule of Law as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency".

Compliance with the rule of law is listed as a good governance principle by UNDP, ADBG, UNESCAP and WGI.

[21] See Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*, Cupore publications 26, May 2016.

[22] Available at http://www.cisac.org/What-We-Do/Governance.

Conduct for Music Industry Music Licensing Companies,[23] and the International Federation of Reproduction Rights Organizations (IFFRO) also has its own Code of Conduct for reproduction rights organizations.[24] Another important international effort in improving the governance of collective management organizations is the European Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market,[25] which lays down requirements to ensure the proper functioning of the management of copyright and related rights by collective management organizations.[26] All these tools include practical requirements which can be used as a baseline to assess the quality of governance in collective management organizations.

Governance in the copyright system is highly connected to the general governance in the country, including the performance of the government, government infrastructure, and public administration practices in general; the copyright system does not operate in a vacuum, and issues related to general governance are likely to have a large effect on the governance in the copyright system.[27] As a result, it is important to understand the characteristics of public governance before undertaking an assessment of governance in a copyright system. Several tools are available for this purpose, including the Indicator Framework on Culture and Democracy developed by the Council of Europe,[28] the Indicators of the World Justice Project's Rule of Law Index[29] and the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems.[30] Other tools have been designed to improve specific aspects of general governance, some of which are likely to have an important influence on the copyright system. Among these tools is the Open Government Partnership.[31] The tools listed here are described in more detail in Appendix 2 and mentioned in Section 3 when they can be particularly useful for the assessment of a specific aspect of the governance of copyright and related rights systems.

Finally, some public actions and initiatives are also likely to improve the quality of governance in the country, and have a positive effect on the quality of governance of

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[23] Available at https://www.upfr.ro/download/IFPI%20MLC%20Code%20of%20Conduct%20-%20April%202014.pdf.

[24] Available at https://www.ifrro.org/content/ifrro-code-conduct-reproduction-rights-organisations.

[25] Directive 2014/26/EU of the European Parliament and of the Council of February 26, 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.

[26] As stated in article 1.

[27] International cooperation in the field of copyright also plays a crucial role through agreements concerning copyright rules and international exchange of copyrighted products and services that national public authorities are bound to implement.

[28] *Indicator Framework on Culture and Democracy – Policy Maker's Guidebook*, Council of Europe, October 2016, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806af0e2.

[29] See the World Justice Project's *Rule of Law Index 2016*, available at http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf.

[30] See Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*, Cupore publications 26, May 2016.

[31] Information on the partnership available at http://www.opengovpartnership.org.

the copyright system. When performing an analysis of the governance of copyright, the existence of these public actions and initiatives could be studied. They include:

- impact assessment guidelines and codes of conduct,
- initiatives to enhance the transparency of the government, decision-making and legislative processes, and the possibilities for the public in general and the different stakeholders to take part in decision-making and to propose new initiatives, and
- measures to enhance the quality of legislative preparation and the designing of policy interventions.

Section 3
Assessing Governance in the Context of the Copyright System

The purpose of this section is to propose questions to be answered in order to assess the compliance of copyright governance to each good governance principle listed above (transparency, participation, accountability, coherence & consistency, responsiveness, effectiveness & efficiency, and equity & inclusiveness, and separation of powers). These questions concern both the public authorities in charge of copyright administration and the collective management organizations, which in many countries play an important role in the copyright system. Depending on the country context and the goals of the assessment, some principles might be considered more important than others. The assessment can focus on certain principles only. Some principles also tend to overlap when it comes to their practical implementation, and some of the questions proposed to assess one aspect might be useful in the assessment of others.

The questions are accompanied with suggestions for operationalization as well as references to existing methodologies that could help measure these aspects. Each question covers a different aspect of a certain good governance principle; as a result, a meaningful analysis of the compliance of copyright governance to the studied principle will require an answer to all questions included. However, the suggestions for operationalization are examples that can be complemented or replaced with other suitable methods of assessment. This document is not a complete set of guidelines, but a theoretical framework to be tested in practice, and developed according to the experiences gained, which could result in additional questions or methods for operationalization.

1. Transparency

Transparency is one of the most often cited principles of good governance.[32] It refers to the availability of information concerning public actions, and clarity about government policies, regulations, and decisions. In particular, "it involves making public accounts verifiable, providing for public participation in government policy-making and implementation, and allowing contestation over decisions impacting on the lives of citizens. It also includes making available for public scrutiny accurate and timely information on economic, financial and market conditions".[33] These types of information are crucial for a legal and market-based system such as copyright.

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[32] Transparency, sometimes regarded as synonym for "openness", is listed as a good governance principle by UNDP, OHCHR, ADB, ADBG, UNESCAP, IMF, EU, WGI and OECD.

[33] *African Development Bank Group Policy on Good Governance*, 2 November 1999, §3.3.

Transparency of the copyright system includes several different aspects, such as the transparency of the process of preparing new copyright rules and policies, transparency of copyright rules (taking into account problems that could impair the awareness of right holders and users), transparency of collective management organizations, and transparency of government information related to copyright.

Transparency during law making processes will be enhanced through public consultation on legislative proposals, which makes information on future laws available already at the drafting stage. When public consultations are conducted, they allow stakeholders to closely follow the legislative process.

The assessment of the transparency of the copyright system includes the following aspects:[34]

A. Transparency of copyright rules:

A1. Is information available about the copyright system and copyright rules?

Operationalization: A desktop study could examine whether, for example, texts of the laws related to copyright are easily accessible, whether information on the copyright policies is published and accessible to all citizens, whether there are organizations or services that can answer citizens' questions, etc.

If the level of technological development in the country permits, the assessment could include the possibility to get this information through digital means.

The indicators of the World Justice Project's Rule of Law Index[35] *could also be used, as the Index proposes to measure the level of "Open Government" through four indicators related to transparency. These indicators measure, among other things, the extent to which laws and government data are publicized, and the realization of the right to information.*[36] *The country profiles produced by the World Justice Project will provide important background information on the level of transparency of the general governance in the country, and the same methodology could be used in the study of the level of transparency in the copyright system specifically.*

A2. What is the level of awareness of copyright rules?

Operationalization: A survey could be conducted to determine whether the concept of copyright is understood by the public at large, and if

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[34] Another aspect of the transparency of the copyright governance is the transparency of the rights: whether public authorities facilitate the determination of the right holders on a work, or if a work is in the public domain. The availability of information on the legal status of a work is important for ensuring that the work can be licensed and used. This aspect could be studied through desktop studies ascertaining whether there are measures taken by public authorities to facilitate the determination of right holders on a work, as well as through an assessment of the level of complexity of rules related to the terms of protection.

[35] See the World Justice Project's *Rule of Law Index 2016*, available at http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf: "The rule of law is a system in which the following four universal principles are upheld: The government and its officials and agents as well as individuals and private entities are accountable under the law. (…)"

[36] Idem, page 154.

end-users are aware of the rights of authors, performers and other right holders, as well as the extent of the legal uses of copyright. This is the subject of Methodology Card 10 – Public Awareness of the Rights *of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect as well as model questionnaires.*

Another method for assessing this aspect would be to conduct desktop studies on the existence and extent of copyright-related education for the public at large, as well as on the availability of copyright-related information activities. The assessment could be done using the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems. See in particular Description Sheet 13 – Copyright-related Information Activities *and* Description Sheet 14 – Copyright-related Education for the Public in General.

B. Transparency of the law-making process:

B1. Are laws concerning copyright prepared in a transparent way that allows all relevant stakeholders to follow the legislative process?

Operationalization: A desktop study could examine whether the law-making process involves the possibility for stakeholders to be informed of proposals for legislative change; surveys or interviews with stakeholder representatives could examine whether the information is usually transmitted in practice.[37]

C. Transparency of CMOs:

C1. Is the operation of CMOs transparent towards right holders and users?

Operationalization: A desktop study could examine whether the following information is available to right holders and to users, whether they are using a CMO's services or not, according to their needs:

- *Statutes of the organization*
- *Terms of membership and terms for withdrawal*
- *Standard licensing contracts and tariffs, including the nature of the rights transferred, whether rights are transferred on an exclusive basis, etc.*
- *Governance structure of the organization and lists of persons responsible for management*

[37] Note that questions concerning the possibilities for stakeholders to actually take part in the law-making process are part of the assessment of the good governance principle "participation" below.

- *General policy on distribution of remunerations to right holders, on management fees, on the deduction of management fees and other deductions from right revenues, and on the use of non-distributable amounts*
- *List of cooperation and representation agreements with other CMOs*
- *Dispute resolution procedures available*
- *Annual reports and accounts.*

Codes of conducts proposed by professional organizations in the field of collective management of rights (such as IFPI, CISAC or IFFRO) also include details requirements on transparency applicable to specific industries that can be used in the assessment.

C2. Is information concerning the collection of remunerations on their works available to right holders represented by CMOs?

Operationalization: A desktop study and/or interviews with representatives of CMOs and/or right holders could examine whether income statements are available to all right holders represented by a CMO, including

- *Detailed information on the use of their works and the level of remuneration associated*
- *A clear explanation of all deductions in the revenue for expenditures*
- *An explanation of the distribution rules, in a form easily comprehensible.*

Codes of Conducts proposed by professional organizations in the field of collective management of rights (such as IFPI, CISAC or IFFRO) also include detailed requirements on transparency applicable to specific industries that can be used in the assessment.

TRANSPARENCY	
QUESTIONS	**OPERATIONALIZATION**
A. Transparency of copyright rules	
A1. Is information available about the copyright system and copyright rules?	Are texts of the laws related to copyright easily accessible? Is information on the copyright policies published and accessible to all citizens? Are there organizations or services that can answer citizens' questions? Is it possible to get this information through digital means?
A2. What is the level of awareness of copyright rules?	Is the concept of copyright understood by the public at large? Are end-users aware of the rights of authors, performers and other right holders, as well as the extent of the legal uses of copyright?

B. Transparency of the law-making process	
B1. Are laws concerning copyright prepared in a transparent way that allows all relevant stakeholders to follow the legislative process?	Does the law-making process involve the possibility for stakeholders to be informed of proposals for legislative change? Is the information usually transmitted in practice to stakeholders?
C. Transparency of CMOs	
C1. Is the operation of CMOs transparent towards right holders and users?	Is the following information available to right holders and to users, whether they are using a CMO's services or not, according to their needs? ▪ Statutes of the organization ▪ Terms of membership and terms for withdrawal ▪ Standard licensing contracts and tariffs, including the nature of the rights transferred, whether rights are transferred on an exclusive basis, etc. ▪ Governance structure of the organization and lists of persons responsible for management ▪ General policy on distribution of remunerations to right holders, on management fees, on the deduction of management fees and other deductions from right revenues, and on the use of non-distributable amounts ▪ List of cooperation and representation agreements with other CMOs ▪ Dispute resolution procedures available ▪ Annual reports and accounts.
C2. Is information concerning the collection of remunerations on their works available to right holders represented by CMOs?	Are income statements available to all right holders represented by a CMO, including ▪ Detailed information on the usage of their works and the level of remuneration associated ▪ A clear explanation of all deductions in the revenue for expenditures ▪ An explanation of the distribution rules, in a form easily comprehensible?

2. Participation

"Participation is defined as a process whereby stakeholders exercise influence over public policy decisions and share control over resources and institutions that affect their lives, thereby providing a check on the actions of government."[38] In the context of governance, participation refers to the possibility of concerned parties to generate legitimate demands, and take part in the decision-making process.[39] It implies that "government structures are flexible enough to offer beneficiaries, and others affected, the opportunity to improve the design and implementation of public programs and projects."[40] Participation can be exercised through groups or associations (e.g. trade unions, non-governmental organizations, professional associations or collective management organizations). All groups affected by a measure should be able to participate

[38] *African Development Bank Group Policy on Good Governance*, 2 November 1999, §3.5.

[39] Participation is listed as a good governance principle by UNDP, OHCHR, ADB, ADBG, UNESCAP, EU and OECD.

[40] Asian Development Bank, *Governance: Sound Development Management* (August 1995), published in 1999, p.8.

so that the government can make informed choices with respect to their needs, and different social groups can protect their rights. Participation is also a prerequisite for consensus,[41] and good governance benefits from mediation of the different interests in society to reach a broad consensus on what is in the best interest of the whole community and how this can be achieved.

Participation is worth particular interest in areas such as the copyright system, that require cooperation between public authorities and the markets for efficiency, since "the effectiveness of policies and institutions impinging on the economy as a whole may require the broad support and cooperation of major economic actors concerned."[42] Participation in the field of copyright could also be understood as participation in the creation of culture, but this aspect is not covered here as the level of cultural participation is not directly connected to the quality of governance of the copyright system.[43]

Participation in the context of the copyright system includes the following aspects:

A. Participation in the development of the copyright system:

A1. Do stakeholders have a chance to participate in the preparation of new legislation and development of the copyright system?

Operationalization: A desktop study could assess whether the law-making process applicable to copyright legislation requires or allows for the involvement of stakeholders, for example through public consultations on legislative proposals. This is the topic of Methodology Card 5 – Public Consultation on Law Proposals *of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.*

If the level of technological development in the country permits, the assessment could include the possibility to participate through digital means.

Note that a prerequisite for efficient participation in the development of the copyright system is for stakeholders to be organized into groups or unions. The level of organization in each copyright-related industry

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[41] Consensus orientation is listed as a good governance principle by UNESCAP.

[42] Moreover, "To the extent that the interface between public agencies and the private sector is conducive to the latter's participation in the economy, national economic performance (comprising the combined contributions of the public and private sectors) will be enhanced". Asian Development Bank, *Governance: Sound Development Management* (August 1995), published in 1999, p.8.

[43] The Indicator Framework on Culture and Democracy developed by the Council of Europe (*Indicator Framework on Culture and Democracy – Policy Maker's Guidebook*, Council of Europe, October 2016, page 41) contains indicators concerning "cultural participation" that cover artistic expression and creation, interest in foreign cultures, online creativity, online cultural creation, passive cultural creation and students in the arts (arts education), but also non-partisan involvement (the extent to which individuals care about contributing to finding solutions to societal problems through channels distinct to those of the political competition process). Moreover, the Indicator Framework on Culture and Democracy includes a set of indicators related to "political participation" which covers both institutionalized and non-institutionalized participation. These indicators are not directly related to the field of copyright, but provide a list of variables that will help assessing the level of democratic participation in the country.

as well as the level of organization of copyright users and other relevant groups of actors might need to be assessed.[44]

B. Participation in CMOs:

B1. Do right holders have the possibility to take part in the decision-making of the CMO representing them? Through which mechanisms?

Operationalization: This question could be answered through a study of CMOs' statutes and rules of operation, that would determine whether there are appropriate and effective mechanisms for the participation of right holders in the CMO's decision-making process. This study could be conducted through desktop research and/or interviews with representatives of CMOs and/or right holders.

PARTICIPATION	
QUESTIONS	**OPERATIONALIZATION**
A. Participation in the development of the copyright system	
A1. Do stakeholders have a chance to participate in the preparation of new legislation and development of the copyright system?	Does the law-making process applicable to copyright legislation require or allow for the involvement of stakeholders, for example through public consultations on legislative proposals? Is it possible to participate through digital means?
B. Participation in CMOs	
B1. Do right holders have the possibility to take part in the decision-making of the CMO representing them? Through which mechanisms?	Are there, in the CMOs' statutes and rules of operation, appropriate and effective mechanisms for the participation of right holders in the CMO's decision-making process?

3. Accountability

Accountability can be defined as "holding responsible elected or appointed individuals and organizations charged with a public mandate to account for specific actions, activities or decisions to the public from which they derive their authority."[45] Public officials must be answerable to citizens, and responsive to the entity from which their authority is derived.[46] In general, public organizations or institutions must be accountable to those who will be affected by its decisions or actions. In a copyright system, policy makers and enforcement agencies should be accountable to all stakeholders while rights management organizations are accountable to their affiliates. Accountability may be achieved differently in different contexts, for example, through the evaluation of institutions' performance. It also requires to establish "criteria to

[44] Participation can only be efficient if stakeholders' opinions are not only collected but also taken into account. This aspect could be further studied through case studies on the discussions related to particular legislative developments and the effect of public debates and stakeholders' arguments on the final piece of legislation. However, the extent to which stakeholders' opinions are taken into account depends on a large number of factors, including the political climate in the country, the subject of the reform, and the demands by each stakeholder. The fact that circumstances do not allow to implement the opinions of a stakeholder in a piece of legislation does not mean that the level of participation is insufficient.

[45] *African Development Bank Group Policy on Good Governance*, November 2, 1999, §3.2.

[46] Accountability is listed as a good governance principle by UNDP, OHCHR, ADB, ADBG, UNESCAP, EU and OECD.

measure the performance of public officials, as well as oversight mechanisms to ensure that the standards are met."[47] Accountability is crucial for effective governance.

Accountability in the context of copyright governance describes the extent to which organizations and public officials responsible for the administration of copyright are subjected to supervision and are held responsible for the results of their actions. The topic is closely connected to the general accountability of national authorities, which could be subject to a more general analysis (see Section 2 above).

Accountability in the context of the copyright system includes the following aspects:

A. Accountability of public authorities in the field of copyright:

A1. Is there supervision of the activities of public authorities in charge of the public administration of copyright?

Operationalization: A desktop study could list public authorities in charge of copyright administration, together with their supervisory bodies, and the possible procedures of supervision. This is the topic of Description Sheet 7 – Public Administration of Copyright *of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.*

A2. Are the outcomes of public actions in the field of copyright assessed a posteriori?

Operationalization: A desktop study and/or interviews with representatives of public authorities could verify whether assessment of the outcomes of public actions, such as a posteriori impact assessment studies,[48] *is being made in the field of copyright. This is the topic of* Methodology Card 6 – Use of Impact Assessment and Research in Policy Development *of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect, and could be used with a focus on the impact assessment and research used to evaluate the impacts of past policy and legislative developments.*

B. Accountability of CMOs' management:

B1. Are there internal supervision practices to ensure that CMOs operate according to their own rules and in the interest of the right holders they represent?

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[47] Asian Development Bank, *Governance: Sound Development Management* (August 1995), published in 1999, p.8.

[48] Impact assessment studies can also be conducted before a legislative action or new policy is considered, in order to study the effects of alternative courses of action on stakeholders. However, impact assessment studies conducted a priori are more useful to assess the equity of the governance of copyright than its accountability, since they will tell whether the considered action will unfairly impact certain categories of stakeholders.

Operationalization: A desktop study and/or interviews with representatives of CMOs could clarify the existence and functioning of supervision procedures concerning CMOs, such as

- *the existence of supervisory bodies,*
- *the procedures for supervision,*
- *the type of information available for the purposes of supervision*
- *the rules regarding the distinction and separation of function between members of the management body and members of the supervisory body, or rules on conflicts of interest and prohibiting interference between these two bodies.*

B2. Is there external supervision to ensure that CMOs operate according to laws?

Operationalization: A desktop study and/or interviews with representatives of CMOs could clarify the existence of rules and procedures concerning external auditing.

Codes of Conducts proposed by professional organizations in the field of collective management of rights (such as IFPI, CISAC or IFFRO) as well as the European Directive on collective management of copyright and related rights, and multi-territorial licensing of rights in musical works for online use in the internal market, *also include detailed requirements on transparency applicable to specific industries that can be used in the assessment.*

In addition, the World Justice Project's Rule of Law Index, which endeavors to measure the extent to which the Rule of Law is attained in different countries, includes accountability as its first component.[49] The Index proposes, as part of its "Factor 1: Constraints on Government Powers", six indicators related to the accountability of public actors. These indicators measure issues such as whether legislative bodies have the ability in practice to exercise effective checks and oversight of the government, or whether government officials in the executive, legislature, judiciary, and the policy are investigated, prosecuted, and punished for official misconducts and other violations.[50] The country profiles realized by the World Justice Project will provide important background information on the level of accountability of public officials in the country, and the same methodology could be used to study the level of accountability of public officials responsible for the copyright system's operation, or collective management organizations' management.

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[49] See the World Justice Project's *Rule of Law Index 2016*, p.9, available at http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf: "The rule of law is a system in which the following four universal principles are upheld: 1. The government and its officials and agents as well as individuals and private entities are accountable under the law. (…)"

[50] Idem, page 153.

ACCOUNTABILITY	
QUESTIONS	**OPERATIONALIZATION**
A. Accountability of public authorities in the field of copyright	
A1. Is there supervision of the activities of public authorities in charge of the public administration of copyright?	List of public authorities in charge of copyright administration, together with their supervisory bodies and the possible procedures of supervision.
A2. Are the outcomes of public actions in the field of copyright assessed a posteriori?	Is there an assessment of the outcomes of public actions, for example through a posteriori impact assessment studies, in the field of copyright?
B. Accountability of CMOs' management	
B1. Are there internal supervision practices to ensure that CMOs operate according to their own rules and in the interest of the right holders they represent?	Are there supervision procedures concerning CMOs, such as ▪ supervisory bodies ▪ procedures for supervision ▪ information available for the purposes of supervision ▪ rules regarding the distinction and separation of function between members of the management body and members of the supervisory body, or rules on conflicts of interest and prohibiting interference between these two bodies?
B2. Is there external supervision to ensure that CMOs operate according to laws?	Are there rules and procedures concerning external auditing?

4. Coherence & Consistency

A coherent system will keep its diverse elements and values connected in a systematic and logical way. Consistency furthermore requires that these elements and values are asserted without contradiction, and are able to work in harmony.[51] Policies and actions must be coherent in order to ensure a consistent approach within a complex system. This is particularly true of areas such as copyright that are influenced by various national laws and international agreements, as well as a large range of policies in different sectors. Legislators should be particularly careful to these principles when preparing a legislation in order to meet a pressing need, for incomplete preparatory work tends to compromise the general coherence of a legal system. Consistency of public policies is also crucial for markets that depend on copyright, since "government policies affect the investment climate directly, and economic actors require reasonable assurance about the future behavior of key variables such as prices, the exchange rate, and employment levels."[52] Consistency needs to be maintained at a reasonable level, even when governments and administrations change. However, consistency has to be balanced with flexibility in cases where it is necessary to respond to changing circumstances. The coherence and consistency of a copyright system can be evaluated through the description of its regulations and policies and the actions of public authorities dealing with copyright issues.

[51] Coherence or consistency are listed as good governance principles by ADB and EU.

[52] Asian Development Bank, *Governance: Sound Development Management* (August 1995), published in 1999, p.11.

Coherence and consistency in the context of the copyright system include the following aspects:

A. Coherence and consistency of the actions of public authorities in the field of copyright:

A1. Is the copyright system administered in a consistent and coherent way?

Operationalization: Desktop research on this subject could determine, for example, whether copyright policies are consistently implemented, and whether different agencies in charge of copyright administration act coherently among themselves and with the rest of the legal system.[53] *The coherence and consistency of public authorities in charge of preparing copyright legislation and policies could also be assessed by examining the processes at the preparatory stages of copyright legislation and whether they have been coherent and consistent over time.*

B. Coherence and consistency of CMOs' decisions:

B1. Are CMOs coherent and consistent in their decisions?

Operationalization: A study could be conducted on whether the decisions of CMOs' management (concerning, for example, the admittance of right holders, the collection and distribution of remunerations, and the international licensing of rights) follow rules that seek to ensure consistency and coherence in the CMOs' operation. This could be studied through desktop research on the CMOs' rules of operation and previous official decisions, complemented with interviews with representatives of CMOs.

COHERENCE & CONSISTENCY	
QUESTIONS	**OPERATIONALIZATION**
A. Coherence and consistency of the actions of public authorities in the field of copyright	
A1. Is the copyright system administered in a consistent and coherent way?	Are copyright policies consistently implemented? Do different agencies in charge of copyright administration act coherently among themselves and with the rest of the legal system? Have the processes to prepare copyright legislation been coherent and consistent over time?
B. Coherence and consistency of CMOs' decisions	
B1. Are CMOs coherent and consistent in their decisions?	Do decisions of CMOs' management (concerning, for example, the admittance of right holders, the collection and distribution of remunerations or the international licensing of rights) follow rules that ensure consistency and coherence in the CMO's operation?

[53] The coherence and consistency of public enforcement of copyright could also be part of the assessment.

5. Responsiveness

A government needs to be "responsive to the needs and aspirations of the people,"[54] as well as "capable of administering, coordinating and mobilizing collaborative action."[55] Good governance requires that public institutions and their processes serve all stakeholders within a reasonable timeframe.[56] Where the principle of participation refers to the different stakeholders' possibilities to influence or to take part in the decision-making process, responsiveness tells about the sensitivity to signals telling about possible needs for changes. These signals might come directly from different stakeholders or be seeked through impact assessment studies and research work. Responsiveness is particularly crucial when the copyright environment is changing. One example of the system's responsiveness can be found in its adaptability and neutrality to new technologies.

Responsiveness in the context of the copyright system includes the following aspects:

A. Responsiveness of public authorities in the field of copyright:

A1. Do public authorities in charge of the copyright system's development regularly assess the need for changes to the copyright system due to the evolution of the copyright environment?

Operationalization: A desktop study and/or expert interviews could verify whether impact assessment studies and research are used in policy and legislative development. This is the topic of Methodology Card 6 – Use of Impact Assessment and Research in Policy Development *of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.*

A2. Are administrative proceedings concerning copyright issues conducted without unreasonable delay?

Operationalization: A desktop study and/or expert interviews could clarify whether, in practice, it is possible to obtain a decision of public authorities in the field of copyright within a reasonable time frame, and on whether, after a decision or agreement is reached, it is possible to enforce the decision within a reasonable time frame. This is the topic of one of the indicators that are part of the World Justice Project's Rule of Law Index (Factor 6.3).[57] *The same type of indicator could be used with a focus on proceedings related to*

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[54] United Nations, Office of the High Commissioner on Human Rights, Commission on Human Rights, resolution 2000/64, *The role of good governance in the promotion of human rights*, April 26, 2000.

[55] United Nations Development Programme, *Discussion Paper: Governance for Sustainable Development – Integrating Governance in the Post-2015 Development Framework*, March 2014, p.5–6.

[56] Responsiveness is listed as a good governance principle by UNDP, OHCHR and UNESCAP.

[57] See the World Justice Project's *Rule of Law Index* and the *Variables Used to Construct the Rule of Law Index* available at http://worldjusticeproject.org/methodology.

copyright management or copyright enforcement in order to further assess the level of responsiveness of the copyright system.

B. Responsiveness of CMOs:

B1. Are CMOs serving right holders and users within a reasonable time frame?

Operationalization: This issue could be studied through a survey of right holders and users' opinions as well as interviews with representatives of CMOs.

B2. Do CMOs perform analyses of their operating environment?

Operationalization: Interviews with CMO representatives could ascertain whether CMOs conduct or have conducted studies on their environment, the industry in which they operate, and the wishes of right holders and users concerning the needs to adapt their services.

B3. Do CMOs respond to requests by right holders and users (concerning, for example, new services or changes in the scope of their operation)?

Operationalization: Desktop studies and interviews with CMO representatives could clarify whether there are procedures in place to present and examine requests, and whether such requests have been honored in the past.

RESPONSIVENESS	
QUESTIONS	**OPERATIONALIZATION**
A. Responsiveness of public authorities in the field of copyright	
A1. Do public authorities in charge of the copyright system's development regularly assess the need for changes to the copyright system due to the evolution of the copyright environment?	Are impact assessment studies and research used in policy and legislative development?
A2. Are administrative proceedings concerning copyright issues conducted without unreasonable delay?	In practice, is it possible to obtain a decision or a judgment of public authorities in the field of copyright within a reasonable time frame? In practice, after a decision or agreement is reached, is it possible to enforce the decision within a reasonable time frame?
B. Responsiveness of CMOs	
B1. Are CMOs serving right holders and users within a reasonable time frame?	What is the opinion of CMOs' right holders and users on the responsiveness of CMOs to their demands?
B2. Do CMOs perform analyses of their operating environment?	Do CMOs conduct or have conducted studies on their environment, the industry in which they operate and the wishes of right holders and users concerning the needs to adapt their services?
B3. Do CMOs respond to requests by right holders and users (concerning, for example, new services or changes in the scope of their operation) in a timely manner?	Are there procedures in place to present and to examine requests? Have such requests been honored in the past?

6. *Effectiveness & Efficiency*

Good governance requires efficiency, meaning that "processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal."[58] In order for the system to be well managed, policies must be effective and timely, delivering what is needed on the basis of clear objectives and an evaluation of future impacts and past experience. Effectiveness can be evaluated regarding "the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies."[59]

Effectiveness and efficiency in the context of the copyright system include the following aspects:

A. Effectiveness and efficiency of public authorities in the field of copyright administration:

A1. Do authorities involved in the public administration of copyright fulfill their roles effectively?

Operationalization: The type of studies to assess this aspect could vary according to the public authority and its duties.

In cases of public authorities whose duties are conducted on a regular basis or follow a regular pattern (such as authorities providing a certain type of decisions), focus groups and/or interviews could be conducted with parties that regularly cooperate with authorities involved in the public administration of copyright[60] *in order to assess whether these public authorities operate efficiently, and are capable of fulfilling their allocated tasks in a timely manner.*[61] *The* Toolkit of Questionnaires for Interviews, Focus Group Studies and Surveys,[62] *which is part of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, proposes questions for assessing this aspect.*[63]

In cases of authorities whose actions are varied and do not follow regular patterns (such as administrative bodies preparing new policies), case

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[58] United Nations Economic and Social Commission for Asia and the Pacific, *What is Good Governance?*, July 10, 2009, p.3. Effectiveness and/or efficiency are listed as good governance principles by UNDP, UNESCAP, IMF, EU, WGI and OECD.

[59] The Worldwide Governance Indicators (WGI) project of the World Bank Group's website, at http://info.worldbank.org/governance/wgi/index.aspx#faq.

[60] Parties that regularly cooperate with authorities involved in the public administration of copyright include government and enforcement bodies as well as supervising authorities, depending on the institutional framework.

[61] It might also be interesting to discuss the efficiency of the authorities under scrutiny with their own employees; self-assessment might shed light on efficiency problems within the organizations.

[62] Tiina Kautio, Nathalie Lefever and Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Toolkit of Questionnaires for Interviews, Focus Group Studies and Surveys*, Cupore publications 27 (2016).

[63] See the questionnaire for authors and performers, question 35, and the questionnaire for professional copyright users, question 33.

studies could be used to assess how efficiently a limited number of specific duties were fulfilled.[64]

A2. What amount of funds is allocated to copyright administration in the state budget?[65]

Operationalization: A comparison of the level of financing of the copyright administration with the results of question A1 will provide more detailed information about the efficiency of copyright administration. The analysis should take into account other important factors, such as the size of the country and the tasks allocated to copyright administration. When appropriate, the amount of financial resources could be presented as the size of the workforce fulfilling functions involved in copyright administration (in full-time equivalents).

A3. What requirements are there for reporting on the use of the budget(s) allocated to copyright administration?

Operationalization: A desktop study and interviews with experts could examine, for each public authority involved in the public administration of copyright, whether they are required to report on the use of the budgets allocated to copyright. The study could also examine the possible existence of internal supervision concerning the use of public resources.[66]

A4. Is the operation of authorities involved in the public administration of copyright submitted to external evaluation?

Operationalization: A desktop study could examine, for each public authority involved in the public administration of copyright, whether external evaluations concerning the efficiency of their operation have been made or are regularly made.

B. Effectiveness and efficiency of CMOs:

B1. Are CMOs able to efficiently collect and redistribute revenues from the use of works to right holders?

Operationalization: This question could be studied by analyzing the annual reports of each CMOs. This is the topic of Methodology Card 9 – Efficiency of Collective Management Organizations *of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.*

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[64] It is important to take into account that the efficiency of authorities in charge of copyright administration cannot be fully assessed based on the results of their actions, which in some cases are determined by external factors. The purpose of this assessment is to determine whether each organization's specific duties are fulfilled in a reasonable manner and within a reasonable time, taking into account the circumstances.

[65] When appropriate, the amount of financial resources could be presented in the number of people fulfilling functions involved in copyright administration (in full-time equivalents).

[66] This question is closely connected to the level of accountability of public authorities (see above).

EFFECTIVENESS & EFFICIENCY	
QUESTIONS	**OPERATIONALIZATION**
A. Effectiveness and efficiency of public authorities in the field of copyright administration	
A1. Do authorities involved in the public administration of copyright fulfill their roles effectively?	Do parties that regularly cooperate with authorities involved in the public administration of copyright consider that these authorities are capable of fulfilling their allocated tasks in a timely manner? Are public authorities efficient at fulfilling certain specific duties?
A2. What amount of funds is allocated to copyright administration in the state budget?	How does the level of financing of the copyright administration compare to the effectiveness of the system as studied through question A1 above?
A3. What requirements are there for reporting on the use of the budget(s) allocated to copyright administration?	Are authorities involved in the public administration of copyright required to report on the use of the budgets allocated to copyright? Is there internal supervision concerning the use of public resources?
A4. Is the operation of authorities involved in the public administration of copyright submitted to external evaluation?	Have external evaluations concerning the efficiency of the public authorities involved in the administration of copyright been made, or are they regularly made?
B. Effectiveness and efficiency of CMOs	
B1. Are CMOs able to efficiently collect and redistribute revenues from the use of works to right holders?	What is the amount of remunerations and compensations administered and distributed by CMOs? How efficient are the collective management organizations in their operation?

7. Equity & Inclusiveness

Equity is the requirement for individuals to be treated similarly in similar situations. It is a crucial aspect of fairness and justice in the way people are treated. Inclusiveness requires to involve all individuals in a system or society. Together, the obedience to these principles of good governance results in a system which does not treat unfairly any of its members.[67] According to UNESCAP,[68] "a society's wellbeing depends on ensuring that all its members feel included in the mainstream of society. This requires that all groups, but particularly the most vulnerable, have opportunities to improve or maintain their wellbeing."

In the process of legislative preparation, equity and inclusiveness can be achieved through the principle of participation. An inclusive society will also aim at teaching its members their rights and the means to enforce them, which is closely related to the principle of transparency. In the context of copyright systems, an important aspect of equity and inclusiveness is the possibility for all members of society to access copyrighted works, engage in artistic creation and enforce their copyrights.

[67] Equity and inclusiveness are listed as good governance principles by UNESCAP and UNDP.

[68] United Nations Economic and Social Commission for Asia and the Pacific, *What is Good Governance?*, July 10, 2009, page 3.

Inclusiveness in the context of the copyright system includes the following aspects:

A. Inclusiveness of the copyright system:[69]

A1. Do public authorities contribute to the possibilities for all members of society to acquire enough knowledge of copyright rules to efficiently participate in the copyright system?

Operationalization: A study on this subject could tell whether there is education on copyright issues in the country, and/or if publicly financed information activities are being conducted. This is the topic of the area "Dissemination of Knowledge" of the Methodology Framework for Assessing Copyright and Related Rights Systems which proposes recommendations and questionnaires for assessing these aspects, in particular

- Description Sheet 13 – Copyright-related Information Activities
- Description Sheet 14 – Copyright-related Education for the Public in General
- Methodology Card 10 – Public Awareness of the Rights
- Methodology Card 11 – Copyright-related Education as part of the Education of Professionals for Creative Industries

B. Equity of the copyright system:[70]

B1. Do public authorities involved in copyright administration take action to ensure that all stakeholders within the same category[71] are treated equitably in the copyright system?

Operationalization: Public authorities have the possibility to take measures to protect stakeholders that might be in a weaker position within the copyright system, for example because of a lack of bargaining power, lower financial position or lack of knowledge of copyright rules and market practices. A desktop study could examine whether there are systems for protecting these stakeholders, so that they have the same means to

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[69] In addition, the inclusiveness of the copyright system could also be assessed by answering the question "Does the copyright system efficiently promote the availability of copyrighted works to users, regardless of their physical, mental, geographical, financial or other types of personal situations?". The Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems proposes recommendations for assessing this aspects through a desktop study and/or expert interviews. See in particular Methodology Card 16 – *Access to Copyrighted Works by the Public*. In addition, the Indicator Framework on Culture and Democracy developed by the Council of Europe (*Indicator Framework on Culture and Democracy – Policy Maker's Guidebook*, Council of Europe, October 2016) contains indicators concerning "cultural access and representation" (page 41) that cover issues related to freedom and equality in the access to culture. This includes variables related to the access to cultural sites and events.

[70] The equity in the actions of public authorities (in the field of copyright) could also be assessed by answering the question "Do all right holders have the possibility to defend their rights in front of equitable courts?". This issue could be the topic of case studies on the equitable access to copyright enforcement and the equity in court proceedings. Statistics on the enforcement of copyright could also be used to study this topic, if available. However, this aspect is difficult to assess. It is also important to note that the equity in proceedings and decisions in court cases related to copyright is highly connected to the general equity in the country's judicial system, the level of corruption and respect of the rule of law in general.

[71] Categories of stakeholders include authors and performers, professional copyright users, intermediaries and end-users, as defined in Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*, Cupore publications 26, May 2016, pages 21–23.

use and enforce their rights in practice as the other stakeholders in the same category. Such measures could include, for example, legal protection against abusive clauses in licensing contracts, availability of information on copyright rules or other types of practical support.

In addition, the Indicator Framework on Culture and Democracy developed by the Council of Europe covers issues related to freedom and equality in the access to culture.[72] *This includes variables related to public measures and programs promoting equality in the access to culture.*

B2. Do public authorities involved in copyright administration take action to ensure that different categories of stakeholders are treated equitably in the copyright system?

Operationalization: The measures taken to promote equity between the different categories of stakeholders include, for instance, impact assessment studies concerning the extent to which new policies or legislative initiatives will impact different categories of stakeholders. A desktop study could examine whether such studies are conducted as a matter of course. This is the topic of Methodology Card 6 – Use of Impact Assessment and Research in Policy Development *of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.*

C. Equity and inclusiveness in CMOs

C1. Do CMOs treat all right holders and all users equally?

Operationalization: A desktop study could examine whether there are legal rules in place to ensure that all right holders and users are treated equally, whether there is a possibility for right holders and users to take legal action when treated unequally, and whether there have been disputes on that subject in the past. In addition, interviews with CMO representatives could ascertain whether there are internal rules and procedures concerning these issues.

C2. Do all right holders have the possibility to join a collective management organization if one exists in their field?

Operationalization: A study could examine the fairness of the rules concerning the conditions under which a right holder can be represented by CMOs, as well as whether there are rules and/or procedures to prevent unjustified discrimination in the admittance of right holders. A survey among right holders could ascertain whether these rules are implemented

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[72] *Indicator Framework on Culture and Democracy – Policy Maker's Guidebook*, Council of Europe, October 2016, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806af0e2.
See in particular indicators concerning "cultural access and representation" on pages 53–55.

in practice, or whether there were cases of right holders not being able to join a CMO in their field.

C3. Do right holders have the possibility to leave a collective management organization or limit its mandate regarding the right holders' works?

Operationalization: A study of CMOs' rules and/or a survey among right holders could examine whether there are situations where a right holder is forced to use the services of a CMO against their will (checking the law, the terms of services of CMOs, etc.), as well as judicial documents and history of dispute resolutions mechanisms to ascertain whether there were disputes in the past on that account.

EQUITY & INCLUSIVENESS	
QUESTIONS	**OPERATIONALIZATION**
A. Inclusiveness of the copyright system	
A1. Do public authorities contribute to the possibilities for all members of society to acquire enough knowledge of copyright rules to efficiently participate in the copyright system?	Is there education on copyright issues in the country? Are publicly financed information activities being conducted?
B. Equity of the copyright system	
B1. Do public authorities involved in copyright administration take action to ensure that all stakeholders within the same category are treated equitably in the copyright system?	Are there systems for protecting stakeholders which are in a weak financial situation or bargaining position (so that they have the same means to use and enforce their rights in practice as the other members of their category)?
B2. Do public authorities involved in copyright administration take action to ensure that different categories of stakeholders are treated equitably in the copyright system?	Are impact assessment studies concerning the extent to which new policies and legislative initiatives will impact different categories of stakeholders conducted as a matter of course?
C. Equity and inclusiveness in CMOs	
C1. Do CMOs treat all right holders and all users equally?	Are there rules in place to ensure that all right holders and users are treated equally? Is there a possibility for right holders and users to take legal action when treated unequally? Have there been disputes on that subject in the past?
C2. Do all right holders have the possibility to join a collective management organization if one exists in their field?	Are the rules concerning the conditions under which a right holder can be represented by CMOs fair? Are there rules and/or procedures to prevent unjustified discrimination in the admittance of right holders? Are these rules implemented in practice? Were there cases of right holders not being able to join a CMO in their field?
C3. Do right holders have the possibility to leave a collective management organization or limit its mandate regarding the right holders' works?	Are there situations where a right holder is forced to use the services of a CMO against their will? Were there disputes in the past on that account?

8. *Separation of Powers*

Separation of powers is a principle of governance according to which responsibilities are divided among distinct authorities or branches with separate and non-overlapping duties. The principle of separation of powers often refers to the division between the legislature, executive and judiciary powers, but it can also be generally understood as a means to prevent the concentration of power and provide for checks and balances. Separation of powers requires, in particular, governing bodies to be separate from judicial authorities, which is a prerequisite for efficient accountability.[73]

In the copyright system, separation of powers can be achieved by ensuring that public authorities in the field of copyright have clearly defined and separate responsibilities. The separation of powers can be compromised in cases where the same authorities are in a position to fulfill competing tasks, for example by both making legislative decisions and executing or enforcing them. A system where powers are efficiently separated should also prevent conflicts of interests from adversely affecting the governance of copyright. Concerning collective management organizations, the principle of division of powers requires a clear separation between the organization's organs of management, supervision and dispute resolution, as well as procedures to avoid, identify and manage conflicts of interests.[74]

Separation of powers in the context of the copyright system includes the following aspects:

A. Separation of powers between public authorities in the field of copyright:

A1. Is the structure of organization and division of responsibilities among the public authorities in charge of copyright governance organized in such a way as to prevent inappropriate decision-making situations?

Operationalization: A desktop study, completed with interviews of experts in the field, could ascertain whether the attribution of responsibilities between different public authorities in the field of copyright is suitable to ensure that the division of powers is guaranteed. Legislative, judiciary and executive duties should be performed by separate entities. For example, the tasks of supervising the activities of actors in the field of copyright (such as collective management organizations) should not be fulfilled by the same authorities who are in a situation to negotiate contracts with them. The division of power should also be organized so that political decisions would not unduly influence administrative tasks. An

[73] Separation of powers is not recognized as a stand-alone principle by the international organizations mentioned in this document, but is often considered as a component of the rule of law which is considered as a requirement to good governance, for example by UNESCAP or ADB, or as a prerequisite to accountability.

[74] Such procedures are for example included in the Directive 2014/26/EU of the European Parliament and of the Council of 26 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, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0026.

authority which makes legislative decisions should not simultaneously be responsible for executing or enforcing these decisions.

As far as possible, no authority or individual employee should be in a situation where conflicts of interests could arise. Whenever the structure of copyright governance leaves a possibility for inappropriate division of power, the study could examine whether there are procedures for identifying and managing potential and actual conflicts of interests, such as adequate supervision or a system for ensuring that the possible conflicts of interests do not adversely affect the completion of the duties.

B. Separation of powers in CMOs

B1. Do CMOs have a clear separation of powers between management, supervision and dispute resolution?

Operationalization: A desktop study, completed with interviews of CMOs' representatives or experts in the field, could ascertain whether each collective management organization's structure and the way in which it carries out its activities ensure that the separation of powers is clear and effective. Persons in charge of monitoring the activities of the CMOs should be independent from the management, or otherwise solutions should be in place to mitigate the risk of abuse. The study could also verify whether the dispute resolution procedures in place to respond to disputes between the collective management organizations, their members,[75] right holders and users, are independent and impartial.

B2. Do CMOs have and apply procedures to avoid, identify and manage conflicts of interest?

Operationalization: A desktop study and/or interviews with CMOs' representatives could determine whether there are procedures in place to avoid conflicts of interests within the organization. When conflicts of interests cannot be avoided, the study could determine whether appropriate measures are put in place to identify, manage, monitor and disclose such conflicts in order to prevent them from adversely affecting the operation of the CMO. For example, managers in the organizations could be required to declare, prior to taking up their position and thereafter on a regular basis, whether there are conflicts between their interests and those of the right holders that are represented. Persons in charge of supervising the activities of the CMO could also be required to report regularly on their activities in monitoring actual and potential conflicts of interests.

[75] Members of a collective management organization are natural persons or legal entities fulfilling the membership terms, namely right holders and entities representing them, such as other CMOs and associations of right holders.

SEPARATION OF POWERS	
QUESTIONS	**OPERATIONALIZATION**
A. Separation of powers between public authorities in the field of copyright	
A1. Is the structure of organization and division of responsibilities among the public authorities in charge of copyright governance organized in such a way as to prevent inappropriate decision-making situations?	Is the attribution of responsibilities between different authorities in charge of copyright administration suitable to ensure that the division of powers is guaranteed? Are legislative, judiciary and executive duties performed by separate entities? Are there procedures for mitigating the risks of conflicts of interests?
B. Separation of powers in CMOs	
B1. Do CMOs have a clear separation of powers between management, supervision and dispute resolution?	Does each collective management organization's structure and the way in which it carries out its activities ensure that the separation of powers is clear and effective? Are the dispute resolution procedures in place independent and impartial?
B2. Do CMOs have and apply procedures to avoid, identify and manage conflicts of interest?	Are there procedures in place to avoid conflicts of interests within the organization? If conflicts of interests cannot be avoided, are there appropriate measures in place to identify, manage, monitor and disclose such conflicts of interest in order to prevent them from adversely affective the interests of right holders?

Summary: List of Studies to Assess Governance in the Context of Copyright Systems

This section presented a set of questions for the assessment of the compliance of copyright governance to different good governance principles. The following table summarizes the different types of studies to be conducted in order to answer each question. The table distinguishes between the studies focusing on the governance by public authorities and the governance of collective management organizations.

LIST OF STUDIES FOR ASSESSING THE GOVERNANCE IN THE CONTEXT OF COPYRIGHT SYSTEMS		
PRINCIPLE	**QUESTIONS**	**TYPE OF STUDY**
Transparency	A1. Is information available about the copyright system and copyright rules?	Desktop study
	A2. What is the level of awareness of copyright rules?	Survey or desktop studies
	B1. Are laws concerning copyright prepared in a transparent way that allows all relevant stakeholders to follow the legislative process?	Desktop study
Transparency of CMOs	C1. Is the operation of CMOs transparent towards right holders and users?	Desktop study
	C2. Is information concerning the collection of remunerations on their works available to right holders represented by CMOs?	Desktop study and/or interviews
Participation	A1. Do stakeholders have a chance to participate in the preparation of new legislation and development of the copyright system?	Desktop study
Participation in CMOs	B1. Do right holders have the possibility to take part in the decision-making of the CMO representing them? Through which mechanisms?	Desktop study and/or interviews
Accountability	A1. Is there supervision of the activities of public authorities in charge of the public administration of copyright?	Desktop study
	A2. Are the outcomes of public actions in the field of copyright assessed a posteriori?	Desktop study and/or interviews
Accountability of CMOs' management	B1. Are there internal supervision practices to ensure that CMOs operate according to their own rules and in the interest of the right holders they represent?	Desktop study and/or interviews
	B2. Is there external supervision to ensure that CMOs operate according to laws?	Desktop study and/or interviews
Coherence & Consistency	A1. Is the copyright system administered in a consistent and coherent way?	Desktop study
Coherence and consistency of CMOs' decisions	B1. Are CMOs coherent and consistent in their decisions?	Desktop study and interviews
Responsiveness	A1. Do public authorities in charge of the copyright system's development regularly assess the need for changes to the copyright system due to the evolution of the copyright environment?	Desktop study and/or interviews
	A2. Are administrative proceedings concerning copyright issues conducted without unreasonable delay?	Desktop study and/or interviews

Responsiveness of CMOs	B1. Are CMOs serving right holders and users within a reasonable time frame?	Survey and interviews
	B2. Do CMOs perform analyses of their operating environment?	Interviews
	B3. Do CMOs respond to requests by right holders and users (concerning for example new services or changes in the scope of their operation) in a timely manner?	Desktop study and interviews
Effectiveness & Efficiency	A1. Do authorities involved in the public administration of copyright fulfill their roles effectively?	Focus groups and/ or interviews / Case studies
	A2. What amount of funds is allocated to copyright administration in the state budget?	Desktop study
	A3. What requirements are there for reporting on the use of the budget(s) allocated to copyright administration?	Desktop study and interviews
	A4. Is the operation of authorities involved in the public administration of copyright submitted to external evaluation?	Desktop study
Effectiveness and efficiency of CMOs	B1. Are CMOs able to efficiently collect and redistribute revenues from the use of works to right holders?	Desktop study
Equity & Inclusiveness	A1. Do public authorities contribute to the possibilities for all members of society to acquire enough knowledge of copyright rules to efficiently participate in the copyright system?	Desktop study
	B1. Do public authorities involved in copyright administration take action to ensure that all stakeholders within the same category[76] are treated equitably in the copyright system?	Desktop study
	B2. Do public authorities involved in copyright administration take action to ensure that different categories of stakeholders are treated equitably in the copyright system?	Desktop study
Equity and inclusiveness in CMOs	C1. Do CMOs treat all right holders and all users equally?	Desktop study and interviews
	C2. Do all right holders have the possibility to join a collective management organization if one exists in their field?	Desktop study and/or survey
	C3. Do right holders have the possibility to leave a collective management organization or limit its mandate regarding the right holders' works?	Desktop study and/or survey
Separation of Powers	A1. Is the structure of organization and division of responsibilities among the public authorities in charge of copyright governance organized in such a way as to prevent inappropriate decision-making situations?	Desktop study and interviews
Separation of powers in CMOs	B1. Do CMOs have a clear separation of powers between management, supervision and dispute resolution?	Desktop study and interviews
	B2. Do CMOs have and apply procedures to avoid, identify and manage conflicts of interest?	Desktop study and/or interviews

Conclusion

As described in this document, the assessment of the quality of governance of a copyright system can take different forms, depending on the goals of the study. The proposed series of questions correspond to eight principles of good governance relevant in the context of copyright systems. In order to carry out the assessment, the guidelines presented here suggest conducting desktop studies, surveys and interviews with representatives of different organizations or stakeholders categories. In several cases, the present document proposes more than one research method, and researchers can select the most appropriate according to the context, the extent of the research and the resources available. It is also possible to conduct the assessment on a modular basis, for example by focusing on one principle of good governance at a time.

The assessment of the copyright system's governance can result in recommendations that will improve the system from an ethical point of view, by increasing its fairness, inclusiveness and transparency. Improving governance is also a tool to achieve better efficiency: a system where all categories of stakeholders are involved, where rules and procedures are coherent, transparent and fair, where different interests are taken into account, and where authorities are rendered accountable is likely to reach a higher level of consensus and function more efficiently. Regularly assessing the quality of a copyright system's governance is therefore a tool for achieving a system that will efficiently reach its goals, and at the same time enjoy a high level of approval.

Since a well-governed copyright system is likely to achieve better efficiency, the assessment of the general operation of the system will also provide information on the quality of its governance. The causal link between these two aspects is however highly influenced by the actions of private actors and external influences on the system, which need to be taken into account. For a methodology to consistently assess the operation of copyright and related rights systems, as well as the contexts in which the systems operate, see Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*.[76]

This document endeavors to propose a theoretical framework to be used as a basis for assessing governance. The framework must next be tested in practice and developed according to the experiences gained. Further research will hopefully propose additional questions or methods for operationalization and altogether enrich the assessment of the governance of copyright systems. This work could eventually result in a complete set of guidelines that will be widely applicable and result in new ideas for improving the governance of copyright systems internationally.

[76] Cupore publications 26, May 2016.

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Appendix 1:
International Organizations Proposing Lists of Good Governance Principles

The following international organizations have presented definitions of good governance that were used in this document:

1. The **African Development Bank Group** (ADBG)[77]

   The ADBG promotes good governance for two main reasons: "First, from broader perspective, good governance, which promotes accountability, transparency, rule of law and participation, is central to creating and sustaining an enabling environment. Second, from the Bank's perspective, it is inextricably related to the efficacy of the investment that it helps to finance, and is in line with the Institution's vision for sustained African development into the 21st Century."[78]

2. The **Asian Development Bank** (ADB)[79]

   The ADB published in 1999 a document on governance to provide advice and technical assistance to help foster good governance, in order to lay the basis for sustained growth. It focuses on "the ingredients for effective management" in the field of economic policies.

3. The **European Union** (EU)[80]

   The European Commission published in 2001 a White Paper on European Governance in order to reform its institutions for the purposes of restoring confidence in its governance and preparing a broader debate on the future of Europe.

4. The **International Monetary Fund** (IMF)[81]

   The IMF produced in 1997 a "guidance note" on its role in governance issues in its member countries. The IMF makes it clear that it "is primarily concerned with macroeconomic stability, external viability, and orderly economic growth in member countries. Therefore, the IMF's involvement in governance should be limited to economic aspects of governance."[82]

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[77] African Development Bank Group Policy on Good Governance, November 2, 1999, available at http://www.afdb.org/en/documents/document/bank-group-policy-on-good-governance-27134/.

[78] Idem, §1.

[79] Asian Development Bank, *Governance: Sound Development Management* (August 1995), published in 1999, available at http://www.adb.org/documents/governance-sound-development-management.

[80] Commission of the European Communities, *European Governance – A white paper*, Brussels, 7.25.2001, COM(2001) 428 final, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52001DC0428.

[81] IMF, *Good Governance – The IMF's role*, 1997, hereafter "IMF". Available at https://www.imf.org/external/pubs/ft/exrp/govern/govern.pdf.

[82] Idem, p.3.

5. The **Organisation for Economic Co-operation and Development** (OECD)[83]
   In 2004, Network on Environment and Development Cooperation ENVIRONET established a Task Team on Strategic Environmental Assessment (SEA), in response to the demand for guidance on the most efficient and effective application of SEA in the context of development co-operation. The product of this work is a Good Practice Guidance detailing principles of governance for achieving environmental sustainability.
6. The **United Nations' Development Programme** (UNDP)[84]
   Since 2000, the UNDP has included governance-related goals and targets in its development agenda, recognizing the vital link between good governance, development and human rights.
7. The **United Nations' Economic and Social Commission for Asia and the Pacific** (UNESCAP)[85]
   The purpose of the document "What is good governance?" published in 2009 is to define good governance in the context of the increasing use of the term, in particular by donors and international financial institutions basing their aid and loans on the condition that reforms ensuring good governance are undertaken.
8. The **United Nations' Office of the High Commissioner for Human Rights** (OHCHR)[86]
   The Commission on Human Rights of the United Nations published in 2000 a resolution recognizing that a foundation of good governance is "a sine qua non for the promotion of human rights".
9. The **Worldwide Governance Indicators** (WGI) project of the **World Bank**[87]
   The indicators constitute "a research dataset summarizing the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, international organizations, and private sector firms."

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[83] *OECD, Applying Strategic Environmental Assessment – Good practice guidance for development cooperation*, 2006, p.3. Available at https://www.oecd.org/environment/environment-development/37353858.pdf.

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[87] The Worldwide Governance Indicators (WGI) project of the World Bank Group's website, at http://info.worldbank.org/governance/wgi/index.aspx.

Appendix 2:
Methodologies for Assessing the Governance in the National Environment

Here are examples of tools available for assessing the quality of governance at national level and for better understanding the governance of a national copyright system:

1. The **Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems**[88] proposes 37 indicators designed for providing data and information suitable to evaluate the functioning of a copyright system. These indicators take the form of 15 description sheets and 22 methodology cards that present the data to be collected, parameters to measure, guidelines for data collection and other information specifying the elements to be included in the study. The framework is modular, and can be utilized for various purposes according to the needs of researchers. The handbook presenting the methodology framework on which this work is based also provides practical advice on the implementation of the indicators. Information on research methods, data sources and interpretation tools is provided.[89] Additionally, for those indicators that require the collection of subjective data through interviews, focus group studies or surveys, a separate publication presents a toolkit of model questionnaires and instructions on research design.[90]

The framework could be further used for the purposes of studying the operation on the copyright system according to the principles listed above, with the aim of determining whether the system operates according to the principles of good governance, in order to achieve better efficiency, increased consensus and better ethics. Moreover, some indicators of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems directly concern the level of good governance in the national context. The Framework provides useful information on the political system and the system of government in the country. It also includes a description of the level of technological development in the country, including information on the access to digital communication technologies, which will influence the means of gov-

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[88] See Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Methodology Framework*, Cupore publications 26, May 2016.

[89] See pages 33 and following.

[90] See Tiina Kautio, Nathalie Lefever & Milla Määttä, *Assessing the Operation of Copyright and Related Rights Systems – Toolkit of Questionnaires,* Cupore publications 27, May 2016.

ernance, since "new technologies offer opportunities for information sharing, public participation, and collaboration."[91]

2. The **Indicator Framework on Culture and Democracy**[92] developed by the Council of Europe contains indicators for assessing the general governance environment in the country, especially those aspects that are most likely to influence the cultural environment. Such is the case for instance of the area "government capability", which proposes variables to measure the government's analytical capacity, central bank independence, confidence in political institutions and political independence. Another part of the Indicator Framework on Culture and Democracy concerns "safeguards and checks and balances", which is closely related to issues of legitimacy and responsibility, with variables measuring the constraints on government powers and judicial review.

3. The **World Justice Project's Rule of Law Index**[93] is another useful tool for assessing the quality of governance at country level. The World Justice Project endeavors to measure the extent to which the Rule of Law is attained in different countries through an Index which comprises 8 aggregated factors and 44 sub-factors or measures. The Index covers a large range of governance issues and results in a portrait of the rule of law in 113 countries. These country profiles can be used as background information when assessing the quality of governance in a national copyright system.

4. The **Open Government Partnership**[94] is a multilateral and international initiative whose members' aim is to "promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance". Participating countries must "endorse a high-level Open Government Declaration, deliver a country action plan developed with public consultation, and commit to independent reporting on their progress going forward". Governments taking part in this kind of initiative demonstrate a will to improve several aspects of their governance.

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[91] Open Government Partnership, *Open Government Declaration*, September 2011, available at https://www.opengovpartnership.org/open-government-declaration.

[92] *Indicator Framework on Culture and Democracy – Policy Maker's Guidebook*, Council of Europe, October 2016, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806af0e2.

[93] See the World Justice Project's *Rule of Law Index 2016*, available at http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf.

[94] Information on the partnership is available at http://www.opengovpartnership.org.

Appendix 3:
Assessing Governance in the Context of Copyright Systems: Summary of Principles and Guidelines

TRANSPARENCY		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Transparency of copyright rules		
A1. Is information available about the copyright system and copyright rules?	A desktop study could examine whether, for example, texts of the laws related to copyright are easily accessible, whether information on the copyright policies is published and accessible to all citizens, whether there are organizations or services that can answer citizens' questions, etc. If the level of technological development in the country permits, the assessment could include the possibility to get this information through digital means.	The indicators of the World Justice Project's Rule of Law Index could also be used, as the Index proposes to measure the level of "Open Government" through four indicators related to transparency. These indicators measure, among other things, the extent to which laws and government data are publicized, and the realization of the right to information. The country profiles produced by the World Justice Project will provide important background information on the level of transparency of the general governance in the country, and the same methodology could be used in the study of the level of transparency in the copyright system specifically.
A2. What is the level of awareness of copyright rules?	A survey could be conducted to determine whether the concept of copyright is understood by the public at large, and if end-users are aware of the rights of authors, performers and other right holders, as well as the extent of the legal uses of copyright.	This is the subject of *Methodology Card 10 – Public Awareness of the Rights* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations and questionnaires for assessing that aspect.
	Another method for assessing this aspect would be to conduct desktop studies on the existence and extent of copyright-related education for the public at large, as well as on the availability of copyright-related information activities.	These issues are the topic of *Description Sheet 13 – Copyright-related Information Activities* and *Description Sheet 14 – Copyright-related Education for the Public in General* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.

B. Transparency of the law-making process		
B1. Are laws concerning copyright prepared in a transparent way that allows all relevant stakeholders to follow the legislative process?	A desktop study could examine whether the law-making process involves the possibility for stakeholders to be informed of proposals for legislative change; surveys or interviews with stakeholder representatives could examine whether the information is usually transmitted in practice.	n/a
C. Transparency of CMOs		
C1. Is the operation of CMOs transparent towards right holders and users?	A desktop study could examine whether the following information is available to right holders and to users, whether they are using a CMO's services or not, according to their needs: ▪ Statutes of the organization ▪ Terms of membership and terms for withdrawal ▪ Standard licensing contracts and tariffs, including the nature of the rights transferred, whether rights are transferred on an exclusive basis, etc ▪ Governance structure of the organization and lists of persons responsible for management ▪ General policy on distribution of remunerations to right holders, on management fees, on the deduction of management fees and other deductions from right revenues, and on the use of non-distributable amounts ▪ List of cooperation and representation agreements with other CMOs ▪ Dispute resolution procedures available ▪ Annual reports and accounts.	Codes of Conduct proposed by professional organizations in the field of collective management of rights (such as IFPI, CISAC or IFFRO) also include detailed requirements on transparency applicable to specific industries that can be used in the assessment.
C2. Is information concerning the collection of remunerations on their works available to right holders represented by CMOs?	A desktop study and/or interviews with representatives of CMOs and/or right holders could examine whether income statements are available to all right holders represented by a CMO, including ▪ Detailed information on the use of their works and the level of remuneration associated ▪ A clear explanation of all deductions in the revenue for expenditures ▪ An explanation of the distribution rules, in a form easily comprehensible.	Codes of Conduct proposed by professional organizations in the field of collective management of rights (such as IFPI, CISAC or IFFRO) also include details requirements on transparency applicable to specific industries that can be used in the assessment.

PARTICIPATION		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Participation in the development of the copyright system		
A1. Do stakeholders have a chance to participate in the preparation of new legislation and development of the copyright system?	A desktop study could assess whether the law-making process applicable to copyright legislation requires or allows for the involvement of stakeholders, for example through public consultations on legislative proposals. If the level of technological development in the country permits, the assessment could include the possibility to participate through digital means. Note that a prerequisite for efficient participation in the development of the copyright system is for stakeholders to be organized into groups or unions. The level of organization in each copyright-related industry as well as the level of organization of copyright users and other relevant groups of actors might need to be assessed.	This is the topic of *Methodology Card 5 – Public Consultation on Law Proposals* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.
B. Participation in CMOs		
B1. Do right holders have the possibility to take part in the decision-making of the CMO representing them? Through which mechanisms?	This question could be answered through a study of CMOs' statutes and rules of operation that would determine whether there are appropriate and effective mechanisms for the participation of right holders in the CMO's decision-making process. This study could be conducted through desktop research and/or interviews with representatives of CMOs and/or right holders.	n/a

ACCOUNTABILITY		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Accountability of public authorities in the field of copyright		
A1. Is there supervision of the activities of public authorities in charge of the public administration of copyright?	A desktop study could list public authorities in charge of copyright administration, together with their supervisory bodies and the possible procedures of supervision.	This is the topic of *Description Sheet 7 – Public Administration of Copyright* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.
A2. Are the outcomes of public actions in the field of copyright assessed a posteriori?	A desktop study and/or interviews with representatives of public authorities could verify whether assessment of the outcomes of public actions, such as a posteriori impact assessment studies, is being made in the field of copyright.	This is the topic of *Methodology Card 6 – Use of Impact Assessment and Research in Policy Development* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect, and could be used with a focus on the impact assessment and research used to evaluate the impacts of past policy and legislative developments.
B. Accountability of CMOs' management		
B1. Are there internal supervision practices to ensure that CMOs operate according to their own rules and in the interest of the right holders they represent?	A desktop study and/or interviews with representatives of CMOs could clarify the existence and functioning of supervision procedures concerning CMOs, such as ▪ the existence of supervisory bodies ▪ the procedures for supervision, ▪ the type of information available for the purposes of supervision ▪ the rules regarding the distinction and separation of function between members of the management body and members of the supervisory body, or rules on conflicts of interest and prohibiting interference between these two bodies.	Codes of Conducts proposed by professional organizations in the field of collective management of rights (such as IFPI, CISAC or IFFRO) as well as the European Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, also include detailed requirements on transparency applicable to specific industries that can be used in the assessment.
B2. Is there external supervision to ensure that CMOs operate according to laws?	A desktop study and/or interviews with representatives of CMOs could clarify the existence of rules and procedures concerning external auditing.	

COHERENCE & CONSISTENCY		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Coherence and consistency of the actions of public authorities in the field of copyright		
A1. Is the copyright system administered in a consistent and coherent way?	Desktop research on this subject could determine, for example, whether copyright policies are consistently implemented, and whether different agencies in charge of copyright administration act coherently among themselves and with the rest of the legal system. The coherence and consistency of public authorities in charge of preparing copyright legislation and policies could also be assessed by examining the processes at the preparatory stages of copyright legislation and whether they have been coherent and consistent over time.	n/a
B. Coherence and consistency of CMOs' decisions		
B1. Are CMOs coherent and consistent in their decisions?	A study could be conducted on whether the decisions of CMOs' management (concerning, for example, the admittance of right holders, the collection and distribution of remunerations or the international licensing of rights) follow rules that seek to ensure consistency and coherence in the CMO's operation. This could be studied through desktop research on the CMOs' rules of operation and previous official decisions, complemented with interviews with representatives of CMOs.	n/a

RESPONSIVENESS		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Responsiveness of public authorities in the field of copyright		
A1. Do public authorities in charge of the copyright system's development regularly assess the need for changes to the copyright system due to the evolution of the copyright environment?	A desktop study and/or expert interviews could verify whether, for example, impact assessment studies and research are used in policy and legislative development.	This is the topic of *Methodology Card 6 – Use of Impact Assessment and Research in Policy Development* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.
A2. Are administrative proceedings concerning copyright issues conducted without unreasonable delay?	A desktop study and/or expert interviews could clarify whether, in practice, it is possible to obtain a decision or a judgment of public authorities in the field of copyright within a reasonable time frame, and on whether, after a decision or agreement is reached, it is possible to enforce the decision within a reasonable time frame.	This is the topic of one of the indicators that are part of the World Justice Project's Rule of Law Index (Factor 6.3). The same type of indicator could be used with a focus on proceedings related to copyright management or copyright enforcement in order to further assess the level of responsiveness of the copyright system.
B. Responsiveness of CMOs		
B1. Are CMOs serving right holders and users within a reasonable time frame?	This issue could be studied through a survey of right holders and users' opinions as well as interviews with representatives of CMOs.	n/a
B2. Do CMOs perform analyses of their operating environment?	Interviews with CMO representatives could ascertain whether CMOs conduct or have conducted studies on their environment, the industry in which they operate, and the wishes of the right holders and users concerning the needs to adapt their services.	n/a
B3. Do CMOs respond to requests by right holders and users (concerning for example new services or changes in the scope of their operation) in a timely manner?	Desktop studies and interviews with CMO representatives could clarify whether there are procedures in place to present and examine requests, and whether such requests have been honored in the past.	n/a

EFFECTIVENESS & EFFICIENCY		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Effectiveness and efficiency of public authorities in the field of copyright administration		
A1. Do authorities involved in the public administration of copyright fulfill their roles effectively?	The type of studies conducted to assess this aspect could vary according to the public authority and its duties. In cases of public authorities whose duties are conducted on a regular basis or follow a regular pattern (such as authorities providing a certain type of decisions), focus groups and/or interviews could be conducted with parties that regularly cooperate with authorities involved in the public administration of copyright in order to assess whether these public authorities operate efficiently and are capable of fulfilling their allocated tasks in a timely manner. In cases of authorities whose actions are varied and do not follow regular patterns (such as administrative bodies preparing new policies), case studies could be used to assess how efficiently a limited number of specific duties were fulfilled.	The *Toolkit of Questionnaires for Interviews, Focus Group Studies and Surveys*, which is part of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, proposes questions for assessing that aspect.
A2. What amount of funds is allocated to copyright administration in the state budget?	A comparison of the level of financing of the copyright administration with the results of question A1 will tell about the efficiency of copyright administration. The analysis should take into account other important factors, such as the size of the country and the tasks allocated to copyright administration. When appropriate, the amount of financial resources could be presented in the number of people fulfilling functions involved in copyright administration (in full-time equivalents).	n/a
A3. What requirements are there for reporting on the use of the budget(s) allocated to copyright administration?	A desktop study and interviews with experts could examine, for each public authority involved in the public administration of copyright, whether they are required to report on the use of the budgets allocated to copyright. The study could also examine the possible existence of internal supervision concerning the use of public resources.	n/a

A4. Is the operation of authorities involved in the public administration of copyright submitted to external evaluation?	A desktop study could examine, for each public authority involved in the public administration of copyright, whether external evaluations concerning the efficiency of their operation have been made or are regularly made.	n/a
B. Effectiveness and efficiency of CMOs		
B1. Are CMOs able to efficiently collect and redistribute revenues from the use of works to right holders?	This question could be studied by analyzing the annual reports of each CMOs.	This is the topic of *Methodology Card 9 – Efficiency of Collective Management Organizations* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.

EQUITY & INCLUSIVENESS		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Inclusiveness of the copyright system		
A1. Do public authorities contribute to the possibilities for all members of society to acquire enough knowledge of copyright rules to efficiently participate in the copyright system?	A study on this subject could tell whether there is education on copyright issues in the country, and/ or if publicly financed information activities are being conducted.	This is the topic of the area "Dissemination of Knowledge" of the Methodology Framework for Assessing Copyright and Related Rights Systems which proposes recommendations and questionnaire for assessing these aspects, in particular ▪ *Description Sheet 13 – Copyright-related Information Activities* ▪ *Description Sheet 14 – Copyright-related Education for the Public in General* ▪ *Methodology Card 10 – Public Awareness of the Rights* ▪ *Methodology Card 11 – Copyright-related Education as part of the Education of Professionals for Creative Industries.*
B. Equity of the copyright system		
B1. Do public authorities involved in copyright administration take action to ensure that all stakeholders within the same category are treated equitably in the copyright system?	Public authorities have the possibility to take measures to protect stakeholders that might be in a weaker position within the copyright system, for example because of a lack of bargaining power, lower financial position or lack of knowledge of copyright rules and market practices. A desktop study could examine whether there are systems for protecting these stakeholders, so that they have the same means to use and enforce their rights in practice as the other stakeholders in the same category. Such measures could include, for example, legal protection against abusive clauses in licensing contracts, availability of information on copyright rules or other types of practical support.	In addition, the Indicator Framework on Culture and Democracy developed by the Council of Europe covers issues related to freedom and equality in the access to culture. This includes variables related to public measures and programs promoting equality in the access to culture.
B2. Do public authorities involved in copyright administration take action to ensure that different categories of stakeholders are treated equitably in the copyright system?	The measures taken to promote equity between the different categories of stakeholders include, for instance, impact assessment studies concerning the extent to which new policies or legislative initiatives will impact different categories of stakeholders. A desktop study could examine whether such studies are conducted as a matter of course.	This is the topic of *Methodology Card 6 – Use of Impact Assessment and Research in Policy Development* of the Methodology Framework for Assessing the Operation of Copyright and Related Rights Systems, which proposes recommendations for assessing that aspect.

C. Equity and inclusiveness in CMOs		
C1. Do CMOs treat all right holders and all users equally?	A desktop study could examine whether there are legal rules in place to ensure that all right holders and users are treated equally, whether there is a possibility for right holders and users to take legal action when treated unequally, and whether there have been disputes on that subject in the past. In addition, interviews with CMO representatives could ascertain whether there are internal rules and procedures concerning these issues.	n/a
C2. Do all right holders have the possibility to join a collective management organization if one exists in their field?	A study could examine the fairness of the rules concerning the conditions under which a right holder can be represented by CMOs, as well as whether there are rules and/or procedures to prevent unjustified discrimination in the admittance of right holders. A survey among right holders could ascertain whether these rules are implemented in practice or whether there were cases of right holders not being able to join a CMO in their field.	n/a
C3. Do right holders have the possibility to leave a collective management organization or limit its mandate regarding the right holders' works?	A study of CMOs' rules and/or a survey among right holders could examine whether there are situations where a right holder is forced to use the services of a CMO against their will (checking the law, the terms of services of CMOs, etc.), as well as judicial documents and history of dispute resolutions mechanisms to ascertain whether there were disputes in the past on that account.	n/a

SEPARATION OF POWERS		
QUESTIONS	**OPERATIONALIZATION**	**EXAMPLES OF TOOLS TO STUDY THE TOPIC**
A. Separation of powers between public authorities in the field of copyright		
A1. Is the structure of organization and division of responsibilities among the public authorities in charge of copyright governance organized in such a way as to prevent inappropriate decision-making situations?	A desktop study, completed with interviews of experts in the field, could ascertain whether the attribution of responsibilities between different public authorities in the field of copyright is suitable to ensure that the division of powers is guaranteed. Legislative, judiciary and executive duties should be performed by separate entities. For example, the tasks of supervising the activities of actors in the field of copyright (such as collective management organizations) should not be fulfilled by the same authorities who are in a situation to negotiate contracts with them. The division of power should also be organized so that political decisions would not unduly influence administrative tasks. An authority which makes legislative decisions should not simultaneously be responsible for executing or enforcing these decisions. As far as possible, no authority or individual employee should be in a situation where conflicts of interests could arise. Whenever the structure of copyright governance leaves a possibility for inappropriate division of power, the study could examine whether there are procedures for identifying and managing potential and actual conflicts of interests, such as adequate supervision or a system for ensuring that the possible conflicts of interests do not adversely affect the completion of the duties.	n/a

B. Separation of powers in CMOs		
B1. Do CMOs have a clear separation of powers between management, supervision and dispute resolution?	A desktop study, completed with interviews of CMOs' representatives or experts in the field, could ascertain whether each collective management organization's structure and the way in which it carries out its activities ensure that the separation of powers is clear and effective. Persons in charge of monitoring the activities of the CMOs should be independent from the management, or otherwise solutions should be in place to mitigate the risk of abuse. The study could also verify whether the dispute resolution procedures in place to respond to disputes between the collective management organizations, their members, right holders and users, are independent and impartial.	n/a
B2. Do CMOs have and apply procedures to avoid, identify and manage conflicts of interest?	A desktop study and/or interviews with CMOs' representatives could determine whether there are procedures in place to avoid conflicts of interests within the organization. When conflicts of interests cannot be avoided, the study could determine whether appropriate measures are put in place to identify, manage, monitor and disclose such conflicts in order to prevent them from adversely affecting the operation of the CMO. For example, managers in the organizations could be required to declare, prior to taking up their position and thereafter on a regular basis, whether there are conflicts between their interests and those of the right holders that are represented. Persons in charge of supervising the activities of the CMO could also be required to report regularly on their activities in monitoring actual and potential conflicts of interests.	n/a

Assessing Governance in the Context of Copyright Systems

SECOND EDITION

The characteristics of processes for making and implementing decisions are an important aspect of the copyright system's operation. Complying to generally recognized good governance principles provides an ethical basis for governance and leads to improved decision-making processes, helping public authorities to meet their legislative responsibilities and to achieve better efficiency in the management of public affairs.

The purpose of this publication is to define good governance in the context of the copyright system, select and describe generally recognized good governance principles particularly applicable to the copyright system, and finally present a list of questions for assessing governance in public institutions and collective management organizations. It is linked to an extensive methodological work to study and assess the operation of national copyright and related rights systems, conducted in Finland by the Center for Cultural Policy Research (Cupore).

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