



UNIVERSITETET I AGDER

Effects of the implementation of the CRM Directive on the Norwegian music environment

Direct and indirect effects of the Directive in the case of
Norway

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Abstract

Since the beginning of digitalisation, the music industries have struggled to develop systems for the accurate and fair collection and distribution of remuneration for the exploitation of rights. Systems are often found to be less than optimal, as a consequence of them being designed to work in an offline environment that is no longer present, making them outdated and dysfunctional. Ideally, such systems are developed naturally in tandem with disruption and change. This however, does not always happen, and it is in cases like these that lawmakers are forced to step in. Legislation does have a remarkable tendency of arriving late, often years after the need for it arises; but if the need is there, legislation will eventually make its appearance.

This thesis is a study on the implications of the CRM Directive on the Norwegian field of rights management and the Norwegian music environment. The study seeks to present the case of Norway as it is today, the relevance of the Directive in this regard, and the viewpoints of important individuals linked to the Norwegian organisational environment. In order to do so, relevant theory and analyses of the CRM Directive and interviews with leading professionals in Norway have formed the basis for evaluating the circumstances and challenges surrounding the field.

The findings of the study suggest that the Norwegian environment is both a modern and favourable place to be for rights holders, but that some changes will have to occur in order for the industry to be able to meet the challenges ahead. Although digital change has a longstanding tradition of being met with fear and resistance, this thesis will show that the Directive might not be so scary or radical after all. Perhaps, this time the EU has managed to find a solution to the problems with collective rights management that the industry is willing to accept.

Abbreviations

AGM – Annual General Meeting

BASCA – The British Academy of Songwriters, Composers and Authors

BIEM – International Organisation for Mechanical Rights Societies

CD – Compact Disc

CEO – Chief Executive Officer

CISAC – International Confederation of Societies of Authors and Composers

CMO – Collective Management Organisation

CRM – Collective Rights Management

DEAL – The repertoire of Universal

DRM – Digital Rights Management

EC – European Commission

EEA – European Economic Area

EP – European Parliament

EU – European Union

FFUK – Fund for Performing Artists

Folkorg – Norwegian Association for Folk Music and Folk Dance

FONO – Norwegian Independent Record Producers' Association

GEMA – German Society for Musical Performing and Mechanical Reproduction Rights

GramArt – Norwegian Recording Artists' Association

Gramo – Norwegian collection society/performing rights organisation

GRD – Global Repertoire Database

ICE – International Copyright Enterprise

IFPI – International Federation of the Phonographic Industry

IME – Independent Management Entity

IMPEL – Independent publishers' Anglo-American repertoire

IP – Intellectual Property

ISRC – International Standard Recording Code

Kopinor – Norwegian reproduction rights organisation

KODA – Danish collection society/performing rights organisation

MF – Norwegian Society of Music Publishers

MFO – Norwegian Musicians' Union

NA – Norwegian Association of Artists

NCB – Nordic Copyright Bureau
NKF – Norwegian Society of Composers
NOK – Norwegian Krone (Norwegian currency)
NOPA – Norwegian Society of Composers and Lyricists
NORA – Norwegian Independent Record Producers' Association
NRK – Norwegian Broadcasting Corporation
NTNU – Norwegian University of Science and Technology
PEDL – Warner Anglo-American repertoire
PRS – The British Performing Right Society for Music
PPL – The British licensing society for recorded music, Phonographic Performance Limited
MCPS – The British Mechanical-Copyright Protection Society
RRA – Reciprocal Representation Agreement
SACEM – French Society of Musical Authors, Composers and Editors
SGAE – Spanish Society of Authors, Composers and Publishers
SIAE – Italian copyright collecting agency
SOLAR – EMI and Sony Anglo-American repertoire
STEF – Icelandic collection society/performing rights organisation
STIM – Swedish collection society/performing rights organisation
Teosto – Finnish collection society/performing rights organisation
TONO – Norwegian collection society/performing rights organisation
UGC – User-Generated Content
WIPO – World Intellectual Property Organisation

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1 Introduction

1.1 Motivation

The motivation behind this thesis is a common interest in the Norwegian music environment and the management of rights. Both authors are former and current students of music. Espen has a bachelor's degree in Music Technology, and Mats has a bachelor's degree in Performance Design & Communications as well as having studied performing music for a year. Both have been performing and composing music for years, but only on an amateur or semi-professional level. Two years of studying Music Management at the University of Agder has created an interest for the field of copyright and copyright legislation for both.

The subject matter of this thesis is first and foremost relevant due to several new legal initiatives on copyright, licensing structures and the rights of rights holders in the online environment, both on a national and international level. In Norway, the proposal for a new and revised Copyright Act has heavily engaged creators, performing artists and interest organisations to initiate public campaigns and to participate and express their concerns in parliamentary hearings. Internationally, the *European Union* (EU) has initiated several legal proposals in order to regulate the new digital environment and protect rights holders, and in the United States there have been proposed several bills in Congress in order to increase royalty payments for music creators in the digital age, and in order to make life more efficient for digital music services¹.

To our knowledge, there is a lack of research and academic writings in the field of collective rights management and digitalisation. What is worth mentioning is the doctoral dissertation of Daniel Nordgård (2017) which deals with factors relating to digital change in the music industries. Other relevant academia in this regard is Gervais (2010), Wikström (2013), Wikström & DeFillippi (2016), Frith & Marshall (2004) and Hesmondhalgh (2013), as well as the theses of our fellow master's students Kefalas (2017) and Kok (2017).

¹ For more information on this, see: Rosenblatt (2018).

1.2 Digital change and challenges in the music industries

The music industries have been through some radical changes throughout the last 30 years. A lot of these changes have come from, or is a response to, technological development and digitalisation. Since the early 1990s, with the introduction of the compact disc-recordable (CD-R), the compact disc rewritable (CD-RW), MP3-files, and file-sharing services like Napster, the music industries have struggled to find the best way to cope with new digital technologies and subsequent disruptions in the market. A big part of the industries tried to fight this development by measures of *digital rights management* (DRM), such as copy protection on CDs and DVDs, and through massive lawsuits against file-sharing communities (McIntyre, 2018). Finally, the major record labels banked their hopes on services such as Apple and iTunes and proceeded to licence their entire music catalogues to Steve Job's empire. It is only in recent years, after several years in decline, that the different stakeholders within the music industries have once again begun to look at their own future in a fairly optimistic manner. One of the main reasons for this is the introduction of subscription-based and on-demand music streaming services like Spotify, Apple Music and Deezer, as well as improved digital tools for reporting, monitoring and distribution for the use of copyright-protected material.

In his blog on Music Business Research, Peter Tschmuck provides an overview of the different periods in the recorded music market in the US for the last 25-30 years. The changes and developments that have taken place there are pretty similar to how things developed in Europe in the same timeframe. Tschmuck describes the different periods of change like this:

- 1990-1999: 'CD boom'. The CD replaces all other formats.
- 2000-2003: CD sales peak. File-sharing disrupts the business. Decrease in recorded music sales. Apple introduces iTunes.
- 2004-2009: Market hit by severe recession despite a boom in music for mobile phones and increasing download sales.
- 2010-2015: Download sales stabilise the market on a low level. Streaming generates considerable revenues.
- 2016: New era. Consumers spend more money on accessing music through streaming than purchasing music, both digitally and physically.

(Tschmuck, 2017)

Economic growth

Digital change has proven to be a challenge to the music industries. Perhaps the most challenging issue of all has been monitoring the use of music, and through this being able to generate and collect a sufficient and fair amount of revenue for the exploitation of rights on behalf of creators, performing artists, producers and other different stakeholders. This challenge is still ongoing and heavily discussed, despite there being a continuous economic growth and a clear optimism in the field. The latest annual report from IFPI² Norway for 2017 shows that the total number of sales of recorded music in Norway generated NOK 730 million. This is a growth of 3.7 percent from 2016, when the total number of sales generated NOK 704 million. Although the increased revenues from music streaming is plateauing a little when compared to the growth of previous years, it is still a positive and growing market (IFPI Norge, 2018b: 3). Globally, the recorded music market grew by 8.1 percent in 2017. This was, according to IFPI, the third consecutive year where it experienced growth (IFPI Norge, 2018a).

Collective management organisations and licensing

Collective management organisations (CMOs) play an important role in the licensing, collection and distribution of revenues for the use of music and the exploitation of rights. In 2015, CISAC³ released an article called *The Role of Collective Management Organisations*. Here, they provide an overview of the role and workings of CMOs in the online music environment:

Online music uses including download and streaming services (interactive or otherwise) are becoming increasingly important to both rights owners and music users. Since many of these new services operate across borders, CMOs have responded by building multi-territory licensing capability and capacity. In Europe, for example a number of alliances between different CMOs have emerged, in line with calls by the Commission of the European Union, and as now embodied in EU legislation, to facilitate user-friendly, pan-European licensing. (CISAC, 2015a)

Due to the digitalisation of music services and music providers, some problems relating to licensing have occurred. The most stand-out problem is the licensing of content for services

² International Federation of the Phonographic Industry. IFPI represents the major recording industry worldwide.

³ See: CISAC, p. 19.

operating in multiple territories, but there are also problems connected to the accuracy of data, especially for catalogues of some age. Licensing of music is intended to ensure that rights holders of musical works are compensated for the use of their work, and that music services are able to provide access to said musical works to their customers. Music streaming services such as Spotify have tens of millions of songs in their catalogues, and one can only assume that there are at least as many rights holders affiliated with these songs. Record labels, publishing companies and CMOs may clear the rights of works, as can individuals who insist on managing their own rights – the problem is that an all-encompassing registry of works and affiliated rights holders has never been established. In most cases, it is possible to locate and remunerate the correct rights holders for the use and exploitation of their works, but due to flaws in the systems, this is not always so. Someone might claim to hold the rights to some obscure recording of an old psychedelic rock band, a recording that is going to be put up on Spotify or Apple Music. The question then becomes: how can these services verify that this person is the one and only correct rights holder? This could be a very real problem for both online services, record labels, publishers and CMOs. Another hypothetical problem might occur in a scenario where the publishing rights to an artist's catalogue used to be managed by an American publishing company that went bankrupt some 20 years ago. Now, these rights are split between 15 different publishers, whereas some of them have also gone bankrupt in the meanwhile. The question then becomes: who do you contact, as an online service provider, in order to properly clear the rights?

In addition to the above, there could be problems relating to transparency when it comes to the interaction between CMOs and streaming services. When streaming services distribute revenues directly to record labels and CMOs, based on the service's own user-data, it might be difficult for record labels, CMOs and rights holders to be certain that the reporting and distribution is accurate and fair. This issue has been made topical by the ongoing case concerning the streaming service Tidal, which has been reported to the Norwegian police and is being accused of manipulating the numbers of listeners in favour of the two American artists Kanye West and Beyoncé⁴. If this turns out to be true, stricter regulation and legislation on the online area would be welcomed.

⁴ For more information on this, see: Eckblad et al. (2018).

To sum up, the complications involving online licensing include, amongst others, issues relating to transparency, non-disclosure agreements, the accuracy of reporting and monitoring of correct usage, and the accuracy of databases of rights holders and rights.

User-generated content and a need for legislation

As mentioned, stakeholders within the music industries now seem to be more optimistic about the future of music, after years of coping with challenges and struggling to adapt to digital change. The amount of illegal file-sharing and downloading of protected content has decreased as a consequence of streaming services such as Spotify, and the music industries no longer seem to be permeated by despair.

One big problem that the music industries are facing is the massive amount of music accessible for free through services such as YouTube, SoundCloud and Facebook. These are services that live off of *user-generated content* (UGC), in that they provide their users with the opportunity to become content creators themselves and make available that content for free on the various platforms. These services do however also live off of copyright protected content, content that their users make use of in their UGC and make available on the platforms. In contrast to licensed digital distributors such as Spotify or Netflix, who spend roughly 70 percent of their turnover on acquiring copyrighted content, services such as Facebook do not return the revenues derived from using said content to the creative community (Hofseth, 2016). This becomes a big problem for the industry as a whole when you consider the fact that YouTube in 2017 attracted 46 percent of all music streaming listening time globally, excluding China, and the audio streaming services attracted only 45 percent, making YouTube by far the most dominant streaming platform in the world (Music Business Worldwide, 2018). This was also pinpointed by Crispin Hunt, chairman of *the British Academy of Songwriters, Composers and Authors* (BASCA):

I want to thank YouTube and Facebook for cracking the funniest joke online: the one where they pretend they're just a dumb pipe and not the biggest and best streaming services on the planet. You guys! You're killing us... literally! (Dredge, 2017)

This seems to be a problem that can only truly be fixed by lawmakers, seen as the various UGC-services are acting in accordance with national and international legislation, and are

protected under the so-called safe harbour rules⁵. Marte Thorsby, the managing director of IFPI Norway, states that “YouTube is not doing anything wrong – but the legislation is wrong [...] If the service plays an active role in promoting the music, they should not be covered by safe harbour rules.” (Forde, 2017).

1.3 Introducing the topic

One of the legislative proposals aiming to solve some of the challenges mentioned in this chapter is the Directive 2014/26/EU on Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online Use in the Internal Market (hereinafter referred to only as the Directive). As the title of the Directive says, this document provides requirements to CMOs in the European Economic Area (EEA) on governance structures, transparency, membership terms, the rights of rights holders and users, and non-discrimination, as well as several requirements intended to facilitate multi-territorial licensing.

This thesis will examine the content of the Directive with the purpose of discussing whether it will affect the Norwegian music scene, and in particular the Norwegian CMOs, directly or indirectly. In order to do so, the following research questions form the basis for the theoretical, methodological and analytical works performed in the thesis.

1.4 Research questions

This thesis aims to answer the following questions:

- What are the circumstances surrounding the field of rights management in Norway and how is the Norwegian music environment doing in general?
- What are the effects of the Directive, directly and indirectly, on the field of rights management in Norway and the Norwegian music environment?

⁵ For more information on safe harbour rules and YouTube, see: Mulligan (2016). For more information on the latest development on YouTube and rights holders, see: Ingham (2018).

1.5 Focus and limitations

The focus of this study is twofold. First, it will attempt to describe the Norwegian field of rights management and the Norwegian music environment as a case. This will be done through the presentation of two Norwegian CMOs, namely TONO and Gramo, and two interest organisations affiliated with these CMOs, namely NOPA and GramArt. These organisations are being prioritised due to their relevance, relative size and affiliation with the interview objects. Second, the study will attempt to gauge the effects of the Directive on the Norwegian field of rights management and the Norwegian music environment, both direct and indirect, through analyses of the Directive and empirical data collected through interviews.

The thesis will be mainly limited to the focuses above. The analyses and ensuing discussion and conclusion will reflect this in that not every aspect of the initial data is deemed relevant in order to answer the research questions, and therefore not included. This is however not the case for the theoretical frameworks, which necessarily need to branch out in order to provide an adequate description of the difficulties and complexities of digitalisation and the music industries as a whole, both nationally and internationally.

In addition to the above, the thesis will attempt to present some views on the future of the Norwegian field of rights management and the Norwegian music environment, as a result of discussions surrounding the analyses and the research questions.

1.6 Disposition

Chapter one introduces the thesis and research questions. Chapter two through four provides the theoretical frameworks, which include an overview of the music industries and digitalisation, collective rights management, organisations and relevant legislation, and finally the Norwegian organisational environment. Chapter five deals with the methodological approach of the thesis. Chapters six and seven include the findings of the analyses. Chapter eight provides a discussion around said findings in relation to the theoretical frameworks, and chapter nine is the conclusion.

2 The music industries and digitalisation

This chapter attempts to define the music industries as being a copyright industry and provides an overview of digitalisation. It also introduces several concepts with regards to technology and economic processes.

2.1 The copyright industry

The music industries have been categorised in many different ways throughout the years by music industry scholars in an attempt to define what the industries really are about. In *The Music Industry: Music in the Cloud*, Wikström presents some of the labels put on the music industries, such as the ‘creative industry’, ‘experience industry’ or ‘cultural industry’ (Wikström, 2013: 12). None of these labels are truly suited to describe the essence of the industries, Wikström argues. Instead, he quotes Negus in stating that the “core of the music industry is about ‘developing musical content and personalities’ ... and, to be able to license the use of that content, they need to be protected by copyright legislation” (ibid.: 17). It is on this basis that Wikström says that the best way to categorise the music industries is to consider them as a ‘copyright industry’. He then goes on to describe how products are traded in the copyright industries:

When people purchase a vase or a CD, they do not purchase the design of the vase or the copyrights to the sound recording. The only thing purchased is an example of the vase design or a right to listen to the sound recording within certain carefully defined restrictions. (ibid.: 20)

The example of the CD could might as well have been replaced with the example of accessing recorded music through the subscription-based music streaming services in the digital environment. In the copyright industries the customer does not buy the idea, expression or creativity behind the commodity. The customer buys the right to enjoy the outcome, physical or non-physical, of the expression of the idea, but the ownership of that idea and the affiliated rights remain with the creator or rights holders.

The concept of the music industries being parts of a copyright industry is also provided by Frith & Marshall (2004). They argue that even though most people have understood the music

industries as being primarily ‘the record business’, seen as success in the music business often is measured in record sales or streams, “Copyright provides the framework for every business decision in the industry” (Frith & Marshall, 2004: 1). Frith & Marshall claim that copyright actually “is the currency in which all sectors of the industry trade” (ibid.: 2). Any form of revenue and remuneration in the music industries are connected to rights, and the protection and exploitation of these rights. Hesmondhalgh adds to this in *The Cultural Industries* (2013) by stating that “Copyright is the main means by which culture becomes commodified” (Hesmondhalgh, 2013: 159).

It seems clear that there is a consensus amongst scholars about the importance of copyright and how to deal with it. It also seems clear that the labelling of the music industries as being copyright industries is well argued for. The challenge for the last 30 years, however, has been how to deal with copyright in the digital era.

2.2 Digitalisation

2.2.1 A brief introduction to digitalisation

Digitalisation has served as a kind of buzzword when stakeholders and scholars have tried to define the challenges and changes within the music industries for the last 30 years. Per *Oxford World Encyclopedia*, digitalisation is defined as “Data or information expressed in terms of a few discrete quantities, often associated with a digital computer” (Digital, n.d.). The few discrete quantities referred to are represented as zeros and ones in a binary system⁶, which is the basis for all information and data in computers and on the internet. With the development of the CD by the two tech-companies Sony and Phillips in 1980, a new standard for digitised recorded music was introduced to the mainstream audience. Even though the CD was, and still is, considered by many as being a physical format for music, almost like the smaller version of the gramophone record, the content of the CD is digital. This introduced a new era wherein consumers could store, alter and share recorded music on a much bigger scale than before. The compact audio cassette did open up for copying and physical sharing of music even before that, but not in the way the CD did.

⁶ For more on binary systems, see: Binary system (n.d.).

Technological development and new formats of production, distribution and consumption of music have always led to changes in the music industries. Often, these changes have been made through close relationships between the music industries and technology and communications industries (Nordgård, 2017: 43-45). The big difference from previous changes is that digital formats, especially relating to online services, seem to have made a greater impact on the overall economy of the industries, and therefore also on the remuneration for the exploitation of rights. One theory is that this is because the structures for licensing, reporting, monitoring and distribution were based on the old physical environment, and because of this the music industries could not or did not want to keep up with the digital development. Wikström & DeFillippi (2016) adds to this idea by describing how the internet impacted physical sales of recorded music at the turn of the millenia, and how it “shocked many industry executives who spent much of the 2000s vigorously trying to reverse the decline and make the disruptive technologies go away” (Wikström & DeFillippi, 2016: 1).

2.2.2 New technologies and disruptions

A term often used to describe the changes caused by new technologies and services in the digital environment is *disruptive innovations*. New services and platforms have disrupted the established systems and structures, and they have opened up for new stakeholders to claim large shares of the overall music market. Disruptive innovation is a term first coined in the January-February 1995 issue of *Harvard Business Review*. In the article *Disruptive Innovations: Catching the Wave*, Bower & Christensen present a theory on how new business entrants sometimes change entire markets by creating their own market and value network before they overtake and disrupt the existing market and value network (Bower & Christensen, 1995). The theory of disruptive innovations is based on the question of how a small, young company is able to beat an industry giant on its own turf. In other words:

“Disruption” describes a process whereby a smaller company with fewer resources is able to successfully challenge established incumbent businesses. Specifically, as incumbents focus on improving their products and services for their most demanding (and usually most profitable) customers, they exceed the needs of some segments and ignore the needs of others. Entrants that prove disruptive begin by successfully targeting those overlooked segments, gaining a foothold by delivering more-suitable functionality—frequently at a lower price. (Christensen, Raynor & McDonald, 2015)

2.2.3 The new digital economy

With digitalisation came a new digital economy. Valenduc & Vendramin (2017) explain how information and the sharing of information has become some of the most valuable assets in the new economy:

One of the key features of the digital economy concerns the central place of digitised information. Digitally codified information is becoming a strategic resource, while the network is becoming the overarching organising principle of the economy and society as a whole – the information society or network society.

(Valenduc & Vendramin, 2017: 122)

The term *digital economy* was first introduced by Tapscott in his 1994 book *The Digital Economy: Promise and Peril in the Age of Networked Intelligence* (Don Tapscott, n.d.). The term refers to “an economy that is based on digital computing technologies” (Digital economy, 2018). Different technologies provide possibilities of doing transactions over the internet, transfer goods and commodities, and to give consumers access to content and services through paying either lump sums or by subscription. From this, one can assert that most of the production, distribution, marketing and consumption of recorded music today is part of the digital economy. A lot of musical content is created, produced and finally distributed digitally. Consumers pay for access to music using credit cards or digital internet-based payment systems like PayPal. In many cases, the entire process, from production to consumption, never needs leave the digital world.

In an article on Forbes.com, Gada describes the impact of today’s digital economy thus:

Today, half the world’s population is online, a third are on a social network, 53% are mobile, and they span all ages, races, geographies and attitudes across the planet. The culmination of this explosion in consumer connectivity is the Digital Economy. A young, dynamic, \$3 trillion ecosystem based on technological infrastructure, increasingly intuitive devices and interfaces, vast audience networks, a whole new medium for advertising and an unlimited supply of content. (Gada, 2016)

This ubiquitous presence of digital solutions and services has made several industries become part of the digital economy. Because of the newfound possibilities of facilitating the

distribution and sharing of digital content like music, pictures, films and games, interpersonal communication through social media platforms, e-mails and web pages, and banking and payment solutions for quick and cashless transactions of money, the copyright industries have become highly digitalised.

With the introduction of the new digital economy and digitalisation, many seemed to think that traditional providers of cultural content, such as record labels and movie production companies, would have outplayed their roles. Activities such as creating, producing and releasing content onto different online platforms have become easier and more accessible. Services like YouTube and SoundCloud provide the possibilities of posting and promoting works for anyone to access, and professional intermediaries seem more and more unnecessary. The fact remains however, that major record labels and movie production companies still exist. The most significant difference is that new digital players are able to make an impact on the industry as well. Big stakeholders in the digital market do rule the digital economy, and the idea that new online markets would become the freest of all free markets, like some digital optimists imagined in the 1990s and at the beginning of the 2000s – that idea has not exactly come to fruition. Gada provides some numbers on the digital economy:

The Digital Economy may still be in its adolescence but 9 companies currently generate 90% of its revenue and profits – Apple, Google, Facebook and Amazon, [...] Microsoft, and the four Chinese digital giants. (ibid.)

Common to all of these companies – perhaps with the exception of the Chinese ones, which are probably on the list due to the huge Chinese population, governmental censorship and protectionism – is that they are all mostly built on external content creators. They act like gatekeepers, controlling access to different kinds of content on their platforms and services. Also, due to their significance in assisting consumers in finding and discovering new content and products, they have become almost impossible to ignore for creators, producers and consumers of creative works and *intellectual property* (IP). This could also mean that consumers are spending more of their money on devices and other various forms of access to content rather than spending it on the actual content.

Hesmondhalgh (2013) addresses the synergy between change and continuity in what he calls the cultural industries. In these industries, “Digitalisation has helped to create a massive demand for cheap content” (Hesmondhalgh, 2013: 406). This goes for the music industries as well, where the fight against free has been, and still is, one of the main challenges to overcome in order to re-establish a business that protects rights holders and investors. However, Hesmondhalgh also states that new digital services cannot be blamed for the challenges that seem to come with them:

Digitalisation does what designers ask of it and that depends on so many other factors that the actual zeros-and-ones nature of its technological apparatus matters very little in terms of the social uses of the technology, other than allowing devices to be marketed as efficient and convenient. (ibid.: 406-407)

Hesmondhalgh is essentially saying that for instance Napster, Spotify or YouTube is not to blame here. These services were created because their creators saw in the consumers’ behaviour a need for change. The problem was already well established within industry; the incumbents were trying to force their products onto the consumers through a format that the consumers were no longer interested in. Furthermore, Hesmondhalgh argues that we should not speak of a new digital ‘era’. The technological developments of today are more or less part of a phase that began in the 1980s in the cultural industries:

there is sufficient continuity to undermine the suggestion that we have entered a new era of cultural production. Rather, we should think of the period since 1980 as representing a new phase within the complex professional era, marked by greater competition and a greater centrality for the cultural industries within advanced industrial economies as a whole, but latterly with those cultural industries under serious pressure from developments in the telecommunications and IT sectors (namely, digitalisation and the internet). (ibid.: 407)

New digital platforms and services have put pressure on the music industries to seek solutions to some of their challenges, but it seems important to keep in mind that there have always been challenges connected to making money from cultural productions. New players have entered the field of providing musical content. As mentioned, huge corporations like Google, Amazon, Apple and Facebook rule the digital economy, and these corporations are positioned

at the top by being the best content providers in the business. Even though Apple has invested some in the music business, and the other corporations have their own streaming services as well, their interests most likely do not lie with talent development. This could be a threat to the cultural diversity of the music business. Hesmondhalgh describes these corporations like this:

Their main interests is to make profit. [...] Their efforts to pursue profits can often prove detrimental to the interests of people as citizens, even if they give us more choice and control over our leisure time as consumers. As businesses, they also tend to support political and economic conservatism, often opposing attempts to achieve social justice. (ibid.: 408)

This could be a reason as to why services like Facebook and YouTube have been trying to protect and maintain the safe harbour rules. These services seem to only provide and facilitate cultural content on their platforms because their user-data shows them that this is what their users want. If they provide what their users want them to provide, the services make profit.

3 Collective rights management, organisations and legislation

The purpose of this chapter is to provide an overall picture of the history and workings of *collective rights management* (CRM) and relevant international organisations.

3.1 A brief history of collective rights management

The statute of Anne

Copyright is one of those seemingly modern phenomena that has in fact been around for a very long time. The first written law to provide copyright regulation was the *Copyright Act of 1710*, commonly known as the *Statute of Anne* (Parliament of England, 1810-1825). This was an act passed by the English parliament, and its purpose was to provide protection for literary works. This protection was to be maintained for fourteen years after a work was first published, and its rationale was to encourage literate and educated writers to compose and write useful books. This kind of incentive is still one of the strongest rationales for maintaining copyright in modern society.

The first collective management organisation

The history of collective rights management also goes back a long way. The first collecting society, and the first example of collective rights management in music, was established in 1851 in France. This was at a time when writers and composers were usually forced to give up their rights, denying them future remuneration for their work. It was after a dispute over payment at a café in 1847 that Ernest Bourget went to trial and won the right to get paid for his music. The verdicts also established that the transaction costs for a systematic collection of performing right fees could be covered by amounts claimed at a level which was related to the indemnity decided on by the Parisian courts of justice (Albinsson, 2014: 67-68). Thus, the legal foundation for collective management was laid, and on the 18th of March 1850, Ernest Bourget, Victor Parizot and Paul Henrion created the first CMO, that later became known as the *Société des Auteurs, Compositeurs et Éditeurs de Musique* (SACEM). Now, similar organisations operate in more than 100 different countries (WIPO, 2005: 9).

3.2 The role and function of CMOs

Collective rights management is the licensing of copyright and related rights by organisations on behalf of rights holders. This is typically done by collective management organisations, sometimes referred to as collecting societies. These societies are usually represented and governed by their various members or member organisations, which are consisting of everything from authors, writers and publishers to photographers, musicians and performers. Collective management organisations serve several purposes. The main reason for their existence is the fact that in many cases it is practically impossible, not to mention unprofitable, for individuals to manage their own rights, as is exemplified by the *World Intellectual Property Organization (WIPO)*:

An author cannot contact every single radio or television station to negotiate licenses and remuneration for the use of his works. Conversely, it is not practical for a broadcasting organization to seek specific permission from every author for the use of every copyrighted work. The impracticability of managing these activities individually ... creates a need for ... CMOs. These organizations ensure that creators receive payment for the use of their works. (WIPO, 2018)

In this way, CMOs enable copyright owners to have their rights administered effectively and cheaply in order to obtain fair remuneration for their work. At the same time, it provides a service to users of rights by facilitating ready access and licensing of copyright works.

3.2.1 An introduction to rights

There are two primary functions that CMOs perform: the administration and licensing of rights, and the collection and distribution of revenue to rights holders. All owners of copyright and related rights are free to start a membership with a CMO. They are then able to make a claim and declare works that they have created, which enables the CMOs to administer the following rights:

- the right of public performance (music played or performed publicly);
- the right of broadcasting (e.g. on radio or television);
- the mechanical reproduction rights (e.g. CDs and vinyl records);

- the performing rights (e.g. theatrical plays);
- the right of reprographic reproduction (photocopying);
- the related rights (the rights of performers and producers of phonograms to obtain remuneration).

From all of these rights, the two most important classifications of rights are commonly known as performing rights and mechanical rights⁷. These rights cover public performance and communication, as well as the right of reproducing recorded works for sale or distribution. Performing rights societies usually administer rights on behalf of composers, lyricists, arrangers, translators, etc. Mechanical rights, that is the right to mechanically reproduce and distribute a master tape, are usually administered on behalf of a publisher. The distinction between the two is important, seen as a stream is considered to be more of a performance than a sale, all the while a download is considered to be more of a sale than a performance⁸.

3.2.2 Administration and licensing of rights

There are different types of CMOs, that collectively manage different kinds of rights, but traditional CMOs all follow the same steps in acting on behalf of their members. They negotiate rates and terms of use with users of copyrighted works, issue licenses which authorise use, collect money, and finally distribute royalties. Throughout the entirety of this process, the individual owner of rights does not have to be directly involved in any way. In order for CMOs to administer and license rights, they will first have to negotiate the terms of the licensing contract with the users of copyrighted music. This includes striking an agreement on the terms of the deal and the fee for the licence. The licensees can be anyone from TV or radio stations, online sites and services to shopping centres or public events like concerts. In addition to licensing the rights, CMOs must also be able to enforce them. This can be done through launching an investigation into entities such as organisations and business to see if they use unlicensed music, by way of spot testing or based on other intel. If

⁷ In Norway, these rights are administered by TONO and Gramo respectively.

⁸ It should be noted that in the digital world, a digital sale or download is considered a sale in roughly the same way as a physical sale. Following that, streams are actually considered low-value MP3 file sales, but since they are only copies that are temporarily owned by users, it is not obvious that it is the same as selling a regular copy of an MP3. In any case, there are several interpretations on the matter, none of which can claim to represent absolute truth.

these entities do in fact use unlicensed material, the CMOs must ensure that they send records of usage in order to determine the correct collection and distribution of revenue.

3.2.3 Collection and distribution of revenue

Once a licence is granted a user, this gives rise to fees for the use of works, which are collected on behalf of both local and foreign rights holders. These fees are then converted into payments commonly referred to as royalties, but they can also come in other forms of remuneration. After the CMOs have collected all the revenue from the users of copyrighted works, the remuneration is distributed to their members according to distribution rules and policies within the CMO. These rules and policies are established by agreement between the CMO and the members of the CMO, through negotiation; this to ensure fairness, efficiency, accuracy and transparency⁹. The basis for said qualities comes from estimations through the use of statistics and various generalisable usage reports.

3.2.4 National and international repertoire

The entirety of works declared by the members of a CMO constitutes what is known as the national or local repertoire, as opposed to the international repertoire which is made up of all the foreign works managed by various CMOs in the world.

3.2.5 CMOs in the digital era

Since the turn of the millennia, online music usage has become increasingly important. The advent of the internet has in many ways made it more difficult to manage and enforce rights. It allowed for the distribution of music across national borders, making the collective management system that was based on national control unfeasible. At the same time though, the availability of music has expanded the potential market enormously. CISAC addresses some of the challenges that face CMOs in the digital era:

⁹ See: CISAC Professional Rules, p. 20.

The advent of digital technology and the increasing importance of online music services have drawn attention to the importance of collective management ... The challenge of effective licensing of online use of copyright works is essentially about finding solutions that will scale, that can accurately and cost effectively perform the licensing tasks in a global market and in relation to the vast and ever increasing volume of use. Only CMOs can provide necessary infrastructure and systems to achieve this, fairly and efficiently, on behalf of a growing population of rights owners. The role of CMOs has also evolved in other ways as well so that nowadays they undertake additional tasks which are not directly connected with the administration of rights but which have a more general (but no less important) cultural or social purpose. These activities include the provision of social and legal support services to right owners; educational and public relations activities aimed at ensuring a better understanding of and respect for authors' rights/copyright by the general public; and representation of their members' interests with national governments and in relation to intergovernmental bodies responsible for authors' rights/copyright such as WIPO WTO at the international level. (CISAC, 2015a)

It seems clear that the role of CMOs, due to digitalisation, has changed towards more cooperation and sharing of data with other CMOs, and towards education of members, lobbying to ensure the rights of their members, and towards providing social and legal support to their members.

3.3 International organisations

3.3.1 CISAC

CISAC¹⁰ is an international non-governmental, non-profit organisation that aims to protect the rights and promote the interests of creators around the world. It was founded in 1926 by 18 authors' societies from 18 European countries; now, there are 239 member societies from 121 different countries, representing more than three million creators and publishers with royalties collected totalling almost \$9 billion (Smirke, 2015). The main activities of CISAC are:

¹⁰ *Confédération Internationale des Sociétés d'Auteurs et Compositeurs.*

- to strengthen and develop the international network of copyright societies;
 - to secure a position for creators and their collective management organisations in the international scene;
 - to adopt and implement quality and technical efficiency criteria to increase copyright societies' interoperability;
 - to support societies' strategic development in each region and in each repertoire;
 - to retain a central database allowing societies to exchange information efficiently;
 - to participate in improving national and international copyright laws and practices.
- (CISAC, 2015b)

CISAC is one of the main governing bodies of CMOs, and vital for the maintenance of trust and high standards through the obedience of their Professional Rules and conduct requirements. CMOs are not required to be members, but other CMOs will expect membership before entering into reciprocal agreements¹¹ with them. All members of CISAC must comply with its Professional Rules, whose overarching objectives govern their conduct. These are:

- to have as its aim and effectively ensure the advancement of creators' moral interests and the defence of the material interests of creators and publishers;
- to have at its disposal effective machinery for the collection and distribution of income to creators and publishers and assume full responsibility for the administration of the rights entrusted to it;
- to have regard to its high and long-standing duty to its affiliates in the conduct of all its operations;
- to encourage the lawful dissemination of works by facilitating the licensing of rights in return for equitable payment ("licensing income");
- to distribute income (less reasonable expenditure) to creators, publishers and sister societies on a fair and non-discriminatory basis;
- to conduct its operations with integrity, transparency and efficiency;
- to strive to adopt best practice in the collective administration field; and to adapt continually to market and technological developments. (ibid.)

¹¹ See: Reciprocal agreements, p. 21.

CISAC also requires each CMO to provide a yearly report with “a declaration stating that it has complied with all relevant and applicable laws and regulations” (ibid.), as well as making available to CISAC, other CMOs and its members certain financial and licensing information. The compliance of these rules is also subject to yearly spot-testing.

3.3.2 BIEM

BIEM¹² is an organisation similar to CISAC, representing mechanical rights societies. It was founded in 1929, with its headquarters situated in the same office block as CISAC in Paris. The organisation coordinates statutory license agreements among different countries and negotiates a standard agreement for its members with IFPI (BIEM, n.d.).

3.4 Licensing structures

Below is described a couple of different standards for licensing. These are all being used in various situations in order to simplify the licensing process, although some are more relevant than others moving forward.

3.4.1 Reciprocal agreements

The notion of reciprocity stems, like much else, from the Berne Convention, which provides the principles of national treatment and reciprocity, shown in Article 5(1-2):

Authors shall enjoy ... in countries of the Union other than the country of origin, the rights which their respective laws ... grant to their nationals [...] Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work ... he shall enjoy in that country the same rights as national authors. (WIPO, 1982)

In this way, national treatment guarantees foreign authors the same treatment as domestic authors, all the while reciprocal agreements can guarantee foreign authors the same protection

¹² *Bureau International des Sociétés gérant les droits d'enregistrement et de reproduction mécanique.*

as in their own country. In order for reciprocity to work however, signatory states had to overcome their differences, which have proved troublesome in certain areas¹³.

Most CMOs now operate within an international framework, and they are able to represent their members both at home and abroad, by mandate from an author or publisher. This means that CMOs grant licences on a national basis, but that they are also able to enter into reciprocal agreements with CMOs in foreign countries, and from there on grant those CMOs the necessary rights to license to users in their respective countries. These rights may be granted on both an exclusive or non-exclusive basis, subject to local or regional antitrust or competition laws.

In order for this to work, the different CMOs need to cooperate to ensure the accuracy of cross border collection and distribution of remuneration. They do this by sharing a vast amount of data on copyrighted works and how they are used in their territories. CMOs need to somehow be able to monitor the transmissions and operations of internet services, in order to review documentation and enforce their own rights, as well as the rights of the foreign CMO. This cannot be done across borders without the CMOs agreeing to cooperate.

3.4.2 Multi-territorial, cross border licensing

CMOs have been able to enter into *reciprocal representation agreements* (RRAs) for years prior to digitalisation, organised through the umbrella organisations CISAC and BIEM¹⁴, for performing rights and mechanical rights, respectively. This enabled national CMOs to license the rights of members from foreign signatory CMOs in their own territories. These RRAs were signed by close to all collecting societies worldwide, and in the analogue world, they reduced the transaction and administration costs of negotiation and the clearance of licenses that would have incurred by having to actively and directly interact with every CMO whose repertoire one wished to make use of. There was not yet a real need for multi-territorial licensing, a need which came in full force with digitalisation and the internet, where licenses could no longer be given nationally.

¹³ A great example of this is the differing views on performing rights, with the French model and continental Europe embracing it on one side, and the Anglo-American model rejecting it on the other.

¹⁴ See: CISAC and BIEM, p. 19-21.

Seen as a lot of new online services are now operating across borders, difficulties have emerged with consumers who are utilizing services that originate in another country to access music. This begs the question of which CMO should license said operations, and how to handle all the issues that go with it; keeping track of data and documentation on all the different rights holders, making sure that no two CMOs are attempting to issue the same license, causing elements of double charging, and so forth.

CMOs have responded by building multi-territorial licensing capabilities. This has shown some promise, but there are also a number of complications and difficulties that have not all yet been overcome, mainly due to the lack of consensus amongst CMOs and legislative authorities. In July 2012 however, the European Union published a proposal for a Directive¹⁵ tackling this very issue (European Parliament and Council, 2012). This is following a Recommendation published by the *European Commission* (EC) in 2005¹⁶, stating that:

Right-holders should have the right to entrust the management of any of the online rights necessary to operate legitimate online music services, on a territorial scope of their choice, to a collective rights manager of their choice, irrespective of the Member State of residence or the nationality of either the collective rights manager or the right-holder. (European Commission, 2005a)

3.4.3 Blanket licensing

When prospective licensees want access to music, they are generally offered blanket licences that allow them to make the authorised use of the entire repertoire represented by a CMO, both national and international. There are of course certain provisions with regards to the time-frame, purpose and usage of the authorised works, but beyond that a blanket licence is an all-encompassing representation of a bulk of rights licensed in one single agreement. Licences can be arranged for one-time usage (e.g. events) as well as for long-term use, and CMOs usually offer a range of different licensing tariffs that reflects the different ways that music is used.

¹⁵ The Proposal is per 26.02.14 no longer in force.

¹⁶ See: The European Commission 2005 Recommendation, p. 31.

The biggest upside to having blanket licenses is the way they significantly reduce transaction costs in comparison to other business schemes, seen as they require only a one-time fee. Another is the security it provides to users, who no longer have to worry about utilizing unlicensed music¹⁷, as well as the fact that they provide users with a big repertoire. As soon as the initial investment into setting up the licensing structure has been made, there is very little cost associated with adding additional members or repertoire (Towse, 2012: 12). Yet another argument for blanket licensing is the way it includes every individual creator, be they small or niche artists or big superstars. Smaller acts need to be a part of a bigger repertoire in order to receive a reasonable reward for the use of their works, seen as they would be forced to accept much lower fees in a scenario where big and small earners are licensed separately (Kretschmer, 2002).

3.5 Competition

3.5.1 Natural monopolies

National CMOs often enjoy operating as what is commonly called natural monopolies¹⁸. This type of monopoly has been tolerated and enabled by governments simply due to the practicality of having one place to go to get a license, and it is as such a result of blanket licensing, which has been the dominant practice for a long time. Blanket licensing has only really begun to be challenged in the digital era, and when it is, it is almost always concerning competition and an ideology conflicting with the European single market¹⁹.

Natural monopolies, or de facto monopolies, occur when it is more cost effective for market demand to be met by one single entity than by several, for whatever reason. In collective management specifically, this happens when rights holders give CMOs exclusive rights to manage their rights, which can be a requirement for registration. When such a monopoly manifests, it is usually met with some form of regulation from the government, in order to

¹⁷ According to Katz (2005), the purchase of a license from a legitimate collecting society is considered by courts to be a good defence against unauthorised use, regardless of whether the CMO in question has the mandate to license the works or not. Where it not for blanket licensing, users would not have this security.

¹⁸ Natural monopolies both economically and in the sense that they can control the rights they manage exclusively, as a membership condition.

¹⁹ The KEA European Affairs remarked upon the following disadvantages of the collective management paradigm: it creates national monopolies; it reduces price competition; it dampens inclinations towards understanding and/or adapting to market realities; it promotes territorial licensing rather than pan-European licensing; and it creates associations between CMOs and the 'taxman' (KEA European Affairs, 2006: 32).

ensure that socially desirable outcomes which would have come naturally from competition still presents itself. Natural monopolies are usually associated with utility services such as electricity or water supply, but the term is perfectly fitting for collective management so long as it is still widely accepted that it is the most efficient form of administering rights.

3.5.2 Arguments for competition

There are both advantages and disadvantages to such de facto monopolies, most of them related to competition, or the lack thereof, and the ramifications that follow, such as the lack of incentive for efficiency and to adapt to new markets; or, the fact that excessive competition might cause lower standards or accuracy in distribution of remuneration, as a consequence of CMOs competing with their administrative costs.

In a competitive environment, a rights holder would have the option of electing which CMO he wants to manage his rights. Here, he might choose one over the other for reasons related to efficiency, high fees, or general quality of service. Anti-competitive activities within CMOs, such as limiting its members' freedom of assigning rights or terminating contracts, discriminative treatment between members, or insisting on blanket licenses, could hinder "good commercialization practices [which] would promote creation and utilization of intellectual property rights" (Wenqi, 2012: 50).

An example of discriminative treatment could be found in the distribution of royalties, as a result of inadequate systems of information disclosure as well as the lack of standard agreements. The factors that CMOs take into consideration when distributing royalties can be anything from past income and seniority to artistic personality and overall contribution. This kind of flexibility and subjectivity can create an unfair environment for members (ibid.: 51).

The biggest argument for increased competition is probably the fact that the EU is heavily pushing for it. According to the EC, eliminating territorial restrictions and opening up EU wide licensing would reduce management costs associated with each CMO taking a management deduction from RRAs (European Commission, 2005c: 54), and at the same time improve accuracy when it comes to the distribution of royalties, although, this is highly dependent on whether rights holders would actually switch to a more efficient and

remunerative collecting society in spite of differing nationalities, cultures and/or language barriers.

3.5.3 Arguments against competition

The KEA for European Affairs expects that a migration may likely only occur in relation to Anglo-American repertoire, effectively separating the international repertoire from the national. Furthermore, they have pointed out these following disadvantages that would result from increased competition between societies:

- national repertoire would suffer higher management costs;
- collecting societies representing national repertoire would lose bargaining power as users would be looking for the more attractive international repertoire;
- international users may no longer seek to license national repertoire or may want to pay less for it;
- local authors and composers may not be paid on the same tariff than international authors and composers (solidarity will be lost);
- societies controlling international repertoire would have no incentive to recruit certain right holders;
- smaller societies unable to compete are unlikely to gather international repertoire independently of reciprocity representation agreements. (KEA European Affairs, 2006: 47)

What can be taken from this is the likelihood of smaller rights holders, smaller CMOs and niche artists losing position to bigger players, which is a threat to the principle of solidarity and cultural diversity. Furthermore, it might mean national repertoire losing position to international repertoire, seen as Anglo-American music would no longer 'subsidise' the management costs of local music. Adding to that, the separation of national and international repertoire would place national users in a situation where they would have to negotiate a license for both local and international repertoire, from different places. In the case of international users, they might find it easier, seen as they would be able to utilize a one-stop-shop for all their international activities; however, The KEA report points out that multinational entities, record companies and users alike, would resent a system where the

collecting societies with the largest number of rights holders are strengthened, and are therefore able to abuse its monopolistic position²⁰.

3.5.4 Data and the GRD

CMOs need to keep track of information about their members, specifically concerning the ownership of their musical works. This information is usually provided for them by their members, but they may also be forced to actively seek out missing information from their members, neighbouring societies, or elsewhere. Because of their ability to collect data, through members and established networks of reciprocal agreements both nationally and internationally, CMOs make for natural hubs of data. This gives them a certain amount of power and ability, as well as making them important in issues of counterclaim or plagiarism.

There are however problems when it comes to the quality of data that CMOs possess, especially with regards to having the correct information about ownership of works. This problem is mainly due to human error on the input-side, which is also augmented by the lack of a centralised or globally shared database²¹. There have been several attempts to sort this out, but the biggest endeavour by far was the Global Repertoire Database (GRD). The GRD was a collaborative effort undertaken by EU Commissioner Neelie Kroes²² and her working group consisting of several organisations, including Universal and EMI Music Publishing, tech companies such as Apple, Nokia, Amazon and Google, and CMOs like PRS for music, STIM and SACEM, including CISAC. The main objectives of the GRD was to achieve increased transparency in terms of royalty collection and distribution, as well as lowering administrative costs. The potential benefits of the GRD are described thus:

An authoritative, comprehensive, and open multi-territory database would benefit the entire music industry, particularly societies, publishers, authors, and licensees.

Societies would have proper and accurate databases to administer, which would

²⁰ One must keep in mind that the exclusive management of a rights holder's rights would not disappear in a scenario where the rights holders are free to choose between societies internationally.

²¹ One can just imagine a scenario where a song is registered to several rights holders in multiple different databases, all controlled by different entities, with different formats and algorithms for different writing systems and complete with human error.

²² Neelie Kroes was the European Commissioner for Competition from 2004 to 2009 and became Commissioner for Digital Agenda in 2010, making her a very central person where the subject of this thesis is concerned (Neelie Kroes, 2018).

facilitate tracking the flow of royalties. Consequently, they would be able to issue invoices and collect and distribute royalties to their constituent publishers and authors promptly. Furthermore, all works owners would be able to register their works only once, with GRD, rather than numerous times in different territories, which can be both time consuming and cause inconsistencies in information. Additionally, the GRD would facilitate licensing processes by allowing licensees to easily identify licensors. This GRD-aided licensing process would be particularly useful to lesser known, but nonetheless commercially appealing, songs, the ownership information for which would have otherwise been difficult or impossible to find. Finally, the GRD would allow for organizations to maintain their current systems by giving collection societies and others access to GRD data through their own portal. (Milosic, 2015)

The GRD project did eventually fail, this in 2014, after several collection societies had begun pulling out. It has been suggested as a reason that CMOs feared losing revenue from operational costs under a more efficient GRD system, that there might have been a dispute over control of the database, or that the CMOs feared the GRD might make them redundant as intermediaries if publishers were to start licensing songs directly to users (ibid.). Efforts are still being made to develop similar systems, but none with the ambition and scale that the GRD had.

3.6 Legislative framework

This part of the chapter provides a thorough overview of the development of the European legal framework concerning rights management all the way from the 19th century up until today. The significance of this is that it provides a backdrop for the rationale behind the Directive, as well as providing the reader with a lot of necessary information relating to copyright and its workings.

3.6.1 Copyright

Copyright is a legal right that grants the creator of an original work the exclusive rights for its usage and distribution. This right protects the original expression of an idea, not the underlying idea itself; however, that expression is a form of intellectual property, which can

be owned. This is more often than not a shared ownership, especially in music, where there are usually more than one contributing party involved in the creation of works. These owners of IP are commonly referred to as rights holders, of whom CMOs act on behalf. CMOs are entirely dependent on copyright as a rationale and would not be in business without it.

The Berne Convention and copyright

The foundation for modern copyright law is the Berne Convention of 1886, which states that the author of a literary or artistic work has the exclusive right to authorise or prohibit the reproduction of his work, in any manner of form²³ (WIPO, 1982: 8). The value of copyright, and rights related to copyright²⁴, lies in the protection they provide for the individuals who dedicate their lives to the creation and dissemination of art, knowledge and culture. This includes, as stated in the Berne Convention, the authorisation and prohibition of reproduction of their works, but it also translates into financial protection. In order for creators to continue creating, they must benefit financially when their works are consumed. Copyright and related rights provide the mechanism for this benefit. This protection also covers professionals who make significant investments in the production, dissemination and marketing of works, as well as the performers who perform and the broadcasters who broadcast works²⁵. In summary, the aforementioned rights protect creators, performers, producers and broadcasters alike, all falling under the general term of rights holders.

3.6.2 International and regional legislation

Legislation is ultimately the responsibility of the national government. National copyright legislation must however be in harmony with commonly accepted international and regional norms, that is to say, abide by the treaty obligations of the country, such as the Berne and Rome Conventions. Therefore, although copyright and related rights are regulated on a

²³ This exclusive right may however be subject to limitations or exceptions. According to Article 9(2) of the Berne Convention, countries of the union can permit the reproduction of works in special cases, provided that it does not conflict with the normal exploitation of the work and prejudice the interests of the author (WIPO, 1982: 8).

²⁴ The international system of related rights has its foundation in the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961), as well as the WIPO Performances and Phonograms Treaty (1996).

²⁵ The articles of the Berne Convention that give protection to the modes of hearing music are Article 11, covering the right of public performance, and Article 11*bis*, covering the right of broadcasting. Together, these two articles cover public performance by both musicians and recordings, including all aspects of broadcasting and communication (WIPO, 1982: 9).

national level, they are also applicable internationally. If they were not, rights holders would not be able to exercise their rights across territories.

Due to the nature of globalisation and the extent to which musical works are able to exploit this ever-increasing connectedness in the global society, some political and economic groupings of countries have found it highly advantageous to coordinate, and to a certain degree standardise, copyright and related rights laws across national borders. This becomes clear when we for example look at international copyright treaties such as the Buenos Aires Convention of 1910²⁶ and the Berne Convention. Since the beginning of this trend, there have been many major and minor alterations to international and/or regional legislation.

The Santiago and Barcelona agreements

When the transition from analogue to digital occurred, and online digital services came with it, the CISAC system of reciprocal agreements between CMOs was not able to reconcile sufficient protection with online music consumption. The end of copyright territoriality made CISAC and BIEM initiate the Santiago and Barcelona agreements, which were to adapt the existing RRA network to the digital world. The scope of the licenses was to be worldwide, and it would include the entire collective repertoire of all signatory societies. In order for a licensee to access this repertoire, he would have to do it through the society of his respective economic residence. This agreement was signed by most societies in the world (Moscoso, 2011: 652).

When the EC was notified of this agreement, they initially claimed to support it, however they inevitably found it to be in violation with article 81 of the European Union treaty, which is in place to fight restrictions of markets and impediments to the creation of a single European market. It was especially the provision of the Santiago agreement that required users to license all repertoire from their own domestic CMO that was held to be in violation of EU competition law:

The agreements gave absolute national exclusivity to existing national societies, reinforced the already natural monopolies that these societies had in their countries

²⁶ The Buenos Aires Convention has since August 23 of year 2000 become mostly redundant due to all its parties becoming signatories to the Berne Convention (WIPO, 1982).

and eliminated competition between collective societies through the most favoured nation clause. (ibid.)

As a result of the response from the EC, European CMOs were forced to terminate both agreements, leaving them back where they started - in the analogue world.

The European Commission 2005 Recommendation

Although the EC had deemed the Santiago and Barcelona agreements unworthy of realisation, they still found it necessary to take steps in order to remedy the situation and develop an easier to use licensing system. This precipitated the proposal of the 2005 Recommendation²⁷, which stated that rights holders resident to the European Union could have the freedom of choice in joining or transferring rights to any collective society they wished, and that they could determine for themselves the territorial scope of the mandate given to that CMO (European Commission, 2005a).

Option 3

Following the 2005 Recommendation, the EC conducted an analysis²⁸ on the pros and cons of the different options available and applicable for the online music market. Out of the three possibilities presented by the commission, it was the third that was to be most widely adopted, commonly referred to as Option 3. This option would have national CMOs adopt the practice of issuing pan-European licenses regardless of the country of origin of the user, as well as competing on repertoire by allowing rights holders to assign whomever they wish the role of managing their rights for the online use of their musical works (European Commission, 2005c).

Fragmentation of rights

A little while after the EC 2005 Recommendation, many multinational publishers decided to withdraw their rights from CMOs and instead create new licensing bodies for their own repertoires, causing a fragmentation of rights and repertoire. This meant that all authors' rights were no longer available through collective societies, creating a need for separate

²⁷ *Recommendation on Collective Cross-Border Management of Copyright and Related Rights for Legitimate Online Music Services.*

²⁸ *The 2005 Impact Assessment Reforming Cross-Border Collective Management of Copyrights and Related Rights for Legitimate Online Music Services.*

negotiations and agreements. In order for users to get all the necessary licences required to conduct their businesses, they would have to jump through several newly constructed hoops, such as SOLAR (EMI and Sony Anglo-American repertoire), DEAL (Universal), PEDL (Warner Anglo-American repertoire) or IMPEL (Independent publishers' Anglo-American repertoire). This would grant users the rights to roughly half of the repertoire, the other half being the local repertoire pertaining to various countries and territories.

This scenario obviously incurs high transaction costs and a complex legal environment, which creates a no small amount of uncertainty and massive entry barriers for new and smaller businesses. It also threatens smaller acts, smaller CMOs, solidarity, and cultural diversity in general, seen as a user is likely to neglect getting a license for a small repertoire if he deems it not worth the trouble.

One remedy for these licensing difficulties, is the creation of hubs, which function as a collection of repertoires from certain collective societies. One example of these is Armonia, which is an alliance between SGAE in Spain, SACEM in France, and SIAE in Italy (Armonia, 2017). Another is the International Copyright Enterprise (ICE), catering to several customers, such as PRS in the United Kingdom, GEMA in Germany, and Polaris Nordic, which is a joint system for the Nordic societies (ICE, 2018).

Further EU legislation

Continuing on the side of the European Union, the end goal remained to achieve the total harmonisation of copyright law across all EU member states (European Parliament, 2015), which in turn reinforces their digital single market strategy. The 2001 Directive on harmonisation, for example, affected many areas of copyright and related rights²⁹. Other examples include the Directive of 2006, and its amendment of 2011, which altered the term of copyright and related rights (European Parliament and Council, 2006).

²⁹ The 2001 Directive, commonly called the Information Society Directive, introduced amongst other things a 'making available' right, a distribution right and provisions relating to the protection of devices or components which are intended to prevent or restrict acts not authorised by a rights holder and for the legal protection of rights management information. The Directive also lists a large number of exceptions to copyright (European Parliament and Council, 2001).

3.6.3 National legislation

As already mentioned, national laws are subject to the treaty obligations of the country in question, as well as the conventions and other contractual agreements it adheres to. For this reason, copyright and related rights legislation is relatively similar from country to country. National laws may however differ in certain ways, depending on each country's interpretation of treaties and directives, as well as how it chooses to enforce them.

The most common requirement for CMOs on a national level is that they must be authorised by some form of authority, for instance the Ministry of Culture or similar. In some countries, there may be provisions in the law stating that there can be only one CMO per group of rights holders or category of rights. In other countries, this might not be the case, but the CMO is in either case required to take current competition law into account, which is there to prevent possible abuse of a dominant monopolistic position.

On EU level, a survey has shown that even between EU member states there are considerable differences between member states with regards to how they regulate rights and to how the system of rules that national CMOs have to follow works (European Parliament, 2004, 4(47)).

3.6.4 Norwegian legislation

In Norwegian law, TONO³⁰ is able to operate pursuant to § 38a of the Norwegian Copyright Act. Gramo³¹ is able to do the same, cf. § 45b (Åndsverkloven, 2015). TONO is also organised as a cooperative society and is therefore subject to legislation relating to this (Samvirkelova, 2016).

There is currently a proposition in motion for a new copyright law that is set to replace the existing copyright act of 1961. Per today, the aim of the proposition is amongst others to simplify and defragment existing legislation, make it more technology neutral, strengthen the position of creative and performing artists as well as investors of creative content, increase availability of creative works, balance the interests of rights holders with those of users, and

³⁰ See: TONO, p. 36.

³¹ See: Gramo, p. 41.

create better conditions for creators to be able to make a living off their vocation (Regjeringen, 2017b).

3.6.5 The EU and Directives

A directive is a legal act imposed by the European Union, one that requires member states of the union to achieve a particular result, although without actually dictating which means are to be used in achieving that result. This makes them differ from regulations, that become immediately enforceable as law in all member states, and recommendations, that are no more than non-binding acts carrying political weight (Folsom et al., 1996). This leaves member states a certain amount of leeway as to which rules they are going to adopt once presented with a directive.

The actual text of a directive is drafted by the European Commission³², and is a result of extensive consultation with experts both internal and national. It is then first presented to the *European Parliament* (EP) and Council³³ for comment and review, and then later for rejection or approval. When the directive is successfully implemented and adopted by the member states, they are given a timetable for the achievement of the intended result. In order to accomplish this, member states are usually compelled to make amendments to their laws, commonly referred to as a transposition. The European Union closely monitors that the transposition occurs in a timely and adequate manner, so as to pre-empt the various ways that member states might implement the transposition incorrectly³⁴. If a member state were to inadequately transpose a directive, the EC may bring a case against it to the European Court of Justice. This however, rarely happens. The EC annually publishes a summary on how EU law has been transposed, including statistics on the numbers and types of infringements, per country and sector (European Commission, 1984-2017).

³² The primary function of the European Commission is to promote the general interest of the European Union through the proposal and enforcement of legislation, as well as implementing policies and the EU budget (European Union, 2018).

³³ The European Council is composed of relevant ministers of member governments.

³⁴ This may be the result of member states leaving aside certain provisions, diverging from the scope or required definition, exceeding the requirements of the directive, overlapping between existing national law and the directive, or through overzealous enforcement or a state of uncertainty in the status of the regulation (Renda, 2009).

Recitals and Articles

In EU law, Recitals and Articles fulfil two different purposes. A Recital is considered to be the justification or reasoning for the actual contents of the enacting terms of an act, which is the Article. Recitals are always introduced by the word 'whereas' (European Union, 2015).

4 Norwegian CMOs, interest organisations and funds

The main collective management organisations in Norway are TONO and Gramo. TONO collects and distributes on behalf of creators and publishers, while Gramo collects and distributes on behalf of performing artists, record companies and other producers³⁵ of recorded music. Affiliated with the two societies are several interest groups and organisations who are representing creators, artists and other stakeholders in the music industries, as well as allocating funds intended to promote Norwegian music and art. In this chapter, an overview of TONO, Gramo and several other organisations and connected funds will be presented.

4.1 TONO

TONO is the Norwegian performing rights society administering the rights stated in the Berne Convention³⁶. The organisation was founded in 1928, following the establishment of the Norwegian broadcasting company, Kringkastingsselskapet A/S, and the proposed legislations leading to the first Norwegian Copyright Act on intellectual property of 1930 (TONO, n.d.a). The first agreement between TONO and the broadcasting company was signed on April 6, 1929.

TONO is a cooperative society under the Norwegian Act on Cooperatives, and it is owned and governed by its members³⁷. The organisation's activities are run on the basis of the rights stated in the Norwegian Copyright Act of 1961, and they are mandated by the Norwegian Ministry for Cultural Affairs. In 2016, TONO managed the performance- and phonographic rights and collected revenue for public use on behalf of over 29 thousand Norwegian rights holders (TONO, 2016: 6), as well as approximately three million foreign rights holders (TONO, n.d.b). TONO also maintains reciprocal agreements with 73 sister companies (TONO, 2016: 6). In this way, TONO is able to manage the world repertoire of copyright-protected music on Norwegian territory. TONO has assigned the management of its rights

³⁵ Here, *producer* is used in the economic sense of the word and should be understood as the owner of a recording.

³⁶ See: The Berne Convention and copyright, p. 29.

³⁷ According to the Norwegian Act on Cooperatives, those who have a management contract with TONO, and also have earnings that qualify for voting at the general assembly, are considered to be the members of TONO (for historical reasons, TONO uses in its by-laws the term 'andelshavere', which roughly translates to 'shareholders'). Those who have management contracts, but not the earnings that qualify for voting at the general assembly, are referred to as "ordinary members".

holders' mechanical rights to the Nordic Copyright Bureau (NCB) in Copenhagen. NCB is co-owned by the Nordic CMOs, which are KODA (Denmark), STIM (Sweden), STEF (Iceland), Teosto (Finland) and TONO.

4.1.1 Members

As of December 31, 2016, there were 1 484 registered members in TONO. The proportion of creators were 98.7 percent. The remaining 1.3 percent of the members were music publishers.

In order to become a member of TONO, you must be a rights holder who has had a management contract with TONO for at least two years, and your average earnings for performances and mechanical production for the last two fiscal years have to equal a certain amount, depending on your registered role. The payment amounts that qualify rights holders for membership are:

- For composers: 0.5 G
- For lyricists: 0.25 G
- For an heir of a composer: 1.0 G
- For an heir of a lyricist: 0.5 G
- For a music publishing house: 3.0 G

G = the Norwegian National Insurance Scheme's basic amount (TONO, 2013)

4.1.2 The annual general meeting

The supreme authority of the members of TONO is effectuated at the *annual general meeting* (AGM), also known as the general assembly. According to TONO's articles of association, the AGM is to be held within six months of the end of each fiscal year (ibid.). Members have the right to attend the AGM, and they are allowed to attend by a proxy of their own choice if they are prevented from being there in person. None may act as a proxy for multiple members. The members have the right to vote at the AGM, and each member constitutes one vote. In order to raise an issue, you must be a member of TONO, and you have to notify TONO of the matter at hand in writing to the board in due time for it to be included in the notice of the AGM. The chairman of the board and the *chief executive officer* (CEO) of

TONO is to be present at the AGM. The CEO and the board members have the right to make comments. A resolution of the AGM requires a majority of the votes to be cast, unless otherwise is stipulated in the articles of association. In the case of equal voting result, the chairman of the meeting has the final vote. When it comes to the election of board members and to the different committees, equal votes are settled by lot.

4.1.3 The administration and board

By the end of 2016, TONO had 63 full time employees in its administration, including five part-time positions. The board of TONO is elected by the AGM. All members may vote at the AGM, and all members are electable for honorary posts. The members of the board are elected to sit for either one or two years in an overlapping arrangement, this in order to ensure continuity of the work in progress. The board consists of 11 representatives from the three group associations *Norsk Komponistforening* (NKF)³⁸, *Norsk forening for komponister og tekstforfattere* (NOPA)³⁹ and *Musikkforleggerne* (MF)⁴⁰, as well as independent members⁴¹ of TONO and employee representatives. As of February 2018, NOPA holds two seats, including the Chairman of the board. NKF holds two seats, MF holds two seats, the unorganised members (free seats) hold three seats, and the employee representatives hold two seats. In addition to these, the three group organisations have two deputy members each, while the independent members have three deputy members and the employees have four deputy members.

4.1.4 Turnover and distribution⁴²

In 2016, TONO had a turnover of almost NOK 542 million⁴³. After deductions of 2 percent to the Norwegian Composers' fund⁴⁴, administrative expenses and losses, a total of NOK 447 million was left over for distribution. According to the 2016 annual report, costs,

³⁸ Norwegian Society of Composers.

³⁹ Norwegian Society of Composers and Lyricists.

⁴⁰ Norwegian Society of Music Publishers.

⁴¹ The independent members should be understood as consisting of members that are not organised in NOPA, NKF or MF.

⁴² The numbers below are rounded to the nearest big number.

⁴³ This is a number that has been steadily growing over the last several years, from 258 million NOK in 2004 to almost 542 million NOK in 2016 (TONO, 2004-2016).

⁴⁴ *Det norske komponistfond*.

administrational and otherwise, came to 15 percent of the funds for distribution. Amongst the different member groups in TONO, the ordinary members received a total of NOK 46 million, averaging a remuneration of roughly NOK three thousand. The members, or shareholders, received a total of close to NOK 110 million, averaging a remuneration of roughly NOK 71 thousand each. In the table below, TONO's distribution by member category is presented:

DISTRIBUTION BY MEMBER CATEGORY	Amount	Average amount
Organised NKF	7 604 832	42 249
Organised NOPA	56 644 753	52 303
Organised NOPA/NKF (double membership)	1 614 834	47 495
Independent	71 329 899	5 072
Publishers	12 148 107	62 619
Heirs	6 588 584	5 361
Total	155 931 009	

(TONO, 2016: 22)

The remuneration for ordinary members was distributed thus:

DISTRIBUTION ORDINARY MEMBERS	Amount	Average amount
Organised	3 367 584	6 987
Independent	34 826 283	2 604
Publishers	2 646 933	15 212
Heirs	5 200 008	4 294
Total	46 040 808	

(ibid.: 23)

The remuneration for shareholders was distributed thus:

DISTRIBUTION SHAREHOLDERS	Amount	Average amount
Organised	62 496 834	76 683
Independent	36 503 616	52 827
Publishers	9 501 175	475 059
Heirs	1 388 576	77 143
Total	109 890 201	

(ibid.)

Through TONO's reciprocal agreements with sister companies in other countries, a total remuneration of NOK 185 million was distributed to foreign rights holders. Some of these 73 reciprocal agreements cover several countries, which means that TONO is actually representing more than 100 countries and territories. The biggest total of payments was made to STIM, the Swedish CMO. Even though Swedish music is popular in Norway, the payments made to STIM were largely due to Anglo-American repertoire, since this kind of repertoire often has sub-publishers in Sweden. Because of this, the figures distributed to each country do not necessarily reflect how much of the country's repertoire is actually performed in Norway. The total revenues collected from foreign sister companies on behalf of Norwegian rights holders was close to NOK 41 million (ibid.: 24). According to a recent press release from TONO, which refers to the not yet published annual report for 2017, there has been a growth of 67.2 percent from 2016 to 2017 when it comes to income from abroad (TONO, 2018).

4.1.5 Cultural funds

In order to promote Norwegian music, Norwegian creators and Norwegian cultural purposes, TONO deducts a certain amount from its turnover as cultural funds. According to TONO's articles of association, for each rights holder with a management contract with TONO, up to one tenth of the settlement amount is to be deducted before the total net amount is distributed. The same goes for foreign rights holders, in accordance with reciprocal agreements. In 2016, the total figure distributed through cultural funds was almost NOK 36 million. Two thirds of cultural funds are to be spent on schemes promoting national music culture, administered by the group associations NOPA, NKF and MF. NOPA gets half, NKF gets two fifths and MF

gets one tenth of the funds. These organisations must provide a written account of how they intend to use the funds in advance and enclose their accounts and directors' report for the previous year in order to receive their share. The remaining one third of the cultural funds is to be used for scholarship funds. One eighth of these funds is distributed through MF's scholarship scheme, while TONO distributes the rest (TONO, 2016: 12).

4.2 Gramo

Gramo is the independent association for the administration of the financial rights of performing artists and record companies stated in the Rome Convention. The association was founded in 1989 as a result of the introduction of Article 45b in the Norwegian Copyright Act, and the association's work is approved by the Norwegian Ministry of Culture. Affiliated with the establishment were six rights holder organisations. These organisations were:

- The Norwegian Independent Record Producers Association (FONO)
- IFPI Norway
- The Norwegian Musicians' Union (MFO)
- The Norwegian Society of Soloists (Norsk Tonekunstnersamfund)
- The Norwegian Actors' Equity Association (Norsk Skuespillerforbund)
- The Actors' Union of 1978 (Skuespillerforeningen av 1978)

As of April 2018, there are 11 rights holder organisations affiliated with Gramo. These are:

For the producers

- IFPI Norway
- The Norwegian Independent Record Producers Association (FONO)
- Norwegian Recording Artists (NORA)

For the performers

- The Norwegian Recording Artists' Association (GramArt)
- Norwegian Musicians' Union (MFO)
- The Norwegian Society of Soloists (Norsk Tonekunstnersamfund)
- The Norwegian Actors' Equity Association (Norsk Skuespillerforbund)

- The Norwegian Association for Folk Music and Folk Dance (Folkorg)
- The Norwegian Association of Graduate Teachers (Norsk Lektorlag)
- The Norwegian Association of Artists (Norsk Artistforbund)
- The Norwegian Association of Contemporary Folk Music (Norsk Viseforum)

The main purpose of Gramo is to negotiate, manage, collect and distribute remuneration on behalf of producers and performing artists when their sound recordings are broadcasted or performed publicly in Norway. Gramo is managing remuneration rights for both Norwegian and foreign rights holders, regardless of Gramo membership. Reporting made by eight different Norwegian broadcasters forms the basis for the distribution of collected fees. The broadcasters are all NRK's⁴⁵ channels and the commercial radio stations Radio 1, P4, P5, 1 FM Molde, NRJ, Radio Norge and Radio Exact. The fees received from all of NRKs channels, Radio Norge and P4 are distributed according to actual airplay, while the rest is distributed according to samples in airplay. After the deduction of administrative costs, the funds received are distributed equally between producers and performers. In 2016, a total of NOK 57.6 million was distributed to performers and a total of NOK 56.8 million was distributed to producers (Gramo, n.d.: 9).

4.2.1 The administration

As of April 2018, Gramo has 28 employees in its administration. The CEO and director of Gramo is Martin Grøndahl (Gramo, 2017d). The board issues instructions that must be followed by the director in his managing of the day-to-day operations of the association. Administrative personnel are employed by the director, within the frameworks of the board (Gramo, 2017a). Gramo also manages the Norwegian administration of the *International Standard Recording Code* (ISRC)⁴⁶.

⁴⁵ The Norwegian Broadcasting Corporation.

⁴⁶ The ISRC is a unique identifier for sound recordings and music videos where one identifying code is allocated to each version (Gramo, 2017b).

4.2.2 Members

All rights holders who are entitled to remuneration under Article 45b in the Norwegian Copyright Act may become members of Gramo. Until the AGM of the association in May 2017, only those who were members of Norwegian rights holder organisations could become regular members of Gramo and vote at the AGM. Foreign producers and artists, other Norwegian rights holders and heirs could become affiliated members, with the right to attend, speak and submit proposals, but not vote at the AGM. By April 2017, Gramo had over 26 thousand members divided into these categories:

PERFORMER MEMBERS	
Regular ⁴⁷	4 043
Affiliated ⁴⁸	12 579
Regional ⁴⁹	3 207
Heirs	236
Total	20 065

PRODUCER MEMBERS	
Regular	165
Affiliated	5 981
Regional	34
Total	6 180

(Gramo, n.d.: 12)

At the 2017 AGM, it was decided that the former differentiation between regular and affiliated members of Gramo should be abrogated. Now, everyone who is entitled to remuneration under Article 45b of the Copyright Act may become a full member of the association.

⁴⁷ Regular members were also members of one or more of Gramo's rights holder organisations.

⁴⁸ Affiliated members were not members of a rights holder organisation.

⁴⁹ Regional members were mainly foreign rights holders who are members of Gramo for the sake of receiving remuneration earned in Norway.

4.2.3 The annual general meeting

The AGM is the highest governing body of Gramo. The ordinary AGM is to be held within the first six months of a year. Previously, only regular members had the right to vote. Now, all performing members that have accumulated remuneration through Gramo during the last three fiscal years have the right to vote. The right to vote for the producer's rights holder group is weighted after the previous fiscal year's accumulated remuneration:

Remuneration/Year (NOK)		Votes
From	To	
1	9 999	1
10 000	49 999	5
50 000	99 999	10
100 000	499 999	50
500 000	999 999	100
1 000 000	1 999 999	200
2 000 000	4 999 999	400
5 000 000	unlimited	500

(Gramo, 2017a.)

The voting rights of individual members are limited upwards to 18 percent of the votes of the producer members present at the AGM. Producer members who are affiliated with the same interest organisation cannot elect more than two members to the board.

Electorate members that over the course of one of the last three fiscal years have received remuneration in excess of a thousand NOK may grant proxy rights to another member or to their rights holder organisation. This is to secure the representation of as many members as possible, including those who for some reason is prevented from being physically present at the AGM.

The votes of the performer rights holder group and the producer rights holder group shall be weighted equally, meaning that joint matters require a simple majority in both the performers' group and the producers' group in order to be adopted (ibid.).

4.2.4 The board and sectoral committees

The board of Gramo is responsible for the management of the association. The board shall ensure that the association's activities are responsibly organised and monitor the director and the day-to-day operations of the association. There are seven members of the board; three elected by the producers' rights holder groups and three elected by the performers' group. The seventh member of the board must be independent of both rights holder groups and is elected by the AGM. By independent is meant that the person is unrelated to any of the approved rights holder organisations, and that he is not a member of Gramo. The six ordinary board members are elected for one year at a time, while the independent member is elected for two years. The independent board member shall be the Chairman of the board. The board employs the director, prepares the job description and issues proxies.

In addition to the board, Gramo has so-called sectoral committees, which deals with matters pertaining to the two rights holder groups. There is one sectoral committee for each of the rights holder groups, one for the performers and one for the producers. The sectoral committees are not legal bodies that are supposed to act externally. Each of the sectoral committees consists of six persons: the three elected board members and their deputies within each rights holder group. The individual distribution within each rights holder group shall be such that each sector determines criteria for distribution and allocates its share of revenue without interference from the other sector. Allocations for collective purposes are undertaken by the respective sectoral committees. The board shall supervise the sector's grants of collective funds before payment can be affected.

4.2.5 Collective funds

According to Gramo, 90 percent of remuneration is distributed and paid out individually to Gramo's members on average. The remaining 10 percent become so-called collective funds. Collective funds are collected funds that Gramo, for different reasons, are unable to distribute to individual rights holders. In the association's distribution rules, collective funds are described like this:

Settled unpaid remuneration funds are converted to collective funds in each sector at the end of the retention period. The same applies to the settled remuneration under the minimum threshold payment (Gramo, 2016: 8)

The minimum threshold payment is set to NOK 450 accumulated over the remuneration year within the retention period (Gramo, 2017c). The retention period for claims for individual remuneration is set to “three years from the earliest date the right holder could request the payment of remuneration” (Gramo, 2016: 8). Gramo has however made it possible for a rights holder to receive payment if the rights holder’s earnings, over the three retention years, exceed the minimum threshold payment. If the total earnings over three years do not exceed NOK 450, the remuneration becomes collective funds.

Collective funds shall be granted as organisational support or to other purposes promoting new Norwegian music or Norwegian performing arts. The two sectoral committees decide on which organisations and which projects shall be granted support from the collective funds. In 2016, the following grants were made (all figures in NOK):

Producer sector		Performer sector	
Organisational support		Organisational support	
IFPI	701 774	GramArt	3 615 075
FONO	467 848	Musikernes Fellesorganisasjon (MFO)	801 711
		Norsk Artistforbund (NA)	378 722
		Norsk Tonekunstnersamfund	29 511
		Norsk Skuespillerforbund	4 918
		Lektorlaget	60 290
		Folkorg	34 429
Sum	1 169 622	Sum	4 924 656
Project support		Project support	
Spellemannprisen ⁵⁰	1 500 000	GramArt	904 237

⁵⁰ The Norwegian Grammy Awards.

Support to NORA	100 000	Musikerne Fellesorganisasjon (MFO)	200 275
Gramo visibility project	150 000	Norsk Artistforbund (NA)	94 741
		Gramo visibility project	450 000
		Norcode	500 000
		Spellemannprisen	1 000 000
Sum	1 750 000	Sum	3 149 259
		Granted for payment Black Sheeps	129 727
Total	2 919 622	Total	8 203 636

(Gramo, n.d.: 16)

In addition to the roughly NOK 11 million accounted for in the table above, Gramo also supported and contributed with NOK 150 thousand by scholarship to the winner of *Jazzintro – Young Jazzmusicians of the Year* at the jazz festival *Moldejazz*, and a scholarship of NOK 250 thousand to the winner of *Newcomer of the Year and Gramo scholarship* at the Norwegian Grammys *Spellemann 2016* (Gramo, n.d.: 15).

4.3 GramArt

GramArt is the largest interest- and competence organisation for performing artists in Norway. The organisation was established in 1989. According to the organisation's articles of association, GramArt aims to work for, and to take care of, performing artists' rights and economic interests (GramArt, 2016: 1). The organisation provides a number of services to its members, such as legal advising, favourable insurance agreements, free extra baggage for flight travels with Scandinavian Airlines (SAS), various discount deals, useful tools, relevant educational courses, social meeting places and so on (GramArt, n.d.b). Article 3(4) in the statutes states that GramArt should, to the greatest extent, make it so that as much as possible of its members' remuneration from the management of public use of their protected works are distributed individually, and besides, to the best of Norwegian performing music (GramArt, 2016: 2). Of a total of NOK 7 million in income in the fiscal year of 2016, a total of NOK 4.5

million came from Gramo, divided into NOK 900 thousand in project support and NOK 3.6 million in organisational support (GramArt, n.d.a: 38-41).

4.3.1 Members

GramArt has approximately three thousand members (GramArt, n.d.b). Any music performer may register as a member of the organisation, as long as that member pays an annual membership fee. The membership fee is determined by the board. Most of GramArt's members are Norwegian, self-employed performing artists or musicians.

4.3.2 The administration and board

As of April 2018, GramArt's administration consists of seven employees. Elin Aamodt is the CEO of the organisation. Her job is to ensure the daily operations of GramArt, within the limits and instructions determined by the board (GramArt, 2016: 5). The board of GramArt consists of five members, with three deputies. At least four out of five permanent members of the board, and all three deputies, shall be elected from GramArt's members. The board members and the chairman of the board are elected by the general assembly. The role of deputy chairman is elected by the board. All board members are elected for a period of two years, where half of them are up for election each year in order to secure continuity of the work in progress.

The board of GramArt is responsible for the general management of the organisation, the accounts and the balance sheet. The board is also supposed to take care of the relationship with public authorities, the employment of the CEO and the instructions for the administration (GramArt, 2016: 4).

4.3.3 The general assembly

The general assembly is the highest governing body of GramArt. It is held annually within the period of April 1 and June 22. In order to have the right to vote at the general assembly, members must have received pay-outs larger than a thousand NOK from CMOs in Norway or abroad in at least one out of the three previous fiscal years and be able to document this in a

satisfactory manner. It is also required that members have joined GramArt and paid the current year's membership fee no later than one week before the general assembly is held.

In order to grant proxy rights to another member, or to act as a proxy, requirements are set corresponding to the right to vote. Each proxy may carry up to five proxies, in addition to voting themselves.

4.4 NOPA

NOPA is the Norwegian society of composers and lyricists. The association was established in 1937, initiated by a group of Norwegian *schlager composers*, and the name is based on Norwegian Popular Authors (NOPA, n.d.d). NOPA's work is "dedicated to the interests of all composers, lyricists and authors of other texts to musical works in Norway" (NOPA, n.d.a). The objective of the organisation is to promote Norwegian creative music, Norwegian musical works and text related to music, strengthen professional fellowships, facilitate meeting places, and work for the artistic and financial interests of professional songwriters. Out of over NOK 14 million in income for NOPA in the fiscal year of 2016, roughly NOK 11 million came from cultural funds distributed by TONO. This equals 77 percent of their total income. NOK 500 thousand came from the Composers' Remuneration Fund⁵¹, NOK 900 thousand came from the Norwegian Composers' Fund⁵² and NOK 100 thousand came from Kardemommestipendet⁵³.

4.4.1 Members

There are approximately a thousand members of NOPA. In order to become a member, you must be a working composer, which includes arrangers and authors of lyrics to music. The conditions for being admitted as a member is that the applicant:

- submits a written application including the information necessary to make a decision on the application;

⁵¹ *Komponistenes vederlagsfond.*

⁵² *Det norske komponistfond.*

⁵³ *Kardemommestipendet* is a grant awarded by NOPA. The grant is gifted from the Egner family and is given as a commendation of previous work and as an incentive for continued production (NOPA, n.d.e).

- has a management contract with TONO; and
- has had over the last three years an average income equivalent to 1/4 G, (NOK 23 409) for composers or 1/8 G (NOK 11 704) for lyricists.

The following copyright-related incomes are considered relevant for the membership application:

- The Composers' Remuneration Fund (work grants only)
- The Lyric Writers' Fund⁵⁴
- Remuneration for composing for film and theatre
- Remuneration for musical arrangements of works
- Advances from publishers
- Advances from record labels
- Processing of free musical works
- Remuneration for commissions
- Remuneration for commissions from the Norwegian Composers' Fund
- The Government Grants for Artists⁵⁵ to composers/popular composers

The application is decided upon by the board, upon recommendation from the administration or the expert council⁵⁶. If an applicant does not meet the membership requirements of NOPA, the applicant may apply for an affiliated membership of the association, as long as the applicant is considered an active composer or lyricist and is a member of TONO (NOPA, n.d.c). The members are committed to pay the membership fee of NOPA. The membership fee is determined by the general assembly.

⁵⁴ *Tekstforfatterfondet.*

⁵⁵ *Statens kunstnerstipend.*

⁵⁶ The expert council consist of four members – two composers with deputies and two lyricists with deputies. Among others, the council is to make recommendations to the board in matters of membership applications and applications for financial support from members.

4.4.2 The general assembly

The general assembly is the highest governing body of NOPA, and it is held annually ahead of TONO's AGM. All ordinary members have the right to attend and vote, and the general assembly is a quorum with the members that attend. Each member has one vote, and the voting right may not be transferred or exercised by proxy. In order to be eligible to sit on the board of NOPA, a candidate has to be a member, i.e. shareholder, of TONO. The voting shall be conducted in writing if one of the voters would so request. Unless it is otherwise stipulated in the articles of association, all decisions shall be made by simple majority. If equal voting results occurs in votes other than elections or nominations, the proposed resolution is considered unapproved (NOPA, 2016).

4.4.3 The board

The board of NOPA consists of the elected chairman as well as six other members, all with deputies. At least three members, with deputies, shall be elected amongst the composers, and at least two members, with deputies, shall be elected amongst the lyricists. The members of the board are elected for two years at a time. Three or four members are up for election each year, in order to ensure continuity of the work in progress. The same goes for the deputies. The chairman of the board is also elected for two years (ibid.).

The board of NOPA must ensure the day-to-day operations of the association in accordance with the resolutions made by the general assembly. The board elects the deputy leader and the second deputy leader amongst the board members. If the chairman of the board is a composer, the deputy leader shall be a lyricist and vice versa. All decisions of the board are adopted by simple majority, and in situations of equal voting, the chairman has the deciding vote.

The board is responsible for the appointment of NOPA's administrative leader, the CEO, and other staff necessary to conduct the day-to-day operations. The employees are governed by the instructions of the board, and the board also determines the employment terms (ibid.).

4.4.4 The administration

As of April 2018, the administration of NOPA consists of four employees. NOPA shares office space with NKF and MF. Some administrative matters and several projects is performed in cooperation with NKF and MF (NOPA, n.d.f: 7). Tine Tangestuen is the administrative leader of the administration. She is responsible for all day-to-day operations, personnel management and financial management, and she has the overall responsibility for NOPA's activities and representatives (NOPA, n.d.b).

4.5 The Norwegian Composers' fund

The Norwegian Composers' fund⁵⁷ was established in 1965, pursuant to the *Law on fees to the Norwegian Composers' fund*. The purpose of the fund is to stimulate the development of creative musical arts. The purpose of the grants from the fund is primarily to support commissions of new musical works, independent of genre, by composers and songwriters who mainly live and work in Norway. The recipients of the fund must have displayed their professional activity as composers publicly. Generally, the fund grants support to applications involving commissions and project works. In order to apply for the funds, an applicant has to document that there is an outstanding order from a concert venue, a festival, an orchestra, an ensemble, a band, a soloist, etc. The support is meant to subsidise composer fees for commissions to public concerts, performances, shows and such. Works that are already written or delivered do not qualify for funds. Neither is there any support for production costs and fees in connection with the recording or performance of works. (Musikkkfondene, 2018a)

The Norwegian Composers' fund is led by a board of five members, with personal deputies, that are appointed by the Ministry of Culture for four years at a time. The board must comply with the rules of public administration regarding impartiality. Board members who are shown to be biased must withdraw themselves from the process of the application in question. (Musikkkfondene, 2018b)

⁵⁷ *Det norske komponistfond.*

4.6 Fund for Performing Artists

The Fund for Performing Artists⁵⁸ provides funding for recordings made in Norway, and for projects in which professional performing artists participate. The applicants of the fund must live and carry out most of their work in Norway. The fund's revenues are derived solely from the use of non-protected recordings. Non-protected recordings are recordings that are not protected by the Copyright Act and to which Norwegian performing artists have no rights (FFUK, 2018a). The Norwegian Parliament, *Stortinget*, has decided that the fund must “ensure that there is a wide diversity of cultural expression” (ibid.). The fund is also committed to ensure that people all over Norway have the possibility to experience and enjoy live performances within all musical genres and all categories of performing artists (ibid.). Gramo collects fees from public use of recorded music on behalf of the Fund for Performing Artists. Gramo also settles and decides, after reviewing playlists from the broadcasters, which revenues are to be considered protected or not (FFUK, 2018b).

The board of the Fund for Performing Artists consists of seven members, with personal deputies, all appointed by the Ministry of Culture, including the chairman of the board and the deputy leader. The chairman is appointed on an open basis, while the other board members are made up of five representatives for performing artists and one for producers. All relevant performers' organisations make recommendations for members to the board. The Ministry of Culture appoints performer representatives in such a way that the board has the widest possible composition in terms of different art expressions. The board allocates the funds and is responsible for the fund's operations (FFUK, 2018c).

⁵⁸ *Fond for utøvende kunstnere* (FFUK).

5 Methodology

This thesis adopts a qualitative approach to the research questions, as it seeks to answer them through the use of analyses of document and interviews.

5.1 Qualitative Research

Qualitative research is a wide methodological approach that encompasses many research methods. These methods include various in-context observations such as comprehensive and thorough interviews with individuals, as well as the study of group constellations, typically ranging all the way from two to ten participants. Qualitative research sessions may be conducted in person, by phone, via video-conference calls and through chatting online. It uses in-depth studies of individuals or small groups of people to guide and support the construction of hypotheses.

Qualitative research has several unique aspects that can contribute to both rich and insightful results, wherein the most important one might be that it gives the research the opportunity to probe, thus enabling him to reach beyond initial responses and rationales. The qualitative process is also dynamic by nature, which engages respondents more actively than structured and rigorous methods such as surveys.

The results of qualitative research are descriptive rather than predictive. They are famous for examining the why's and the how's, not just what, where or when. It has a strong basis in sociology and the social sciences and is widely used in order to understand entities such as governments and organisations, or social programs and constructions.

This thesis utilizes a qualitative research method because the desired end result cannot be obtained through the use of quantitative methods and raw statistics and numerical data.

5.2 Document Analysis

Document Analysis is a sub-branch of qualitative content analysis, where documents are reviewed and evaluated by the researcher in order to elicit meaning and gain understanding from a topic (Bowen, 2009). The word *document* is applicable to all types of written sources

that may be relevant for the analysis of the researcher, ranging from public documents like white papers or directives, to private documents like diaries and letters. O’Leary categorises them into three primary types of documents:

- Public record: The official, on-going records of an organisation's activities, e.g. student transcripts, mission statements, annual reports, policy manuals, student handbooks and syllabi.
 - Personal documents: First-person accounts, experiences and beliefs, e.g. calendars, emails, blogs, Facebook-posts, incident reports, journals and newspapers.
 - Physical evidence: Physical objects found within the study settings (often called artefacts, or physical artefacts), e.g. flyers, posters and other materials.
- (O’Leary, 2014)

Documents can vary in both shape and content. They usually present themselves in writing, but they can also be in the form of sound recordings or visual representations. The document which is subject to analysis in this thesis is of public record and comes in written form. It is the only document that will be used in this way.

5.2.1 Rationale for document analysis and triangulation

Document analysis is an often-used tool for qualitative research, and it works particularly well in combination with other methods as a means of triangulation. Triangulation is the combination of different types of methodologies in the study of the same phenomenon. As Bowen puts it:

The qualitative researcher is expected to draw upon multiple (at least two) sources of evidence; that is, to seek convergence and corroboration through the use of different data sources and methods. (Bowen, 2009: 28)

Such sources, in addition to documents, can be everything from interviews to different kinds of observations, and physical artefacts. Through the process of triangulating data, the researcher is able to boost credibility and reduce the impact of potential bias, as well as guard

against possible accusations claiming the study to be too one-dimensional or simply a result of the researcher's personal bias.

Document analysis should not replace other types of data, and one should not consider records, however 'official' they are, as absolute truth. Triangulation is helpful for the researcher to avoid relying too heavily on documents alone; although, in studies that reside within an interpretive paradigm, e.g. historical or cultural-research, documents may be the only viable or even necessary source of data.

In a study where triangulation is employed, document analysis can also be viewed as a way of verifying findings or corroborate evidence from other sources. This is an especially good way to look at it from a social science point of view, where there is a lack of quantifiable data. If the document analysis provides findings that are contradictory to the primary sources, the researcher is forced to investigate further; when there is convergence of data from the different sources, credibility and trust is built around the findings. This also works the other way around, with document analysis functioning as the primary source of data.

Another approach to document analysis is to use it as a way to formulate questions for use in other parts of the research, for instance in interviews, or situations that need to be observed.

Documents provide an enormous amount of information and context that may have been hard to find elsewhere. Through documents, the researcher is able to extract either primary or supplementary data, track change and development, verify findings from different sources, and eventually formulate additional questions to be asked and researched in the future. All in all, it is an excellent tool to have in most research settings.

In this study, the Directive will be used as a foundation for analysis, as well as a way to formulate questions for interviews at a later stage. It should be considered a secondary source of data, to supplement and corroborate the primary sources, and it can be interpreted through analysis and reinterpreted through the use of different sources.

5.2.2 Process

In her guide to doing research, sociologist Zina O’Leary formulates a planning process that ought to take place in any textual analysis, including a document analysis. Here are a few of the most central ones:

- create a list of texts to explore (e.g., population, samples, respondents, participants);
- determine accessibility and consider linguistic or cultural barriers;
- consider ethical issues (e.g., confidential documents);
- consider and identify types of data to gather from the document(s);
- acknowledge and address biases;
- consider strategies for ensuring credibility;
- develop appropriate skills for research;
- know the data one is searching for;
- look for evidence; and
- have a backup plan. (O’Leary, 2014: 179)

When it comes to actually exploring the content, O’Leary provides two important techniques for accomplishing this (ibid.: 180). One is the interview technique, where the researcher treats the document as if it was a respondent or informant in an interview, that provides the researcher with relevant information. The researcher is then able to ask questions and highlight the answers within the text. The other technique is a more quantifiable approach, where the researcher notes the occurrences of particular words, phrases, and concepts that are preselected by the researcher. The frequency and number of occurrences, as well as the various correlations between elements, is then considered information and can be viewed in relation to the central questions of the research.

Documents can be a rich source of data, but the researcher should look at documents with a critical eye and be cautious in the use of all documents. They should not necessarily be treated as precise, accurate or complete recordings of events or conveyors of meaning. Bowen stresses the importance that researchers not simply “lift words and passages from available documents to be thrown into their research report. Rather, they should establish the meaning of the document and its contribution to the issues being explored.” (Bowen, 2009: 33).

It is also important that the researcher determine the relevance of the documents in question to the research problem and consider whether the documents are adequately comprehensive in covering the broad scope of the topic, or if it is selective in covering only a few aspects of it. Although having access to a wide array of documents can provide a preponderance of evidence, the quality of the documents should be the researcher's first concern. If the document is assessed to be complete in terms of providing enough evidence to support the researcher's claims, one need not necessarily look further. If there is insufficient data and the document is considered incomplete in relation to the study, the researcher ought to begin the search for additional documents that are able to fill the gaps of the original document.

O'Leary introduces two major issues that may need to be addressed at the beginning of the document analysis (O'Leary, 2014: 178-180). The first is that the researcher should consider the purpose and origin of the document. Why was it produced? What was the target audience? Who produced it, and when? These are important questions for the researcher to ask, lest he overlook potential bias and subjectivity from the author(s). The second major issue is what she calls the unwitting evidence, or latent content, of the document (as opposed to just normal content, which refers to witting evidence). This refers to the style, tone, agenda, facts and possible opinions that are found within the document. Depending on the type of document in question, this point may vary in importance, but it should always be kept in mind.

In this study, the qualitative interview technique will be used with regards to the document analysis, and considering the nature of the document, the witting evidence will be most central.

5.2.3 Advantages and Limitations

In his examination of the function of documents as a data source in qualitative research, Bowen includes a list of what he views as the most prominent advantages and limitations of document analysis. He first takes a look at the advantages (Bowen, 2009: 31-32).

- Efficiency: Document analysis is considerably less time-consuming than most other research methods. The reason for this is that it requires data selection, rather than data collection.

- **Availability and affordability:** Most documents are available to the public, and especially after the digital revolution they may be obtained without the author's consent. This also makes it less costly than other research methods. Not only that, but if a public event took place, some official record of it most likely exists, so the researcher is almost always sure to find the data he needs.
- **Stability:** Many qualitative research methods carry with them an inherent risk of being somehow affected by the research process. Documents are naturally unobtrusive and nonreactive, and so they are unaffected by this. This makes it so that the researcher need not worry about events proceeding differently due to observation, and reflexivity - which requires the researcher to be aware of his own contribution to the construction of meanings attached to interaction and influence on the research - is usually not an issue in analysing documents. Seen as they are nonreactive, they are stable, and the presence of the researcher does not alter what is being studied. This also makes documents suitable for repeated reviews.
- **Exactitude and coverage:** Documents often include the exact names, references and details of events, which makes them valuable to the researcher. They also provide broad coverage with regards to long periods of time, multiple events and settings.

Bowen proceeds to describe a number of limitations that are also inherent in documents:

- **Insufficient detail:** Documents are not produced for the purpose of research (with the exception of previous studies located within documents), and so they might not provide sufficient detail in order to adequately answer a research question.
- **Low retrievability and biased selectivity:** Although documents have high availability, they do not necessarily have high retrievability. Access to documents may be deliberately blocked, or they may be difficult to retrieve simply due to the nature of bureaucracy. Access to documents may also be partly blocked, and the researched may only be provided with an incomplete collection of documents. In an organisational context, the available (or selected) documents are likely to be aligned with corporate policies and the agenda of the organisation's principles. They may also reflect the emphasis of the organisation's record-keeping, e.g. Human Resources.

Bowen rounds out his list by pointing out that the advantages are most likely going to outweigh the limitations, and that the limitations should be viewed as potential flaws rather than major disadvantages. The advantages of document analysis represent the typical, where the limitations represent exceptions, which can easily be avoided by following a few simple steps as is exemplified above by O'Leary.

5.3 Interviews

Interviews are amongst some of the most common methods of conducting qualitative research. There is a total of three fundamental types of interviews: structured, unstructured and semi-structured. Each type of interview offers its own advantages and disadvantages, and it is the job of the researcher to select the one that is most suitable to the study.

Structured interviews

Structured interviews are very similar to questionnaires, with the exception of being administered verbally. Here, the interviewer asks the interviewee predetermined questions that are carefully constructed so as to only allow for a limited number of response categories, as well as rule out potential follow-up questions that would warrant further elaboration. This type of interview is easily conducted and is particularly useful when the questions are of a yes or no character, or if they are questions that simply require a clarification to be adequately answered. Structured interviews usually do not require much of time and effort and can often be done over a distance; however, as they only allow for limited participant responses, they do not provide the depth that many questions need to be answered in a complete way.

Unstructured interviews

At the other end of the spectrum of interview methods, we find the more informal unstructured interview. Here, the questions do not necessarily reflect any preconceived theories or ideas that the researcher might have, and they can be very open-ended. The interviewer might begin the interview by asking a very broad question, that kicks off a kind of conversation that could potentially last for hours. In this way, the researcher has little to no prior knowledge of which follow-up questions might be appropriate, as the lack of predetermined questions does not provide much of guidance on what to talk about. This can make this type of interview very hard to manage and is best utilized when the questions are of

a more explorative nature, or where significant depth is required in order to provide a comprehensive answer. Seen as the process of conducting an unstructured interview can be very time-consuming, especially when one takes into consideration the amount of time it takes to transcribe sound recordings, it is important to first consider if this type of interview is even feasible within the time-frame of the researcher.

Semi-structured interviews

The third type of interview is the semi-structured interview, which provides the participant with several key questions that help to define the areas that are to be explored, while at the same time allowing for both the interviewer and interviewee to digress in order to pursue ideas and responses in more detail. This is a best-of-both-worlds approach. The key questions make sure that information crucial to the study is unveiled, all the while the flexibility of being able to diverge from script allows for the discovery or elaboration of information that may not have previously been thought of as pertinent by the researcher, as well as giving the interviewee the freedom of discussing topics that he himself finds important.

In this study, the semi-structured way of conducting an interview will be utilized. The interviews should be considered the primary sources of data, to be supplemented and corroborated by secondary sources.

5.3.1 Process

The purpose of qualitative research interviews is to explore the views, experiences, beliefs and/or motivations of the participants with regards to specific topics. In the process of planning the interview, the most important thing the researcher should keep in mind is constructing questions that are most likely to yield as much information about the study as possible, as well as questions that address the aims and objectives of the research. Qualitative interviewing can be described as a way of guided conversation, where the researcher carefully listens so as to extract meaning from what is being conveyed by the interviewee (Kvale, 1996).

Stuart Hannabuss advocates four important interviewing skills (Hannabuss, 1996). First, the interviewer must help the participant in building confidence and establish a rapport. It is often a good idea to start off with questions that the participants are able to answer easily, and then

proceed with questions that are more difficult or sensitive in nature. Second, it is important that the interviewer knows how to keep the discussion going, by avoiding questions that might dampen the discourse; for example, yes or no questions that stop the flow of the interview, or jargon, abstractions, loaded questions and double negatives. Third, knowing when to interrupt the interviewee, keeping him on subject and stopping him from digressing too much. Lastly, it is paramount that the interviewer not be judgemental or impatient, regardless of the attitudes or opinions showcased by the participants. If the interviewee seems eager to introduce or follow up on a specific topic, he should probably be obliged. Also, it might prove beneficial to ask the participant at the end of the interview whether there is anything he would like to add, as well as quickly debriefing him on the study (Kvale, 1996). This gives him the opportunity to address issues or topics that he thinks are important, and that have not been properly dealt with by the interviewer. This can lead to the discovery of new and unexpected information.

There are of course a multitude of other things that might disrupt the flow of the conversation, such as interrupting or redirecting the narrative of the interviewee, rushing to complete his sentences, failing to define and clarify difficult terms, and asking overly complicated questions. In order not to influence or in other ways lead the interviewee, the interviewer should avoid offering his own opinions, either through words or nonverbal cues such as excessive nodding to indicate approval or showing signs of surprise or shock; basically, adopting the values of stoic calmness, without actually acting like a robot.

Below are a few examples of different types of interview questions that can work as a template in the planning of a research interview (adapted from Kvale, 1996: 133-135).

Types of questions	Purpose of questions	Examples
1. Introducing questions	To kick-start the interview and move to the main interview	“Can you tell me about [...]?” “Do you remember an occasion when [...]?”

2. Follow-up questions	To direct questioning to what has just been said	Nodding, “mm”, repeating significant words
3. Probing questions	To draw out more complete narratives	“Could you say something more about that?” “Could you give a more detailed description of what happened?”
4. Specifying questions	To develop more precise descriptions from general statements	“What did you think then?” “What did you actually do when [...]?”
5. Direct questions	To elicit direct responses	“Have you ever [...]?” “When you mention [...], do you mean [...] or [...]?”
6. Indirect questions	To pose projective questions	“How do you believe others regard [...]?”
7. Structuring questions	To refer to the use of key questions to finish off one part of the interview and open up another, or indicate when a theme is exhausted by breaking off long irrelevant answers	“I would now like to introduce another topic [...]”
8. Silence	To allow pauses, so that the interviewees have ample time to associate and reflect, and break the silence themselves with significant information	

9. Interpreting questions	Similar to some forms of probing questions, to rephrase an interviewee's answer to clarify and interpret rather than to explore new information	"You then mean that [...]?" "Is it correct that you feel that [...]?" "Does the expression [...] cover what you have just expressed?"
10. Throw away questions	To serve a variety of purposes, i.e. to relax the subject when sensitive areas have been breached	"Oh, I forgot to ask you [...]"

Rubin & Rubin categorise the questions in a qualitative interview into three types: main questions that guide the conversation; probes that clarify answers or request further examples; and follow-up questions that pursue the implications of answers to main questions (Rubin & Rubin, 1995: 145). The most important part of doing a qualitative interview however, is that the interviewer remains flexible during the interview process. The nature of qualitative interviewing places limits on standardisation and the working relevance of existing literature; no two interviews will ever pan out the same way.

In the process of designing a research interview, the researcher must consider the time available to complete the study, access to respondents, and the financial and potential emotional costs of conducting the study (ibid.: 54). He must also devote time and effort into finding the right respondents.

5.3.2 Ethics, confidentiality and bias

Once the right respondents have been identified, the researcher must necessarily ask them if they will agree to being interviewed. The right to privacy and confidentiality should be inviolable and guaranteed, which is why all participants must be asked to consent prior to being interviewed and recorded. This is necessary not only to ensure that the interviewee not be damaged in any way because of his or her participation in the interview, but also as a means to build trust between the parties.

The researcher should also search for potential bias, and if found, make it understood how this could affect the study. Only when this is properly dealt with can the results of the study truly speak for themselves.

In this regard, it is important for us to clarify the roles of a couple of the contributors, as well as our relations to them. The first is our supervisor Daniel Nordgård, who has also been our supervisor and teacher for the past two years. In addition to that, he sits on the boards of both Gramo and GramArt, in the capacity of being a researcher rather than being a performer. Therefore, he has no financial stakes in the matters described in this thesis. The second is one of our informants, Bendik Hofseth, who has also been our teacher for one and a half years⁵⁹.

Both Daniel and Bendik are very knowledgeable and are, amongst others⁶⁰, responsible for teaching us a lot of what we know today about the field of rights management. Therefore, it is natural that a lot of what we consider to be factual knowledge ultimately stems from them.

⁵⁹ See: The informants, p. 82.

⁶⁰ See: Acknowledgements.

6 Document Analysis

This chapter includes a brief presentation of the Directive. After the presentation of the Directive follows the findings from the document analysis. These are sorted by use of several sub-headings, with the purpose of analysing the main themes and relevant requirements of the Directive in conjunction with the Norwegian model.

6.1 Important dates

Below is listed a number of important dates, with regards to:

The Directive

- April 16, 2004: The European Commission announced the CRM-Directive in a Communication (European Commission, 2004)
- July 11, 2012: Proposal adopted by the Commission (European Commission, 2012)
- December 12, 2012: Common position adopted by the Council (ibid.)
- February 4, 2014: Approval by the European Parliament (ibid.)
- February 26, 2014: Signed by the European Parliament and the Council (ibid.)
- March 20, 2014: Publication in the Official Journal (European Union, 2014)
- April 10, 2016: Directive to be implemented by the Member States (CRM Directive, Article 43(1))

The implementation of the Directive in Norway⁶¹

- June 2, 2014: The Directive was processed by the special committee for intellectual property and found to be EEA-relevant and acceptable. (Regjeringen, 2017a)
- September 22, 2017: EEA-committee decision no. 186/2017 to implement the Directive into the EEA-agreement. (ibid.)
- N/A: Approval of the Norwegian Parliament of the EEA-committee decision, as necessitated by § 26(2) (ibid.)
- N/A: The Ministry of Culture will produce a proposal to the implementation of the Directive into Norwegian law (ibid.)

⁶¹ It has come to our attention, through word of mouth, that the proposition of the Directive is not likely to be addressed until 2019 and will therefore not take effect until at the earliest 2020.

- N/A: Deadline for implementation
- N/A: Actual implementation

6.2 Introducing the document

The CRM Directive is a document of public record, produced by the European Union. It was published on March 20, 2014, and although it came into force in the Member States of the Union on April 9, 2016, it has at the time of writing yet to be implemented by the EEA signatory countries not formally part of the European Union, which include Norway, Iceland and Liechtenstein.

The text of the Directive was prepared by the European Commission, then subsequently approved by the European Parliament and the Council. The Directive consists of 58 Recitals and 45 Articles, but for the sake of simplicity, the document can be referred to as being comprised of two separate parts.

6.2.1 Part I

Part I, which includes Titles I, II, IV and V, lays down requirements and regulations deemed necessary for the good governance of CMOs (CRM Directive, Articles 1-22; 33-45). Chapter one defines certain standards that CMOs must meet in order to ensure that they “act in the best interests of the rights holders”, including non-members of CMOs (*ibid.*, Articles 1-10). These standards are then given substance in several Articles that stipulate specific requirements with regards to:

- the collection and distribution of revenue, as well as certain deductions (*ibid.*, Articles 11-32);
- transparency and reporting (*ibid.*, Articles 18-22);
- enforcement measures, including procedures relating to complaints and dispute resolution (*ibid.*, Articles 33-38); and
- reporting (to the EC) and final provisions (*ibid.*, Articles 39-45).

Part I, by far the longest and most comprehensive of the two, covers then regulations for CMOs, governance and the need for transparency, and it ensures that the provisions are applicable to all kinds of collecting societies established in the Union, regardless of the kinds of rights mandated.

6.2.2 Part II

Part II, the shorter of the two, applies to collecting societies established in the Union that manage online rights in musical works on a multi-territorial basis, and it deals with multi-territorial licensing of online rights in musical works by CMOs (ibid., Articles 23-32, Article 34(2) and Article 38). This part of the Directive is mainly focused on how CMOs should proceed when granting multi-territorial licences, which must be done in a way that allows for rights holders to either remain with their current CMOs, mandate a different CMO of their choosing or manage their rights individually (ibid., Article 5 and Articles 29-31).

6.3 Rationales and objectives of the Directive

There are three points that can be identified as the main reasons for the implementation of the Directive. In addition to that, the Directive has two main objectives that it aims to achieve.

6.3.1 Identifying the problem

The first point is the acknowledgement by the European Commission that:

the EU suffers from a lack of innovative and dynamic structures for the cross-border collective management of legitimate online music services. This affects the provision of legitimate online music services. (European Commission, 2005c: 6)

The EC found the main issues to be outdated structures and practices such as border rights management and blanket licencing, this in a highly technological era where there are available mechanisms for more accurate distribution of royalties. The Commission also identified that:

the large number of licensors – and variations as to the repertoire and rights they can licence – can be a major handicap. The numerous parallel negotiations are also time-consuming ... and are costly. ... other factors such as repertoire fragmentation, the handling and reconciliation of invoices, and the administration of a considerable number of licences, do affect costs. (European Commission, 2012)

They noted as well that:

some services might choose to launch on the basis of major repertoire only, which can be secured with a small number of licences. This would be detrimental to niche and local repertoire ... consumers ultimately have less choice and there is a loss of cultural diversity. (ibid.)

The CRM Directive also describes some problems with the traditional models. Recital 5 of the Directive states that “problems with the functioning of collective management organisations lead to inefficiencies in the exploitation of copyright and related rights across the internal market, to the detriment of the members of collective management organisations, rights holders and users.” (CRM Directive, Recital 5). Recital 38 also describes the complexities and difficulties of collective rights management in Europe, which has:

exacerbated the fragmentation of the European digital market for online music services. This situation is in stark contrast to the rapidly growing demand on the part of consumers for access to digital content ... including across national borders. (ibid., Recital 38)

6.3.2 The European single market

As follows, the second reason for the implementation of the Directive is the aim of a European single market for the exploitation of musical works in digital format (European Commission, 2010: 14). The structures at play were considered to be a hindrance to the development of the single digital market, with the biggest issues being that online music service providers were compelled to purchase access to multi-repertoire licenses en bloc, and then negotiate a multitude of licences with different national collecting societies to acquire the necessary permissions to provide the entire repertoire of desired works. In order to rectify the

situation, the EC has instructed CMOs to modernise their operations, especially where transparency, governance and the handling of revenue is concerned.

6.3.3 The European Digital Agenda

The third reason is the European Commission Digital Agenda for Europe and the Europe 2020 Strategy, which works as an underlying argument:

To create a true single market for online content and services (i.e. borderless and safe EU web services and digital content markets, with high levels of trust and confidence, a balanced regulatory framework with clear rights regimes, the fostering of multi-territorial licences, adequate protection and remuneration for rights holders and active support for the digitalisation of Europe's rich cultural heritage, and to shape the global governance of the internet. (ibid.)

6.3.4 Possible secondary motives

Besides the rationales stated above, there might be several other reasons and aims that lie behind the development and implementation of the Directive, that are not explicitly stated. One is that there is a need for better systems for keeping track of information relating to rights holders in order to facilitate a cross-territorial platform for the licensing of music rights, which after the failure of the EU-initiated GRD is still a topical issue⁶². Another might be the integration of different rights into one single license, also known as the one-stop-shop, or at the very least a simplification of the licensing system, which is referred to in Recital 40 of the Directive. These can also be better understood through hints to the EU believing that intermediaries such as CMOs and record labels have too much power over the industry, or that they blame record companies for halting the development of a well-functioning digital licensing system with cross-border licensing and one-stop-shops for music copyright⁶³ (Nordgård, 2017: 192-194).

⁶² See: Data and the GRD, p. 27. See also: the Directive, Recitals 41-42.

⁶³ It must be emphasised that these are conjectures based on individual opinions that surfaced during roundtable conferences, not official statements.

6.3.5 Aims of the Directive

The 2012 Proposal for the CRM Directive introduced two objectives moving forward: “(a) improve the standards of governance and transparency of collecting societies”, by establishing common governance and standards for financial management, so that rights holders are able to exercise more control; and “(b) facilitate the multi-territorial licensing by collecting societies”, also by the setting of minimum standards (European Parliament and Council, 2012).

Following this, the European Commission has formulated the key aims of the Directive, which “aims at ensuring that rightholders have a say in the management of their rights, and at improving the functioning and accountability of Collective Management Organisations ...” (European Commission, 2017). The Directive aims for a more capable process of licensing, through improving collective management structures, effectively modernising collective rights management and harmonise rules concerning good governance and transparency. It also intends to:

facilitate the multi-territorial licensing by collective management organisations of author’s rights in musical works for online use who are subject to several requirements ... adapted to the digital era, such as enhanced capability to process large amounts of data, accurate identification of the works used by the service providers, fast invoicing to service providers and timely payment to rightholders.
(ibid.)

The European Commission continues to list the specific objectives of the Directive, which are:

- improving the way in which CMOs established in the Union are managed by establishing common governance, transparency and financial management standards;
- setting common standards for the multi-territorial licensing by authors’ CMOs of rights in musical works for the provision of online services;
- creating conditions that can expand the legal offer of online music. (ibid.)

These objectives are to be reached by:

- ensuring among others adequate participation of rights holders in the decision-making process;
- ensuring adequate financial management of the revenues collected on behalf of the rights holders they represent;
- increasing their transparency vis-à-vis rights holders, other CMOs, service providers and the public at large. (ibid.)

In addition to the already stated intents of the documents, the CRM Directive complements Directive 2006/123/EC of 12 December on services in the internal market⁶⁴, “which aims to create a legal framework in order to ensure the freedom of establishment and the free movement of services between member states.” (European Parliament and Council, 2012, 1(4)).

6.4 Results from the document analysis

6.4.1 Part I

The first Article of the Directive describes the subject matter and the aims towards transposition by Member States⁶⁵. The Directive lays down the requirements necessary to ensure the proper functioning of the management of copyright and related rights by CMOs, and for multi-territorial licensing by CMOs of authors’ rights for online use (CRM Directive, Article 1). Definitions of the different entities are provided. The definition of a CMO in the Directive is:

any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose (ibid., Article 3)

⁶⁴ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property. CMOs are subject to this Directive seen as they are providers of collective management services.

⁶⁵ The Member states are the states included in the European Union. In the Directive, member states refer to states that are part of the EEA. In addition to the 28 Member States of the EU, the EEA also consists of Iceland, Lichtenstein and Norway.

The organisation also has to either be owned or controlled by its members, be organised on a not-for-profit basis, or both, in order to fall under this definition. In addition to traditional CMOs, the Directive refers to *independent management entities* (IMEs) as alternative managers of copyright and rights related to copyright. IMEs differ from CMOs in that they are neither owned nor controlled, directly or indirectly, wholly or in part, by rights holders, and they are organised on a for-profit basis (ibid.). IMEs should be understood as commercial entities who provide the function and services of a CMO for rights holders. As an example, one could imagine that digital data companies such as Google become IMEs, if they were interested in and saw the possibilities of entering the field of digital rights management for lucrative rights holders. According to Recital 16, audio-visual producers, record producers, broadcasters and publishers, as well as authors' and performers' managers or agents, shall not be regarded as IMEs.

The rights of rights holders

The main purposes of CMOs are to protect, represent, manage, collect and distribute remuneration for public exploitation of the rights of members and other rights holders. In the Directive, rights holders are entitled to several rights in order to protect their own rights and have the freedom of choice regarding what CMO they consider to be best suited to manage their rights. It is up to the Member States to ensure that rights holders are able to enjoy the rights laid down in the Directive and that those rights are included in the membership terms and statutes of CMOs. The rights of rights holders are:

- the right to authorise a CMO of their choice to manage their rights, irrespective of the Member State or nationality;
- the right to grant licenses for non-commercial use;
- the right to terminate the authorisation to manage rights or to withdraw from a CMO any of the rights;
- the right to retain rights for acts of exploitation which occurred before termination of authorisation or withdrawal;
- that CMOs shall not restrict the exercise of rights under the two preceding paragraphs to another CMO;
- rights holders shall give consent specifically for each right they authorise the CMO to manage. This shall be evidenced in documentary form; and

- that CMOs shall inform rights holders of all the above rights before obtaining their consent to its managing. (ibid., Article 5(2-8))

Membership terms and the general assembly

The requirements for membership of CMOs shall be based on objective, transparent and non-discriminatory criteria (ibid., Article 6(2)). All members shall be enabled to participate in their organisation's decision-making process (ibid., Article 6(3)), and the CMOs shall allow their members to communicate with them by electronic means, including for the purposes of exercising members' rights (ibid., Article 6(4)). This could mean that electronic voting and live streaming of the general assembly must be facilitated. In addition to this, all CMOs shall keep regularly updated records of its members, which means that all CMOs are obliged to create their own database containing member information and associated rights, given that this is not already taken care of (ibid., Article 6(5)).

When it comes to the exercising of members' rights, a general assembly of members of the CMO shall be convened at least once a year (ibid., Article 8(2)). All members shall have the right to participate in, and the right to vote at, the general assembly, unless restrictions based on membership duration or amounts received are allowed by the Member State (ibid., Article 8(9)). This is backed up by Recital 23 which states that only fair and proportionate restrictions shall be subject to the exercise of the rights to participate and vote. In addition to the rights of the members, rights holders who are directly represented by CMOs, but do not fulfil their membership requirements, shall be provided with rights to participate in decision-making processes (ibid., Recital 21). The Directive does not say whether this right to participate includes the right to vote or the right to submit proposals to the general assembly. The general assembly shall decide on any amendments to the statutes, membership terms, appointments or dismissals of directors, review their general performance, and so on (ibid., Article 8(3-4)). The Directive provides several minimum requirements of issues that the general assembly will have to decide on. These are some of the most interesting ones:

- the general policy on the distribution of amounts due to rights holders;
- the general policy on the use of non-distributable amounts;
- the general policy on deductions from rights revenue, and from any income arising from the investment of rights revenue; and

- the use of non-distributable amounts. (ibid., Article 8(5))

The supervisory function

In order to continuously monitor the activities of the individuals who manage the business of the organisation, Member States shall ensure that each CMO has in place a supervisory function (ibid., Article 9(1)). In most cases, this supervisory function is the board of the CMO. Article 9(2) requires that there shall be a fair and balanced representation of the different member categories in the body exercising the supervisory function. One interesting paragraph in the Directive concerning the members of the board is paragraph 3 in Article 9:

Each person exercising the supervisory function shall make an annual individual statement on conflicts of interest ... to the general assembly of members. (ibid., Article 9(3))

This annual individual statement shall contain information on the person's potential interests in the CMO; any remuneration received in the preceding fiscal year from the CMO, including pension schemes, benefits in kind and other types of benefits; any amounts received in the preceding fiscal year as rights holder from the CMO, and; a declaration concerning any actual or potential conflict between any personal interests and those of the CMO or between any obligations owed to the CMO and any duty owed to any other natural or legal person (ibid., Article 10(2)).

Management of rights revenue

It is important that CMOs are diligent in the collection and management of rights revenue (ibid., 11(2)). When concerning investments of rights revenue or any related income, the CMOs shall do so in the best interests of the rights holders. In order to do so, some rules are provided in the Directive:

- where there is any conflict of interest, the CMO shall ensure that the investment is made in the sole interest of those rights holders;
- investments shall be made in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole; and

- the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole. (ibid., Article 11(5))

CMOs are not allowed to obtain consent to manage rights for a rights holder without informing the rights holder on management fees and other deductions in advance (ibid., Article 12(1)). The management fees must be based on documented and justified costs in relation to the management of copyright and related rights, and they shall not exceed those justified amounts (ibid., Article 12(3)). When it comes to deductions, CMOs are allowed to deduct certain amounts from the total revenues, but the deductions shall “be reasonable in relation to the services provided by the collective management organisation to rightholders” (ibid., Article 12(2)). The amounts deducted and the use of it shall be transparent to the rights holders. CMOs who are using deductions or other income from investments of rights revenue to provide social, cultural or educational services are allowed to do so, but it shall be provided on the basis of fair criteria when it comes to access to, and the extent of, those services (ibid., Article 12(4)). The paragraph does not say anything about whom the services shall be provided to.

The distribution of amounts due to rights holders is one of the most important features of CMOs. Member states shall ensure that CMOs distribute and pay remuneration for use of copyrighted works to rights holders “as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected” (ibid., Article 13(1)). The exceptions from this rule is when bad data, bad reporting or other related circumstances prevent the CMOs, or the members, from meeting that deadline. The Directive also requires that CMOs shall take all necessary measures to identify and locate the rights holders. Information on works and other subject-matter for unidentified or non-located rights holders shall be made available by the CMO at the latest three months after the nine months deadline mentioned above (ibid., Article 13(3)). The information shall be made available to:

- the rights holders represented or the entities representing rights holders, where such entities are members of the CMO; and
- all CMOs with which it has concluded representation agreements. (ibid.)

Where it is available, the following information shall be included:

- the title of the work;
- the name of the rights holder;
- the name of the relevant publisher or producer; and
- any other relevant information which can assist in the identification of the correct rights holder. (ibid.)

If these measures fail to produce results, the CMO shall make the information available to the public at the latest one year after the extended three months period mentioned above. If the amounts for plausible reasons cannot be distributed to the correct rights holder after three years from the end of the first fiscal year, the amounts shall be deemed non-distributable (ibid., Article 13(4)). The general assembly shall decide on the use of the non-distributable amounts in accordance with the adopted distribution policy of the CMO (ibid., Article 13(5)), but Member States may limit or determine the use by ensuring that the amounts are used to fund social, cultural and educational activities for the benefit of rights holders (ibid., 13(6)).

Representation agreements

CMOs often manage rights in their respective territories on behalf of other CMOs under so-called representation agreements, or RRAs⁶⁶. The Directive states that it is the Member States' responsibility to ensure that a CMO does not discriminate against any rights holder whose rights the organisation manages under a RRA. It is in particular discrimination with respect to management fees, applicable tariffs, and the conditions for the collection of the rights revenue and distribution of amounts due to rights holders that is pointed out (ibid., Article 14). It is also important that a CMO does not make any deductions, other than in respect of management fees, from the rights revenue and related income derived from the rights it manages under a RRA, unless the other CMO signatory to the agreement "expressly consents to such deductions" (ibid., Article 15(1)). Distribution and payments from one CMO to another shall be carried out as soon as possible but no later than nine months from the end of the fiscal year in which the rights revenue was collected. The other CMO shall distribute and pay the amounts due to rights holders as soon as possible but no later than six months from receipt of the amounts (ibid., Article 15(3)).

⁶⁶ See p. 21 on Reciprocal agreements

The minimum information provided to other CMOs on the management of rights under RRAs is listed in the Directive. The information for the period which it relates to shall be made available no less than once a year and it shall be provided by electronic means. Information shall be included on:

- the rights revenue attributed, the amounts paid by the CMO per category of rights managed, and per type of use, for the rights it manages under the RRA, and any rights revenue attributed which is outstanding for any period;
- deductions made in respect of management fees;
- information on any licenses granted or refused with regard to works and other subject-matter covered by the RRA; and
- resolutions adopted by the general assembly insofar as those resolutions are relevant to the management of rights under the RRA. (ibid., Article 19)

Information and transparency

One of the main subjects of the Directive is the need for transparency of information between CMOs and their members, CMOs and other CMOs, CMOs and users, and between CMOs and the public. This is seen in quite a few Articles. Article 20, for instance, features information provided to rights holders, other CMOs and users on request. Information shall be made available by electronic means in response to duly justified requests, and the information shall contain the rights the CMO manages, the works or other subject-matter it represents, directly or under RRAs, and the territories covered. As well as this, the CMO shall provide information where such works or other subject-matter cannot be determined (ibid., Article 20). Article 21 provides a list of the minimum information a CMO shall make public, for instance its statute, membership terms, standard licensing contracts, distribution policy and so on. The CMO shall publish, and keep up to date, the information on its public website (ibid., Article 21).

The Directive conveys the responsibility of Member States to ensure that a CMO, irrespective of its legal form under national law, draws up and makes public an annual transparency report. A report shall be published and made public for each fiscal year no later than eight months following the end of that fiscal year, and the report shall be published on the CMO's website, and it shall remain available there for at least five years (ibid., Article 22). All information required to be in the report is found in the Annex of the Directive.

6.4.2 Part II

Multi-territorial licensing

In order to provide for a more efficient licensing system for protected works in the online music sector, the facilitation of multi-territorial licensing is important, according to the Directive. This will allow online music service providers such as Spotify and Apple Music to request and be granted licenses much more efficiently than with how the scheme is today. Instead of requesting licenses for use in one territory after another, they may request licenses for the exploitation of musical works in all or most territories. Recital 40 in the Directive explains that “it is essential to create conditions conducive to the most effective licensing practises by collective management organisations in an increasingly cross-border context” (ibid, Recital 40). In order to make this happen, a set of rules shall be provided, “prescribing basic conditions for the provision by collective management organisations of multi-territorial collective licensing of authors’ rights in musical works for online use, including lyrics” (ibid.). All musical works, including those incorporated in audio-visual works, shall apply to the same rules, with the exception of sheet music. If a CMO cannot or does not wish to fulfil the multi-territorial licensing requirements for online rights itself, the CMO is able to request another organisation to represent its repertoire on a multi-territorial basis (ibid.). Member States shall ensure that CMOs that grants multi-territorial licenses has:

sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of such licenses, including for the purposes of identifying the repertoire and monitoring its use, invoicing users, collecting rights and distributing amounts due to rightholders. (ibid., Article 24(1))

The CMO shall also make sure that it, as far as possible, provides the correct and complete information on the online music repertoire it represents to online music service providers. This information shall include:

- the musical works represented;
- the rights represented wholly or in part; and
- the territories covered. (ibid., Article 25(1))

The rules for transparency and information pertaining to users, rights holders and other CMOs whose rights are being managed apply in the cases of multi-territorial licensing as well as in all other aspects of a CMO's daily operations. Databases have to be as accurate and as up to date as possible (ibid., Recital 41), and the Directive states that Member States shall ensure that online service providers, rights holders and other CMOs is enabled to request corrections to the data if they believe that the data or the information is inaccurate in respect of their online rights in musical works (ibid., Article 26(1)). It is also important that the invoicing to online service providers from CMOs managing online rights is accurate and timely, identifies the works and rights which are licensed, and the corresponding actual use. The online service provider shall accept the invoice if the CMO is using the format of an industry standard (ibid., Article 27(3)). Recital 43 elaborates on the need for industry standards:

Industry standards for music use, sales reporting and invoicing are instrumental in improving efficiency in the exchange of data between collective management organisations and users ... In order to ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, collective management organisations should be required to invoice service providers and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that users provide collective management organisations with accurate and timely reports on the use of works. (ibid., Recital 43)

Nonetheless, the online service provider may challenge the accuracy of the invoice, especially if it receives invoices from one or more CMOs for the same online rights in the same musical works (ibid., Article 27(5)).

Non-discrimination and cultural diversity in multi-territorial licensing

Any RRA between CMOs whereby multi-territorial licensing is included shall be of a non-exclusive nature. The mandated CMO “shall manage those online rights on a non-discriminatory basis” (ibid., Article 29(1)). This is also described in Recital 44.

A CMO that grants multi-territorial licenses for online rights in musical works is obliged to enter into a RRA with a CMO which is not granting such licenses if the latter CMO makes a request for it (ibid., Article 30(1)). The requested CMO shall “include the represented repertoire of the requesting collective management organisation in all offers it addresses to

online service providers” (ibid., Article 30(4)). This builds on the aim of the Directive of non-discriminatory treatment and amplifies the wish for cultural diversity in the online environment stated in Recital 3. It is a requirement of the EU to:

take cultural diversity into account in its action and to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. Collective management organisations play, and should continue to play, an important role as promoters of the diversity of cultural expressions, 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 rightholders and the public. (ibid., Recital 3)

7 Interview results

This chapter includes a short presentation of the interviewees and the rationale behind why they were chosen to participate. Following that, the findings from the interview analysis are presented, organised under sub-headings relating to the findings and the research questions.

7.1 The informants

In this study, a total of four interviewees have been selected and have agreed to participate. The interviewees are all prominent professionals within the Norwegian music scene who are, and have been, very much involved in the shaping of the music industry we see today. It follows then that they are highly knowledgeable individuals, which is the main reason as to why they have been chosen to participate in this study.

Another reason for their inclusion in this study is the relevance of their expertise to the subject matter at hand, as well as the various positions they retain or have held in the past, which grant unique insight and understanding, as well as the ability to speak in the capacity of being in those roles. It should however be noted that the purpose of these interviews was first and foremost to extract meaning and information from the interviewees as individuals, not as instruments of their positions; although, being in those positions do necessarily shape their responses and personas in general. Another point in this regard is that within the music industry people have a tendency to move around a lot and occupy very different roles and positions at the same time. This is therefore very much the norm, and not something that is peculiar to the interviewees of this study.

- 1) Ingrid Kindem is the chairman of the board for both TONO and NOPA. She has vast experience with music policy work, including sitting on the board of directors for NOPA and FFUK. In addition to that, she has a degree in music from NTNU⁶⁷ in Trondheim and has had a long-standing career as a composer (TONO, 2017).
- 2) Harald Sommerstad is a musician and keyboardist for the Norwegian pop group Minor Majority, and an Attorney at Law, specialised in the field of intellectual property rights, specifically copyright law and marketing law. He works at Zacco on

⁶⁷ Norwegian University of Science and Technology.

intellectual property, and prior to that, he worked in the CMO Kopinor⁶⁸. In addition to that, he has extensive experience from working in the music business and has held the position of chairman of the board for both Gramo and GramArt, as well as sitting on the board of directors for Music Export Norway⁶⁹ and several commercial companies (Zacco, n.d.). Currently, he is a board member for both Gramo and GramArt (Gramo 2017e; GramArt, n.d.c).

- 3) Martin Grøndahl is the CEO of Gramo. He has a law degree and has been working at Gramo since the fall of 2000.
- 4) Bendik Hofseth is a Norwegian jazz musician, arranger and composer (Stendahl, 2009). He is a professor at the University of Agder, has previously and for extensive periods of time retained the position of chairman of the boards of both TONO and NOPA, and has generally been very involved in both national and international music organizations.

In proceeding to the interviews, it should be noted that Bendik Hofseth was our teacher for one and a half years at the University of Agder, where he held seminars on the subjects of IP Law, Rights Administration, Aesthetics Workshop and New Technologies⁷⁰.

7.2 Conducting the interviews

The interview phase of this study was carried out in three steps: planning the interviews, executing the interviews, and finalizing the interviews.

The planning step consisted of establishing contact with the prospective interviewees, and then deciding on the format, time and place. Given the nature of the subject and the scope of the study, a face-to-face interview was not deemed to be very important. As such, three out of the four interviews were conducted through Skype or over the phone, without any problems to

⁶⁸ Kopinor is the Norwegian CMO for authors and publishers.

⁶⁹ Music Export Norway was one of the precursors to Music Norway. Music Norway is the export office for Norwegian music, operated by the Ministry of Culture. Music Norway receives annual grants from the National Budget, and, in addition, is managing funds from the Ministry of Foreign Affairs and acts as a consultant for the Ministry of Foreign Affairs on the music field (Music Norway, n.d.).

⁷⁰ See: Ethics, confidentiality and bias, p. 64

speak of. The actual length of the interviews ranged from roughly 30 minutes to an hour. We entered into the interviews without any preconceptions of time but found the lengths of the interviews to be of no concern. We were able to extract what we needed within the duration of the interviews, and we felt that we did not have to rush the interviewees in order to not overextend the interviews.

Prior to the interviews, the interviewees were informed on how the interview was to be conducted, the nature and purpose of the interview⁷¹, the topic of the study and main research questions, and finally the key subjects of the interview. The key subjects were:

- 1) The Norwegian model⁷²
- 2) Distribution of funds
- 3) Competition
- 4) The CRM Directive

These topics were considered to be adequately broad so as to facilitate a wide range of responses from the interviewees, while at the same time steering the interviewees towards giving satisfying answers to the main research questions. Although the interviewees all have different areas of expertise, the key subjects remained the same, however the natural development of the direction that the interviews took could be vastly different from interview to interview.

All four interviews went more or less exactly to plan. They all came fully prepared and were very talkative, which was very much in harmony with the intention of creating a sort of guided conversation. The questions posed by us, both introducing, follow-up and otherwise, were more or less answered in a satisfying manner. During the interviews, all interviewees had moments of digression, but none strayed too far from topic so as to warrant interruption. All in all, it was a pleasant experience, and highly educational.

⁷¹ See: Qualitative Research, p. 54 and Semi-structured interviews, p. 61.

⁷² With the Norwegian model is meant the general structuring of the field of rights management in Norway, and in particular what sets it apart from other territories and parts of the world.

The final part of the process was fact-checking the interviews. This was done after we had transcribed and singled out all the potential quotations to be used in the thesis, by way of sending copies to the respective interviewees. This was done mostly in case they might have said something that turned out to be completely false⁷³.

7.3 Analysing the interviews

In order to analyse the interviews, we first had to transcribe the audio recordings of the interviews into text. This can be a tedious process, but with only four recordings to transcribe, with durations of no more than an hour each, the process could be completed in a matter of a few days. The transcripts amounted to roughly 60 pages of text. All interviews were relatively easy to transcribe, with the exception of the interview with Harald Sommerstad, where the audio quality ended up being rather poor. This resulted in us having to concede that a few words here and there were simply unintelligible. However, this did not seem to take away from the context of the interview and the meaning behind the various sections of the interview, so it should not be considered a problem.

As soon as the transcripts were completed, the next step was to prep them for analysis. This was done in two steps. First, through color-coding the different sections of the interview according to relevance, with four parameters:

- 1) empty talk;
- 2) historical facts;
- 3) topical facts; and
- 4) statements of meaning.

This was helpful as a way to immediately filter out the noise and identify the usefulness of various sections of the texts. Second, through labelling the sections and excerpts of the sections by giving them titles⁷⁴. This was helpful as a way to get an outline of the numerous topics that were touched upon during the interview; and there were surprisingly many. Also, it

⁷³ This turned out to be just a formality, seen as there was only one instance of redaction from the thesis, due to it being hearsay. It should also be noted that the complete, un-redacted version of the interviews is available in Norwegian at the bottom of this thesis, under Appendix.

⁷⁴ Examples of such titles can be 'Re the catalogue of TONO' or 'Re blanket licensing'.

was helpful as a way to locate and revisit parts of the text, seen as the titles could be organized in an index and marked with the page number corresponding to the title in the text.

7.4 Interview responses

The responses included below are made up of everything considered to be relevant to this thesis, in some way or other. This does not however mean that everything will be discussed later, nor does it include the entirety of the interviews. The responses are organised by way of subjects relating to the research questions, and not necessarily relating to the key questions of the interview. The responses have been translated from Norwegian to English, with priority being given to the conveyance of meaning rather than a direct translation that would oftentimes seem awkward and clunky, as well as causing unnecessary confusion. If, however there are sections containing ambiguity in the eyes of the reader, the complete, un-redacted version of the interviews is available in Norwegian at the bottom of this thesis, under Appendix.

7.4.1 The case of Norway

The Norwegian music environment

Prior to the interviews, we had decided to kick off the conversations by asking the interviewees to briefly describe the Norwegian music environment as they saw it. All the interviewees seemed to agree that, in the case of Norwegian rights holders, Norway is thriving. Kindem states that:

We are in an exciting time for Norwegian music. For the last three to four years, we see that Norwegian music also performs very well internationally, which does affect the numbers at TONO. We absolutely do see that income from abroad, it is increasing. In addition, we see that there is an influx of members to TONO, so it seems that there are a lot of young people wanting to live off their music. ... that the position of Norwegian music is strengthened throughout these last few years is evident.

Grøndahl echoes this by saying that the current situation for rights holders is good. Hofseth also agrees with this sentiment, and adds that:

Norwegian rights holders have good coverage ... The degree of protection and collection in the Norwegian market, and the tariffs, are very high. So, if you were to operate as a national player in a national market, then Norway is a good market to be in, in my opinion.

He also notes that there are some challenges with regards to Norway being a small music importing country, which makes for a partially lacking infrastructure when it comes to establishing a career-base, but also emphasizes that this is very much the case for many other countries, and that in comparison to other European countries, Norway is a good place to be for rights holders.

The Norwegian model

Kindem praises the Norwegian model for facilitating cultural diversity:

Norway has a diverse music environment and a pretty experimental music scene for being such a small country. The combination of collective management and interest organisations who are mainly performing the cultural policy work, and hopefully a good [governmental] cultural policy, makes it so that we have a pretty good and strong music environment in Norway. ... Is it important to have a diverse music environment? We think so. If it is important that we have a diverse music environment, that we have a ... that many voices are being heard, not only those who are at the top of the hit lists.

CMOs

When asked to comment on the Norwegian CMOs, several interviewees made the comparison between TONO/Gramo and CMOs abroad. Kindem argues that TONO is one of the most modern societies in the world, where rights holders are concerned. Hofseth also commends the Norwegian CMOs in this regard:

I think there are a lot of positives when it comes to TONO and Gramo; they are, internationally, on a very high level.

Hofseth does however provide several criticisms of the Norwegian CMOs. He touches on a handful of topics, one of which is the collection of digital revenue, and points to the governance structures as underlying issues:

I think that in particular TONO should be more on the ball with regards to the collection of digital revenue from other places, be more proactive, especially on behalf of those rights holders that have a catalogue which is relevant internationally. That they should build services and be more proactive in order to collect those types of incomes. And I would argue that one of the reasons as to why this is not happening, lies paradoxically in the governance structures. ... those who sit on the board of TONO, they often have a "back country" [constituency]; they represent an organisation which has a cultural policy interest in TONO, and that makes it so that TONO is being stopped from being as digital as it should be.

He adds to this by saying that:

There are members of the board in TONO who are not capable of "balancing their hats". In one instant, they want what is best for TONO, and in the next they want what is best for the organisation they represent. So, it demands a very particular type of person, and those kinds of people are hard to find.

Hofseth brings up another criticism in relation to TONO's distribution policies, that are based on established customs and old board decisions. He then goes on to provide several examples of schemes that do not function as intended and has not been revised:

And this does not look good. This is hard to explain, both to TONOs own members, but especially to sister societies and to the general public. It weakens TONOs credibility considerably, it weakens TONOs ability to be a strong player, and a unifying player in the Norwegian market. It weakens their reputation. It cannot stand the light of day. And with "day", I mean "today".

When asked about the future and the development of digital tools, Hofseth has this to say:

I think that TONO is a little "ostrich in the sand", you know, when it comes to how digital the reality is about to become. And then they must build good digital tools themselves, both on the back-office side and on the front-office side⁷⁵. They have to have good solutions that enable them to do business more efficiently and more scalable; and those solutions won't come as long as the battle is about small money and cross-subsidization of distribution. ... TONO has the potential to become a really good and dynamic ... but there is a lack of courage. There is a lack of effort, and the focus lies elsewhere. There has been a lot of focus on back-office solutions with societies in Europe, and very little on front-office solutions. ... today, only 30 percent of concerts are being reported on. It should be easier to report works, and it should be easier to report works correctly ... as long as you are spending dimes on getting works reported, then you are forced into spending dollars on the back-office side in order to rectify the damages ... it is not hard to develop such tools. But there is no desire to do so. There is no courage to do so, and the focus lies elsewhere. ... I think it [the Directive] is going to help, because it draws attention to it. I welcome the Directive, but I don't think it goes far enough. That's my personal opinion.

Sommerstad recognises the potential for improvement when it comes to administrative costs, and asserts Gramo's view on the matter:

We have as an objective to find the optimal solution. ... we have a goal of, and probably have a potential for improvement, to redistribute funds more efficiently. Read: that the administrative costs become as low as possible. ... we are on the ball but can always become better. But we are on the ball, absolutely.

⁷⁵ With *back-office* is meant the centre in which the product development and administrative work of a business is carried out, as opposed to its dealings with customers which is the *front-office*.

Grøndahl provides a more specific example on how administrative costs can be diminished, as he believes that the Norwegian CMOs should cooperate more closely⁷⁶:

Gramo has been in contact with TONO, and we will continue to be in contact, considering that we should have a closer cooperation with the collection of other public performance. In what type of model it can be, we will see, but we have that as a plan, and we are going to continue with that, because it is of our opinion that it could be beneficial for the rights holders. ... We have that in our strategic plan for 2018 to 2020 that we should merge the market divisions and create a separate company in order to save costs, that is, merge the divisions in TONO and Gramo and create a separate entity.

Interest organisations

There seems to be no doubt as to the relevance and importance of the work performed by the interest organisations. Kindem points to a steady flow of rights holders interested in signing a membership with NOPA – a flow which is especially based on those who are already shareholders in TONO:

I believe that rights holders have the need to not stand completely alone, and that they therefore seek towards organisations such as NOPA, because we know that there is quite a bit of competence there. We have positions on the board of TONO too, which means that we can have a little bit of control with regards to where the money goes. So, it is a pleasing development for us.

Kindem highlights in particular the cultural policy work that the interest organisations do as very positive and exemplifies this with their role in the "artist rebellion" of 2017⁷⁷. She also emphasises their importance in an environment prone to complexity, uncertainty and change, as well as the importance of the voice of the artist:

I am thinking that how the situation is now, with a new copyright law and the implementation of a CRM Directive, the network and competence that resides within the interest organisations is needed. ... What is desirable for both TONO and NOPA is

⁷⁶ The specifics of this can be found in the full interview at the bottom of this thesis, under *Appendix*.

⁷⁷ This is mentioned briefly in the introduction. See: *Motivation*, p. 1.

to have active composers and lyricists in board positions. ... it is not desirable for us to have organisations that almost have professional cultural policy makers in board positions. ... because we think it's very important with the artist's voice in the public space. There are enough organisations who have lawyers to speak for them.

Sommerstad echoes Kindem in stating the importance of the role the interest organisations have in safeguarding the interests of individual members through cultural policy work. Grøndahl provides a practical example that draws attention to the fundamental merits of having such safeguards in place:

I think it [the Norwegian model] works very well, and it is very important that we have these basic organisations [interest organisations] ... It is a very well-functioning model, and when we contribute in other countries, it can be for example countries that have yet to get started with collecting revenue, where we are asked to assist in a country, then we will always recommend that these basic organisations are established first, that represent potential members to this, you know, typically a musician's association, or an IFPI, or a FONO, and so on.

Sommerstad explains some of the challenges that interest organisations face, and points out two in particular:

For GramArts part ... the challenge is perhaps engaging the members. It is ... financing, how we are financed, if we are going to be financed like this in the future and so forth. ... And then it's of course the fact that collective funds, they might diminish, and how are we to be financed then? Many interest organisations will be financed through the national budget ... but we are not. ... Gramo works towards redistributing as much of the money as possible, you know. That is the aim of Gramo. So, you can say that in Gramo we work against the existence of GramArt. ... So, if we get really good at redistributing funds, then the financial foundation disappears.

Sommerstad adds to this by describing the challenging relationship between Gramo and GramArt and how to approach it:

It is a kind of contrasting relationship, that we work for, and that is in the interest of our members too, that as much as possible goes out ... the better they become in Gramo, the less funding we shall have in GramArt. There is definitely a contradiction there ... and you have to be aware of it ... but it is one that you just have to deal with in a good way. It is clear that it is a challenge, as long as I've been at GramArt, we've been talking about it. ... as a GramArt representative in Gramo, you are supposed to safeguard the interests of the members, but at the same time safeguard the interests of Gramo. So, in a way you are working against the funding existence, but our attitude towards it is ... that we can't do anything else and then we have to eventually face the challenges as they come. You know, we are not a for-profit organisation, ergo our goal is in a way to have zero equity.

Kindem voices similar concerns with regards to the contrasting purposes of CMOs and interest organisations, but argues that there can be divided opinions on the matter of distribution:

But if there is an interest in collecting and distributing the most amount of money possible to the rights holders, without considering cultural policy, then I can see that there can be divided opinions on what is the right thing to do.

When it comes to financing the interest organisations, Grøndahl thinks that collective funds are a good way to accomplish this:

And this money, I think they are a very nice way to organise, for example, the organisational environment, e.g. MFO, Norsk Artistforbund and GramArt, and also be able to support projects. And the projects must after the preliminary work be to the best for Norwegian performing arts. So, it's a pretty wide definition, but I think it works really well. It makes it so that for example GramArt can run an organisation independent of support from state funds and assist Norwegian artists in various questions.

He is however unsure of what the future model of financing will look like, and how it will be affected by the Directive:

It is totally dependent on what is agreed upon when the CRM Directive comes; this is one of the big question marks that is going to present itself, what opportunities are there going to be for generating such funds. In many countries there is heavy resistance, they are of the opinion that the money that we haven't been able to distribute or pay out individually should be put on top, or in other words be distributed one more time, and paid out to those who have already been paid, so that they get a little more, the ones that we have already identified. It is one of the questions that we are most unsure of, and- maybe Gramo isn't that concerned with it, but that the organisations around us are very concerned with how the future model will be. That there will be some changes to it, that is a reality. ... There will come non-discrimination rules and a lot of different things, here we have in a way rewarded Norwegian organisations and Norwegian performers primarily, when we have distributed these funds. It may be that there will be changes when it comes to that. ... One of the points can be that, for example, it is not allowed to only give organisational support to Norwegian organisations. I am very uncertain about this, because it has been solved a little differently in the various countries. ... If you ask the organisations, then the Gramo-organisations ... would want that we transition into a kind of TONO-model, where you have predictability because a percentage of the gross collected revenue can be distributed as cultural funds, or collective funds. The challenge with taking it off the top is obviously that ... let's say the cost percentage of Gramo is 18 percent, and then you reserve 10 percent more, then that is 28 percent of the total income of Gramo that does not reach the individual distribution to the rights holders. And if these 10 percent only accrue to Norwegian rights holders, then the foreigners will be able to dispute that, and I think that they might do that. But we will see.

Hofseth believes that the European model of deducting 10 percent as cultural funds will likely persist in the long run, because the French, German and other central European societies are very interested in keeping it that way, seen as they have very little repertoire that moves outside their linguistic areas.

Kindem agrees with Grøndahl that there are challenges with the TONO-model of distributing cultural funds from a percentage of the gross collected revenue:

It is clear that collective management is being challenged by a global digital market ... we see now that it is challenged, considering that TONO sets aside a share of its income for the interest organisations. This is something that is being scrutinised, both through reciprocal agreements with other societies, but also in general in an international perspective. ... we can adjust it down, and this should be harmonised with other countries too, and especially countries that we are cooperating with, and we also regulate it through reciprocal agreements. But that we can continue like we have done for 90 years, it is not as easy as that. It means that it is demanding for us, but we are trying to closely follow up on this from month to month.

She goes on to provide a hypothetical example of how a future model of financing might look:

It can be imagined a model where the interest organisations can perhaps receive support from the national budget, or through Norsk Kulturråd⁷⁸ for example. It is something we should look at.

7.4.2 The Directive

When it comes to the Directive, Kindem believes that TONO is already more or less in compliance with it, and points to changes in the governance structures of TONO that have long been made:

I believe that we have already, through the way that TONO is being run, implemented most of what is in the Directive. ... We are the Norwegian society that has had a general assembly for many years. We have employee representatives on the board, and there is a balance between free seats and the interest organisations and so forth, so I believe that we are just about running [TONO] the way the Directive intended.

⁷⁸ Arts Council Norway.

Hofseth agrees with this. He welcomes the Directive as a positive, but would have liked to see more radical changes proportionate to the disruptiveness of digitalisation:

I think, from my experience from conversations with the Ministry and legislator, that it [the Directive] is not going to have any consequences. ... But I would argue that from what we know today, and with the rate that the market is changing, that there should be more radical changes than there will be. ... I think it is a positive thing because it is of my opinion that these reforms are needed. And they are needed even more in Greece, Portugal and Italy than in Norway. But we need them here too, because it needs to be viewed in context of digitalisation, and it [digitalisation] moves so much faster than it seems from the board room of TONO. ... We carried out these reforms early on in TONO, and at that point we were far ahead. Now it is a mixture of representative democracy and open democracy, and that is probably going to be enough for the CRM-Directive.

Grøndahl believes that the Directive won't make a big difference for Gramo, and provides a couple of examples of the effects that the Directive has already had on Gramo:

We have only ordinary members. We have no- earlier, it is correct when you say that we distinguished between ordinary and affiliated members ... but now we only have ordinary members. And this was because we saw that CRM would, when it comes, that it will require that we only have one class of members. But what can be topical is, if you consider CRM and this way of election, can be that – and we are most likely going to – that we will have to open up for electronic voting for the general assembly. ... What the Ministry [of Culture] is saying, is that they are going to cooperate closely with the organisations prior to making a lot of these regulations, and they have informed that we are to be a part of forming a part of these regulations where there is no requirement within the CRM-Directive that change take place. So, we do not believe that CRM is going to make a big difference for Gramo like it is today and what comes next. ... Gramo has up until last year, we have deducted 10 percent in administrative fees at payment for non-ordinary members – and now I am back to the old membership description – we have removed that too now, because it would look discriminating with regards to CRM, and we see that- well, I have always meant that it was discriminating anyway, so we shouldn't have had that ... it is also a

discussion that has come up now that we have seen that CRM will lead to it having to be removed, the 10 percent fee, so we have now removed that from the distribution that we are going to have now in May, which is for 2017.

Governance

When it comes to the issue of how the Norwegian CMOs are governed, Hofseth brings up several points. He is particularly concerned with the way the board of directors is organised in TONO and the effect this has on TONO and the development of digital tools:

It is of my opinion that this representative way of organising, where you are elected to sit on TONOs board as a representative of an "owner organisation" - or well, quote-unquote – as a representative for an interest organisation. This cannot continue, because those board members are representing that organisation more than they are representing TONO. So, TONO is not getting the board that they deserve, and thus they can't evolve quickly enough. ... It's this cross-subsidisation, this mixing of cultural policy and distribution that TONO does; it has to stop, in my opinion, in order for TONO to become more attractive, and more valuable for its members. But there is resistance towards separating these two areas, because some of the owners are unsure about or feel that they don't want to be left with cultural policy funds, with grants, they want to have access to the distribution, because they see it as being safer; and this makes it so that reforms take too long and are too late. ... With an ever improvement of digital tools, both on the input-side, that concerts can be reported more precisely, and that we can monitor the market more precisely, this kind of practice cannot continue. But because you want that practice to continue, you refuse to develop the tools that make it so that there can be a better and more transparent market. ... What the CRM Directive is most concerned about is governance and transparency, accountability, governance, and it's these problems TONO has. It's these [problems] that stand in the way of developing the necessary tools. The CRM Directive also points to that, that there is a connection between governance and what can be done. You have to anchor such strategies in a board of directors, and then it has to be a board which is concerned with the welfare of TONO – not with cultural policy agendas. So, this is a critique of the representative model, that both TONO and Gramo has.

Hofseth goes on to present his views on what should be done to secure the position of the CMOs in the new digital and more competitive landscape:

One course of action is that TONO exposes itself to a real democracy, and that also Gramo does so. It will be noisy, and it will be difficult, at least to begin with, but it will eventually make it so that the members feel a closeness, and that they will be engaged. What they do now is that they get involved with their interest organisation, and the interest organisations are also shutting TONO out from having a direct contact with their members, TONO should work much closer with their members, because the competition for members is going to be a challenge in a European context, it already is. These new young ones who sell their music internationally, Alan Walker and Kygo etc., they are shopping for the best deal, you know. And if you don't have a relationship with the organisation, if you can't use "soft-power" to have kind of intimacy and access, then it becomes hard. They are being stopped from doing this, because the owner organisations, or interest organisations, are saying "that intimacy, educating members, providing service, providing information on how they can move forward as members, we are the ones who take care of that." And it is TONO who should be taking care of that. Then TONO would have become a much more dynamic organisation, with an engaged democracy. ... and this is also what really underlies the CRM Directive, but it does not go that far.

Sommerstad disagrees with Hofseth when it comes to the intentions and relevance of the Directive with regards to Norwegian CMOs and argues that they are run within the demands of the Directive:

I am thinking that Gramo at least, I think also TONO, are ... have always, as far as I know, been running [their business] reasonably within the, sort of, demands that comes with the CRM Directive. ... You should know that the CRM Directive ... one part of it is of course: one market. ... when it comes to the other part of the CRM Directive, to get democratic and transparent CMOs, then this is the type of regulation that in great part was made in the EU because there were some CMOs in other countries ... that weren't transparent at all, and where there have been a few cases of corruption and so on. ... so those regulations, they are in a way made to make sure that all CMOs are transparent, and so it is our opinion that at least, that Gramo have

been fairly transparent and democratic ... always. So, it probably wasn't the Nordic CMOs that came to mind when that part of the Directive was made, to put it like that.

Transparency

Sommerstad believes the Norwegian systems are fairly transparent for rights holders:

As a songwriter it is reasonably transparent. You can kind of see where the money is coming from. ... As a rights holder I feel that the systems are fairly transparent in Norway. ... When it comes to transparency, we feel that the CMOs are within the requirements [of the Directive].

Multi-territorial licensing

Kindem has this to say about the multi-territorial licensing system that the EU is pushing for:

It is cross-border licensing, multi-territorial licensing, that we are heading towards, whether we want it or not. We could wish that there was one society in each country, then we could manage rights for each other and exchange that; of course, that would have been a simple model, but it is now being challenged.

Competition

Kindem explains that the strengthened position of Norwegian music has sparked the interest of other societies. She also describes the current state of competition in Norway, and expects more of it in the future:

"What is going on here? How can they have such a big, vivid and diverse music environment?" This also means that foreign societies are actively seeking out Norwegian rights holders in the hopes of getting them on their roster. It really is a rather new situation. ... The situation regarding competition now makes it so that every society wants to be the best, so maybe something must be kept as a kind of trade secret too. ... We do see some competition, but what TONO has can almost be considered as a monopoly. We do have companies like for example Epidemic Sound, which is trying to establish itself in Norway, and we just have to expect that there are others who would like to establish themselves in Norway and are going to get concession to practice in Norway. So, the best we can do is to try to be the best in the

class. Simply put. But we do also think that being a non-profit company is something that speaks to our advantage, rather than there being shareholders who are taking a profit regularly.

Kindem adds to this by describing the advantages of maintaining a big catalogue:

We have a big catalogue ... which is built up through 90 years. So, having a big catalogue makes it so that one can go one single place in order to license most of the repertoire. So, keeping the catalogue together is something we want. It is not certain that we will be able to, but we want to.

Hofseth expands on this by describing a hypothetical scenario where being non-profit and managing a big catalogue might not prove to be such an advantage after all:

This area is kind of up for grabs. If an international player with a mind on profits enters here and represents 10 rights holders, instead of 30 thousand like TONO does, then it is clear that they can do a really clean slate. If Google or, well, a for-profit company jumps in and represents Bruce Springsteen, Madonna, Elton John blah blah blah, the 10 biggest artists, then it is obvious that they would be able to gain a lot of money in the market, easily. They could knock on the door of TONO and say "you know what, we know that this many listened to this song by Elton John, we know that this many saw that concert with Bruce Springsteen, and here is the bill. This is what you owe us." It is not unthinkable that something like this happens, that the rights holders assign their rights to an agent or a company that thinks profits; and that company can then take 5 percent of the income, or two percent of the income. That is much lower than the commission that TONO has on 14 percent. And in addition to that, 10 percent of cultural funds are being deducted, so in reality it is much higher. And they are deducted from the gross collected revenues. So, TONO has in principle a commission which is closer to 20-25 percent, and the Norwegian Composers' Fund, and then you add and then you add ... so it is obvious that the difference between 25 percent and two or two and a half percent is pretty big when you are making big money in the Norwegian market. So, it is not hard to imagine that things might happen here.

Sommerstad agrees that TONO might see more competition, but is more doubtful when it comes to Gramo:

For TONO's part, there might be more competition, perhaps. This might happen in the Gramo-area as well, that there are other CMOs from abroad that will claim that they too can [unintelligible word] remuneration for the use of music in Norway, based on deals or based on compulsory license. I don't know how this is going to be exactly. ... I don't quite see how it affects Gramo per today.⁷⁹

Technology

When it comes to the subject of technology, Kindem states that modern technology challenges the Norwegian model:

Modern technology, which makes it so that we in the future will be able to monitor the use of music much more precisely, does challenge the Norwegian model, where we have collective management with licensing deals for a collected catalogue, you know, for Norwegian music and the repertoire we manage through reciprocal agreements. So, it is clear that, in the future, when monitoring can be done more precisely, you can measure directly what is being used, which challenges these collective agreements. We do see that. But if we run [our business] well and give back to the rights holders as much as possible from what we collect, then it can be an alternative to other more commercial models.

Hofseth agrees that there are major challenges to digitalisation, and that there is a need for new tools in order to fill the gap created by the diminishing importance of blanket licensing:

Things are happening in other markets that is going to be of import in Europe, in Asia, in America and ... these blanket licenses are less and less in use. People want to have licensing of some repertoire to use in a particular context. ... I don't think it [blanket licensing] is going to disappear completely, as long as we have a public broadcaster and university sector and so on, but I think there are fewer and fewer areas in the digital where they are relevant. ... So, here you need to create new tools. And this is

⁷⁹ This is an area very much subject to change and uncertainty, as is exemplified in an article published through Ballade on the effects of the proposed new copyright act on competition and Gramo (Klausen, 2018).

squeezing them, you know, with regards to how the organisation is made up, what tools they have developed and how it stands in the market. So, TONO and Gramo are becoming a little – now, I am saying a little [emphasis added] - anachronistic. They are kind of remnants of an old offline age. That's what I'm afraid of.

Hofseth thinks that the way the use of music is monitored and reported on today is lacklustre, as opposed to what is possible with current technology. He exemplifies this by pointing at the readily available numbers from Norwegian radio stations:

What I mean, personally, is that it should at least be looked at ... look at bringing in a parameter such as actual listeners and viewers. You know, because we have all those numbers. ... the statistics on music usage and monitoring of radio stations is in full swing. It is no secret how many is listening to a song on P1 and how many is listening to a song on P2, it is not hard to figure out, at any time. ... That you no longer play around with the money, and that the cultural policy agenda is on top, but that you actually try to have a distribution that reflects what is actually going on in the market. ... because TONO could have done better with regards to reflecting the market. ... they have put that parameter aside, they don't use it in the distribution. They only use potential, possible, because you reach so and so many, and then it isn't TONO's job to say something about who turns on the radio to what station, TONO says. But I think it is.

8 Discussion

In this chapter, the findings from the interview analysis and document analysis will be summarised, discussed and linked together with the theoretical frameworks in chapters two through four. The foundation for the discussion is primarily the findings from the interviews, whose results will be compared to the secondary sources and examined in order for similarities and differences to be drawn. The secondary sources are the results from the document analysis, and finally the theoretical frameworks.

8.1 The case of Norway

The results of the interviews describe the Norwegian music environment as a good place to be for rights holders, especially when compared to similar territories in Europe. There is a high degree of protection and collection in the market, and the tariffs are very high. Norwegian music also performs very well internationally, evidenced by the recent TONO press release⁸⁰. This is a testament to a well-functioning model that bodes well for the future.

Norway has a diverse music environment and a pretty experimental music scene for being such a small country. This is, according to Kindem, all thanks to the combination of collective management and the cultural policy work of the interest organisations. Cultural diversity seems to be a focal point for the Norwegian organisations as a whole, and the Norwegian model promotes it. Cultural diversity is also mentioned in Recital 3 of the Directive, which states that the CMOs play, and should continue to play, an important role as promoters of the diversity of cultural expressions, as well as in Recital 44, which states that aggregating different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity. The Directive does also indirectly affect cultural diversity through Article 30(4), which makes it so that CMOs requested to represent another CMO must include the entirety of that CMO's repertoire in all offers it addresses to online service providers.

⁸⁰ See: p. 40.

8.2 CMOs

The analysis of the interviews suggests that the Norwegian CMOs are internationally on a very high level, and amongst the most modern societies in the world. The strengthened position of Norwegian music over the last few years has also affected the numbers at TONO, whose income has been steadily growing over the last several years, aided by an increase in money coming in from abroad. In addition to that, TONO has experienced an influx of new members, which goes to show that a lot of young people are wanting to live off their music.

8.2.1 Governance

There is a wide consensus between the interviewees that the Norwegian CMOs are being run in a way that is more or less in compliance with the demands of the Directive, and that the implementation of the Directive won't have any big consequences for the way they operate. This is also evident from the presentation of the Norwegian CMOs in chapter 2 as well as in the findings from the document analysis. Apart from a handful of practical changes to be made when the Directive comes, for example that the CMOs likely will have to open up for electronic voting at the general assembly, the biggest reforms have already been implemented, especially with regards to governance structures. One example of this is the way Gramo used to distinguish between ordinary and affiliated members; now they only have ordinary members, which is an indirect effect of the non-discrimination rules introduced by the Directive⁸¹. Another example is the 10 percent in administrative fees at payment for non-ordinary members – which again refers to the old membership description – that Gramo had up until last year. This was removed because it would look discriminating with regards to the Directive.

TONO has also been through some changes in this regard, but this was many years ago, and at this point they were far ahead of other societies. TONO has had a general assembly for a very long time⁸². They also have employee representatives on the board, and there is a balance between free seats and the seats occupied by representatives from the interest organisations, as can also be seen in chapter four on TONO. This balance is a requirement of Article 9(2) of the Directive.

⁸¹ See: Article 6(2-3), Article 8(9), Recitals 21 & 23.

⁸² See: Article 8.

In spite of the above, Hofseth believes that the reforms introduced by the Directive are still needed and welcomes the Directive as a positive but argues that there should be more radical changes; changes that are more in line with the rate that the market is changing due to digitalisation, as can be seen in chapter 1.2. He points to the main issues addressed by the Directive – governance and transparency – and argues that these are in fact the problems that TONO has. However, the Directive does not go that far as to address these issues head on, as is also pointed out by Sommerstad.

The interview results do however introduce several points of contention when it comes to how the Norwegian CMOs are governed, despite of them being outside of the direct scope of the Directive. The biggest critique in this regard is provided by Hofseth, who explains how the representative model of TONO and Gramo is hindering their development in relation to digitalisation. He refers in particular to TONO when he describes how the agendas of those who are elected to sit on the board of directors are in stark contrast to what is actually needed for TONO to succeed in an ever increasingly digital industry. This is because many of the board members are representing an interest organisation with a cultural policy interest in TONO, an interest which might be stopping them from becoming as digital as they need to be. These board members are, according to Hofseth, representing their respective interest organisations more than they are representing TONO, making it so that TONO is not getting the board it deserves and needs in order to adapt to market changes fast enough.

8.2.2 Information and transparency

Transparency is one of those words that are easy to understand but at the same time hard to define. Herein, we have decided to discuss two aspects of it separately, the first being a wider understanding of it referring to the general transparency of CMOs and the systems of rights management. It is also important to understand that transparency is not necessarily a synonym for absolute truth, and that in many cases it is easy to simply label something as transparent without being able to actually confirm the veracity of it. With this in mind, the results from the interview analysis indicate that the Norwegian systems of collecting and distributing revenue are fairly transparent, especially when compared to some CMOs and systems in other territories. This is not to say that transparency should not be a focus of the Norwegian CMOs, but rather that they should have little to no trouble abiding by the regulations of the Directive. This can also be seen from the presentation of the Norwegian CMOs in chapter four. Based

on statutes and distribution policies, all amounts distributed are fairly easy to understand and keep track of. It is however harder to gain a complete picture of amounts collected, and to know what the figures from annual reports specifically entail.

The second aspect of transparency is a consistent theme throughout most of the Directive, and it primarily deals with the precise, efficient and transparent sharing of information and reporting. The interesting part here is that it is a prerequisite for facilitating multi-territorial licensing and an attempt to solve the issues related to databases with inaccurate information, a topic which is problematized in chapter three under Data and the GRD and chapter one under CMOs and licensing. This is also addressed in Recitals 41 and 42, which states that CMOs should hold and maintain databases containing data that allows for the identification of works, rights and rights holders that the CMO is authorised to represent and of the territories covered by the authorisation. CMOs should take measures to protect the accuracy and integrity of the data, and they are required to update their databases continuously and without undue delay. An important point is that they must establish easily accessible procedures that enable online service providers, rights holders and other CMOs to inform them of any inaccuracy that the databases may contain in respect of works they own or control.

Articles 6(5), 13(3-6) and 26(1) follows through on the points above. Furthermore, Articles 19-22 specify a minimum of information that a CMO should make available through RRAs, to rights holders and other CMOs upon request, on whose behalf the CMO manages rights, to the public, and regarding annual transparency reports.

These are steps taken towards a more efficient, accurate and transparent environment of rights management. Considering the heavy focus of the Directive on transparency, it could result in CMOs being heavily regulated in this regard. The same cannot be said for IMEs, who are to a greater degree left out of the Directive. Therefore, it could prove beneficial in terms of transparency to have traditional CMOs that are owned by members continue to be strong players in the field.

In terms of information, these are steps taken away from the idea of centrally controlled databases such as the GRD initiative. The requirements of the Directive do tackle the issues of correcting bad data, and they deal with the lack of will towards sharing information to this end. They also place the ultimate responsibility of maintaining the accuracy of the databases

with the CMOs. In this way, we can see a clear foundation for correcting bad data, but what the Directive fails to consider is how the data is recorded into the databases in the first place, seen as there is no mention of measures aimed at preventing such errors from occurring. However, seen as the CMOs are responsible for maintaining the databases, this is necessarily something they will be forced to consider in order to effectively do so. This is also pointed out by Hofseth, who explains how a bad system of reporting and logging data makes for a lot of work correcting consequent errors.

8.2.3 Multi-territorial licensing

We are heading towards multi-territorial licensing, as Kindem says, whether we like it or not. A model where there was one society in each country managing rights for each other would perhaps have been simpler in some ways – but it is now being challenged.

Recital 40 of the Directive states that the facilitation of multi-territorial licensing is important in order to provide for a more efficient licensing process. To this end, a set of rules is provided, prescribing basic conditions for the provision by CMOs of multi-territorial collective licensing. Recital 40 also states that a CMO is able to request another organisation to represent its repertoire on a multi-territorial basis, if the CMO cannot or does not wish to fulfil the multi-territorial licensing requirements for online rights itself.

This will essentially allow online music service providers such as Spotify and Apple Music to request and be granted licenses much more efficiently than is possible with how the scheme is today. It fixes a lot of the problems described in chapter three on multi-territorial, cross border licensing, and it simplifies the licensing system in general. This is good, especially for users. An improvement of the system is also beneficial for CMOs, and therefore the rights holders, in particular because it makes it easier for rights holders to disseminate their music as widely as possible. Considering the focus of the Directive on fairness and non-discriminatory practices, it is hard to see an instance where rights holders are being denied the management of their repertoire, so the transition to a multi-territorial licensing system should have no negative effect on rights holders in this regard.

What could be an issue down the line, is that multi-territorial licensing might weaken smaller CMOs. This is because the system makes it so that eventually big CMOs or commercial IMEs

are able to make licensing deals directly with the major record labels in order to manage the most lucrative catalogue across multiple territories, possibly spanning all of Europe. The consequence of this is that smaller national CMOs are left with the remaining less lucrative catalogue, affecting administration costs and their overall economy.

8.2.4 Technology and progress

Digitalisation has already taken the world by storm, and now it is in the process of conquering the realm of rights management. Kindem states that modern technology, which in the future will make it so that CMOs are able to monitor the use of music in a much more precise way, is challenging the Norwegian model of collective management with licensing deals for a collected catalogue, for Norwegian music and the repertoire managed through RRAs, where blanket licensing has been a widely used solution⁸³.

Hofseth argues that this future is already here, that TONO should start building good digital tools and develop solutions that enable them to do business more efficiently and scalable. He thinks in particular that the way the use of music is monitored and reported on today is lacklustre, as opposed to what is possible with current technology. Hofseth reveals that only 30 percent of concerts are being reported on, which is such a low number that it should raise a few red flags as to the reason why this is not being prioritised. This means that either it is a more difficult problem to tackle than is being portrayed, or there is a lack of willingness to rectify the situation. According to Hofseth, developing the necessary tools for the job is not actually difficult, which leaves us with the latter option. It is difficult to gauge the complexity and amount of work that would lie behind such a solution, but TONO should try to find that solution.

With what is possible with current technology, Hofseth believes that TONO could have done a better job at reflecting what is actually going on in the market, through more precise reporting, as is discussed above, and monitoring based on parameters such as actual listeners and viewers instead of potential and possible. This would lead to a more precise individual distribution and more money going directly to the correct rights holders. It would however also mean that there is less money in the system available to use for other schemes intended to

⁸³ See: Blanket licensing, p. 23.

benefit the rights holders; although, this might not be such a bad thing, considering that Hofseth provides examples of distribution policies, many of which are based on established customs and old board decisions that no longer function as intended. Couple that with the mixing of cultural policy and distribution, which lies at the centre of Hofseth's argument, and you have a distribution that might not reflect the market in an adequately precise way.

Another important topic presented in the interviews is the issue of administrative costs. Sommerstad recognises the potential for improvement in this regard and reiterates that this is always a top priority of Gramo. Grøndahl adds to this by introducing a specific solution that the CMOs might adopt to that end, namely through a more closely-knit cooperation between Gramo and TONO when it comes to the collection of other public performance. This is an option that the Norwegian CMOs should consider, one that would likely reduce administrative costs. At this point there are no specific plans to make this happen but going down this road could eventually also lead to a scenario where the different rights are licenced together, which would further simplify the licensing process for both the CMOs and the users⁸⁴. It could also make it so that the Norwegian CMOs are a stronger and more unifying player in an environment characterised by increased competition and challenging circumstances.

8.2.5 Competition

What the Norwegian CMOs have can almost be considered as natural monopolies, due to concessions given by the Ministry of Culture⁸⁵. However, from what can be taken from the interviews, there is an expectation of a more competitive environment coming to Norway than there currently is, at least in the case of TONO. Kindem considers this to be a consequence of the strengthened position of Norwegian music, which is causing foreign societies to actively seek out Norwegian rights holders in the hopes of getting them on their roster. This is also facilitated by the Directive, specifically Article 5(2-8), which lays down the rights of rights holders. There is also the expectation that there will be more and more players who would like to establish themselves in Norway and are going to get concession to practice in Norway.

⁸⁴ This solution has already been adopted by several societies in other European countries, the most recent example being the joint venture to create one single company to administer the licensing of public performance by PPL and PRS for music in the UK (PRS for Music, 2018).

⁸⁵ See: Norwegian legislation, p. 33.

Hofseth takes this a step further and provides a hypothetical where a big for-profit independent management entity, as defined in Article 3 and Recital 16 of the Directive, enters the market and represents the 10 biggest rights holders, as opposed to the 30 thousand that TONO represents. In this scenario, the IME is able to collect a lot of money with a very small management fee compared to that of TONO⁸⁶. If this were to happen, it would weaken the bargaining position of TONO, and make it so that a decent amount of money would likely stop going through TONO, which would affect the overall economy of TONO and inevitably the rights holders.

The above scenario would not however put TONO out of business. Someone must necessarily manage the rights on behalf of the remaining 30 thousand. But it would definitely create a great divide between the rights holders deemed financially “worth it” by the big IME and those deemed not, both in terms of service and distribution. This would accentuate the already top-heavy music industry and be a detriment to smaller and middle-class rights holders as well as cultural diversity in general⁸⁷. It would also widen the gap between national and international repertoire, a consequence proposed by the KEA for European Affairs⁸⁸

One way to combat this could be by securing the collection of digital revenue on behalf of rights holders that have an internationally relevant catalogue. Hofseth believes that the best way of doing this is to be proactive and build services that cater towards collecting these types of incomes and holding on to those particular rights holders. He also argues that TONO needs to become a lot more hands-on when it comes to dealing with the rights holders, and that the work performed by the interest organisations should to a much greater degree fall under the job description of TONO. The competition for members has already become a challenge in a European context, and Hofseth argues that without a more personal relationship with TONO, the rights holders will have no quarrel with taking their business elsewhere. Considering the nature of traditional CMOs and the various criteria coming from national legislature such as laws on cultural diversity, e.g. the law on fees to the Norwegian Composers’ Fund⁸⁹, and

⁸⁶ This is because of the obvious fact that managing 30 thousand rights holders demands more work than managing 10, as well as the fact that the IME could choose to not deduct 10 percent in cultural funds – because why would they - thus ending up with a commission much lower than TONO could ever hope to achieve.

⁸⁷ See: Hesmondhalgh (2013), p. 14.

⁸⁸ See: Arguments against competition, p. 25.

⁸⁹ See: The Norwegian Composers’ Fund, p. 52.

European legislature, e.g. Article 5(2) on the rights of rights holders, it is hard to see how they will ever be able to compete with IMEs on price. Therefore, it might be that they will have to pursue other avenues of service, as illustrated by CISAC in chapter three under CMOs in the digital era, in order to secure lucrative rights holders.

8.3 Interest organisations

The results of the interview analysis clearly show that the work the various interest organisations perform is both relevant and important for rights holders and the Norwegian music environment in general. This is substantiated by the steady flow of rights holders interested in signing a membership with NOPA. It is in particular the cultural policy work of the interest organisations that stands out as a facilitator of cultural diversity and for safeguarding the interests of individual members. The competence found within the organisations can also be very helpful to rights holders in an environment prone to complexity, uncertainty and change. Finally, the interest organisations are able to give strength to the voice of the artists and creators in the public space, and thus amplify their influence over various aspects of the music scene, be they social, political, educational or otherwise.

In the current system, the interest organisations seem to be doing good, and they are able to maintain their strong position within the Norwegian model. It is in particular the TONO-model of distributing a percentage of the gross collected revenue as cultural funds that favours the interest organisations and provides them with a stable and predictable way of being financed. Several of the interviewees do however point out the challenges connected with taking funds off the top. The main issue with this is the fact that this is a part of the distribution that does not reach the individual distribution to the rights holders. Another issue is that this is an arrangement that has to be agreed upon through RRAs with other societies, which is a requirement of the Directive through Article 15(1). This is also an arrangement that is being regulated and scrutinised both through reciprocal agreements and in general from an international perspective. Kindem states that this can be adjusted down and argues that this is something that should be harmonised with other countries that TONO is cooperating with, and that it is unlikely that TONO will be able to continue in this regard like they have done for the last 90 years.

So, with this in mind, the absolute biggest challenge facing the interest organisations moving forward is how they are to be financed. With the prospect of diminishing collective funds making its way to the organisations – also in part due to an ever-increasing precision of individual distribution in the CMOs – the financial foundation could be in danger of disappearing. This is especially true for the interest organisations that are currently financed through collective funds coming from Gramo, who would lose their funding completely in a scenario where Gramo manages to distribute all collected revenues individually. The requirements in the Directive concerning accuracy and efficiency also substantiates this.

Grøndahl explains how this is one of the big question marks where the interest organisations are concerned, and also with regards to how the Directive might affect things once implemented. He mentions that the way Norwegian interest organisations and performers are rewarded primarily from the distribution of cultural funds might be construed as discriminatory in relation to the Directive. This however is unclear from the document analysis, and the resolution of this issue will most likely depend entirely on the interpretation and implementation of the Directive in Norway⁹⁰.

Another challenge is how to deal with the contrasting existence and purposes of the Norwegian CMOs and the interest organisations. The principal purpose of both TONO and Gramo is to redistribute as much of the money as possible to individual rights holders, which, if achieved, works against the existence of the interest organisations. Sommerstad describes this as a black and white reality that GramArt will just have to deal with when the time comes, and the purpose and aim of maximum individual distribution is also clearly stated in the statutes of GramArt. This seems more ambiguous where NOPA is concerned, with Kindem arguing that there can be divided opinions on the matters of individual versus collective distribution, seen as the cultural policy work and the services the interest organisations provide to their members is widely regarded to be important to rights holders overall. Either way, with an increased precision on the part of the CMOs' distribution follows a decreased basis for funding for the interest organisations.

⁹⁰ See: Recitals 18 and 28.

There were several mentions in the interviews of a possible future model of financing through support from the national budget, or through Arts Council Norway. This is also something that the interest organisations are looking at, alongside other possible alternatives, but whether or not the state is willing to bail out these organisations is a matter for the future. As it stands, and as long as the existence of collective funds is deemed to be inevitable, using them to finance the interest organisations seems to be a good solution that benefits the rights holders and the Norwegian music scene as a whole. If, however, the interest organisations were to disappear from the Norwegian music environment, it would be a great loss for both rights holders, cultural diversity and the music scene in general.

9 Conclusion

This study sought to describe the effects, both direct and indirect, of the implementation of the Directive on the Norwegian music scene, as well as providing a description of the circumstances surrounding the field of rights management and general music milieu in Norway. The focus of the thesis was on Norway as a case and in particular the Norwegian organisational environment. Additionally, the thesis attempted to present some views on the future of rights management and music in Norway. The main findings of the study are presented below.

Norway is a good place to be for rights holders, and Norwegian music performs very well internationally. Norway also has a diverse music environment and a pretty experimental music scene, facilitated by a well-functioning Norwegian model and cultural policy work. The Directive does not particularly deal with the matter of cultural diversity except to say that the CMOs have, and should continue to have, an important role to play in promoting the diversity of cultural expression. In Norway however, the cultural policy work is mainly performed by the interest organisations.

The Norwegian CMOs are internationally on a high level. The economy of TONO is good, and a growing one at that, which is also aided by an increased income from abroad. TONO has also experienced an influx of new members, which goes to show that there are a lot of young people wanting to live off their music.

When it comes to the way the Norwegian CMOs are governed, they are more or less in compliance with the demands of the Directive, and it won't have any notable consequences for the way they operate, apart from a handful of practical changes that will have to be made. The biggest reforms introduced by the Directive have already been implemented by them. Keeping in mind the fact that TONO and Gramo are of the most modern CMOs in the world, and that they are already in line with new EU regulation, the Directive would have had to introduce much more radical changes than it does in order to truly address the challenges found within the CMOs.

Regardless, there are challenges relating to governance structures. In TONO, one of these is the representative model of governance which could be a hindrance to the digital development of the CMO, due to the agendas of those who are elected to sit on the board of directors.

The Norwegian systems for rights management and the Norwegian CMOs are fairly transparent, and they should have little to no trouble abiding by the regulations of the Directive. Transparency in the Directive primarily deals with the precise, efficient and transparent sharing of information and reporting, which is introduced as a prerequisite for multi-territorial licensing. This is also yet another attempt to solve the problems with databases. It does directly deal with the problem of correcting bad data found inside databases, but it does not tackle the underlying problem of the creation of bad data. This is something the CMOs and the industry will have to figure out on their own.

We are heading towards multi-territorial licensing, and the Directive is doing its very best to facilitate this. The proposed system should simplify the licensing process considerably. This seems to be a good development, especially for users and rights holders controlling lucrative catalogues, but less so for smaller rights holders. Multi-territorial licensing might also end up weakening smaller national CMOs and conversely strengthen the bigger CMOs as well as big commercial IMEs, and in the process widen the gap between the most lucrative rights holders and the rest, as well as between national and international Anglo-American repertoire. Taking it one step further, one can imagine a possible future where multi-territorial licensing causes smaller national CMOs to disappear, to be replaced by bigger pan-European licensing hubs.

The Norwegian model is challenged by technology, specifically the part of it that promotes accuracy and precision. A lot of what is argued in the interviews boils down to technology and the development of digital tools, and the interview analysis suggests that with what is possible with current technology, the monitoring and reporting of the use of music is lacklustre. The reason for why this is the case is likely to be a lack of will in TONO towards developing the necessary digital tools to this end. It is also possible that there is a desire within TONO for the monitoring, reporting and distribution to remain inaccurate, seen as it provides TONO with more freedom to prioritise other models and principles of distribution over maximum individual distribution. The results from the interviews also illustrate that there can be divided opinions on the subject of collective funds, since both individual and collective distribution provide a clear value to both rights holders and society.

When it comes to the issue of administrative costs, a closer cooperation between TONO and Gramo would likely reduce these. It might also lead to a stronger and more unified Norwegian field of rights management, and it could be the start of a possible future where the different rights are licensed collectively.

Competition has already become a challenge in a European context. From the interviews, there is an expectation of more competition coming to Norway. The biggest threat in this regard is that big commercial IMEs might start challenging TONO on certain areas, and they will most likely be able to beat the traditional CMOs on price, which would draw in commercially successful rights holders. This scenario heavily benefits said rights holders, and is to the detriment of smaller ones, which would potentially lead to a very noticeable class divide. One way for TONO to combat this could be to implement measures tailored to retain successful Norwegian rights holders on their roster, and that they also begin performing some of the functions that the interest organisations are currently doing in order to better service their members.

The work that the Norwegian interest organisations do is both relevant and important for Norwegian rights holders and cultural diversity in Norway. The organisations are doing good in the Norwegian model, and it is especially the TONO-model that makes it so that they are able to operate the way they do. The absolute biggest challenge for the interest organisations is how they are to be financed in the future. There is a prospect of diminishing collective funds making its way to the organisations, and the financial foundation could be in danger of disappearing. This is especially true for the interest organisations affiliated with Gramo. One alternative solution to this is that they get financed through the state budget or Arts Council Norway instead of through the CMOs. Another, specific to the Gramo-organisations, is that they transition into a TONO-type model, which seems to be the most stable and predictable from the perspective of the interest organisations. What seems clear is that it would be a great loss to the rights holders, cultural diversity and the music environment in general if the interest organisations were forced to cease operations, unless the CMOs are willing and able to pick up the torch and carry on the good work performed by the organisations.

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Appendix

Interview 1: Ingrid Kindem

KINDEM: -nå, så dere er jo også litt tidlig ute, i forhold til å få noen klare svar da. Men jeg skal svare så godt jeg kan, og prøve så godt jeg kan med å serve dere med informasjon iallefall. Kanskje vi må ta det i flere omganger, jeg vet ikke når dere har frist for levering av oppgaven?

MATS: Det er i slutten av Mai.

KINDEM: Åja! Men da kan det hende at det er kommet mer på plass. Dette her som dere berører, det går jo også litt inn i behandlingen av åndsverkloven, og det siste jeg vet om den er at den skal behandles i stortinget 15 mai. Den er utsatt den behandlingen fra 24. April til 5. Mai. Og så får man se om CRM-direktivet griper inn i loven, og så foreløpig ikke, men det vet jo kulturdepartementet mer om. Vi får jo ikke ut all informasjonen fra de, i forhold til status i disse sakene nå. Men vi henger på de da. Men, er dere to som skriver oppgaven, er det slik?

ESPEN: Ja, eg og sitte her, Espen heite eg.

KINDEM: Ja, hei Espen! Nei, det er jo et veldig spennende tema, jeg synes det er så bra at noen tar tak i det også. Så det blir spennende å se hva dere ender opp med, og i og med at jeg er et av intervjuobjektene nå, så vil jeg gjerne ha sitatsjekk på det, fordi det er et komplekst tema. Jeg vil nødig komme med feilinformasjon da, for det kan jo hende dere spør meg om noe som jeg kanskje måtte dobbeltsjekke eller, ja, for at det ikke bare skal bli synsing, men at det skal ha rot i fakta.

MATS: Ja, men da går heilt fint, det ordna vi.

KINDEM: Ja, fint. Da må dere bare fyre løs egentlig.

MATS: Ja, me har jo sendt over slik i forhold til intervjuformat og tema og sånn så eg veit ikkje, ska me gå gjennom da ein gong til eller? Såg alt greit ut?

KINDEM: Du, jeg fikk sett litt på det - ikke så veldig mye, for det er veldig travle dager for meg - men nå tok jeg opp den mailen deres, så da har jeg de punktene foran meg; og så har jeg skrevet noen stikkord på noen av de. Så vi kan jo i grunnen holde oss til det dere sendte på mail. Jeg synes den disposisjonen så veldig fin ut jeg, med fire overordnede temaer. Det var en fin oppbygging i det, tenker jeg - nå vet ikke jeg hvor mye dere vet om dette temaet på forhånd?

MATS: Nei altså, vi har jo satt oss litt inn i det, men vi er ingen ekspertar på området, det er vi ikkje ... Så, vi kan jo berre gå i gang med første spørsmål; om du kan sei litt om korleis du tenke situasjonen er for norske rettighetshavara i dag?

KINDEM: ja ... vi har jo forvaltningsorganisasjoner som TONO og GRAMO, òg som for så vidt er ganske, hva skal vi si, gamle selskap. TONO er jo 90 år gammelt nå i 2019. Det betyr at vi har bygget det selskapet gjennom lang tid. Det er jo et non-profit-selskap, det vil si, det er ikke et kommersielt selskap, men det eies av medlemmene og styres av medlemmene, som er komponister og tekstforfattere til musikkverk. Når vi sier tekstforfattere til musikkverk så er de jo ikke romanforfattere, det skal være tekst knyttet til musikkverk. Og så er det musikkforlaget i tillegg. Det vil si, slik åndsverkloven omtaler rettighetshaverne i TONO, er jo de opphavere nå - det som er opphavsmann er blitt opphavere, og musikkforlag. Det er det, det er vi som eier TONO.

TONO skal jo forvalte rettighetene da ... både for rettighetshavere som har medlemskap i TONO, det vil si er individuelt tilknyttet TONO gjennom å signere en kontrakt, en forvaltningskontrakt, og så forvalter også TONO musikken til rettighetshavere, som er tilknyttet tilsvarende selskap faktisk over hele verden ... og da har jo TONO avtaler med disse selskapene i hvert enkelt land. Det betyr at vi har bygget opp og forvalter en veldig stor katalog med musikk. Det betyr at det blir enkelt å forholde seg til TONO fordi du har muligheten til å inngå avtaler med en stor katalog med musikk, som et resultat av 90 års historikk.

Så dét er jo veldig bra med TONO da, og det at det er et non-profit-selskap betyr jo det at det vi får inn skal i størst mulig grad ut igjen til rettighetshaverne. Det er ikke aksjeeiere inni dette selskapet som skal tjene penger på denne modellen. Det skal gå tilbake igjen til de som skaper musikken.

Ja, og de innkasserer jo vederlag fra kringkasting eller annen offentlig fremføring av musikk ... og så legger vi jo til rette for bruk av musikk i samfunnet, slik at vi tar jo en andel av den inntekten vi har, til å sørge for at vi har et grunnlag til å skape nye musikkverk. Vi må jo tenke på denne næringskjeden da, og sørge for at repertoaret hele tiden blir oppdatert ... det er jo viktig.

ESPEN: Eg lure litt på om du kan utdjupe litt om situasjonen for rettighetshavarar spesielt, om det har forbedra seg i løpet av dei siste åra, eller om det har forverra seg, eller om du trur den kjem til å bli beire?

KINDEM: Ja, vi er jo inne i en litt spennende tid for norsk musikk, for i løpet av de siste tre fire årene så ser vi at norsk musikk gjør det også veldig bra internasjonalt; og det påvirker jo tallene i TONO. Helt klart, så vi ser at inntektene fra avregning i utlandet, den øker. Dette er jo en veldig spennende situasjon, men så ser vi samtidig at tilstrømningen av medlemmer til TONO øker også, i veldig veldig stor grad, så det virker som om veldig mange unge mennesker ønsker å leve av sin musikk. De ønsker forvaltningskontrakt med TONO, og det er klart at da skal jo også det beløpet som kommer inn til TONO fordeles på flere. Men at posisjonen til norsk musikk nå er styrket gjennom de siste få årene, det er tydelig, og det gjør jo også sitt til at andre selskap er nysgjerrige på Norge. Hva skjer her, og hvordan kan de ha et såpass stort og levende og mangfoldig musikkmiljø? Det betyr også at utenlandske selskap oppsøker norske rettighetshavere i håp om å få de inn i sin stall. Det er jo en ny, ganske ny situasjon.

Så, det er vanskelig å si noe generelt om rettighetshaverne, det er jo klart at de rettighetshaverne som har musikk i bruk hele tiden gjør det veldig veldig veldig bra, og de som før kanskje hadde mesteparten av sine inntekter gjennom salg av plater, de taper jo da. Det fysiske plateselskapet har jo selvfølgelig påvirket veldig mange av de norske rettighetshaverne, og kanskje særlig her. I Norge så selger vi jo omtrent ikke CD-er lenger, vi

selger litt vinyl, men markedet her for fysiske produkter er jo nesten på et nullnivå ... mens i England og Tyskland og Frankrike og så videre, så har de faktisk et fysisk salg enda.

Så vi møtte jo den digitale utviklingen først, og det er nok ganske spesielt for særlig de skandinaviske rettighetshaverne.

MATS: Mm. Eg tenkte me skulle spørja litt om situasjonen for interesseorganisasjonar slik som NOPA og, ja, komponistforbundet ... det er jo kanskje en del av den samme utviklingen, men om du har noko å sei om det?

KINDEM: Ja, jeg kan jo først og fremst svare for NOPA. Det vi ser er at det er en veldig interesse fra rettighetshaverne i å melde seg inn i NOPA. Man ser jo det at tilstrømmingen er jevn, og den baserer seg faktisk i særlig grad på de som er andelshavere i TONO. Det syns vi er veldig bra da, at de som tjener penger inn til TONO oppsøker gruppeforeningene. Dette betyr at vi også er relevante for rettighetshavere i dag. Jeg tror rettighetshavere har behov for å ikke stå helt alene, og derfor søker seg til en organisasjon som NOPA, for der vet vi at det er en del kompetanse, og vi har jo styreplasser også i TONO sant, og da kan vi ha litt kontroll med pengestrømmen. Så det er en gledelig utvikling for oss.

Så vi synes selv at det ikke er mange tegn på at vår posisjon er svekket - men jeg tror også det handler mye om at det er en spesiell situasjon nå i forhold til åndsverkloven. Den forrige loven kom jo i 1961. Vi skulle få en ny lov i fjor. Den behandlingen ble utsatt, rett og slett fordi rettighetshaverne gjorde opprør mot det utkastet som forelå til behandling i stortinget, og i den fasen så tror jeg også at rettighetshavere har sett at gruppeforeningene arbeider veldig godt politisk. De prøver å sikre en god kulturpolitikk i Norge, så jeg tror kanskje at oppmerksomheten vi får og tilstrømmingen av medlemmer har også forankring i det.

Og kunstmusikken, det må nesten styreleder i NKF svare på, Jørgen Kalstrøm, men jeg regner med at dere kanskje intervjuer han også?

ESPEN: Det kan fort hende vi kjem til å gjer.

MATS: Ja. Skal vi sjå, vi har jo vært litt inne på det men, ka tenke du om det som vi har kalt "den norske modellen" for forvaltning av musikkrettar, med at ein har dei to store

vederlagsbyråa på toppen, og så har ein interesseorganisasjonar og ein har kulturstøtte, kulturelle midlar og forskjellig, som ein del av det? Du har jo vært litt inne på det men, har du nokre tankar omkring den modellen som vi har i Norge?

KINDEM: Ja, jeg må jo si at Norge har et mangfoldig musikkmiljø og en ganske eksperimentell musikkscene til å være et såpass lite land. Så den kombinasjonen av kollektiv forvaltning og gruppeforeninger som i hovedsak utfører det kulturpolitiske arbeidet, og en forhåpentligvis god kulturpolitikk, gjør at vi har et ganske godt og sterkt musikkmiljø i Norge. Men det er klart at den kollektive forvaltningen er utfordret gjennom et globalt digitalt marked.

Vi kommer jo tilbake til dette med konkurransen da, både nasjonalt og internasjonalt, så vi kan jo si mer om det der, men vi ser jo nå at den kollektive forvaltningen blir utfordret, og i og med at TONO setter av en andel gjennom sine vedtekter til gruppeforeningene, så er jo dette noe som er under lupen, både gjennom gjensidighetsavtaler med andre selskap, men også sånn generelt i et internasjonalt perspektiv.

Det er jo lisensiering over landegrensene ikke sant, multi-territorial lisensiering, som vi går mot, enten vi ønsker det eller ikke. Vi kunne jo ønske oss at det var étt selskap i hvert land, heh, så kunne vi forvaltet rettigheter for hverandre og utvekslet det - det er klart at det hadde vært en enkel modell, men den utfordres nå. Og det beste vi kan gjøre er å prøve å finne gode forretningsmodeller og ha selskaper som tåler innsyn, og som er styrt så godt som overhodet mulig.

ESPEN: Ja ... du snakka litt om masse forskjellige ting her egentlig. Du snakka litt om distribusjon av midlar, som er neste tema for oss. Kanskje vi skal gå litt inn på det?

KINDEM: Ja.

ESPEN: Då har vi jo ... TONO for eksempel har masse reglar og rettningslinjer for korleis disse midlane skal fordelast. Ka tenke du om den modellen? Har du noke du vil påpeike som eventuelt bra eller dårlig med den?

KINDEM: Ja, altså ... distribusjon av midlene våre er jo forankret i vedtektene, det kan jo dere også finne på TONOs websider, og jeg vil si at vi prøver å være så åpne som mulig i forhold til hvordan vi distribuerer midlene våre. Men, konkurransesituasjonen også gjør jo nå sitt til at alle selskapene vil være best, ikke sant, så kanskje noe må beholdes som en slags forretningshemmelighet også.

Så det er jo egentlig en ny situasjon, men slik det er i dag så står jo vedtektene på våre websider, så alle kan se hvordan vi fordeler midlene der. Den store fordelingsplanen skal jo vedtas på årsmøtet, og den kan bare endres gjennom vedtektsendring. Det betyr at vi for hvert år må se på vedtektene i TONO, for å se om vi bør gjøre justeringer for å stå sterkere som selskap, og i forhold til behovet til medlemmene våre. Og nå vil jo også CRM-direktivet kanskje utfordre våre vedtekter, slik at vi må justere de, etter krav som kommer gjennom et direktiv.

Men vi har jo distribusjonsmodeller som sier noe om kulturelle midler, som da brukes til å finansiere organisasjonene, og det står jo i paragraf 58. Der står det spesifikt hvor mye som går til organisasjonene, og det er jo, jeg vil si, alltid under lupen. Er det en rettferdig fordeling, er det rettferdig i forhold til antall medlemmer i foreningene ... det diskuterer vi fortløpende.

Mens distribusjonen, du kan si, det som går til gruppeforeningene, er jo også forankret i gjensidighetsavtalene vi har med selskaper fra andre land. De vet også det at opptil 1/10 av avregningen skal gå til stipender, eller det som vi kaller kulturelle midler.

Men vi kan justere det ned, og dette bør jo harmoniseres også med andre land, og hvertfall land vi samarbeider med, og det regulerer vi også gjennom gjensidighetsavtaler. Men at vi kan fortsette slik vi har gjort i 90 år, så enkelt som det er det ikke. Men, det betyr at det er krevende for oss, men vi prøver egentlig å følge dette veldig tett fra måned til måned vil jeg si.

Og vi samarbeider jo også godt med de nordiske landene; vi har jo både nordisk nettverk og europeiske nettverk og verdensomspennende nettverk, og det er klart at vi utveksler kompetanse også om de forskjellige modellene oss imellom, slik at vi egentlig ligger litt foran direktivet. Så vi er ganske rolige på det, i forhold til det direktivet som kommer til oss. Vi

syns vi er veldig godt i rute, og jeg vil påstå at TONO er et av de mest moderne drevne selskapene i verden, i forhold til rettighetshavere.

MATS: mm. Men, vi tenkte litt på, for du var jo inne på det i stad at veldig mange av dei som er andelshavarar i TONO, søker seg óg til gruppeforeningar-

KINDEM: -Ja, i hvertfall NOPA. Fordi, det ligger i kriteriene for å bli medlem i NOPA, at du må vise til inntjening, mens komponistforeningen har en annen måte å ta opp medlemmer på. De utviser mer skjønn i forhold til hva slags type musikk du lager. Mens i NOPA, så er det slik at du må vise til inntjening i TONO, og da er det regler i forhold til det, som er linket til dette vi kaller G, eller statens grunnbeløp. Dette er også omtalt i NOPAs vedtekter. Du må vise til inntjening der, enten du er tekstforfatter eller komponist, og da baserer vi opptaket i NOPA på det. Mens nå ser vi også det at veldig mange av de som søker medlemskap er andelshavere i TONO, det vil si at de har stemmerett i TONO og har høyere inntjening enn det vi egentlig forlanger for å bli medlem av NOPA.

MATS: Ja, men kan det tenkast at det kan finnast ei interessekonflikt, altså med tanke på setting av retningslinter og forvaltning av midlar i TONO, når så mange er medlemmar i NOPA samtidig som dei er andelshavarar i TONO?

KINDEM: Ja, tenker du da at det går for mye til gruppeforeningene av inntektene til TONO, er det det du tenker på?

ESPEN: Ja, egentlig, at det er styret som bestemmer kor pengane skal gå, ikkje sant? Og då er det sjølvsagt vanskelig-

KINDEM: -ja, i NOPA så, viss vi ser på NOPA så har vi jo delt det inn i to potter. Det ene er til prosjekter ikkje sant, det kan være songwriting camps og så vidare, som veldig mange kan ta del i, og mesteparten av det vi får fra TONO bruker vi jo på musikkpolitisk arbeide. Og så har vi også noen stipendordninger i NOPA, som foreløpig er forbeholdt medlemmer. Det er en ordning som vi har under lupen. Men vi er også opptatt av at det må være ordninger som sikrer at det skapes populærmusikk, og som sikrer at TONO også får inntjening da.

Men, jeg forstår spørsmålet, og ... jeg tenker slik situasjonen er nå, med en åndsverklov som skal på plass, og implementering av et CRM-direktiv, så trenger man det nettverket og den kompetansen som ligger i gruppeforeningene. Det er veldig tydelig akkurat disse årene her. Men viss man har som interesse at det skal komme mest mulig penger inn til TONO og fordeles mest mulig ut til rettighetshaverne, uten å ta hensyn til kulturpolitikk, så ser jeg jo det at det kan kanskje være delte meninger om hva som er riktig å gjøre da.

Jeg tror jo den kombinasjonen med en god kulturpolitikk gjør at det kan være et fint samspill, kanskje særlig i Norge, fordi Norge er et lite land. Vi har bare fem millioner innbyggere. Så at vi har foreninger som sikrer det kulturpolitiske arbeide, eller det musikkpolitiske arbeide, tror jeg er bra. Men, så kan man jo si, det kan jeg mene som er styreleder in NOPA og styreleder i TONO ... jeg forstår jo det. Vi som er tillitsvalgte i NOPA får jo indirekte vårt honorar gjennom TONO, så det er forståelig at spørsmålet stilles.

MATS: Ja ... eg lure på om vi skal gå vidare til å snakke litt om-

KINDEM: -jeg kan komme med et innspill til også! Man kan jo også tenke seg en modell der gruppeforeningene kan kanskje motta støtte over statsbudsjettet, eller gjennom Norsk Kulturråd for eksempel. Det er jo noe vi bør se på. Og ellers kan vi se på dette med medlemskontigent, det bidrar jo også inn til NOPAs økonomi da. Så du kan si sånn helt generelt, så dekker jo medlemskontigenten det som går ut igjen til stipender til NOPAs medlemmer. Så vi prøver egentlig å se litt nøye på hvordan vi bruker pengene, og at vi hele tiden kan forsvare det vi gjør. Våre regnskaper ligger jo åpent også, slik at alle, det vil si hvem som helst, kan gå inn og etterse hva vi bruker midlene til.

ESPEN: Ja ... eg lure på, den alternative modellen som du snakka om no, er det noke du kom på no, som di eiga meining, eller er det noko dokke snakka om ellers, innad?

KINDEM: Dette er noe vi snakker om i styret i NOPA, for å se på mulige inntektskilder, og det er jo rett og slett fordi det er helt vanlig i enten alle selskap eller foreninger, hvor man må se litt på status, og man må se litt på framtiden, og se på de muligheter som ligger der. Men vi har ikke besluttet noe der, men at vi analyserer mulighetene, det gjør vi. Og vi prøver også å søke støtte til de prosjektene vi gjør, for rett å slett å utnytte de mulighetene som ligger, ikke bare i norsk kulturpolitikk, men også i nordisk kulturpolitikk. Så vi ser jo at et prosjekt som

retter seg mot filmkomponister for eksempel, det har vi fått delfinansiert gjennom blant annet nordisk kulturfond. Så, det er jo viktig å si i denne sammenheng.

MATS: Eg lure på om vi skal gå litt vidare til å snakke om konkurranse. Som vi har vore inne på, så er det på en måte ingen reell konkurranse nasjonalt mellom vederlagsbyrå i Norge, så ka tenker du-

KINDEM: -Ja, vi ser jo egentlig noe konkurranse, men det er jo nesten å betrakte som et monopol det TONO har. Men vi har jo selskap som for eksempel epidemic sound, som prøver å etablere seg i Norge, og vi må bare forvente at det er andre selskaper som har lyst å etablere seg i Norge, og kommer til å få konsesjon til å drive i Norge. Så det beste vi kan gjøre er å prøve å være best i klassen. Rett og slett. Men vi synes jo også det at det er et non-profit-selskap er noe som taler til vår fordel, framfor at det er aksjeeiere som skal fordele et utbytte, og ta ut utbytte med gjevne mellomrom.

ESPEN: Så, den naturlige fordelene som TONO har, den tenker du er liksom litt rettferdiggjort da, på grunn av at det er et non-profit?

KINDEM: Ja, jeg tenker det, og det drives jo også av rettighetshaverne. Når vi ser på styresammensetningen, så er jo det i tråd med det som kommer i CRM-direktivet. Vi har hatt generalforsamling i mange år, og vi har en styresammensetning som er balansert, vil jeg påstå. Det er jo ikke bare folk som kommer fra gruppeforeningene som sitter i styret lenger heller, vi har jo ansatte-representanter, og vi har folk som sitter på fri plass. Så det er bare å møte opp på TONOs generalforsamling, og dersom du er andelshaver, kan du påvirke hvordan styret er sammensatt. Det mener jeg er bra.

Og dessuten har vi jo en stor katalog, som jeg nevnte tidligere, som er bygget opp gjennom 90 år. Så, det å ha en stor katalog, gjør jo det at man kan gå ét sted for å lisensiere mesteparten av repertoaret. Så det å holde katalogen samlet, det er jo noe vi ønsker oss. Det er ikke sikkert vi får til det ... men vi ønsker oss det.

ESPEN: Då har vi jo snakka litt om nasjonal konkurranse da ... men når det kjem til internasjonal konkurranse, har du nokre tankar om det?

KINDEM: Ja ... et globalt digitalt marked utfordrer jo konkurransesituasjonen, i veldig sterk grad. Man trenger jo ikke å være fysisk til stede i et land for å inngå lisensavtaler for musikk distribuert på nett, det vil si inngå lisensavtaler med aktører som Spotify, Tidal, iTunes, YouTube, evt. Facebook osv. Så det utfordrer oss, selvfølgelig. Og moderne teknologi, som gjør at vi i framtiden kan monitorere bruken av musikk mye mer presist, utfordrer jo også den norske modellen da, hvor vi har kollektiv forvaltning med lisensavtaler for en samlet katalog, ikke sant, for norsk musikk og det repertoaret som vi forvalter gjennom gjensidighetsavtaler. Så det er klart når monitoreringen i framtiden kan gjøres mer presist, at du kan måle direkte hva som er brukt, så utfordrer jo det disse kollektive avtalene. Vi ser jo det. Men viss vi drives godt, og gir tilbake til rettighetshaverne så mye som mulig av det vi får inn, så kan jo det være et alternativ til andre mer kommersielle modeller.

ESPEN: Ja ... så du tenker at det går ann å utfordre på presisheit og ... har du nokre andre stikkord enn det?

KINDEM: Ja, presis avregning, innsyn - det vil si transparens, at vi redegjør for midlene og er veldig åpne om det. Det gjelder jo også det vi gir til gruppeforeningene. Jeg tror det er veldig viktig å være åpne om det, å kunne redegjøre for det. Og viss vi kan sikre en bærekraftig forretningsmodell, og ha et arbeide hele tiden som gjør at forretningsmodellen er bærekraftig, så kan vi forsvare det vi gjør. Og det er jo veldig viktig da. Og så må vi jo tenke oss å være - er det viktig å ha et mangfoldig musikkmiljø? Vi mener jo det. Hvis det er viktig at vi har et mangfoldig musikkmiljø, at vi har et ... ja, at mange stemmer blir hørt, ikke bare de som til enhver tid ligger øverst på hitlistene.

Og vi ser jo det, hvis man ser på et felt som musikk rettet mot barn og unge, for eksempel, så ser vi det at det kan ta lang tid å etablere det. Det er musikk som må vokse gjennom tid, og kanskje er du avhengig av TV-serier eller tegnefilmer for at det skal nå ut til publikummet, ikke sant. Og filmmusikken óg, tar det jo tid både å produsere, og - til at man ser om det selges til mange andre land. Men det, når jeg nevner musikk rettet mot barn og unge, så ser vi jo eksempler på at vi har Egner, vi har Prøysen, vi må ha mye Egner og Prøysener, vi har Kaptein Sabeltann, vi har TV-serier som Elias for eksempel, vi har Jul i Blåfjell. Flere av disse TV-seriene óg gjør det jo veldig bra internasjonalt. Jeg mener Elias har solgt i over 120 land. Det er klart at det er, det har også solgt i det Kinesiske markedet nå. Og derfor så tenker vi det at det er viktig å ha et mangfoldig musikkmiljø.

Når vi ser også på TV-serier, så er det et betydelig antall norske TV-serier nå som er solgt til andre land, det gjelder både Frikjent, det gjelder Nobel for eksempel ... og der er det jo veldig mye norsk musikk. Skam er jo også en TV-serie nå som vekker betydelig interesse. Det er allerede solgt til Facebook, og det blir spennende å se om musikken følger TV-serien. Manuset i Skam er jo bygget rundt musikken, og sangtekstene. Så det er en veldig spennende utvikling, og derfor så tenker vi at det er også viktig å tenke i lange linjer i hvordan vi forvalter rettigheter.

MATS: Har du nokre meir tankar omkring det naturlige monolet for norske CMOar, som TONO? For eksempel sett i forhold til den amerikanske modellen, der det er konkurranse og fleire vederlagsbyrå som forvaltar rett?

KINDEM: Ja ... den europeiske lovgivningen er jo annerledes enn den amerikanske. Vi har jo også dette med de moralske rettighetene, eller de ideelle rettighetene, som står veldig sterkt. Retten til å bli navngitt, den er viktig. Om du ønsker å overlate de økonomiske rettighetene til forlag eller andre, det er jo forsåvidt helt greit - men de ideelle rettighetene er jo noe som er spesielt for europeisk lovgivning.

Så, det er jo også mange amerikanske låtskrivere som gjerne skulle hatt en modell som vi har i europa. Jeg tror med tanke på det markedet vi har i Norge, så er den norske modellen god. For oss. Og med innsyn og transparens i modellene, så er det godt også for de norske rettighetshaverne som opererer i et internasjonalt marked. Så det er viktig for oss å samarbeide med selskap som også driver på en god måte.

ESPEN: Ja, eg trur det egentlig er greit på det temaet der. Då har vi et tema til, og det er rett og slett CRM-direktivet. Det er jo veldig mykje som skjer, og vi er ikkje komt så veldig langt, men ka tenke du egentlig om implementeringa av ditte direktivet i Norge?

KINDEM: Jeg tror at vi allerede, gjennom måten TONO er drevet på, har implementert det meste av det som ligger i det direktivet.

Nå er jo status for det at EØS-komiteen har besluttet å innlemme direktivet. Det ble jo gjort i september 2017. Men i tillegg så skal du ha stortingets samtykke. Så det må utarbeides en

proposisjon, der stortinget blir bedt om å ta stilling til spørsmålet. Status for dette nå er at kulturdepartementet skal utarbeide et føringsnotat som skal på høring da, ikke sant, med forslag til gjennomføring av direktiv i norsk rett. Direktivet skal jo også implementeres - det er kulturdepartementet som har hovedansvaret for dette da, slik er det i Norge. Vi har også dette regelrådet på Hønefoss, som generelt ser på implementering av EU-direktiv til norsk rett, slik at det skal bli en god og forenklet implementering. De må vel også se på dette.

Og jeg tenker, når vi ser det som kommer på høring fra kulturdepartementet, så vil vi justere det vi trenger i TONO slik at det kan implementeres på en god måte. Det at vi har generalforsamling i TONO, og har hatt det i veldig mange år, og er åpne i forhold til bruk av midler, gjør at vi langt på vei har implementert direktivet - og så får vi se på dette med elektroniske fullmakter og så videre, men vi har et veldig godt samarbeid med de andre nordiske landene, vi følger tett implementeringen i de landene. De er jo medlem av EU - vi er jo et EØS-land, som gjør at vi har mer tid på oss i forhold til implementeringen.

ESPEN: Tenker du at, med tanke på at dei andre nordiske landa ligger et hakk foran oss-

KINDEM: -nei, det tenker jeg ikke. Vi er jo det norske selskapet som har hatt generalforsamling i mange år. Vi har jo ansatte-representanter i styret, og det er en balanse mellom frie seter og gruppeforeningene og så videre, så ... jeg tror vi langt på vei driver slik hensikten med direktivet var ment.

Altså, det direktivet skal gjøre da, er å harmonisere regler om bedre forvaltning, det man kaller good governance. Og så er det dette med økt åpenhet og innsyn, det man kaller i direktivet for transparency, i forvaltningsorganisasjonene. Og så er det også strenge krav til rettighetsorganisasjonenes rapportering og åpenhet om forvaltning. Så, det er jo kontrollrutiner, at det skal være på plass også, og at forvaltningen skal bli mest mulig effektiv. Ikke sant, og så er det jo en ting til òg da: direktivet skal legge til rette for å forenkle dette multi-territoriell lisensiering av musikkverk.

ESPEN: Så, det du på en måte sei, er at TONO er allereie veldig nærme å følge CRM-direktivet.

KINDEM: Ja, slik vi leser direktivet per i dag, så er vi det. Men det gjenstår å se hva kulturdepartementet legger ut til høring. Så det er vanskelig for oss å si noe om dette, det blir egentlig gjetning. Så jeg tror heller vi får komme tilbake til det. Men det er jo delt opp i fem hovedavsnitt da, så det går jo ann å lese om det. Vi følger jo jevnt dette, det ligger jo dokumenter om dette på regjeringen.no, slik at man kan følge behandlingen av direktivet. Så vi følger med der, og vi følger også med det som skjer i EU. Vi har hatt møte med de norske delegatene der nede, som også følger med i det som skjer der.

ESPEN: Det høres veldig ut som du meina at ditte kjem ikkje til å bli noke problem i alle fall. Og det er jo bra.

KINDEM: Neeei, vi ser ikke det foreløpig. Vi er godt i rute, og de justeringene vi eventuelt måtte gjøre, de er vi helt rede til å gjøre. Så, når vi kan forvente direktivet, det spørs vel om det kommer noe om det før sommeren. Så vi bare venter. Venter og ser.

Men vi har jo dialog med kulturdepatementet om dette. Og så er det jo det at det til slutt også skal ha stortingets samtykke - og når vi ser hvor hardt de jobber med åndsverkloven nå, så blir det neste CRM-direktivet. Det jobbes jo også på nordisk nivå, politisk, ikke sant. Så, det er vel egentlig det jeg kan si om dette per idag da.

MATS: Ja, eg lurte litt på om du trur direktivet kjem til å ha noko å sei for gruppeforeningane, på den måten systemet er i Norge i dag?

KINDEM: Neei, det er jo flere som har sagt det at direktivet omhandler gruppeforeningene. Slik vi fordeler midler i TONO, så er jo det forankret i gjensidighetsavtaler. Og viss gruppeforeningene blir berørt gjennom direktivet på noe vis, når vi får den høringen, så må vi bare justere det da. Det er jo ikke vanskeligere enn det - og samtidig er det, slik jeg nevnte i sted, at vi ser også på andre modeller for drift av gruppeforeningene. Det kan være måten vi tar inn medlemskontigent på, eller det kan være driftstøtte også. Så der er det kanskje at noe fades ut, og andre fades inn igjen. Men vi har det på agendaen hele tiden.

ESPEN: Ja ... eg er egentlig fornøgd eg, ka du tenker?

MATS: Ja, vi har jo egentlig fått veldig mykje informasjon. God informasjon.

KINDEM: Ja, jeg kan jo tillegge, i forhold til gruppeforeningene da, så ser vi jo det at NOPA for eksempel har jo et veldig stort tillitsvalgtapparat. Det er jo over 80 tillitsvalgte som er fordelt på over 160 verv i norsk musikkliv, og det er klart at det er veldig omfattende - og det er jo også noe vi kan se på. Det går jo også midler til disse tillitsvalgte, det er klart at tillitsvalgte skal jo også ha betalt for å bruke tiden sin på dette. Og der kan vi se, kanskje kan vi effektivisere det eller forenkle det ... burde mer av dette være statens ansvar for eksempel? Men det er noe vi ikke har konkludert med, men jeg har bare lyst å formidle at vi ser jo på det.

Og det er jo det vi bruker veldig mye av pengene vi får overført fra TONO til òg, ikke sant. Det går jo til honorering av tillitsvalgte, så jeg går jo inn for at det er kanskje det du mente i stedet med at det kan være en interessekonflikt da. Vi ser jo styret òg, styret sitt honorar sant, og styrelederens honorar er jo en direkte følge av det som er overført fra TONO, og det er helt fint at det settes under lupen. Men nivået på de honorarene, det er jo regulert gjennom TONO. Gruppeforeningene følger jo reguleringene i TONO, og nivået på styrehonorarene er jo et utslag av en lang historikk. Så det peker jo flere tiår tilbake.

Men jeg kan jo si at vi har faktisk dette med honorarer til styret og tillitsvalgte, vi har en egen komité som ser på det nå. Ja, rett og slett fordi det kom opp på generalforsamlingen i fjor, at det var ønskelig å gjøre en vurdering av det, og da har vi folk som ikke er tillitsvalgte i NOPA som ser spesielt på det nå.

ESPEN: Jaha, var det en spesiell grunn til at det kom opp i fjor, eller?

KINDEM: Nei, det var ett av våre medlemmer som stilte det spørsmålet, og det er jo viktig å fange opp det medlemmene spør om. Så det tenker vi, vi er jo til for medlemmene. Hvis medlemmene har ønske om at styret skal ta tak i problemstillinger, så skal jo selvfølgelig styret gjøre det. Og det ble besluttet da på generalforsamlingen at vi setter ned et utvalg som ser på dette, og det arbeidet er godt i gang. Jeg har faktisk hatt møte, eller jeg fikk en oppdatering idag da, og ble spurt om hva jeg tenkte om honorarnivået.

ESPEN: Finst det noke tidstabell på det, når det arbeidet skal være ferdig?

KINDEM: Ja, det må jo behandles igjen på årsmøtet da. Det var et spørsmål fra årsmøtet i fjor, og da må vi svare på det i år. Og da må det ligge en eventuell vedtektsendring, eller - dette med lønn til tillitsvalgte, det er jo alltid en sak på årsmøtet. Så det er bare helt regulær behandling. Så hvis vi gjør noe drastiske nedjusteringer der, eller - det er vel mere det, jeg tror ikke det blir noe oppjusteringer - så blir det gjort på førstkommende årsmøte. Men det er vel etter at dere da har levert denne oppgaven.

ESPEN: Ja, det blir vel det.

KINDEM: Men viss dere ser på TONOs og NOPAs websider, så ser dere jo vedtektene der, og dere kan sammenligne - så kan dere se hvordan dette henger sammen.

ESPEN: Ja, det blir interessant å sjå. Ja ... ønske du en debriefing på det vi har gått igjennom, eller ... er det greit for deg?

KINDEM: Neeei, det er greit for m- eller, jeg kan si noe generelt da, om TONO og NOPA, for jeg hører jo på spørsmålene deres at dere har tenkt litt på dette med lønn til de som er i styret, eller interessekonflikt og så videre ... fordi det som er ønskelig for både TONO og NOPA, det er å ha aktive komponister og tekstforfattere i styreverv. Omfanget av saker styret skal behandle - det gjelder både TONO og NOPA, det vil si både CRM-direktivet og åndsverkloven - det å stå seg i et internasjonalt landskap og, det er uhyre krevende. Det er veldig annerledes enn det var for ti år siden. Kanskje fem år siden også. Som jeg nevnte innledningsvis om åndsverkloven, den forrige ble behandlet i 1961, og det tar veldig mye tid. Det er ikke noe ønskelig for oss å ha organisasjoner som nesten har profesjonelle kulturpolitikere i verv. Vi ønsker fortsatt at det skal være komponister og tekstforfattere som er aktive, og det er nettopp derfor vi ser ekstra på dette nå, fordi vi tror det er veldig viktig med kunstnerstemmen i det offentlige rom. Det er nok av organisasjoner som har jurister til å tale for seg, og det ser vi et eksempel på nå i arbeidet med åndsverkloven. Vi tror det kunstneropprøret vi hadde i fjor, som fikk parkert behandlingen av åndsverkloven slik at vi kunne få en bedre åndsverklov i forhold til rettighetshaverne, det hang på at det var troverdighet i hvem som uttalte seg i den saken. Og vi så også at veldig mange av NOPAs og GramArts medlemmer, de gjorde den kampanjen sammen. De tok jo dette inn på sine egne facebooksider og var med i kampanjen og stod fram med budskap om hvor viktig loven er for

de. Det syns jeg var veldig flott å se, det at behandlingen av en åndsverklov får over 900 tusen treff, det er eksepsjonelt i et land med litt over fem millioner mennesker.

ESPEN: Ja, det er ganske spesielt faktisk ...

KINDEM: Ja. Og det handler litt om det samholdet vi har bygget, både i musikkfeltet, men også med andre kunstnerorganisasjoner i kunstnernettverket. Slik at vi har jo bygget nettverk nå gjennom mange år, slik at vi samordner aktiviteter, samordner ikke minst kunnskap, slik at vi får gode rammevilkår rundt norsk kulturliv og ikke minst norsk musikkliv da, som vi først og fremst er opptatt av.

Så ser vi jo også at musikkfeltet møtte jo de utfordringene med et globalt digitalt marked, møtte jo det først. Filmbransjen ligger jo mange år etter, og så ser du det slår fullt ut i media generelt. Avisene ikke sant, papiravisene er jo i ferd med å forsvinne. Bloggerne overtar annonsemarkedet, i forhold til den, jeg holdt på å si, den seriøse journalistikken. Så nå ser vi at det er flere andre felt som er berørt av et globalt digitalt marked. Og så kommer 3D-printerne, som gjør at alt som forefinnes som en digital oppskrift, kan jo kopieres, eventuelt også printes ut hvor som helst; og det utfordrer e-handel generelt.

Nå har ikke vi kommet inn på e-handelsdirektivet her, men heh, det berører jo også vår situasjon.

MATS: Ja, eg trur kanskje vi skal holde det utenfor, så det ikkje blir alt for masse.

KINDEM: Ja ... men det er jo som dere innledet med også, at dette er komplekst materiale, så jeg håper at jeg har vært presis nok da. Men jeg vil gjerne sikre det gjennom en runde to ... det er veldig travle dager for meg, sånn rent personlig også; så jeg flyr fra det ene møtet til det andre.

ESPEN: Ja, men det kan vi sjå på.

MATS: Det kan vi prøve å få til ja; eit oppfølgingsintervju, og selvfølgelig sitatsjekk på alt som vi har på print.

KINDEM: Ja. Og jeg tenker også dere bør intervju leder i musikkforleggerne, lederne av gruppeforeningene generelt, og kanskje også se litt på GRAMO og GramArt.

MATS: GRAMO og GramArt har vi sånn delvis avtale med. Men dei andre er heilt klart interessante ja.

KINDEM: Ja. Det kan godt hende at dere vil få noen andre betraktninger. Nå svarte jo jeg delvis i kraft av å være styreleder i TONO, men når jeg omhandler NOPA så er det jo med “styreleder-i-NOPA-hatten” på. Sånn at det er vel kanskje den sammenblandingen jeg har lyst å se litt ekstra på da. For dere er jo inne på noe her, ikke sant, med hvilken hatt har man på seg, og nå har jeg jo begge de hattene på døgnet rundt. Og jeg ser at det er noe man må vurdere fortløpende.

ESPEN: Det er klart, viss det er noke som du har sagt som du ønske å spesifisere at det kjem frå den og den hatten da, for å sei det sånn, så er det heilt greit.

KINDEM: Ja, det er mulig vi må rydde litt i det. Men det er jo helt vanlig med sitatsjekk, så jeg hadde bare lyst til å bidra med det jeg vet ihvertfall, for jeg syns det er utrolig viktig at denne oppgaven blir skrevet.

MATS: Ja, men det er bra. Vi set veldig stor pris på at du tar deg tid.

KINDEM: Ja, det skulle bare mangle. Men har dere veileder på oppgaven eller?

MATS: Ja, me har Daniel Nordgaard.

KINDEM: Jada, akkurat. Ja, han er jo kjempedyktig. Det er jo veldig mange dyktige folk på Agder altså. Jeg må bare si det. Og NOPAs og TONOs tidligere styreleder Bendik Hofseth er jo også der, han har jo veldig mye kunnskap om dette da; men særlig TONO, i og med at han gikk av som styreleder i TONO først nå til sommeren, men det er jo lenge siden han var styreleder i NOPA. Det har jo vært en i mellom der som har vært styreleder i syv år. Så jeg vil jo si at kanskje NOPAs arbeide har forandret seg veldig siden Hofseth var styreleder der. Slik jeg ser det da.

MATS: Ja, nei men, eg lure på om vi berre skal takke for intervjuet, hvis ikkje det er noko meir du ønske å tilføre, sånn utenom dei tinga vi har snakka om? Det har jo vore ganske fritt og fint det her.

ESPEN: Vi har jo hatt 4 tema her, og du kan jo berre tilføye noke til dei viss det er noko du kjeme på; ellers er det jo åpent for å snakke om andre ting òg; utanfor temaa, viss det er noko du tenker er viktig.

KINDEM: Ja, absolutt, dere må bare ta kontakt med meg igjen, og jeg følger jo med på regjeringen sine sider om behandling av direktivet og om det påvirker oss, og det kan dere jo også oppsøke selv. Jeg vet ikke om dere har de linkene jeg, men det er jo veldig nyttig.

Neimen fint, da sier vi takk til alle parter så langt, og så lykke til med oppgaven! Da hører jeg fra dere igjen.

MATS: Tusen hjertelig takk! Ha det bra.

KINDEM: Hade!

Interview 2: Bendik Hofseth

MATS: -og så gjer me sjølvsagt opptak av-

HOFSETH: -ja, det er bra det, med backup og greier.

MATS: Ja, me trengje da, så ikkje me får sånn roundtable-situasjon.

HOFSETH: Ja, hehehe.

MATS: Men ja, vi kan eigentleg berre begynde. Eg veit ikkje om du veit noke om prosjektet anna en ...

HOFSETH: -nei, ikke nok.

ESPEN: Vi får introdusere litt da.

MATS: Ja, for det er på en måte todelt, men det henge sammen. Det er både at me ser på forvaltning av norske musikkrettigheitar og korleis det er organisert med TONO og GRAMO og interesseorganisasjonar, og så er det då CRM-direktivet som me då gjer ein dokumentanalyse på.

HOFSETH: Åja, så spennende,

MATS: Ja, så får vi prøve å sjå om det får nokre konsekvensar eller endringar.

ESPEN: Ja, så det e på ein måte Norge som ein case da-

HOFSETH: -i forhold til CRM ja, mm.

MATS: Så e det jo semi-strukturert og frisnakk er heilt topp.

ESPEN: Ja, det er berre å seie akkurat det du vil - vi er egentlig mest interresert i ka du meiner om ting.

HOFSETH: Og dette er anonymt og ikke sitert hvis ikke jeg vil?

ESPEN: Ja, det får bli opp til deg da. Hvis det er noke du ikkje vil ha sagt eller noke sånt, så får du berre seie ifrå om det.

MATS: Ja, då får vi begynne med første spørsmålet, som er litt - om du kan seie noko om ka du tenker om situasjonen for norske rettighetshavarar i dag?

HOFSETH: I forhold til andre rettighetshavere i andre land, eller?

ESPEN: Ja, det òg egentlig men sånn generelt, ka du tenker om-

HOFSETH: Nei, altså, som dere har hørt om gjennom studiet her da, så er jo norske rettighetshavere ganske godt dekket, men det er jo utfordringer i TONO og GRAMO, og det er utfordringer i forhold til at Norge er et lite musikkimporterende land, som gjør at det er delvis mangelfull infrastruktur i forhold til det å ha en karrierebase her. Men dette gjelder jo mange andre land også. Det er ikke bare Norge som er i den situasjonen. Så, i forhold til andre europeiske land, så er Norge et bra sted å være for rettighetshavere. Beskyttelsen og innhentningsgraden i det norske markedet og tariffene er jo veldig høye. Så det ... hvis man først skal operere som nasjonal aktør i et nasjonalt marked, så er Norge et bra marked å være i, mener jeg.

MATS: Ja. Vi kan følge opp med situasjonen for vederlagsbyrå, som TONO og GRAMO, korleis e egentlig situasjonen for dei?

HOFSETH: For rettighetshaverne der?

MATS: Ja, men òg for dei som organisasjonar-

HOFSETH: -som selskaper, ja ... i forhold til CRM-Direktivet, eller generelt?

ESPEN: Generelt egentlig. Vi kjem meir inn på Direktivet seinare.

HOFSETH: Jeg synes at det er veldig mye bra med TONO og GRAMO, de er internasjonalt på et veldig høyt nivå. Men det er allikevel ting å gjøre der, som jeg nevnte tidligere da. Ting, stener å snu og ...

ESPEN: Har du noken eksempel på det?

HOFSETH: Ja, jeg mener jo spesielt at TONO burde være mer på ballen, i forhold til det å hente inn digitale inntekter fra andre steder, være mer proaktive, særlig på vegne av de rettighetshaverne som har en katalog som er relevant internasjonalt da. At de burde bygge ut tjenester og være mer proaktive for å hente inn sånne typer inntekter. Og jeg mener at en av grunnene til at det ikke skjer, ligger paradoksalt nok i styringsstrukturene.

Styringsstrukturene, og dette kommer vi inn på i CRM-Direktivet, men ... CRM-Direktivet går ikke langt nok da, til å fange opp den norske situasjonen. Men de som sitter som styremedlemmer i TONO, de har ofte et "bakland", de representerer en organisasjon som har en kulturpolitisk interesse av TONO, og det gjør at TONO stoppes fra å bli så digitalt som det burde blitt.

ESPEN: Når du seie at CRM-Direktivet ikkje går langt nok, ka spesifikt meiner du då?

HOFSETH: Nei jeg tror, det av min erfaring ut i fra de samtalene som har vært med Departementet og lovgiver, er at det ikke kommer til å få noe konsekvenser. Når jeg var styreleder i TONO så gjorde vi jo en adopsjon, vi lagde en kvasi-åpen generalforsamling, som velger styremedlemmer og som er mer representativ. Men jeg mener at ut ifra det vi vet i dag, og ut ifra den takten som markedet endrer seg i, så burde det vært mer radikale endringer enn det blir.

ESPEN: Heilt spesifikt, ka slags endringar då?

HOFSETH: Jeg mener at denne representative organiseringen, hvor man velges inn i TONOs styre som representant for en "eierorganisasjon", eller ja, i gåseøyne ... som representant for en interesseorganisasjon da. Den kan ikke fortsette, fordi de styremedlemmene representerer mer den organisasjonen enn de representerer TONO. Så, TONO får ikke det styret de fortjener, og dermed så klarer de ikke å utvikle seg raskt nok.

ESPEN: Mm ... fordi at dei andre organisasjonane har andre agenda?

HOFSETH: De har spesifikke interesser. Mm.

ESPEN: Så du meina at det kanskje er en interessekonflikt der?

HOFSETH: Det er det absolutt. Fordi det det digitale fordrer er at du ser på musikk som likt. Ikke sant, du kan ikke legge inn faktorer eller vektning av ulike repertoar i en digital sammenheng; du kan gjøre det innen distribusjon, men du kan ikke gjøre det i en ... det er denne kryss-subsidieringen, det er denne sammenblandingen av kulturpolitikk og avregning som TONO gjør; den må slutte, mener jeg, for at TONO skal bli mer attraktivt, og mer verdifullt for medlemmene. Men det er motstand mot å skille de to områdene, fordi noen av eierne er usikre på eller føler at de vil ikke sitte med kulturpolitiske midler, med stipender, de vil sitte med tilgang til avregningen, fordi det oppfatter de som sikrere - og det gjør at reformene tar for lang tid, og reformene kommer for seint.

MATS: Ja ... så du er inne på litt sånn som at speletid på P2 er meir verdt-

HOFSETH: -det kan man jo godt gjøre i distribusjon, men jeg er mer opptatt av for eksempel konsertsiden da, at for eksempel musikkhøyskolen får 2.6 millioner i utbetaling, når de betaler inn 30 tusen kroner i vederlag. Og så ser man på hva som faktisk spilles på musikkhøyskolen, det skulle jo være da en beskyttet arena, eller en subsidiert arena for samtidsmusikk, men det er ikke samtidsmusikk som spilles på musikkhøyskolen. Det er frijazz. Så den ordningen treffer ikke. Men motvilligheten mot å endre en sånn ordning, og heller si, "vet du hva, det hadde vært mye bedre om den samtidskomponisten fikk et substansielt stipend fra TONO, heller enn at vi lager en kvasi-ordning so ikke treffer". Den viljen til å bruke sunn fornuft, og for å se at det ville være i TONOs beste faktisk at vi gjorde reformer her; for dette er ikke bra for omdømmet til TONO. Ikke sant, i et markedsperspektiv.

Sånne eksempler er det mange av, og da setter man seg bare på sin høye hest og sier "nei, disse reformene får du ikke gjennom, for jeg kan ikke gå tilbake til mitt bakland og fortelle dette." Fordi, de vil ha forutsigbarhet, og "da får heller ordningen bare treffe feil."

Hvis vi kunne skilt, ikke sant, med konvergens av kringkasting, og med stadig bedre digitale verktøy, både på input-siden, altså at man kan rapportere konserter mer nøyaktig, og at vi kan monitorere markedet mer nøyaktig, så kan ikke sånn praksis fortsette. Men fordi man vil at den praksisen skal fortsette, så nekter man å utvikle de verktøyene som gjør at man kan få et bedre og mer transparent marked, gjennomskinnelig marked.

ESPEN: Har du noken, kanskje idéar om korleis det ideelt sett burde være?

HOFSETH: Ett grep er jo at TONO utsetter seg selv for et reelt demokrati da, og at også GRAMO gjør det. Det vil bli bråkete, og det vil bli vanskelig, hvertfall til å begynne med, men det vil gjøre at medlemmene føler etterhvert en nærhet, og at de vil engasjere seg. Det de gjør nå er at de engasjerer seg i gruppeforeningen eller i organisasjonen sin, og gruppeforeningene stenger også TONO fra å ha direkte tilgang til medlemmene, TONO burde jo jobbe mye tettere mot medlemmene, fordi konkurransen om medlemmene kommer til å bli en utfordring i europeisk sammenheng, ganske snart, det er det jo allerede. Disse nye unge som selger musikk internasjonalt, Alan Walker og Kygo og de, de shopper beste deal, ikke sant. Og hvis man ikke da har et forhold til organisasjonen, hvis ikke man ikke bruke “soft-power” for å liksom ha intimitet og tilgang, så blir det vanskelig. Det stoppes de fra å gjøre, fordi eierorganisasjonene, eller gruppeforeningene sier “den nærheten, det å kurse medlemmer, det å gi de service, det å gi de informasjon om hvordan de kan nå fram som medlemmer, den er det vi som tar oss av.” Og den er det TONO som burde tatt seg av. Og da ville TONO blitt en mye mer dynamisk organisasjon, med et engasjert demokrati. Det kommer til å ta litt tid, men jeg mener at man burde gjort den øvelsen, og det er det egentlig som ligger til grunn for CRM-Direktivet óg, men de går ikke så langt da.

ESPEN: Men, hvis eg var en interesseorganisasjon, så ville eg kanskje sagt at det er på en måte det samme, at eg gjer mitt på vegne av TONO, og TONO er meg, og dei andre organisasjonane. Så eg ser ikkje heilt forskjellen?

HOFSETH: Forskjellen er at det sitter styremedlemmer i TONO som ikke klarer å balansere hattene. I det ene øyeblikket så vil de TONOs beste, og i det neste så vil de organisasjonen de representerer sitt beste. Så det krever helt spesielle mennesker, og de menneskene er vanskelig å oppdrive.

MATS: Ja, for du har jo på en måte svart på det, men vi har jo et tema som me kallar “den norske modellen”, som jo er med to store vederlagsbyrå og interesseorganisasjonar, kulturstøtte og kulturelle midlar. Du var jo inne på korleis modellen egentlig fungerer idag.

ESPEN: Ja, og når du snakkar om kulturstøtte og stipend osv., trur du det er en ting som kjem til å fungere i framtida?

HOFSETH: Jeg tror kanskje ikke vi får noe valg. Hvis vi skal overleve så tenker jeg at det må bli sånn, for vi skal kunne skalere, viss vi skal kunne ... jeg tror at TONO er litt sånn strutsen i sanda liksom, i forhold til hvor digital virkeligheten er i ferd med å bli. Og da må de bygge gode digitale verktøy selv, både på backoffice-siden og frontoffice-siden. De må ha gode løsninger som gjør at de kan drive mer effektivt og mer skalerbart; og de løsningene kommer ikke så lenge striden står om småpenger og kryss-subsidiering av avregning.

ESPEN: Når det kjem til sånne ... metodane for å digitalisere måten å hente pengar på [VERKTØY], korleis trur du TONO ligge ann i forhold til andre organisasjonar i utlandet?

HOFSETH: TONO har mulighet for å bli et kjempegodt og dynamisk ... men det mangler litt mot. Det mangler litt innsats, og fokuset er et annet sted. Det har vært veldig mye fokus på back-office løsninger hos selskaper i Europa, og veldig lite på front-office løsninger. Med front-office løsninger mener jeg da både digitale løsninger rettet mot medlemmene, men også mot de som lisensierer musikk, altså kundene. Hvis medlemmene hadde hatt en applikasjon som var enkel, hvor din repertoarliste lå, så kunne det tatt to minutter å sende en anmeldelse fra konserter, i dag er det bare 30% av konsertene som anmeldes. Det burde vært enklere å anmelde verk, og det burde vært enklere å anmelde verk riktig, sånn at man slipper å få ... altså, du kan si, så lenge man bruker småpenger på å få anmeldt verk inn, så er man nødt til å bruke store penger på back-office siden for å rette opp skaden når den først er gjort. Sånne eksempler er det mange av ... det mangler verktøy for å gå inn på YouTube internasjonalt, og se hvor norske verk brukes, det er ikke veldig vanskelig å utvikle sånne verktøy. Men det er det ikke vilje til. Det er ikke mot til det. Og det er fokus et annet sted.

ESPEN: Men, det ligge jo litt i CRM-Direktivet at dei skal pushe litt på at dei skal utvikle sånne ting. Trur du det kjem til å hjelpe?

HOFSETH: Ja, jeg tror det kommer til å hjelpe, for det sette oppmerksomhet på det. Jeg ønsker direktivet velkommen, men jeg synes ikke det går langt nok. Det er min personlige mening.

ESPEN: Er det spesielt for det punktet, eller er det andre punkt óg du tenker dei burde gått lenger med?

HOFSETH: Det jeg prøvde å argumentere for nå er at, det CRM-Direktivet er mest opptatt av er jo styringsformer og transparens, accountability, governance, og det er de problemene TONO har. Det er de som står i veien for å utvikle de verktøyene som trengs. Det peker jo CRM-Direktivet på óg, at det er en sammenheng mellom styring og hva man kan få gjort da. Du må forankre sånne strategier i et styre, og da må det styre være et styre som er opptatt av TONOs ve og vel; ikke av kulturpolitiske agendaer. Så dette er en kritikk av den representative modellen da, som både GRAMO og TONO har.

ESPEN: Ja. Ka du tenker vi skal gå vidare med MATS? Vi har jo hoppa litt fram og tilbake her, men.

MATS: Kanskje vi skal gå litt til distribusjon? Ja, du har jo vore litt inne på det og men. Distribusjonsmodellane i TONO og GRAMO - om du har nokre tankar omkring dei er, og korleis det blir bestemt i vedtekter og årsmøte?

ESPEN: Synes du det er bra nok, eller syns du det er forbedringspotensiale, når det kjem til accuracy og korleis det blir bestemt, og kem som bestemme det osv.?

HOFSETH: Ja, det er jo veldig mange små stener da, eller små tuer, som kan velte store lass, som ligger i - nå kjenner jeg TONO best, jeg kjenner ikke GRAMO så godt - som ligger inne i TONOs avregninger, som er basert på hevd, og som er basert på gamle styreavgjørelser, “ja vi gjør det sånn, vi tar penger derifra, og så legger vi det over der”, for eksempel som du nevnte med P2, at P2 har like mye penger som P1, det er jo ikke noe fornuft i det. Du kan argumentere for det, du kan si at “jo, det er potensielt like mange lyttere og seere”, men det handler ikke om det, det handler om at der var det en del mangfoldsrepertoar. Og jeg mener at det mangfoldsrepertoaret, fordi nå er det nesten ikke noe musikk i P2 ikke sant. Der er riktignok noe mangfoldsrepertoar, men det er ikke det mangfoldsrepertoaret som man ønsket

å treffe da, med den ordningen. Man ønsket å treffe jazzmusikk og samtidsmusikk og sånn, men pengene går jo til sibelius sine arvinger og, ikke sant, det går til andre, óg til pop-musikk, for det spilles masse pop-musikk på P2. Så ordningen treffer ikke sånn som den var tenkt, men den er ikke revidert. Og dette ser ikke bra ut. Dette er vanskelig å forklare, både til TONOs egne medlemmer, men ikke minst til søsterselskaper og til allmennheten da. Det svekker TONOs kredibilitet betydelig, det svekker TONOs evne til å være en sterk aktør, og en samlende aktør i det norske markedet. Det svekker omdømmet. Det tåler ikke dagens lys. Og med dagen mener jeg i dag.

MATS: Så, du tenker kanskje at istadenfor å differansiere mellom ... sånn som man gjer idag, skulle ein heller hatt éin sats for lik type offentlig framføring?

HOFSETH: Ja, det jeg mener personlig er at man bør se på det hvertfall, om ikke eksekvere, er jo å se på å bringe inn et parameter som faktiske lyttere og seere da. Ikke sant, for alle de tallene har man jo. At man ikke lenger leker med pengene, og at den kulturpolitiske agendaen står øverst, men at man faktisk prøver å ha en avregning som gjenspeiler det som faktisk skjer i markedet. Det tror jeg er viktig, og at man så heller justerer det utenfor avregningen. At man justerer det i form av kulturpolitiske midler eller stipender, fordi TONO kunne ha gjort bedre i forhold til det å gjenspeile markedet.

ESPEN: Det her burde vi kanskje ha visst, men all den statistikken som dei bruka til å bestemme det her, e den tilgjengelig?

HOFSETH: Nei, ikke offentlig tilgjengelig, men statistikken om musikkbruk og monitorering av radiostasjoner, det er jo i full gang. Det er jo ikke noen hemmelighet, hvor mange som hører på en sang på P1 og hvor mange som hører på en sang på P2, det er jo ikke noe vanskelig å finne ut, til enhver tid.

ESPEN: Men det dei velger å bruke-

HOFSETH: Ja, de har lagt det parameteret til side, de bruker det ikke i avregningen. De bruker bare potensielle, mulige, fordi man når fram til så og så mange, og da er det ikke TONOs jobb å si noe om hvem som skrur på radioapparatet på hvilken stasjon, sier TONO. Men det mener jeg det er.

ESPEN: Skal vi gå til neste tema, konkurranse? Det er jo ingen reell konkurranse nasjonalt i Norge. Trur du det kjem til å forandre seg? Det er jo noken små aktørar som prøva seg.

HOFSETH: Ja altså, dette området er jo litt sånn “up for grabs”. Hvis en internasjonal aktør som tenker profitt går inn her og representerer 10 rettighetshavere, ikke 30 tusen som TONO gjør, så er det klart at de kan gjøre en kjempe clean slate. Hvis Google eller, ja, et for-profit-selskap hopper inn og representerer Bruce Springsteen, Madonna, Elton John blablabla, de 10 største artistene, så er det klart at de ville kunne hente masse penger i markedet, på en enkel måte. De kunne banke på døra til TONO og si “vet du hva, vi vet at så mange hørte denne sangen med Elton John, vi vet at så mange hørte den konserten med Bruce Springsteen, og her er regningen. Dette skylder dere oss.” Det er ikke noe utenkelig at noe sånt skjer, at rettighetshaverne overdrar rettighetene til en agent eller et selskap som tenker profitt; og det selskapet kan jo da ha 5% av inntektene, eller 2% av inntektene. Det er mye lavere enn den kommisjonen som TONO har på 14%. Og i tillegg til det så trekkes det 10% kulturelle midler, så i realiteten så er det høyere. Og de trekkes på bruttoavregning. Så, TONO har i prinsippet en kommisjon som er nærmere 20-25% da, og norsk komponistfond, og så legger du til og legger til ... så det er klart at forskjellen på 25% og 2%/2.5% er ganske stor når du tjener store penger i det norske markedet. Så det er ikke så vanskelig å se for seg at det kan skje ting her.

ESPEN: Den modellen med kulturelle midlar som du snakka om, 10%, den er jo ganske forankra i det europeiske systemet da, med alle avtalar som alle organisasjonane har, men trur du den kjem til å holde framover? Hvis det skjer det du sei no, at for eksempel Google bestemmer seg for å innta markedet?

HOFSETH: Ja, jeg tror den kommer til å holde, og det er fordi Franske og Tyske og sentraleuropeiske selskaper er veldig veldig opptatt av dette, og de er veldig avhengige av den inntekten, du kan tenke Tyskland, som er et enormt marked, men som har veldig lite reportoar som går utenfor den tyskspråklige sonen da, de er veldig interessert i å trekke 10%. Problemet med TONO er jo at TONO trekker mer enn 10%, for vi har også loven om norsk komponistfond. Så da trekker du først halvannen prosent av brutto inntjening, og så kommer utgiftene, så trekker du 10% på distribusjonen. Så TONO opererer i en gråsoner, i forhold til hvor mye de trekker.

ESPEN: Det og er vel forankra i avtala reknar eg med?

HOFSETH: Det er lov. Og det er også det TONO gjemmer seg bak, de sier at dette er en lov, som kommer på 60-tallet, som departementet har påtvunget de, så de kan ikke gjøre noe med det, men i forhold til regelverket, det internasjonale regelverket, så tar de jo da halvannen prosent av brutto, som i realiteten da er, ja, mer da.

ESPEN: Men det kan jo, for eksempel, GEMA eller kem som helst, dei kan jo sei nei til det? I avtalane?

HOFSETH: Nei, det kan de ikke. Så det trekkes mer enn 10%.

ESPEN: Koffor kan ikkje dei det?

HOFSETH: Jo, fordi TONO hevder at det er en annen affære enn CISAC-10%ene. Men hvis det blir en rettssak om det, hvis det blir problematisert, hvis GEMA går inn og sier “vi vil ha bare 10%, og ikke de fondspengene, for det er også en del av de pengene som blir igjen i Norge” ... for hvis det skal bli igjen 10% totalt, ikke sant, da ville TONO miste mye kulturelle midler.

ESPEN: Ja ... e det noke meir du vil sei rundt konkurranse, internasjonalt, nasjonalt?

HOFSETH: Nei, det er interessant det der, og det er jo åpent, EU har jo basket med det lenge, ikke sant. Er det naturlige monopoler, er det hensiktsmessig at det er monopoler i markedene? Det er jo på en måte gode argumenter for, fordi det gjør lisensieringen veldig mye enklere for brukerne. Men forleggerne har jo problematisert det, og på online-området så er det jo nå fragmentering av rettigheter, så TONO har veldig lite rettigheter på online-området; forleggerne har trukket ut, PRS har trukket ut, STIM, det svenske selskapet, og disse har trukket ut rettighetene. Så når TONO går til Spotify for å framforhandle en avtale i Norge, så er de jo nokså “wing-clipped” ikke sant, de er jo bare en av mange, og de har ikke det mest attraktive repertoaret. Det er et problem. Hvordan dette løses er jo, i vårt tilfelle i Norge, Brüssel-avhengig da.

[BENDIKS TELEFON RINGER, SAMTALE KUTTET UT]

ESPEN: Har du tid til kjapt å snakke litt om Direktivet?

HOFSETH: Ja ja.

ESPEN: Eg lure på ka du tenker om implementering av Direktivet i Norge? Trur du det blir fullstendig implementert?

HOFSETH: Nei, det tror - eller, jo, det kommer til å bli implementert, men det kommer ikke til å medføre noen krav fra departementet om endringer, som det har gjort i Sverige. Der har det jo fått konsekvenser. Det er det jeg har hørt ihvertfall, så får vi se.

ESPEN: Ja, det e jo berre synsing sjølvsagt, men du trur altså det kjem til å bli annerledes enn det har blitt i Sverige osv.?

HOFSETH: Ja, både i Sverige og Danmark, og også i Finland, så har de vert hardere da. Men vi gjorde jo disse reformene som sagt tidlig i TONO, og da var vi langt framme. Nå er det en blanding av representativt demokrati og åpent demokrati, og det holder nok for CRM-Direktivet.

ESPEN: Så TONO kjem til å sei at det er bra nok-

HOFSETH: Ja, departementet kommer til å si at det er bra nok, det som TONO har. Og da tror jeg ikke politikerne kommer til å interessere seg for det.

MATS: Så det kjem sånn i praksis ikkje til å ha noke særlige følger ...

HOFSETH: Nei, jeg tror ikke det.

ESPEN: Ja ... men då har vi vel egentlig ikkje meir spørsmål enn det.

MATS: Nei, men vi kan jo berre ta, sjøl om du har vore inne på det, om du kan trekke fram det som e positivt og eventuelt negativt med CRM-Direktivet?

HOFSETH: Ja, altså, jeg synes jo det er positivt jeg da, fordi jeg mener at disse reformene trengs. Og de trengs enda mer i Hellas, Portugal og Italia enn i Norge. Men vi trenger de her óg, fordi det må sees i sammenheng med digitaliseringen, og den går mye mye raskere enn det virker som fra styrerommet til TONO altså. Det skjer ting i andre markeder som kommer til å få betydning i Europa, i Asia, Amerika og ... så, hvor på en måte, disse avtalelisensene, eller blanket licensing er mindre og mindre i bruk da. Folk vil ha lisensiering av noe repertoar til å bruke i en spesiell sammenheng.

ESPEN: Trur du det kjem til å forsvinne heilt?

HOFSETH: Jeg tror ikke det kommer til å forsvinne helt, så lenge vi har en allmennkringkaster og universitetssektor og sånne ting da. Men jeg tror det er færre og færre områder på det digitale hvor de er relevante. Du trenger ikke avtalelisens hvis du har en website, hvor du skal spille din egen musikk for eksempel. Så her må man lage nye verktøy da. Og dette presser på, ikke sant, i forhold til hvordan organisasjonen er satt sammen, hvilke verktøy de har utviklet og hvor den står i markedet. Så TONO og GRAMO er i ferd med å bli litt ... nå sier jeg litt anakronistiske. De er litt sånn etterlevninger av en gammel offline tid da. Det er det jeg er redd for.

Jeg synes det er veldig spennende at dere gjør denne oppgaven da. Jeg håper dere kan klare å finne ut litt i Sverige, om hva som har skjedd der, for der har jo Direktivet hatt effekt. Det har skjedd ting i STIM, og jeg tror også de andre selskapene som er direkte ... en konsekvens av dette, jeg vet ikke om dere følger med på nobelspris-bråket som er nå? Med Svenske Akademiet? Svenskene har veldig veldig konservative styringsformer, og veldig ofte lukkede organisasjoner, som ikke er så åpne og lette å få innsyn i da. Det er interessant å se Nobelpris og akademi-diskusjonen, de har jo også verdi for milliarder, eiendommer ... det er en svær organisasjon. Også i forbindelse med den #metoo-greia så har det skjedd ting med noen medlemmer, og det er en styreleder som beskytter, og alt skal være lukka og alt skal være hemmelig. Litt sånn har STIM fungert óg. De har ikke villet fortelle andre om sin disposisjon og sin strategi og hva de gjør. De har konkurrert uten å dele informasjon, og det har jo ikke vært en Nordisk tradisjon i det hele tatt, vi har samarbeidet og vært åpne med hverandre, for å utvikle i takt da. Så det er jo derfor Direktivet kommer, for å tvinge selskapene til å samarbeide om utviklingen, ikke ... at utviklingen kommer raskere.

MATS: Ja, det er jo interessant. For en oppleve jo sånn som TONO som rimelig åpne, iallefall med hensikt til årsrapportart og forskjellig. Det meste kjem fram, sjøl om det er ikkje alt en forstår i rekneskapi.

HOFSETH: Du skal ikke alltid dømme en bok på omslaget, ikke sant.

Interview 3: Harald Sommerstad

ESPEN: Ja

MATS: Mhm.

ESPEN: Er du klar for å begynne då?

SOMMERSTAD: Hva sier du?

ESPEN: Er du klar for å begynne?

SOMMERSTAD: Ja. Jeg tenkte jeg skulle bare finne den derre e-posten deres.

ESPEN: Mhm.

SOMMERSTAD: Tema er norske... Ja. Men det er greit. Vi får bare snakke fritt.

ESPEN: Mhm.

SOMMERSTAD: Yes!

MATS: Ja. Då skal me... Det står jo ein del info der om kva prosjektet handlar om og ... kva me prøver å undersøka.

SOMMERSTAD: Ja.

MATS: So eg lurar på, viss det er greitt for deg, so går me berre i gang med det første spørsmålet me har?

SOMMERSTAD: Sett i gang!

MATS: Ja. Då lurar me på om du kan sei litt om kva du tenker om situasjonen for norske rettighetshavarar i dag?

SOMMERSTAD: Eeh. Tenker dere nå på.. Altså, for det er... Rettighetshavere er både selskap da, utøvere og, og låtskrivere.

MATS: Mhm.

SOMMERSTAD: Du tenker på alle dem?

ESPEN: Ja, generelt alle sammen egentlig.

SOMMERSTAD: Ja... Jeg må bare spørre også: Spør dere meg som GramArt-representant, som artist eller Gramo-representant, eller hva?

MATS: Ja, altså. Det er vel først og fremst GramArt...

SOMMERSTAD: Ja. Okei. Ja. Men, sånn som artist-representant...

MATS: Men du har jo litt... Du har jo litt bredde, so...

SOMMERSTAD: Ja. Nei, altså ... Situasjonen for rettighetshavere ... Altså, i forhold til vederlagsbyråene så ser jeg på en måte ikke sånn store problemer, at det har skjedd noen endringer ... Vi har jo, sånn generelt i bransjen så snakker man om såkalt value-gap og sånn, og der er jo vederlagsbyråene.. Altså, TONO, for eksempel, har jo en avtale med Google, altså Youtube, for eksempel, men ikke med noen andre, så de er jo litt sentrale der, men... Men der er det jo ikke så veldig mye som kommer inn i forhold til kanskje hva man mener at man har krav på da. Så, sånn som Youtube, som verdens største musikkkanal...

Men i forhold til vederlagsbyråene så, så klarer ikke jeg tenke på sånn veldig store endringer, store problemer egentlig. Dere kan kanskje spesifisere? Hvis det er noe spesifikt dere tenker på?

ESPEN: Nei, vi tenker egentlig ikkje so veldig spesifikt om noko. Egentlig mest ute etter kva du tenker om ting og... Ja, kva du kjem på som du synst er viktig på en måte.

SOMMERSTAD: -i forhold til CRM-direktivet og åpenhet og transparens og sånn for eksempel, så ... Som låtskriver så er det i rimelig grad transparent. Man på en måte ser hvor pengene kommer fra, [UFORSTÅELEGE ORD] og sånn, men det... Kan ikke legge det på TONO.

ESPEN: Mhm.

SOMMERSTAD: Altså, da tenker jeg på utenlandsinntekter. Innlandsinntekter så kommer det ganske kjapt og ganske oversiktlig.

ESPEN: Mhm.

SOMMERSTAD: I den grad vi klarer å rapportere all mulig bruk da. Det er en del bruk som blir rapportert ganske spesifikt, for eksempel NRK - det gjelder både Gramo og TONO - hvor man ser liksom antall spilleminutter, hvilken kanal og alt mulig. Og så... Men selvfølgelig [UFORSTÅELEGE ORD] det som vi kaller for annen offentlig fremføring, som er på en måte spilling i frisørsalonger og sånn, så bruker de helt andre nøkler... eller da bruker de egentlig samme nøkkel, selv om det kanskje ikke er helt reelt.

ESPEN: Ja.

SOMMERSTAD: Det er i, er i endring altså, men som rettighetshaver så føler jeg vel at systemene er rimelig transparente i Norge.

ESPEN: Ja. Du snakka jo litt om dissa nøklane som du nettopp nevnte. Har du noko meir å seia om dei?

SOMMERSTAD: Altså ... Når jeg sa nøklene så mente jeg på en måte rapporteringen - hvordan de er brukt, og den informasjonen du får fra vederlagsbyråene eller... og... forvaltningsorganisasjonen. Vederlagsbyrået Gramo, forvaltningsorganisasjonen TONO.

ESPEN: Ja, riktig.

SOMMERSTAD: Og den er transparent og sånn ... Og så er det fordelingsnøkler som de sitter med. Altså , både TONO og Gramo har... I TONO så er det fordelt etter hva de selv legger inn som låtskrivere. Så den nøkkelen er jo grei.

ESPEN: Mhm.

SOMMERSTAD: Sånn i forhold til de avtalene man inngår da, internt blant låtskrivere og kanskje også ... med tredjeparter som publishingselskaper. Det er på en måte hvertfall... Det er vi som legger inn på en måte. Eller, eller publishingselskapet da med mindre vi ... sier at det ikke er reelt. Men, Gramo så er det en litt annen nøkkel for der har man sånn poengtabell, som den kalles, som er litt sånn komplisert å forklare.

Men den, på en måte, ser på antall artister på en innspilling. Og hvilken type artist du er - om du er hovedartist eller om du er innleid musiker, for eksempel. Den er nok ikke så transparent, men... Rett og slett for, fordi poengfordelinga er litt forskjellig, men det er ikke sånn veldig stor... Altså personlig da, så er ikke jeg sånn veldig mye personlig i mot den poeng...systemet som er.

ESPEN: Mhm.

SOMMERSTAD: Jeg har ihvertfall ikke reagert noe på det før.

ESPEN: Nei. Du synst den fungerer greit?

SOMMERSTAD: Ja. Den er [UFORSTÅLEGE ORD], den gjør. Den er nok litt [UFORSTÅELEG ORD] på en tid hvor man har ivaretatt sånne filharmonikere og session-musikere, på en måte. Slik at de får noe mer ... vederlag enn man ville fått hvis man hadde hatt en ren sånn prosentfordeling, på en måte.

ESPEN: Ja, skjønner.

SOMMERSTAD: Eller at man hadde ... Dette er litt sånn komplisert å gå inn på, tror jeg. Jeg har hvertfall, altså sånn personlig forhold til poengtabellen i Gramo så syns jeg den i og for seg per i dag er grei.

ESPEN: Mhm. Men du snakka litt om at det var i endring?

SOMMERSTAD: Jeg er jo, er jo både [UFORSTÅELEGE ORD] og så noen ganger er jeg session-musiker.

ESPEN: Men du snakka litt om at det var i endring, det systemet?

SOMMERSTAD: Nei ... Ja. Nei, rapporteringen. Ikke poengsystemet-

ESPEN: Ja, okey.

SOMMERSTAD: -per i dag. Rapporteringen er i endring fordi Gramos, og TONOs, mål er på en måte å få inn penger for det som blir spilt, og sende pengene videre til den rettighetshaver som er brukt. Og så har vel ... Og så er det sånn at man får jo aldri helt korrekte data, og da [UFORSTÅELEGE ORD] at da måtte man i gåseøyne [UFORSTÅELEGE ORD] og antageligvis hørt på hva de spiller - hver dag. NRK rapporterer faktisk hva de spiller hver dag på minuttbasis, sånn tre minutter med "Supergirl" av [UFORSTÅELEG NAMN] liksom til Gramo, mens en frisørsalong ikke rapporterer sånn. Men der ... har vi allerede inngått, eller Gramo da, har inngått avtale med, med lokalradioer, sånn at rapporteringer, bedre rapportering skal komme derfra. Og så ser man også på om man kan få inn informasjon om hva slags kilder for eksempel en frisørsalong bruker. Og hvis en frisørsalong for eksempel bruker NRK og P4, så kan man ... Og noen andre bruker Spotify, så kan man på en måte ... i stedet for å kreve rapportering da, som blir for mye stor arbeidsbyrde for en sånn frisørsalong som betaler 2000 i året, men så kan man kanskje bruke andre ... annen statistikk da, for å fordele riktigere i stedet for å bare bruke NRK generelt.

ESPEN: Mhm.

SOMMERSTAD: Man liksom ser at, okey, disse, så og så mange frisørsalonger bruker den og den spillelisten i fra Spotify da forholder vi oss til den spillelisten fra Spotify og fordeler. Slik at de aktørene som er på den spillelisten, de dataene har vi i Gramos database. Så da får vi riktigere, på en måte, fordeling av det som faktisk blir spilt. Såå, jeg vet ikke hvordan

TONO jobber med det, men det er på en måte målet - at, er du spilt så skal du også få pengene dine. Og det er ikke alltid tilfellet hvis du ikke blir spilt på NRK.

Det er, det er mulig for dere å snakke med Gramo om.

ESPEN: Ja, vi skal jo med Grøndahl òg, så vi kan ta det opp med han.

SOMMERSTAD: Ja.

MATS: Mhm. Me lurte litt på ... sånn situasjonen for interesseorganisasjonar, sånn som Gramart som du representerar - kva tenker du om det? I dagens landskap...

SOMMERSTAD: Nei, jeg syns jo interesseorganisasjoner, både GramArt og de andre utøverorganisasjonene er på en måte viktige... men da særlig politisk, for det er interesseorganisasjonene som jobber politisk, mens disse forvaltningsorganisasjonene, TONO og Gramo, jobber ikke så mye politisk. Det er mer - de skal ha inn penger og så skal de fordele penger. Så det er liksom interesseorganisasjonene som ivaretar på en måte de enkelt ... medlemmenes interesser da, så jeg syns det er viktig rolle de har. For GramArts del så er det jo ... Ja, hva skal jeg si ... Altså, utfordringa er kanskje engasjement hos medlemmene. Det er ... finansiering - hvordan vi er finansiert, om vi skal være finansiert sånn i fremtiden og så videre. Det er jo ikke ... Det er jo ikke profittorganisasjoner, altså som tjener penger på noe. Så det ... Vi er jo avhengige av en finansieringskilde, som da i GramArt-sammenheng er fra det vi kaller for kollektive midler, som egentlig er forfalte vederlagsmidler. Altså, altså penger som ikke har blitt, vært mulig å fordele til utøvere. Det blir alltid liggende penger i et sånt forvaltningssystem fordi man ikke finner rettighetshaveren.

MATS: Mhm.

SOMMERSTAD: Eller det er for små penger til at man fordeler til rettighetshaveren eller sånne ting. Og da ... Og da bruker man det på kollektive formål da, som det vi mener er til beste for alle, på en måte. Og ett av de formålene er jo GramArt.

Og sånn finansieres GramArt, og det vil alltid være en utfordring - både sånn politisk: er det sånn at, for det må jo et flertall til, må være enige om at det er til beste for norske

populærmusikere. Og så er det jo selvfølgelig det at de kollektive midlene, de kan jo bli mindre i fremtiden, og hvordan skal vi finansieres da? Så det er jo sånn kanskje ... en utfordring som interesseorganisasjoner som GramArt har da. Altså finansieringsbiten. Vi er ikke ... Mange interesseorganisasjoner vil jo være finansierte gjennom statsbudsjettet og [UFORSTÅELEG ORD] støtteordninger, men det er ikke vi.

ESPEN: Nei. Og det er ikkje, det er ikkje snakk om at det blir heller?

SOMMERSTAD: Jo, det kan hende fordi at grunnen til at vi ikke er statsfinansiert - jeg tror vi var det en gang i tiden - men når Gramo oppsto, og GramArt for den del, så visste jo alle at det blir en del midler som ikke lar seg fordele, så var meningen at type GramArt skulle finansieres gjennom sånne kollektive midler.

MATS: Ja.

SOMMERSTAD: Så det har liksom vært en [UFORSTÅELEG ORD], men så jobber jo Gramo for at man skal få, man skal få fordelt så mye som mulig av pengene, ikke sant. Det er jo målet til Gramo. Så du kan si at i Gramo så jobber vi mot GramArts eksistens.

Så hvis vi blir skikkelig flinke på å fordele midler, så ... så faller jo finansieringsgrunnlaget bort. Så da må man jo eventuelt tilbake [UFORSTÅELEGE ORD] da: om ikke staten, eller skattebetalerne skal betale eller finansiere interesseorganisasjonen sånn som andre interesseorganisasjoner blir finansiert. Men ... men bakgrunnen for den finansieringen er fordi departementet, Kulturdepartementet, og alle aktørene i bransjen visste at det vil bli kollektive midler og det er en fin måte å finansiere grunnorganisasjoner på, altså interesseorganisasjoner.

ESPEN: Mhm. Veldig interessant.

SOMMERSTAD: Ja.

ESPEN: Har du nokre tankar om, rundt det samspelet mellom Gramo og interesseorganisasjonar som GramArt? Du seier jo sjølv at viss Gramo har som mål å bli så flinke som mulig så jobbar det på ein måte i mot GramArt sin eksistens, ikkje sant?

SOMMERSTAD: Ja.

ESPEN: Og ... Ja, kva tenker du om det? At det kanskje er ein liten sånn klinsj der da?

SOMMERSTAD: Ja, ja, men det er det. Og den må man være bevisst. For det er en utfordring det med finansiering, og samtidig så skal man på en måte, som GramArt-representant i Gramo, så skal man på en måte ivareta interessene til medlemmene, men samtidig så skal man ivareta interessen til Gramo. Så sånn en måte så jobber man liksom mot finansieringseksistensen da, men ... men holdningen vår til det er på en måte at... vi kan ikke gjøre noe annet og så må vi eventuelt ta de utfordringene som kommer etterhvert da som de oppstår. Derfor har GramArt blant annet en ... ikke sant, vi er jo ikke en profittorganisasjon, ergo så er på en måte målet vårt vill vært å ikke ha noen kroner - altså null på egenkapitalen.

Men så har vi en buffer - opparbeidet en buffer sånn tilfelle det skjer noe voldsomt så vi ikke må sparke alle ansatte over natten, liksom.

MATS: Ja.

SOMMERSTAD: Så det er sånn vi håndterer det, men ja, det er en ... det er et sånt slags motsetningsforhold - at vi jobber for, og det er jo interessen til våre medlemmer òg, at mest mulig går ut [FORSTYRRELSE PÅ LINJA] de som har blitt spilt, samtidig som at da blir det ... jo flinkere de blir i Gramo, jo mindre finansiering skal vi ha i GramArt. Det er helt klart en motsetning der, men den må man på en måte prøve å takle på en god måte da.

ESPEN: Mhm.

SOMMERSTAD: Men den ... det er helt klart en utfordring sånn, så lenge jeg har vært i GramArt så har vi alltid snakket om det.

ESPEN: Ja. Så det er alltid eit tema på ein måte?

SOMMERSTAD: Ja, det er helt klart et tema som man diskuterer og tar alvorlig i hvert fall.

ESPEN: Mhm. Hem... Når det kjem til Gramo då, kanskje: har du nokre tankar rundt prosessen med bestemmelsa om distribusjonsmodellar og sånn ... årsmøtet?

SOMMERSTAD: Hva tenker du på da?

ESPEN: Nei, berre om du har noko du tenker på rundt den modellen i seg sjølv? Om du synst det er bra eller dårlig eller? No blir det jo ... CRM-direktivet går jo litt inn på det: korleis det skal være og...

SOMMERSTAD: Jaa ... Altså når det gjelder CRM-direktivet så har den på en måte to sider - den går på... altså [UFORSTÅELEG ORD] government, altså hvordan forvaltningsorganisasjoner er drevet, at de skal være transparente og... eeh, hva skal jeg si... altså medlemmenes stemmerett og sånne ting - hvem er det som bestemmer i forvaltningsorganisasjonen og så vidare. Og der tenker jeg at Gramo i alle fall, jeg tror også TONO, er ... har alltid, så langt meg bekjent, drevet sånn rimelig innenfor de, de på en måte kravene som kommer med CRM-direktivet. Det er noen endringer i, vi har gjort i Gramo. For eksempel så er det vel ... så blir det, det er ikke, men det blir på en måte et [UFORSTÅELEG ORD] krav om at man kan... være til stede på generalforsamling gjennom internett. Vi er ikke der ennå i Garmo... vi har ikke [UFORSTÅELEG ORD]. Det er sånn vi på en måte jobber mot da. At vi på et eller annet tidspunkt så, så skal alle kunne være til stede fra der de er. Eh ... Den måten man på en måte håndterer det på per i dag det er ved fullmakter. At alle organisasjonene, i alle fall, sender ut e-poster og ringer til sine medlemmer og sier at ... du må sende fullmakt til den du mener kan representere deg på generalforsamlingen sånn at du i så måte er til stede på generalforsamlingen og det er viktig demokratisk prinsipp og så vidare.

MATS: Mhm.

SOMMERSTAD: Per i dag er det håndtert med fullmakter, men selvfølgelig ... det aller beste er hvis noen fra, fra medlemmene, at de er til stede selv, hvis de ønsker det.

ESPEN: Ja.

SOMMERSTAD: Samtidig så er jo generalforsamling ... det er jo sånn... det er ikke alle som ønsker å være til stede.

ESPEN: Nei, det er jo klart.

SOMMERSTAD: [UFORSTÅELEGE ORD] viktig, ikke sant. Man på en måte ha litt sånn respekt for valget medlemmene gjør. Man må i hvert fall legge til rette for at flest mulig skal kunne være til stede. Og på sikt så er Gramo også nødt til å ha en sånn digital- eller internettmodell, tenker vi da.

ESPEN: Mhm.

SOMMERSTAD: Men, eeh ... Ja, og så har vi endret også noe i forhold til hvem som kan bli medlemmer for vi hadde - det kan du snakke med Gramo om - sånn derre tilsluttet medlem og ... og ordentlig medlem liksom. Og tilsluttede medlemmer har ikke stemmerett på generalforsamling.

MATS: Nei.

SOMMERSTAD: Oooog ... Der har vi gjort noen endringer som du kan snakke med Gramo om i forhold til stemmereglene og alt sånt noe, hvem som kan komme på generalforsamling og stemme, for der er litt sånn endringer på gang da, og det handler om litt om CRM-direktivet.

[Om medlemstyper i GRAMO]

MATS: Ja.

SOMMERSTAD: Mhm. Når det gjelder sånn transparens og sånn så føler vi at forvaltningsorganisasjonene er innenfor de kravene. Den andre delen av CRM-direktivet det går på at ... man skal kunne ha sånne one-stop klareringssteder gjennom forvaltningsorganisasjoner. Det har ikke noe særlig å si for Gramo, men det har noe å si i forhold til TONO.

ESPEN: Mhm.

SOMMERSTAD: Mhm.

ESPEN: Ja ... Skal vi gå, skal vi gå til dét eller?

MATS: Ja. Me kan fortsetta å snakka litt om konkurranse.

SOMMERSTAD: Ja.

MATS: Eeh ... for det er jo... sånn sett, for det er jo ingen reell konkurranse for Gramo eller TONO sånn som det er i Norge i dag, tradisjonelt sett. Kva tenker du om konkurranse og eventuelt - tenker litt meir internasjonalt på det digitale - at ein opnar opp for meir konkurranse på det feltet med vederlagsbyrå og den type ting?

SOMMERSTAD: Ja ... Når det gjelder Gramo så ... Gramo er på en måte oppnevnt til å kreve inn penger på vegner av en tvangslisens, altså en lovbestemmelse, og den lovbestemmelsen har egentlig ikke så mye med rettighetshaverne å gjøre fordi den begrenser nemlig rettighetshavernes enerett. Fordi en tvangslisens sier noe om hvordan brukerne av lydopptak kan få lov til å bruke musikken, og så har man tvangslisens i Norge - 45b - som sier at bruker av musikk kan spille innspilt musikk offentlig ... og via kringkasting, altså radio, eller i butikklokaler eller noe sånt noe, uten å be rettighetshaver om samtykke til det.

MATS: Mhm.

SOMMERSTAD: Det er lovbestemt. Så det er en brukerrettighet på en måte. Men, så står det også i den tvangslisensen at rettighetshaverne skal ha betalt. Og det er derfor Gramo eksisterer, fordi at Gramo sørger da for at rettighetshaverne får betalt ...

... for den bruken som, som er... som er basert på den tvangslisensen da. Eeh.. Det er ikke alle land som har en sånn tvangslisens, men ... USA har det blant annet ... enkelte områder, og det er mange land som har det, så jeg tror ikke det - jeg ser ikke helt at det blir noe konkurranse på det området nødvendigvis. For TONO sin del så, så kan det jo bli mer konkurranse, kanskje. Det kan jo hende at det skjer på Gramo-området også, at det er andre forvaltningsorganisasjoner, altså fra utlandet, som ... som vil hevde at de også kan

[UFORSTÅELEG ORD] vederlag for bruk av musikk i Norge ... basert på avtaler eller basert på den tvangslisensen.

ESPEN: Mhm.

SOMMERSTAD: Akkurat hvordan det vil bli vet jeg ikke, egentlig.

ESPEN: Nei.

SOMMERSTAD: Men, men grunnen til dette her er jo på grunn at EU, som vi er en del av gjennom EØS på dette området, ønsker jo ett digitalt marked og at det skal liksom, ja ... Og hele EØS er på en måte ett marked. Og per i dag så er det problem for rettighetshaverne ... Nei, ikke for rettighetshaverne, men brukerne at man må på en måte klarere fra land til land - dette er liksom TONO-området da ... eeh... og det må det skje en stopper for. Og akkurat hvordan det vil påvirke TONO som organisasjon det er jeg litt sånn usikker på.

ESPEN: Mhm.

SOMMERSTAD: Men det er nok ... det er nok ikke usannsynlig at en del penger kanskje vil gå ... ikke vil gå gjennom TONO, mer enn det som gjøres per i dag. Men da går det mest sånn ... TONO-bruk da, det går gjennom TONO, og så går det til en annen forvaltningsorganisasjon eller direkte til publishere eller sånn, men ... Ja, det er kanskje noe du bør snakke med TONO om, hvordan de ser på den konkurransesituasjonen. For Gramo så ser jeg ikke helt hvordan det innvirker/påvirker per i dag.

ESPEN: Nei.

SOMMERSTAD: [UFORSTÅELEG SETNING]

MATS: Nei. Eg lurte litt på - for GramArt sin del ... eh... og den typen konkurranse, altså... Kva tenker du om det? No har det jo vore ei sak lenge med for eksempel Norsk Artistforbund og utbetalingar av støtte i frå Gramo.

SOMMERSTAD: Ja.

MATS: Det var vel òg ein uttalelse som ... eg hugsar ikkje kor eg las han, som gikk på at representasjonen i frå GramArt var so stor i Gramo-styret at dei meinte kanskje det var ein av fleire grunnar - til at det blei holdt igjen peng. Er det noko stor konkurranse?

SOMMERSTAD: Ja ... ja ... Det, det er jo ikke riktig.

MATS: Nei, nei.

SOMMERSTAD: Nesten, dette må faktisk ... Det vil jeg at du skal snakka med Gramo om for de er på en måte objektive i gåseøyne.

MATS: Mhm.

SOMMERSTAD: Eh.. Altså den ... Man har helt klare regler i Gramos fordelingsreglement, hvordan disse kollektive midlene blir fordelt. Og de har fått sin da ... rettmessige andel, og vedtatt alt mulig. Eh ... de fikk midlene når de hadde sendt ut den dokumentasjonen som de er påkrevet-

MATS: Ja.

SOMMERSTAD: -av alt som skal sendes inn for å motta det vederlaget. Da ... og da fikk de det, heh. Så, så ... så det er ikke riktig, for å si det rett ut. Og man får ... det man får det er på en måte ... Interesseorganisasjonene får på en måte den andelen som sine medlemmer representerer i Gramo. Så Gramo ... nei, unnskyld, GramArt har ... GramArt sin medlemsbase utgjør noe sånt som 80% av vederlaget som fordeles i Gramo - på den norske siden da.

MATS: Mhm.

SOMMERSTAD: Mens MFO har 15% og NA er jeg ikke helt ... usikker på. Eehm ... Så man får på en måte det vederlaget, altså de kollektive midlene som, som speiler den vederlagsfordelingen. Det er det som står i Gramos fordelingsreglement.

MATS: Ja.

SOMMERSTAD: Og det er uavhengig av ... egentlig ... det er egentlig uavhengig av representanter i styret fordi representanter i styret blir valgt gjennom generalforsamlingen og antall stemmer på generalforsamlingen og da er det et alminnelig flertall ... flertallsprinsipp på utøversiden. Og GramArt pleier å ha flest fullmakter, og det betyr at GramArt i teorien kunne kastet MFO for eksempel-

MATS: Mhm.

SOMMERSTAD: -og bare sittet med GramArt-representanter, men det gjør vi ikke fordi MFO er jo selvfølgelig viktig i ... eh ... for sine medlemmer, ikke sant, at de er representert i Gramo og sånt. Så man har liksom hatt en praksis på at det er flere interesseorganisasjoner uavhengig av om man har flertall eller ikke - at man på en måte velger inn også en representant fra andre. Men det er et flertall av GramArt-representanter i Gramo-styret, på utøversiden.

MATS: Ja.

SOMMERSTAD: Mhm.

ESPEN: Ja, eg trur det var svar nok eg. Eg lurur på om me skal gå vidare til siste tema som er CRM-direktivet.

SOMMERSTAD: Ja.

ESPEN: Vi har snakka litt om det, men ... kan først begynne med kva du tenker om implementeringa av direktivet i Norge: trur du det blir sånn som det har blitt i Sverige, eller trur du det blir... trur du det blir fullstendig implementert?

SOMMERSTAD: Det blir fullstendig implementert, men ... jeg vet ikke helt hvordan Kulturdepartementet kommer til å skrive forslaget. Jeg tror de kommer til å tenke at veldig mye er på plass allerede. Eh ... kanskje blir det en slags sånn der henvisningslov til, til direktivet - at det gjelder. Og at kanskje det også vil bli skrevet at det anses å være i, i tråd

med norsk lov. Jeg er ikke helt sikker på hvordan implementeringen blir ... eh... det er jeg ikke. Jeg kjenner ikke til hvordan det er gjort i Sverige, egentlig.

ESPEN: Nei. Trur ... for du snakka litt om...

SOMMERSTAD: [UFORSTÅELEGE ORD] vi må, vi må følge det.

ESPEN: Ja, ja.

SOMMERSTAD: Altså, norsk lov må være i henhold til det direktivet. Det er helt, helt klart.

ESPEN: Mhm. Og ... ja. For då gå vi jo ut i frå det, ikkje sant? Og viss-

SOMMERSTAD: Ja.

ESPEN: -den styringsforma som Gramo og for så vidt TONO òg har no med representativt demokrati, på ein måte. Du ... trur du det kjem til å holde liksom for direktivet? Er det nok?

SOMMERSTAD: Nei, altså vi må gjøre visse endringer. Det som jeg nevnte ikke sant med tilsluttede medlemmer det er vel også vedtatt at blir fjernet.

ESPEN: Mhm.

SOMMERSTAD: Så, det betyr at alle som er medlemmer i Gramo kan, kan komme på generalforsamling og stemme.

ESPEN: Ja.

SOMMERSTAD: Hvis man ellers ... følger, følger de på en måte kriteriene som ligger til grunn da.

ESPEN: Mhm. Trur du direktivet kjem til å ha noko å seie for interesseorganisasjonar i det heile tatt?

SOMMERSTAD: Eh ... Den endringen har jo en praktisk konsekvens ... eehm... ut over det ... Nei, jeg ... Nei, jeg ser ikke [UFORSTÅELEG ORD] ut per i dag, ikke som jeg kommer på i alle fall. At det vil ha veldig mye å si for interesseorganisasjoner [UFORSTÅELEG ORD]. Altså det man ser på interesseorganisasjoner i dag da er kanskje en økt grad av samarbeid mellom interesseorganisasjoner i ulike land. Man ivaretar på en måte sine medlemmers interesser i det landet, og man er på en måte ... eeh ... nærmest seg selv på en måte, så jeg tror vel interesseorganisasjoner i stor grad vil på en måte ... eh... opprettholdes, på en måte, i de enkelte land, og så vil det være en større samarbeid mellom interesseorganisasjoner, i alle fall på utøversiden - eller det ser man jo egentlig på produsentsiden også – eh ... fordi EU er ett marked og sånne ting, og at det kanskje bare er et ... Det har vel vært, og kommer vel til å bare øke, et sånt fruktbart samarbeid da mellom interesseorganisasjoner for å ivareta interessene til medlemmene våre. Sånn som vi, i GramArt, vi representerer selvstendige næringsdrivende musikere-

ESPEN: Mhm.

SOMMERSTAD: -ikke fastansatte musikere, sånn filharmonimusikere og sånn, men selvstendige næringsdrivende musikere - ofte innenfor populær, populærmusikken da, ikke sant. Eh ... og da er det naturlig for oss å samarbeide om interessesaker med andre lignende organisasjoner i andre land. Politisk blant annet, ikke minst mellom, eller gjennom lobbyorganer i EU. Der har vi allerede en lobbyorganisasjon, men den, den gjelder både selvstendig næringsdrivende og fastansatte utøvere ganske generelt som heter AEPO. [UFORSTÅELEG SETNING]. Så der har vi liksom et lobbyorgan hvor, hvor også GramArt og MFO ... eh ... er til stede ... er medlemmer og er til stede på en måte i EU-organer og lobbyerer da når det ... Sånn med det CRM-direktivet så var jeg i Brussel flere ganger for å diskutere og lobbyere i forhold til det direktivet. Da går man sammen med mange andre interesseorganisasjoner i alle EU-land, og så prøver å finne felles kampsaker da sånn at man har størst mulig grad for å lykkes med lobbyeringen.

ESPEN: Ja ... Mhm. Er du ... Føler du at du er fornøgd med det som har skjedd da med dei reformane som kjem og for så vidt har blitt gjennomført i Norge?

SOMMERSTAD: Eeh ... Ja, egentlig. Altså, dere skal vite at det CRM-direktivet det er i veldig stor grad ... Altså den ene siden er selvfølgelig: ett marked. Det er sånn vi har snakket

om den ene delen med TONO blir påvirket og sånn. Når det gjelder andre delen av CRM-direktivet for å få demokratiske og transparente forvaltningsorganisasjoner, så er det sånn type reglement som i veldig stor grad ble laget i EU fordi det var en del forvaltningsorganisasjoner i andre land ... Altså, les litt sånn ... ja, sørpå, som hadde litt sånn familiedrevne forvaltningsorganisasjoner som ikke var transparente i det hele tatt, og hvor det ... eh ... Det har vel vært litt sånne korrupsjonssaker og sånne ting. Man ønsket på en måte å regulere det markedet i mye større grad, så det ... det reglementet det ... det er på en måte laget for å sørge for at alle forvaltningsorganisasjoner er transparente, og så mener vi, i hvert fall, at Gramo har vært rimelig transparent og demokratisk ... alltid.

ESPEN: Mhm.

SOMMERSTAD: Så, det var nok ikke ... det var ikke forvaltningsorganisasjonene i Norden man hadde i tankene da man lagde den delen av direktivet, for å si det sånn.

ESPEN: Ja.

SOMMERSTAD: Så ... men dette påvirker oss i noen grad, og ... i den grad det påvirker oss så må vi da gjøre de endringer som er påkrevet. Men, det er ikke så mye, tror jeg ... eller, vet jeg.

ESPEN: Mhm. Eg trur vi begynner å nærme oss fornøgte eg med intervjuet.

SOMMERSTAD: Ja, det går jo an å ringe på igjen også hvis man kommer på sånn oppfølgings spørsmål og sånn. Det hender man får det når man har snakket med de andre og-

ESPEN: Mhm.

SOMMERSTAD: -og sånne ting.

ESPEN: Er det noko ting du ønsker å nevne ellers? Nokre andre ting vi, du føler vi burde snakke om eller? Noko du vil tilføye?

SOMMERSTAD: Jeg er mest spent på den der ... eeh ... forvaltningen av ... Nei, jeg er egentlig mest spent på hva dere får ut av den der forvaltning av norske musikkrettar ... hvordan det fungerer og om det er forbedringspotensiale.

MATS: Mhm.

SOMMERSTAD: Den gleder jeg meg til å lese. Eh ... vi har et slags mål om å finne den optimale løsningen [UFORSTÅELEGE ORD] den optimale løsningen. Eh ... så ... Nei, det eneste jeg tenker umiddelbart er på en måte at vi har et mål om, og kan nok ha et forbedringspotensiale på å fordele midler mer effektivt. Altså les: at administrasjonskostnadene blir så lave som mulig.

ESPEN: Ja.

SOMMERSTAD: For da ... det er alltid en transaksjonskostnad.

MATS: Mhm.

SOMMERSTAD: Uansett hva ... i alle pengesummer. Vi må bli så lave ... der har man et forbedringspotensiale... som at vi bør jobbe mot. Eh ... noe annet jeg tenkte på da?

ESPEN: Føler du at TONO, nei, Gramo er på, er på ballen når det kjem til det eller føler du ... ?

SOMMERSTAD: Ja, vi er på ballen, men man kan alltid bli bedre. Men vi er på ballen med det, helt klart. Så det vi kunne ... det er... ta nå da, så har vi implementering av et helt nytt databasesystem, og det har jo kostet masse penger. Ikke sant, så sånne kostnader har man jo med jevne mellomrom, ikke sant, og det er jo ... det blir da en transaksjonskostnad når man krever inn og fordeler midler videre. Eh ... så man har har alltid sånne problemstillinger i forhold til hva man skal investere i. Eh ... man investerer jo også i rettstvister ... og utredninger. Vi har blant annet en forpliktelse til å finne ut, eller - vi fordeler ... vi krever inn og fordeler i Gramo pengene bare for offentlig bruk av musikk, ikke privat bruk av musikk. Og da blir det jo noen ganger diskusjon, juridisk diskusjon, om hva er offentlig og ikke offentlig, altså privat.

ESPEN og MATS: Ja.

SOMMERSTAD: Og da blir man på en måte ... Eller vi har, vi er i konflikt med NRK for eksempel da om hvor, hva som er rimelig vederlag ... for bruken deres. Og da må man kanskje ta en tvist i rettsapparatet eller sistnevnte tilfelle i en nemnd. Og det koster penger, og det blir også en transaksjonskostnad for medlemmene, ikke sant, eller for de som får midler til slutt. Men sånne tvister må man jo ta, så blir det sånn vurdering om hvilke kamper skal man ta for å finne ut hva som er grensen for det offentlige rom, og hva skal man ikke ta. Så det er jo sånne vurderinger vi må ta fortløpende ... eh ... også i forhold til en kostnadsside da. Så ... Men det er en sånn, det er ikke noe endringer der på en måte, det er en sånn problemstilling man har hele tiden.

ESPEN: Mhm.

SOMMERSTAD: Mhm.

MATS: Ja. Nei, men eg trur me er fornøgde med det me har fått ut av det.

SOMMERSTAD: Ja, bra. Når dere er ferdig så mottar jeg gjerne oppgaven. Så hvis dere skal bruke navnet mitt så må jeg vite hva jeg sier i oppgaven, sånn at jeg kan liksom korrigere hvis jeg mener noe annet enn det jeg klarte å formidle nå.

ESPEN: Ja, ja. Det er heilt innafor.

SOMMERSTAD: Ja, sånn at det blir korrekt og at jeg kan stå inne for eventuelle sitater.

MATS: Mhm. Jammen det skal du få motta.

SOMMERSTAD: Mhm. Supert. Veldig bra.

MATS: Ja. Nei men då ...

ESPEN: Då takkar vi for oss. Tusen hjertelig takk for at du ville være med på dette her.

SOMMERSTAD: Bare hyggelig, og så ønsker jeg dere lykke til. Det blir spennende.

MATS: Takk for det.

SOMMERSTAD: Takk. Ha det fint.

MATS: Då får du ha det bra. Hei.

Interview 4: Martin Grøndahl

GRØNDAHL: -jess, da er jeg med.

MATS: Ja, vi ska berre få satt igang opptaket av samtalen, så e me klar.

ESPEN: Ja, hei forresten.

GRØNDAHL: Hei, hei hei.

ESPEN: Vi e to her, så det e Espen og Mats.

GRØNDAHL: Ja. Det er et veldig sentralt GRAMO-spørsmål, er det noen grunn til at dere har valgt dette som tema? Har dere noe relasjon til GRAMO eller, kjenner dere GRAMO spesielt fra før, eller TONO eller?

ESPEN: Neei, egentlig ikkje noke spesielt, sånn sett.

MATS: Nei, altså, eg e jo medlem av TONO og GRAMO, men ikkje noke stort medlem som har fått store utbetalingar akkurat.

GRØNDAHL: Nei ... nei, altså, det var bare positivt ment, det var ikke noe ... jeg bare tenkte at noen er interessert i GRAMO/TONO-modellen og er opptatt av det som gjelder oss sånn ... det er ikke så ofte at vi opplever. Det hender at folk er bortom oss i litt sånne perifere sammenhenger, sånn i forbindelse med skriving av, ja, noen ganger doktorgrad og noen ganger mastergrad eller også i forbindelse med noe skriving til [UFORSTÅELIG ORD], men jeg bare lurte på om dere hadde en spesiell relasjon, som en slags innledende bemerkning.

ESPEN: Nei, det e nok kun akademisk interesse det e snakk om egentlig.

GRØNDAHL: Ja, flott.

MATS: Ja, eg veit ikkje, vi har jo ... du har jo fått sett litt igjennom den e-posten eg sendte med informasjon om prosjektet?

GRØNDAHL: Ja, det har jeg.

MATS: Ja, så vi kan vel egentlig berre gå rett på første spørsmål, og det er som me skreiv at jo meir fri prat me får, jo bedre e det egentlig for oss.

GRØNDAHL: Ja, det skjønner jeg.

MATS: Så, me startar med et spørsmål som ... me lure litt på om du kan seia noko om korleis situasjonen er, eller ka du tenke om situasjonen for norske rettighetshavarar idag?

GRØNDAHL: Det blir ... altså, jeg sender jo denne virksomheten da primært sett med GRAMO-øyne. Og en del av de tankene man gjør seg om en del av de sammenligningene og de måtene å eventuelt kunne samarbeide på, som kan være alternativer til den type modell som vi har idag, med to helt separate organisasjoner. De vil jo være hentet som en inspirasjon fra utenlandske tilsvarende selskaper som GRAMO og TONO. Mens sånn som for de norske rettighetshaverne, så fungerer både TONO og GRAMO godt, veldig mange av TONOs medlemmer er også GRAMO-medlemmer, og vice versa. Sånn at det er mange dobbeltmedlemmer, men det er naturligvis også mange som kun er medlem av den ene organisasjonen. Vi kjører to helt separate administrasjoner, to helt separate organisasjonsoppsett, altså med egen administrasjon for vært enkelt sted, og TONO ... dere kjenner godt til rettighetsbildet som vi forvalter og som TONO forvalter?

MATS: Ja, det har me satt oss inn i.

GRØNDAHL: Sånn at dere vet at opphavsmannen, eller TONO-medlemmene har mange flere rettigheter enn det en utøver eller produsent har når det gjelder vederlagsretten som forvaltes av GRAMO?

MATS: Mhm.

GRØNDAHL: Men altså, selv om TONO forvalter mange flere rettigheter, så forvalter jo GRAMO og TONO helt parallelle rettigheter når det gjelder fremføring. Og vi forvalter jo rettigheter når det gjelder framføring i kringkasting, altså da primært radio - det er ikke mye

kringkasting på TV - og for annen offentlig framføring. Og denne type rett forvalter også TONO. Begge de to rettighetene har også opphavsmannen, sånn at det er to separate innkrevingsløp, da tenker jeg på forhandlinger, eventuelt saker og med diskusjon om størrelsen på hvor mye som skal betales. Tvistemodellen er forskjellige, så det er kanskje hensiktsmessig at det er to forskjellige løp, men hvis man skal sånn overall si noe om utgangspunktet deres, "hva er situasjonen for rettighetshaverne", så vil jeg si at rettighetshavernes situasjon i Norge er god. Men, nå har jeg liksom, nå skjønnte dere kanskje litt på innledningen, at nå syns jeg at GRAMO og TONO i større grad burde vært samkjørte og samordnet på mange flere punkter enn det man er idag. Og det vil jo vise seg, hvis man kan være mer kostnadseffektiv, ved et nærmere samarbeid på en del av områdene, så vil jo det komme rettighetshaverne til gode.

ESPEN: Mm. Når du snakka om samkjørtheit, e det meir spesifikt sånn at dokke tenke på en sammenslåing av et slag, eller e det meir samarbeid det e snakk om?

GRØNDAHL: Nei altså, det første jeg kan beskrive er det samarbeidet vi har. Når det gjelder annen offentlig framføring, altså de rettighetene der hvor vi krever inn vederlag for musikk brukt i butikker, treningssentere, i serveringssteder, i hoteller osv. osv. Der har vi to utegående konsulenter, kontrollører, som reiser rundt og besøker steder som ikke svarer når vi spør om de bruker musikk, eller hvis de tilhører en bransje hvor vi synes at det er rart at de ikke bruker musikk. Disse to, de kjører helt fra nord til sør og dekker Norge, og kjører innom da alt som fins av restauranter og hoteller hvor vi ikke har avtale, og hører og rett og slett informerer om ordningen, om de rettighetene som er og hvem pengene går til. Når disse to, som er ansatt i GRAMO, de jobber helt parallellt for TONO, så hvis de går inn i en pub - hvor er det dere bor hen?

MATS: I Kristiansand no.

GRØNDAHL: Dere bor i Kristiansand. Hvis det åpner en ny pub i Kristiansand, som får brev fra GRAMO og TONO og ikke svarer, så vil ved neste gang én av de to er i Kristiansand, så vil de stikke innom den pubben. Og så vil, hvis pubben bruker musikk, så vil de tegne avtale på vegne av begge to. Og den kostnaden som er for å drive disse to, den deler GRAMO og TONO, med en halvpart på hver. I tillegg så har vi en utveksling av kundedata, det har vi forespurt konkurransetilsynet om at det er ok, og det gjør vi, sånn at de kampanjene GRAMO

kjører for å identifisere musikkbrukere, de vil også komme TONO til gode, og vice versa. Det er den formen for samarbeid som foregår. Mens, hvis man skal sammenligne, hvis man skal se på ... og da skal jeg dra dette litt ut til hva man ha oppnådd i andre land, der finnes det litt forskjellige modeller. Den mest ekstreme modellen er jo at GRAMO og TONO, de fusjonerer ikke som foreninger, men vi fusj- TONO er ikke en forening, GRAMO er en forening, TONO er et samvirkelag - det spiller ikke noen rolle, men man kan godt flytte sammen, og få synergieffekter av det. I noen land så har de gjort det, at de faktisk flytter helt sammen, samarbeider på alle områder med det lokale TONO-selskapet. Eller, det som har vært mer vanlig, det er at man skiller ut det som heter markedsavdelingene - altså de som henvender seg til alle brukere av musikk i annen offentlig framføring - i de to organisasjonene, laver et eget selskap eller en egen organisasjon som bare skal drive med det på vegne av begge to. Sånn at det blir én faktura, det blir én type jobb som i dag gjøres helt likt på to forskjellige steder. Det er akkurat startet opp i England, der har de lavet et, flyttet ... der sitter både PRS og PPL, som er to ... PPL er GRAMO og PRS er TONO i England. Der har de lavet et nytt selskap som de kalte så enkelt som PPL/PRS; flyttet det til Leicester, ansatt 200 mennesker, og de skal bare kreve inn for annen offentlig framføring. Så da har jo naturligvis alle de funksjonene blitt borte i de to selskapene. Og så stilles det veldig strenge krav til effektivitet, altså kostnadskontroll er det jeg tenker på da, altså hvor mye penger av det innkrevede er det man bruker i prosent, og det blir vi målt etter hele tiden og vi bruker så lite som mulig, og det kommer jo rettighetshaverne til gode; vi skal være så effektive og kostnadseffektive som mulig for at det skal være mest mulig penger igjen til utbetaling til den enkelte rettighetshaver. Og akkurat det samme kravet har naturligvis TONO.

Det har som sagt engelskmennene begynt med, det er et tilsvarende oppsett i Holland som er veldig velfungerende, det er et tilsvarende oppsett i Finland som ikke er så velfungerende. Det er litt vanskelig å si hvorfor det ikke er velfungerende, men de har i hvert fall ikke klart å få noen kostnadseffekt utav det enda. Sånn at, det kan være en annen type alternativ form, og da går det jo igjen på at man vil kunne spare penger, og ha mere igjen til å betale ut til rettighetshaverne. Hvis man bruker den modellen.

En tredje modell, det er litt sånn som de gjør i Danmark, da er det den ene som gjør jobben for begge to; altså, der er det KODA som er TONO i Danmark, som krever inn for annen offentlig framføring for begge to, og så overføres bare da andelen som skal til Gramex, som er GRAMO i Danmark, fra KODA til Gramex, og så betaler Gramex en andel, eller en sum

penger per år, for at KODA skal gjøre den jobben på deres vegne. Men, vi har ingen av de modellene enda i Norge.

ESPEN: Det e ikkje noken plana om det heller? Som du kan sei noke om?

GRØNDAHL: GRAMO ønsker, men TONO er mer skeptiske til det.

ESPEN: Ok. Mm.

GRØNDAHL: Og, jeg antar at dere skal snakke med en hos TONO, eller har gjort det eller?

ESPEN: Jaa, vi har snakka med Ingrid Kindem.

GRØNDAHL: Som- dere har snakket med ... ?

ESPEN: Ingrid Kindem.

GRØNDAHL: Jamen, hun er jo ikke TONO-ansatt, hun er jo NOPA. Hun er styreleder i TONO.

ESPEN: Ja, vi har ikkje snakka med noken andre enn det liksom.

GRØNDAHL: Nei ... neida, altså, de har litt forskjellig syn, og hvis du spør TONO, så ville de si at de syns at kanskje den danske modellen, at den ene gjør jobben for begge to og at den andre betaler en andel av kostnadene, er bedre enn at man skal slå sammen og lave et eget selskap og de tingene som de ikke synes har fungert så godt, og da er det særlig Finnland de refererer til.

Men jeg mener at, og GRAMO helt definitivt, vi har det i vår strategiske plan for 2018 til 2020, at vi bør slå sammen markedsavdelingene og lave et separat selskap for å spare kostnader, altså slå sammen avdelingene i TONO og GRAMO og lave et separat selskap.

MATS: Ja, okay. Ja.

GRØNDAHL: Egentlig, hvis jeg skal dra dette enda lenger, så finnes jo flere forvaltningsorganisasjoner i hvert land, i Norge finnes jo også FONO, som er for billedkunstnere, så finnes det KOPINOR, som er for reprografiområdet, så er det NORWACO, som er videresending i kabel, så er det da TONO og GRAMO, som alle krever inn vederlag på vegne av rettighetshavere. Hvis man skal se på dette, så burde jo alle disse sett på en eller annen form for felles løsning, man burde hatt et felles kontor hvor man hadde felles IT, felles økonomi, felles lokaler, man kunne jo spare masse penger på kontorlokaler, man kunne spare penger på møtelokaler, altså, vi har alle sammen våre egne lokaler som vi betaler for. Hvis fem organisasjoner slår seg sammen, så ville man jo kunne gå betydelig ned i areal og spare mye penger.

MATS: Ja, interessant.

GRØNDAHL: Ja, det er veldig interessant, men det er en veldig lang og tung ball å prøve å forfølge.

ESPEN: Ja, det er klart. Ehm, så det er nok å prøve å pushe for da, i GRAMO?

GRØNDAHL: GRAMO har vært i kontakt med TONO, og vi kommer til å fortsette å ha kontakt, med tanke på at vi bør ha et nærmere samarbeid ved innkreving av annen offentlig framføring. I hvilken modell det kan bli, det får vi jo se, men vi har det som en plan, og det kommer vi til å fortsette med, fordi vi mener at det kan være gunstig for rettighetshaverne.

ESPEN: Ja, mm. Eg lure på om vi skal gå litt vidare eg, og kanskje snakke litt om det vi har valgt å kalle den norske modellen. Kan tenke du om den modellen vi har i Norge, med forvaltning av musikkrettar når det kjem til dei to store vederlagsbyråa, og så har du interesseorganisasjonane, med kulturelle midlar osv. Har du nok tanka rundt det?

GRØNDAHL: Ja, altså, jeg synes jo ... da må jeg bare gjenta det jeg sa i sted, jeg synes det fungerer veldig bra, og det er veldig viktig at man har grunnorganisasjonene, eller de som du kalte organisasjonene ved siden av, som da er MOF, GramArt, IFPI, FONO, Norsk Artistforbund, og noen litt mindre på vårt område, og NOPA og komponistforreningen i TONO. Det er en veldig velfungerende modell, og når vi bidrar i andre land, det kan for eksempel være i et land som ikke har kommet igang med vederlagsinnkreving, hvor vi blir

forespurt å assistere i et land, så vil vi alltid anbefale at det etableres grunnorganisasjoner først, som representerer potensielle medlemmer til dette her, altså sånn typisk et musikerforbund, eller et IPFI, eller et FONONO, eller sånne ting.

Ehm, hvis du tenkte på, du tenkte på den der fundingen av disse organisasjonene, er det det du tenker på når du snakker om den norske modellen, at det bidras med penger fra organisasjonene til for eksempel NOPA og GramArt?

ESPEN: Ja, det er jo en betydelig del av det.

GRØNDAHL: Jada. Jeg måtte bare være sikker på at jeg ikke begynte å snakke om noe du ikke er interessert i.

ESPEN: Nei, vi er absolutt interessert i det, viss du har noe å fortelle om det?

GRØNDAHL: Altså, den måten ... disse pengene som overføres som såkalte kulturelle midler, eller vi kaller det herreløse midler, kollektive midler, de oppstår jo på forskjellige måter. TONO beregner det som en prosent av brutto vederlagsmidler. GRAMO tar de pengene som er igjen når foreldelsesfristen for et vederlag går ut, og de pengene hvor vi ikke har klart å finne en eller flere rettighetshavere på innspillinger. Så, det oppstår noen penger som ikke lar seg fordele, som får en ny status, og i GRAMO så blir det da herreløse midler, eller kulturelle midler. Det er en veldig fin- da GRAMO ble stiftet i 1989 så visste kulturdepartementet veldig godt at det ville være noen penger som vi ikke ville klare å fordele individuelt. Det er jo- hovedmålet både til GRAMO og TONO er jo å fordele pengene som man får inn individuelt til rettighetshaverne; men i den grad man ikke evner å finne- det kan jo være folk som utlendinger som ikke melder seg inn, fra land som ikke har avtaler med GRAMO - så vil det oppstå en sum med penger som ikke er utbetalt, men som likevel ligger igjen i regnskapet. De blir da kulturelle midler. Og disse pengene, de synes jeg at det er en veldig fin måte å organisere for eksempel organisasjonslivet, som for eksempel MFO, Norsk Artistforbund og GramArt, og også kunne støtte opp under prosjekter. Og prosjekter må etter forarbeidene være til det beste for norsk utøvende kunst. Sånn at, det er en ganske vid definisjon, men det synes jeg fungerer veldig godt. Det gjør jo at type GramArt kan drive en organisasjon uavhengig av støtte av statlige midler, og bistå norske artister i diverse spørsmål da.

ESPEN: Mm, trur du det kjem til å fortsette å være sånn, eller trur du dei kjem til å trenge hjelp-

GRØNDAHL: Det er jo, det er jo helt avhengig av hva man blir enige om når CRM-loven kommer da, da altså hva- dette er jo en av de store spørsmålstegnene som kommer til å komme, hvilke muligheter vil det være til å generere sånne midler. I mange land så er det jo sterk motstand mot, de mener jo at de pengene som vi ikke har klart å få avregne, eller få utbetalt individuelt, de skal legges på toppen, altså med andre ord avregnes en gang til, og betale ut til de som allerede har fått, sånn at de skal få litt mer, de vi allerede har identifisert. Sånn at, nå er det jo veldig i det blå, nå er det lenge siden jeg har spurt dette, men vi går jo og venter på høring for denne nye CRM-loven, og vi tror jo kanskje at det skulle være implementert ved 01.01.18, men nå har vi jo ikke hørt noen ting på lenge, og jeg vet heller ikke om vi får noe høring før sommeren. Men det er jo ett av de spørsmålene som vi er mest usikre på, det vi lurer mest på, og- GRAMO lurer kanskje ikke så veldig på det, men at organisasjonene rundt oss lurer jo veldig på hvordan vil den fremtidige modellen være. At det vil bli noen endringer på det, det er en realitet. Her vil jo komme inn ikke-diskrimineringsregler og mye forskjellig, her har man jo på en måte tilgodesett norske organisasjoner og norske utøvere primært, til det, når man har fordelt disse pengene. Det kan godt hende at det blir endringer på det.

ESPEN: Ja, du tenke at dei punkta som kjem, som ligge under diskriminering i CRM-Direktivet, at det kan ha noke med det å gjer? Eller kjem til å ha det?

GRØNDAHL: Det kan det hende. Det er jo ikke bare det, men en av de punktene kan være at, for eksempel, det er ikke lov å bare gi organisasjonsstøtte til norske organisasjoner. Jeg er veldig usikker på dette her, men, fordi det har vært løst litt forskjellig i de forskjellige land. Så, hvordan den norske modellen på det området kommer til å bli når vi får CRM-loven, det er jeg veldig i tvil om.

ESPEN: Mm. Ja, det blir spennande å sjå.

GRØNDAHL: Ja. Hvis du spør organisasjonene, så ønsker nok GRAMO-organisasjonene, altså det som vi kaller rettighetshaver-organisasjonene, at man skal gå mer over til en sånn

type TONO-modell, hvor man har en forutsigbarhet ved at en prosent av brutto vederlagsmidler kan fordeles til kulturelle midler, eller kollektive midler. Det som er utfordringen med å ta det fra toppen er jo naturligvis at hvis dette skal, la oss si at kostnadsprosenten til GRAMO er 18% da, og så skal det holdes av 10% til, da er det jo 28% av totalinntekten til GRAMO som ikke kommer til individuell fordeling til rettighetshaverne. Og hvis dette- hvis disse 10% bare tilfaller norske rettighetshavere, så vil jo utlendinger kunne stride om det, og det tror jeg kanskje at de kommer til å gjøre. Men det får vi se på.

ESPEN: Mm. Ska vi gå vidare til det her?

MATS: Ja, me kan ta neste tema. Ja, det e jo litt med distribusjon av midla, som vi jo på mange måtar var inne på no med kulturelle midlar, men det e jo klare reglar og rettningslinjer internt i vederlagsbyråa korleis det skal fordelast.

GRØNDAHL: Ja, det er veldig tydelig.

MATS: Ja. Har du noke tanka omkring den distribusjonsmodellen som GRAMO har, med poengsystem og at det blir-

GRØNDAHL: -men nå, nå er du på den individuelle fordelingen, ikke sant?

MATS: Ja, eg e inne på den no.

GRØNDAHL: Individuell fordeling av vederlag, og ikke av disse kulturelle midlene.

MATS: nei-

GRØNDAHL: -fordi vi har klare regler for den vederlagsfordelingen med en poengtabell, og klare regler for fordelingen av disse kulturelle midlene, det er veldig tydelig hvordan dette skal gjøres på begge sider. Når det gjelder GRAMOs poengtabell, så har den fungert nesten uten endringer i 20 år. Vi hadde ett år hvor vi gjorde om litt på poengene, men da fikk det veldig uheldige utslag, jeg tror det var 2003, og da gikk man tilbake igjen til den gamle poengtabellen som dere sikkert da har sett på GRAMO sine hjemmesider, hvordan vi fordeler med poeng til hovedartist og medvirkende og dirigent. Det er- vi har ikke funnet noe system

som er bedre, vi hadde for to, eller kanskje det er tre år siden, hadde vi et prosjekt hvor vi så på alternativer, hvor vi regnet ut konsekvenser og vi så på type, ja, hva ville forskjellige type fordelingsmodeller ha å si for den enkelte utøver eller den enkelte produsent. Og det ble konkludert med, den gang for tre år siden, at man fortsatt skulle holde på det gamle systemet. Noen mener at man skal gå over til andre typer fordelingsmodeller, men i GRAMO-sammenhengen, så ble det bestemt, med veldig stort flertall, at vi skulle holde på den gamle modellen. Det er en, altså, hele poengtabellen er en type kompromiss mellom de som representerer hovedartisten og de som representerer medvirkende musikere, om at, hvem som skal få og hvilke andeler av vederlaget hver enkelt skal få. Og den har fungert godt for GRAMO i mange år. Jeg har ikke noe annet å si om det.

ESPEN: Nei. Når det kjem til distribusjonsmodellar til organisasjonane, som var den andre delen av det, har du noke tanka rundt prosessen rundt bestemmelsa av det?

GRØNDAHL: Har dere lest, bare ett kontrollspørsmål, har dere lest GRAMOs fordelingsreglement?

MATS: Eg har lest nesten heile.

GRØNDAHL: Ja ... det er litt sånn kryptisk for en som ikke driver med dette hver dag, men-

MATS: -men, det er med sektorgrupper og dei tinga?

GRØNDAHL: Ja. Og hvordan man, hvordan pengene oppstår og hvordan man beregner poeng, og hvordan vi beregner totaler og verdier per poeng og alt dette her, men der står det jo også noe om fordelingen av disse kollektive midlene, disse kulturelle midlene. Jeg synes at, sånn som vi gjør det i dag, så beregner vi jo den enkelte organisasjons andel av utbetalte vederlag, altså medlemmene, hvis du tenker på medlemmene i musikernes fellesorganisasjon; alle de medlemmene som er medlem av MFO òg medlem av GRAMO, så beregner vi at av et års utbetalte midler til norske rettighetshavere, så får, bare ett eksempel, MFOs medlemmer 22%. Så kan det hende at vi har en rettighetshaverorganisasjon som heter folkorg, som er folkemusikkorganisasjonen, de kanskje får 1% av totalt vederlag fra GRAMO. Så får GramArts medlemmer, som da representerer de fleste hovedartistene og veldig mange artister, så vil de kanskje stå for 60-65% av vederlaget. Og når vi skal fordele til organisasjonene, så

fordeler vi etter den prosenten, som medlemmene i den enkelte organisasjon har opptjent vederlag foregående år. Jeg synes det er en god og rettferdig modell og måte og gjøre det på.

ESPEN: Ja ... CRM-Direktivet for eksempel toucha jo litt på det der, med korleis det blir bestemt da. Ka du trur om, tenke om den modellen som dokke har i GRAMO, og som for så vidt e i TONO òg, med representativt demokrati, i forhold til CRM-Direktivet? Trur du det blir noke forandringar på det, eller trur du det e innafor rammene?

GRØNDAHL: Hva er det du tenker på nå, representativt demokrati, tenker du på i forbindelse med styrevalg og sånne ting?

MATS: Ja, altså ... i hvert fall sånn som ordningen e no, så e det vel kun dei som e, no hugsa eg ikkje ka de kalla da, ordinære medlemmar, som har stemmerett for eksempel, ved årsmøtet.

GRØNDAHL: Neida, det ble gjort om, det ble gjort om i fjor, da må du lese siste vedtekter, dette gjorde- fordi dette så vi at CRM-Direktivet ville komme. Vi har bare ordinære medlemmer. Vi har ingen- tidligere så er det helt korrekt når du sier at vi skilte på ordinære og tilsluttede medlemmer, og at ... men nå har vi bare ordinære medlemmer. Og det var fordi vi så at CRM ville, når det kommer, vil det stille krav til om bare én type medlemsklasse. Men det som kan være aktuelt, er at, hvis du tenker på CRM og denne måten å velge på, kan jo være at - og det kommer vi helt sikkert til - at vi må åpne for elektronisk stemmegivning på generalforsamlingen. For i dag så må man jo møte opp fysisk, og vi er jo alt i Oslo, vi er på [UFORSTÅELIG ORD] i Oslo og har vårt årsmøte eller generalforsamling, det har vi jo vært år i begynnelsen av Juni eller helt i slutten av Mai. Og du kan gi fullmakt for at noen skal stemme for deg, vi begynte vel i fjor, eller kanskje var det i forfjor, å videofilme, sånn at folk kunne følge med på både det som ble sagt på den debatten som var på generalforsamlingen. Men vi, etter CRM så vil vi også måtte lave et system sånn at folk skal kunne stemme på distanse, og ikke bare ved fysisk tilstedeværelse. Det er jeg helt sikker på at kommer til å bli en av de endringene vi må innføre i forbindelse med CRM-loven.

ESPEN: Mm. Ja, men det var fint vi kunne få en oppklaring på det, så vi ikkje rota oss vekk.

MATS: Ja, men det var i 2017 at- for eg satt litt med dei engelske vedtektene på nettsidene, og dei var kanskje ikkje heilt oppdatert da.

GRØNDAHL: Det kan nok hende at du gjorde det, så hvis du leser de norske vedtektene så står det, der endret vi, det var ved generalforsamlingen 2017 hvor vi endret dette med medlemskap, og nå har vi bare én type medlemmer, og det, nå heter det bare medlemmer.

MATS: Ja, nei den e god.

ESPEN: Mm. Har du noken andre tanka rundt CRM-Direktivet? Det e eit veldig åpent spørsmål, men-

GRØNDAHL: -ja, altså, det vi tror er jo at, og det som departementet uttaler, er at vi kommer til å gjøre en type sånn implementering som ligger veldig nær opptil direktivteksten; de kommer ikke til å gjøre veldig mye mer eller annerledes enn det som er. Det vi også vet, er at det kommer ikke til å bli en del av åndsverkloven, men det vil bli en egen lov; uten at det har naturligvis noe sånn rettskildemessig konsekvens, men det som kan være, eller det departementet sier, er at de kommer til å samarbeide tett med organisasjonene før en del av disse reglene lages, og de har varslet at vi skal være med på å kunne utforme en del av disse reglene der hvor det ikke er et krav i CRM-Direktivet om at endringer finner sted. Sånn at vi tror ikke at CRM kommer til å bli veldig stor forskjell for GRAMO sånn som det er i dag og det som blir etterpå. Det vil være noe i forbindelse med gjennomføringen av generalforsamlingen og stemmer, som jeg allerede har sagt. Det vil også kreve litt- GRAMO har jo fram til og med i fjor, ved utbetaling så har vi jo trukket 10% i et administrasjonsgebyr for ikke-ordinære medlemmer - og nå er jeg igjen tilbake til den gamle medlemsbeskrivelsen - det har vi fjernet også nå, for det vil også virke diskriminerende i forhold til CRM, og det ser vi - altså, jeg har alltid ment at det var diskriminerende uansett, så det burde vi ikke ha hatt, men det kommer også- det er også en diskusjon som har kommet opp nå som vi har sett at CRM ville medføre at det måtte fjernes, det 10%-trekket, så det har vi nå fjernet fra og med den utbetalingen som vi skal ha nå i Mai, som gjelder 2017.

ESPEN: Ja, mm. Ja, har vi noke meir egentlig?

MATS: Neei ... eller altså, jo. Har du nokre tanka om implementeringen av CRM-Direktivet, om det kjem til å ha noke å sei for interesseorganisasjonane, altså, sia dei- du var jo inne på det, dei e jo finansiert av ofte GRAMO eller TONO.

GRØNDAHL: Ja, det er helt riktig. Ja, det kan nok hende at det blir mer viktig for dem. At, og det blir jo da som jeg sa i sted, helt avgjørende av hvordan man beskriver reglene for hvordan eventuelt- og den muligheten man vil ha til å kunne trekke eller at det genereres noen av disse kulturelle midlene. Det er- jeg klarer ikke helt å spå om hvordan det blir.

ESPEN: Nei, det er jo vanskelig sjølvsagt, når vi er så tidlig i prosessen.

GRØNDAHL: Ja. Jeg tenker at, har dere vært i kontakt med kulturdepartementet om dette her?

ESPEN: Nei, det har vi ikke.

GRØNDAHL: Nei, for de, jeg vet ikke om de er villige til å forhånds-si noe om dette og om hva de tenker i dag, nå har jo det at åndsverkloven ble sendt tilbake igjen til stortingskomiteen, og nå skal det jo være en, nå har det jo vært en ny runde med ny komité etter valget og alt dette herre her, så det har jo gjort at kulturdepartementet har sikkert hatt en god del å gjøre fortsatt med åndsverkloven og kanskje ikke hatt så mye tid. Og det har kanskje medført at de ikke ville være villige til å si så fryktelig mye om det, men jeg tror kanskje at de kunne tenke seg å fortelle dere litt om det, hvis dere forteller hva det skal brukes til.

ESPEN: Mm. Kanskje det kan være en mulighet.

MATS: Det er et godt tips.

ESPEN: Ehm, ditte- berre for å, er jeg litt nysgjerrig, du sa det at det kom ikke til, Direktivet kom ikke til å være en del av nye åndsverklova, er det noe de har sagt, uttalt?

GRØNDAHL: Vi vet at det kommer til å bli en egen lov ja. Vi vet, det er sagt ja, at vi får i Norge en lov som kommer til å hete CRM-loven. Implementeringen kommer til å bli gjort som en egen lov. I noen land så har det vært gjort ved at man har gjort det som et eget kapittel, eller har implementert det i eksisterende opphavsrettslov, men i Norge så blir det en egen lov.

ESPEN: Mm, har du noken andre ting då?

MATS: Nei. Eg trur egentlig me har fått mykje godt stoff. E det noke meir du tenke på som du ønske å tilføre, enten direkte til CRM-Direktivet eller omkring vederlagsbyråa eller den sokalla norske modellen?

GRØNDAHL: Nei jeg tror ikke det, jeg tror egentlig jeg har fått sagt det jeg hadde tenkt jeg skulle si nå.

ESPEN: Ja, nei men kjempebra. Tusen takk for at du ville delta.

GRØNDAHL: Når er det dere har levering på dette?

MATS: Det e 21. Mai, så det e en god måned til.

GRØNDAHL: Ja. Kommer dere til å- det hadde vært veldig interessant å lese hva dere skriver, hadde dere hatt anledning trur du, at dere kunne tenkt dere, hvis dere bare kunne sende en fil til meg så jeg kunne få lese oppgaven deres?

MATS: Ja, det kan du få, og som me og skreiv i e-posten, hvis du ønske noken form for sitatsjekk og sånn før me ...

GRØNDAHL: Hvis du siterer meg direkte, så vil jeg gjerne sjekke at ... nå har du jo tatt opp, så jeg tviler ikke på at du kommer til å skrive dette riktig, men jeg liker alltid godt å få lov å ta en sitatsjekk altså.

MATS: Ja, jamen då får du det òg, hvis det blir direkte sitat. Mm. Ja, neimen då trur eg berre at me takka masse for at du ville stille opp.