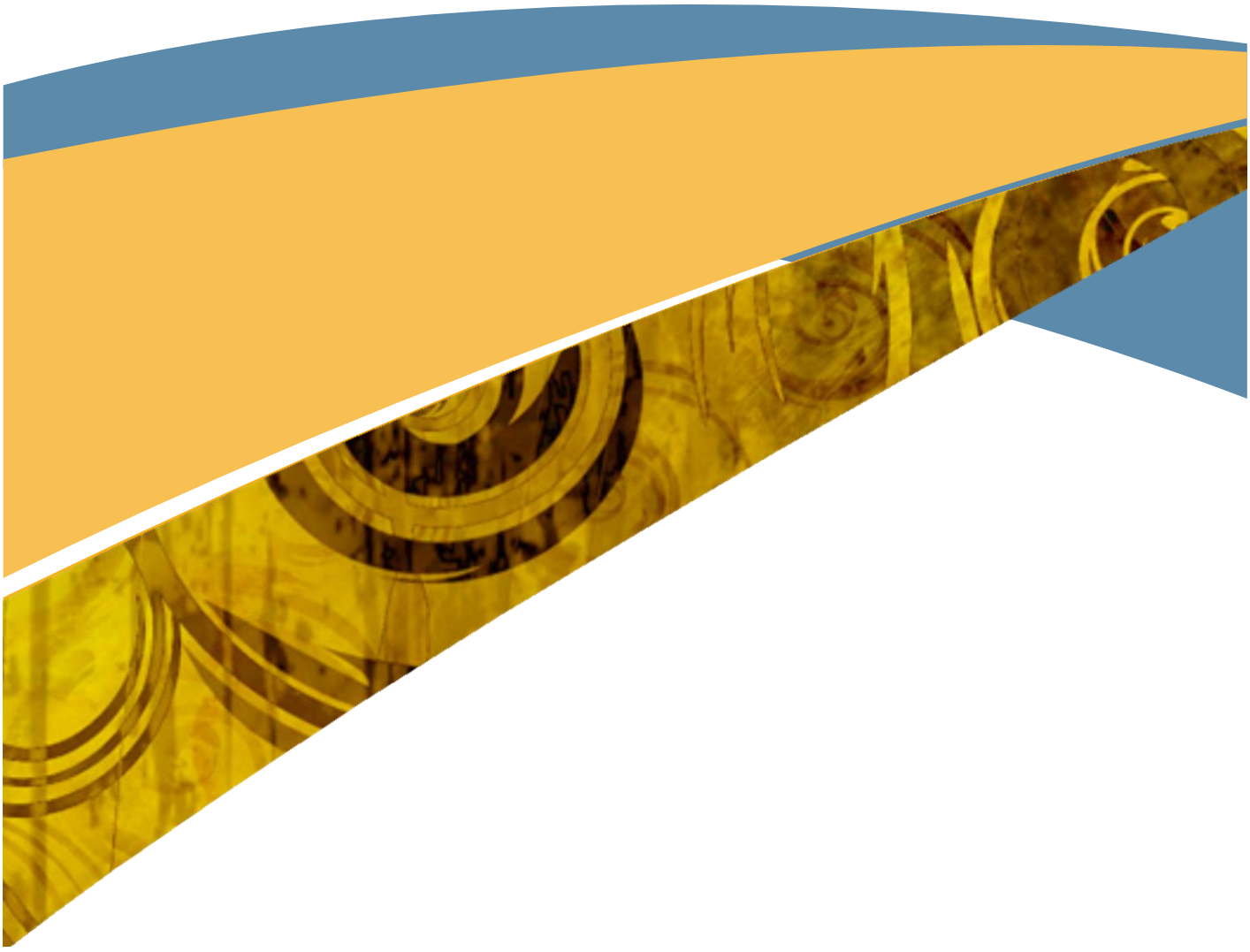
Intellectual Property Office

Collective rights management in the digital single market

Consultation on the implementation of the EU Directive on the collective management of copyright and multi-territorial licensing of online music rights in the internal market



Intellectual Property Office is an operating name of the Patent Office

Contents

1. Ministerial Foreword

The UK is home to some of the world's greatest creative talent and collective management organisations (CMOs) which demonstrate ever-improving standards of governance and transparency. Our creative industries are worth more than £71 billion a year to the UK economy and employ 1.68 million people, of which the music, performing and visual arts sector contributes some £4.75 billion and 224,000 jobs[1].

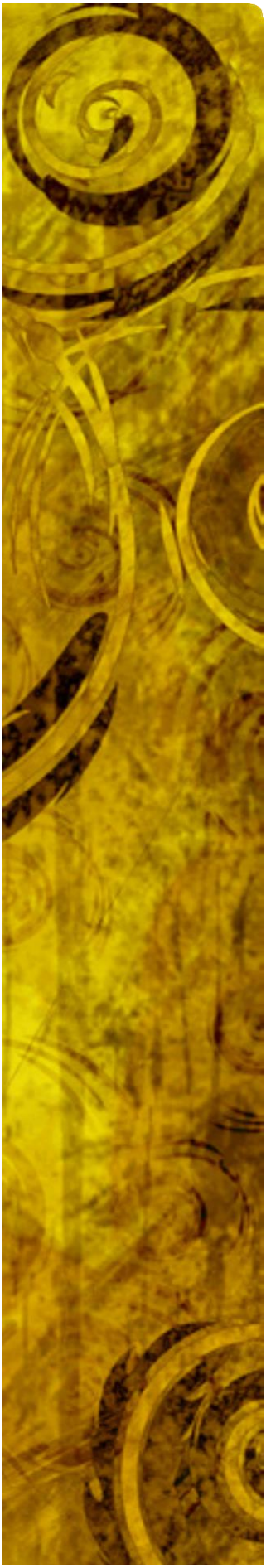
This is why the UK has welcomed and supported the Collective Rights Management (CRM) Directive. It sets minimum standards of governance and transparency with which all European CMOs must comply. This is a golden opportunity for our CMOs to build on their achievements since they adopted their codes of practice in 2012.

The codes of practice and the Government's minimum standards on which they are based have already done much to improve the transparency and governance standards of CMOs here. Whilst UK CMOs will have some work to do to comply with the more detailed provisions in the Directive, they and their members, the rightholders, will benefit from a level playing field across the EU.

The Directive also introduces a framework for the supply of multi-territorial licences for online musical works. By setting the standards for CMOs that choose to engage in multi-territorial licensing, it should become easier for service providers to obtain licences, which, in turn, should improve the development and rollout of new goods and services. As a result, consumers should benefit from a more competitive, dynamic market which gives them access to a much wider choice of music to download. As one of only two net exporters of music in Europe, this should also be good for UK rightholders.

More widely, the Directive, once implemented, should present new opportunities for UK companies and help strengthen the Digital Single Market. Creating conditions for the more effective online licensing of music in a cross-border context, with more efficient CMOs, are laudable aims. It is important that we deliver these aims. This consultation on the complex detail and compliance costs of the Directive is your chance to influence its application in the UK. I look forward to your views including those from micro-businesses and entities covered by its governance and licensing rules for the first time.

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271008/Creative_Industries_Economic_Estimates_-_January_2014.pdf



2. How this document works

This consultation is about the UK Government's proposals for implementation of the Directive. It summarises the Directive's provisions by main themes, followed by a list of questions on the general approach to implementation. It highlights those areas where the Directive allows for discretion and considers the potential impacts on UK stakeholders.

How to respond

Overall, this consultation seeks views on the options for implementation. In particular, the Government welcomes evidence that will help identify where the costs lie and invites the submission of economic and/or cost estimates, especially those that are backed up by calculations or references. While the transposition of the Directive is mandatory, there are a few discretionary provisions (in Articles 7, 8, 13, 34 and 37) on which views are also sought.

The Government is seeking evidence that is open and transparent in its approach and methodology. Unsupported responses (e.g. "yes" or "no" answers) are unlikely to assist in forming a view. However, Government is aware that some individuals and small businesses and organisations face particular challenges in assembling evidence. Those contributions will be assessed accordingly. The Intellectual Property Office has published a guide to evidence for policy[2] which lays out the Government's aspiration that evidence used to inform public policy is clear, verifiable and able to be peer-reviewed.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of the members were gathered.

Please make your responses as concise as possible, clearly marking the response with the question number.

The consultation form is available electronically (until the consultation closes). The form can be submitted electronically by email or by letter or by fax to:

Address	Copyright and Enforcement Directorate Intellectual Property Office First Floor, 4 Abbey Orchard Street, London SW1P 2HT
Tel	0300 300 2000
Fax	020 7034 2826
Email:	copyrightconsultation@ipo.gov.uk
Issued:	4 February 2015
Respond by:	30 March 2015 (midday)

The contact details above may also be used to ask questions about policy issues raised in the document, or to obtain a copy of the consultation in another format.

2 http://webarchive.nationalarchives.gov.uk/20140603093549/http://www.ipo.gov.uk/consult-2011-copyright-evidence.pdf

Confidentiality and Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want information, including personal data that you provide to us, to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be binding on the Department.

What happens next?

The Government intends to publish a summary of the responses to the consultation and its response to those responses following the General Election in May 2015. In the light of those responses it may wish to amend the Impact Assessment and will then undertake a technical consultation on the draft Regulations. The implementing Regulations will be laid in time to ensure that the Directive's provisions enter into force in the United Kingdom no later than 10 April 2016.

Comments or complaints on the conduct of this consultation

This consultation has been drawn up in line with the Government's Consultation Principles[3].

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET
Telephone Angela on 020 7215 1661
or e-mail to: angela.rabess@bis.gsi.gov.uk

3 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60937/Consultation-Principles.pdf

3. Introduction

The EU Directive on the collective management of copyright and multi-territorial licensing of online music ("the Directive"[4]), published on 26 February 2014, entered into force on 10 April 2014 and must be transposed into national law by 10 April 2016.

The policy underpinning the Directive is part of the European Commission's 'Digital Agenda for Europe'[5] and the 'Europe 2020 Strategy[6] for smart, sustainable and inclusive growth.' It is one of a set of measures aimed at improving the licensing of rights and the access to digital content. These are intended to facilitate the development of legal offers across EU borders of online products and services, thereby strengthening the Digital Single Market.

Policy aims of the Directive

The Directive's main objective is to ensure that collective management organisations ("CMOs") act in the best interests of the rightholders they represent. Its overarching policy aims are to:

- Modernise and improve standards of governance, financial management and transparency of all EU CMOs, thereby ensuring, amongst other things, that rightholders have more say in the decision making process and receive accurate and timely royalty payments.
- Promote a level playing field for the multi-territorial licensing of online music.
- Create innovative and dynamic cross border licensing structures to encourage further provision and take up of legitimate online music services.

The Directive sets out the standards that CMOs must meet to ensure that they act in the best interests of the rightholders they represent. It establishes some fundamental protections for rightholders, including those who are not members of CMOs. These include detailed requirements for the way in which rights revenues are collected and paid, how the monies are handled, and how deductions are made.

The Directive provides a framework for best practice in licensing, including obligations on licensees around data provision. It also creates scope for the voluntary aggregation of music repertoire and rights with the aim of reducing the number of licences needed to operate a multi-territorial, multi-repertoire service.

All these measures are underpinned by detailed requirements to ensure effective monitoring and compliance, overseen by a national competent authority (NCA). Those requirements include ensuring that proper arrangements are in place for handling complaints and resolving disputes.

4 http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:084:0072:0098:EN:PDF
5 http://ec.europa.eu/digital-agenda/
6 http://ec.europa.eu/europe2020/index_en.htm

Structure of the Directive

The Directive is in four parts. Title I outlines its scope and definitions. Title II focuses on the rights of and protections for rightholders, underpinned by minimum standards of governance and transparency that are required of all EU CMOs. Title III sets out the standards that EU CMOs which choose to engage in multi-territorial licensing of online musical rights must meet. Title IV covers the requirements for enforcement of all the measures in the Directive, including the procedures for handling complaints and settling disputes.

Domestic regulation

The Directive's provisions for improved transparency and governance broadly complement existing domestic legislation for the regulation of CMOs. The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014[7] (the "2014 Regulations") require UK CMOs to adhere to codes of practice that comply with minimum standards of governance and transparency under those Regulations. There is also provision for regular, independent reviews of compliance and access to an Ombudsman who acts as the final arbiter in disputes with a CMO. UK CMOs self-regulate in the first instance, but Government has a reserve power to remedy any problems in self-regulation and to impose sanctions where appropriate.

The 2014 Regulations were developed and implemented against the backdrop of the Directive. When the Directive was announced in 2012, work on the 2014 Regulations was well underway.[8] The question of whether to continue was carefully considered, and Government decided to carry on with the domestic work, given that there was no guarantee that the Directive would be agreed. Even if it were, it would be a number of years before transposition during which time rightholders and licensees would be without the protections they had been promised.

Scope of the Directive

The scope of the 2014 Regulations does not currently extend to those organisations that also collectively manage rights but which have a different legal form to CMOs. The Directive calls these organisations "independent management entities" (IMEs).

In general terms, UK CMOs tend to be constituted as companies limited by guarantee, (a form usually adopted by most incorporated charities, public benefit bodies, clubs, and membership organisations). They are typically described as "not for profit" organisations and are owned and controlled by their members, the rightholders. IMEs, by contrast, are for-profit commercial entities that are not owned or controlled by rightholders. Under the Directive they will have to comply with certain provisions; broadly summarised, these oblige them to provide information to the rightholders they represent, CMOs, users and the public.

Online music

There is no specific provision in UK law for the regulation of the multi-territorial licensing of online musical works. The Directive introduces new provisions in Title III to ensure that cross border services meet certain standards, including transparency of repertoire and accuracy of financial flows related to the use of the rights.

7 http://www.legislation.gov.uk/uksi/2014/898/contents/made

8 In fact, the Government had already consulted on codes of practice for collecting societies in its Copyright Consultation of 2011, and had published minimum standards at the end of 2012.

4. Proposals for Implementation

The Directive will be transposed in accordance with the UK Government's principles for the transposition of Directives[9]. This means that, where feasible, copy out and alternatives to regulations should be considered so that UK businesses are not put at a competitive disadvantage to their European counterparts. As such, the Government is consulting on two options for implementation:

Option 1: Adapt the existing regulatory framework, including the 2014 Regulations, to comply with the Directive's requirements

Option 2: Replace the existing regulatory framework, including the 2014 Regulations, with new Regulations. This would involve copying out the Directive as far as possible, but drawing on existing infrastructure (e.g. the Ombudsman) where feasible.

Option 1

Parts of the Directive, notably the (Title II) provisions designed to improve governance and transparency, broadly overlap with the specified criteria[10] in the 2014 Regulations.

Under this option, CMOs would amend their existing codes of practice to align with the Directive's more detailed governance and transparency requirements. IMEs would have to adopt and publish codes of practice incorporating the relevant provisions. In both cases, the Government would need to amend the Regulations, including the specified criteria, to cover the additional requirements of the Directive.

Option 2

Under this option, the 2014 Regulations would have to be repealed. The provisions of the Directive would effectively be copied out into a new set of Regulations. Where possible, existing infrastructure from the current system (e.g. the Ombudsman or complaints procedure) may be used.

The 2014 Regulations include certain protections for licensees, in particular, that are stronger, more detailed, or absent from the Directive. These include the requirements for licensees to respect creators' rights and ensure that the use of copyright material is in accordance with the licence terms and conditions; and for CMOs to ensure that its employees, agents and representatives are trained on conduct that complies with obligations in the minimum standards. The Government believes these are important protections for both creators and licensees and that due consideration should be given to retaining them in the new secondary legislation.

9 Guiding Principles for Transposition of EU Directives
10 http://www.legislation.gov.uk/ukdsi/2014/9780111109267/schedule

Initial Analysis of Options

This suggests that Option 1 may be problematic in that the 2014 Regulations are not the most suitable vehicle for transposition. This is partly because the Directive covers areas and bodies not in scope of the 2014 Regulations. Broadly speaking, these may be categorised as follows:

- Micro-businesses, entities which are owned or controlled by collective management organisations; and IMEs;
- Special rules on musical works for online use on a multi-territorial basis.

Moreover, Article 5 of the Directive requires the rightholder to be put in a position to enforce their individual rights set out in that Article as part of their membership terms, from the very first day of transposition under national law. This is not possible under the 2014 Regulations, because they make provision for a breach of a code of practice as a whole, with enforcement through the Secretary of State.

Questions

1. Please say whether and why you would prefer to implement using Option 1 or 2?
2. How important is it to retain those aspects of the 2014 Regulations that go beyond the scope of the Directive?
3. What is your best estimate for the overall cost of (a) implementation and (b) ongoing compliance with this Directive?
4. If Option 2 was the preferred option, as a CMO would you consider retaining a revised code of practice as a means of making the new rules accessible to members and users?

The Directive and the Extended Collective Licensing Regulations

Extended Collective Licensing (ECL) is a form of licensing that allows a CMO to apply for an authorisation from the Secretary of State to license the works of all rightholders in an ECL scheme, except those rightholders that exercise their right to opt out.

Recital 12 of the Directive states that it "does not interfere with arrangements concerning the management of rights in Member States such as individual management, the extended effect of an agreement between a representative collective management organisation and a user ie extended collective licensing". However, some of its provisions for "rightholders" (a definition that covers both members of a CMO and non-members in an ECL scheme[11]) overlap, exceed, or are absent from those that apply to the same rightholders in the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 (the "ECL regulations)[12].

11 There is further discussion of the "rightholder" definition later on in this consultation document
12 http://www.legislation.gov.uk/uksi/2014/2588/contents/made

Broadly speaking, the overlap can be divided into the following categories:

- Stronger, more detailed, or additional protections in the Directive than in the ECL Regulations
- Stronger, more detailed, or additional protections in the ECL regulations than in the CRM Directive.
- Similar protections in the Directive and the ECL Regulations.

The Government's intended approach for each of these categories is as follows:

Where there are stronger, more detailed or additional provisions in the Directive, these will necessarily take precedence over the ECL Regulations.

In cases where the Directive is silent on something that is available in the ECL Regulations or where the ECL Regulations go further than the Directive, the ECL Regulations are expected to remain as they are, subject to good reasons for retaining them. This is because the Government legislated to include those protections based on in-depth consultation and evidence from stakeholders and consultations.

Where there are very similar protections, these will be looked at on a case by case basis.

5. Overview of Directive's requirements

Title I: General provisions: Scope and definitions

Distinction between collective management organisations and independent management entities

The Directive brings into scope those bodies defined as "collective management organisations" and "independent management entities"; the latter are not in scope of the 2014 Regulations. Only some of the Directive's provisions apply to IMEs.[13]

The 2014 Regulations do not apply to relevant licensing bodies[14] that are micro-businesses.[15] There is no such exemption in the Directive. The Government is currently aware of one CMO that is exempt from the 2014 Regulations and which is likely therefore to incur higher costs as result of the Directive's implementation.

Questions

5. Given the definitions of "collective management organisation" and "independent management entity", would you consider your organisation to be caught by the relevant provisions of the Directive? Which type of organisation do you think you are and why? Please also say whether you are a micro-business.

6. If you are a rightholder or a licensee, do you either have your rights managed or obtain your licences from an organisation which you think is an IME? If so, could you please identify the organisation, and explain why it is an IME.

Subsidiaries

The scope of some of the Directive's provisions extend to "entities directly or indirectly owned or controlled, wholly or in part, by a collective management organisation" but only insofar as they undertake regulated activities that a CMO otherwise would (Article 2(3)). The objective of this Article is to guard against circumvention of the Directive. The Directive does not specify (as is the case for IMEs), which Articles would always apply to subsidiaries as the circumstances may vary according to the nature of the activities concerned. For example, in relation to the management of rights revenues, a subsidiary involved in the investment of rights revenues (Article 11.4) would have to comply with only some of the Directive's requirements.

Questions

7. Do you have subsidiaries? Which of the Directive's provisions do you think would apply to them, and why? Please set out your structure clearly.

13 Articles 16(1), 18, 20 and 21 (a)(b)(c)(e) and (f).
14 A "relevant licensing body" is the equivalent definition of a CMO in the 2014 Regulations
15 A business with fewer than ten employees and which has a turnover or balance sheet of less than 2 million Euros per annum

Rightholder

Article 3(c) defines "rightholder" as "any person or entity, other than a collective management organisation, that holds a copyright or related right or, under an agreement for the exploitation of rights by law, is entitled to a share of rights revenue." This would appear to include both members of a CMO and certain rightholders who are not members. The latter category should include non-members in ECL schemes and mandating rightholders who are not members.[16]

Questions

8. Who do you understand the "rightholders" in Article 3(c) to be?

9. If you are a CMO, what are the practical effects of a relatively broad definition of "rightholder" for you?

Title II: Collective management organisations

Title II sets out the standards of governance, financial management, transparency and reporting that CMOs must meet to ensure that they act in the best interests of the rightholders they represent.

Chapter 1: Representation of rightholders and membership and organisation of a collective management organisation

Representation of rightholders

Articles 5 and 6 establish some fundamental rightholder protections. These include being able to authorise their chosen CMO to manage some or all of their rights; to decide in which territory(ies) those rights should be managed; to withdraw all or some of those rights; and to be fairly represented in the decision-making process.

The Directive also requires that CMOs grant certain rights to rightholders for which there is no equivalent provision in the specified criteria. These include the right to grant licences for non-commercial use (Article 5(3)); to give consent for specific rights or category of right (Article 5(7)); and the right to choose to withdraw certain rights (Article 5(5)).

Questions

10. What do you consider falls in the scope of "non-commercial"?

11. If you are a CMO, to what extent do you already allow members scope for non-commercial licensing? Please explain how you do so?

12. What will be the impact of allowing rightholders to remove rights or works from the repertoire?

13. Under what circumstances would it be appropriate for a CMO to refuse membership to a rightholder i.e. what constitutes "objective, transparent and non-discriminatory behaviour"?

16 Mandating rightholders who are not members could be defined as those rightholders who have given a CMO a mandate to manage their rights and collect on their behalf, but who choose not to be members of the CMO. The Government is aware of one CMO set up in this way. There may be CMOs who dissuade or prevent mandating rightholders from becoming members but the Government is not aware of any such CMO.

14. What should “fair and balanced” representation in Article 6(3) look like in practice?

15. What do you consider to be an appropriate “regular” timeframe for updating members’ records?

Rights of rightholders who are not members of CMOs

In Article 7(1) of the Directive, Member States are required to ensure there is at least a basic level of protection for rightholders who have a direct legal relationship or other contractual arrangement with a CMO but who are not their members.

Article 7(2) gives Member States the discretion as to whether to apply other provisions in the Directive to rightholders who are not members of the CMO.

Questions

16. Is there a case for extending any additional provisions in the Directive to rightholders who are not members of the CMO? If so, which are these, why would you extend them and to whom (i.e. non-members in ECL schemes, mandating rightholders who are not members, or any other category of rightholder you have identified in answer to question 7)? What would be the likely costs involved? What would be the impact on existing members?

The General Assembly of Members

The protections around governance and supervision required under the Directive will be applied taking into account the requirements of UK company law. Several of the provisions around the functioning of the General Assembly (Article 8) allow CMOs some discretion around their implementation. These may be broadly summarised as:

- delegation of certain powers to the supervisory body, a delegates’ assembly and/or rightholders;
- conditions for the use and investment of rights revenue;
- arrangements for the appointment or removal of the auditor;
- restrictions on voting rights;
- appointment of proxy vote holders;

It may be appropriate to allow for some flexibility around the functioning and powers of the General Assembly to accommodate the different corporate structures amongst UK CMOs and/or to take account of existing practice. The overall objective is to support the “fair and balanced” representation of rightholders’ interests and demonstrate robust corporate governance.

Questions

17. Which of the discretionary provisions of Article 8 do you think should be adopted?

18. Do you have an existing supervisory function that complies with the requirements in Article 9? If not, can you give an estimate of the likely costs of compliance?

19. Which of the Directive’s provisions are existing requirements under UK company law?

Chapter 2 - Management of rights revenue

In the 2014 Regulations, the obligations on CMOs around the collection and distribution of rights revenues are limited to high level information and transparency and reporting requirements. The Directive has detailed provisions (Articles 11 and 12) that will govern the way rights revenues are collected, how the monies are handled and how deductions are made.

Article 13 prescribes how and when rightholders are to be paid; the arrangements a CMO must put in place to try and locate absent rightholders; and what must happen if they are unknown or cannot be found. Whilst in the first instance the General Assembly is responsible for deciding what happens to non-distributable amounts, the Member State has a discretion to "limit or determine the permitted uses of non-distributable amounts" (Article 13(6)).

Throughout the negotiations on the Directive, the UK Government has sought to distinguish between the handling of non-distributable monies that are due to members of CMOs and those which belong to rightholders who are not members of the CMO. This distinction is reflected in the ECL Regulations.

Whereas the Directive's requirements for due diligence in locating absent rightholders should minimise the amount of undistributed monies, it is unlikely that all monies will always be distributed. The UK is minded to exercise the discretion in Article 13(6), but only where the monies belong to rightholders who are not members of a CMO. The Government is aware that there is some concern about the exercise of this discretion where it is in relation to member rightholders, on the basis that it could ultimately result in being an incentive for (particularly social and cultural) deductions in other jurisdictions to the detriment of UK member rightholders. While the Government believes that some of this concern may be offset by the heightened transparency requirements and detailed provisions for reuniting rightholders with their money, it welcomes evidence on this matter.

Questions

20. If you do not already have a distribution system that complies with the provisions of Article 13, can you say what the cost of implementing the requirements will be?

21. What are your organisation's current levels of undistributed and non-distributable funds, as defined in Article 13?

22. What is your estimate of the current size and scale of non-distributable amounts that are used to fund social, cultural and educational activities in the UK and elsewhere in the EU?

23. Do you collect for rightholders who are not members of your CMO? If so, how much of that rights revenue is undistributed and/or non-distributable? If you collect for mandating rightholders who are not members of your CMO, to what extent do those rightholders have a say in the distribution of non-distributable amounts, and what do you think of the Government exercising its discretion in relation to those amounts?

24. What should be the criteria for determining whether deductions are 'unreasonable'?

25. Are there any pros and cons to be particularly aware of in case the Government exercises the discretion?

Chapter 3 – Management of rights on behalf of other CMOs

Articles 14 and 15 establish the principle of parity of rightholders whose rights are managed under a representation agreement with those managed directly. This applies to tariffs, management fees, and collection of revenues and distribution of amounts due to rightholders.

Questions

26. Is there currently a problem with discrimination in relation to rights managed under representation agreements? If so, what measures should be in place to guard against this?

Chapter 4 – Relations with users

Articles 16 and 17 set out a framework designed to ensure that licensing negotiations are conducted in good faith, on the basis of objective and non-discriminatory criteria. It also provides for CMOs to be more agile and flexible when licensing new online services, an area in which there continues to be rapid changes in the types of business model used to launch them.

The new obligations on licensees in relation to the provision of data (Article 17) have been welcomed by CMOs as a key measure to ensure they are able to comply with the Directive, thereby improving the efficiency of the collective management process.

From a licensee's perspective, it is essential to find the right balance between repertoire transparency and contractual freedoms and data requirements that are feasible, fair and appropriate. The requirements should therefore be read in conjunction with Recital 33, which limits the information CMOs may request from licensees to what is "reasonable, necessary and at the users' disposal .... taking into account the specific situation of small and medium sized enterprises (SME)".

In the light of the requirement in Article 36.2 for procedures to exist which would enable interested parties to notify the national competent authority of a breach of the requirements arising from the Directive the Government will need to consider whether anything further is needed to secure compliance for example through private action.

Questions

27. What do you consider should be the "necessary information" CMOs and users respectively should provide for in licensing negotiations (Article 16(1))?

28. What format do you think the user obligation should take and how might it be enforced? What is "relevant information" for the purpose of user reporting?

29. What is the scale of costs incurred in administering data returns that are incomplete and/or not in a suitable format?

Chapter 5 – Transparency and reporting

This Chapter sets out requirements for the provision of information by a CMO to rightholders (both routinely and upon request), to CMOs with whom it has reciprocal agreements and to the public. As with other areas of the Directive, the provisions in the 2014 Regulations are broadly in line those in Chapter 5 of the Directive, but they are much less prescriptive.

The Directive requires, for example, that CMOs "make available" individualised information to rightholders on the management of their rights at least annually. All CMOs will be required to publish an extremely detailed annual transparency report (the "ATR"); and in some circumstances a special report on the uses of amounts deducted for social, cultural and educational services. There are also detailed requirements for the timing of publication of the ATR (no later than eight months following the end of that financial year) and that the accounting information must be audited.

Questions

30. Which of the Transparency and Reporting obligations differ from current practice, and what will be the cost of complying with them?

31. What do you think qualifies as a "duly justified" request for the purposes of Article 20?

Title III: Multi-territorial licensing of online rights in musical works by collective management organisations

One of the key objectives of the Directive is to create conditions that are conducive to the effective provision of multi-territorial collective licensing of authors' rights in musical works for online use, including lyrics. The new provisions should ensure cross border services provided by CMOs adhere to minimum quality standards, notably in terms of transparency of repertoire represented, and accuracy of financial flows.

The Title III provisions also set out a framework for facilitating the voluntary aggregation of music repertoire and rights, with the aim of reducing the number of licences needed to operate a multi-territorial, multi-repertoire service. Unlike the Title II provisions, which in some places allow for Member States to impose more stringent standards if they wish,[17] Title III requirements are harmonising provisions.

A comprehensive list of the criteria that a CMO has to fulfil in order to demonstrate it has the capacity to process multi-territorial licences is set out in Article 24. In addition, CMOs must respond to requests for up-to-date information about their online repertoire, except where there may be a need to protect the data. Whilst licensees have welcomed the potential for improved standards of reporting, there is some concern that some CMOs may use the discretion in Article 24(2) to circumvent the repertoire transparency requirements.

In general terms, there are many similarities between the information requirements for CMOs in Title II and Title III of the Directive. These include provisions for CMOs to provide licensees with at least one method of electronic reporting (Articles 17(4) and Articles 27.2); and give rightholders a detailed breakdown of the amounts paid for the use of their rights by category and type (Articles 18 and 28)). Some CMOs have expressed concern that these requirements could increase their costs and that that their ability to comply depends on licensees adhering to a suitable reporting format.

There are also some important differences, for example in relation to the timing of payments to rightholders. There is no specified time period for distributing revenues for multi-territorial licences, save that payments must be made "without undue delay after the actual use of the work is reported" (Article 28). The aim is to speed up online payments, ideally so that they operate in real time. In Title II CMOs must distribute monies "no later than nine months after the end of the financial year in which they were collected" (Article 13).

17 See Recital 9

Article 32 provides a derogation for online music rights required for radio and television programmes. This is so that broadcasters can receive such licences from CMOs that do not necessarily have the capacity to process multi-territorial licences under the Title III requirements. The derogation applies to CMOs, not broadcasters. It is limited to those instances where there is a clear and subordinate relationship between the music and the original broadcast (i.e. it does not apply to offers of individual audiovisual works). This is to avoid potential distortion of the competitive market.

Questions

32. What factors help determine whether a CMO is able to identify musical works, rights and rightholders accurately (Article 24(2))?

33. What standards are currently used for unique identifiers to identify rightholders and musical works? Which of these are voluntary industry standards?

34. What would you consider to be a "duly justified request for information"? (Article 25(1)) What is not?

35. What would you consider to be "reasonable measures" for a CMO to take to protect data (Article 25(2))? What would be an unreasonable ground to withhold information on repertoires?

36. What period of time would you consider would constitute "without undue delay" for the purposes of correcting data in Article 26(1) and for invoicing in Article 27(4)?

Title IV: Enforcement measures

Article 33 of the Directive requires Member States to ensure that CMOs have effective complaints procedures.

Article 34(1) gives Member States the discretion to provide for rapid, independent and impartial alternative dispute resolution procedures for disputes between CMOs, members, rightholders or users, except in the case of multi-territorial disputes, where the provision of ADR is mandatory. Article 34(2) includes very detailed requirements around the resolution of Title III disputes and specifies the individual aspects of the Directive to which the provision should apply.

During informal consultation, several CMOs expressed a preference for having access to a range of mediation and ADR processes to resolve different types and levels of disputes. Rightholders on the other hand, felt this could cause confusion. Licensees wanted fair ADR systems, of different gradations according to the type of dispute or possibly considering having a centralised ADR system.

Subject to the outcome of this consultation, it would appear logical for Government to build on the service provided by the existing independent Ombudsman scheme. An alternative could be mediation. For example, the IPO's accredited, flexible fee, mediation service helps businesses and individuals resolve IP disputes quickly and effectively, including by telephone in some cases[18].

18 https://www.gov.uk/intellectual-property-mediation

Article 35 requires Member States to ensure that disputes between CMOs and licensees about existing and proposed licensing conditions or a breach of contract can be submitted to a court. Alternatively, but only if appropriate, disputes may be referred to another independent and impartial dispute resolution body, which has expertise in intellectual property law.

One option could be that disputes about licensing terms and conditions should continue to be referred to the Copyright Tribunal, as provided for in Sections 118 and 119 of the Copyright, Designs and Patents Act 1988 ('CDPA'). At present, disputes may only be referred to the Tribunal by the licensee or their representative body, depending on the circumstances. This rule was designed to redress the imbalance of power that can often be found at the negotiating table, because most CMOs are effectively monopoly suppliers. While the Government recognises that the balance can sometimes work in favour of the licensee, as a general rule it seeks to maintain equilibrium in negotiations. The Government welcomes views on other options which take into account the need for this balance.

Disputes about breaches of contract are civil matters, which would be dealt with in the usual way as with other contractual disputes.

The scope of the complaints and dispute resolution provisions do not extend to IMEs. Nevertheless, as Member States are required to monitor and enforce IME compliance, one possibility could be to do so by monitoring complaints, prompting an investigation where necessary.

Questions

37. How many licensees do you have in total? Of these, are you able to say how many are small and medium enterprises and how many have a bigger turnover than you do?

38. What do you think are the most appropriate complaints procedures for handling disputes and complaints between CMOs, users and licensees, including for multi-territorial disputes? Please say why.

Monitoring and compliance

The Directive places an obligation on Member States to ensure that CMOs comply with its provisions by establishing an NCA to monitor compliance and impose sanctions where necessary. Several specific tasks and responsibilities are listed: these include reporting mechanisms for members, rightholders, licensees, CMOs and other interested parties with concerns; notification and reporting requirements; and participation in an expert group as required. The NCA must also ensure there is provision for monitoring implementation of the requirements for multi-territorial licensing, with mechanisms for co-operating with NCAs in other Member States. The Directive does not restrict Member States in their choice of NCA nor does it prescribe the way in which the Directive's requirements are monitored and enforced; only that the NCA should be in a position to address any concerns in an effective and timely manner and that any sanctions should be "effective, proportionate and dissuasive."

Options for a national competent authority

The Government has been exploring different options for the creation of a NCA: (a) creating a new regulatory body; (b) persuading an existing regulatory body to take on the role; and (c) having a dedicated team within the Intellectual Property Office (IPO).

Early signals from existing regulatory bodies suggest little appetite for taking on this work, while the relatively narrow scope of the Directive would make it difficult to justify the high cost of creating a new body. As such, the Government's favoured option at this stage is for a dedicated team within the IPO to take on the role. Although the IPO is not a regulatory body, its responsibilities in relation to the 2014 Regulations mean that it acts in a quasi-regulatory capacity. It would therefore appear reasonable to take advantage of synergies with its existing functions and expertise in collective rights management. To create a separate body or to expand the scope of an alternative economic regulator is likely to be a more expensive, more difficult way of proceeding and would likely take longer to set up. This is an important consideration as either the Government will need to absorb those costs (as the price of becoming a regulator), or pass them on to CMOs as compliance costs.

Questions

39. What is your preferred option for the national competent authority? Please give reasons why.

40. Bearing in mind the scope of its ongoing responsibilities, what would you consider to be an appropriate level of staffing and resources needed? Please give and upper and lower estimate.

41. How should the costs of the NCA be met?

Annex A

Initial impact assessment

Title: Collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market **IA No:** BISIPO007 **Lead department or agency:** IPO **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** 19/10/2014 **Stage:** Consultation **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:** rosalind.stevens@ipo.gov.uk

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£0m	£0m	£0m	No	

What is the problem under consideration? Why is government intervention necessary?

The Directive addresses two, interlinked problems: (i) the functioning of collecting societies, particularly in relation to transparency, accountability and governance; and (ii) problems specific to the supply of multi-territorial licences for the online exploitation of musical works in an EU market that is territorially fragmented. The Commission proposed intervention at European Union level under the principle of subsidiarity (Article 5(3) TFEU) as both national legal frameworks and a Commission Recommendation from 2005 had proved insufficient to address the problems.

What are the policy objectives and the intended effects?

The Directive's policy aims are to:

• To modernise and improve collecting societies' governance, financial management and transparency; in particular, ensuring rightholders have more say in the decision making process and receive royalty payments that are accurate and on time.

• Promote a level playing field across the EU for the multi-territorial licensing of online music.

• Create innovative and dynamic cross border licensing structures to encourage further provision and take up of legitimate online music services.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing.

Option 1: Directive is implemented through extensive modification of existing regulatory framework for UK collective management organisations.

Option 2: Directive replaces existing framework and is implemented entirely through copy out. Existing protections (e.g. for licensees) to be retained in a code of practice that sits alongside the SI.

Option 2 is the preferred option as it introduces legal certainty, ensures rightholders are able to directly enforce their legal rights, and minimises the risk of infraction. In both options 1 and 2, the "Title III" provisions on multi-territorial licensing would be copied out into a separate section of the Statutory Instrument. In both options 1 and 2 responsibility for enforcement could fall to (a) a dedicated team within the IPO or (b) an existing independent regulator or (c) a new independent body.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 04/2021

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** n/a	**Non-traded:** n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Adapt the existing self-regulatory framework to comply with the Directive's requirements

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

We have not been able to monetise the costs at this stage. We are seeking evidence at consultation.

Other key non-monetised costs by 'main affected groups'

National competent authority (NCA): initial set up costs, monitoring and enforcement.
Collective management organisations (CMO): compliance costs - revision of existing codes; representation requirements; database and reporting systems.
Independent management entities: compliance with transparency and reporting obligations.
Licensees: compliance cost of data obligations; potential higher licence fees if CMOs pass through compliance costs.
Rightsholders: potential loss of revenues if CMOs pass through administrative overheads to cover additional implementation and compliance costs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits at this stage. We are seeking further evidence at consultation.

Other key non-monetised benefits by 'main affected groups'

CMOs: level playing field for standards, improved efficiency and reduced transaction costs with potential to gain extra business from rightholders across the EU. Pro-competitive benefits for online music services with resultant increased revenues and fewer complaints
Licensees: improved CMO efficiency could lead to lower licensing fees, falling transaction costs and improved licensing opportunities.
Rightholders: faster, more accurate receipt of royalties due.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

Assumes that implementation will successfully address:
- inefficiencies associated with collective management of copyright and related rights in general, and
- the specific complexities of the collective licensing of authors' rights in musical works for online uses.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	No	IN/OUT/Zero net cost

Summary: Analysis & Evidence **Policy Option 2**

Description: Replace existing codes framework with new Regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional	10	Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

We have not been able to monetise the costs at this stage. We are seeking evidence at consultation.

Other key non-monetised costs by 'main affected groups'

National competent authority (NCA): initial set up costs, monitoring and enforcement.
Collective management organisations (CMO): compliance costs - revision of existing codes; representation requirements; database and reporting systems.
Independent management entities: compliance with transparency and reporting obligations.
Licensees: compliance cost of data obligations, potential higher licence fees if CMOs pass through compliance costs.
Rightsholders: potential loss of revenues if CMOs pass through administrative overheads to cover additional implementation and compliance costs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional	10	Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits at this stage. We are seeking further evidence at consultation.

Other key non-monetised benefits by 'main affected groups'

CMOs: clear legal framework, level playing field for standards, improved efficiency and reduced transaction costs with potential to gain extra business from rightholders across the EU. Pro-competitive benefits for online music services with resultant increased revenues and fewer complaints
Licensees: improved CMO efficiency could lead to lower licensing fees, falling transaction costs and improved licensing opportunities; clear legal framework providing assurance that licensing is legal.
Rightholders: greater clarity of rights and legal certainty around enforcement; faster, more accurate receipt of royalties due.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

Assumes that implementation will successfully address:
- inefficiencies associated with collective management of copyright and related rights in general, and
- the specific complexities of the collective licensing of authors' rights in musical works for online uses.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	No	IN/OUT/Zero net cost

Evidence Base (for summary sheets)

1. Background

The Directive 2014/26/EU of the European Parliament and of the Council on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ('CRM Directive') entered into force on 10 April 2014. Member States must transpose it into national law by 10 April 2016.

The policy is part of the European Commission's 'Digital Agenda for Europe' and the 'Europe 2020 Strategy for smart, sustainable and inclusive growth.' It is one of a set of measures aimed at improving the licensing of rights and the access to digital content. These are intended to facilitate the development of legal and cross-border offers of online products and services, thereby strengthening the Digital Single Market**.**

Copyright and related rights are the rights granted to authors (copyright) and to performers, producers and broadcasters (related rights) to ensure that those who have created or invested in the creation of content such as music, literature or films, can determine how their creation can be used and receive remuneration for it. These rights should act as an incentive to create and invest in creative activities and to disseminate creative works matter to the public.

Permission to use these rights can be obtained directly from the copyright owner, but more usually it is in the form of a licence from a Collective Management Organisation (CMO). A CMO is a body that is mandated by its members, the copyright owners, to license their rights and collect and distribute their royalties in return for an administrative fee.

The Directive is in four parts. Title I covers the general provisions while Title II deals with the minimum standards of governance and transparency that all EU CMOs must comply with. Title III sets out the standards for those EU CMOs that choose to engage in multi-territorial licensing of online musical rights. Title IV covers the requirements for enforcement of all the measures in the Directive.

The Directive's provisions for improved transparency and governance broadly complement UK domestic legislation for the regulation of collective management organisations. The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 (the "Regulations") require UK CMOs to adhere to codes of practice that comply with minimum standards of governance and transparency set by the Government. There is also provision for regular, independent reviews of compliance and access to an Ombudsman who acts as the final arbiter in disputes with a CMO. UK CMOs self-regulate in the first instance, but Government has a reserve power to remedy any problems in self-regulation and to impose sanctions where appropriate.

The scope of the Regulations does not currently extend to those organisations that also collectively manage rights but which are constituted differently to CMOs. The Directive calls these organisations "independent management entities" (IMEs). In general terms, UK CMOs are constituted as companies limited by guarantee, (a form usually adopted by most incorporated charities, public benefit bodies, clubs, and membership organisations). They are typically described as "not for profit" organisations and are owned and controlled by their members, the rightholders. Independent management entities (IMEs), by contrast, are for-profit commercial entities that are not owned or controlled by rightholders. Where these IMEs collectively manage copyright or related rights as their sole or main business purpose, the Directive applies in part to them: it requires them to provide information to the rightholders they represent, collective management organisations, users and the public.

There is no specific provision in UK law for the regulation of the multi-territorial licensing of online musical works. The Directive introduces new provisions in Title III to ensure the necessary minimum quality of cross border services provided by CMOs, particularly in relation to transparency of repertoire represented and accuracy of financial flows related to the use of the rights. The Directive also sets out a framework for facilitating the voluntary aggregation of music repertoire and rights, so as to reduce the number of licenses required to operate a multi-territory, multi-repertoire service. It is the UK Government's intention to copy out these provisions.

2. Problem under consideration

The EU market for the licensing of online music is complex, demanding and usually territorially fragmented. This means that service providers and developers often need multiple licences from the national collective management organisations of different member states, which can make the licensing process expensive and time consuming. Not all collective management organisations have been able to meet the challenges of online licensing. There are longstanding concerns about some CMO's transparency, governance and handling of revenues collected on behalf of rights holders. Many rightholders have complained about being unable to access information and exercise control over the management of their CMO, including decisions around licensing and the distribution of their royalties.

Historically CMOs have been established on a national basis. This has sometimes proved to be particularly problematic for foreign rightholders who have little insight into and influence over the decision making processes of CMOs acting on behalf of their national CMO. In some instances rightholders have found that their works had not been properly licensed, meaning loss of remuneration for them and fewer legal offers for consumers.

3. Rationale for intervention

The Commission initially adopted a "soft law" approach to the problem. On 18 October 2005 it published a non-binding Recommendation on the collective cross-border management of copyright and related rights for legitimate online music services. This Recommendation invited Member States to promote a regulatory environment suited to the management of copyright for the provision of legitimate online music services and to improve the governance and transparency standards of CMOs.

Following a public hearing in 2010 and further consultation, the Commission concluded that the market was still not working as it should. Further action would be needed (a) to improve the standards of governance and transparency of collective management organisations so that rightholders could make informed choices, exercise more effective control and help improve management efficiency; and (b) to create a framework for facilitating the online licensing of musical works. Given the trans-national nature of the problem, the Commission believed that only action taken at EU level under the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union, would be effective.

This Directive is a further measure to harmonise certain aspects of copyright and create a level playing field for the transparent and effective management of copyright across borders. Nevertheless the Directive leaves open to Member States the option to maintain or impose more stringent standards if appropriate.

4. Policy objectives

The Directive's main objective is to ensure that CMOs act in the best interests of the rightholders they represent. Its overarching policy aims are to:

- Modernise and improve standards of governance, financial management and transparency of all EU CMOs; ensuring rightholders have more say in the decision making process and receive accurate and timely royalty payments.
- Promote a level playing field for the multi-territorial licensing of online music.
- Create innovative and dynamic cross border licensing structures to encourage further provision and take up of legitimate online music services.

The Directive's objectives align well with the UK Government's wider policy agenda for collective rights management specifically and copyright reform more generally.

5. Options considered for implementation

<u>Option 0: Do nothing</u>

EU directives lay down certain end results that must be achieved in every Member State. Failure to do so would result in infraction. Therefore the do-nothing option is not under consideration.

Option 1: Adapt the existing self-regulatory framework to comply with the Directive's requirements

Given that the domestic Regulations are already in place, the option of transposing some or all of the Directive's requirements using this framework merits consideration. CMOs would need to amend their existing codes of practice to align them with the more detailed governance and transparency requirements in the Directive. The codes would maintain the existing provisions in the Government's minimum standards, which are not covered by the Directive: these relate to the conduct of employees, agents and representatives, certain obligations towards potential licensees and a CMO's expectations of licensees.

Where the Directive extends certain (albeit limited) licensing and transparency requirements to independent management entities (IMEs), these would need to be codified and IMEs, which are not currently covered by domestic legislation, would be brought into scope. Those IMEs affected would adopt and publish codes of practice incorporating the requirements of the Directive that apply to them.

In both cases, the Directive's requirements would be reflected in a revised set of Government minimum standards, underpinned by a statutory power in the Regulations.

The revised legislation would encompass the Directive's (Title IV) provisions for enforcement. At present, the domestic regulations give the Secretary of State a relatively wide discretion to decide whether to act. Following transposition of the Directive, Part 3 of the domestic regulations (Information and financial penalties) would be revised to make provision for enforcement for each aspect of the code, with an obligation on the Secretary of State to act for each and every potential breach of the code. This may result in less clarity and more complexity than if the Directive's Title II provisions were copied out directly, potentially leading to higher costs and administrative burdens of compliance. This option carries a not insignificant risk of infraction, given for example, the requirement that the legal obligations on CMOs must apply from day one of transposition and that rightholders must be in a position to enforce their rights directly. The self-regulatory aspect of the domestic framework, combined with its discretionary elements would almost certainly raise questions about whether the Directive had been properly implemented.

Whilst there is no existing domestic provision for the Title III requirements in the Directive (that apply only to those CMOs engaging in multi-territorial licensing) these would currently only apply to one UK CMO. As such it would not seem appropriate to transpose the provisions through a general codes framework that would apply to all CMOs. The intention is therefore to copy out and introduce these provisions either in the existing Regulations or through a separate set of Regulations.

The current domestic framework provides for the exercise of powers and enforcement of codes through the Secretary of State, with an independent Ombudsman acting as arbiter in case of dispute. The Directive requires that each member state must have a national competent authority (NCA) that is responsible for the monitoring and enforcing of the Directive's provisions in a timely and effective way, including making provision for effective dispute resolution procedures. It neither prescribes the nature of the regulatory body, nor requires Member States to create a new body.

We understand that the UK's self-regulatory framework could be seen as a barrier to the requirement on Member States to give individuals clear rights that they can enforce directly. Thus irrespective of whether option 1 or option 2 is adopted, consideration needs to be given to the most effective way for a national competent authority ('NCA') to enforce the new regulatory framework.

Option 2: Replace existing codes framework with new Regulations

In this scenario, the existing domestic framework would no longer apply. All of the provisions in the Directive (including those that relate to multi-territorial licensing) would be incorporated into new secondary legislation. Those elements of the domestic provisions that are not covered by the Directive (e.g. minimum standards for CMO employees, agents and representatives' conduct, and expectations of licensees), could be retained in a code that sits alongside the statutory instrument or in the statutory instrument itself. These are existing protections that we would not wish to strip away from affected parties.

As with option 1, those CMOs that wish to manage authors' rights in musical works for online use on a multi-territorial basis would need to demonstrate compliance with the relevant Title III requirements around data processing, transparency, accuracy, timeliness and representation requirements.

The Government would publish legal guidance on the application of the requirements, setting out the statutory framework under which the relevant national competent authority ('NCA') would act in the event of a breach.

It is envisaged that the existing independent Ombudsman scheme would remain in place to fulfil the Directive's requirements for alternative dispute resolution procedures, including for multi-territorial licensing. The NCA would need to sign a Memorandum of Understanding with the existing independent Ombudsman scheme to facilitate the exchange of information required for monitoring and enforcement purposes; and also with the CMOs that currently fund the Ombudsman under domestic arrangements.

6. Monetised and non-monetised costs and benefits of options under consideration

OPTION 1

Adapt the existing self-regulatory framework to comply with the Directive's requirements

We have not been able to monetise the costs and benefits of option 1 at this stage given the lack of evidence and data provided by stakeholders. We will continue to seek evidence from the affected stakeholders at consultation to validate our assessment of the impacts and to help us monetise the costs and benefits of this legislation.

Compliance costs

The Government has been exploring three options for the creation of a national competent authority: (a) creating a new entity; (b) persuading an existing regulatory body to take on the role, and (c) creating a new regulatory body. Early signals from existing regulatory bodies suggest little appetite for taking on this work, while the relatively narrow scope of the Directive would make it difficult to justify the high cost of creating a new body. As such, our favoured option at this stage is having a dedicated team within the Intellectual Property Office ('IPO') to act as a national competent authority. Although the IPO is not a regulatory body, its responsibilities in relation to the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 mean that it acts in a quasi-regulatory capacity. It would therefore appear reasonable to take advantage of synergies with its existing functions and expertise in collective rights management. To create a separate body or to expand the scope of an alternative economic regulator is likely to be a more expensive, more difficult way of proceeding and would likely take longer to set up.

Under both options 1 and 2, there will be costs associated with the set-up and running of the National Competent Authority (NCA). The Directive describes a number of specific tasks and responsibilities that will fall to it. These include putting in place reporting mechanisms for members, rightholders, licensees, CMOs and other interested parties with concerns; and having the powers to impose sanctions or other measures as and when required. In addition, the NCA would be obliged to fulfil several notification and reporting requirements and participate in an expert group as and when the Commission requires. The NCA must also ensure it makes specific provision for monitoring implementation of the requirements for multi-territorial licensing, including having mechanisms for co-operating with NCAs in other Member States.

We will be considering, as part of the consultation, the level of intervention that might be needed to fulfil these monitoring, compliance and enforcement obligations. This will help to determine the size, shape, and costs of the NCA. To provide an illustration, our preliminary estimate of the likely size and scale of the NCA, based on the current regulated population (16 CMOs) and a further four independent management entities (IME) that would fall within the regulatory framework for the first time, is for three or four additional full time employees (FTEs), with estimated overheads of £150,000 - £200,000 (fixed costs and salary costs). It is likely that these employees would be absorbed into existing accommodation.

It is possible that Government may need to absorb these costs as the price of becoming a regulator. However, these costs also represent the cost of compliance by CMOs, so it is possible that they may need to be passed on to them. We are currently taking advice on these options and whether we have the legal power to exercise them. Depending on the outcome, we may need to consult further.

Compliance benefits

Under this option there are likely to be some intangible benefits to the UK Government in having well run, compliant CMOs.

Costs to Collective Management Organisations (CMOs)

Unlike the domestic regulatory framework there are no exemptions in the Directive for micro-businesses (as defined within the Commission Recommendation (2003/361/EC) "*Within the SME category, a micro-enterprise is defined as an enterprise that employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million*"). We are aware of one CMO that will be caught by the Directive that was previously exempt from the domestic regulations and will therefore incur higher costs as a result. We shall request information about the scale of these potential costs as part of the consultation process.

Under option 1, CMOs would need to adapt their existing codes of practice to meet the Government's revised minimum standards, which would reflect the more prescriptive Directive requirements. For example, the minimum standards set out high-level governance and transparency requirements, whereas the Directive stipulates that the CMO's General Assembly must make decisions on distribution, investment, deductions, risk management, acquisitions and disposals, mergers and alliances and loans and subject all information in its annual transparency report to statutory audit. The CMOs may wish to consult with their members about their interpretation of the Directive's requirements within the codes, which will incur additional costs. They may need to have more than one code to keep the codes manageable and easy for a diverse membership and diverse customer base to understand. They would need to adapt their websites to signpost stakeholders to the various codes.

The disclosure of the detailed information required in the annual transparency report may not be easily accommodated by existing accounting software. Some CMOs may not have previously been subject to an annual audit. Additional costs are therefore likely to be incurred.

We have yet to receive quantitative evidence on the scope and scale of those costs and hope to get more information provided at consultation. Notwithstanding the considerations above, given that the self-regulatory framework is already well established, we would not expect costs to be excessive. For example, actual CMO cost data for start-up costs of self-regulation (October 2013) put these in the range of £0.37 million to £0.47 million (0.04 per cent of total collections for each CMO). Those costs included the establishment of an independent Ombudsman and the recruitment of an independent code reviewer and so we would not expect further costs to be as big as this.

Prior to consultation, we have not been able to quantify the additional costs that may be incurred for implementation of the specific requirements around multi-territorial licensing for online music rights in Title III. We will be asking for information about these costs in the consultation. We do not believe this should be counted as a cost of regulation for CMOs who are not currently engaging in multi-territorial licensing because Title III only applies to those CMOs that choose to engage in multi-territorial licensing. We would assume that a CMO would only choose to enter this market if it were commercially viable to do so. Those CMOs already operating in this market may incur additional costs of compliance, for example of adapting systems and processes to meet the Title III requirements and if unable or unwilling to do so, would lose income as a result.

Benefits to Collective Management Organisations (CMO)

As rightholders have the right to authorise a collective management organisation of their choice to manage their rights, irrespective of which Member State in which they or the CMO belongs, UK CMOs have the potential to benefit from a reputation for high standards or effective and efficient rights management. Rightholders from other Member States may prefer to entrust the management of some or all their repertoire in UK CMOs, particularly if they are seen to provide a fairer, more competitive service than some of their EU counterparts. In addition CMOs should benefit from reduced costs of complaints handling and rectifying errors as higher standards are met.

Costs to Independent Management Entities (IMEs)

The Directive brings into scope "independent management entities," which are not currently regulated in the UK. They will have to comply with significantly fewer requirements than the CMOs, mainly reporting and transparency obligations. We assume these costs will not be onerous as most entities would already have these measures in place as good business practice. Should this assumption be flawed, we invite IMEs to provide evidence to the contrary as part of the wider consultation process.

The Government has reached out to IMEs that it is aware of (for example by inviting them to a workshop on the Directive) but only one has responded. Consequently, we have little in the way of quantifiable evidence as yet, but we intend to ask targeted questions during the consultation.

Benefits to Independent Management Entities (IMEs)

If implementing the Directive's transparency requirements through the codes framework, independent management entities could benefit from the existence of compliant codes already introduced by CMOs, which they might wish to adapt to comply with the specific requirements that apply to them. The adoption of and compliance with such a code by IMEs should provide assurance to the rightholders they represent, other CMOs, licensees and the public.

Costs to rightholders

The implementation of the Directive under option 1 does not impose any direct costs on rightholders. In initial discussions with a cross section of rightholders, they expressed concerns that if CMOs were to pass on the additional costs of administering the new regulatory requirements (by increasing the amounts deducted for administration from the gross amount of royalties due), this would impact negatively on their revenues. The ability of CMOs to pass through such costs unchallenged should in theory be substantially reduced because of the Directive's requirements for CMOs to improve transparency and rightholder representation. However we intend to ask CMOs how they plan to handle compliance costs in the consultation.

Benefits to rightholders

Overall rightholders should benefit from a collective management framework that is transparent, has strong governance measures in place, and gives them greater participation in the CMO's decision making about the collection, distribution, and handling of their royalties. Heightened transparency means that they should be able to compare and contrast operating costs and deductions from their royalties, including cross border royalty flows. Moreover, they should benefit from access to a wide range of information including cost income ratios, level of deductions, proportion of royalties remaining undistributed and time taken to distribute royalties. The obligatory audit of the CMO's annual accounts should help create a higher level of trust amongst rightholders that they have a true and fair view of their CMO's assets, liabilities and financial position. Rightsholders whose rights are managed under reciprocal arrangements in different Member States should be able to compare and contrast financial information because of the uniform reporting formats.

Costs to licensees

The Directive introduces new obligations on licensees, including one significant obligation to provide CMOs with relevant information at their disposal on rights usage, within an agreed or pre-established time and format. This could result in licensees incurring additional costs, which may be substantial. These costs may be counterbalanced by provisions for CMOs to take into account the needs of small and medium enterprises and to only require what is at the licensee's disposal.

As information requirements are contractual matters, our starting point would be to look at whether the obligations could be transposed by requiring that they be dealt with bilaterally between the CMO and the licensee. We will be seeking further information about the best way to transpose this obligation in order to give clarity to both sides.

There is a risk to licensees that CMOs and IMEs would pass on any costs incurred through implementation of the Directive in the form of increased licence fees. The Directive requires that negotiations between collective management organisations and licensees should be conducted in good

faith and that tariffs should be reasonable. It also makes provision for the independent resolution of disputes arising around existing or proposed licensing conditions. Our working assumption therefore is that the option to pass on the costs of compliance to licensees would be limited. We shall request specific information and data on how this provision might impact on licensees' costs through the consultation.

Benefits to licensees

The Directive's provisions on licensing should help strengthen the existing domestic regulations that require CMOs to deal with licensees and potential licensees transparently, fairly, honestly, impartially and courteously. Licensees should benefit from improved, simplified procedures for licensing, including multi-territorial licensing, which is not covered by the existing domestic arrangements. The overall transparency requirements on CMOs should help improve clarity over their repertoires - an issue that licensees regularly report difficulty with.

In contrast to the potential increase in administration costs outlined above, the improved efficiency of CMOs could lead to lower overheads which may be passed through as reduced licensing fees.

Online music service providers should find it easier and cheaper to obtain licences from CMOs representing authors' rights across borders. The arrangements for multi-territorial licensing should mean that they require significantly fewer licences than they might have done in the past. With licences covering more than one member state, service providers should find it easier to stream music services across the EU. The more users there are, the more incentives for such services to expand.

OPTION 2

Replace existing codes framework with new Regulations

As with option 1, we have not been able to monetise the costs and benefits of option 2 at this stage given the lack of evidence and data provided by stakeholders. We will continue to seek evidence from the affected stakeholders at consultation to validate our assessment of the impacts and help us monetise the costs and benefits of implementing the Directive into UK law using option 2. We expect the costs and benefit to be broadly similar to Option 1, except for the following:

Costs to CMOs

Under option 2, CMOs would have to maintain codes to cover the minimum standards that are not covered in the Directive (ie those that related to the conduct of CMO employees, agents and representatives and the expectations of licensees). In addition they will need to review internal compliance procedures to ensure they are meeting the requirements of the new Regulations.

Benefits to CMOs, IMEs, Rightholders and Licensees

CMOs and IMEs should benefit from having greater clarity as to what is required of them to be compliant. Rightholders should benefit from having greater clarity of their rights that is likely to give them more legal certainty around enforcement. Licensees, particularly SMEs, want the assurance that their licensing is legal, so the simpler the regulatory framework is for them to understand, the better.

6. Direct costs and benefits to business calculations (following OITO methodology)

This measure is out of scope of the "One-In, Two-Out" (OITO) principle as implementation should not go beyond the minimum EU requirements.

7. Wider impacts

To the extent that CMOs in other member states are complying with the Directive's provisions as a result of the efforts of the NCAs in those jurisdictions, UK rights holders stand to benefit where their works have been used abroad. This is especially so in the case of music, where the UK is one of only two net exporters of music in the EU.

Improvements in the efficiency of collective licensing throughout the EU should strengthen confidence in the operation of all CMOs, helping them deliver benefits for their members, rightholders and licensees. It should promote cross border licensing in a way that is consistent with the further development of efficient, open markets.

The provisions are intended to make the licensing process simpler and more cost effective, making it easier for services providers to launch new services. These measures should benefit consumers by widening the availability of legal content and benefit rightholders who as a result should receive additional remuneration. The Directive is intended to be an important step towards the completion of the Digital Single Market, a priority for the UK, and we will be transposing with this objective in mind.

8. Risks and assumptions

This initial impact assessment has been prepared in the absence of quantifiable evidence from stakeholders which has been requested but not yet received. Its assumptions are therefore subject to review following the formal stakeholder consultation process. The long run assumptions are that implementation of the Directive will successfully address:

(a) Inefficiencies currently associated with collective management of copyright and related rights in general; and

(b) The specific complexities of the collective licensing of authors' rights in musical works for online uses.

9. Summary and preferred options

The adoption of the CRM Directive fulfils several of the UK's policy objectives for collective rights management specifically and for copyright more generally. Parts of the Directive, in particular the transparency and governance provisions, broadly complement UK domestic Regulations governing the behaviour of collective management organisations. The options for implementation take into account the main differences between the current framework and the Directive's provisions. These may be summarised as follows:

Scope: The Directive brings into scope "independent management entities" which are not currently regulated in the UK. In addition, unlike the UK framework, there are no exemptions for micro-businesses.

Transparency and Governance: The UK minimum standards are high level principles that allow for some discretion as to how UK CMOs tailor their codes of practice and adhere to those standards, whereas the provisions in the Directive are more detailed and prescriptive. For example, the Directive stipulates how royalties should be managed and distributed, whereas the minimum standards simply require CMOs to be able to provide members with a clear distribution policy.

Licensing: The Directive introduces a new obligation on licensees around the provision of data to CMOs, which the minimum standards are silent on (because under UK legislation this would usually be a contractual matter).

Multi-territorial licensing: There is no specific provision in UK law for the regulation of the multi-territorial licensing of online musical works. The Directive introduces quality standards for cross border services, particularly in relation to transparency of repertoires and accuracy of financial flows; as well as setting out a framework to facilitate the voluntary aggregation of music repertoire and rights.

Enforcement: Compliance with the UK domestic framework is largely a reactive process, with provision for the enforcement of codes through exercise of discretion by the Secretary of State. The Directive, however, requires the establishment of a national competent authority (NCA) with the dedicated function

of pro-active compliance monitoring and direct enforcement of rightholders' rights, including mechanisms for co-operation with NCAs in other Member States.

Given that the domestic Regulations are already in place, this Impact Assessment has duly considered the option of transposing some or all of the Directive's requirements using this framework (option 1). As summarised above, transposition of the more prescriptive requirements in the Directive in this way may be more costly and involve more administrative burdens than incorporating the provisions into new secondary legislation (option 2). Given also the relatively high risk of infraction, option 1 is discounted. The preferred option therefore is option 2, which is likely to result in more clarity over requirements and be less costly overall to implement.

Annex B

Consultation response form

1. Please say whether and why you would prefer to implement using Option 1 or 2?

DUK are in favour of Option 2-new regulations and repeal of the existing UK Regulations. This would provide more certainty for CMO's and members/rightsholders. There would be potential for confusion with too many layers of regulations if Option 1 was implemented and a risk of less uniformity amongst member states.

2. How important is it to retain those aspects of the 2014 Regulations that go beyond the scope of the Directive?

The provisions that have been identified as additional in the UK Regulations can be delivered through other means (codes of conduct or contract) so we do not believe there is a need to have additional regulations.

3. What is your best estimate for the overall cost of (a) implementation and (b) ongoing compliance with this Directive?

We are unable to give an accurate estimate of costs at the time as we are unsure how the government will implement the directive as there are many areas that are still undecided. However any changes as a result of the directive will certainly give rise to additional costs for legal advice concerning governance and IT costs concerning database changes and website.

4. If Option 2 was the preferred option, as a CMO would you consider retaining a revised code of practice as a means of making the new rules accessible to members and users?

We would prefer to retain the Codes of Practice (please refer to answer for Q2) It is helpful to members, potential members and users.

5. Given the definitions of "collective management organisation" and "independent management entity", would you consider your organisation to be caught by the relevant provisions of the Directive? Which type of organisation do you think you are and why? Please also say whether you are a micro-business.

Directors UK falls into the definition of Collective Management Organisation as we are owned and controlled by our members. We do not licence any rights but handle rights related to copyright. We are not a micro business.

6. If you are a rightholder or a licensee, do you either have your rights managed or obtain your licences from an organisation which you think is an IME? If so, could you please identify the organisation, and explain why it is an IME.

N/A

7. Do you have subsidiaries? Which of the Directive's provisions do you think would apply to them, and why?
Please set out your structure clearly.

We do not have any subsidiaries.

8. Who do you understand the "rightholders" in Article 3(c) to be?

We regard rightsholders to be creative professionals who hold copyright in their work or the right to receive income from the exploitation of their work In Directors UK's case this refers to directors of an audio visual work

9. If you are a CMO, what are the practical effects of a relatively broad definition of "rightholder" for you?

We feel that the definition could give rise to confusion since it refers to non-members as well as members. Some of the obligations under the directive are not deliverable to non-members. For example, Article 18 requires certain information to be provided to rightsholders. This is not practical when the society does not have the contact details of the rightsholder as would be the case for non-members.

We require rightsholders to become members in order to pay out fees to help ensure that we are compliant with Data Protection Act and Money Laundering Regulations. Identity checks are required to be carried out to ensure we are paying out to the correct person. This cannot be done if we are paying out to directors who do not join Directors UK and do not have a contractual agreement with us.

We feel that the directive throughout should differentiate between members and non-members when it refers to obligations to rightsholders.

We treat all non-members the same as members, we conduct diligent searches to find them, fees are allocated on the same basis as members and we hold fees for non-members until they are found and join as a member. We currently do not re -allocate or declare any any funds owing to non-members as un-distributable.

10. What do you consider falls in the scope of "non-commercial"?

We do not licence any rights so we do not feel that we have direct knowledge of this concept to comment.

11. If you are a CMO, to what extent do you already allow members scope for non-commercial licensing? Please explain how you do so?

N/A Directors UK does not licence any copyright on behalf of its members.

12. What will be the impact of allowing rightholders to remove rights or works from the repertoire?

A Directors UK member can remove all of their rights with 12 months' notice. However they are currently unable to remove part of their works. If a member removed part of their repertoire it would lead to complications and confusion with regards to administration of rights. There would be particular uncertainty with sister societies as to the correct owner of repertoire.

The IPI (Interested Parties Information) database allows societies to register and exchange information regarding the members that they represent in order to ensure that payments are made to the correct society representing that rightsholder. The IPI system only allows societies to register members' rights according to the territory, not according to individual works. So we can see a potential problem if rightsholders are able to move rights to specific works from one society to another as the IPI system will not be able to reflect this.

13. Under what circumstances would it be appropriate for a CMO to refuse membership to a rightholder i.e. what constitutes "objective, transparent and non-discriminatory behaviour"?

It would be appropriate to refuse membership in the situation where we can't provide a service (i.e. the director does not benefit under our schemes and we do not collect any money for them). We would refuse membership in the event a director could not prove that he is the director of the work or when a beneficiary cannot provide proof that they are the beneficiary of a deceased director's rights. We offer membership to anyone who qualifies under our definition of a director.

14. What should "fair and balanced" representation in Article 6(3) look like in practice?

Fair and balanced representation of members should be achieved at board level. In the case of Directors UK we have taken a number of steps to ensure that our Board is representative in all of these categories (although other CMOs may have different criteria):

- Geographical location of members' home base (i.e. the different nations and regions of the UK)
- Field of activity (e.g. feature film, factual TV, Fiction TV etc)
- Stage of career (so that we represent members at the peak of their profession as well as new entrants). This would also cover the estates/beneficiaries of deceased members and those who are retired or no longer active in the profession.
- Diversity (especially in relation to gender and ethnicity

15. What do you consider to be an appropriate "regular" timeframe for updating members' records?

There are two elements to a member's record – personal details and work information. It is impractical to write to members "regularly" for the purposes of asking them to confirm their personal details – members would simply ignore the correspondence or get frustrated with the constant communication. Instead, we allow members access to view their contact details online through their profile on our website.
Where we are aware of a specific record that is out of date (e.g. A letter returned undeliverable or a bank instruction returned by the bank) then we will make every effort to ensure that the member's record is updated as soon as possible. In regards to work/programme information – we continually and regularly update our records with information about a members' works so there is no need to apply a specific timeline.

16. Is there a case for extending any additional provisions in the Directive to rightholders who are not members of the CMO? If so, which are these, why would you extend them and to whom (i.e. non-members in ECL schemes, mandating rightholders who are not members, or any other category of rightholder you have identified in answer to question 7)? What would be the likely costs involved? What would be the impact on existing members?

We do not believe there is a case for adding additional other provisions to non-members. We need to offer the best service to members and protect their rights and professional interests. It is not possible to extend other provisions to non-members who we cannot protect and with who we do not have any kind of contractual relationship

17. Which of the discretionary provisions of Article 8 do you think should be adopted?

Regarding the proposals in Art 8 (5) f to i there are issues of good governance and of operational practicality to be considered. We have the following comments:

(f) Risk management policy is often delegated to the Board or to the Audit Sub-Committee of the Board as it requires detailed and regular scrutiny and decision-making. We would favour this discretion being permitted.
(g) Property acquisition is such a major investment that this should remain an issue for members to approve at the AGM.
(h) Similarly, mergers and acquisitions would be so fundamental to the operations and the underlying remit of a CMO that these should remain issues for members to approve at the AGM.
(i) Taking out and granting loans could involve small sums and numerous transactions that are straightforward operational matters (such as granting loans to staff to enable them to purchase travel season tickets). We would therefore support discretion in this area to enable the Board to supervise the activities of management. However, there may be an argument for setting a threshold on loan amounts above which the approval of the general assembly is required.

Regarding the proposals in Art 8 (7) we believe that detailed issues concerning the uses of rights revenue and investment will usually require a depth of specialist knowledge and a need to act quickly, so these should be able to be delegated to the Board.

Regarding the proposals in Art 8 (8) we think it is a matter of sound governance that the selection of the auditor should be a matter for the general assembly, as the auditor may be required to pass judgement on decisions of the Board.

Regarding the proposals in Art 8 (9) on voting rights we think this should be reserved to the general assembly in order to ensure that democratic principles apply.

For the same reason, we think the proposals in Art 8 (10) should remain under the control of the general assembly

18. Do you have an existing supervisory function that complies with the requirements in Article 9? If not, can you give an estimate of the likely costs of compliance?

We consider our board of directors does conform to the description of the supervisory function in article 9. We understand supervisory function to refer to the board of directors and the management of the business to refer to the CEO and management team.

19. Which of the Directive's provisions are existing requirements under UK company law?

Please refer to the government legal service or Attorney General's office as this is a matter of fact under the Companies Act 2006 and not for consultation.

20. If you do not already have a distribution system that complies with the provisions of Article 13, can you say what the cost of implementing the requirements will be?

At this stage it is impossible to give an exact cost until we know the full scope of the directive within the UK.
The areas which will require changes and potential additional costs in order to comply are as follows:

* We may potentially require additional resources in order to process payments within 9 months of receiving the reporting. We are concerned that this timeframe may be too restrictive in that it does not account for the fact that we are sent the majority of our foreign payments in the last quarter of a financial year. We currently hold two scheduled foreign distributions a year at 6 month intervals, which allows us to schedule an even flow of work through the year. We do not have enough time to process these December receipts in time for the first of these distributions in April, April, so this article will now require us to process the majority of the reports for the second distribution (October), and would also potentially take us beyond the proposed 9 month deadline

* Taking necessary measures to identify and locate the rights holders who are not members. This could require additional resource in order for us to track down these directors. However, this would depend on the definition of 'necessary measures'

* We do not currently supply online information on works for which we are holding money so this will require development of our IT systems and website

We are still uncertain about the definition of un-distributable so are unable to comment on the implications this may have to our systems. We have concerns that a non-member who has money both before and after the three year threshold will be aggrieved if they have had portions of their money removed from their record if they do not come forward or are found by us within the 3-year deadline. This will also have implications on how and when money can be declared un-distributable.
Our recommendation is that if all money that is allocated to a rightsholder is over three years old then it should be declared as un-distributable. If a rightsholder has money both before and after the three year threshold then we should continue to locate them and unite them with their payments.

21. What are your organisation's current levels of undistributed and non-distributable funds, as defined in Article 13?

We are currently holding approximately £700,000 in undistributed funds that are over 3 years old. This is due to a lack of reporting / usage information.

We do not consider any of the fees we hold as non-distributable – they are currently attached to a rightsholder's record until they join or we are able to forward the payments on to a sister society.

22. What is your estimate of the current size and scale of non-distributable amounts that are used to fund social, cultural and educational activities in the UK and elsewhere in the EU?

£0. We do not use any non- distributable amounts for any purpose

23. Do you collect for rightholders who are not members of your CMO? If so, how much of that rights revenue is undistributed and/or non-distributable? If you collect for mandating rightholders who are not members of your CMO, to what extent do those rightholders have a say in the distribution of non-distributable amounts, and what do you think of the Government exercising its discretion in relation to those amounts?

Under our foreign scheme we do not actively collect payments for non-members although we do regularly receive this money from sister societies. All of the money that we receive is undistributed until the time of allocation. We then actively try to track down these directors in order for them to join and in order for us to pay them.

Under the terms of our UK Rights Agreement with UK broadcasters and producers, the money that we receive is due to our members only. In practice we allocate payments to both members and non-members until a cut-off date of 18 months after allocation. During this time we actively try to trace the non-member directors for whom we are holding money. If they haven't joined by the 18 month deadline, the money is removed from the non-members' record and reallocated to those members who received payments 18 months previously.

We do not collect for mandating rightsholders under our two distribution schemes.

24. What should be the criteria for determining whether deductions are 'unreasonable'?

We assume that this question refers to Art 12 and to the criteria relating to social, cultural and educational services funded through deductions from rights revenue. In our view this is a decision to be made by the democratic choice of the members: the general meeting should be able to approve general principles applying to such activities, both in terms of extent and types of activity. It should be for the Board to supervise the operations of the management team in carrying out these activities in accordance with the agreed principles. Deductions should never be more than necessary and sufficient to carry out the activities in accordance with agreed principles decided by the members.

25. Are there any pros and cons to be particularly aware of in case the Government exercises the discretion?

We do not believe that the government needs to exercise the discretion at all. Members of UK CMOs that are well-governed and operate in a transparent and accountable manner in accordance with the Directive should have flexibility to decide on the most appropriate use of these funds. CMOs understand the needs and requirements of their members and they understand and are in the best position to make the decision on how to spend the funds, including expenditure that benefits members, non-members, or is intended to be of wider benefit to society.

26. Is there currently a problem with discrimination in relation to rights managed under representation agreements?
If so, what measures should be in place to guard against this?

We are not aware of any sister societies discriminating in such a manner.

27. What do you consider should be the "necessary information" CMOs and users respectively should provide for in licensing negotiations (Article 16(1))?

N/A Directors UK do not licence members works

28. What format do you think the user obligation should take and how might it be enforced? What is "relevant information" for the purpose of user reporting?

The principle that should operate here is that the information should be that which is necessary and sufficient to enable the CMO to allocate and distribute the correct amount to the correct recipient.
To fulfil that principle we believe that, in our case, the minimum requirements for the purpose of reporting are:

- The name of the work
- The Rightsholder (if known)
- Usage information (eg. In our case transmission date, sales information such as customer or territory, number of units sold etc)
- Any additional information that can help identify the work (such as a production year, production company, channel etc).

If users fail to provide such information, we would suggest that CMOs have a right to inspect and audit the users records in order to establish any missing, inaccurate or invalid information, in a similar fashion to the rights that certain parties such as actors and writers have to inspect and audit the records of film and television distributors in order to establish whether they have received the correct share of royalties. If such inspection and audit discovers a default by the user in excess of a *de minimis* level then the user must pay the cost of the audit and a fair premium. Refusal to grant access for inspection and audit should be matter that can be referred to the NCA who can if necessary compel the user to provide access.

29. What is the scale of costs incurred in administering data returns that are incomplete and/or not in a suitable format?

CMO's have made efforts to try and make the process of reporting more efficient –i.e. using a common standard format mandated by CISAC, CISAC – the International Confederation of Societies of Authors and Composers – is the leading network of authors' societies (also referred to as Collective Management Organisations). It has 230 member societies in 120 countries, representing more than 3 million creators from all geographic areas and all artistic repertoires; music, audiovisual, drama, literature and visual arts.

The impact of receiving incomplete data is as follows:
* It takes longer to track down a work or rights holder (resulting in a cost in staffing to track down this information)
* Could result in money being allocated or paid to an incorrect rights holder (and the cost involved of then trying to identify and recoup the error)
* Money cannot be allocated to the rights holder because there is not enough information to process the payments – as a result, the rights holder loses out

We realise that it would be unreasonable to expect to receive 100% accurate reporting all the time. However we estimate that 60% of our distribution staff resources is deployed on dealing with inaccurate and incomplete reports.

30. Which of the Transparency and Reporting obligations differ from current practice, and what will be the cost of complying with them?

We assume here that the directive is referring to members and not to general rights holders who are not members. Historically we sometimes have not been provided with the information required under the article.

We therefore only supply the information below to members or sister organisations.

18.1 (a) We supply this information to members in their website profile
18.1 (b) The invoices we send to members break down the payments due to them them
18.1 (c) We don't include the category of rights on our invoices. IT development would be required in order for this information to appear on invoices We have not historically stored this information on our system and, in some instances, it has not always been reported to us.
18.1 (d) We currently do not include the period of rights on our invoices. IT development would be required in order for it to appear on invoices**.** We have not historically stored this information on our system and, in some instances, it has not always been reported to us.
18.1 (e) We do supply this information
18.1 (f) We do supply this information
18.1 (g) There are a number of circumstances when we believe it would not be right to disclose this information. .

Examples of circumstances are:
When authorship of a work is in dispute between one or more directors
When there is a question about who is the principal director of the work or whether the work has been correctly identified / reported
When a director has less than £30 allocated to them

We also do not want to find ourselves in a position where members are demanding we pay them outside of the scheduled distribution timetable as this incurs additional unnecessary costs. If requested by the member we do of course supply this information.

18.2 We supply this information

19 (a) We supply amounts paid, name of rightsholder and work. IT development would be required to include all fields
19 (b) We supply this information
19 (c) We supply this information
19 (d) Not applicable
19. (e) Not applicable

We currently comply with Article 21.

31. What do you think qualifies as a "duly justified" request for the purposes of Article 20?

A duly justified request could be one that is made in order to enable a sister society to pay out revenue. We have no experience of any person or body making an unreasonable request. We already complete checklists from sister societies in order to confirm members and their works.

32. What factors help determine whether a CMO is able to identify musical works, rights and rightholders accurately (Article 24(2))?

N/A

33. What standards are currently used for unique identifiers to identify rightholders and musical works? Which of these are voluntary industry standards?

N/A

34. What would you consider to be a "duly justified request for information" (Article 25(1))? What is not?

N/A

35. What would you consider to be "reasonable measures" for a CMO to take to protect data (Article 25(2))? What would be an unreasonable ground to withhold information on repertoires?

N/A

36. What do you think are the most appropriate complaints procedures for handling disputes and complaints between CMOs, users and licensees, including for multi-territorial disputes? Please say why.

The Directors UK company complaints procedure is appropriate for dealing with complaints and disputes with members. We have only received a handful of issues that have been dealt with under our procedure and all have been resolved. The Ombudsman service which was set up by all CMOs has not be used by any members of Directors UK since it was first set up. The Copyright Tribunal is the appropriate procedure for copyright disputes.

37. What is your preferred option for the national competent authority? Please give reasons why.

In the absence of any other credible or affordable option we consider that the IPO would be an appropriate body to function as the UK's NCA. We would recommend that careful consideration be given to any potential conflicts of interest that may be created, and appropriate safeguards put in place including rights of appeal in the case of disputes arising from such conflicts.

38. Bearing in mind the scope of its ongoing responsibilities, what would you consider to be an appropriate level of staffing and resources needed? Please give and upper and lower estimate.

We do not feel qualified to offer any guidance on this.

39. How should the costs of the NCA be met?

Directors UK are against are the possibility of passing on costs of the NCA to CMOs. There is currently a great deal of uncertainty about the level of costs that our NCA would incur, because of a number of factors, including:

- Whether the NCA is active or passive in relation to compliance,
- Relies purely on monitoring or is more pro-active,
- The extent to which it has to deal with issues concerning the behaviour of UK CMOs or EU CMOs,
- The level and nature of complaints,
- Whether they are licensee driven or member driven etc.

We feel the IPO's thinking needs to ensure CMO's do not bear unconnected costs. If the NCA can pass the costs to CMOs there is no incentive for it to manage costs efficiently. This could lead to waste and inefficiency.

Concept House
Cardiff Road
Newport
NP10 8QQ

Tel: 0300 300 2000
Fax: 01633 817 777

www.gov.uk/ipo

For copies in alternative formats please contact our Information Centre.

When you no longer need this booklet, please recycle it.

Published: January 2015
DPS/Jan15