

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

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Joint response from the Libraries and Archives Copyright Alliance (LACA) and Universities UK (UUK) Copyright Working Group.

Introduction: Proposals for implementation

1. Please say whether and why you would prefer to implement using Option 1 [Adapt the existing regulatory framework, including the 2014 Regulations, to comply with the Directive's requirements] or 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]

Answer: Option 1. The Regulations include certain protections for licensees that are stronger, more detailed, or absent from the Directive, and these should be retained in the new secondary legislation.

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

Answer: It is important. For example, the Regulations require CMOs to ensure that their employees, agents and representatives are trained on conduct that complies with obligations in the minimum standards. We are aware of inappropriate conduct such as the issuing of unjustified threats or notices implying that a potential licensee has been infringing, and of high pressure selling techniques. In certain circumstances, there is also a lack of transparency regarding the breakdown of charges.

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

Answer: N/A

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Representing ARA: The Archives & Records Association, ARLIS/UK & Ireland: The Art Libraries Society of the UK and Ireland, The Bodleian Libraries, BIAL: British and Irish Association of Law Librarians, The British Library, CILIP: the Chartered Institute of Library and Information Professionals, HearFirst, AML/UK & Ireland: The International Association of Music Libraries, Archives and Documentation Centres, JISC: Joint Information Services Committee, LIS-COPYSEEK online community, Museum Libraries, The National Archives, The National Library of Scotland, The National Library of Wales, Share the Vision, Society of Chief Librarians in England and Wales, and SCONUL: Society of College, National and University Libraries, Wellcome Trust.

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?

Answer: N/A

Overview of Directive's requirements

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

Answer: N/A

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 Independent Management Entity (IME)? If so, could you please identify the organisation, and explain why it is an IME.

Answer: 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.

Answer: N/A

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

Answer: Members of a CMO and certain rightholders who are not members

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

Answer: N/A

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

Answer: Non commercial would include any activity which is not directly concerned with obtaining a commercial advantage. We would understand non-commercial to include use by educational establishments for teaching and learning, including schools, colleges and universities and use by organisations such as museums, galleries, archives and libraries.

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?

Answer: N/A

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

Answer: We support the ability for rights holders to opt out, however, terms of licences for licensees should be honored to avoid breakages of minimum licence terms. For example it is problematic for teachers if they are required to remove works from a repertoire when they are being used as part of a course of study, until the course has finished for that academic year.

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”?

Answer: N/A

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

Answer: Licensees should be represented on management boards of collecting societies. This should include representatives from each of the major different categories of members (e.g. publishers, authors, artists etc.) We also believe original creators (authors, artists, composers, researchers) should be included and that they should have equal say with commercial intermediaries over the running of CMOs. This is particularly important in an ECL environment where they are representing repertoire which will often have been created without commercial exploitation in mind and the values of publishers/media organisations may be at odds with those of the original authors.

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

Answer: Annually.

Rights of rightholders who are not members of CMOs

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?

Answer: N/A

The General Assembly of Members

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

Answer: N/A

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?

Answer: N/A

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

Answer: N/A

Management of rights revenue

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

Answer: N/A

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

Answer: N/A

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?

Answer: N/A

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?

Answer: N/A

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

Answer: N/A

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

Answer: N/A

Management of rights on behalf of other CMOs

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?

Answer: N/A

Relations with users

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

Answer: N/A

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?

Answer: N/A

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

Answer: N/A

Transparency and reporting

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

Answer: N/A

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

Answer: N/A

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

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

Answer: N/A

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

Answer: The following standards are relevant are used:

- International Standard Recording Code and the ISWC (International Standard Works Code)
- The Global Repertoire Database should, once operational, provide a single source of information on the ownership and control of musical works worldwide.
- Linked Content Coalition

The EU should continue to promote the adoption of identifiers and ensure that silos of content are not created. Rights and permissions databases must be interoperable and available to all content creators, and identifiers must be based on standards to ensure consistency. Databases should link up with other work done around standards and cataloguing (e.g. by Europeana).

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

Answer: 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?

Answer: N/A

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)?

Answer: N/A

Enforcement measures

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?

Answer: N/A

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

Answer: Mediation should be available if a collecting society and a licensee cannot reach an agreement.

We support the Ombudsman scheme

Any complaints handling procedure must be fully transparent in regard to other rights the complainants have (such as access to the Ombudsman)

Publishing the number of complaints and how they are dealt with would enhance transparency.

Monitoring and compliance

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

Answer: The proposal that the IPO create a team to take on this role is something that we would support.

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 an upper and lower estimate.

Answer: We don't feel able to comment on the costs needed.

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

Answer: The costs should not be met by public funds or from educational institutions. We believe this should be centrally funded by government or by the rightsholders.