



Copyright and Enforcement Directorate  
Intellectual Property Office  
First Floor  
4 Abbey Orchard Street  
London SW1P 2HT

31 March 2015

Dear Sir/Madam,

**Collective rights management in the digital single market**

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above named consultation.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with about 200,000 members, we are also the largest organisation representing small and medium sized businesses in the UK.

Small businesses make up 99.3 per cent of all businesses in the UK, and make a huge contribution to the UK economy. They contribute 33 percent of private sector turnover and employ 48 per cent of the private sector workforce.

The FSB represents both licensees and rightholders who are members of Collective Management Organisations (CMOs). Around a quarter of FSB members have a license from at least one CMO, while 2 per cent are members of one or more CMOs<sup>1</sup>.

The FSB recognises that Option 1 in the consultation presents difficulties in effectively implementing the provisions of the Collective Rights Management Directive, and as such we favour Option 2 of repealing and replacing the 2014 Regulations. However, the 2014 Regulations were a major step forward for licensees in terms of the responsibilities of CMOs, and we would strongly urge for these protections to be retained in the new regulations. While we broadly welcome the additional requirements on transparency and governance in the Directive, we believe it is particularly important for the Government to retain backstop powers that allow for further action to be taken in the event that CMOs are found to have failed to comply with the provisions of the Regulations.

We recognise that the provision of more information on usage is important to ensure that CMOs are able to better reflect the benefit that should be passed on to rightholders. However, we welcome that the Directive makes clear that this requirement should be reasonable, and makes specific reference to the need to consider SMEs. We agree that it would be wholly inappropriate, and indeed

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<sup>1</sup> FSB Survey, October 2014



counter-productive, to require this information from small businesses, many of whom already find compliance problematic. We would urge you to ensure that the UK Regulations reflect that small businesses should not be subject to this requirement.

As previously stated, we do support the improved arrangements for transparency and governance in supporting rightholders. Crucial to the success of improving governance will be the way in which the Regulations ensure “fair and balanced” representation for rightholders, as required by the Directive. We note that among our rightholder members that there is a perception that CMO decision-making is geared towards larger companies. While individual CMOs have made attempts to ensure wider board representation, we think it would improve decision-making to have specific regard for small rightholder representation at board level.

Greater flexibility for rightholders in managing their portfolio is important, in order to maximise the benefits of their rights, particularly when looking to license rights across multiple territories.

Putting in place sensible measures to ensure accurate multi-territorial licensing are important. Members have suggested to us for example that while the International Standard Recording Code (ISRC) is able to help identification, works with similar names can end up with several different identification numbers creating confusion. As such, it would be helpful to work towards an overarching system.

Enforcement will clearly be vital to ensuring that the additional protections for rightholders are properly implemented. We agree that the focus should be on providing straightforward, easily accessible alternative dispute resolution. However, there does also need to be procedures in place for legal redress. The Copyright Tribunal, while helpful, presents a cost which many smaller businesses will find hard to bear, and as such we would urge you to consider whether alternative routes, either through the Copyright Tribunal or elsewhere, could be pursued to consider low value claims, drawing on the reforms that have been made to the Intellectual Property Enterprise Court (IPEC).

We trust that you will find our comments helpful and that they will be taken into consideration.

Yours sincerely,

Clive Davenport  
Chairman, Enterprise and Innovation Policy Unit  
Federation of Small Businesses