Annex B

Consultation response form

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

Soundreef believes that Option 2 would be the best option. The Regulations provide minimum standards which are high level principles, whereas the provisions in the Directive are more detailed and prescriptive. With Option 2, CMOs, and IMEs should benefit from having greater clarity as to what is required of them to be compliant, and rightholders should benefit from having greater clarity of their rights which is likely to give them more legal certainty around enforcement. Furthermore, concerning the provisions for enforcement, Soundreef is aware that, revising Part 3 of the domestic regulations, may result in less clarity and more complexity than if the Directive's Title II provisions were copied out directly.

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

Since the Regulations are already in place, it is indeed important 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?

Soundreef is already compliant with all the requirements of the Directive, no costs would be incurred if the provisions of the Directive would be copied out into a new set of Regulations.

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?

Soundreef is an Independent Management Entity, so the question doesn't concern it.

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.

Being Soundreef a commercial entity "neither owned nor controlled directly or indirectly, wholly or in part, by rightholders", and furthermore being Soundreef organized "on a for-profit basis", it should be considered as an IME under the Directive's provisions.
Soundreef is "authorised by licence agreement to manage copyrights on behalf of more than one rightholder, for the collective benefit of those rightholders".

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.

Soundreef is an Independent Management Entity, so it can't answer this question.

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.

No, Soundreef does not have subsidiaries.

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

The Article 3(c) states that the rightholder is "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." The first consequence is related to the extension of the definition to "entities that hold a copyright", compared to the Regulations which identifies as rightholders "the owner of the copyright". The Directive's definition, speaking of "entity", takes into account the actual reality of Content Providers, entities which hold (not own) copyrights on behalf of the owner. The fact that the provision appears to include both members of a CMO and certain rightholders who are not members doesn't concern Soundreef.

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

Soundreef isn't a CMO, but the effects of a relatively broad definition of "rightholder" for CMOs are clear.
Nowadays, many CMOs don't recognize the entities as rightholders. Consequently when an entity (which holds the rights on behalf of the owner) subscribes an agreement with Soundreef and Soundreef sends a notification to the CMO (as the owner in this way is withdrawing his rights from the CMO), the CMOs don't update their database. Therefore, the CMOs frequently contest Soundreef some works, stating that they belong to them.
Recognizing the entity as rightholders, the CMOs should be now obliged to update their databases.

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

The provision of Article 5(3) doesn't apply to IMEs, so it doesn't concern Soundreef.

(However Soundreef is aware that nowadays it is very difficult to clearly define "non-commercial", almost impossible without a exact categorization.)

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?

Soundreef is not a CMO, so this question doesn't concern it.

However, Soundreef allow its members to license their music for free for non commercial uses with a simple written communication by email. The final decision is always made by the right holder.

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

Soundreef will not be affected by this prevision, since it is already possible, for rightholders who authorise it to manage their rights, to easily remove rights or works from the repertoire.
Soundreef manages two kind of rights: live music and background music. The rightholders can easly remove rights or works from the repertoire of one or both categories.

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”?

Soundreef is not a CMO, so there's no need to answer this question.

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

Soundreef is not a CMO, so Article 6(3) doesn't concern us.
However Soundreef is planning to provide itself an advisory committee of rightholders for business development.

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

Soundreef believes that a collective management organisation should keep records of its members and update those records every 60 days. Soundreef is currently able to do so and it is specified in its membership agreement.

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?

It does not apply to IMEs, so it does not concern Soundreef.

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

The discretionary provision of Article 8 doesn't apply to IMEs, so it doesn't concern Soundreef.

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?

The provision of Article 9 doesn't apply to IMEs, so it doesn't concern Soundreef.

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

As above, Soundreef is an Independent Management Entity, so it can't answer this question.

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?

Even though Soundreef is an IME, and Article 13 should not be applied to it, it is already compliant with the provisions stated in it.

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

Soundreef doesn't have any undistributed or non-distributable funds.

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?

See answer above.

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?

Soundreef isn't a CMO, so it doesn't collect for rightholders who are not members of Soundreef.

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

Soundreef believes that, in a cross-border competitive market in which CMOs and IMEs work alongside each other, it is not necessary for the State to interfere with the amount of the deduction, since the important requirement for the protection of the rightholder is to have transparent and clear information about fees and deduction. Rightholders will be able to asses the best service for them if they can see deductions and fees clearly. In future, the market will be similar to the telecommunication market with companies competing between them to attract right holders. Rightholders will benefit and enjoy lower and lower deductions and fees.

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

Soundreef is aware that many CMOs have huge quantities of non-distributable amounts. Therefore, there are no cons in the application of the provision of Article13(6).
Governments should limit or determine the permitted uses of non-distributable amounts, by ensuring, as the provision states, "that such amounts are used in a separate and independent way in order to fund social, cultural and educational activities for the benefit of rightholders".

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?

Articles 14 and 15 don't apply to IMEs.
However Soundreef is aware that there are some problems with discrimination for international rightholders in relation to rights managed under representation agreements. In most of the cases CMOs take advantage of the fact they represent international rightholders to impose lump-sum payments, or delay the payments to rightholders or with the deduction of management fees (applied twice for both CMOs).
Soundreef believes that, for some kind of uses (e.g. in-store, television, radio, live music) direct rights collection is possible without any kind of representation agreement or intermediary.

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

CMOs and users should respectively provide in licensing negotiations: clear fees, fees per period, number of works, authors' list. Even though it is necessary to provide this information in response to a request (as in the case in which users are requested to provide us with the list of the works broadcasted in a given period, the LOGs), Soundreef doesn't believe that a public database would be necessary in any case. The typical licensee is a business with the need to license large quantity of music (e.g. broadcaster, store chains). A public database would be difficult to query for such a typical licensee. Only internet companies (e.g. streaming services) would have the technology and the willingness to query a large db of music.

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?

It depends: different regulations should apply for different segments of the market. For television, radio and internet, all broadcasters should be obliged to push their digital log files to all CMOs and IMEs operating in their own country. For in-store music, a large store chains using in-store radio devises to play music should be obliged to push log files to the CMOs or IMEs from which they license music. For live event organizers, they should be obliged to fill in digital cue sheets of all the CMOs and IMEs they license music from. All these solutions would be relatively easy to implement and would prevent from duplicate requests of fees to broadcasters. The push of information will enhance innovation, fair distribution of royalties and will breed a new wave of start ups that will help licensors and licensees to connect easily.

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

Soundreef has a problem of incomplete data and/or not suitable format for log files returned by licensees for the use of its music in stores.
Soundreef is making an effort to educate licensees and improve the system of log file reporting in order to make it very easy to use. At the moment the costs of normalizing log files is on Soundreef and it is a high cost compared to the annual turnover (in terms of human and technology resources). However, Soundreef believes this is the area in which CMOs and IMEs should focus the most in order to provide royalties with a fair distribution. A fair distribution mainly comes from the capacity of the CMO and IME of analytically determining how the music is used.

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

Only some of the Directive’s provisions of Chapter 5 apply to IMEs as Soundreef, and they are the ones in Articles 18, 20 and 21 (a)(b)(c)(e)(f) and (g).
Soundreef is already compliant with all the requirements of the provisions above, so there won't be any costs sustained to comply with them.

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

The request is duly justified when there is reasonable doubt regarding the authorization or the belonging of a work. For example, there can be the case in which a user could not provide a licence certification to a CMO inspector, or the CMO believes that a work broadcasted belongs to its repertoire.
Soundreef can provide several practical examples on this as it has dealt several times with similar requests from CMOs.

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

This provision doesn't apply to IMEs, but Soundreef is aware that a CMO should be able to provide a list of works and the details of the period during which the use took place, for every type of usage (e.g. TV, broadcaster, in-store radio, music log...).

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

The music industry has NOT found common and widely used standards. Many have failed to have a meaningful impact on the industry and on the transparency of the industry.

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

As for Question 31, the request is duly justified when there is a reasonable doubt regarding the authorization or the belonging of a work.

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?

There are some cases in which the requests of others CMOs do not seem to be duly justified. For example, when the request is very general and not specific. Soundreef can provide several practical examples on this as it has dealt several times with similar requests from CMOs.
In these cases, Soundreef believes that an IME (and a CMO) can refuse to provide information allowing the identification of the (online) music repertoire it represents.

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)?

Soundreef believes that a CMO should ensure that the data or the information is corrected in less than 60 days from the rightholder's request.
In the same way, the CMOs should invoice the online service provider accurately in less than 60 days after the actual use of the online rights.
Soundreef has already implemented a 60 day notice system and embedded it in the membership agreement.

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?

The scope of the complaints and dispute resolution provision does not extend to IMEs.

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.

The scope of the complaints and dispute resolution provision does not extend to IMEs.
Anyway, Soundreef believes that the existing Ombudsman scheme would be a rapid, independent and impartial alternative dispute resolution procedure for disputes between CMOs, members, rightholders or users.

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

Probably the less expensive and less complicated option would be having a dedicated team within the Intellectual Property Office.
Although the IPO is not a regulatory body, since the existing regulatory body suggest little appetite for taking on the role, and creating a new regulatory body seems to be too expensive, it would appear reasonable to take advantage of synergies with IPO's existing functions and expertise in collective rights management.

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.

Soundreef is not able to estimate the appropriate level of staffing and resources needed.

However, the preliminary estimate illustrated in page 7 (three or four additional full time employees with estimated overheads of £150,000-£200,000) seems to be a likely estimation.

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

We'd like UK to have a Declaration of Conformity for IMEs or CMOs which could demonstrate compliance with the provisions and good business practices.
In the case in which the Intellectual Property Office would grant this kind of Declaration, Soundreef would agree to have all the CMOs and IMEs contributing to the costs with a percentage of their respective turnover.