MCPS, PMLL and IMPEL

Response to the IPO consultation on the introduction of the Collective Rights Management Directive in the UK

30 March 2015

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Background Information:

1. The Mechanical Copyright Protection Society ("MCPS"), Printed Music Licensing Limited ("PMLL") and Independent Music Publishers European Licensing ("IMPEL") are all wholly owned subsidiaries of the Music Publishers Association ("MPA"). Their operations can be described as follows:

- **MCPS** is appointed by its members - publishers and other owners of musical works - to manage certain uses of the mechanical rights in those musical works. These operations are contracted to the Performing Rights Society ("PRS"), as defined by a service level agreement.
- **PMLL** was established in 2013 and manages the licensing of the copying of printed music in the UK on behalf of music publishers. Its Schools Printed Music Licence ("SPML") covers the copying of printed sheet music in schools and is offered to schools exclusively by The Copyright Licensing Agency ("CLA"), acting as sole agents.
- **IMPEL** acts on behalf of music publishers for the licensing and administration of the mechanical rights in their Anglo American repertoire for pan-European (and wider) online activities.

General Observations:

2. We support the introduction of the CRM Directive and hope that it will deliver the desired effect of modernising and improving standards of governance and transparency in all EU CMOs.

3. MCPS, PMLL and IMPEL are not captured by the definitions of either CMO or IME as set out in the Directive. These three organisations are constituted as for-profit limited liability companies, and whilst they are not owned by the rightholder members of their licensing schemes (referred to throughout this response as "licensing scheme rightholder members"), their licensing scheme rightholder members do exercise partial indirect control of the organisations through their right to stand for election and vote directors onto the board.

4. However, the boards of each of these organisations recognise that MCPS, IMPEL and PMLL may be perceived to be "collection societies" and as such we consider the principles of the Directive applicable to all three organisations. We believe all three organisations are generally compliant with the requirements of the Directive, and where they are not, we are working to ensure that they do comply to the fullest extent that is compatible with their structures. Where there are some specific provisions which are difficult to apply directly given the constitution of MCPS/PMLL/IMPEL, we are taking a principled approach and are adapting such provisions to suit the structure within which we are operating.

Response to IPO Questions:

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

   We support the Government's preferred route of implementing the CRM Directive in the UK via Option 2. The advantage of 'copying out' the Directive into UK law, rather than fitting around existing regulations, is that the new legislation will provide a clear legal framework for CMOs, rightholders and users and also will create a transparent and level playing field across all EU Member States.

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

   The Directive adequately covers the majority of obligations on CMOs which are set out in the existing regulations. Where demands of the existing regulations go above and beyond those in the Directive and deliver best practice, they could be incorporated into UK CMO codes of conduct, or delivered by contract. As such, repealing the existing regulations and replacing them with the Directive is likely to be the most transparent and efficient way of ensuring the best outcome for CMOs, rightholders and users.

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

   MCPS, IMPEL and PMLL welcome the standard-setting principles of the Directive. As currently constituted, we do not consider either MCPS, or IMPEL or PMLL to be CMOs within the

definition provided by the Directive because they are not owned or controlled by the licensing scheme rightholder members and are constituted as for-profit limited liability companies. Nevertheless, the standards embodied within the directive are principles to which we already adhere and we consider MCPS, IMPEL and PMLL to be generally compliant with the requirements of the Directive., To the extent we are not currently compliant, we are investigating ways to comply with the Directive in the most cost-efficient and effective way.

There is a one-off cost involved in implementing changes to the governance of the three organisations (legal advice, changes to articles, review of policies etc.). [redacted]

This covers such things as running elections, holding annual meetings, preparing reports, reviewing policies, updating websites etc. In addition, since MCPS and IMPEL do not run their own operations systems but contract them to PRS, there will be systems costs involved in compliance, some of which may be recharged to MCPS. We are currently awaiting a full breakdown from PRS so are unable to supply this detail at present.

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

We currently have codes of practice for all three organisations. These have been have been drawn up in line with the British Copyright Council Principles and The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014. There is a commitment within all our codes to update them as and when new legislation is introduced. New obligations relating to the CRM Directive will be incorporated once the final regulations have been published.

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.

Application of CRMD:

For the reasons set out below, none of the three organisations fulfil the strict definition of either a CMO or an IME. Nevertheless, we welcome the CRMD as a move in favour of best practice and good governance standards for European licensing bodies across the board. For this reason, and because we also recognise that MCPS, IMPEL and PMLL may be perceived to be "collection societies", we consider the principles of the Directive applicable to all three organisations and will comply to the fullest extent that is compatible with the structure of the three organisations and their objectives. Some of the specific provisions are difficult to apply directly because MCPS/PMLL/IMPEL are not controlled by their licensing scheme rightholder members but by the Music Publishers Association, as holding company. However, we are taking a principled approach and are adapting such provisions to suit the structure within which we are operating.

MCPS does not consider itself to be a CMO because it is owned and substantially controlled by MPA as holding company rather than by its licensing scheme rightholder members and is constituted as a for-profit limited liability company. It operates collective licensing schemes for its licensing scheme rightholder members who exercise partial indirect control through their right to stand for election and vote directors onto the board. Hence, it is also not an IME.

Due to the level of its turnover (whether taking into consideration gross licensing income or commission income) MCPS is not a micro-business.

PMLL does not consider itself to be a CMO because it is owned and substantially controlled by MPA as holding company rather than by its licensing scheme rightholder members and is constituted as a for-profit limited liability company. It operates collective licensing schemes for its licensing scheme rightholder members who exercise partial indirect control through their right to stand for election and vote directors onto the board. Hence, it is also not an IME.

If "turnover" is defined as gross licensing income, PMLL is not a micro-business. However, if it is defined as commission income, then it is.

IMPEL is still in the process of establishing its corporate structure but it does not consider itself to be a CMO because it is owned and substantially controlled by MPA as holding company rather than by its licensing scheme rightholder members and is constituted as a for-profit limited liability company. It intends to operate collective licensing schemes for its licensing

scheme rightholder members who will exercise partial indirect control through their right to stand for election and vote directors onto the board. Hence, it is also not an IME.

If "turnover" is defined as gross licensing income, IMPEL is not a micro-business. However, if it is defined as commission income, then it is.

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.

MCPS, IMPEL and PMLL are all subsidiaries of MPA. We believe that we should be as compliant as possible in order to be able to fulfil our objective of operating in the best interests of our licensing scheme rightholder members.

With regards to the treatment of subsidiaries more generally, we do not believe that the CRMD status of a subsidiary rests in the compliance of the parent company and believe that each subsidiary entity of a CMO should be looked at individually on its own merits when determining whether or not it is or should be CRMD compliant..

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

We understand, in relation to our operations, the definition of "rightholder" in Article 3(c) of the Directive would include all our licensing scheme members – as those who hold copyright and/or are entitled to a share of the rights revenue;

In addition, we agree with the PRS response and we understand examples of rightholders in Article 3(c) include (but are not limited to)

- composers and lyricists (i.e. holds copyright);
- publishers (i.e. holds copyright and/or is entitled to a share of the rights revenue);

any other third party who holds copyright as a result of copyright assignment (e.g. relative of a composer) or a copyright reversion (e.g. estate of deceased composer);any other third party who is entitled to a share of the rights revenue (e.g. depending on existing agreements, this may be co-writers, performers or managers).

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

The rightholder definition appears appropriate since it can capture both members in the corporate sense and rightholder members of licensing schemes. It also affords protection to non-members of schemes such as ECL.

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

It is difficult to define what falls in the scope of "non-commercial" and as such we believe that it is best left as a matter to be decided between a CMO and its members, and should not be defined in law.

If, nevertheless, the term is defined within any implementing legislation, we suggest that such definition should differentiate between non-commercial uses and commercial uses where royalties are being waived or donated. We offer two examples to illustrate the point:-

(i)) We believe that any definition of "non commercial" should not capture charitable licences since these are effectively commercial licences from which income is donated, rather than being non-commercial licences per se. Furthermore, creators are often put under pressure from multiple sources to donate their royalties to charity, and can find it hard to refuse requests. In taking the view that these are essentially commercial licences, requiring commercial activity but ending with philanthropic donations, MCPS/PMLL/IMPEL is able to offer some protection to creators. Our licensing scheme rightholder members may choose to donate their royalties once they have received them, of course, but creating a structure that allows charity projects as a category of reserved rights would put an unacceptable burden on both rightholders and societies.

(ii) Writers/artists are often required to agree contractual provisions under which they grant or agree to procure the grant of free publishing licences for "promotional" purposes. Our

publisher and writer licensing scheme rightholder members will often respect these provisions where they can see a persuasive argument that granting a free licence may lead to greater exploitation income in the long term. However, this is essentially a commercial decision and we would not want to see any exception for "non-commercial use" being used as a wedge to create a larger and larger category of situations in which free licences are demanded. This would put undue pressure on writers and tie the hands of publishers and industry organisations from protecting these rights.

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?

Currently there is no explicit provision for licensing scheme rightholder members of either MCPS/PMLL/IMPEL to reserve rights in relation to non-commercial rights per se.

However, MCPS, licensing scheme rightholder members may exclude from their mandate the power to exercise rights in relation to sound recordings that are not the subject of any MCPS blanket licensing agreement or scheme. So, for example, if a member wants to license a stand-alone project in which a record is being released in physical format by an organisation that is not a regular record label and which does not have a blanket licence from MCPS, then the rightholder member is entitled to grant a licence to such organisation without reference to MCPS. Licensing scheme rightholder members may also reserve from their mandate the right to grant synch licences for film, TV and commercials. So, if a rightholder has reserved those rights, then that rightholder is able to grant such rights for a non-commercial use on whatever terms that rightholder sees fit. However, if that rightholder has granted MCPS the right to act as exclusive agent for the granting of synch licences, then it will not be possible to take back those rights on an ad hoc basis.

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

CMOs have in theory been operating with the removal of categories of works from the repertoire since the GEMA decision in the early 70s, which stated that GEMA members have the right:

- to assign their rights entirely to GEMA or to divide them by category among several

authors' rights societies; and

- to withdraw the administration of certain categories of rights after due notice at the end of each year and without losing membership status or incurring penalties.

However, in reality, very few of the societies ensured that these rights were made clear to members or made them easy to exercise, to the point that in some cases legal proceedings had to be taken to enforce the ability to remove the rights or repertoire.

MCPS currently offers a variety of licence agreements to licensing scheme rightholder members, each with termination procedures. In principle, it intends to offer even greater flexibility to members, going forward.

PMLL is already compliant with Art 5(4). It currently only operates one licensing scheme for the copying of sheet music in educational establishments and licensing scheme rightholder members can exclude individual works or catalogues from the scheme by posting details in a database of excluded works.

IMPEL intends to license online rights on behalf of independent music publishers on a pan-territory basis (principally within Europe). It offers a very specific type of membership to its licensing scheme and has a negotiated mandate agreement that already offers a lot of flexibility around opt-outs and take-downs. Licensing scheme rightholder members may include limitations on the approval for certain types of exploitation and may negotiate input into licensing decisions.

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"?

MCPS/PMLL/IMPEL all operate licensing schemes that are available to any rightholder whose works are being exploited in the manner covered by the scheme and we will be revising membership agreements to ensure compliance with the Directive. The only proviso is in relation to PMLL, a new organisation that does not yet have enough comprehensive usage data to distribute 100% of licence income on an empirical usage basis. Although every effort is being made to increase the quantity and quality of data,, for the next few years it is likely that a (diminishing) proportion of income will continue to be distributed on an incremental basis based on MPA membership revenue bands. Therefore, the board has decided that membership

is currently only open to publishers with a reasonable prospect of having their work copied in UK schools.

Other than that, we would only refuse membership in an extreme case, for example, if information had been brought to our attention that gave us reason to doubt the authenticity of representations made to us under a membership agreement.

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

MCPS articles provide for nine directors, three of whom are major publishers, three of whom are independent publishers and one who is a full writer member of BASCA. There is also provision for an external director to bring in additional balance and expertise, if required. The ninth director is the CEO.

PMLL articles are in the process of being amended to provide for eight directors, three of whom will be print publishers, two of whom will be major publishers and two of whom will be independent publishers. The eighth director is the CEO.

IMPEL articles provide for 10 directors, four of whom are those IMPEL licensing scheme rightholder members with the highest market share who have guaranteed seats, four of whom are elected annually from the remaining IMPEL members, and one of whom is an external director to bring in additional balance and expertise, if required. The tenth director is the CEO.

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

Clearly, these should be updated as soon as reasonably possible in order to best serve the interests of MCPS/IMPEL/PMLL's licensing scheme rightholder members and end users.

PRS, which handles our licensing, operations and distribution, regularly update rightholder records, both automatically and manually in accordance with Article 6(5) of the Directive. Automatic updates are instantaneous, whereas manual updates usually occur within 14 days and, at latest, within 21 days. We consider that these timeframes are appropriate as they are timely and regular, as required by Article 6(5) of the Directive.

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?**

MCPS/PMLL/IMPEL are not 'membership organisations' in the sense of being owned and controlled by rightholders for whom they act. They are licensing bodies, operating commercial licensing schemes on behalf of their mandating licensing scheme rightholder members. As discussed throughout this response, we consider that the principles of the Directive are applicable to the activities of all three organisations and should adhere to the benefit of our licensing scheme rightholder members. In some situations, which we elaborate where relevant, the structure and function of the organisation has an impact on the degree to which strict compliance is possible. However, we are endeavouring to interpret and apply the substance of the CRMD principles within each of our specific structural and functional context.

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

MCPS/IMPEL/PMLL are not CMOs in the formal sense because they are not owned or controlled by licensing scheme rightholder members and are constituted as for-profit limited liability companies. As wholly owned subsidiaries of MPA, they each only have one shareholder "member" who, as a matter of company law, has to hold ultimate reserve power. The licensing schemes that they operate sit within the commercial activities of their limited companies. Therefore, certain of the provisions of Article 8 are not directly translatable to them.

We would argue that in such cases it is appropriate to interpret the principles of the CRMD within the context of the structure and function of these organisations, bearing in mind the overarching objective that collective management organisations "should act in the best interests of the rightholders whose rights they represent".

In the case of each of MCPS/PMLL/IMPEL, the articles either provide for or are being amended to provide for an annual meeting to which licensing scheme rightholder members have a right to attend and where they will be presented with a report (comparable to a transparency report but suitable for the MCPS/PMLL/IMPEL structure and function) on key transparency, governance and licensing issues.

Turning to each specific area of Art 8 discretion:-

Art 8(7) – Discretion to require more detailed conditions for the use of rights/investment revenue – We feel that the existing provisions as set out in the Directive are sufficient.

Art 8(8) – Member states may allow alternative modalities for the appointment and removal of the auditor to ensure independence – In the case of organisations structured as limited companies such as MCPS/PMLL/IMPEL, it would not be appropriate for licensing scheme rightholder members (who in certain respects are the customers of the company) to select the auditors. Our view is that company and revenue law afford sufficient protection in this area.

Art 8(9) – Member states may allow for certain limited fair and proportionate restrictions on the right of members to participate and vote. – In the case of MCPS/PMLL/IMPEL, the articles now enshrine/will shortly enshrine, the right of licensing scheme rightholder members to vote for some or all of the board of directors who exercise the supervisory function.

Art 8(10) – Member States may provide for certain restrictions concerning the appointment of proxy holders – In the case of MCPS/PMLL/IMPEL, licensing scheme rightholder members will be entitled to vote for directors through proxies. We have no view on whether restrictions should apply.

Art 8(11) – Member States may decide that, if certain principles are satisfied, the powers of the general assembly may be exercised by an assembly of delegates elected at least every 4 years. – In the case of MCPS/PMLL/IMPEL, the articles now enshrine/will shortly enshrine, the right of licensing scheme rightholder members to vote for some or all of the board of directors for terms of between one and three years (depending on the organisation).

Art 8(12) – Member States may decide that where a CMO by reason of its legal form does not have a general assembly of members, the powers of that body are to be exercised by the body exercising the supervisory function – Subject to our belief that MCPS/PMLL/IMPEL are not technically CMOs, we would urge the Government to adopt an approach along these lines since we believe that building into the companies' constitutions a right for licensing scheme rightholder members to elect directors from their midst in representative categories and to receive a report at an annual meetings is the most appropriate way to ensure transparency and

good governance.

Art 8(13) – Member States may decide that where a CMO has members who are entities representing rightholders, all or some of the powers of the general assembly are to be exercised by the body exercising the supervisory function – As above.

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?

MCPS/IMPEL/PMLL all have boards of directors comprised of representatives of licensing scheme rightholder members in categories that we consider are a fair and balanced representation of the licensing scheme rightholder members as a whole. The boards receive reports from the CEO and other officers, monitor performance, and decide upon the strategic direction of the organisations in question.

As above, the articles of each organisation either provide for, or are being amended to provide for, an annual meeting to which licensing scheme rightholder members have a right to attend and where they will be presented with a report (comparable to a transparency report but suitable for the MCPS/PMLL/IMPEL structure and function) on key transparency, governance and licensing issues.

Here are the specific details of the composition of the various boards of directors:-

MCPS – The board meets monthly and is comprised of up to 3 representatives of the largest 6 MPA members, up to 3 representatives of independent publishers, a writer member nominated by BASCA and an executive director or other senior employee of MPA or MCPS. MPA chair may attend but not vote (unless otherwise a director).

IMPEL – The board meets 6 times a year and is comprised of 4 representatives of the largest MPA members, 4 licensing scheme rightholder members elected from the remaining MPA members, the executive director or other senior employee of MPA or MCPS, and the CEO of IMPEL.

PMLL - The board meets 4 times a year and is comprised of 3 representatives of its print music publisher rightholder members, 2 representatives of its major publisher rightholder members,

2 representatives of its independent publisher rightholder members and the CEO of PMLL (without voting rights).

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

This is a matter for an expert in company law and outside our expertise.

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?

The distribution and accounting systems for MCPS and IMPEL are currently outsourced to PRS. We are waiting to hear from them as to the costs of any required systems change, and to what extent, if any, those costs will be recharged to MCPS/IMPEL.

PMLL is a new society, currently operating a single licensing scheme. As its distribution policies become more sophisticated, we will ensure compliance with the Directive.

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

[redacted]

It is the intention of all three businesses that all monies collected and held will be distributed.

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?

No amounts held to fund social, cultural or educational activities, whether in the UK or the EU for either MCPS, IMPEL or PMLL.

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?

As currently constituted, none of the three organisations have rightholder "members" within the organisational ownership and control sense of the word. So, given that they collect instead for mandating rightholders who have joined a particular licensing scheme, they could be seen as collecting for "non-members" in a strict corporate sense.

However, leaving that definitional issue to one side, it is possible that MCPS and PMLL may rarely collect money for additional entitles who are not licensing scheme rightholder members. However, every effort is made to identify beneficiaries of revenue and to invite them to join the organisation(s). Consequently, only a tiny proportion of undistributed income will relate to parties who have not mandated any rights to our organisations.

Within all three organisations, our approach is to have open and accessible membership and policies that maximise income distribution wherever possible and we do not think that Government intervention would lead to material improvements in this area.

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

With MCPS, IMPEL and PMLL, commissions are set to cover running costs and all other direct expenses (which are, in turn, disclosed in the relevant audited statutory accounts and other information sent to respective members).

Commission costs are the only deductions made, and are transparent and available to members – in both the audited statutory accounts and are listed on distribution statements.

We would suggest that the "reasonableness" test should be applied in relation to the

appropriateness of the organisation's running costs in relation to its income and function. The level of transparency of all deductions/commissions is also an important factor in assessing reasonableness, since it plays into the issue of the free commercial choice made by members to join the licensing scheme in question.

We also consider that there is a direct correlation between the effectiveness of a society and the ability of its members to leave. If it is very difficult for a rightholder to withdraw rights then there is less impetus on the CMO to be efficient.

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

The only area where it is acceptable for Government to exercise this discretion is in relation to non-distributable revenues is in the case of Extended Collective Licensing where it involves the monies of non-members. The parameters for Government exercising this discretion in relation to ECL are clearly set out in paragraph 19 of the 2014 regulations (Retention and application of undistributed licence fees).

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?

MCPS/IMPEL/PMLL all apply exactly the same tariffs, methods of collection and deductions to all repertoire in a non-discriminatory way. This is a principle of operation of CMOs (specifically, the CISAC Professional Rules), it is also required by competition law, and it is a matter of agreed contract with affiliate CMOs.

We cannot comment in detail on other international CMOs, given that they do not maintain the same levels of transparency

For additional information, we would refer to the PRS response.

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

As the licensing functions for MCPS and IMPEL are currently outsourced to PRS, we reference

the PRS view, namely that it is difficult to provide a single definitive answer to this Question 27 as the data that each party – the user or the CMO – should provide will depend on a number of factors, such as:

(i) size and type of user;
(ii) type of exploitation involved;
(iii) whether there is a published tariff for the type of exploitation; and
(iv) if there is a published tariff, what that tariff requires the user to provide (a) in order to calculate licence fees; and (b) in terms of music usage information.

Depending on the above, the types of information that should be shared could include:

CMOs

- tariff details (where there is one);
- basis of and principles for setting licence fees (where there is no tariff);
- reporting requirements (music usage, revenue (where relevant);
- details of rights controlled in terms of type of repertoire, rights, territories; and
- details of exclusions – rights not covered by the licence

Users

- description of the service for which a licence is sought;
- expected extent of usage of repertoire (in terms of amount of music used and consumption, i.e. audience) and, where relevant to the tariff / licence fee calculation, revenues;
- user information (e.g. company history, location, directors, company/group structure);
- financial information (e.g. creditworthiness, bank details); and
- territories of operation of the service

As an overarching comment, we see this issue as one which requires a greater level of engagement between Government and the licensing bodies, and we urge Government not to take any material steps in this matter without engaging in an appropriate consultation.

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?

PRS, as our current operations and systems supplier for MCPS and IMPEL, is best placed to

answer this question and we refer you to their comments and recommendations on these issues. PMLL does not deal directly with multiple users.

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

PRS, as our current operations and systems supplier for MCPS and IMPEL, is best placed to answer this question and we refer you to their comments on these issues.

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

Neither MCPS, nor IMPEL, nor PMLL currently produce an annual transparency report to all of the level of detail specified in the Directive (e.g. in respect of costs breakdowns, undistributed and non-distributable funds, and reporting by affiliate CMO). However, to comply with the principles of the Directive, each organisation will be presenting an annual report to the annual meeting of licensing scheme rightholder members which will include as much of this information as is relevant to the structure of these organisations (taking into consideration that they are not "CMO"s within the definition of the Directive and are not owned by their licensing scheme rightholder members).

The distribution and accounting systems for MCPS and IMPEL are currently outsourced to PRS. We are waiting to hear from them as to the costs of any systems changes required to support additional transparency and reporting obligations, and to what extent, if any, those costs will be recharged to MCPS/IMPEL.

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

MCPS/IMPEL/PMLL support the need for transparency to members, licensees and affiliate CMOs and anticipate positive gains from the obligations on CMOs to disclose information to members and affiliate CMOs generally and, in particular, by way of the annual report, which should mean a reduction in the need for ad hoc requests for information from rightholders, users and CMOs that would fall within Article 20 of the Directive.

Most requests for information are dealt with by PRS which endeavours to reply to any "duly

justified" requests from rightholders, users and CMOs as completely as possible, provided that (i) the requests are "duly justified" and (ii) they do not compromise their compliance with confidentiality or data protection obligations or any competition law principles, or their duty to act in the best interests of our membership as a whole.

PRS has stated that it will assess what is meant by "duly justified" on a case-by-case basis and, given the increased transparency that will result from the other disclosure obligations on CMOs, we would support their argument for a restrictive interpretation of what "duly justified" request means. This will vary on case-by-case basis depending, in particular, on the person making the request, the purpose of the request and the scope of the request – for example, "duly justified" is likely to be interpreted more restrictively when a request has no legitimate business reason, is unjustifiably wide in scope and/or is received from a user (rather than a member). Our view reflects the PRS view, namely that a restrictive interpretation of "duly justified" best serves the interests of our members so that unnecessary resource is not spent responding to unjustified or spurious requests for information, the cost of which would ultimately negatively impact our members. Alternatively, IPO could consider whether or not it is appropriate for a CMO to pass the cost of answering a query onto the party asking the question.

In the event that PRS ceases to become our partner for licensing, operations and distribution, we would adhere to this position with any new supplier.

We note this reply to Question 31 is also relevant to the obligation in Article 25(1) of the Directive.

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

PRS, as our current operations and systems supplier for MCPS and IMPEL, is best placed to answer this question and we refer you to their comments on these issues.

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

IRC and ISWC codes are the key identifiers for musical works. It would be helpful if Government

could support the industry in its efforts to ensure that these voluntary standards are routinely and consistently adopted by content providers, DSPs and other users.

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

Please refer to response to Question 31 above.

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?

We take our confidentiality, data protection and competition law obligations seriously and are currently reviewing and updating our policies in light of the Directive. The key ways in which we (either directly or through PRS, our current partner for licensing, operations and distribution for MCPS and IMPEL) would protect data under Article 25(2) of the Directive are to disclose any data under confidentiality agreements and to restrict the disclosure of data only to that which is necessary to achieve the "duly justified" purpose and which is compliant with confidentiality, data protection and competition law obligations (i.e. by redacting, anonymising or aggregating information, where appropriate).

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)?

PRS, our current partner for licensing, operations and distribution for MCPS and IMPEL, will endeavour to ensure that (a) any corrections of data arising as a result of a sufficiently substantiated claim would be made "without undue delay" as required by Article 26(1) of the Directive; and (b) they invoice online service providers "without delay" as required by Article 27(4) of the Directive.

We believe that it is of the utmost importance that data is up to date and that CMOs are encouraged to be transparent about what they consider "without undue delay" to mean. If CMOs are required to specify timescales, it will allow members to determine whether they feel those timescales are too long.

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?

MCPS – 2365 broadcast and online mechanical licences, of which approximately 273 are SMEs. 6014 recorded music licences, of which 5827 are SMEs. We would estimate that approximately 5% licensees have a turnover in excess of MCPS.

IMPEL - 54 licensees. We would estimate that approximately 5-10% of licensees have a turnover in excess of IMPEL.

PMLL – It is estimated that approximately 30,000 schools use the schools printed music licence. Since a school is not an enterprise in a commercial sense, we have not provided a breakdown of size of licensee in this case.

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 UK has well established and well functioning bodies in place to deal with complaints and dispute resolution. These comprise the Ombudsman Service, the Copyright Tribunal, mediation services and the UK Courts. Each of these bodies has a clearly defined role in relation to complaints and disputes, and we would be against Government extending the remit of any of them – which would perhaps lead to them operating beyond their clearly defined areas of expertise (for example we do not believe that the Ombudsman Services should handle complaints relating to multi-territory licensing).

We are currently less clear as to how multi-territorial disputes will be resolved given the potential number of different agencies in each Member State who may need to be involved. Given that the system of national copyright law – which we endorse – prevails in each EU jurisdiction, we believe it is not appropriate for issues of value to be decided outside of the national territory.

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

We agree that the IPO is probably best positioned to house the National Competent Authority and that staffing and costs should be kept to a minimum at all times. If the NCA is housed within the IPO, it should be able to draw on the expertise of those around them. However, it is clear that the NCA should be independent from the daily work of the IPO, particularly with regards to policy setting.

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.

As mentioned above, we envisage that the NCA will be a small agency, housed within the IPO and view that a staff of 2 should be sufficient to run such an organisation – certainly at the outset. We imagine that those appointed to the organisation will need a practical understanding of copyright and company law.

We would welcome clarity on the role the NCA is expected to play in relation to interaction with NCAs from other EU Member States and whether it is envisaged that NCAs will attend EU experts meetings, for example. As mentioned above, we do not believe that the NCA should be involved in policy developments for our sector.

41 How should the costs of the NCA be met?

As a small agency, whose primary responsibility is to monitor CMO compliance with the Directive, the modest cost of setting up and running this agency should be borne by the Government - on the basis that CMOs (and therefore their rightholder members) are bearing the costs of implementation of the Directive.

In addition, and in line with the principles of good governance, we do not believe that it is appropriate that the costs of the NCA should be borne by the CMOs it is monitoring. The NCA should operate as a wholly independent entity and as such should not be dependent on income from those entities it is supposed to be monitoring.

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