

30 March 2015

Collective Rights Management in the Digital Single Market – Consultation on the implementation on the EU directive

About UK Music

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society. The members of UK Music are listed in an annex.

General

3. We welcome the Directive and its policy aims, i.e. to “modernise and improve standards of governance, financial management and transparency of all EU CMOs (collective management organisations), thereby ensuring, amongst other things, that rightholders have more say in the decision making process and receive accurate and timely royalty payments.”
4. Individual UK Music members will submit more specific evidence to the questions. Collective management organisations act on behalf of their members, i.e. composers, music publishers, performers and record companies. As mentioned in paragraph 1, UK Music represents their collective interests.
5. We welcome Article 5 of the Collective Rights Management Directive which recognises that rightholders as defined in Article 2 have “the right to authorise a collective management organisation of their choice to manage the rights, categories of rights or types of works and other subject-matter of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the collective management organisation or

UK Music
4TH floor
49 Whitehall
London, SW1A 2BX
T. 020 3713 8454

E. info@ukmusic.org

www.ukmusic.org

the rightholder. ...” Members control the relevant collective management organisation, they obtain the financial benefits and pay for their operation.

6. In response to this consultation UK Music focuses its answers on four specific questions and provides an additional general remark.

Response

7.

Question 1

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

We prefer Option 2 which would provide a clean and clear legal framework for the UK. Option 2 also contributes to a harmonised pan European application of the laws. This is preferable to tinkering with the existing regulation which might lead to a lack of clarity and confusion.

8.

Question 25

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

We oppose any form of Government intervention in decisions concerning the use of non-distributable revenue (defined in Article 13 (4)). It must be understood that monies, which are non-distributable, are still ultimately income from the licensing of music and belongs to composers, music publishers, performers and record companies. It is for them to decide how their CMO should distribute such non-distributable revenues. Decisions on how to use non-distributable revenue will normally be made at the level of the Board of a collective management organisation according to the rules established and laid out in the Collective Rights Management Directive (note in particular the mandatory provision in Article 13 (5)).

Additionally, if Government remains minded “to exercise the discretion in Article 13(6), but only where the monies belong to rightholders who are not members of a CMO” we stress that preferential treatment of non-members by collective management organisations would be unacceptable in view of the non-discriminatory treatment rules of collective management organisations. Non-members should not benefit more than members of any collective management organisation without contributing to their operation.

We understand non-members to refer to rightholders who are not members of CMOs. This does not include rightholders who are members of a CMO and whose rights are administered by a UK CMO based on a reciprocal representation agreement, ie. non-

members in this context only refers to “non-member rightholder” in the sense of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014.

9.

Question 27

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

Accurate and comprehensive data about the usage which users provide to collective management organisations in an agreed format is key for a detailed distribution to composers, music publishers, performers and record companies. The provision of accurate and comprehensive usage information addresses all policy aims of the Directive by providing transparent reporting, accurate distribution and thus promoting the operation of a digital music market with many small value transactions.

Usage data is relevant for distribution in the digital world but also in the traditional public performance sector such as pubs. Users are best placed to provide such usage data. The provision of usage data by certain classes of music user/licensee can be limited, and on occasion very poor. We therefore suggest that the IPO creates incentives for users to provide accurate data when implementing Article 17 of the Collective Rights Management Directive.

The question of “necessary information” is best addressed by close collaboration between CMOs, rightholders and users setting standards and establishing best practice on all levels from the provision of necessary information by the music industry at inception of the musical work/sound recording to the actual usage data by users.

UK Music believes this is an important area and would be happy to assist with any collaboration.

10.

Question 41

How should the costs of the NCA be met?

We agree with Government that the National Competent Authority is probably best based within the IPO. In our view the costs of establishing and running the body will be limited given that the National Competent Authority can draw on the resources already available at the IPO.

The supervisory body should be independent from the subject of their supervision, thus it seems inappropriate for the CMOs to pay for it. In addition, CMOs, respectively their rightholder members, have to cover the general costs of implementation of the

Directive. It is inappropriate to impose the costs of a National Competent Authority on the members of collective management organisations.

11.

In addition to the specific questions being asked in this consultation, we understand that the European Commission is considering the interpretation of wording in Article 8 as compelling collective management organisations to enable electronic participation in the general assembly. Members of UK Music were concerned about the costs for collective management organisations to provide an efficient and secure technical e-voting system. We ask the IPO to call for a reasonable interpretation of the provisions of Article 8.

Annex

UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies
- BASCA - British Academy of Songwriters, Composers and Authors – BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition – the voice of the featured artists.
- MMF - Music Managers Forum - representing 425 managers throughout the music Industry
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music
- Musicians' Union representing 30,000 musicians
- PPL is the music licensing company which works on behalf of over 90,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 100,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

For more information please contact Tom Kiehl, Director of Government and Public Affairs, UK Music.