# 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

## Response from: SKY UK Limited ("Sky UK")

## To: Copyright and Enforcement Directorate, Intellectual Property Office, First Floor, 4 Abbey Orchard street, London SW1P 2HT

**30th March 2015**

### Introduction from Sky UK

Following the opening by the IPO of the above consultation, Sky UK, which is a customer of PRSfM and PPL (the two main music CMOs operating in the UK) and a large scale user of music in both its linear and non-linear services, has reviewed the paper. The paper appears to be aimed principally at CMOs, entities similar to CMOs and creators/rights holders and as such, we are only responding to questions where we feel a user view is pertinent.

### Answers to Questions in Annex B

**Q1**. Option 2 (plus, if possible, any aspects of the 2014 Regulations that go beyond the Directive) is likely to be the optimal route that will allow the Directive's intentions to be fully realised and in a form acceptable to all interested parties, including users. From Sky UK's perspective as a user, the Directive's more detailed governance and transparency requirements of CMOs are essential as we do not feel the existing codes of practice are sufficient in this context.

**Q2**. As above, retaining aspects of the 2014 regulations that go beyond the Directive will give the Directive its best chance of being 'fit for purpose' and effective.

**Q8**. We think the intention under Article 3 (c) should be that the definition of "rights holders " is drawn as widely possible to assist any CMO in offering as wide a repertoire of music as possible to any user.

**Q12**. From the perspective of a user who negotiates large-scale blanket licences with CMOs, the impact of allowing rights holders to remove rights or works from any repertoire can be considerable. In certain circumstances it can trigger a re-negotiation of licence fees and as a minimum, will always involve time and effort to ensure either, a) separate licences are entered into for the "withdrawn" works or b) internal systems and practices are adjusted so that the withdrawn works aren't inadvertently used without permission. In the case of such large-scale blanket licences (or other similar licences), Sky UK strongly recommends that CMOs add provisions to any right of withdrawal which mean that withdrawal of repertoire is not immediate but only becomes effective following the expiry of the term of any such licences.

**Q16**. As a user of music on a mass scale, it is essential that Sky UK is able to obtain music licences that cover the widest scope of repertoire possible, deliver the widest grant of rights, cover the newly integrated Sky plc group of companies operating in different territories and which are cost effective and efficient to acquire. In these circumstances, there is a case for extending additional provisions in the Directive to all possible rights holders (see Q8).

**Q27**. Subject to any considerations of commercial sensitivity, users should provide information which outlines the broad scope of the type of licence they are seeking - including both established and new ways in which music might be exploited via the relevant services which feature in any licence. Where possible, the anticipated consumption/take up of any such services should be provided together with data on the historic performance of any services previously licensed by the CMO which are to continue under any prospective licence. CMOs should indicate at an early stage precisely what repertoire and rights they control and what licensing principles or precedents might apply to the licence being sought by any user. This will enable due consideration to be given to adapting and flexing such principles or precedents where reasonable.

**Q28**. We are not sure we fully understand this question – in Sky UK's experience it is in the user's interest to offer up a reasonable amount of information to any CMO when negotiating so that an appropriate and 'fit for purpose' licence can be secured for the proposed activity. We do not see why there should be a need for any "enforcement" to apply. "Relevant Information" for the purpose of user reporting should mean sufficient

information be provided by users that will assist in the efficiency and speed of the collective management process i.e. which will enable rights holders to receive monies from CMOs for any usage of their works by a user quickly and efficiently. In Sky UK's dealings with PRSfM and PPL, detailed formats have already been developed and agreed for reporting on music usage for this very purpose.

**Q38**. In terms of procedures for handling major disputes between CMOs and users, including disputes in a multi territorial context, the appropriate resolution of any dispute should continue to be determined by the Copyright Tribunal as it can provide consistency from the case history of previous disputes and because it has a track record of delivering reasonable and balanced decisions to licensing issues. However, we broadly agree that smaller scale disputes should be handled via some kind of ADR process.

**Q39**. If an existing regulatory body is unable or unwilling to take on the responsibilities of an NCA, then using the resources of the IPO would be Sky UK's preferred option and we agree that this is likely to have the benefit of being the quickest and most cost efficient route to set up such a body.