

**DATED**

**16<sup>th</sup> January 2017**

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**MECHANICAL COPYRIGHT PROTECTION SOCIETY LIMITED**

**and**

**INTELLECTUAL PROPERTY OFFICE**

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**MEMORANDUM OF UNDERSTANDING**

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## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) comes into operation on 16<sup>th</sup> January 2017 (hereinafter referred to as the “Effective Date”), it is non-binding, and is made

BETWEEN:

### **MECHANICAL COPYRIGHT PROTECTION SOCIETY LIMITED**

8<sup>th</sup> Floor

2 Pancras Square

Kings Cross

London

N1C 4AG

Represented by Jane Dyball, Chief Executive Officer, duly authorized for signature  
(Hereinafter referred to as “**MCPS**”)

AND

### **INTELLECTUAL PROPERTY OFFICE (the operating name of the Patent Office)**

Concept House

Cardiff Road

Newport

South Wales

NP10 8QQ

Represented by Ros Lynch, Director of Copyright and Enforcement, duly authorized for signature  
(Hereinafter referred to as “**IPO**”)

WHEREAS:

(A) MCPS is a private company limited by shares and is a wholly-owned subsidiary of the Music Publishers Association Ltd (“**MPA**”). It operates licensing schemes relating to the exploitation of the mechanical right in musical works and is mandated by music publishers and other owners of copyrights (principally authors and/or composers) in musical and literary works (lyrics) to license those rights on their behalf. MCPS’s operations are currently outsourced to the Performing Rights Society (“**PRS**”), as defined by a Services Agreement (the “**SLA**”). Operational services are provided to MCPS Licensing Scheme Members and customers (as defined below) by PRS for Music Limited, a subsidiary company of PRS.

(B) IPO is an executive agency sponsored by the Department for Business, Energy and Industrial Strategy and is the official UK government body responsible for intellectual

property rights, including copyright.

(C) The goal of Directive 2014/26/EU on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (“**the Directive**”) is, inter alia, to ensure that collective management organisations (“**CMOs**”) act in the best interests of the right holders they represent. Its policy objectives are

- (1) to modernise and improve standards of governance, financial management and transparency of EU CMOs;
- (2) to promote a level playing field for the multi-territorial licensing of online music; and
- (3) to create innovative and dynamic cross-border licensing structures to encourage further provision and take-up of legitimate online music services.

(D) The Collective Management of Copyright (EU Directive) Regulations 2016 (“**the Regulations**”) implement the Directive within the UK.

(E) As a for-profit limited company, which is not owned or controlled by its Licensing Scheme Members, MCPS currently falls outside the definition of CMO within the Directive and Regulations, which are therefore not applicable to MCPS. However, MCPS supports the aims and objectives of the Directive and Regulations.

(F) MCPS has consulted with IPO regarding the requirements of the Directive and wishes to underscore its commitment to the principles of the Directive by setting out the ways in which it either is currently compliant or is working towards compliance with the Regulations to the extent that is possible given the ownership structure of MCPS.

(G) IPO wishes to encourage and support the efforts of MCPS to voluntarily comply with the Regulations to the maximum extent feasible within its current structure.

(H) MCPS has decided that it will pursue an approach of voluntary compliance with the Regulations within the framework of the statements made by MCPS in this MOU.

MCPS and IPO have reached the understandings set out in this memorandum:

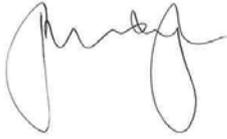
#### **PRINCIPLES:**

1. Although the Directive and Regulations are not applicable to MCPS, it nonetheless welcomes the Directive as a framework for its efforts to continually improve its own standards. It welcomes the Directive’s principles of transparency, representativeness, accountability, efficiency and fairness and has committed to analysing the possible application of the Directive to its structure and operations.
2. Under its Articles of Association, MCPS is committed to promoting and protecting the interests of Right Holders that it represents (Licensing Scheme Members).

3. MCPS's view of its current and planned practices and their relationship to the Directive and Regulations are set out in paragraphs 1 to 38 of Schedule 2 below. In the event of a change of service provider, MCPS will require compliance with the Regulations to the fullest extent possible from any such service provider. IPO notes these views.
4. MCPS considers that its voluntary compliance with the Regulations in accordance with Schedule 2 reflects its commitment to the standards and principles of the Directive. MCPS has invited IPO to attend Annual Right Holder Meetings and assess annual reports, and has offered to address questions raised by IPO, whether as a result of issues brought to it by Licensing Scheme Members, users or other parties, or at its own instigation. MCPS will consider in good faith issues raised by IPO and shall respond with the objective of holding itself to the high standards set out in this MOU, whether in relation to the specific issue in question, or more generally.
5. To the extent MCPS falls outside the scope of persons to whom the Regulations apply IPO will monitor MCPS's voluntary compliance with the Regulations in accordance with the points made in this MOU. The IPO will treat information received about potential non-compliance with this MOU in the same way as it will treat information about potential non-compliance with the Regulations by a party subject to the Regulations. However, because MCPS is currently outside the scope of the Regulations, the IPO will not be able to take enforcement action against MCPS in the event that it considers non-compliance has taken place.
6. IPO will work with MCPS to address any non-compliance, including by proposing amendments to this MOU as required. More details about the IPO's approach to investigation and enforcement in relation to the Regulations is available at <https://www.gov.uk/government/publications/how-the-ipo-will-carry-out-investigation-and-enforcement-activities>
7. MCPS and the IPO will make this MOU publicly available on their respective websites.
8. Either MCPS or IPO can bring this MOU to an end at any time, in either's sole discretion by giving to the other person six (6) months prior written notice of termination. Notice shall be given in writing and be sent by a reputable international courier to the person (or such person's successor in title) and at the address (or such replacement address) set out at the head of this MOU.
9. This MOU is subject to review at intervals of 1 year from the date first set forth above.
10. This MOU shall not constitute and is not intended to establish any legally binding obligations or other form of relationship between any person.
11. To assist with the interpretation of this MOU, a definitions section is included in Schedule 1 below.

This MOU represents the understandings reached between the IPO and the MCPS

SIGNED BY:

A handwritten signature in black ink, appearing to be a stylized name with a large initial 'M' and a long horizontal stroke.

for and on behalf of  
MECHANICAL COPYRIGHT PROTECTION SOCIETY LIMITED

SIGNED BY:

A handwritten signature in black ink that reads "Ros Lynch" in a cursive style.

for and on behalf of  
INTELLECTUAL PROPERTY OFFICE

## SCHEDULE 1

### Definitions

**“Annual Right Holder Meeting”** means a meeting taking place each year to which all MCPS Licensing Scheme Members are invited and at which the ARM Report is given for discussion and feedback.

**“ARM Report”** means a report containing the matters set out at Point 29 of Schedule 2.

**“Author/Composer Licensing Scheme Member”** means a Licensing Scheme Member who is a Right Holder by virtue of being the author and/or composer of one or more musical and literary works.

**“Distribution Policy”** means the policy relating to the distribution of rights revenue created in accordance with the Licensing Scheme Membership Agreement(s) and the SLA (for the time being) and adopted by the board of directors

**“Licensing Scheme Member/Membership”** means a Right Holder or Right Holders in relation to musical and literary works who has authorised MCPS to enter into licences on its behalf via MCPS’s licensing schemes.

**“Licensing Scheme Membership Agreement”** means the agreement (sometimes referred to as the “MA2”) or any similar successor agreement under which a Licensing Scheme Member authorises MCPS to license musical and literary works in accordance with some or all of MCPS’s licensing schemes.

**“Publisher Licensing Scheme Member”** means a Licensing Scheme Member who is a Right Holder by virtue of being the publisher of one or more musical and literary works under the terms of agreements with one or more other Right Holders.

**“Representation Agreement”** has the same meaning as it has within the Regulations, namely an agreement between CMOs whereby one CMO mandates another CMO to manage the rights it represents SAVE THAT with reference to agreements to which MCPS is a party, it shall be interpreted to reflect the fact that MCPS is not a CMO.

**“Right Holder”** has the same meaning as it has within the Regulations, namely any person, other than a CMO that:-

- (a) holds a copyright or related right; or
- (b) under an agreement for the exploitation of rights or by law is entitled to a share of the rights revenue.

## SCHEDULE 2

### MCPS practices and their relationship to the Regulations

Regulations are referred to below where, in the view of MCPS, their subject matter relates directly to MCPS, and are not referred to below when, in the view of MCPS, their subject matter does not relate directly to MCPS.

#### **GENERAL OBLIGATION TO RIGHT HOLDERS (REGULATION 3):**

1. *MCPS considers that it is compliant with Regulation 3 (**general principles underpinning obligations of CMOs to Right Holders**) to the fullest extent possible:*

##### Observations by MCPS

MCPS is not a membership organisation but is a for-profit limited company that is wholly owned by the MPA. Under its Articles of Association, MCPS is committed to promoting and protecting the interests of Right Holders that it represents (Licensing Scheme Members).

MCPS will not impose on Right Holders any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights.

#### **PARTICULAR OBLIGATIONS TO RIGHT HOLDERS (REGULATION 4):**

2. *MCPS considers that it is substantially compliant with Regulation 4 (**specific obligations of CMOs in relation to Right Holders**) and intends to become compliant:*

##### Observations by MCPS

Membership of MCPS is open to all Right Holders whose activities fall within the scope of the licensing schemes that MCPS operates. MCPS offers flexibility across a number of its schemes. Members of MCPS may also serve notice and terminate their agreement with MCPS, after which their musical and literary works will not be included in new licences. However, MCPS is committed to further improving its Licensing Scheme Membership Agreement to ensure additional flexibility of representation in relation to rights, categories of rights, types of works and territories of exploitation. The MCPS Licensing Scheme Membership Agreement ("MA2") will be revised in order to put these changes into operation.

#### **MEMBERSHIP RULES (REGULATION 5)**

3. *MCPS considers that it is compliant with Regulation 5(1) (**obligation to accept members**):*

##### Observations by MCPS

Licensing Scheme Membership is open to all Right Holders whose activities fall within the scope of the licensing schemes that MCPS operates.

4. *MCPS considers that it is substantially compliant with Regulation 5(1)(b) (**obligation to give reasons for refusal of membership**) and intends to become compliant, and considers that it is compliant with Regulation 5(2) (**membership requirements**):*

Observations by MCPS

MCPS considers that Licensing Scheme Membership requirements are currently based on objective, transparent and non-discriminatory criteria. MCPS will communicate the eligibility criteria on a new website that will be commissioned in 2017, and they will be included within the updated Licensing Scheme Membership Agreement as part of the review, referred to in Point 2 above. MCPS is not aware of any instances where membership has been refused in practice.

## **RELATIONSHIP WITH MEMBERS (REGULATION 6)**

5. *MCPS considers that it is compliant with Regulations 6(a) (**provision within statute for participation of members**) and (b) (**fair and balanced participation of different categories of members in decision-making process**) to the fullest extent possible:*

Observations by MCPS

MCPS is not a membership organisation but is a private limited company, established and owned by MPA, whose core business is the operation of licensing schemes that it administers on behalf of Publisher Licensing Scheme Members and Author/Composer Licensing Scheme Members. MCPS, as the subsidiary of MPA, is owned by publishers who are usually also Publisher Licensing Scheme Members.

Licensing Scheme Members are consulted over the terms on which licences are valued and distributions made. The board of MCPS also reflects the varied membership with three directors who are representatives of larger publishing companies (acknowledging the large proportion of MCPS licences granted that are attributable to such companies) and three directors who are representatives of independent publishing companies (representing a diversity of other publishers), along with a writer member, the CEO and an external director to ensure good corporate governance. The MCPS board thus discusses strategic as well as operational issues affecting the society; however, the MPA (acting by its board) holds ultimate responsibility for making decisions for the business.

6. *MCPS considers that it is compliant with Regulation 6(c) (**requirement for communication to be possible by electronic means**) and (d) (**regular update of members records**)*

Observations by MCPS

Licensing Scheme Members and non-members are able to communicate electronically with MCPS, directly or via its service provider (currently PRS), where appropriate. Licensing Scheme Members can check and amend their registration details and records online.

## GENERAL ASSEMBLY (REGULATION 7)

7. *MCPS considers that it is substantially compliant with Regulation 7 (**existence and powers of general assembly**) (through the operation of Regulation 7(5) and (6)) (**organisations whose form does not admit of a general assembly in which those powers are exercised by the supervisory body**)*

### Observations by MCPS

MCPS is an organisation that is structured as a private limited company owned by the MPA. MPA, in turn, is owned by a specific subset of publishers which comprises mostly of MCPS Publisher Licensing Scheme Members. As a result, MCPS does not admit of a general assembly within the definition set out in the Regulations. Instead, as mandated by Regulation 7(5) and (6), the supervisory function of MCPS, comprising all functions specified within Regulation 7, is carried out by its board of directors, who are subject to all the obligations and constraints of UK company law as well as being subject to the reserve power of MCPS's holding company, MPA, as enshrined within MCPS's Articles of Association.

To increase Right Holder participation, MCPS has introduced an Annual Right Holder Meeting, to be enshrined within its Articles. This offers an opportunity for the board and officers to present to Licensing Scheme Members, for discussion and feedback, an ARM Report (broadly equivalent to the transparency report required by Regulation 21 – see Point 29 below).

## SUPERVISORY FUNCTION (REGULATION 8)

8. *MCPS considers that it is compliant with Regulation 8(1) (**supervisory function in place**)*

### Observations by MCPS

MCPS considers that its board of directors fulfils the supervisory function for continuous monitoring of the company's activities and the performance of the officers and staff. Directors are appointed by the MPA board.

9. *MCPS considers that it is compliant with Regulation 8(2)(a) (**fair and balanced representation in body exercising supervisory function**) to the fullest extent possible:*

### Observations by MCPS

For the reasons set out in Point 5 above, MCPS regards Right Holder representation on the board of directors as fair and balanced across the three main categories of its Licensing Scheme Membership (larger publishers, independent publishers and authors/composers). Balance and fairness is achieved not in a way that is directly proportional to the numbers of Licensing Scheme Members in the various categories but weighted to take into account: (i) the corporate structure of MCPS (it is a private limited company owned by MPA, which is a publishers trade association comprised of publishers who are predominantly also Publisher Licensing Scheme Members), (ii)

the size and level of participation in MCPS licensing schemes of its two categories of Publisher Licensing Scheme Members, and (iii) the fact that Author/Composer Licensing Scheme Members are not only represented by a director who is an author/composer nominated by BASCA and appointed by MPA but also by publisher directors who also are concerned with the interests of author/composer Right Holders from whom they derive some or all of their rights.

10. *MCPS considers that it is substantially compliant with Regulation 8(2)(b) (directors annual statements of interests):*

Observations by MCPS

Each director makes an annual statement on conflicts of interest, which will be available for inspection by other directors and Licensing Scheme Members. This statement will contain the information required by Regulation 9(3).

11. *MCPS considers that it is compliant with Regulation 8(2)(c) (regular meetings, exercise of general assembly function and monitoring of management)*

Observations by MCPS

The MCPS board meets at least bi-monthly and exercises all of the powers otherwise ascribed to the general assembly by the Regulations. It also monitors the activities and performance of the duties of the persons referred to in Regulation 9 (i.e. managers of the organisation).

12. *MCPS considers that it is substantially compliant with Regulation 8(2)(d) (annual report by body exercising supervisory function to general assembly of members)*

Observations by MCPS

The MCPS board reports once a year on the exercise of its supervisory function to an Annual Right Holder Meeting (to which all right holders are invited to attend). MCPS presents an ARM Report, which MCPS considers is broadly comparable to the annual transparency report referred to in the Regulations, but consistent with MCPS's specific structure and function.

## **MANAGEMENT FUNCTION (REGULATION 9)**

13. *MCPS considers that it is compliant with Regulation 9 (responsibilities of organisation to ensure appropriate behaviour from managers)*

Observations by MCPS

MCPS considers that it is operated day-to-day by suitably qualified personnel who manage its business in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms. Senior management are fully accountable to the board of directors and company members under MCPS's corporate governance. MCPS has in place a conflicts policy covering conflicts of interest and has recently instituted a Conflicts Committee to ensure

rigorous compliance by directors. As a director of MCPS, this also covers the Chief Executive.

## **COLLECTION AND RIGHTS REVENUE (REGULATION 10)**

14. *MCPS considers that it is compliant with Regulation 10(a) (**diligence in collection and management of rights revenue**)*

### Observations by MCPS

To ensure efficiencies and economies of scale, MCPS outsources its back office function. Its current service provider is PRS. MCPS uses all reasonable commercial endeavours to ensure that PRS is diligent in the collection and management of rights revenue and will require the same high standards from any successor service provider with which MCPS may enter into a future agreement. As set out in MCPS's current Request for Proposals for Provision of Business and Operational Services, compliance with the Directive and/or the Regulations is a requirement of any future service agreement.

15. *MCPS considers that it is compliant with Regulation 10(b) (**separation within accounts of commission and rights revenue**)*

### Observations by MCPS

MCPS acts as agent for its Licensing Scheme Members. Income collected on members' behalf ("rights revenue") remains member's income within the accounts until the point of distribution, which is currently when MCPS's commission is calculated and crystallised. Commission rates are publicised in advance and commission is clearly identified within the accounts as separate from future rights revenue or rights revenue that has been collected but which cannot be distributed at that time for reasons allowed under the Regulations.

16. *MCPS considers that it is compliant with Regulation 10(c) (**restrictions on use of rights revenue**)*

### Observations by MCPS

MCPS uses rights revenue for distribution and payment of commission solely in accordance with the Distribution Policy.

17. *MCPS considers that Regulation 10(d) (**conditions applying to investment of rights revenue**) is not currently relevant to MCPS*

### Observations by MCPS

Other than the accrual of bank interest, which is clearly demarcated within the accounts, MCPS does not currently invest rights revenue for the purpose of income generation. Any change in policy would be in compliance with the Regulations.

## DEDUCTIONS (REGULATION 11)

18. *MCPS considers that it is compliant with Regulation 11 (restrictions on deductions from rights revenue)*

### Observations by MCPS

Information on distribution charges, distribution principles and the Distribution Policy are publicly available on the MCPS section of the PRS for Music website, through which PRS currently provides online services to Licensing Scheme Members and MCPS customers. Such information will continue to be made available on any future dedicated MCPS website. Although all prospective Licensing Scheme Members have access to this information prior to joining MCPS licensing schemes, as set out in Point 3 above, MCPS will be updating its Licensing Scheme Membership process and, as part of that process, will provide increased visibility of commission details prior to accepting a Right Holder as a Licensing Scheme Member. MCPS commissions are calibrated to cover the reasonable running costs of the company. No commission is used for social, cultural, educational purposes.

## DISTRIBUTION TO RIGHT HOLDERS (REGULATION 12)

19. *MCPS considers that it is compliant with Regulations 12(1)-(5) (obligations relating to distributions to Right Holders)*

### Observations by MCPS

Unless there are objective reasons for not paying a Right Holder (such as those set out in Regulation 12(4)), MCPS, though its service provider, distributes streams of rights revenue, monthly, according to rules and procedures that accord with MCPS's Distribution Policy, which is available on the MCPS section of the PRS for Music website. Income that, for objective reasons, is not yet capable of being distributed, remains designated as "royalty creditors" within the balance sheet.

20. *MCPS considers that it is compliant with Regulation 12(6)-(8) (measures required to identify, locate and distribute to Rights Holders)*

### Observations by MCPS

The necessary measures taken by MCPS to identify and locate Right Holders for distribution have been taken by its service provider, PRS. PRS has adjusted its systems to implement compliance, both for itself and for MCPS, by making available data available online to members, affiliates and the general public in respect of works and other subject matter in relation to which MCPS has been unable to make a distribution. In this way, it is open to Right Holders to check whether there is rights revenue outstanding to them.

21. *MCPS considers that it is substantially compliant with Regulation 12(9) (designation of non-distributable income)*

Observations by MCPS

Amounts of rights revenue that cannot be distributed before the end of the period of 3 years from the end of the financial year in which collection of the rights revenue occurred, and in respect of which the data referred to in Point 20 above has been made available, will be treated as non-distributable within the accounts. Such sums, nevertheless, will continue to be subject to MCPS's Distribution Policy, which takes into account the impact of the Statute of Limitations on MCPS's potential liability in relation to such amounts.

**DISTRIBUTION TO RIGHT HOLDERS (REGULATION 13)**

22. *MCPS considers that it is compliant with Regulation 13 (non-discrimination against Right Holders)*

Observations by MCPS

MCPS does not discriminate against Right Holders whose rights it manages under Representation Agreements, in particular with respect to applicable tariffs, management fees and the conditions for (i) the collection of rights revenue, and (ii) the distribution of rights due to right holders.

**DEDUCTIONS AND PAYMENTS RELATING TO RIGHTS MANAGED UNDER A REPRESENTATION AGREEMENT (REGULATION 14)**

23. *MCPS considers that it is compliant with Regulation 14 (express consent to deductions and other requirements relating to distributions)*

Observations by MCPS

MCPS does not make deductions other than in respect of management fees from the rights revenue derived from the rights it manages on the basis of a Representation Agreement, and where the CMO in question has expressly consented to such deductions. It requires its service provider to regularly, diligently and accurately distribute and pay rights revenue to such CMOs and to provide the same level of service as is provided to Licensing Scheme Members with which it has a direct Licensing Scheme Membership Agreement.

**LICENSING (REGULATION 15)**

24. *MCPS considers that it is compliant with Regulation 15 (conditions relating to licensing activities)*

Observations by MCPS

MCPS considers that it does and will continue to conduct licensing negotiations in good faith and in a transparent, non-discriminatory, efficient manner, with licensing terms being based on objective and non-discriminatory criteria. As a commercially-

driven organisation, within licensing negotiations MCPS uses all reasonable commercial endeavours to maximise the value of the rights that it represents on behalf of Right Holders within the parameters of what is reasonably achievable within the marketplace and, in accordance with its commitments set out in Point 18 above, retains only commissions reflecting actual management and running costs. As an organisation dependent on providing an efficient and acceptable service to users, it provides licensing services through a service provider (currently PRS), which it appoints on the basis of the quality of provision supplied. Its licensing provision is available to all bona fide users requiring a licence to apply and communicate electronically and it treats all such users in good faith.

MCPS is a “licensing body” for the purposes of the Copyright Designs and Patents Acts and, as such, disputes on licensing may be referred to the Copyright Tribunal.

#### **INFORMATION PROVIDED TO RIGHT HOLDERS (REGULATION 17)**

25. *MCPS considers that it is compliant with Regulation 17 (information requirements to be provided to Right Holders)*

##### Observations by MCPS

MCPS requires its current service provider, PRS, to make available the information set out in Regulation 17. This is currently available online, on a continual basis, through the current Licensing Scheme Membership portal on the PRS for Music website, or through the data provided on royalty statements, distributed monthly. MCPS will continue to require such compliance from any future service provider.

#### **INFORMATION PROVIDED TO CMOs (REGULATION 18)**

26. *MCPS considers that it is compliant with Regulation 18 (information requirements to be provided to CMOs under the terms of Representation Agreements)*

##### Observations by MCPS

Save for the information set out in sub-paragraph 2(g) (resolutions adopted by general assemblies), which is not relevant to MCPS, the information required by Regulation 18 is made available in the same manner as the information made available to other Right Holders, as detailed in Point 25 above.

#### **INFORMATION PROVIDED TO RIGHT HOLDERS, CMOs AND USERS ON REQUEST (REGULATION 19)**

27. *MCPS considers that it is compliant with Regulation 19 (information to be provided in response to duly justified request)*

##### Observations by MCPS

MCPS makes available electronically through the online database managed by its service provider (currently PRS), to Licensing Scheme Members, users and CMOs with

which it has a Representation Agreement, the works and rights that it represents and the territories in respect of which it is able to license.

MCPS's current service provider is PRS. As a condition of any future agreement with a service provider, MCPS will require that all information necessary for compliance with Regulations is made electronically available to its Licensing Scheme Members, CMOs with which it has a Representation Agreement, users and the general public.

#### **DISCLOSURE OF INFORMATION TO THE PUBLIC (REGULATION 20)**

*28. MCPS considers that it is compliant with Regulation 20 (information to be provided to general public)*

##### Observations by MCPS

The information specified in paragraph (3) is available on the MCPS section of the PRS for Music website and will continue to be available on any future replacement website.

#### **TRANSPARENCY REPORT (REGULATION 21)**

*29. MCPS considers that it is substantially compliant with Regulation 21 (specific information to be included on transparency report)*

##### Observations by MCPS

To increase Right Holder participation, MCPS has introduced an Annual Right Holder Meeting to which Licensing Scheme Members will be invited and at which an ARM Report will be presented for discussion and feedback. The ARM Report will be available on its website for at least 5 years and will contain a comprehensive summary of MCPS's financial position, based on its statutory accounts which are prepared and independently audited in accordance with company law. Where Regulation 21(2)(b) requires the auditing of financial information, MCPS will require its service provider to prepare the ARM Report in accordance with this Point 29 in a form which has been audited by an eligible person. The ARM Report will contain the following information:-

- (i) A financial summary of the company, prepared in accordance with company law requirements for statutory accounts (including independent audit) and reflecting the information filed at Companies House;
- (ii) a report on activities in the previous year;
- (iii) information in general terms on refusals to grant licences, in accordance with Regulation 15(5)(b)(ii);
- (iv) a description of the legal and governance structure of MCPS;
- (v) information on entities owned or controlled by MCPS;
- (vi) remuneration (including benefits) payable to Directors and the CEO in the previous financial year;

- (vii) financial information on rights revenue collected for each category of rights managed and for each type of use and the use to which such revenue was put;
- (viii) in terms of financial information on the cost of rights management and other services provided to right holders, MCPS will provide information in line with company law requirements for statutory accounts. MCPS publishes its commission rates in advance and finances its operations from the commission received; MCPS does not consider that it is appropriate to provide further sensitive commercial information on its costs, given that it is a competitive for-profit company and members are able to leave if a more economical option is available.
- (ix) subject to any commercially sensitive information, financial information on (a) amounts due and paid to right holders broken down for each category of rights managed and type of use, (b) frequency of payment, (c) the total amount collected but not attributed for each category of rights managed and type of use indicating when collected, (d) the total amount attributed but not distributed for each category of rights managed and type of use indicating when collected, (e) reasons for any failure to distribute within 9 months from the end of the financial year in which the revenue was collected, and (f) the total non-distributable amounts along with an explanation of the use to which those amounts have been put;
- (x) information on relationships with CMOs, including (a) amounts received from and paid to CMOs with a breakdown for each CMO, category and type of use, (b) management fees and other deductions of revenue due to CMOs with a breakdown for each CMO, category and type of use, (c) management fees and other deductions of revenue paid by CMOs with a breakdown for each CMO, category and type of use, and (d) amounts distributed to right holders originating from CMOs) with a breakdown for each CMO, category and type of use.

### **CAPACITY TO PROCESS MULTI-TERRITORIAL LICENSES (REGULATION 23)**

30. *MCPS considers that it is compliant with Regulation 23 (sufficient capacity to process multi-territorial licences)*

#### Observations by MCPS

Through its service provider, currently PRS, MCPS considers that it has sufficient capacity, according to the definition set out in paragraphs (2) and (3), to process the necessary data for the administration of multi-territorial licences for online rights in musical works.

## **TRANSPARENCY OF MULTI-TERRITORIAL REPERTOIRE INFORMATION (REGULATION 24)**

31. *MCPS considers that it is compliant with Regulation 24 (required responses to duly justified requests)*

### Observations by MCPS

MCPS's service provider, currently PRS, responds to duly justified requests to provide, by electronic means, to online service providers, Licensing Scheme Members and CMOs, the up-to-date information, including that set out in paragraph (2), allowing the identification of the online music repertoire that it represents.

## **ACCURACY OF MULTI-TERRITORIAL REPERTOIRE INFORMATION (REGULATION 25)**

32. *MCPS considers that it is substantially compliant with Regulation 25 and intends to become compliant (right to request correction of online data)*

### Observations by MCPS

Licensing Scheme Members currently are able to submit and amend information relating to their own registrations through their own online account. In relation to the accuracy of other registrations not under the control of the Licensing Scheme Member in question, PRS will respond to a request to correct data where there is activity relating to the registration in question. MCPS is committed to the observation of industry best practice protocols and standards and the current Request for Proposals for Provision of Business and Operational Services specifies a high level of compliance with the technical requirements of the Directive and/or the Regulations.

## **REPORTING AND INVOICING FOR MULTI-TERRITORIAL LICENSING (REGULATION 26)**

33. *MCPS considers that it is compliant with Regulation 26 (obligation to monitor the use of online rights and acceptance of reporting of online use)*

### Observations by MCPS

Via its agreement with its service provider, currently PRS, MCPS ensures that online uses are adequately monitored and invoiced for (in accordance with regulation 26(8)) by electronic means. Online service providers are offered the possibility of reporting by electronic means the actual use of online rights in musical works, and they may challenge the accuracy of the invoices submitted.

## **PAYMENT TO RIGHT HOLDERS (REGULATION 27)**

34. *MCPS considers that it is compliant with Regulation 27 (distribution of amounts to Right Holders from multi territorial licences for online rights)*

### Observations by MCPS

Via its service provider, MCPS requires that amounts accruing from multi-territorial licences for online rights are distributed to Licensing Scheme Members and CMOs

with whom it has a Representation Agreement, accurately and without delay, and that sufficient information is provided regarding period of exploitation, amounts collected, deductions made and amounts distributed.

#### **AGREEMENTS WITH CMOs FOR MULTI-TERRITORIAL LICENSING (REGULATION 28)**

35. *MCPS considers that it is partially compliant with Regulation 28 (conditions required for Representation Agreements and practices between CMOs)*

##### Observations by MCPS

Representation agreements under which MCPS mandates to or is licensed by a CMO or similar organisation to grant multi-territorial licences for online rights are negotiated on a case-by-case basis and decided upon by the board. MCPS will not use industry-agreed “standard” agreements, going forward, and licences of rights will not be exclusive. Non-commercially sensitive information regarding these licences will be included within the ARM Report to Licensing Scheme Members and to mandating CMOs upon request.

#### **REPRESENTATION OF CMOs IN RELATION MULTI-TERRITORIAL LICENSING (REGULATION 29)**

36. *MCPS considers that it is compliant with Regulation 29 (obligations on CMOS relating to representation of online rights managed by other CMOs)*

##### Observations by MCPS

Licences are offered to users in respect of repertoire from CMOs on the same terms as MCPS offers licences for its own repertoire, and MCPS manages the repertoire on the same conditions as it does its own. Management fees are calculated on the basis of costs reasonably incurred by MCPS (including any costs incurred in ensuring that the information received from a CMO is in a sufficient and suitable format).

#### **COMPLAINTS PROCEDURE (REGULATION 31)**

37. *MCPS considers that it is compliant with Regulation 31 (provision of effective and timely procedures for dealing with complaints)*

##### Observations by MCPS

MCPS has a two-tier complaints procedure available to Licensing Scheme Members, CMOs whose repertoire it represents, and users. Operational service-level complaints are first addressed to PRS in accordance with the PRSforMusic Code of Conduct. After that, there is a right to request further scrutiny of the complaint by the MCPS Board’s Complaints Committee, which is a recently-introduced procedure. Other types of complaints are covered by a separate MCPS Complaints Policy and are initiated by a complaint to the CEO. In this situation there is also a right to continue to pursue the complaint before the MCPS Complaints Committee.

## ALTERNATIVE DISPUTE RESOLUTION PROCEDURE (REGULATION 32)

38. *MCPS intends to become compliant with Regulation 32 (obligation to provide independent and impartial complaints procedure)*

### Observations by MCPS

MCPS intends to join the Ombudsman scheme and is awaiting information from the Ombudsman's Office concerning conditions for admission. This will offer to Licensing Scheme Members, CMOs whose repertoire MCPS represents and users, a right of appeal to the Ombudsman as the final, independent and impartial dispute resolution procedure.