Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market

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State of play

- Directive adopted on 26 February 2014
- Transposition deadline: 10 April 2016
- Transposition workshops with Member States (the first one on 29 October 2014) and bilateral meetings
Objectives

- Improve governance and transparency of **ALL** collective management organisations
- Facilitate multi-territorial licensing of rights in **musical works for online uses** and the development of digital music services

Identified problems - governance & transparency of CMOs

- difficulties in joining foreign CMOs
- obligations to entrust all rights, for all territories, etc.
- discrimination of foreign members
- limited access to annual reports
- limited information on cross-border royalty flows
- late distribution of royalties
- risky investments
- unclear rules on the use of non-distributed income
**Governance & Transparency**

Main provisions on Governance & Transparency

- Membership of CMOs
- Participation of rightholders in the decision-making process
- Handling of funds
- Relations with other CMOs and users
- Transparency and financial reporting

**Collective management organisation**

- **Article 3 – Definition of a CMO**

  ‘collective management organisation’ means any organisation authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria:

  (i) it is owned or controlled by its members,

  (ii) it is organised on a not-for-profit basis.
Independent management entity

- **Article 3** – Definition of an IME

  The same criteria as CMO but:

  (i) neither owned or controlled, directly or indirectly, wholly or in part, by rightholders; and

  (ii) organised on a for-profit basis.

  Recital 16 – what is not an independent management entity.

Subsidiaries

- Article 2(3) – the relevant provisions of the Directive apply to entities directly or indirectly owned or controlled, wholly or in part, by a collective management organisation, provided that such entities carry out an activity which, if carried out by the CMO, would be subject to the provisions of the Directive.

- Recital 17 – "provisions of the Directive (...) applicable to the activities of the subsidiaries or other entities"
## Rights of rightholders

- **Article 5 – Rights of rightholders**
  - Obligation to manage rights unless objectively justified reasons
  - Mandates by rights, categories of rights, types of works; territories according to choice of rightholder, irrespective of residence/establishment of rightholder or CMO
  - Specific consent evidenced in documentary form
  - Right to grant licences for non-commercial uses
  - Rights’ withdrawal (in the same manner as mandates), notice not exceeding 6 months
  - Information to existing rightholders by 10 October 2016

## Membership rules

- **Article 6 – Membership rules**
  - Membership requirements – based on objective, transparent and non-discriminatory criteria
  - Included in the statute or membership terms
  - Publicly available
  - Refusal – clear explanation of the reasons
Decision-making process

- Article 8 – General assembly (GA)
  - Minimum competencies (e.g. general policies on distribution, non-distributable amounts, investment)
  - Right to participate in and vote at the GA
  - Right to appoint proxies
  - Specific cases

- Article 9 – Supervisory function
  - Continuous monitoring of the activities and the performance of the duties of the persons who manage the CMO
  - Report to the GA at least once a year

- Article 10 – Managers
  - Statements on conflict of interest

Handling of funds

- Article 11 - Collection & use of rights’ revenue
  - Diligent collection & management
  - Separation CMOs assets - rights’ revenue
  - Prudent investment rules

- Article 12 - Deductions
  - Information duty
  - Established on the basis of objective criteria & reasonable
  - Management fees (and other deductions to cover management costs) cannot exceed justified & documented costs
  - Social, cultural or educational services – fair criteria
Handling of funds

- Article 13 - Distribution of royalties
  - Accurate & timely (9 months from the end of the financial year in which the rights revenue was collected)
  - From distributable to non-distributable amounts:
    - CMO has to take all necessary measures to identify and locate rightholders
    - if amounts cannot be distributed after 3 years: non-distributable amounts
    - GA decides on use of amounts – but MS may limit permitted uses
- Article 15 - modified rules for payments between CMOs

Relations with users

- Article 16 – Licensing
  - Licensing terms shall be based on objective and non-discriminatory criteria.
  - Tariffs shall be reasonable in relation to, inter alia:
    - the economic value of the use of the rights in trade, taking into account the nature and scope of the use of the work and other subject matter
    - the economic value of the service provided by CMO
- Responsiveness towards users:
  - reply without undue delay indicating the required information
  - licence or reasoned statements on the refusal of the licence
  - electronic means
Transparency

Art. 18 – RIGHTHO! DFERS, on the management of their rights

Art. 19 – OTHER CMOs, on the management of rights under representation agreements

Art. 20 – RIGHTHOLDERS, MEMBERS OTHER CMOs & USERS, on request

Art. 21 – THE PUBLIC (ongoing disclosure of certain information)
ANNUAL TRANSPARENCY REPORT (Art. 22 + Annex)

Transparency & financial reporting
Different levels of information obligations vis-à-vis

Identified problems - multi-territorial licensing
(authors’ rights in musical works/online uses)

- fragmentation of repertoire (CMOs/publishers)
- lack of data processing infrastructure adjusted to per-use/per-work reporting
  - identification of repertoire
  - identification of rights that can be licensed
  - identification of territories in which rights can be licensed
- inaccurate invoicing leading to over-payments for the same repertoire, same rights, same territory
- legal uncertainty
- complex and costly licensing system
Enforcement measures

- CMOs to provide complaint procedures to members and other CMOs
- Alternative dispute resolution for purposes of multi-territorial licensing of online music rights
- Dispute resolution: court or independent & impartial dispute resolution body with expertise in IP law
- MS to ensure that compliance is monitored by competent authorities (CAs)
- MS to provide notification procedures, sanctions and measures to ensure compliance
- Exchange of information between CAs in particular with regard to cross-border activities of CMOs (the role of the CA in the MS in which the CMO is established)
- MS and COM to cooperate to ensure monitoring of the compliance of CMOs with rules on multi-territorial licensing
- Expert group for CAs of all MS (post-transposition)