

ROADMAP

Title of the initiative: **Framework directive on collective rights management**
Type of initiative (CWP/Catalogue/Comitology): **CWP (Non- Strategic)**
Lead DG/contact person/details: **DG MARKT/D1/**
Expected date of adoption of the initiative (month/year): **November 2010**
Date of modification:
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Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

Although copyright law is largely harmonised across the EU, rights management is not. It has been subject to soft law (a recommendation in 2005) and to antitrust cases (most notably the 'CISAC Decision' in 2008). Collecting societies and other rights management service providers are now governed by the Services Directive, but these provisions do not provide any guidance on appropriate approaches on governance and transparency in collective rights management operations. The absence of a Community wide framework governing collecting societies and the reciprocal relationships they maintain amongst each other has often been criticised by commercial users and online service providers. Increasingly, commercial users, members and collecting societies themselves are calling for harmonisation and a level playing field at EU level.

What are the main problems identified?

With the increasing need to clear copyright for online and broadcast services that span several territories, copyright management activities will no longer be confined to national borders. Therefore, collecting societies will increasingly be called upon to license repertoire in more than one Member State. Licensing practices that were previously territorial need to be adapted. New models of cooperation between collecting societies for the grant of multi-territory licenses need to be facilitated. Better cooperation between collecting societies requires common standards on governance and transparency. Rights holders and users need clarity on the level of service provided by rights management service providers.

Who is affected?

Holders of copyright and related rights are primarily affected, as they rely upon efficient rights management services in order to receive their due royalties. Large corporate users such as broadcasters, online retailers and service providers, are profoundly affected: they need efficient rights management services in order to provide comprehensive content offers to end-users. Collecting societies need clear rules of engagement in their reciprocal arrangements that are destined to underpin their cross-border licensing arrangements.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

Member States' approaches to supervision of collecting societies are heterogeneous. Where Member States have enacted new legislation this has served only to widen the disparities between Member States' approaches. A coherent approach would therefore require a modicum of harmonisation at EU level. Common EU standards on collective rights management would foster a more integrated EU Digital Single Market, enhance consumer choice and increase revenues that flow back to right holders.

B. Objectives of EU initiative

What are the main policy objectives?

To provide a clear and stable framework for cross-border services that rely on clearing a variety of copyrights. More cross-border services will foster a wider range of customer offers.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No, the objectives can be met by increasing the transparency and governance of the way in which rights are managed within the existing legal framework.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

In 2005, the Commission issued a Recommendation establishing the principle that right-holders can join any collecting society in Europe, select the territorial scope of a rights management mandate and be represented fairly on the board or other decision-making bodies in collecting societies. While 'soft law' was one option, this has not produced the desired results.

The legislative options relate to the different aspects of rights management: authorisation and supervision; transparency, including accounts and audit; relations with members; relations with users; relations with each other; and the availability of effective dispute settlement fora. None of them would impact the balance of rights and obligations inherent in the copyright system as established by the seven relevant Directives.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

By promoting cross-border licensing and efficient royalty remittances, the action proposed would be in support of the European Digital Agenda.

Explain how the options respect the proportionality principle.

The legislative options to be proposed will aim at the minimum standardisation necessary to achieve a level playing field that allows collecting societies to exchange information and cooperate better to provide the services required by users.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

A Community framework on cross-border management of copyright has important repercussions on the development of legal online services and modern internet-based broadcasting. Clarity on the mutual obligations that collecting societies owe to their members and to each other in representing their respective members will bring along a more sustainable management infrastructure, especially for online uses. In many aspects the Community framework would be complementary to the Services Directive and antitrust enforcement against restrictive practices (here: territorial restrictions of copyright licenses). Apart from fostering cross-border licensing and more adequate remittance policies, a legislative approach would assuage concerns that market developments, such as cross-border licensing, undermines the status of local collecting societies and thus be detrimental for cultural diversity.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

No.

E. Planning of further impact assessment work

When will the impact assessment work start?

Following public consultation to be undertaken in 2010. A public hearing will be held on 23 April to gather industry views, and further written contributions will be invited in the 8 weeks.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The relevant data sets are primarily (a) industry information concerning royalty revenues and flows; and (b) relevant provisions in Member States' legislation. Both data sets need updating since the last Commission survey of 2005. This will be done by the Commission in concert with industry and Member States.

Which stakeholders & experts have been/will be consulted, how and at what stage?

Stakeholders and experts will be consulted during 2010.