

ROADMAP	
TITLE OF THE INITIATIVE	<b>Legislative initiative on collective rights management</b>
TYPE OF INITIATIVE	X• CWP                                      • Non-CWP                                      • Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	DG MARKT/Unit D1
EXPECTED DATE OF ADOPTION	Month/Year: March 2012
VERSION OF ROADMAP	No: 3                                      Last modification:                                      Month/Year: 11/2011

This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, problem definition
(i) What is the political context of the initiative? (ii) How does it relate to past and possible future initiatives, and to other EU policies? (iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?
<p>The initiative on collective rights management was announced in the Digital Agenda for Europe and more recently in the Commission Communication: A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe (COM(2011)287 final).</p> <p>Although copyright law is largely harmonised across the EU, the rules governing collective management organisations are not. Collective rights management refers to the practice whereby individual rightholders entrust their rights to an organisation such as a collecting society to manage rights on their behalf. There seems to be an increasing need for harmonisation to establish a level playing field at EU level in order to facilitate the provision of services by collecting societies, including the cross-border (multi-territorial) licensing of online services. This requires appropriate governance and transparency framework.</p>
What are the main problems which this initiative will address?
<p>With the increasing need to clear copyright for services that span several territories, copyright management is no longer confined to national borders. Therefore, collecting societies are increasingly 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 licences 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. There is also a need for more transparency in relation to distribution schedules and represented repertoire.</p>
Who will be affected by it?
<p>Holders of copyright and related rights are primarily affected, as they rely upon efficient rights management services in order to receive their due royalties. Commercial users such as broadcasters, online music retailers and music service providers, are affected: they need efficient rights management services in order to provide comprehensive content offers to end-users (consumers) across multiple territories. Collecting societies need a level playing field and clear rules of functioning and cooperation.</p>
(i) Is EU action justified on grounds of subsidiarity? (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test) (iii) Can the EU achieve the objectives better? (Test of EU Value Added)
<p>Member States' approaches to the regulation 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 to governance and transparency framework that is valid across the EU would therefore require a modicum of harmonisation at EU level. Common EU standards on collective rights management enabling transparent and well-governed licensing, including multiterritorial licensing for use of music online, would foster an</p>

integrated EU Single Market, enhance consumer choice and increase revenues that flow back to right holders.

## B. Objectives of the initiative

What are the main policy objectives?

The proposed instrument will have a double focus: first, a general level of governance and transparency applicable to all collecting societies; and second, specific rules aimed at licensing of online music. Improved governance and transparency standards and more streamlined licensing should lead to more services available across the EU. This will benefit consumers by giving them wider choice of legal offers, commercial users by facilitating the licensing process and right holders by bringing more accurate and increased royalties.

Do the objectives imply developing EU policy in new areas?

The objective of improving governance and transparency of collecting societies and foster European-wide licensing can be met within the existing legal framework for copyright.

## C. Options

- (i) What are the policy options being considered?
- (ii) What legislative or 'soft law' instruments could be considered?
- (iii) How do the options respect the proportionality principle?

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. Continuing with soft law or "codes of conduct" is one alternative approach to create European wide licensing platforms.

The legislative options relate to the different aspects of rights management and licensing process: transparency, including accounts and audit; supervision; relations with members; relations with users; relations between societies; and the availability of effective dispute settlement fora. None of them would impact the equilibrium of the copyright system established by the seven relevant existing copyright Directives.

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 to provide the services required by their members (right holders) and commercial users.

## D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

The analysed impacts will cover the benefits and costs of each proposed option in relation to the Internal Market; online services, rightholders; cultural diversity, consumers and administrative burden.

The analysis of impacts will look into the impact of each proposed option on innovation, flexibility of licensing process and the level of repertoire aggregation. It will assess the level of supervision needed in case of each proposed governance model. Finally, the feasibility or likelihood of the different options will be taken into account.

Significant impacts likely to result from the chosen policy option, such as the wider choice of legal on-line services available in the EU, improved royalty flows, legal certainty in relations between collecting societies, shall be beneficial to consumers, right holders and collecting societies alike.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

No.

- (i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start?
- (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?

<p>Work on the Impact Assessment began in Q3 2010.</p> <p>The Steering Group was established in July 2010 and has met six times so far. DGs involved are : INFISO, EAC, COMP, SANCO, ENTR, TRADE, SG, SJ.</p>
<p>(i) Is any of options likely to have impacts on the EU budget above €5m?</p> <p>(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
<p>No.</p>

<p>E. Evidence base, planning of further work and consultation</p>
<p>(i) What information and data are already available? Will existing impact assessment and evaluation work be used?</p> <p>(ii) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?</p> <p>(iii) What is the timing for the procurement process &amp; the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?</p> <p>(iv) Is any particular communication or information activity foreseen? If so, what, and by when?</p>
<p>The relevant data sets are primarily (a) industry information concerning royalty revenues and flows and licensing process; (b) information from collecting societies and (c) relevant provisions in Member States' legislation. Data sets need updating since the last Commission survey of 2005. This is being done by the Commission in concert with industry and collecting societies.</p>
<p>Which stakeholders &amp; experts have been or will be consulted, how, and at what stage?</p>
<p>Wide range of stakeholders and experts (such as: collecting societies, authors, music publishers, record producers, public and private broadcasters, retail music service providers and consumers) have been consulted during 2010 and the consultations are ongoing in 2011. A public hearing was held on 23 April 2010 to gather industry views, and further written contributions were invited in the 8 weeks following the hearing. The Commission previously invited the views of stakeholders via the following documents:</p> <ul style="list-style-type: none"> <li>- A Commission Communication on The Management of Copyright and Related Rights in the Internal Market (2004)</li> <li>- A study on a Community Initiative on the Cross-Border Collective Management of Copyright (2005)</li> <li>- A monitoring exercise assessing the effects of the 2005 Recommendation (2007)</li> <li>- A joint DG MARKET/INFISO consultation on "Content Online" (2009)</li> </ul>