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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

(Text with EEA relevance)

{SWD(2012) 204 final}  
{SWD(2012) 205 final}

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Grounds for and objectives of the proposal**

The present proposal for a directive aims to put in place an appropriate legal framework for the collective management of rights that are administered by collecting societies on behalf of rightholders by providing for rules ensuring the better governance and greater transparency of all collecting societies and also by encouraging and facilitating the multi-territorial licensing of the rights of authors in their musical works by collecting societies representing authors.

A licence is required from the relevant holder of any copyright or related right where any service is provided which includes the exploitation of the protected work of an author e.g. a song or musical composition or other protected subject matter, such as a phonogram or performance. Such services may be provided offline, such as showing a film in a cinema or playing music in a concert hall, but also increasingly online. A licence is required from all the different rightholders (authors, performers, producers). In some sectors, licences are most often granted directly by individual rightholders (e.g. film producers), in other sectors, the collective management of rights plays a very important role, in particular of authors' rights in musical works. Certain forms of exploitation also rely particularly on collective management e.g. the performers and record producers' remuneration rights for the broadcasting and public performance of phonograms.

Rightholders entrust their rights to a collecting society which manages rights on their behalf. They also provide services to rightholders and users which include granting licences to users, administering the rights revenue, payments due to rightholders and enforcing the rights. Collecting societies play a very important role, in particular where negotiations with individual creators would be impractical and entail prohibitive transaction costs. They also play a key role in the protection and promotion of the diversity of cultural expressions by enabling the smallest and less popular repertoires to access the market.

Action is considered necessary in two areas.

First, collective rights' management in all sectors needs to adapt in terms of the service provided to members and users as regards efficiency, accuracy, transparency and accountability. An excessively slow pace of modernisation negatively impacts on the availability of new offerings for consumers and service providers, as innovative services especially in the online environment are being hampered. To ensure the adequate provision of services using works or other subject-matter protected by copyright and related rights in the internal market, collecting societies should be led to adapt their methods of operation for the benefit of creators, service providers, consumers and of the European economy as a whole. As societies license rights on behalf of national and foreign rightholders, their functioning has a fundamental impact on the exploitation of those rights across the internal market. The functioning of some of them has raised concerns as to their transparency, governance and the handling of rights revenue collected on behalf of rightholders. Notably, concerns have been expressed with regard to the accountability of certain societies to their members in general, and to the management of their finances in particular. A number of collecting societies still have to meet the challenge of adapting to the realities and needs of the Single Market.

Second, the development of a Single Market for cultural content online has led to calls for changes to copyright licensing, notably in the licensing of the rights of authors in musical works as online music service providers face difficulties in acquiring licences with an aggregated repertoire for the territory of more than one Member State. While a number of factors contribute to the territorial fragmentation of online music services, including the commercial choices of providers, the difficulties of obtaining multi-territorial licences should not be underestimated. This situation leads to fragmentation of the EU market for these services, thereby limiting the provision of online music services by online service providers and as a result authors' musical works have not been as widely licensed or properly remunerated, as they could have been. This fragmentation also prevents consumers from enjoying the widest possible access to the considerable diversity of musical repertoires. Whilst in other areas collective rights management has not given rise to any difficulties that need to be addressed in this context, the collective management of authors' rights in musical works needs to be addressed. Tackling this situation is crucial to stimulate the legal offer of music online in the EU.

This proposal therefore aims to: (a) improve the standards of governance and transparency of collecting societies so that rightholders can exercise more effective control over them and help improve their management efficiency, and (b) facilitate the multi-territorial licensing by collecting societies of authors' rights in musical works for the provision of online services.

## **1.2. General context**

This proposal is presented in the context of the Digital Agenda for Europe<sup>1</sup> and the Europe 2020 Strategy aiming for smart, sustainable and inclusive growth<sup>2</sup>. In its "Single Market Act"<sup>3</sup> the Commission identified intellectual property as one of the areas in which action is required and underlined that, in the internet age, collective management must be able to evolve towards more transnational, possibly EU-wide models of licensing, covering the territories of multiple Member States. In its Communication "A Single Market for Intellectual Property Rights"<sup>4</sup> the Commission announced that it would be proposing a legal framework for the collective management of copyright and related rights. The importance of this legislative proposal was also highlighted in the Commission's "European Consumer Agenda".<sup>5</sup>

Article 167 of the TFEU requires the Union to take cultural aspects into account in its action, in particular to respect and promote the diversity of its cultures.

Technology, the fast evolving nature of digital business models and the growing autonomy of online consumers, all call for a constant assessment as to whether current copyright rules set the right incentives and enable rightholders, users of rights and consumers to take advantage of the opportunities that modern technologies provide. This proposal should not be seen in isolation but as part of a set of measures proposed or to be proposed by the Commission, as appropriate, in order to facilitate the licensing of rights and, more generally, access to attractive digital content, in particular in a cross-border context. Besides addressing the functioning of collecting societies in the context of this proposal, the Commission is also considering if other measures are required to facilitate licensing in general whether done by

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<sup>1</sup> COM(2010)245.  
<sup>2</sup> COM(2010)2020.  
<sup>3</sup> COM(2011)206.  
<sup>4</sup> COM(2011)287.  
<sup>5</sup> COM(2012)225.

individual rightholders, those to which the rights have been transferred, or by collecting societies. This reflection encompasses the issue of the territoriality of rights and its effects in the licensing of certain content or services.

Also in the context of the Digital Agenda for Europe, the Commission Communications “A Single Market for Intellectual Property Rights” and “A coherent framework for building trust in the Digital Single Market for e-commerce and online services”<sup>6</sup> and the follow-up to the “Green Paper on the online distribution of audiovisual works in the European Union”<sup>7</sup>, the Commission is carrying out in-depth legal and economic analysis as regards the scope and functioning of copyright and related rights associated with internet transmissions in the Single Market, including whether the current exceptions and limitations to copyright granted under the Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society<sup>8</sup> need to be updated or further harmonised at EU level.

### 1.3. Existing provisions in the area of the proposal

While some of the existing directives in the field of copyright<sup>9</sup> contain references to the management of rights by collecting societies, none of them addresses the *modus operandi* of the societies as such.

Commission Recommendation 2005/737/EC on the collective cross-border management of copyright and related rights for legitimate online music services<sup>10</sup> invited Member States to promote a regulatory environment suited to the management of copyright and related rights for the provision of legitimate online music services and to improve the governance and transparency standards of collecting societies. Being a Recommendation, it was non-binding and its voluntary implementation has been unsatisfactory.

### 1.4. Consistency with other policies

This proposal complements Directive 2006/123/EC of 12 December 2006 on services in the internal market<sup>11</sup> which aims to create a legal framework to ensure the freedom of

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<sup>6</sup> COM(2011)942.

<sup>7</sup> See Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market. COM(2011)427.

<sup>8</sup> OJ L 167, 22.6.2001, p. 10.

<sup>9</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001), Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006), Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ L 272, 13.10.2001), Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993), Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (codified version) (OJ L 111, 5.5.2009), Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996), Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ L 372, 27.12.2006), Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights OJ L 265, 11.10.2011).

<sup>10</sup> OJ L 276, 21.10.2005.

<sup>11</sup> OJ L 376, 27.12.2006.

establishment and the free movement of services between the Member States. Collecting societies are subject to Directive 2006/123/EC as providers of collective management services.

The proposal is important for the protection of copyright and related rights. The Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights, the World Intellectual Property Organisation Copyright Treaty and the World Intellectual Property Organisation Performances and Phonograms Treaty are key international instruments in this respect. The United Nations Educational Scientific and Cultural Organisation Convention on the protection and promotion of cultural expressions which expands the obligation of the European Union at international level, also recalls the importance of intellectual property.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **2.1 Public consultation**

The proposal builds on an extensive round of dialogue and consultation with interested parties, including authors, publishers, performers, producers, collecting societies, commercial users, consumers and public bodies.

It takes into consideration the views expressed in a public consultation on "Content Online",<sup>12</sup> which aimed to promote further thinking and debate about possible European responses to the challenges of the digital "dematerialisation" of content, including easier and quicker rights clearance structures while ensuring fair and adequate remuneration for rightholders. The consultation specifically addressed the governance and transparency of collecting societies and the cross-border management of rights for online music services. Several respondents felt that aggregating different music repertoires would simplify rights clearance and licensing. A number of authors' associations, publishers and commercial users favoured further reflection on the governance and transparency of collecting societies. Consumers' associations generally supported a regulatory initiative (e.g. by means of a binding legislative instrument).

In 2010 the Commission consulted collecting societies and online music service providers. It also organised a public hearing<sup>13</sup> on the governance of collective rights management in the EU, attended by almost 300 stakeholders. These consultations confirmed what had been identified as deficiencies in the collective management of rights and the need to improve the governance and transparency standards of collecting societies and to create a framework for facilitating the online licensing of musical works.

### **2.2 Collection and use of expertise**

There was no use of external expertise.

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<sup>12</sup> From 22.10.2009 to 5.1.2010.

<sup>13</sup> On 23.04.2010.

## 2.3 Impact assessment

The impact assessment examines two groups of options to deal with: (a) issues pertaining to the insufficiency of governance and transparency standards applied by certain collecting societies, often resulting in weaknesses in their financial management; (b) issues stemming from the lack of preparedness of certain authors' collecting societies to grant online multi-territorial licences in view of the requirements associated with this kind of activity and the perceived legal uncertainty, making the repertoire aggregation of musical works more difficult.

The policy options regarding the governance and transparency of collecting societies are as follows:

- Retaining the *status quo* (A1), relying on the market and peer pressure (including self-regulation) would not solve the cross-border issues (e.g. control of royalty flows).
- *Better enforcement* (A2) of existing EU law and more consistency at national level in applying its principles would not harmonise the operating conditions of collecting societies. Issues outside the scope of existing principles would remain unsolved.
- The *codification of existing principles* (A3) would reflect in legislation the principles that have emerged from the case-law of the Court of Justice, the Commission's antitrust decisions and Recommendation 2005/737/EC but it fails to capture more recently identified problems in relation to financial transparency and control by rightholders.
- *A governance and transparency framework* (A4) would codify the existing principles and provide a more elaborate framework of rules on governance and transparency, increasing the possibilities of control over collecting societies.

The following policy options were examined to address the complexities of the collective licensing of authors' rights in musical works for online uses:

- Under the *status quo* (B1), the internal market would remain fragmented as rights licensing for online services would continue to be complex and burdensome.
- *The European Licensing Passport* (B2) would foster the voluntary repertoire aggregation for online uses of musical works at EU level and the licensing of rights through multi-territorial licensing infrastructures. It would lay down common rules for all collective licensors throughout the EU and would create competitive pressure on societies to develop more efficient licensing practices.
- *Parallel direct licensing* (B3) would allow rightholders to conclude direct licences with users, without having to withdraw their rights from their collecting societies. It would promote competition among societies but would neither establish a set of minimum common rules for licensors nor necessarily produce repertoire aggregation.
- *Extended collective licensing and country of origin principle* (B4) would establish the presumption that each collecting society has the authority to grant "blanket" licences for online uses covering the entire repertoire provided that the society is "representative". This option would neither provide any incentive for collecting

societies to become more efficient, nor simplify the multi-territorial licensing of rights (due to opt-outs from collective management which would often lead to repertoire disaggregation).

- A *centralised portal (B5)* would enable collecting societies to pool their repertoire for multi-territorial licensing in a single transaction, coordinated through the portal. This option raises significant concerns as to its compatibility with competition law.

After carefully weighing up the advantages and disadvantages of each of the approaches, options A4 and B2 were retained.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

The proposal is based on Articles 50(2)(g), 53 and 62 TFEU as facilitating the free provision of services. The introduction of key governance and transparency standards in collecting societies would protect the interests of members and users and also thereby facilitate and encourage the provision of collective management services across borders, in particular as societies usually manage rights of rightholders from other Member States (including via the so-called representation agreements that collecting societies have traditionally concluded with collecting societies established in other Member States) and cross-border royalty flows. Moreover, addressing the fragmentation of rules applicable to collective rights management across Europe will facilitate the free movement of all those services which rely upon copyright and related right-protected content. Notably, taking action to facilitate the granting of multi-territorial licences to online service providers will substantially ease the distribution of and the access to such musical works online.

#### **3.2. Subsidiary and proportionality**

The EU action is necessary under the principle of **subsidiarity** (Article 5(3) TFEU) as the legal framework at both national and EU levels has proved to be insufficient to address the problems. The Union has already enacted legislation which harmonises the principal rights of rightholders that are managed by collecting societies<sup>14</sup> and that the management of those rights in the internal market should take place in a comparable, effective and transparent manner across national borders. Moreover, the objectives of the proposed action cannot be achieved sufficiently by Member States and could thus be better achieved at EU level on account of the trans-national nature of the problems:

- As regards governance and transparency, a significant share of royalty collections in collecting societies derives from the non-domestic repertoire. The problem of members that do not have oversight of their society's activities is more pronounced with respect to foreign rightholders. As they are not members of the relevant collecting societies, they have little insight into, and even less influence on, the decision-making process of societies acting on behalf of their own society. Protecting the interests of EU rightholders requires all royalty flows, and in particular cross-border flows, to be transparent and accounted for. It is unlikely that in the future Member States would ensure the transparency needed for rightholders to exercise

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<sup>14</sup> See footnote 5 above.

their rights cross-border. EU intervention is the only way of ensuring the exercise of rights and, in particular, the collection and distribution of royalties in a consistent manner across the EU.

- Multi-territorial licensing for online uses of musical works is, by definition, of a cross-border nature. Rules intended to ensure the smooth functioning of multi-territorial licensing are accordingly better set up at EU level since Member States would not be in a position to draw up rules which would coherently address the cross-border activities of collecting societies.

The proposal respects the principle of **proportionality** (Article 5(4) TEU), and it does not go beyond what is necessary to achieve the objectives pursued. The proposed rules on the governance and transparency codify, to a large extent, existing case-law of the Court of Justice in the context of decisions of the Commission taken in the area of antitrust<sup>15</sup>. They also take into account the size of collecting societies and allow Member States to exclude the smallest ones from certain obligations that may be disproportionate. The rules on multi-territorial licensing for online uses of musical works are limited to authors' rights and are the minimum principles needed to make an effective and modern licensing system workable in the digital era and to guarantee the repertoire aggregation, including niche and less-known musical works. Appropriate safeguards are provided in this regard: e.g. a collecting society will have the choice as to whether to carry out the multi-territorial licensing of its repertoire itself or to entrust other societies with it; also an author will not be locked in to a society which is unwilling either to grant multi-territorial licences directly or to allow another society to do so on its behalf.

### **3.3. Choice of legal instrument**

The Commission proposes a Directive. This is in conformity with the requirements of Articles 50(2)(g), 53 and 62 TFEU. Also, a directive allows for the necessary flexibility as to the means to achieve these objectives and takes into account the fact that Member States have different approaches as regards the legal form of collecting societies and the way such societies are supervised.

### **3.4. Explanation of the proposal**

#### *3.4.1. Scope and definitions*

*Title I* contains general provisions on subject matter (Article 1), scope (Article 2) and definitions (Article 3). The Directive applies to: (i) the management of copyright and related rights by collecting societies, irrespective of the sector in which the societies are active (*Title II*),<sup>16</sup> and (ii) the multi-territorial licensing of online rights in musical works by authors' collecting societies (*Title III*). *Titles I* and *II* also apply to societies that carry out multi-territorial licensing under *Title III*.

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<sup>15</sup> e.g. Cases C-395/87 *Ministere public v Jean-Louis Tournier* and Joined Cases 110/88 and 242/88 *Francois Lucazeau and others v SACEM and others*, Commission decision of 16.7.2008 (CISAC) (COMP/C2/38.698)

<sup>16</sup> Member States may decide not to apply some requirements to micro enterprises.



### 3.4.2. *Collecting societies*

*Title II* establishes organisational and transparency rules which apply to all types of collecting societies.

*Chapter 1* provides for rules governing the membership organisation of collecting societies. Article 4 lays down certain requirements which should apply to the relations between collecting societies and rightholders. Article 5 ensures that rightholders can authorise the collecting society of their choice to manage rights and to withdraw such authorisation partially or completely. Societies should base their rules on membership and participation in the internal decision-making on objective criteria. (Article 6). Article 7 sets out the minimum powers of the general meeting of the members. Article 8 requires collecting societies to establish a supervisory function enabling their members to monitor and exercise control over their management, while respecting the different institutional arrangements in the Member States. Article 9 establishes certain obligations to ensure that societies are managed in a prudent and sound manner.

*Chapter 2* sets out rules on collecting societies' financial management:

- income collected as a result of the exploitation of the rights represented must be separated from the society's own assets and must be managed under strict conditions (Article 10);
- a collecting society must specify the applicable deductions in its agreements with rightholders and assure members and rightholders fair access to any social, cultural or educational services, if funded by deductions (Article 11);
- collecting societies must pay the amounts due to rightholders accurately and without undue delay and make efforts to identify rightholders (Article 12).

*Chapter 3* establishes the non-discrimination requirement for the management by a collecting society of rights on behalf of another society pursuant to a representation agreement (Article 13). There is no possibility of deducting the amounts which are due to another society without the latter's express consent and payments should be made accurately to other societies (Article 14).

*Chapter 4* requires collecting societies and users to conduct negotiations in good faith. Tariffs should be based on objective criteria and reflect the value of the rights in trade and of the actual service provided by the society (Article 15).

*Chapter 5* (transparency and reporting) requires the following levels of disclosure by collecting societies:

- information to rightholders on amounts collected and paid, management fees charged and other deductions made (Article 16);
- information to other collecting societies on the management of rights under representation agreements (Article 17);
- information to rightholders, other societies and users on request (Article 18);

- information made public on the organisation and functioning of the society ([Article 19](#));
- annual publication of a transparency report, including governance principles and their implementation, financial statements, etc. ([Article 20](#)).

### 3.4.3. *Multi-territorial licensing by authors' collecting societies of online rights in musical works*

Title III establishes the conditions that an authors' collecting society must respect when providing multi-territorial licensing services for online rights in musical works ([Article 21](#)):

- being able to process efficiently and transparently the data needed for the exploitation of such licences (e.g. identifying of its music repertoire, monitoring of its usage) by using a time-sensitive, authoritative database containing the necessary data ([Article 22](#));
- being transparent as regards the online music repertoire it represents ([Article 23](#));
- offering rightholders and other societies the possibility to correct the relevant data and to ensure their accuracy ([Article 24](#));
- monitoring the actual usage of the works covered by the licences, being capable of processing usage reports and invoicing. Procedures to enable the user to challenge the accuracy of invoices (e.g. to avoid double invoicing) must be established. Appropriate industry standards, where available, should be used ([Article 25](#));
- paying rightholders and other collecting societies without delay and provide them with information on works used and financial data related to their rights (e.g. amounts collected, deductions made) ([Article 26](#)).

A collecting society may decide not to grant multi-territorial licences for online rights in musical works, but it could continue to grant national licences for its own repertoire and/or national licences for the repertoire of other societies through reciprocal agreements. However, in order to ensure that repertoires can be easily aggregated for the benefit of music service providers who want to offer a service as complete as possible across Europe and for the benefit of cultural diversity and consumers at large, specific safeguards will apply to ensure that the repertoire of all societies have access to multi-territorial licensing:

- a collecting society may request another society granting multi-territorial multi-repertoire licences to have its repertoire represented on a non-discriminatory and non-exclusive basis for the purpose of multi-territorial licensing ([Article 28](#)). The society receiving the request may not refuse if it is already representing (or if it offers to represent) the repertoire of one or more collecting societies for the same purpose ([Article 29](#));
- following a transitional period, rightholders may grant licences (either directly or through another intermediary) for their own online rights if their collecting society does not grant multi-territorial licences and if it does not enter into one of the agreements mentioned above ([Article 30](#)).

A society is allowed to outsource services related to the multi-territorial licences it grants, without prejudice to its liability towards rightholders, online service providers or other collecting societies ([Article 27](#)). Title III must also apply to subsidiaries of collecting societies covered by the Title ([Article 31](#)).

To achieve the degree of flexibility required to encourage the granting of licences to innovative online services (i.e. which have been available to the public for less than 3 years), collecting societies are allowed to grant such licences without being required to use them as a precedent for the purposes of determining the terms of other licences ([Article 32](#)). By way of exception, collecting societies do not need to comply with Title III when granting multi-territorial licences to broadcasters for the online use of their radio or television programmes containing musical works ([Article 33](#)).

#### *3.4.4. Enforcement measures*

In Title IV collecting societies are required to make available to their members and rightholders complaint and dispute resolution procedures ([Article 34](#)). Mechanisms should also be available to settle disputes on licensing conditions between users and collecting societies ([Article 35](#)). Finally, certain types of disputes, in relation to multi-territorial licensing, between collecting societies and users, rightholders or other societies could be submitted to an independent and impartial alternative dispute resolution system ([Article 36](#)).

Member States shall designate the appropriate competent authorities empowered to ([Article 39](#)): (a) administer complaints procedures ([Article 37](#)); (b) administer effective, proportionate and dissuasive sanctions ([Article 38](#)) and (c) monitor the application of Title III ([Article 40](#)). Article 39, however, does not impose on Member States to set up independent supervisors specifically dedicated to the oversight of collecting societies.

#### *3.4.5 Fundamental rights and specific recitals*

The proposal provides for effective safeguards regarding the application of fundamental rights as laid down in the Charter of Fundamental Rights of the European Union. The safeguards required from collecting societies as regards their governance and the conditions on the provision of cross-border multi-territorial licences for online rights in musical works would restrict the freedom of collecting societies to conduct a business, as defined in the Charter, compared to the existing situation. However, such restrictions would respect the conditions set out in the Charter, which provides that the exercise of the relevant freedoms may be limited, under certain circumstances. These restrictions are necessary to protect the interests of the members, rightholders and users and to set minimum quality standards for the exercise by collecting societies of their freedom to provide multi-territorial licensing services for online uses of musical works in the internal market.

Due to the complexity and scope of the proposal, Member States are required to transmit a correlation table of the provisions of their national law and the Directive.

## **4. BUDGETARY IMPLICATION**

The proposal has no impact on the European Union budget.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50(2)(g), 53 and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>17</sup>,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The directives which have been adopted in the area of copyright and related rights already provide a high level of protection for rightholders and thereby for a framework where the exploitation of content protected by these rights can take place. They contribute to developing and maintaining creativity. In an internal market where competition is not distorted, protecting innovation and intellectual creation also encourages investment in innovative services and products.
- (2) The dissemination of content which is protected by copyright and related rights and the linked services, including books, audiovisual productions and recorded music require the licensing of rights by different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the rightholders to choose between the individual or collective management of their rights. Management of copyright and related rights includes the granting of licences to users, the auditing of licensees and monitoring of the use of rights, the enforcement of copyright and related rights, the collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collecting societies enable

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<sup>17</sup> OJ C , , p. .

rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets. Moreover, they have an important social and cultural role as promoters of the diversity of cultural expressions by enabling the smallest and less popular repertoires to access the market. Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action, in particular in order to respect and to promote the diversity of its cultures.

- (3) When established in the Union, collecting societies – as service providers – must comply with the national requirements pursuant to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>18</sup> which seeks to create a legal framework for ensuring the freedom of establishment and the free movement of services between the Member States. This implies that collecting societies should be free to provide their services across borders, to represent rightholders resident or established in other Member States or grant licences to users resident or established in other Member States.
- (4) There are significant differences in the national rules governing the functioning of collecting societies, in particular as regards their transparency and accountability towards their members and rightholders. Beyond the difficulties non-domestic rightholders face when exercising their rights and the too often poor financial management of the revenues collected, problems with the functioning of collecting societies lead to inefficiencies in the exploitation of copyright and related rights across the internal market to the detriment of the members of collecting societies, rightholders and users alike. These difficulties do not arise in the functioning of independent rights management service providers who act as agents for rightholders for the management of their rights on a commercial basis and in which rightholders do not exercise membership rights.
- (5) The need to improve the functioning of collecting societies has already been identified in the past. Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services<sup>19</sup> set out a number of principles, such as the freedom of rightholders to choose their collecting society, the equal treatment of categories of rightholders and the equitable distribution of royalties. It also called on collecting societies to provide users with sufficient information on tariffs and repertoire in advance of the negotiations. Finally, it contained recommendations on accountability, rightholder representation in the decision-making bodies of collecting societies and dispute resolution. Commission Recommendation 2005/737/EC was however a non-binding instrument limited in scope. Consequently, it has been unevenly followed.
- (6) The protection of the interests of the members of collecting societies, rightholders and third parties requires that the laws of the Member States related to copyright management and multi-territorial licensing for online rights in musical works be coordinated with a view to having equivalent safeguards throughout the Union. Accordingly, the Directive is based on Article 50(2)(g) of the Treaty.

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<sup>18</sup> OJ L 376, 27.12.2006, p.36.

<sup>19</sup> OJ L 276, 21.10.2005, p. 54.

- (7) This Directive should aim at coordinating national rules concerning the access to the activity of managing copyright and related rights by collecting societies, the modalities for their governance, and their supervisory framework and is also based on Article 53(1) of the Treaty. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 of the Treaty.
- (8) In order to ensure that holders of copyright and related rights can fully benefit from the internal market when their rights are being managed collectively and that their freedom to exercise their rights is not unduly affected, it is necessary to provide for the inclusion of appropriate safeguards in the constituting documents of collecting societies. Moreover, in accordance with Directive 2006/123/EC collecting societies should not discriminate, directly or indirectly, between rightholders on the basis of their nationality, place of residence or place of establishment when providing their management services.
- (9) Having the freedom to provide and to receive collective management services across national borders entails that rightholders are able to freely choose the collecting society for the management of their rights, such as public performance or broadcasting rights, or categories of rights, such as interactive communication to the public, provided the collecting society already manages such rights or categories of rights. This implies that rightholders can easily withdraw their rights or categories of rights from a collecting society and entrust or transfer all or part of them to another collecting society or another entity irrespective of the Member State of residence or the nationality of either the collecting society or the rightholder. Collecting societies managing different types of works and other subject matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject matter. Collecting societies should inform rightholders of this choice and allow them to exercise it as easily as possible. Finally, this Directive should not prejudice the possibilities of rightholders to manage their rights individually, including for non-commercial uses.
- (10) Membership of collecting societies should be based on objective and non-discriminatory criteria including as regards publishers who by virtue of an agreement on the exploitation of rights, are entitled to a share of the income from the rights managed by collecting societies and to collect such income from the collecting society.
- (11) Collecting societies are expected to act in the best interests of their members. It is therefore important to provide for systems which enable members of collecting societies to exercise their membership rights by participating in the societies' decision-making process. The representation of the different categories of members in the decision-making process should be fair and balanced. The effectiveness of the rules on the general meeting of members of collecting societies may be undermined if there were no provisions on how the general meeting should be run. Thus, it is necessary to ensure that the general meeting is convened regularly, and at least annually, and that the most important decisions in the collecting society are taken by the general meeting.
- (12) Members of collecting societies should be allowed to participate and vote in the general meeting; the exercise of these rights may only be subject to fair and proportionate restrictions. The exercise of voting rights should be made easy.

- (13) Members should be allowed to take part in monitoring the management of collecting societies. To this end, collecting societies should establish a supervisory function appropriate to their organisational structure and allow members to be represented in the body that exercises this function. To avoid imposing excessive burden on smaller collecting societies and to make the obligations arising from this Directive proportionate, Member States should be able to, if they consider this to be necessary, exclude the smallest collecting societies from having to organise such a supervisory function.
- (14) For reasons of sound management, a collecting society's senior management must be independent. Managers and executive directors should be required to declare annually to the collecting society whether there are conflicts between their interests and those of the society.
- (15) Collecting societies collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that society, or another society. It is therefore important that collecting societies exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where collecting societies maintain proper records of membership, licences and use of works and other subject matter. Where appropriate, data should also be provided by rightholders and users and verified by the collecting societies. Amounts collected and due to rightholders should be managed separately from any own assets of the collecting society and, if they are invested, pending their distribution to rightholders, this should be carried out in accordance with the investment policy decided by the collecting societies' general meeting. In order to maintain a high level of protection for the rights of rightholders and to ensure that any income which may be derived from exploitation of their rights accrues for the benefit of rightholders, the investments made and held by the collecting society should be managed in accordance with criteria which would oblige the collecting society to act prudently, while allowing the collecting society to decide on the most secure and efficient investment policy. This should allow the collecting society to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and which does not unduly prejudice any rights revenue owed to rightholders. Moreover, in order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require collecting societies to undertake diligent and good faith reasonable measures to identify and locate the relevant rightholders. It is also appropriate to provide for the approval by members of collecting societies of the rules governing any situation where, due to the lack of identified or located rightholders, amounts collected cannot be distributed.
- (16) Since rightholders are entitled to be remunerated for the exploitation of their rights, it is important for any deduction, other than management fees or deductions required by national law, to be decided by the members of collecting societies and for the societies to be transparent towards rightholders regarding the rules governing those deductions. Any such rightholder should have access in a non-discriminatory manner to any social, cultural or educational service funded through such deductions. However, this Directive should not affect national law on any aspects that are not regulated by this Directive.

- (17) Collecting societies may manage rights and collect revenue from their exploitation ('rights revenue') under representation agreements with other societies. To protect the rights of the members of the other collecting societies, a society should not distinguish between the rights it manages under representation agreements and those it manages directly for its rightholders. Nor should the collecting society be allowed to apply deductions to the rights revenue collected on behalf of another collecting society without the other society's express consent.
- (18) Fair commercial terms in licensing are particularly important to ensure that users can license the works and other protected subject-matter for which a collecting society represents rights and to ensure the remuneration of rightholders. Collecting societies and users should therefore conduct licensing negotiations in good faith and apply tariffs determined on the basis of objective criteria.
- (19) To enhance the trust of rightholders, users and other collecting societies in the management services provided by collecting societies, each collecting society should be required to set up specific transparency measures. Each collecting society should therefore inform individual rightholders of the amounts paid to them and the corresponding deductions made. They should also be required to provide sufficient information, including financial information, to the other collecting societies whose rights they manage through representation agreements. Each collecting society should also make public enough information to ensure that rightholders, users and other collecting societies understand how it is structured and how it carries out its activities. Collecting societies should in particular disclose to rightholders, users and other collecting societies the scope of their repertoire and their rules on fees, deductions and tariffs.
- (20) To ensure that rightholders are in a position to monitor the performance of their collecting societies and compare their respective performance, collecting societies should make public an annual transparency report comprising comparable audited financial information specific to the activities of collecting societies. Collecting societies should also make public an annual special report on the use of amounts dedicated to social, cultural and educational services. To avoid imposing excessive burden on smaller collecting societies and to make the obligations arising from this Directive proportionate, Member States should be able to, if they consider this to be necessary, exclude the smallest collecting societies from certain transparency obligations.
- (21) The providers of online services which make use of musical works, such as music services that allow consumers to download music or to listen to it in streaming mode, as well as other services providing access to films or games where music is an important element, must first obtain the right to use such works. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society<sup>20</sup> requires a licence for each of the rights in the online exploitation of musical works. These rights are the exclusive right of reproduction and the exclusive right of communication to the public of musical works, which includes the right of making available. They may be managed by the individual rightholders themselves, such as authors or music

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<sup>20</sup> OJ L 167, 22.6.2001, p. 10.



publishers, or by collecting societies that provide collective management services to rightholders. Different collecting societies may manage the reproduction and the communication to the public rights of authors. Furthermore, there are instances where several rightholders have rights in the same work and may have authorised different collecting societies to license their respective shares of rights in the work. Any user wishing to provide an online service offering a wide choice of musical works to consumers, would need to aggregate rights in works from different rightholders and collecting societies.

- (22) While the Internet knows no borders, the online market for music services in the EU is still fragmented, and a single market has still not been fully achieved. The complexity and difficulty associated with the collective management of rights in Europe has, in a number of instances, exacerbated the fragmentation of the European digital market for online music services. This situation comes in stark contrast to the fast growing demand of consumers for access to digital content and associated innovative services, including across national borders.
- (23) Commission Recommendation 2005/737/EC promoted a new regulatory environment better suited to the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online environment and which is multi-territorial. However, the Recommendation, due to its voluntary nature, has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works and to address the specific demands of multi-territorial licensing.
- (24) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by collecting societies, in an increasingly cross-border context. It is therefore appropriate to provide for a set of rules coordinating basic conditions for the provision by collecting societies of multi-territorial collective licensing of authors' online rights in musical works. These provisions should ensure the necessary minimum quality of the cross-border services provided by collecting societies, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and thus reducing the number of licences a user needs to operate a multi-territorial service. These provisions should enable a collecting society to request another collecting society to represent its repertoire on a multi-territorial basis where it cannot fulfil the requirements itself. There should be an obligation on the requested society, provided that it aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting society. The development of legal online music services across the Union should also contribute to the fight against piracy.
- (25) The availability of accurate and comprehensive information on the musical works, rightholders and the rights that each collecting society is authorised to represent in a given Member State is of particular importance for an effective and transparent licensing process, for the subsequent monitoring of the use of licensed rights and the related invoicing of service providers as well as for the distribution of amounts due to rightholders. For this reason, collecting societies granting multi-territorial licences for musical works should be able to process such detailed data quickly and accurately.

This requires the use of continually updated databases on ownership of rights that are licensed on a multi-territorial basis, containing data that allow for the identification of works, rights, rightholders and Member States which a collecting society is authorised to represent. These databases should also help to match information on works with information on phonograms or any other fixation in which the work has been incorporated. It is also important to ensure that prospective licensees and rightholders have access to the information they need to identify the repertoire that those collecting societies are representing, without prejudice to any measure these societies may be entitled to take to protect the accuracy and integrity of the data, to control its reuse and to protect personal data and commercially sensitive information.

- (26) To ensure that the data on the music repertoire they process is as accurate as possible, collecting societies granting multi-territorial licences of musical works should be required to update their databases continuously and without delay. They should establish easily accessible procedures to enable rightholders and other collecting societies whose repertoire they may represent to inform them about any inaccuracy that the collecting societies databases may contain in respect of works they own or control, including rights – in whole or in part – and Member States for which they have mandated the relevant collecting society to act. They should also have the capacity to process electronically the registration of works and authorisations to manage rights. Given the importance of information automation for the fast and effective processing of data, collecting societies should provide for the use of electronic means for the structured communication of that information by rightholders. Collecting societies should, as far as possible, ensure that such electronic means take into account the relevant industry standards or practices developed at international level or at the level of the Union.
- (27) Digital technology allows the automated monitoring by collecting societies of the use by the licensee of the licensed musical works and facilitates invoicing. Industry standards for music usage, sales reporting and invoicing are instrumental to improve the efficiency in the exchange of data between collecting societies and users. The monitoring of the use of licences should respect fundamental rights, namely the right to respect of private and family life and data protection. To ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, collecting societies should be required to invoice service providers and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that licensees make every effort to provide collecting societies with accurate and timely reports on the use of the works. Collecting societies should not be required to accept users' reports in proprietary formats when widely used industry standards are available.
- (28) Access to and handling of large amounts of data, and a high technical capability are necessary to provide high quality management services by collecting societies granting multi-territorial collective licences. Collecting societies should not be prevented from outsourcing services relating to the granting of multi-territorial licences for online rights in musical works, provided that their liability towards rightholders, online services providers or other collecting societies is unaffected and data protection obligations as set out in Article 17 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to

the processing of personal data and on the free movement of such data<sup>21</sup> are respected. Sharing or consolidation of back office capabilities should help the collecting societies to improve management services and rationalise investments in data management tools.

- (29) Aggregating of different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer that service. That aggregation of repertoires should facilitate the development of new online services, and should also result in a reduction of transaction costs that are passed on to consumers. Therefore, collecting societies that are not willing to or are not able to grant multi-territorial licences directly in their own music repertoire should be encouraged to mandate other collecting societies voluntarily with the task of managing their repertoire under non-discriminatory terms. Where the request to mandate takes place, the requested collecting society should be required to accept, provided that it aggregates repertoire and offers or grants multi-territorial licences. In addition, exclusivity in agreements on multi-territorial licenses would restrict the choices available to users seeking multi-territorial licenses and also restrict the choices available to collecting societies seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between collecting societies providing for multi-territorial licensing should be concluded on a non-exclusive basis.
- (30) The transparency of the conditions under which collecting societies manage the online rights they have been authorised to represent is of particular importance for rightholders. Collecting societies should therefore provide sufficient information to its rightholders on the main terms of any agreement mandating any other collecting society to represent its online music rights for the purposes of multi-territorial licensing.
- (31) It is also important to require any collecting societies that offer or grant multi-territorial licences to agree to represent the repertoire of any collecting societies that decide not to do so directly. To ensure that this requirement is not disproportionate and does not go beyond what is necessary, the requested collecting society should only be required to accept the representation if the request is limited to the online right or categories of online rights which it represents. Moreover, this requirement should apply only to collecting societies which aggregate repertoire and should not extend to collecting societies which provide multi-territorial licences for their own repertoire only. Nor should it apply to collecting societies which merely aggregate rights in the same works for the purpose of being able to license jointly both reproduction and communication to the public rights in such works. Any agreement whereby a collecting society mandates another collecting society or societies to grant multi-territorial licences in its own music repertoire for online use should not prevent that collecting society from continuing to grant licences limited to the territory of the Member State where that collecting society is established, in its own repertoire and in any other repertoire it may be authorised to represent in that Member State.

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<sup>21</sup> OJ L 281, 23.11.1995, p. 31.

- (32) The objectives and the effectiveness of the rules on multi-territorial licensing by collecting societies would be largely jeopardised if rightholders were not able to exercise their rights by granting multi-territorial licences when the collecting society to which they have granted their rights does not grant or offer multi-territorial licences and does not want to mandate another collecting society to do so. For this reason, it is important in such circumstances, to enable rightholders to exercise the right to grant the multi-territorial licences required by online service providers themselves or through another party or parties, without having to withdraw their rights from the collecting society.
- (33) In the interest of the online market, key obligations relating to access to information, data handling, invoicing and payment capabilities must also apply to any entity owned, in whole or in part, by a collecting society and which offers or grants multi-territorial licences in online rights in musical works.
- (34) In the digital environment, collecting societies are regularly required to license their repertoire for totally new forms of exploitation and business models. In such cases and in order to foster an environment conducive to the development of such licences, and to do so as swiftly as possible, collecting societies should have the flexibility required to provide individualised and innovative licences, without the risk of their being used as a precedent for determining the terms of other different types of licences.
- (35) Broadcasting organisations generally rely on a licence from a local collecting society, for their own broadcasts of television and radio programmes which include musical works. This licence is often limited to broadcasting activities. A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online music rights for the purposes of simultaneous and delayed transmission online of television and radio broadcasts, it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of musical works for online uses. Such derogation should be limited to what is necessary to allow access to television or radio programmes online and to material having a clear and subordinate relationship to the original broadcast produced for purposes such as supplementing, previewing or reviewing that television or radio programme. That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, or lead to restrictive practices, such as market or customer sharing, in breach of Articles 101 or 102 of the Treaty on the Functioning of the European Union.
- (36) It is necessary to ensure the effective enforcement of the provisions of the national law adopted pursuant to this Directive. Collecting societies should offer their members specific procedures for the handling of complaints and the resolution of disputes. These procedures should also be made available to other rightholders represented by the collecting society. It is also appropriate to ensure that Member States have independent, impartial and effective dispute resolution bodies capable of settling commercial disputes between collecting societies and users on existing or proposed licensing conditions as well as on situations in which the granting of a licence is refused. Furthermore, the effectiveness of the rules on the multi-territorial licensing of online rights in musical works could be undermined if disputes between collecting societies and their counterparts were not solved quickly and efficiently by independent and impartial bodies. As a result, it is appropriate to provide, without prejudice to the

right of access to a tribunal, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between collecting societies, on the one hand, and online music service providers, rightholders or other collecting societies, on the other.

- (37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against collecting societies who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.
- (38) It is important for collecting societies to respect the rights to private life and personal data protection of any rightholder, member, user and other individual whose personal data they process. Directive 95/46/EC governs the processing of personal data carried out in the Member States in the context of this Directive and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Rightholders should be given appropriate information about the processing of their data, the recipients of that data, time limits for retention of their data in their database, and how they can exercise their rights to access, correct or delete their personal data concerning them in accordance with Articles 10 and 11 of Directive 95/46/EC. In particular, unique identifiers which allow for the indirect identification of a person should be treated as personal data within the meaning of point (a) of Article 2 of that Directive.
- (39) In the light of Article 12(b) of Directive 95/46/EC which grants to every data subject the right to obtain rectification, erasure or blocking of inaccurate or incomplete data, this Directive also ensures that inaccurate information regarding rightholders or other collecting societies in the case of multi-territorial licenses is to be corrected without undue delay.
- (40) Provisions on enforcement measures should be without prejudice to the competencies of independent public national authorities established by the Member States pursuant to Article 28 of Directive 95/46/EC to monitor the respect of national provisions adopted in implementation of that Directive.
- (41) This Directive respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union. The requirement in the Directive that dispute resolution mechanisms should be made available to members, rightholders, users and collecting societies should not prevent the parties from exercising their right of access to a tribunal as guaranteed in the Charter of Fundamental Rights of the European Union.
- (42) Since the objective of this Directive, to improve the ability of their members to exercise control over the activities of collecting societies, to guarantee sufficient transparency by collecting societies and to improve the multi-territorial licensing of authors' rights for online use of musical works cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved

at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that same Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (43) The provisions of this Directive are without prejudice to the application of competition law rules, and any other relevant law in other areas including confidentiality, trade secrets, privacy, access to documents, the law of contract and private international law relating to the conflict of laws and the jurisdiction of courts.
- (44) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

HAVE ADOPTED THIS DIRECTIVE:

## **TITLE I**

### **GENERAL PROVISIONS**

#### *Article 1* *Subject matter*

This Directive lays down requirements necessary to ensure the proper functioning of the management of copyright and related rights by collecting societies. It also lays down requirements for multi-territorial licensing by collecting societies of authors' rights in musical works for online use.

#### *Article 2* *Scope*

Titles I, II and IV with the exception of Articles 36 and 40 shall apply to all collecting societies established in the Union.

Title III and Articles 36 and 40 of Title IV shall only apply to those collecting societies managing authors' rights in musical works for online use on a multi-territorial basis.

#### *Article 3* *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (a) 'collecting society' means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement, by more than one

rightholder, to manage copyright or rights related to copyright as its sole or main purpose and which is owned or controlled by its members;

- (b) 'rightholder' means any natural person or legal entity other than a collecting society that holds a copyright or related right or who under an agreement for the exploitation of rights is entitled to a share of the rights revenue from any of the rights managed by the collecting society;
- (c) 'member of a collecting society' means a rightholder or an entity directly representing rightholders, including other collecting societies and associations of rightholders, fulfilling the membership requirements of the collecting society;
- (d) 'statute' means the memorandum and articles of association, the statute, the rules or document of constitution of a collecting society;
- (e) 'director' means any individual managing director, any member of the administrative board, the management or the supervisory board of a collecting society;
- (f) 'rights revenue' means income collected by a collecting society on behalf of rightholders, whether from an exclusive right, a right to remuneration or a right to compensation;
- (g) 'management fees' means the amount charged by a collecting society in order to cover the costs of its management of copyright or related rights services;
- (h) 'representation agreement' means any agreement between collecting societies whereby one collecting society mandates another collecting society to represent rights in its repertoire, including an agreement concluded under Articles 28 and 29;
- (i) 'user' means any natural person or legal entity who is carrying out acts subject to the authorisation of rightholders, the remuneration of rightholders or the payment of compensation to rightholders and who is not acting in the capacity of a consumer;
- (j) 'repertoire' means the works or other protected subject matter in which a collecting society manages rights;
- (k) 'multi-territorial licence' means a licence which covers the territory of more than one Member State;
- (l) 'online rights in musical works' means any of the rights in a musical work provided under Articles 2 and 3 of Directive 2001/29/EC which are required for the provision of an online music service;
- (m) 'online music service' means an information society service within the meaning of Article 1(2) of Directive 98/34/EC which requires the licensing of musical works.

## TITLE II

### COLLECTING SOCIETIES

#### Chapter 1

#### Membership and organisation of collecting societies

##### *Article 4*

##### *General principles*

Member States shall ensure that collecting societies act in the best interest of their members and do not impose on rightholders whose rights they manage any obligations which are not objectively necessary for the protection of the rights and interests of these rightholders.

##### *Article 5*

##### *Rights of rightholders*

1. Member States shall ensure that rightholders have the rights as laid down in paragraphs 2 to 7 and that those rights appear in the statute or the membership terms of the collecting society.
2. Rightholders shall have the right to authorise a collecting society of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the Member State of residence or of establishment or the nationality of either the collecting society or the rightholder.
3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted to a collecting society or to withdraw from a collecting society any of the rights or categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, upon serving reasonable notice not exceeding six months. The collecting society may decide that such termination or withdrawal will take effect only at the middle and at the end of the financial year, whichever is sooner after the expiry of the notice period.
4. If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under Articles 12, 16, 18 and 34 with respect to those acts of exploitation.
5. Collecting societies shall not restrict the exercise of rights provided under paragraphs 3 and 4 by requiring that the management of rights or categories of rights or type of



works and other subject matter which are subject to the termination or the withdrawal are entrusted to another collecting society.

6. Member States shall ensure that the rightholder gives express consent specifically for each right or category of rights or type of works and other subject matter which that rightholder authorises the collecting society to manage and that any such consent is evidenced in documentary form.
7. A collecting society shall inform rightholders of their rights under paragraphs 1 to 6 before obtaining their consent to manage any right or category of rights or type of works and other subject matter.

Collecting societies shall inform their members of their rights under paragraphs 1 to 6 within six months of the transposition date of this Directive.

#### *Article 6* *Membership rules of collecting societies*

1. Member States shall ensure that collecting societies comply with the rules laid down in paragraphs 2 to 5.
2. Collecting societies shall accept rightholders as members if they fulfil the membership requirements. They may only refuse a request for membership on the basis of objective criteria. These criteria shall be included in the statute or the membership terms of the collecting society and shall be made publicly available.
3. The statute of the collecting society shall provide for appropriate and effective mechanisms of participation of its members in the collecting society's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.
4. Collecting societies shall allow their members to communicate by electronic means, including for the purposes of exercising members' rights. The use of electronic means shall not depend upon the member's residence or place of establishment.
5. Collecting societies shall keep records of members which are regularly updated so that members can be properly identified and located.

#### *Article 7* *General meeting of members of the collecting society*

1. Member States shall ensure that the general meeting of the members of the collecting societies is organised according to the rules laid down in paragraphs 2 to 8.
2. A general meeting of the members of the collecting society shall be convened at least once a year.
3. The general meeting shall approve any amendments to the statute and the membership terms of the collecting society, where those terms are not regulated by the statute.

4. The general meeting shall have the power to decide on the appointment or dismissal of the directors and approve their remuneration and other benefits such as non-monetary benefits, pension awards, right to other awards and rights to severance pay.

The general meeting shall not decide on the appointment or dismissal of members of the management board or the individual managing director where the supervisory board has the power to appoint or dismiss them.

5. In accordance with the provisions laid down in Chapter 2 of Title II, the general meeting shall, at least, take decisions on the following issues:

- (a) the policy on the distribution of the amounts due to rightholders, except where the general meeting decides to delegate this decision to the body exercising the supervisory function;
- (b) the use of the amounts due to rightholders which cannot be distributed as set out in Article 12(2) except where the general meeting decides to delegate this decision to the body exercising the supervisory function;
- (c) the general investment policy, including on granting loans or providing security or guarantee for loans, with regard to rights revenue;
- (d) the rules on deductions from rights revenue.

6. The general meeting shall control the activities of the collecting society by, at least, deciding on the appointment and removal of the auditor and approving the annual transparency report and the auditor's report.

7. Any restriction on the right of the members of the collecting society to participate and to exercise voting rights at the general meeting shall be fair and proportionate and be based on the following criteria:

- (a) duration of membership;
- (b) amounts received or due to a member in relation to the specified financial period.

These criteria shall be included in the statute or the membership terms of the collecting society and shall be made publicly available in accordance with Articles 17 and 19.

8. Every member of a collecting society shall have the right to appoint any other natural or legal person as a proxy holder to attend and vote at the general meeting in his name.

#### *Article 8* *Supervisory function*

1. Member States shall ensure that the collecting society establishes a supervisory function responsible for continuously monitoring the activities and the performance of the duties of the persons entrusted with managerial responsibilities in the

collecting society. There shall be fair and balanced representation of the members of the collecting society in the body exercising this function in order to ensure their effective participation.

2. The body entrusted with the supervisory function shall meet regularly and shall have at least the following powers:
  - (a) to approve any acquisition of immovable property by the collecting society;
  - (b) to approve the setting-up of subsidiaries, acquisitions of other entities, acquisitions of shares or rights in other entities, mergers and alliances;
  - (c) to approve the taking-out of loans, granting of loans and provision of security or guarantee for loans.
3. Member States may decide that paragraphs 1 and 2 shall not apply to a collecting society which on its balance sheet date does not exceed the limits of two of the three following criteria:
  - (a) balance sheet total: EUR 350 000;
  - (b) net turnover: EUR 700 000;
  - (c) average number of employees during the financial year: ten.

#### *Article 9*

##### *Obligations of the persons who effectively manage the business of the collecting society*

1. Member States shall ensure that the persons who effectively manage the business of a collecting society and its directors, with the exception of the directors exercising supervisory function, manage the collecting society in a sound and prudent manner, using sound administrative and accounting procedures and internal control mechanisms.
2. Member States shall ensure that the persons who effectively manage the business of a collecting society and its directors, with the exception of the directors exercising supervisory function, design procedures so as to avoid conflicts of interest. The collecting society shall have procedures to identify, manage, monitor and disclose conflicts of interest in order to prevent them from adversely affecting the interests of members of the society.

Those procedures shall include an annual individual statement by each of those persons and directors, to the body entrusted with the supervisory function, containing the following information:

- (a) any interests in the collecting society;
- (b) any remuneration received from the collecting society, including pension schemes, advantages in kind and other types of advantages;
- (c) any amounts received as a rightholder from the collecting society;

- (d) a declaration on any actual or potential conflict between any personal interests and those of the collecting society or between any obligations towards the collecting society and any duty to any other legal or natural person.

## Chapter 2

### Management of rights revenue

#### *Article 10*

##### *Collection and use of rights revenue*

1. Collecting societies shall be diligent in the collection and the management of rights revenue.
2. The collecting society shall manage and keep separate the rights revenue and any income derived from its investment from its own assets, the income derived from its management services or the income derived from any other activities.
3. The collecting society shall not be allowed to use rights revenue and any income derived from its investment for its own account, save that it may deduct its management fees.
4. Where, pending the distribution of the amounts due to rightholders, the collecting society invests the rights revenue and any income derived from its investment, it shall do so in accordance with the general investment policy referred to in Article 7(5)(c) and the following rules:
  - (a) the assets shall be invested in the best interests of members; where there is any potential conflict of interest, the collecting society shall ensure that the investment is made in the sole interest of members;
  - (b) the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
  - (c) the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.

#### *Article 11*

##### *Deductions*

1. Member States shall ensure that agreements governing the relationship of the collecting society with its members and rightholders shall specify deductions applicable to the rights revenue referred to in point (e) of Article 16.
2. Member States shall ensure that, where a collecting society provides social, cultural or educational services funded through deductions from rights revenue, rightholders are entitled to the following:

- (a) social, cultural or educational services on the basis of fair criteria, in particular in relation to the access to and the extent of those services;
- (b) rightholders who have terminated the authorisation to manage rights or categories of rights or types of works and other subject matter or who have withdrawn their rights or categories of rights or types of works and other subject matter from the collecting society, continue to have access to those services. The criteria in relation to the access to and the extent of those services may take into consideration the rights revenue generated by those rightholders and the duration of the authorisation to manage rights, provided that such criteria are also applicable to rightholders who have not terminated such authorisation or have not withdrawn their rights or categories of rights or types of works and other subject matter from the collecting society.

#### *Article 12*

#### *Distribution of the amounts due to rightholders*

1. Member States shall ensure that the collecting society regularly and diligently distributes and pays amounts due to all rightholders it represents. The collecting society shall carry out such distribution and payments no later than 12 months from the end of the financial year in which the rights revenue was collected, unless objective reasons related in particular to reporting by users, the identification of rights, rightholders or to the matching of information on works and other subject matter with rightholders prevent the collecting society from respecting this deadline. The collecting society shall carry out such distribution and payments accurately, ensuring equal treatment of all categories of rightholders.
2. Where the amounts due to rightholders cannot be distributed, after five years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collecting society has taken all necessary measures to identify and locate the rightholders, the collecting society shall decide on the use of the amounts concerned in accordance with Article 7(5)(b), without prejudice to the right of the rightholder to claim such amounts from the collecting society.
3. For the purposes of paragraph 2, measures to identify and locate rightholders shall include verifying membership records and making available to the members of the collecting society as well as to the public a list of works and other subject matter for which one or more rightholders have not been identified or located.

## **Chapter 3**

### **Management of rights on behalf of other collecting societies**

#### *Article 13*

#### *Rights managed under representation agreements*

Member States shall ensure that a collecting society does not discriminate between its members and any rightholders whose rights it manages under a representation agreement, in

particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of the amounts due to rightholders.

#### *Article 14*

##### *Deductions and payments in representation agreements*

1. The collecting society shall not apply deductions, other than management fees, to the rights revenue derived from the rights it manages on the basis of a representation agreement with another collecting society, unless the other collecting society expressly consents to such deductions.
2. The collecting society shall regularly, diligently and accurately distribute and pay amounts due to other collecting societies.

## **Chapter 4**

### **Relations with users**

#### *Article 15*

##### *Licensing*

1. Collecting societies and users shall conduct negotiations for the licensing of rights in good faith including the provision of all necessary information on their respective services.
2. Licensing terms shall be based on objective criteria, in particular in relation to tariffs.

Tariffs for exclusive rights shall reflect the economic value of the rights in trade and of the service provided by the collecting society.

In the absence of any national law which establishes the amounts due to rightholders in respect of a right to remuneration and a right to compensation, the collecting society shall base its own determination of those amounts due, on the economic value of those rights in trade.

3. Collecting societies shall allow users to communicate by electronic means, including, when appropriate, for the purpose of reporting on the use of the licence.

## Chapter 5

### Transparency and reporting

#### *Article 16*

##### *Information provided to rightholders on the management of their rights*

Member States shall ensure that a collecting society makes available at least once a year, by electronic means, the following information to each rightholder it represents:

- (a) any personal data which the rightholder has authorised the collecting society to use including to identify and locate the rightholder;
- (b) the rights revenue collected on behalf of the rightholder;
- (c) the amounts due to the rightholder per category of rights managed, and type of use, paid by the collecting society to the rightholder in the period concerned;
- (d) the period during which the uses took place for which amounts are due to the rightholder;
- (e) the deductions made for management fees in the period concerned;
- (f) the deductions made for any purpose other than management fees, including those that may be required by national law for the provision of any social, cultural or educational services in the period concerned;
- (g) any amounts due to the rightholder which are outstanding for the period concerned;
- (h) the available complaint handling and dispute resolution procedures pursuant to Articles 34 and 36.

#### *Article 17*

##### *Information provided to other collecting societies on the management of rights under representation agreements*

Member States shall ensure that a collecting society makes the following information available, at least once a year by electronic means, to the collecting society on whose behalf it manages rights under a representation agreement for a particular period:

- (a) the amounts due to rightholders per category of rights managed, and per type of use paid by the collecting society for the licensing of the rights it manages under the representation agreement;
- (b) the deductions made for management fees and for other purposes;
- (c) information on the licences and rights revenue pertaining to works included in the repertoire covered by the representation agreement;

- (d) resolutions of the general meeting.

#### *Article 18*

##### *Information provided to rightholders, members, other collecting societies and users on request*

1. Member States shall ensure that a collecting society makes the following information available at the request of any rightholder whose rights it represents, any collecting society on whose behalf it manages rights under a representation agreement or any user, by electronic means, without undue delay:
  - (a) standard licensing contracts and applicable tariffs;
  - (b) the repertoire and rights it manages and the Member States covered;
  - (c) a list of representation agreements it has entered into, including information on other collecting societies involved, the repertoire represented and the territorial scope covered by any such agreement.
2. In addition, a collecting society shall make available at the request of any rightholder or any collecting society, any information on works for which one or more rightholders have not been identified including, where available, the title of the work, the name of the author, the name of the publisher and any other relevant information available which could be necessary to identify the rightholders.

#### *Article 19*

##### *Disclosure of information to the public*

1. Member States shall ensure that a collecting society makes public the following information:
  - (a) the statute;
  - (b) the membership terms and terms of termination of the authorisation to manage rights, if not included in the statute;
  - (c) the list of the persons referred to in Article 9;
  - (d) rules on distribution of the amounts due to rightholders;
  - (e) rules on management fees;
  - (f) rules on deductions from rights revenue for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;
  - (g) complaint handling and dispute resolution procedures available in accordance with Articles 34, 35 and 36.
2. The information referred to in paragraph 1 shall be published on the website of the collecting society and shall remain available to the public on that website.



The collecting society shall keep the information referred to in paragraph 1 up to date.

*Article 20*  
*Annual transparency report*

1. Member States shall ensure that, irrespective of its legal form under national law, a collecting society draws up and make public an annual transparency report, including a special report, for each financial year no later than six months following the end of the financial year. The annual transparency report shall be signed by all directors.

The annual transparency report shall be published on the website of the collecting society and shall remain available to the public on that website for at least five years.

2. The annual transparency report shall contain at least the information set out in Annex I.
3. The special report referred to in paragraph 1 shall be on the use of the amounts deducted for the purposes of social, cultural and educational services and shall contain at least the information set out in point 3 of Annex I.
4. The accounting information given in the annual transparency report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts<sup>22</sup>.

The auditor's report, including any qualifications, shall be reproduced in full in the annual transparency report.

For the purposes of this paragraph, accounting information shall comprise the financial statements referred to in point 1 (a) of Annex I and any financial information referred to in points 1 (f) and (g) of Annex I and in point 2 of Annex I.

5. Member States may decide that points 1 (a), (f) and (g) of Annex I shall not apply to a collecting society which on its balance sheet date does not exceed the limits of two of the three following criteria:
  - (a) balance sheet total: EUR 350 000;
  - (b) net turnover: EUR 700 000;
  - (c) average number of employees during the financial year: ten.

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<sup>22</sup> OJ L 157, 9.6.2006, p. 87.

## TITLE III

### MULTI-TERRITORIAL LICENSING OF ONLINE RIGHTS IN MUSICAL WORKS BY COLLECTING SOCIETIES

#### *Article 21*

##### *Multi-territorial licensing in the internal market*

1. Member States shall ensure that collecting societies established in their territory comply with the requirements in this Title when granting multi-territorial licences for online rights in musical works.
2. Member States shall ensure that compliance by collecting societies with those requirements can be effectively reviewed by the competent authorities referred to in Article 39.

#### *Article 22*

##### *Capacity to process multi-territorial licences*

- 1 Member States shall ensure that a collecting society which grants multi-territorial licences for online rights in musical works has sufficient capacity to process electronically, in an efficient and transparent manner, the data needed for the administration of such licences, including for identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.
2. For the purpose of paragraph 1, a collecting society shall comply, at least, with the following conditions:
  - (a) the ability to accurately identify the musical works, in whole or in part, which the collecting society is authorised to represent;
  - (b) the ability, to accurately identify rights, in whole or in part, and the rightholders with respect to each of the Member States to which this authorisation applies, for each musical work or share thereof which the collecting society is authorised to represent;
  - (c) use of unique identifiers to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or Union level;
  - (d) the taking into account, without undue delay, of any changes to the information described in point (a),
  - (e) the ability to identify and resolve in a timely and effective manner inconsistencies in data held by other collecting societies granting multi-territorial licences in online rights in musical works.

*Article 23*  
*Transparency of multi-territorial repertoire information*

1. A collecting society which grants multi-territorial licences for online rights in musical works shall provide to online music service providers, rightholders and other collecting societies, by electronic means, up-to-date information allowing the identification of the online music repertoire it represents. This shall include the musical works represented, the rights represented, in whole or in part, and the Member States represented.
2. The collecting society may take reasonable measures to protect the accuracy and integrity of the data, to control its re-use and to protect personal data and commercially sensitive information.

*Article 24*  
*Accuracy of multi-territorial repertoire information*

1. A collecting society which grants multi-territorial licences for online rights in musical works shall have procedures in place to enable rightholders and other collecting societies to object to the contents of the data referred to in Article 22(2) or to information provided under Article 23, where such rightholders and collecting societies, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the collecting society shall ensure that the data or the information are corrected without undue delay.
2. The collecting society shall provide rightholders whose musical works are included in its own music repertoire with means of submitting by electronic means information on their musical works or their rights in those works. When doing so, the collecting society and the rightholders shall take into account, as far as possible, industry standards or practices regarding the exchange of data developed at international or Union level, allowing rightholders to specify the musical work, in whole or in part, the online rights, in whole or in part, and the Member States, for which they authorise the collecting society.

*Article 25*  
*Accurate and timely reporting and invoicing*

1. A collecting society shall monitor the use of online rights in musical works which it represents, in whole or in part, by online music service providers to which it has granted a multi-territorial licence for those rights.
2. The collecting society shall offer online music service providers the possibility of reporting the actual use of online rights in musical works by electronic means. The collecting society shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The collecting society may refuse to accept reporting by the user in a proprietary format if the society allows for reporting using an industry standard for the electronic exchange of data.

3. The collecting society shall invoice the online music service provider by electronic means. The collecting society shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level. The invoice shall identify the works and rights which are licensed, in whole or in part, on the basis of the data referred to in Article 22(2), and the corresponding actual uses, to the extent this is possible on the basis of the information provided by the user and the format used to provide that information.
4. The collecting society shall invoice the online music service provider accurately and without delay after the actual use of the online rights in that musical work is reported, except where a delay is attributable to the online music service provider.
5. The collecting society shall have adequate procedures in place for the online music service provider to challenge the accuracy of the invoice, including when the online music service provider receives invoices from one or more collecting societies for the same online rights in the same musical work.

#### *Article 26*

#### *Accurate and timely payment to rightholders*

1. Member States shall ensure that a collecting society which grants multi-territorial licences for online rights in musical works distributes amounts due to rightholders accruing from such licences accurately and without delay after the actual use of the work is reported, except where any further delay is attributable to the online music service provider.
2. The collecting society shall provide at least the following information to rightholders:
  - (a) the period during which the uses took place for which amounts are due to rightholders and the Member States in which the uses took place;
  - (b) for each online right in any musical work the rightholder has authorised the collecting society to represent in whole or in part, amounts collected, deductions made and amounts distributed by the collecting society;
  - (c) for each online music service provider, amounts collected for the rightholder, deductions made, and amounts distributed by the collecting society.
3. Where rightholders terminate their authorisation to a collecting society to manage their online rights in musical works or withdraw their online rights in musical works, in whole or in part, from a collecting society, paragraphs 1 and 2 shall apply to multi-territorial licences granted before the termination or the withdrawal and which continue to produce effect.
4. Where a collecting society mandates another collecting society to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated collecting society shall distribute the amounts referred to in paragraph 1 and provide the information referred to in paragraph 2 to the mandating collecting society, which shall be responsible for its subsequent distribution and information to rightholders, unless they agree otherwise.

*Article 27*  
*Outsourcing*

A collecting society may outsource services which relate to the multi-territorial licences it grants. Such outsourcing shall not affect the liability of the collecting society towards rightholders, online services providers or other collecting societies.

*Article 28*  
*Agreements between collecting societies for multi-territorial licensing*

1. Any representation agreement between collecting societies whereby a collecting society mandates another collecting society to grant multi-territorial licences for the online rights in musical works in its own music repertoire shall be of a non-exclusive nature. The mandated collecting society shall manage those online rights on non-discriminatory terms.
2. The mandating collecting society shall inform its members of the duration of the agreement, the costs of the services provided by the other collecting society and any other significant terms of the agreement.
3. The mandated collecting society shall inform the mandating society of the key terms on which its online rights are to be licensed, including the nature of the exploitation, all provisions which relate to or affect the licence fee, the duration of the licence, accounting periods and the territories covered.

*Article 29*  
*Obligation to represent another collecting society for multi-territorial licensing*

1. A collecting society which does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own music repertoire can request another collecting society that meets the requirements of this Title to enter into a representation agreement to represent those rights in accordance with Article 28.
2. The requested collecting society shall accept such a request if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collecting societies.

The management fee for the service provided by the requested collecting society to the requesting society shall not exceed the costs reasonably incurred by the requested collecting society in managing the repertoire of the requesting collecting society and a reasonable profit margin.

3. The requesting collecting society shall make available to the requested collecting society the information on its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested collecting society to meet the requirements of this Title, the requested collecting society shall be entitled to charge for the reasonable costs incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

*Article 30*  
*Access to multi-territorial licensing*

Member States shall ensure that where a collecting society does not grant or offer to grant multi-territorial licences in online rights in musical works or does not allow another collecting society to represent those rights for such purpose by one year after the transposition date of this Directive, rightholders who have authorised that collecting society to represent their online rights in musical works can grant multi-territorial licences in their online rights in musical works themselves or through any collecting society complying with the provisions of this Title or any other party they authorise. The collecting society which does not grant or offer to grant multi-territorial licences shall continue to grant or offer to grant licences for the online rights in musical works of such rightholders for their use in the territory of the Member State where the collecting society is established, unless the rightholders terminate their authorisation to manage them.

*Article 31*  
*Multi-territorial licensing by subsidiaries of collecting societies*

Articles 18(1)(a), 18(1)(c), 22, 23, 24, 25, 26, 27, 32 and 36 shall also apply to entities owned, in whole or in part, by a collecting society and which offer or grant multi-territorial licences for online rights in musical works.

*Article 32*  
*Licensing terms in online services*

A collecting society providing multi-territorial licences for online rights in musical works shall not be required to use as a precedent for other types of services licensing terms agreed with an online music service provider, when the online music service provider is providing a new type of service which has been available to the public for less than three years.

*Article 33*  
*Derogation for online music rights required for radio and television programmes*

The requirements under this Title shall not apply to collecting societies which grant, on the basis of the voluntary aggregation of the required rights, in compliance with the competition rules under Articles 101 and 102 TFEU, a multi-territorial licence for the online rights in musical works required by a broadcaster to communicate or make available to the public its radio or television programmes simultaneously with or after their initial broadcast as well as any online material produced by the broadcaster which is ancillary to the initial broadcast of its radio or television programme.

## TITLE IV

### ENFORCEMENT MEASURES

#### *Article 34*

##### *Dispute resolution for members and rightholders*

1. Member States shall ensure that collecting societies make available to their members and rightholders effective and timely procedures for dealing with complaints and for resolving disputes in particular in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.
2. Collecting societies shall respond in writing to complaints by members or rightholders. Where the collecting society refuses the complaint, it shall give reasons.
3. Parties shall not be prevented from asserting and defending their rights by bringing an action before a court.

#### *Article 35*

##### *Dispute resolution for users*

1. Member States shall ensure that disputes between collecting societies and users concerning existing and proposed licensing conditions, tariffs, and any refusal to grant a licence can be submitted to a court, and if appropriate, to an independent and impartial dispute resolution body.
2. Where the obligation set out in paragraph 1 is implemented by recourse to an independent and impartial dispute resolution body, this shall not prevent the parties from asserting and defending their rights by bringing an action before a court.

#### *Article 36*

##### *Alternative dispute resolution*

1. Member States shall ensure, for the purposes of Title III, that the following disputes of a collecting society which grants or offers to grant multi-territorial licences in online rights in musical works can be submitted to an independent and impartial alternative dispute resolution bodies:
  - (a) disputes with an actual or potential online music service provider on the application of Articles 22, 23 and 25;
  - (b) disputes with one or more rightholders on the application of Articles 22, 23, 24, 25, 26, 28, 29 and 30;
  - (c) disputes with another collecting society on the application of Articles 24, 25, 26, 28 and 29.

2. Collecting societies shall inform the relevant parties of the availability of alternative dispute resolution procedures as referred to in paragraph 1.
3. The procedures referred to in paragraphs 1 to 2 shall not prevent the parties from asserting and defending their rights by bringing an action before a court.

*Article 37*  
*Complaints*

1. Member States shall ensure that procedures are set up for members of a collecting society, rightholders, users and other interested parties to submit complaints to the competent authorities with regard to the activities of collecting societies which are covered by this Directive.
2. Member States shall take all the necessary measures to ensure that the complaints procedures referred to in paragraph 1 are administered by the competent authorities empowered to ensure compliance with the provisions of national law adopted pursuant to the requirements laid down in this Directive.

*Article 38*  
*Sanctions or measures*

1. Member States shall provide that their respective competent authorities may take appropriate administrative sanctions and measures where the provisions of the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied. The sanctions and measures shall be effective, proportionate and dissuasive.
2. Member States shall notify the Commission of the rules referred to in paragraph 1 by [date] and shall notify it without delay of any subsequent amendment affecting them.

*Article 39*  
*Competent authorities*

Member States shall notify the Commission of the competent authorities referred to in Articles 21, 37, 38 and 40 by the [date].

The Commission shall make that information available on its website.

*Article 40*  
*Compliance with the provisions on multi-territorial licensing*

1. Member States shall ensure that the competent authorities referred to in Article 39 continuously monitor the compliance with the requirements laid down in Title III of this Directive by collecting societies established in their territory when granting multi-territorial licences for online rights in musical works.



2. The Commission shall foster regular exchange of information between the competent authorities of the Member States and between those authorities and the Commission on the situation and development of multi-territorial licensing.
3. The Commission shall conduct regular consultations with representatives of rightholders, collecting societies, users, consumers and other interested parties on their experience with the application of the provisions of Title III of this Directive. The Commission shall provide competent authorities with all relevant information deriving from these consultations, in the framework set out in paragraph 2.
4. Member States shall ensure that, at the latest, *[30 months after the entry into force of this Directive]*, their competent authorities provide the Commission with a report on the situation and development of multi-territorial licensing in their territory. The report shall include information, in particular, on the availability of multi-territorial licences in the relevant Member State, the compliance of collecting societies with Title III of this Directive and the evaluation of the service by users and non-governmental organisations representing consumers, rightholders and other interested parties.
5. On the basis of the reports under paragraph 4 and the information gathered under paragraphs 2 and 3, the Commission shall assess the application of Title III of this Directive. If necessary, and based on a specific report as appropriate, it will consider further steps to address the identified problems, if any. The assessment shall cover, in particular, the following:
  - (a) the number of collecting societies meeting the requirements in Title III;
  - (b) the number of representation agreements between collecting societies under Articles 28 and 29;
  - (c) the proportion of repertoire in the Member States which is available for licensing on a multi-territorial basis.

## **TITLE V**

### **REPORTING AND FINAL PROVISIONS**

#### *Article 41* *Report*

By [5 years after the end of the transposition period (date)], the Commission shall assess the application of this Directive and report to the European Parliament and to the Council on the application of this Directive, including its impact on the development of cross-border services and on cultural diversity, and, if necessary, on the need to review it. The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.

*Article 42*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after the entry into force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 43*  
*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 44*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## Annex I

1. Information to be provided in the annual transparency report referred to in Article 20(2):
  - (a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash flow statement;
  - (b) a report on the activities in the financial year;
  - (c) a description of the legal and governance structure of the collecting society;
  - (d) information on any entities in which the collecting society holds shares;
  - (e) information on the total amount of remuneration paid to the persons referred in Article 9 in the previous year, and on other benefits granted to them;
  - (f) the financial information referred to in point 2;
  - (g) a special report on the use of the amounts deducted for the purposes of social, cultural and educational services.
  
2. Financial information to be provided in the annual transparency report:
  - (a) Financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance).
  - (b) Financial information on the cost of management services and other services provided by the collecting society to rightholders, with a comprehensive description of at least the following items:
    - (i) all operating and financial costs, with a breakdown per category of rights managed and an explanation of the method used to allocate indirect costs;
    - (ii) operating and financial costs, with a breakdown per category of rights managed, only with regard to the services for the management of rights;
    - (iii) operating and financial costs with regard to services other than the management of rights, including social, cultural and educational services;
    - (iv) resources used to cover costs;
    - (v) deductions made to rights revenues, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs related to the management of rights or to social, cultural or educational services;
    - (vi) the percentages that the cost of the management services and other services provided by the collecting society to rightholders represents compared to the rights revenues in the relevant financial year, per category of rights managed.

- (c) Financial information on amounts due to rightholders with a comprehensive description of at least the following items:
  - (i) total amount attributed to rightholders with a breakdown per category of rights managed and type of use;
  - (ii) total amount paid to rightholders, with a breakdown per category of rights managed and type of use;
  - (iii) frequency of payments, with a breakdown per category of rights managed and per type of use;
  - (iv) total amount collected but not yet attributed to rightholders, with a breakdown per category of rights managed and type of use and indicating the financial year in which these amounts were collected;
  - (v) total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and type of use and indicating the financial year in which these amounts were collected;
  - (vi) where a collecting society has not carried out the distribution and payments within the deadline set out in Article 12(1), the reasons for the delay.
- (d) Information on the relationships with other collecting societies with a description of at least the following items:
  - (i) financial flows, amounts received from other collecting societies and amounts paid to other collecting societies, with a breakdown per category of rights and type of use and per collecting society;
  - (ii) management fees for and other deductions from the revenue due to other collecting societies, with a breakdown per category of rights and per collecting society;
  - (iv) management fees for and other deductions from the amounts paid by other collecting societies, with a breakdown per category of rights and per collecting society;
  - (v) amount distributed to rightholders originating from other collecting societies, with a breakdown per category of rights and per collecting society.

3. Information to be provided in the special report referred to in Article 20(3):

- (a) the amounts collected for the purposes of social, cultural and educational services in the financial year, with a breakdown per category of rights managed and per type of use;
- (b) the explanation of the use of those amounts, with a breakdown per type of purpose.

## Annex II

### **EXPLANATORY DOCUMENTS**

In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.

With regard to this Directive, the Commission considers the transmission of such documents to be justified for the following reasons:

#### **Complexity of the Directive and of the sector concerned**

Collective management of copyright and related rights is a complex issue. It affects the management of rights for online use but also for more traditional offline uses. It concerns the rights of authors, but also of performers, publishers, producers and broadcasters. Different types of collecting societies are involved, from the large collecting societies managing authors' rights to the smaller ones collecting the remuneration linked to the reprography or to the resale right. Different types of stakeholders are involved: not only the rightholders but also the commercial users who obtain the licences from collecting societies.

While there is legislation at European level on copyright and related rights, it is the first time that collective management is directly addressed by EU legislation. The comprehensive legal framework proposed by the Directive will result in substantial changes for most of the national laws as regards the regulation of collecting societies.

Moreover the Title of the directive concerning the multi-territorial licensing of authors' rights in musical works for online uses is an absolute novelty from a regulatory perspective. No Member State has legislation on this type of licences in place.

Furthermore, the rules of the Directive will also affect national law regarding dispute resolution.

The setting up of this new legal framework will require a structured approach during the transposition supervision. Given the lack of national legislative or regulatory experience for certain parts of the Directive, it is of high importance that the Commission receives transposition documents clarifying how the Member States have given effect to the new provisions. In the absence of well-structured explanatory documents, the capacity for the Commission to oversee the transposition would be significantly undermined.

#### **Consistency and interrelation with other initiatives**

The directive remains a "minimum harmonisation" legal instrument and Member States may impose stricter and/or more detailed requirements on collecting societies than those foreseen in the Directive. It is important that the Commission be in a position to compare the resulting situations in the various Member States and thus properly carry out its task of overseeing the application of Union law. Moreover, a review clause is included in the directive and, in order to be able to collect all relevant information on the functioning of those rules, the Commission will need to be able to monitor the implementation of the directive from the outset.

Collecting societies must comply with the national requirements pursuant to the Services Directive (2006/123/EC). They should be free to provide their services across borders to represent rightholders resident or established in other Member States or grant licences to users resident or established in other Member States.

They must also respect the competition rules of the Treaty.

Therefore, in order to ensure that national rules transposing the proposed directive are consistent with the Services Directive and the competition rules, it is particularly important that the Commission can keep an overview and undertake an appropriate review of the national transposition, on the basis of the necessary explanatory documents.

### **Administrative burden**

The administrative burden of requesting explanatory documents from Member States regarding the Directive is not disproportionate considering the objectives of the Directive and the novelty of its subject matter. It is furthermore necessary for the Commission to be in a position to carry out its task of overseeing the application of Union law.

On the basis of the above, the Commission believes that the requirement to provide explanatory documents in the case of the proposed Directive is proportionate and does not go beyond what is necessary to achieve the objective to carry out efficiently the task of overseeing accurate transposition.