



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

**Consultation on Transposition of the Collective Management of Copyright
and Related Rights and Multi-territorial Licensing of Rights in Musical Works
for Online Use in the Internal Market**

19 December 2014

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A. Overview

1. Purpose

A new directive on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online users in the internal market was proposed at European level on 11 July, 2012. The Department of Jobs, Enterprise and Innovation undertook a consultation on the proposals in August 2012.

The directive is aimed at putting 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 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. 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 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.

There are more than 250 collecting societies in the EU that manage revenues of around €6 billion annually. The use of rights in the music sector accounts for about 80% of the total revenue collected by collecting societies.

The collective management of rights is also important for the licensing of online music service providers (music download services, streaming services). This is particularly the case for the rights of those who compose the music or write the lyrics. Service providers face serious difficulties when trying to obtain the licences necessary to launch online music services across the EU. This results in fewer online music services available to consumers across the EU and a slower incorporation of innovative services.

Following negotiations between Member States and the EU Institutions, in March 2014 the EU Parliament and EU Council adopted a Directive on the collective management of copyright and related rights, and multi-territorial licensing of rights in musical works for online use in the internal market, [Directive 2014/26/EU](#).¹

2. Main Aim of the Directive

The main objective of the Directive is to: (a) improve the standards of governance and transparency of collective management 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.

This should help to improve consumers' access to a variety of cultural goods and services. Commercial users will benefit from better functioning and more transparent collecting societies and, in the online environment, from a framework facilitating access to licences for the provision of music services throughout the EU. Rightholders will maximise their earnings by widely promoting their works. They will also exercise more control over collecting societies and will be able to exercise informed choices as to who manages their rights. Cultural diversity will be fostered by the availability of a large and diverse repertoire. In consequence, more content and more services will become accessible to European citizens, including across borders.

The creation of a Single Market for intellectual property rights has been high on the European political agenda in the last few years. This proposal is presented in the context of the Digital Agenda for Europe and the Europe 2020 Strategy aiming for smart, sustainable and inclusive growth. In its 'Single Market Act', the EU 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, possible EU-wide models of licensing, covering the territories of Member States. Also, in its Communication 'A Single Market for Intellectual Property Rights' the Commission announced that it would be proposing a legal framework for the collective management of copyright and related rights.

The Department of Jobs, Enterprise and Innovation must transpose the Directive by 10th April 2016 and this consultation exercise is being undertaken with 3 main objectives in mind:

1. To inform relevant stakeholders of the requirements of the Directive in advance of transposition;
2. To gather fuller information on the activities of Collective Management Organisations and Independent Management Entities operating in Ireland and which will be subject to the Directive; and
3. To ascertain views of stakeholders on aspects of the Directive that remain to be transposed into Irish law.

3. Overview of the Directive:

¹ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.084.01.0072.01.ENG

Title II sets down the requirements in relation to the entitlements of Rightholders and governs the administrative and organisational aspects of operation of Collective Management Organisations (CMOs). In that sense, it deals with matters such as the rights of members, rightholders, membership rules, structure of management arrangements e.g. providing for a general assembly of members, obligations on the persons who manage the business and a supervisory function. Requirements are also set out in relation to the revenue income from the use of copyrights or related rights, deductions therefrom and its investment and distribution. General principles on licensing are also provided for as well as certain arrangements under representation agreements. Rules on disclosure of information to members, rightholders and the general public together with annual transparency reports are proposed.

In relation to authors' online rights in musical works, Title III is aimed at facilitating multi-territorial licensing in these works. Title IV includes measures to ensure the enforcement of and compliance with the Directive.

In addition to ensuring that the Government has implemented the necessary legislation, CMOs will also need to ensure they are prepared to provide certain information to rightholders, members and the Government, and that their systems are in compliance with the requirements of the Directive by 10th April 2016.

B Consultation on Transposition of the Collective Management of Copyright and Related Rights and Multi-territorial Licensing of Rights in Musical Works for Online Use in the Internal Market

1. Submissions:

Submissions are invited on the transposition of the Directive into Irish law in general, and in particular on the issues raised in questions 1-26 outlined below.

Respondents are requested to make their submissions in writing and, where possible, by email. Submissions to this consultation should be sent to copyright@djei.ie or posted to:

Collective Rights Management Consultation
Copyright Section
Intellectual Property Unit
Department of Jobs, Enterprise and Innovation
23 Kildare Street
Dublin 2

The closing date for submissions is **Thursday 19th February 2015**. Any questions regarding the consultation can be emailed to copyright@djei.ie or contact Gráinne O'Carroll (01 6312333).

2. Confidentiality of Submissions:

Contributors are requested to note that it is the Department's policy to treat all submissions received as being in the public domain unless confidentiality is specifically requested. Respondents

are, therefore, requested to clearly identify material they consider to be confidential and to place same in a separate annex to their response, labelled “confidential”. Where responses are submitted by email, and those emails include automatically generated notices stating that the content of same should be treated as confidential, contributors should clarify in the body of their emails as to whether their comments are to be treated as confidential.

3. Relevant provisions of Freedom of Information Act 1997 (as amended):

Respondents’ attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Acts. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with any potentially affected respondent regarding information identified as sensitive before making a decision on any Freedom of Information request.

C. Questions:

1. Name of Person/Organisation:
2. Are you covered by the Directive, as a CMO, independent Management entity or rightholder? (Single choice answer)
 - CMO
 - Independent Management Entity
 - Rightholder:
 - member of a CMO – specify which CMO?
 - represented by Independent Management Entity – specify which IME?
 - not represented
 - Not covered by the Directive (please explain interest)

Questions Title II – Collective Management Organisations

3. Under **Article 5(2)**, what might constitute “objectively justified reasons” as a basis for a collective management organisation to refuse management of a rightholder’s repertoire?
4. Under **Article 5(3)**, what are your views on the range of activities that might constitute “non-commercial use”?
5. Under **Article 5(7)**, please outline your views on what form the documentary evidence should take that rightholders must give to collective management organisations to indicate their specific consents?
6. **Article 7(2)** allows for the application of provisions other than those referred to in article **7(1)** to rightholders that are not members of collective management organisations but have a direct legal relationship by law or by way of assignment, licence or any other contractual

arrangement with the CMO. What is your view of other provisions of the Directive that would be appropriate to extend to non-member rightholders?

7. In relation to **article 8(5)**, is there anything else that the General Assembly should decide?
8. **Article 8(7)** allows that, in the context of the meeting of the General Assembly, the Government may set down more detailed conditions on the use of the rights revenue and income arising from investment of rights revenue. Are there other conditions that should be considered for inclusion under this Article?
9. **Article 8(8)** sets down the need for the General Assembly to control the activities of the CMO by at least appointing or removing the auditor and approving the annual transparency report. Is this power currently vested in the General Assembly of the CMO? Are there any other rights and duties that Members should have in the General Assembly or alternative systems for the appointment and removal of the auditor?
10. Are there views on whether or not it is desirable to introduce restrictions on Members under **Article 8(9)**? If so, why and on the basis of criteria (a), (b) or both?
11. Are there circumstances in relation to **Article 8(10)** which would suggest that there is a need to impose restrictions on the ability of proxy holders to exercise voting rights?
12. Are there CMOs that do not operate on the basis of having an annual meeting of the General Assembly?
13. Are there any circumstances that might warrant legislating for the alternative situation outlined in **Article 8(11)**?
14. **Articles 9 and 10** are mandatory provisions regarding the supervisory function of the CMO and of the obligations of the persons who manage the business of the CMO. What aspects of articles 9 and 10 are not currently practised in your organisation?
15. **Article 13(6)** allows Member States to limit or determine the permitted uses of non-distributable amounts to fund wider social, education and cultural activities. If it was decided to exercise this option, are there uses that would be deemed appropriate?
16. Under **Article 16(1)**, what information would be required by both parties to facilitate the negotiation of licencing rights in good faith?
17. Under **Article 17**, what type of information would be relevant to ensure that users provide CMOs with the fullest information possible to discharge the obligations on the CMOs? Are there voluntary standards or best practise guidelines in use and are these sufficient to meet the requirements?

18. In relation to **Article 22**, is there information beyond what is included in the Annex that is desirable for inclusion in the annual transparency report?

Questions Title III – Multi-territorial Licensing of online rights in musical works by Collective Management Organisations

19. Under **Article 25(1)**, what might constitute the basis for a “duly justified request” so that a collective management organisation should comply with a request for information?
20. Under **Article 26(1)**, are there views on how a CMO which grants multi-territorial licences for online rights in musical works shall provide a mechanism for the correction of data referred to in Article 24(2) or information provided under Article 25?

What would be reasonable response time to a “duly justified request”?

21. If relevant, how do CMOs envisage that the monitoring, reporting and invoicing functions covered under **Article 27** will be carried out?
22. **Article 31** aims to ensure that all Rightholders will have access to multi-territorial licencing arrangements by 10th April 2017. If any CMOs do not intend to engage in multi-territorial licencing, either directly or through other CMOs, or will not have completed such negotiations by the 10 April 2017 deadline, how is it envisaged that they will facilitate rightholders seeking to withdraw their online rights in musical works as outlined in this article?

Questions Title IV – Enforcement Measures

23. Are you in favour of introducing an Alternative Dispute Resolution system under **Article 34(1)** and are there views on how such a system could operate?
24. Is it considered that existing systems for considering disputes under **Article 34(2)** are sufficient? Please elaborate.
25. **Article 35** envisages disputes between CMOs and users being submitted to a court or to an impartial dispute resolution body. Is it your view that the Courts are the appropriate body for referral of such disputes?
26. In relation to **Article 36**, are there views on the appropriate competent authority to oversee compliance in Ireland and in relation to the type of sanctions that might be applied?