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Committee on Legal Affairs

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DRAFT REPORT

on the 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 (COM(2012)0372 – C7-0183/2012 – 2012/0180(COD))

Committee on Legal Affairs

Rapporteur: Marielle Gallo

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2012)0372 – C7-0183/2012 – 2012/0180(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0372),
 - having regard to Article 294(2) and Article 50(2)(g) and to Articles 53 and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0183/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, the Luxembourg Chamber of Deputies, the Polish Sejm and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 12 December 2012¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on International Trade, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 44, 15.2.2013, p. 104.

Amendment 1
Proposal for a directive
Recital 2

Text proposed by the Commission

(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 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.*

Amendment

(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.

Or. fr

Amendment 2
Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural diversity into account in its action and to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. Collecting societies play an important role in the promotion and preservation of cultural diversity. Collecting societies enable 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.

Or. fr

**Amendment 3
Proposal for a directive
Recital 3**

Text proposed by the Commission

Amendment

(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 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

deleted

represent rightholders resident or established in other Member States or grant licences to users resident or established in other Member States.

Or. fr

Justification

The purpose of this Directive is to improve the way collecting societies work, make them more transparent and facilitate multi-territorial licensing. Consequently, there is no need for the text to address all matters falling within the scope of Directive 2006/123/EC.

Amendment 4
Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) This Directive is without prejudice to the right of Member States to draw up or adopt rules establishing a higher standard of good governance and transparency with regard to collecting societies than that stipulated in Title II of this Directive.

Or. fr

Justification

This is the first legislative proposal on this subject. In accordance with the subsidiarity principle, Member States must be at liberty to adopt stricter rules on the governance and transparency of collecting societies.

Amendment 5
Proposal for a directive
Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) This Directive is without prejudice to arrangements in the Member States concerning the management of rights, such as extended collective licensing or legal presumptions of representation or

transfer, provided that the arrangements in question are compatible with Union law and the international obligations of the Union and the Member States.

Or. fr

Amendment 6
Proposal for a directive
Recital 7 c (new)

Text proposed by the Commission

Amendment

(7c) This Directive is without prejudice to the freedom of association of employers and workers, their freedom to establish professional organisations and trade unions of their own choosing to defend their interests and the freedom to negotiate and conclude collective agreements in accordance with national law.

Or. fr

Amendment 7
Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

(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

deleted

basis of their nationality, place of residence or place of establishment when providing their management services.

Or. fr

Justification

The purpose of this Directive is to improve the way collecting societies work, make them more transparent and facilitate multi-territorial licensing. Consequently, there is no need for the text to address all matters falling within the scope of Directive 2006/123/EC.

Amendment 8 **Proposal for a directive** **Recital 9**

Text proposed by the Commission

(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,

Amendment

(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. ***The general meeting of members of collecting societies should determine the rights, categories of rights, works, types of works and other subject matter that can be managed. The decisions of the general meeting should take account of rightholders' individual freedom to dispose of their works and to freely choose the collecting society which will manage their rights, the specific features of the cultural sector concerned, and the necessary undertakings on the part of rightholders to enable the collecting society to perform its task effectively.*** Finally, this Directive should not prejudice the possibilities of rightholders to manage their rights individually, including for non-commercial uses.

this Directive should not prejudice the possibilities of rightholders to manage their rights individually, including for non-commercial uses.

Or. fr

Justification

The Directive must enshrine the principle of rightholders' individual freedom to choose the collecting society which will manage their rights. This freedom should not, however, lead to any further fragmentation of rights. Moreover, Title II of the Directive applies to all sectors, and consequently the specific features of the cultural sector concerned must be taken into account.

Amendment 9
Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The rightholders' authorisation is not required if collective rights management is mandatory under national law.

Or. fr

Justification

The domestic law of some countries imposes mandatory collective management of certain rights or categories of rights. The Directive must take these practices into account. In such cases, there can be no requirement for the rightholders' authorisation to be obtained.

Amendment 10
Proposal for a directive
Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) Rightholders should be able to 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. This prerogative should not be abused by rightholders or exercised in such a way as to undermine the effective fulfilment by the collecting society concerned of the tasks entrusted to it. 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. These collecting societies should inform rightholders of this option 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.

Or. fr

Justification

Rightholders' right to withdraw their rights should be enshrined in the Directive. However, as the ECJ has indicated, it is essential not to undermine the collecting societies' performance of their task, which is to protect the interests of all their members..

Amendment 11 **Proposal for a directive** **Recital 13**

Text proposed by the Commission

(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*

Amendment

(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. *In compliance with national law, the supervisory function should be exercised either by a special body, such as a supervisory board, or by the*

should be able to, if they consider this to be necessary, exclude the smallest collecting societies from having to organise such a supervisory function.

administrative board.

Or. fr

Amendment 12
Proposal for a directive
Recital 18

Text proposed by the Commission

(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.

Amendment

(18) Fair **and non-discriminatory** licensing **conditions and conditions for the use of rights** are particularly important to ensure that users can **use** the works and other protected subject-matter for which a collecting society represents rights and to ensure the remuneration of rightholders. **The Court of Justice has issued several rulings on remuneration for the use of rights, and consequently the relevant case law should be codified.** Collecting societies and users should conduct licensing negotiations in good faith. **Collecting societies should reply without delay to requests from users, indicating the information required in order to propose licensing conditions. Collecting societies should offer to grant licences within a reasonable period, which should be less than 90 days from the date on which the request was received or the date on which the information requested by the collecting society was received. The tariffs applied should be appropriate and calculated** on the basis of objective criteria **which reflect the nature, extent and value of the use of the rights in trade. The user concerned should be notified of these criteria without delay.**

Or. fr

Justification

The rapporteur proposes that the case law of the ECJ on remuneration (tariffs) for the use of protected rights should be codified. Furthermore, the rapporteur proposes that negotiations between the parties should be regulated by imposing deadlines with a view to speeding up and facilitating the granting of licences.

Amendment 13 **Proposal for a directive** **Recital 19 a (new)**

Text proposed by the Commission

Amendment

(19a) To make it easier for collecting societies to perform their task, users should be required to provide, within a reasonable period, information on the use of rights, categories of rights, works, categories of works or other subject matter which the collecting societies represent.

Or. fr

Amendment 14 **Proposal for a directive** **Recital 20**

Text proposed by the Commission

Amendment

(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,

(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. ***It should be possible for these reports to be published either as a constituent part of a document, for example the annual accounts, or***

Member States should be able to, if they consider this to be necessary, exclude the smallest collecting societies from certain transparency obligations.

separately. 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.

Or. fr

Amendment 15
Proposal for a directive
Recital 23

Text proposed by the Commission

(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.

Amendment

(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 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.

Or. fr

Amendment 16
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) The objectives and the effectiveness

Amendment

(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.

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, ***by terminating their authorisation to manage those rights or withdrawing those*** rights from the collecting society.

Or. fr

Justification

The practice of exclusive authorisation must be maintained.

Amendment 17 **Proposal for a directive** **Recital 33**

Text proposed by the Commission

(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.

Amendment

(33) In the interest of the online market, key obligations relating to ***multi-territorial licensing***, access to information, data handling, invoicing and payment capabilities, ***agreements between collecting societies on multi-territorial licensing, obligations to represent another collecting society and access to multi-territorial licensing*** must also apply to any entity ***directly or indirectly*** owned ***or controlled***, in whole or in part, by a collecting society and which offers or grants multi-territorial licences in online rights in musical works.

Amendment 18
Proposal for a directive
Recital 36

Text proposed by the Commission

(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.

Amendment

(36) It is necessary to ensure the effective enforcement of the provisions of 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 **and to collecting societies on whose behalf it manages rights under a representation agreement**. It is also appropriate to ensure that Member States have independent, impartial and effective dispute resolution bodies capable of settling, **within a reasonable period**, 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.

Amendment 19
Proposal for a directive
Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) Member States should not be required to set up new dispute resolution bodies or courts in order to bring dispute resolution procedures into line with this Directive.

Or. fr

Amendment 20
Proposal for a directive
Recital 37

Text proposed by the Commission

Amendment

(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.

(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, ***to control the activities of collecting societies*** 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, ***controlling the activities of collecting societies*** and ***imposing*** 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.

Or. fr

Amendment 21
Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) Member States should not be required to set up new competent authorities. Furthermore, Member States should be able to impose ex post or ex ante controls. The competent authorities should be impartial and have the necessary expertise and resources to successfully perform the tasks entrusted to them.

Or. fr

Justification

It is essential to respect the diversity of the Member States' customary practice in relation to supervising collecting societies' activities. However, the Directive will have no practical effect unless competent authorities are impartial and supervise collecting societies effectively.

Amendment 22
Proposal for a directive
Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) In order to ensure uniform conditions for the implementation of this Directive, and in particular Article 25(5a) thereof, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹.

¹ OJ L 55, 28.2.2011, p. 13.

Or. fr

Amendment 23
Proposal for a directive
Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) The examination procedure should be used for the adoption of the relevant implementing acts, given that those acts are of general scope.

Or. fr

Amendment 24
Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may decide that Title II and Title IV, with the exception of Articles 36 and 40, shall apply to collecting societies established outside the Union which engage in activities in their territory.

Or. fr

Justification

All collecting societies operating in the EU should be strictly regulated.

Amendment 25
Proposal for a directive
Article 2 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

The relevant provisions of Title II and Title IV, with the exception of Articles 36 and 40, shall apply to the activities of entities directly or indirectly controlled, or owned in whole or in part, by collecting societies if the activities in question fall within the scope of those Titles when they are carried out by a collecting society.

Or. fr

Justification

The practical impact of this Directive must be ensured. This amendment targets the activities of subsidiaries or other entities set up by collecting societies, whatever their legal status, including for example foundations. Where these entities engage in activities which fall within the scope of Titles II and IV, such as the investment of rights revenues, the relevant provisions of those titles should apply to them also.

Amendment 26
Proposal for a directive
Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Title III and Articles 36 and 40 of Title IV shall not apply to collecting societies which grant a broadcaster, on a voluntary basis, a multi-territorial licence for the online rights in musical works for services which are ancillary to the broadcaster's offline services.

Or. fr

Justification

The derogation currently provided under Article 33 should be inserted in Article 2. At present broadcasters are still subject to considerations of distance. They must be given the possibility of approaching a collecting society for online services which are ancillary to their offline services. Finally, the rapporteur notes that other EU initiatives should specifically address problematic issues in the audiovisual sector.

Amendment 27
Proposal for a directive
Article 3 – point a

Text proposed by the Commission

(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;

Amendment

(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:

(a) is owned or controlled by its members,
or

(b) is a non-profit-making body;

Or. fr

Justification

The legal status of collecting societies varies from one Member State to another. The definition should cover all eventualities.

Amendment 28
Proposal for a directive
Article 3 – point b

Text proposed by the Commission

(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;

Amendment

(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 *or by law*, is entitled to a share of the rights revenue from any of the rights managed by the collecting society;

Or. fr

Amendment 29
Proposal for a directive
Article 3 – point c

Text proposed by the Commission

(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;

Amendment

(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 **and admitted by it**;

Or. fr

Justification

A rightholder can fulfil the membership requirements of a collecting society without necessarily being a member of it.

Amendment 30
Proposal for a directive
Article 3 – point e

Text proposed by the Commission

(e) 'director' means any **individual managing director, any** member of the administrative board, the management or the supervisory board of a collecting society;

Amendment

(e) 'director' means any **natural person who, pursuant to national law or the statute of the collecting society, is:**

(a) a member of the administrative board or

(b) a member of the management or the supervisory board of a collecting society;

Or. fr

Justification

It is essential to accommodate two-tier systems, which have a supervisory board, as well as single-tier systems which have an administrative board.

Amendment 31
Proposal for a directive
Article 3 – point g

Text proposed by the Commission

(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;

Amendment

(g) 'management fees' means the amount charged ***or deducted*** by a collecting society ***from the rights revenue or from income derived from investments*** in order to cover the costs of its management of copyright or related rights services;

Or. fr

Amendment 32
Proposal for a directive
Article 3 – point i

Text proposed by the Commission

(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;

Amendment

(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, ***in other words, for purposes which are not comprised in his professional or commercial activity;***

Or. fr

Amendment 33
Proposal for a directive
Article 3 – point j

Text proposed by the Commission

(j) 'repertoire' means the works or other protected subject matter in which a collecting society manages rights;

Amendment

(j) 'repertoire' means the works, ***types of works*** or other protected subject matter in which a collecting society manages rights;

Or. fr

Amendment 34
Proposal for a directive
Article 3 – point m

Text proposed by the Commission

(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.

Amendment

(m) 'online music service' means **a** service within the meaning of Article 1(2) of Directive 98/34/EC which requires the licensing of musical works.

Or. fr

Amendment 35
Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Rightholders shall have the right to authorise a collecting society of their choice to manage the rights, categories of rights, **works** 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.

The general meeting of members of collecting societies shall, in accordance with Article 7, decide the rights, categories of rights, works, types of works and other protected subject matter that can be managed.

This decision shall take account of rightholders' individual freedom to dispose of their works and other subject matter and to freely choose the collecting society which will manage their rights, the specific features of the cultural sector concerned, and the necessary undertakings on the part of rightholders to enable the collecting society to perform its task effectively.

Justification

The Directive must enshrine the principle of rightholders' individual freedom to choose the collecting society which will manage their rights. This freedom cannot be absolute as other factors need to be taken into consideration such as the cultural sector concerned. Moreover, as indicated by the ECJ, collecting societies may require undertakings from rightholders when these are necessary for them to perform the tasks with which they have been entrusted.

Amendment 36
Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

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.***

Amendment

3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights, ***works*** 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, ***works*** 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 end of the financial year.

Amendment 37
Proposal for a directive
Article 5 – paragraph 3 – subparagraph 1 a (new)

*Text proposed by the Commission**Amendment*

Termination of the authorisation or withdrawal shall not affect the validity of the licences that have been granted by collecting societies before the date on

*which the termination of the
authorisation or withdrawal takes effect.*

Or. fr

Amendment 38
Proposal for a directive
Article 5 – paragraph 6

Text proposed by the Commission

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.

Amendment

6. Member States shall ensure that the rightholder gives express consent specifically for each right or category of rights, *work* 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.

Or. fr

Amendment 39
Proposal for a directive
Article 5 – paragraph 7 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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, *work* or type of works and other subject matter.

Or. fr

Amendment 40
Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

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***.

Amendment

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 ***proportional***.

Or. fr

Justification

Proportional representation of the different categories of rightholders is a guarantee of good administration in the interests of all parties.

Amendment 41
Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

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.

Amendment

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. ***If, because of its legal form, a collecting society does not have a general meeting of its members, Member States may decide that the competences set out in paragraphs 3 to 6 are assigned to the body exercising the supervisory function.***

Or. fr

Justification

Collecting societies may be set up under different legal forms and do not always have a general meeting.

Amendment 42
Proposal for a directive
Article 7 – paragraph 5 – point a

Text proposed by the Commission

(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;***

Amendment

(a) the ***general*** policy on the distribution of the amounts due to rightholders;

Or. fr

Justification

The general meeting of the members should define the guidelines. The daily management should be carried out by the other bodies.

Amendment 43
Proposal for a directive
Article 7 – paragraph 5 – point b

Text proposed by the Commission

(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;***

Amendment

(b) ***the general policy on*** the use of the amounts due to rightholders which cannot be distributed as set out in Article 12(2);

Or. fr

Justification

This is a provision that improves the transparency of collecting societies and should remain a prerogative of the general meeting of the members.

Amendment 44
Proposal for a directive
Article 7 – paragraph 5 – point c

Text proposed by the Commission

(c) the general investment policy,
including on granting loans or providing security or guarantee for loans, with regard to rights revenue;

Amendment

c) the general investment policy with regard to rights revenue ***and risk management***;

Or. fr

Amendment 45
Proposal for a directive
Article 7 – paragraph 5 – point d

Text proposed by the Commission

(d) the rules on deductions from rights revenue.

Amendment

(d) the rules on deductions from rights revenue ***and on income derived from its investment***.

Or. fr

Amendment 46
Proposal for a directive
Article 7 – paragraph 5 – point d a (new)

Text proposed by the Commission

(da) the approval of any acquisition of immovable property by the collecting society;

Amendment

Or. fr

Amendment 47
Proposal for a directive
Article 7 – paragraph 5 – point d b (new)

Text proposed by the Commission

(db) the approval of the setting-up of subsidiaries, acquisitions of other entities,

Amendment

acquisitions of shares or rights in other entities, mergers and alliances;

Or. fr

Amendment 48
Proposal for a directive
Article 7 – paragraph 5 – point d c (new)

Text proposed by the Commission

Amendment

(dc) the approval of the taking-out of loans, granting of loans and provision of security or guarantee for loans;

Or. fr

Amendment 49
Proposal for a directive
Article 7 – paragraph 5 – point d d (new)

Text proposed by the Commission

Amendment

(dd) determination of the rights, categories of rights, works, types of works and other protected subject matter that can be managed by the collecting society.

Or. fr

Amendment 50
Proposal for a directive
Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The decisions taken under paragraph 4 and paragraph 5 (da), (db) and (dc), may be delegated, on an individual or statutory basis, to the body exercising the supervisory function under Article 8.

Amendment 51
Proposal for a directive
Article 7 – paragraph 6

Text proposed by the Commission

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.**

Amendment

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.

Justification

The auditor has full independence in carrying out its duties and its report does not need to be approved by any body of the collecting society.

Amendment 52
Proposal for a directive
Article 7 – paragraph 8

Text proposed by the Commission

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.

Amendment

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, ***provided that there is no conflict of interest. The proxy holder may not be a natural or legal person who falls within another category of rightholders.***

Member States may allow collecting societies to limit the number of proxies given to the same natural or legal person.

Justification

It is necessary to allow representation but avoid conflicts of interest, which is why the rapporteur proposes not allowing proxies between different categories of rightholders. In the same vein, the number of proxies per person should be limited in order to prevent abuse.

Amendment 53
Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***proportional*** representation of the members of the collecting society in the body exercising this function in order to ensure their effective participation.

Or. fr

Justification

Proportional representation of the different categories of rightholders in the body exercising the supervisory function guarantees that it functions more transparently in the interests of all members.

Amendment 54
Proposal for a directive
Article 8 – paragraph 2 – point a

Text proposed by the Commission

(a) to approve any acquisition of immovable property by the collecting society;

Amendment

deleted

Or. fr

Amendment 55
Proposal for a directive
Article 8 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) to approve the setting-up of subsidiaries, acquisitions of other entities, acquisitions of shares or rights in other entities, mergers and alliances;

deleted

Or. fr

Amendment 56
Proposal for a directive
Article 8 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) to approve the taking-out of loans, granting of loans and provision of security or guarantee for loans.

deleted

Or. fr

Amendment 57
Proposal for a directive
Article 8 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) to exercise the powers delegated to it by the general meeting of members.

Or. fr

Justification

The general meeting is the body in which a large number of powers must be concentrated. To ensure the efficient operation of collecting societies and take into account the different types of organisation possible, some of these powers need to be delegated to the body referred to in Article 8.

Amendment 58
Proposal for a directive
Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The powers covered by this Article may be exercised, in accordance with national law, by an administrative board, the management or a supervisory board.

Or. fr

Justification

In Europe there are single-tier systems (with an administrative board) or two-tier systems (which have an administrative board and a supervisory board). The directive should allow these two models to co-exist.

Amendment 59
Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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:

deleted

(a) balance sheet total: EUR 350.000;

(b) net turnover: EUR 700 000;

(c) average number of employees during the financial year: ten.

Or. fr

Amendment 60
Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall ensure that the ***collecting societies guarantee that the*** persons who effectively manage the business of a collecting society and its directors manage the collecting society in a sound and prudent manner, using sound administrative and accounting procedures and internal control mechanisms.

The persons who effectively manage the business of a collecting society shall, within a reasonable space of time, take decisions concerning the conditions for granting licences and the conclusion of contracts.

Or. fr

Justification

It is necessary to speed up the decision-making process as regards granting licences. The rapporteur does not wish to impose a specific time limit, which could be very long or very short depending on the sector, but states that this period must be reasonable.

Legally, the obligation in paragraph 1 falls on the collecting societies.

Amendment 61
Proposal for a directive
Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

Member States shall ensure that the persons who effectively manage the business of a collecting society and its directors 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.

affecting the interests of members of the society.

Or. fr

Amendment 62
Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

1. Collecting societies shall be diligent in the collection **and** the management of rights revenue.

Amendment

1. Collecting societies shall be diligent in the collection, the management **and the distribution** of rights revenue.

Or. fr

Amendment 63
Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The collecting society shall manage the rights revenue and any income derived from its investment, **including interest, so as to keep it separate** from its own assets, the income derived from its management services or the income derived from any other activities.

Or. fr

Amendment 64
Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

3. **The collecting society shall not be allowed to use rights** revenue and any

Amendment

3. **Rights** revenue and any income derived from its investment, **including interest,**

income derived from its investment *for its own account, save that it may deduct its* management fees.

may only be used for the deduction of management fees *by a decision of the general meeting in accordance with Article 7(5)(d).*

Or. fr

Amendment 65
Proposal for a directive
Article 10 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The collecting society shall not be allowed to use rights revenue and any income derived from its investment, including interest, for its own account.

Or. fr

Amendment 66
Proposal for a directive
Article 10 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

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:

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 the best interests of members***, in accordance with the general investment policy referred to in Article 7(5)(c) and the following rules:

Or. fr

Amendment 67
Proposal for a directive
Article 10 – paragraph 4 – point a

Text proposed by the Commission

(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;***

Amendment

a) the assets shall be invested in ***such a way as to avoid*** any potential conflict of interest;

Or. fr

Amendment 68
Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***and any income derived from its investment*** referred to in ***points*** (e) ***and (f)*** of Article 19.

Or. fr

Amendment 69
Proposal for a directive
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The deductions should be reasonable in relation to the services provided by the collecting society to rightholders, including, where appropriate, the services referred to in paragraph 2, and should be established according to objective criteria.

Or. fr

Amendment 70
Proposal for a directive
Article 11 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The collecting society shall, prior to admitting a rightholder as a member, communicate its rules on deductions applicable to the rights revenue and any income derived from its investment.

Or. fr

Amendment 71
Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

Amendment

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.

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 **6** 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.

Or. fr

Justification

The deadline proposed by the Commission is very long. The rapporteur suggests that it should be shortened and notes that this new deadline may be up to 18 months from the date of

collection of the rights revenue.

Amendment 72
Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

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.**

Amendment

2. Where the amounts due to rightholders cannot be distributed, after **three** 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 **general meeting of members** shall decide on the use of the amounts concerned in accordance with Article 7(5)(b).

Or. fr

Amendment 73
Proposal for a directive
Article 12 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Rightholders have the right to claim reimbursement of these amounts within the time period and according to the procedures laid down by the applicable national law.

Amendment

Or. fr

Amendment 74
Proposal for a directive
Article 15 – title

Text proposed by the Commission

Amendment

Licensing

Licensing **and conditions on the use of rights**

Or. fr

Justification

Rightholders do not always grant licences for the use of protected works.

Amendment 75
Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. Collecting societies and users shall conduct negotiations for the licensing of rights in good faith. ***They shall provide*** all necessary information on their respective services.

Or. fr

Amendment 76
Proposal for a directive
Article 15 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Licensing terms shall be based on objective criteria, ***in particular in relation to tariffs.***

Licensing terms shall be based on objective ***and non-discriminatory*** criteria. ***Collecting societies providing licences for rights shall not be required to use as a precedent for other types of services, particularly online services, licensing terms agreed with a user, when the user is providing a new type of service which has been available to the public for less than three years.***

Justification

The rapporteur proposes moving Article 32 to Article 15(2) and extending its scope to cover all sectors as well as online and offline services. It is necessary to encourage the development of new services on the market.

Amendment 77

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

The tariffs applied should be appropriate and calculated on the basis of objective criteria which reflect, in particular, the extent, nature and value of the use of the rights in trade.

Justification

The rapporteur proposes that the ECJ case law should be codified.

Amendment 78

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

The user concerned should be notified without delay of the criteria used to calculate the tariffs referred to above.

Amendment

Amendment 79

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 2 b (new)

Text proposed by the Commission

Amendment

Collecting societies shall reply without delay to requests from users, indicating the information required in order to propose licensing conditions. Collecting societies shall offer to grant licences within a reasonable period, which shall be less than 90 days from the date on which the request was received or the date on which the information requested by the collecting society was received.

Or. fr

Justification

Whilst giving the Member States some flexibility on the matter, negotiations between collecting societies and users should be regulated.

Amendment 80
Proposal for a directive
Article 15 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

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.

deleted

Or. fr

Amendment 81
Proposal for a directive
Article 15 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that the competent authorities referred to in Article 39 monitor the compliance with the requirements set out in paragraphs 2 and 3.

Or. fr

Amendment 82
Proposal for a directive
Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Obligations on users

Member States shall ensure that users provide collecting societies, within a reasonable period, with all information on the use of rights, categories of rights, works, types of works or other subject matter which they represent and which are necessary for the collection and distribution of rights revenue.

Or. fr

Justification

It is necessary to impose an obligation on users to provide information to allow collecting societies to act in accordance with the requirements of the directive.

Amendment 83
Proposal for a directive
Article 16 – title

Text proposed by the Commission

Amendment

Information provided to **rightholders** on

Information provided to **members** on the

the management of their rights

management of their rights

Or. fr

Amendment 84
Proposal for a directive
Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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:

1. Member States shall ensure that a collecting society makes the following information available at the *duly motivated* 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:

Or. fr

Amendment 85
Proposal for a directive
Article 18 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(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.

deleted

Or. fr

Amendment 86
Proposal for a directive
Article 18 – paragraph 2

Text proposed by the Commission

Amendment

2. In addition, a collecting society shall

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.

make available at the *duly motivated* 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.

Or. fr

Amendment 87
Proposal for a directive
Article 19 – paragraph 1 – point d

Text proposed by the Commission

(d) *rules* on distribution of the amounts due to rightholders;

Amendment

(d) *general policy regarding* distribution of the amounts due to rightholders;

Or. fr

Amendment 88
Proposal for a directive
Article 19 – paragraph 1 – point e

Text proposed by the Commission

(e) rules on management fees;

Amendment

(e) rules on management fees *and withdrawals against income from the investment thereof*;

Or. fr

Amendment 89
Proposal for a directive
Article 19 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) general policy regarding utilisation of the amounts referred to in Article 12(2);

Or. fr

Amendment 90
Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. fr

Justification

See Article 40(1).

Amendment 91
Proposal for a directive
Article 22 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) the taking into account, without undue delay, of any changes to the information described in ***point*** (a);

(d) the taking into account, without undue delay, of any changes to the information described in ***points*** (a) ***and*** (b);

Or. fr

Amendment 92
Proposal for a directive
Article 23 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. A collecting society which grants multi-territorial licences for online rights in musical works shall provide to online music service providers, **members** and other collecting societies, by electronic means, up-to-date information allowing the identification of the online music repertoire it represents. This shall include :

(a) the musical works represented, including the names of the artists and the title of the recording;

(b) the rights represented in whole or in part and

(c) the Member States represented.

The final part of Article 23(1) of the Commission text becomes points (a) to (c) in Parliament's amendment.

Or. fr

Amendment 93
Proposal for a directive
Article 23 – paragraph 2

Text proposed by the Commission

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.

Amendment

deleted

Or. fr

Justification

The rapporteur is introducing a new article regarding personal data protection applying to processing operations arising from implementation of the directive.

Amendment 94
Proposal for a directive
Article 25 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission may lay down standard forms for providing the information referred to in paragraph 2 and standard formats for the invoices referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 41b(2).

Or. fr

Justification

It is necessary to give the Commission the possibility of adopting implementing acts to lay down standard forms for information regarding the use of rights and standard invoice formats for users.

Amendment 95
Proposal for a directive
Article 28 – paragraph 1

Text proposed by the Commission

Amendment

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

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.

non-discriminatory terms. ***The mandated collecting society shall issue licences under the same conditions as for its own repertoire.***

Or. fr

Justification

It is necessary to ensure non-discriminatory rights management by specifying that licences must be issued under exactly the same conditions.

Amendment 96
Proposal for a directive
Article 30

Text proposed by the Commission

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***

Amendment

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 ***terminate rights management authorisation or withdraw the rights, so as to*** 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.

them.

Or. fr

Justification

It is necessary to preserve the exclusive nature of contributions.

Amendment 97
Proposal for a directive
Article 31

Text proposed by the Commission

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.

Amendment

Articles 18(1)(a), 18(1)(c), **21**, 22, 23, 24, 25, 26, 27, **28, 29, 30** and 36 shall also apply to entities owned, in whole or in part, **or controlled directly or indirectly**, by a collecting society and which offer or grant multi-territorial licences for online rights in musical works.

Or. fr

Amendment 98
Proposal for a directive
Article 32

Text proposed by the Commission

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

Amendment

deleted

the public for less than three years.

Or. fr

Justification

Included in Article 15.

Amendment 99
Proposal for a directive
Article 33

Text proposed by the Commission

Amendment

Article 33

deleted

*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.

Or. fr

Justification

See amendment to Article 2

Amendment 100
Proposal for a directive
Article 34 – title

Text proposed by the Commission

Dispute resolution for members and rightholders

Amendment

Complaints procedures

Or. fr

Amendment 101
Proposal for a directive
Article 34 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall ensure that collecting societies make available to their members, rightholders **and collecting societies on whose behalf it manages rights under a representation agreement** 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.

Or. fr

Amendment 102
Proposal for a directive
Article 34 – paragraph 2

Text proposed by the Commission

2. Collecting societies shall respond in writing to complaints by members **or** rightholders. Where the collecting society refuses the complaint, it shall give reasons.

Amendment

2. Collecting societies shall respond in writing to complaints by members, rightholders **or collecting societies on whose behalf it manages rights under a representation agreement**. Where the collecting society refuses the complaint, it shall give reasons.

Amendment 103
Proposal for a directive
Article 34 – paragraph 3

Text proposed by the Commission

Amendment

3. Parties shall not be prevented from asserting and defending their rights by bringing an action before a court.

deleted

Amendment 104
Proposal for a directive
Article 35 – title

Text proposed by the Commission

Amendment

Dispute resolution for users

Alternative dispute resolution procedures

Amendment 105
Proposal for a directive
Article 35 – paragraph 1

Text proposed by the Commission

Amendment

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.**

1. . Member States **may provide** that disputes **attributable to the implementation of this new directive** between collecting societies, **members of collecting societies, rightholders or** users **shall** be submitted to **a rapid, independent and impartial alternative dispute resolution procedure.**

Amendment 106
Proposal for a directive
Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1. Member States shall ensure that, for the purposes of Title III, disputes involving the collecting company issuing or proposing to issue multiterritorial licences for online rights in musical works may be subject to an independent and impartial alternative disputes resolution procedure in the following cases:

(a) disputes with a present or future online music services provider regarding the application of Articles 22, 23 et 25;

(b) disputes with one or more rightholders regarding the application of Articles 22, 23, 24, 25, 26, 28, 29 et 30;

(c) disputes with another collecting company regarding the application of Articles 24, 25, 26, 28 et 29.

Amendment 107
Proposal for a directive
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Amendment 108
Proposal for a directive
Article 36

Text proposed by the Commission

Amendment

Article 36

deleted

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.

Amendment 109
Proposal for a directive
Article 36 a (new)

Text proposed by the Commission

Amendment

Article 36a

Dispute resolution

1. Member States shall ensure that disputes between collecting societies and users concerning existing or proposed licensing conditions, tariffs or any refusal to grant a licence for example can be submitted to a court, and if appropriate, to an independent and impartial dispute resolution body.

2. Articles 34 and 35 and the first paragraph of Article 36a shall be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.

Or. fr

Amendment 110
Proposal for a directive
Article 37 – title

Text proposed by the Commission

Amendment

Complaints

Monitoring implementation of the directive

Or. fr

Amendment 111
Proposal for a directive
Article 37 – paragraph 1

Text proposed by the Commission

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.***

Amendment

1. Member States shall ***designate authorities competent to ensure compliance by collecting societies established on their territory with the provisions of national law adopted under this Directive.***

Or. fr

Amendment 112
Proposal for a directive
Article 37 – paragraph 1 a (new)

Text proposed by the Commission

1a. 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.

Amendment

Or. fr

Amendment 113
Proposal for a directive
Article 37 – paragraph 1 b (new)

Text proposed by the Commission

1b. Member States shall provide that their respective competent authorities may take appropriate administrative sanctions and measures where national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied.

Amendment

The sanctions and measures shall be effective, proportionate and dissuasive.

Member States shall inform the Commission of these provisions by [date] at the latest and inform it without delay of any subsequent modification thereto.

Or. fr

Amendment 114
Proposal for a directive
Article 37 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. Member States shall inform the Commission of the name of the competent authorities referred to in Articles 15, 21, 37, 38 and 40 by [date].

Or. fr

Amendment 115
Proposal for a directive
Article 37 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. fr

Amendment 116
Proposal for a directive
Article 38

Text proposed by the Commission

Amendment

Article 38

deleted

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.

Or. fr

Amendment 117
Proposal for a directive
Article 39 – paragraph 1

Text proposed by the Commission

Amendment

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

Member States shall notify the Commission of the competent authorities referred to in Articles **15**, 21, 37, 38 and 40 by [date]. ***The Commission shall make that information available on its website.***

Or. fr

Amendment 118
Proposal for a directive
Article 39 – paragraph 2

Text proposed by the Commission

Amendment

The Commission shall make that information available on its website.

deleted

Or. fr

Amendment 119
Proposal for a directive
Article 40 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. Member States shall ensure that the competent authorities referred to in Article 39 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.

Or. fr

Amendment 120
Proposal for a directive
Article 41 a (new)

Text proposed by the Commission

Amendment

Article 41a

Protection of personal data

The processing of personal data resulting from the implementation of this directive shall be done in accordance with the provisions of European Parliament and Council Directive 95/46/EC of 24 October 1995 concerning the protection of individuals regarding the processing of personal data and on the free movement of such data¹.

¹ OJ L 281 23.11.1995, p. 31.

Or. fr

Amendment 121
Proposal for a directive
Article 41 b (new)

Text proposed by the Commission

Amendment

Article 41b

Comité

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Or. fr

Amendment 122
Proposal for a directive
Article 42 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

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.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**18** months after the entry into force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Or. fr