

AMENDMENTS 001-169

by the Committee on Legal Affairs

Report**Marielle Gallo****A7-0281/2013**

Copyright and related rights and multi-territorial licensing of rights in musical works for online uses

Proposal for a directive (COM(2012)0372 – C7-0183/2012 – 2012/0180(COD))

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***

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.

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

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. Collective management organisations play an important role in the promotion and preservation of cultural diversity, enabling 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 play 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.

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) When established in the Union,

deleted

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

Amendment 4

Proposal for a directive Recital 4

Text proposed by the Commission

(4) There are significant differences in the national rules governing the functioning of **collecting societies**, in particular as regards their transparency and accountability towards their members **and** rightholders. Beyond the difficulties non-domestic rightholders face when exercising their rights and the too often poor financial management of the revenues collected, problems with the functioning of **collecting societies** lead to inefficiencies in the exploitation of copyright and related rights across the internal market to the detriment of the members of **collecting societies**, rightholders and users alike. **These difficulties do not arise in the functioning of independent rights management service providers who act as agents for rightholders for the management of their rights on a commercial basis and in which rightholders do not exercise membership rights.**

Amendment 5

Proposal for a directive

Amendment

(4) There are significant differences in the national rules governing the functioning of **collective management organisations**, in particular as regards their transparency and accountability towards their members, rightholders **and users**. Beyond the difficulties non-domestic rightholders face when exercising their rights and the too often poor financial management of the revenues collected, problems with the functioning of **collective management organisations** lead to inefficiencies in the exploitation of copyright and related rights across the internal market to the detriment of the members of **collective management organisations**, rightholders and users alike.

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) It should be possible for Member States to decide that Titles II and IV, with the exception of Articles 35(1a) and 40, are to apply to collective management organisations which, although established outside of the Union, are engaged in activities in their territory.

Amendment 6

Proposal for a directive

Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) It should be possible for collective management organisations to choose to have certain of their activities carried out by subsidiaries or other entities that they own or control. In such cases, those provisions of Titles II and IV, with the exceptions of Articles 35(1a) and 40, that would be applicable if the relevant activity were carried out directly by a collective management organisation should be applied to the activities of those subsidiaries or other entities. Relevant provisions of Titles II and IV should also apply to entities that manage on a commercial basis within the Union, as their sole or main purpose, copyright or rights related to copyright on behalf of more than one rightholder.

Amendment 7

Proposal for a directive

Recital 7 c (new)

Text proposed by the Commission

Amendment

(7c) 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 with the international obligations of the Union and of the Member States.

Amendment 8

Proposal for a directive Recital 7 d (new)

Text proposed by the Commission

Amendment

(7d) 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 collective management organisations than that prescribed in Title II of this Directive.

Amendment 9

Proposal for a directive Recital 7 e (new)

Text proposed by the Commission

Amendment

(7e) This Directive is without prejudice to the legal form traditionally chosen by Member States for the operation of collective management organisations. Member States should not be required to change the legal form of those organisations. The provisions of this Directive are without prejudice to rightholders' freedom of association and their right to organise themselves. 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.

Amendment 10

Proposal for a directive

Recital 7 f (new)

Text proposed by the Commission

Amendment

(7f) For the purposes of this Directive, collective management organisations should cover not-for-profit organisations which are authorised by more than one rightholder to manage copyright or related rights as their main activity and which are owned or directly or indirectly controlled by rightholders. Individual companies which, in the normal course of their business, are engaged on a commercial basis in the production of content or the licensing of rights (such as music publishers, book publishers or music companies) should not be covered by this Directive.

Amendment 11

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

deleted

Amendment 12

Proposal for a directive

Recital 9

(9) Having the freedom **to provide and** to receive collective management services across national borders entails that rightholders are able to freely choose the **collecting society** for the management of their rights, such as public performance or broadcasting rights, or categories of rights, such as interactive communication to the public, provided the **collecting society** already manages such rights or categories of rights. **This implies that rightholders can easily withdraw their rights or categories of rights from a collecting society and entrust or transfer all or part of them to another collecting society or another entity irrespective of the Member State of residence or the nationality of either the collecting society or the rightholder. Collecting societies managing different types of works and other subject matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject matter. Collecting societies should inform rightholders of this choice and allow them to exercise it as easily as possible.** Finally, this Directive should not prejudice the possibilities of rightholders to manage their rights individually, including for non-commercial uses.

(9) Having the freedom to receive collective management services across national borders entails that rightholders are able to freely choose the **collective management organisation** 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 **collective management organisation** already manages such rights or categories of rights. **The general meeting of members of a collective management organisation should determine the rights, categories of rights, types of works and other subject matter that are to be managed by the collective management organisation. The decisions of the general meeting of members should take account of rightholders' individual freedom to dispose of their works and to freely choose the collective management organisation which will manage their rights. The general meeting of members should also take account of the specific features of the cultural sector concerned, such as the audiovisual sector, and the necessary undertakings on the part of rightholders to enable the collective management organisation 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.

Amendment 13

Proposal for a directive Recital 9 a (new)

(9a) Authorisation by the rightholders is not required if collective rights management is mandatory under national

law.

Amendment 14

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) Having the freedom to receive collective management services across national borders entails that rightholders should be able easily to withdraw their rights or categories of rights or types of works and other subject matter of their choice from a collective management organisation and to entrust or transfer all or part of them to another collective management organisation or another entity, irrespective of the Member State of residence or the nationality of either the collective management organisation or the rightholder. It should be possible for collective management organisations to establish rules aimed at preventing their members from misusing those rights by placing reasonable limits on the number of withdrawals from, and re-entries to, the collective management organisation concerned of the rights or categories of rights or types of works and other subject matter within a reasonable period. This should create an appropriate balance where the legitimate concerns of collective management organisations regarding the administrative burdens can be mitigated, while at the same time guaranteeing the freedom of the rightholder to manage his works as freely as possible. Collective management organisations 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. Such collective management organisations should inform rightholders of this option and allow them to exercise it as easily as

possible.

Amendment 15

Proposal for a directive Recital 11

Text proposed by the Commission

(11) **Collecting societies are expected to** act in the best interests of **their members**. It is therefore important to provide for systems which enable members of **collecting societies** to exercise their membership rights by participating in **the societies'** decision-making process. The representation of the different categories of members **in the decision-making process** should be fair and balanced. The effectiveness of the rules on the general meeting of members of **collecting societies** **may** be undermined if there were no provisions on how the general meeting should be run. Thus, it is necessary to ensure that the general meeting is convened regularly, and at least annually, and that the most important decisions in the **collecting society** are taken by the general meeting.

Amendment

(11) **Collective management organisations** **should** act in the best **collective** interests of **the rightholders they represent**. It is therefore important to provide for systems which enable **the** members of **a collective management organisation** to exercise their membership rights by participating in **an organisation's** decision-making process. The representation **in the decision-making process** of the different categories of members, **such as producers or performers**, should be fair and balanced. The effectiveness of the rules on the general meeting of members of **collective management organisations** **would** be undermined if there were no provisions on how the general meeting **of members** should be run. Thus, it is necessary to ensure that the general meeting **of members** is convened regularly, and at least annually, and that the most important decisions in the **collective management organisation** are taken by the general meeting **of members**.

Amendment 16

Proposal for a directive Recital 12

Text proposed by the Commission

(12) **Members of collecting societies** should be allowed to participate and vote in the general meeting; the exercise of these rights **may** only be subject to fair and proportionate restrictions. **The** exercise of voting rights should be made easy.

Amendment

(12) **All members of collective management organisations** should be allowed to participate and vote in the general meeting **of members**; the exercise of these rights **should** only be subject to fair and proportionate restrictions. **In some exceptional cases, collective management organisations have been established in the legal form of a foundation, hence they**

have no membership. In such cases, the powers of the general meeting of members should be exercised by the body entrusted with the supervisory function. The general meeting of members should, at least, have the power to set the framework of the activities of the management, particularly as regards the use of rights revenue by the collective management organisation. Collective management organisations should encourage the active participation of their members in the general meeting. However, the exercise of voting rights should be made easy for those members of the collective management organisation who do not attend the general meeting. Therefore, members should be allowed to participate and vote in the general meeting through a proxy. In addition, it should be possible for Member States to allow collective management organisations to introduce electronic voting.

Amendment 17

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

Amendment

(13) Members should be allowed to take part in **the continuous** monitoring of the management of **collective management organisations**. To this end, **such organisations** should **have** a supervisory function appropriate to their organisational structure and **should** allow members to be represented in the body that exercises this function. **Depending on the organisational structure of the collective management organisation, the supervisory function can be exercised by a separate body, such as a supervisory board, or by the directors of the administrative board who do not manage the business of the collective management organisation. The requirement of fair and balanced representation of members should not prevent the collective management**

organisation from appointing third parties to exercise the supervisory function.

Amendment 18

Proposal for a directive Recital 14

Text proposed by the Commission

(14) For reasons of sound management, a **collecting society's** senior management must be independent. Managers and executive directors should be required to declare **annually to the collecting society** whether there are conflicts between their interests and those of the **society**.

Amendment

(14) For reasons of sound management, a **collective management organisation's** senior management must be independent. Managers and executive directors should be required to declare, **prior to taking their position as manager or executive director, and thereafter on a yearly basis**, whether there are conflicts between their interests and those of the **collective management organisation**.

Amendment 19

Proposal for a directive Recital 15

Text proposed by the Commission

(15) **Collecting societies** collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that **society**, or another **society**. It is therefore important that **collecting societies** exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where **collecting societies** maintain proper records of membership, licences and use of works and other subject matter. Where appropriate, data should also be provided by rightholders and users and verified by the **collecting societies**. Amounts collected and due to rightholders should be managed separately from any own assets of the **collecting society** and, if they are invested, pending their distribution to rightholders, this should be carried out in accordance with the investment policy decided by the

Amendment

(15) **Collective management organisations** collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that **organisation**, or **to another organisation**. It is therefore important that **collective management organisations** exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where **collective management organisations** maintain proper records of membership, licences and use of works and other subject matter. Where appropriate, data should also be provided by rightholders and users and verified by the **collective management organisations**. Amounts collected and due to rightholders should be managed separately from any own assets of the **collective management organisation** and if

collecting societies' general meeting. In order to maintain a high level of protection for the rights of rightholders and to ensure that any income which may be derived from exploitation of their rights accrues for the benefit of rightholders, the investments made and held by the **collecting society** should be managed in accordance with criteria which would oblige the **collecting society** to act prudently, while allowing **the collecting society** to decide on the most secure and efficient investment policy. This should allow **the collecting society** to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and which does not unduly prejudice any rights revenue owed to rightholders. Moreover, in order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require **collecting societies** to undertake diligent and good faith reasonable measures to identify and locate the relevant rightholders. **It is also appropriate to provide for the approval by members of collecting societies of the rules governing any situation where, due to the lack of identified or located rightholders, amounts collected cannot be distributed.**

they are invested pending their distribution to rightholders, this should be carried out in accordance with the investment policy decided by the **collective management organisations'** general meeting **of members**. In order to maintain a high level of protection for the rights of rightholders and to ensure that any income which may be derived from exploitation of their rights accrues for the benefit of rightholders, the investments made and held by the **collective management organisation** should be managed in accordance with criteria which would oblige the **collective management organisation** to act prudently, while allowing **it** to decide on the most secure and efficient investment policy. This should allow **collective management organisations** to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and which does not unduly prejudice any rights revenue owed to rightholders. Moreover, in order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require **collective management organisations** to undertake diligent and good faith reasonable measures to identify and locate the relevant rightholders. **When rightholders cannot be identified or located after a diligent search, Member States should ensure that those amounts are managed separately and in an independent way, for example by the setting-up of a special fund by the Member State in which the money is collected, in order to fund cultural, social or educational services.**

Amendment 20

Proposal for a directive Recital 18

Text proposed by the Commission

(18) Fair **commercial terms in** licensing are particularly important to ensure that

Amendment

(18) Fair **and non-discriminatory** licensing **terms** are particularly important to ensure

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.

that users can license ***their rights*** and other subject-matter for which a ***collective management organisation*** represents rights and to ensure the remuneration of rightholders. ***The Court of Justice has delivered several rulings on remuneration for the use of rights, and consequently the relevant case-law should be codified.*** ***Collective management organisations*** and users should conduct licensing negotiations in good faith. ***Collective management organisations should reply without delay to requests from users, indicating the information required in order to propose licensing conditions. The tariffs should ensure the payment of an appropriate remuneration to rightholders for the use of their rights and should be calculated on the basis of objective criteria which reflect, inter alia, the nature and extent of, and should bear a reasonable relation to, the economic value of the use of the rights in trade. The user concerned should be notified of those criteria without delay.***

Amendment 21

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) In order to make it possible and easier for collective management organisations to perform their task, users and producers should be required to provide, within a reasonable period, information in their possession on the use of rights, categories of rights, categories of works or other subject matter which the collective management organisations represent.

Amendment 22

Proposal for a directive

Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) Collective management organisations should have the right to conclude representation agreements with other collective management organisations in the area of rights management. Collective management organisations should also have the right to conclude agreements on joint invoicing and the collection of rights revenues. Such agreements should comply with Article 101 of the Treaty on the Functioning of the European Union and should be based on equal, non-discriminatory and transparent conditions.

Amendment 23

Proposal for a directive

Recital 19

Text proposed by the Commission

Amendment

(19) To enhance the trust of rightholders, users and other ***collecting societies*** in the management services provided by ***collecting societies***, each ***collecting society*** should be required to set up specific transparency measures. Each ***collecting society*** should therefore inform individual rightholders of the amounts paid to them and the corresponding deductions made. ***They should also be required to provide sufficient information, including financial information, to the other collecting societies whose rights they manage through representation agreements.*** Each ***collecting society*** should also make public enough information to ensure that rightholders, users and other ***collecting societies*** understand how it is structured and how it carries out its activities. ***Collecting societies*** should in

(19) To enhance the trust of rightholders, users and other ***collective management organisations*** in the management services provided by ***collective management organisations***, each ***collective management organisation*** should be required to set up specific transparency measures. Each ***collective management organisation*** should therefore inform individual rightholders of the amounts paid to them and the corresponding deductions made. Each ***collective management organisation*** should also make public enough information to ensure that rightholders, users and other ***collective management organisations*** understand how it is structured and how it carries out its activities. ***Collective management organisations*** should in particular disclose to rightholders, users and other ***collective***

particular disclose to rightholders, users and other **collecting societies** the scope of their repertoire and their rules on fees, deductions and tariffs.

management organisations the scope of their repertoire and their rules on fees, deductions and tariffs.

Amendment 24

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

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

Amendment 25

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

(20) To ensure that rightholders are in a position to monitor the performance of their **collective management organisations** and compare their respective performance, **collective management societies** should make public an annual transparency report comprising comparable audited financial information specific to the activities of **collective management organisations**. **Collective management 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 those reports to be published either as a constituent part of a document, for example the annual accounts, or separately.**

Amendment 26

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.

Amendment 27

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by ***collecting societies***, in an increasingly cross-border context. It is ***therefore*** appropriate to provide for a set of rules coordinating basic conditions for the provision by ***collecting societies*** of multi-territorial collective licensing of authors' online rights in musical works. These provisions should ensure the necessary minimum quality of the cross-border services provided by collecting societies, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the

Amendment

(24) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by ***collective management organisations***, in an increasingly cross-border context. ***In order to allow the aggregation of a multiplicity of repertoires and to be able to grant multi-repertoire and multi-territorial licences, it should be possible for collective management organisations to conclude representation agreements with other collective management organisations for the coordination and efficiency of such licenses on equal and non-discriminatory terms.*** It is appropriate to provide for a set of rules coordinating

rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and thus reducing the number of licences a user needs to operate a multi-territorial service. These provisions should enable a **collecting society** to request another **collecting society** to represent its repertoire on a multi-territorial basis where it cannot fulfil the requirements itself. There should be an obligation on the requested **society**, provided that it aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting **society**. The development of legal online music services across the Union should also contribute to the fight against piracy.

basic conditions for the provision by **collective management organisations** of multi-territorial collective licensing of authors' online rights in musical works. These provisions should ensure the necessary minimum quality of the cross-border services provided by **collective management organisations**, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and thus reducing the number of licences a user needs to operate a multi-territorial service. These provisions should enable a **collective management organisation** to request another **collective management organisation** to represent its repertoire on a multi-territorial basis where it cannot fulfil the requirements itself. There should be an obligation on the requested **organisation**, provided that it aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting **organisation**. The development of legal online music services across the Union should also contribute to the fight against piracy.

Amendment 28

Proposal for a directive Recital 32

Text proposed by the Commission

(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-

Amendment

(32) The objectives and the effectiveness of the rules on multi-territorial licensing by **collective management organisations** would be largely jeopardised if rightholders were not able to exercise their rights by granting multi-territorial licences when the **collective management organisation** to which they have granted their rights does not grant or offer multi-territorial licences and does not want to mandate another **collective management organisation** to do so. For this reason, it is important, in such circumstances, to enable

territorial licences required by online service providers themselves or through another party or parties, ***without having to withdraw their*** rights from the ***collecting society***.

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 by withdrawing those*** rights from the ***collective management organisation***.

Amendment 29

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 collective management organisations on multi-territorial licensing, obligations to represent another collective management society and access to multi-territorial licensing*** must also apply to any entity ***which is directly or indirectly owned or controlled***, in whole or in part, by a ***collective management organisation*** and which offers or grants multi-territorial licences in online rights in musical works.

Amendment 30

Proposal for a directive Recital 35

Text proposed by the Commission

(35) Broadcasting organisations generally rely on a licence from a local ***collecting society***, for their own broadcasts of television and radio programmes which include musical works. This licence is often limited to broadcasting activities. A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online music rights for the purposes of

Amendment

(35) Broadcasting organisations generally rely on a ***blanket*** licence from a local ***collective management organisation*** for their own broadcasts of television and radio programmes which include musical works. This licence is often limited to broadcasting activities. A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online music

simultaneous and delayed transmission online of television and radio broadcasts, it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of musical works for online uses. Such derogation should be limited to what is necessary to allow access to television or radio programmes online and to material having a clear and subordinate relationship to the **original broadcast** produced for purposes such as supplementing, previewing or reviewing that television or radio programme. That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, or lead to restrictive practices, such as market or customer sharing, in breach of Articles 101 or 102 of the Treaty on the Functioning of the European Union.

rights for the purposes of simultaneous and delayed transmission online of television and radio broadcasts, it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of musical works for online uses. Such derogation should be limited to what is necessary to allow access to television or radio programmes online and to material having a clear and subordinate relationship to the **offline broadcasting services** produced for purposes such as supplementing, previewing or reviewing that television or radio programme. That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, or lead to restrictive practices, such as market or customer sharing, in breach of Articles 101 or 102 of the Treaty on the Functioning of the European Union.

Amendment 31

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

Amendment

(36) It is necessary to ensure the effective enforcement of the provisions of national law adopted pursuant to this Directive. **Collective management organisations** 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 **collective management organisation and to collective management organisations 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 **with expertise in intellectual property law**, capable of settling, **within a reasonable period**, commercial disputes between **collective**

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.

management organisations and users on existing or proposed licensing conditions as well as on situations in which the granting of a licence is refused. **Member States should ensure that their relevant national dispute resolution bodies have a minimum degree of training and experience in the field of intellectual property.** Furthermore, the effectiveness of the rules on the multi-territorial licensing of online rights in musical works could be undermined if disputes between **collective management organisations** 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 **collective management organisations**, on the one hand, and online music service providers, rightholders or other **collective management organisations**, on the other.

Amendment 32

Proposal for a directive Recital 37

Text proposed by the Commission

(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

Amendment

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against **collective management organisations** who do not comply with the law, **to control the activities of collective management organisations** 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 collective management organisations and imposing sanctions. The competent authorities should be impartial and should have the necessary expertise, particularly in**

with each other to this end.

intellectual property law, and resources to successfully perform the tasks entrusted to them. Member States should not be obliged to set up new competent authorities. 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. ***This Directive should remain neutral as regards the prior authorisation and supervision regimes in the Member States in so far as they are compatible with Union law and do not create an obstacle to the full application of this Directive. This Directive does not affect national authorisation regimes for collective management organisations in so far as they are compatible with Union law and do not create an obstacle to the full application of this Directive.***

Amendment 33

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 should have the necessary expertise and resources to successfully perform the tasks entrusted to them.

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 34

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 its Article 25(5a), 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.

Amendment 35

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.

Amendment 36

Proposal for a directive

Article 1

Text proposed by the Commission

Amendment

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

This Directive lays down requirements necessary to ensure the proper functioning of the management of copyright and related rights by ***collective management organisations***. It also lays down requirements for multi-territorial licensing by ***collective management organisations***

of authors' rights in musical works for online use.

Amendment 37

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 35(1a) and 40, are to apply to collective management organisations established outside the Union which engage in activities in their territory.

Amendment 38

Proposal for a directive

Article 2 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Without prejudice to Article 31, the relevant provisions of Title II and Title IV, with the exception of Articles 35(1a) and 40, shall apply to the activities of entities directly or indirectly controlled, or owned in whole or in part, by collective management organisations provided that those entities carry out an activity which, if carried out by the collective management organisation, would be subject to the provisions of those Titles.

Amendment 39

Proposal for a directive

Article 2 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

Articles 10, 11(1), 12, 16, 19 and 20 of Title II and Articles 35(1) and 37 of Title IV shall apply to entities that manage on a commercial basis within the Union, as their sole or main purpose, copyright or rights related to copyright on behalf of

more than one rightholder.

Amendment 40

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

Text proposed by the Commission

Amendment

Title III shall not apply to collective management organisations when they grant, on the basis of the voluntary aggregation of the required rights, in compliance with competition law rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union, 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, including previews, produced by or for the broadcaster.

Amendment 41

Proposal for a directive Article 3 – point a

Text proposed by the Commission

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 ***is owned or controlled by its members;***

(a) ***'collective management organisation'*** 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 ***for the collective benefit of the said rightholders,*** as its sole or main purpose and which ***fulfils at least one of the following criteria:***

(i) it is owned or controlled by its members, or

(ii) it is organised on a not-for-profit basis;

Amendment 42

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 **collective management organisation** 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 **collective management organisation**;

Amendment 43

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 **collective management organisation**' means a rightholder or an entity directly representing rightholders, including other **collective management organisations** and associations of rightholders, fulfilling the membership requirements of the **collective management organisation and admitted by it**;

Amendment 44

Proposal for a directive Article 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) 'general meeting of members' means the body within the collective management organisation in which members participate and exercise their voting rights, regardless of the legal form of the organisation;

Amendment 45

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:

(i) where national law or the statute of the collective management organisation provides for a unitary board, any member of the administrative board,

(ii) where national law or the statute of the collective management organisation provides for a dual board, any member of the management board or the supervisory board;

Justification

The amendment aims at clarifying the terminology for both single board CMOs and dual board CMOs

Amendment 46

**Proposal for a directive
Article 3 – point f**

Text proposed by the Commission

(f) 'rights revenue' means income collected by a **collecting society** on behalf of rightholders, whether from an exclusive right, a right to remuneration or a right to compensation;

Amendment

(f) 'rights revenue' means income collected by a **collective management organisation** on behalf of rightholders, whether from an exclusive right, a right to remuneration or a right to compensation, **including any income derived from the investment of rights revenue**;

Amendment 47

**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 **collective management organisation from the rights revenue or from income derived from the**

investment of such revenue in order to cover the costs of its management of copyright or related rights services;

Amendment 48

Proposal for a directive Article 3 – point g a (new)

Text proposed by the Commission

Amendment

(ga) 'deductions from rights revenue' means any deductions from rights revenue in the form of management fees or deductions to fund social, cultural or educational services;

Justification

It is important to be clear with the terminology around deductions to make sure that it includes both deductions for cultural purposes and for management fees.

Amendment 49

Proposal for a directive Article 3 – point i

Text proposed by the Commission

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;

(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 do not form part of his professional or commercial activity;**

Amendment 50

Proposal for a directive Article 3 – point j

Text proposed by the Commission

Amendment

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

(j) 'repertoire' means the works, **types of works** or other subject matter in which a **collective management organisation** manages rights;

Amendment 51

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.

Amendment 52

Proposal for a directive

Article 4

Text proposed by the Commission

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

Amendment

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

Amendment 53

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 **collective management organisation** 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 **collective management organisation** or the rightholder. **In accordance with Article 7, the general meeting of members of the collective management organisation shall**

decide the rights, categories of rights or types of works and other subject matter that can be managed by the collective management organisation.

The decision of the general meeting of members shall take account of rightholders' individual freedom to dispose of their works and other subject matter and to freely choose the collective management organisation which will manage their rights. It shall also take into account the specific features of the cultural sector concerned and the necessary undertakings on the part of rightholders to enable the collective management organisation to perform its task effectively.

Amendment 54

Proposal for a directive

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Rightholders shall have the right to grant licences for the non-commercial uses of the rights, categories of rights or types of works and other subject matter of their choice. Collective management organisations shall inform their members of this right and of the conditions attaching thereto.

Amendment 55

Proposal for a directive

Article 5 – paragraph 3

Text proposed by the Commission

Amendment

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

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 **collective management organisation**, or to withdraw from a **collective management organisation** any of the rights or categories of rights or types of works and other

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.

subject matter of their choice, for the Member States of their choice, upon serving reasonable notice not exceeding six months. The *collective management organisation* may decide that such termination or withdrawal *of rights from the repertoire* will take effect *in the middle or at the end of the financial year*, whichever is sooner after the expiry of the notice period.

By a decision of its general meeting of members, a collective management organisation may determine rules to prevent misuse by its members of the right to terminate the authorisation or to withdraw any of the rights or categories of rights or types of works and other subject matter of their choice by placing reasonable limits on the number of withdrawals from, and re-entries into, the collective management organisation of the rights or categories of rights or types of works and other subject matter within a reasonable period of time.

Amendment 56

Proposal for a directive Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The collective management organisation may decide that licences granted to users prior to termination or withdrawal of the rights or categories of rights or types of works and other subject matter of their choice will not be affected by that termination or withdrawal, if such licences do not exceed a period of one year after the date on which termination takes effect.

Amendment 57

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, **works** or type of works and other subject matter which that rightholder authorises the **collective management organisation** to manage and that any such consent is evidenced in documentary form.

Amendment 58

**Proposal for a directive
Article 6 – paragraph 2**

Text proposed by the Commission

2. **Collecting societies** shall accept rightholders as members if they fulfil the membership requirements. They may only refuse a request for membership on the basis of objective criteria. These criteria shall be included in the statute or the membership terms of the **collecting society** and shall be made publicly available.

Amendment

2. **Collective management organisations** shall accept rightholders as members if they fulfil the membership requirements. They may only refuse a request for membership on the basis of objective **and transparent** criteria. These criteria shall be included in the statute or the membership terms of the **collective management organisation** and shall be made publicly available. **Upon refusal, the rightholder must be given a clear explanation as to why the request for membership was refused.**

Amendment 59

**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 **collective management organisation** shall provide for appropriate and effective mechanisms of participation of **all** its members in the **collective management organisation's** decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.

Amendment 60

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

3. The general meeting shall approve any amendments to the statute and the membership terms of the **collecting society, where those terms are not regulated by the statute.**

Amendment

3. The general meeting **of members** shall approve any amendments to the statute and the membership terms of the **collective management organisation.**

Amendment 61

Proposal for a directive

Article 7 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 62

Proposal for a directive

Article 7 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

In a collective management organisation with a dual board system, the general meeting **of members may** decide **to delegate to the supervisory board decisions** on the appointment or dismissal of members of the management board or **on approval of their remuneration and other benefits.**

Amendment 63

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 64

**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

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

Amendment

(b) the use of the amounts ***collected which have not been distributed after three years from the end of the financial year, because the rightholders cannot be identified and located, except when Member States decide to use those amounts for cultural, social or educational services in a separate and independent way;***

Amendment 65

**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;***

Amendment 66

**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;***

Amendment 67

Proposal for a directive

Article 7 – paragraph 5 – point d a (new)

Text proposed by the Commission

Amendment

(da) the approval of any acquisition of immovable property by the collective management organisation;

Amendment 68

Proposal for a directive

Article 7 – paragraph 5 – point d b (new)

Text proposed by the Commission

Amendment

(db) the approval of the setting-up of subsidiaries, acquisition of other entities, acquisition of shares or rights in other entities, mergers and alliances;

Amendment 69

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 guarantees for loans;

Amendment 70

Proposal for a directive

Article 7 – paragraph 5 – point d d (new)

Text proposed by the Commission

Amendment

(dd) the determination of the rights, categories of rights or types of works and other subject matter that can be managed by the collective management organisation.

Amendment 71

Proposal for a directive

Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The general meeting of members may delegate the powers referred to in paragraph 4 and in points (da), (db) and (dc) of paragraph 5 to the body exercising the supervisory function on an individual or statutory basis.

Amendment 72

Proposal for a directive Article 7 – paragraph 6

Text proposed by the Commission

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 **and the auditor's report**.

6. The general meeting **of members** shall control the activities of the **collective management organisation** by, at least, deciding on the appointment and removal of the auditor and **having placed before it, together with the company's accounts,** the annual transparency report.

Where there are serious doubts concerning the financial conduct of the collective management organisation, the general meeting of members may decide to appoint an external auditor to carry out checks. The results of that audit shall be notified to the members of the collective management organisation and to the competent national authority.

Amendment 73

Proposal for a directive Article 7 – paragraph 7 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

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

All members of the collective management organisation shall have the right to participate and vote at the general meeting of members. Any restriction on the right of the members of the collective management organisation to participate and to exercise voting rights at the

general meeting of members shall be fair and proportionate and *shall* be based on the duration of *the* membership.

(a) duration of membership;

(b) *amounts received or due to a member in relation to the specified financial period.*

Amendment 74

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 *collective management organisation* shall have the right to appoint any other *member of that collective management organisation who falls within the same category of rightholders* as a proxy holder to attend and vote at the general meeting *of members* in his name. *Every member shall also have the right to appoint a professional, such as an agent or a lawyer, as a proxy holder provided that there is no conflict of interest.*

Each proxy shall be valid for a single general meeting of members. Member States may allow collective management organisations to limit the number of proxies given to the same natural or legal person.

Amendment 75

Proposal for a directive Article 7 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Member States may allow collective management organisations to introduce electronic voting.

Amendment 76

Proposal for a directive

Article 7 – paragraph 8 b (new)

Text proposed by the Commission

Amendment

8b. Member States may decide, where a collective management organisation is precluded by reason of its legal form from having a general meeting of members, that the powers listed in paragraphs 3 to 6 are to be exercised by the body exercising the supervisory function.

Amendment 77

Proposal for a directive

Article 7 – paragraph 8 c (new)

Text proposed by the Commission

Amendment

8c. Member States may decide that the powers of the general meeting of members may be exercised by an assembly of delegates elected at least every four years by the members of the collective management organisation, provided that:

(a) appropriate and effective participation of members in the collective management organisation's decision-making process is ensured; and

(b) the representation of the different categories of members in the assembly of delegates is fair and balanced.

The rules laid down in paragraphs 2 to 8a shall apply to the assembly of delegates mutatis mutandis.

Amendment 78

Proposal for a directive

Article 8 – paragraph 1

Text proposed by the Commission

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**

1. Member States shall ensure that the **collective management organisation has a body entrusted with** a supervisory function **which is** responsible for **continuous** monitoring **of** the activities and the performance of the duties of the persons

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*.

who manage the business of the organisation. There shall be fair and balanced representation of *the different categories of rightholders that are members of the collective management organisation* in the body exercising *the supervisory function*.

Each member of the body exercising the supervisory function shall make an annual individual statement on conflict of interest containing the information referred to in the second subparagraph of Article 9.

Amendment 79

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 80

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

Amendment 81

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

Amendment 82

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;

Amendment 83

Proposal for a directive

Article 8 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) to monitor the activities and the performance of the duties of the persons referred to in Article 9, including the implementation of the decisions of the general meeting of members and, in particular, of the general policies listed in points (a) to (d) of Article 7(5).

Amendment 84

Proposal for a directive

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

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 85

Proposal for a directive

Article 8 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The body entrusted with the supervisory function shall report on the exercise of its responsibilities to the general meeting of members.

Amendment 86

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.***

Amendment 87

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. Member States shall ensure that ***a collective management organisation puts in place and applies procedures obliging*** the persons who manage the business of ***the collective management organisation to do so*** in a sound and prudent manner, using sound administrative and accounting procedures and internal control mechanisms.

The persons who manage the business of a collective management organisation shall, within a reasonable period of time, take decisions concerning the conditions for granting licences and the conclusion of contracts.

Amendment 88

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 affecting the interests of members *of the society*.

Amendment

Member States shall ensure that *collective management organisations put in place and apply* procedures so as to avoid conflicts of interest. The *collective management organisation* shall have *in place* procedures to identify, manage, monitor and disclose conflicts of interest *or potential conflicts of interest* in order to prevent them from adversely affecting the *collective* interests of *the* members *and rightholders represented by the organisation*.

Amendment 89

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

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

Amendment

Those procedures shall include an annual individual statement by each of those persons *referred to in paragraph 1* to the body entrusted with the supervisory function, containing the following information:

Amendment 90

Proposal for a directive

Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Collective management organisations shall publish on their website the annual individual statements referred to in the second subparagraph of paragraph 2.

Amendment 91

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. **Collective management organisations** shall be diligent in the collection, the management **and distribution** of rights revenue.

Amendment 92

**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 **collective management organisation** shall manage the rights revenue and any income derived from its investment, **including interest, in such a way 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.

Amendment 93

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

Amendment

3. **Rights** revenue and any income derived from its investment, **including interest, may only be used for the deduction of** management fees **by a decision of the general meeting of members in accordance with point (d) of Article 7(5).**

Amendment 94

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

Text proposed by the Commission

Amendment

The collective management organisation shall not be allowed to use rights revenue or any income derived from its investment, including interest, for its own

account.

Amendment 95

Proposal for a directive

Article 10 – paragraph 4 – introductory part

Text proposed by the Commission

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:

Amendment

4. Where, pending the distribution of the amounts due to rightholders, the **collective management organisation** 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 point (c) of Article 7(5) and the following rules:

Amendment 96

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;

Amendment 97

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 **collective management organisation** with its members and rightholders shall specify deductions applicable to the rights revenue **and any income derived from its investment as** referred to in **points** (e) **and** (f) of Article 19.

Amendment 98

Proposal for a directive

Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Deductions should be reasonable in relation to the services provided by the collective management organisation to rightholders, including, where appropriate, the services referred to in paragraph 2, and should be established on the basis of objective criteria.

Amendment 99

Proposal for a directive

Article 11 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The collective management organisation shall, upon receiving a request for membership from a rightholder, communicate to that rightholder its rules on deductions from rights revenue and any income derived from its investment.

Amendment 100

Proposal for a directive

Article 11 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. Member States shall encourage collective management organisations to provide social, cultural and educational services to their members.

Amendment 101

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that the

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.

collective management organisation regularly and diligently distributes and pays amounts due to all rightholders it represents. The ***collective management organisation*** shall carry out such distribution and payments ***as soon as possible and*** no later than **three** months from the end of the financial year in which the rights revenue was collected.

Collective management organisations may carry out such distribution and payments after the expiry of the deadline referred to in the first subparagraph when objective reasons related in particular to reporting by users, the identification of rights, rightholders or the matching of information on works and other subject matter with rightholders prevent the ***collective management organisation*** from respecting this deadline. The ***collective management organisation*** shall carry out such distribution and payments accurately, ensuring equal treatment of all categories of rightholders.

Amendment 102

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***

Amendment

2. ***Collective management organisations shall take all necessary measures to identify and locate the rightholders. Member States shall ensure that, 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, ***those amounts are managed separately and in***

with Article 7(5)(b), without prejudice to the right of the rightholder to claim such amounts from the **collecting society**.

an independent way in order to fund cultural, social or educational services, without prejudice to the right of the rightholder to claim such amounts from the **collective management organisation in accordance with the laws of the Member States on the limitation of claims**.

Amendment 103

Proposal for a directive Article 12 – paragraph 3

Text proposed by the Commission

3. For the purposes of paragraph 2, measures to identify and locate rightholders shall include verifying membership records and making available to the members of the **collecting society** as well as to the public a list of works and other subject matter for which one or more rightholders have not been identified or located.

Amendment

3. For the purposes of paragraph 2, **the collective management organisation shall put in place effective** measures to identify and locate rightholders **while ensuring appropriate safeguards to deter fraud. Such measures** shall include verifying membership records and making available **regularly** to the members of the **collective management organisation** as well as to the public a list of works and other subject matter for which one or more rightholders have not been identified or located.

Amendment 104

Proposal for a directive Article 13

Text proposed by the Commission

Member States shall ensure that a **collecting society** does not discriminate between its members and any rightholders whose rights it manages under a representation agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of the amounts due to rightholders.

Amendment

Member States shall ensure that a **collective management organisation** does not discriminate between its members and any rightholders whose rights it manages under a representation agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of the amounts due to rightholders, **and deductions made for management fees as referred to in point (e) of Article 16**.

Amendment 105

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. ***The collecting society shall*** not apply deductions, other than management fees, to the rights revenue derived from the rights it manages on the basis of a representation agreement ***with another collecting society, unless the other collecting society expressly consents to such deductions.***

Amendment

1. ***Member States shall ensure that a collective management organisation does*** not apply deductions, other than ***reasonable*** management fees, to the rights revenue derived from the rights it manages on the basis of a representation agreement, ***or to any income arising from the investment of that rights revenue.***

Amendment 106

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

2. The ***collecting society*** shall regularly, diligently ***and*** accurately distribute and pay amounts due to other ***collecting societies.***

Amendment

2. The ***collective management organisation*** shall regularly, diligently, accurately ***and without undue delay*** distribute and pay amounts due to other ***collective management organisations.***

Amendment 107

Proposal for a directive Article 15 – title

Text proposed by the Commission

Licensing

Amendment

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

Amendment 108

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

1. ***Collective management organisations*** and users shall conduct negotiations for the licensing of rights in good faith. ***They shall provide*** all necessary information on their

respective services.

respective services.

Amendment 109

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

Licensing terms shall be based on objective ***and non-discriminatory*** criteria. ***Collective management organisations 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.***

Amendment 110

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

Rightholders shall receive appropriate remuneration for the use of the rights. Tariffs shall ***be calculated on the basis of objective criteria which reflect, inter alia, the nature and extent of, and a reasonable relation to,*** the economic value ***of the use*** of the rights in trade.

Amendment 111

Proposal for a directive

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

Text proposed by the Commission

Amendment

Collective management organisations shall inform the user concerned, on the basis of a substantiated decision, of the calculation of the tariffs referred to in the second subparagraph for the award or renewal of licences.

Amendment 112

Proposal for a directive

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Collective management organisations shall reply without delay to requests from users, indicating inter alia the information needed for the collective management organisation to provide a proposal for a licence. Upon receipt of that information, the collective management organisation shall promptly notify the user that it has received all the relevant information or specify what additional information it needs in order to provide a proposal for a licence. A collective management organisation shall either propose a license or give a reasoned statement of why it does not intend to licence a particular service within 90 days of receiving a request for a licence together with all the relevant information.

Justification

Users as well as rightholders should have a right to demand that CMOs are rapid when it comes to responding to demands for licensing and that they deliver a license. A CMO could however not be expected to deliver a proposal for a license without getting the information it needs from the user, which should in turn be entitled to clear information about what information the CMO will need. Also a CMO can not be forced to license a specific service as this would violate the rights of rightholders. The CMO should however have to issue a reasoned statement on why it has refused to license the service for the information of users, and pursuant to a new provision in article 16 rightholders represented by the CMO.

Amendment 113

Proposal for a directive

Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Obligations of users

1. Member States shall ensure that users comply with the deadlines and schedules set for payments as provided for in the

licences and agreements concluded with the collective management organisations in order for those organisations to be able to comply with their own deadlines for distribution to rightholders.

2. Member States shall ensure that users and producers provide the collective management organisations with which they have concluded a licence or an agreement, within an agreed time and in an agreed format, with the regular, precise and prompt information in their possession on the use of rights, in order for the collective management organisations to collect the rights revenues due to the rightholders they represent.

Amendment 114

**Proposal for a directive
Article 15 b (new)**

Text proposed by the Commission

Amendment

Article 15b

Representation agreements between collective management organisations

Collective management organisations shall have the right to conclude representation agreements with other collective management organisations in the area of rights management in order to facilitate, improve and simplify the procedures for licensing users, including for the purposes of single invoicing, under equal, non-discriminatory and transparent conditions, and to offer multi-territorial licenses, in particular, in areas other than those referred to in Title III.

Amendment 115

**Proposal for a directive
Article 16 – title**

Text proposed by the Commission

Information provided to rightholders on the management of their rights

Amendment

Information provided to **members and rightholders represented by a collective management organisation** on the management of their rights

Amendment 116

**Proposal for a directive
Article 16 – introductory part**

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that a **collective management organisation** makes available at least once a year, by electronic means, to each rightholder **to whom it makes a payment during the period concerned and to each member** it represents, **the following information**:

Amendment 117

**Proposal for a directive
Article 16 – point e**

Text proposed by the Commission

(e) the deductions made for management fees in the period concerned;

Amendment

(e) **the amount of the management fees in the period concerned**, the deductions made for management fees **in the period concerned and the investment income used for settlement of management fees and/or distributed to the members** in the period concerned;

Amendment 118

**Proposal for a directive
Article 16 – point h a (new)**

Text proposed by the Commission

Amendment

(ha) any reasoned statement issued pursuant to Article 15(2a) regarding the refusal of the collective management organisation to license a particular

service.

Amendment 119

Proposal for a directive

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The members of a collective management organisation must forward to the organisation, within a reasonable period, detailed information concerning the possible uses of the work, with a view to facilitating the smooth running of the organisation.

Amendment 120

Proposal for a directive

Article 16 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The collective management organisation shall make the information referred to in paragraph 1 available to rightholders it represents where requested to do so by those rightholders.

Amendment 121

Proposal for a directive

Article 18

Text proposed by the Commission

Amendment

Article 18

deleted

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

1. Member States shall ensure that a collecting society makes the following information available at the request of any rightholder whose rights it represents, any collecting society on whose behalf it manages rights under a representation agreement or any user, by electronic

means, without undue delay:

(a) standard licensing contracts and applicable tariffs;

(b) the repertoire and rights it manages and the Member States covered;

(c) a list of representation agreements it has entered into, including information on other collecting societies involved, the repertoire represented and the territorial scope covered by any such agreement.

2. In addition, a collecting society shall make available at the request of any rightholder or any collecting society, any information on works for which one or more rightholders have not been identified including, where available, the title of the work, the name of the author, the name of the publisher and any other relevant information available which could be necessary to identify the rightholders.

Amendment 122

Proposal for a directive

Article 19 – paragraph 1 – point c

Text proposed by the Commission

*(c) **the** list of the persons **referred to in Article 9**;*

Amendment

*(c) **a** list of the persons **who manage the business of the organisation**;*

Amendment 123

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;*

Amendment 124

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;***

Amendment 125

Proposal for a directive

Article 19 – paragraph 1 – point f

Text proposed by the Commission

(f) rules on deductions from rights revenue for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;

Amendment

(f) rules on deductions from rights revenue, ***including those that may be required by national law,*** for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;

Amendment 126

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);

Amendment 127

Proposal for a directive

Article 19 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) standard licensing contracts and applicable tariffs;

Amendment 128

Proposal for a directive

Article 19 – paragraph 1 – point g b (new)

Text proposed by the Commission

Amendment

***(gb) the repertoire and rights it manages
and the Member States covered;***

Amendment 129

**Proposal for a directive
Article 19 – paragraph 1 – point g c (new)**

Text proposed by the Commission

Amendment

***(gc) a list of the representation
agreements into which it has entered,
including information on other collective
management organisations involved, the
repertoire represented and the territorial
scope covered by any such agreement;***

Amendment 130

**Proposal for a directive
Article 19 – paragraph 1 – point g d (new)**

Text proposed by the Commission

Amendment

***(gd) 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 in order to identify the
rightholders.***

Amendment 131

**Proposal for a directive
Article 20 – paragraph 5**

Text proposed by the Commission

Amendment

***5. Member States may decide that points 1
(a), (f) and (g) of Annex I shall not apply
to a collecting society which on its
balance sheet date does not exceed the
limits of two of the three following
criteria:***

deleted

- (a) balance sheet total: EUR 350 000;*
- (b) net turnover: EUR 700 000;*
- (c) average number of employees during the financial year: ten.*

Amendment 132

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

Amendment 133

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);

Amendment 134

Proposal for a directive Article 23 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. A **collective management organisation** which grants multi-territorial licences for online rights in musical works shall provide to online music service providers, **members** and other **collective management organisations**, 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.

Amendment 135

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

Amendment 136

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

1. A **collecting society** which grants multi-territorial licences for online rights in musical works shall have procedures in place to enable rightholders **and other collecting societies** to object to the contents of the data referred to in Article 22(2) or to information provided under Article 23, where such rightholders **and collecting societies**, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the **collecting society** shall ensure that the data or the information are corrected without undue delay.

Amendment

1. A **collective management organisation** which grants multi-territorial licences for online rights in musical works shall have procedures in place to enable rightholders, **other collective management organisations and users** to object to the contents of the data referred to in Article 22(2) or to information provided under Article 23, where such rightholders, **collective management organisations and users**, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the **collective management organisation** shall ensure that the data or the information are corrected without undue delay.

Amendment 137

Proposal for a directive

Article 25 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission may lay down, by means of an implementing act, 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).

Amendment 138

Proposal for a directive

Article 28 – paragraph 2

Text proposed by the Commission

Amendment

2. The mandating ***collecting society*** shall inform ***its members*** of the duration of the agreement, the costs of the services provided by the other ***collecting society*** and any other significant terms of the agreement.

2. The mandating ***collective management organisation*** shall inform ***the rightholders*** of the duration of the agreement, the costs of the services provided by the other ***collective management organisation*** and any other significant terms of the agreement.

Amendment 139

Proposal for a directive

Article 28 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall promote, on the same conditions, where applicable, cooperation between collective management organisations in the fields of management, administration and the licensing of rights.

Amendment 140

Proposal for a directive

Article 29 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The requested **collecting society** shall accept such a request if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other **collecting societies**.

Amendment

The requested **collective management organisation** shall accept such a request **within one month after receipt thereof**, if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other **collective management organisations**.

Amendment 141

Proposal for a directive

Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The requested collective management organisation shall offer and manage the repertoire of the requesting collective management organisation for the purpose of multi-territorial licensing on the same conditions as those applicable to its own repertoire.

Amendment 142

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

Amendment

Member States shall ensure that where a **collective management organisation** does not grant or offer to grant multi-territorial licences in online rights in musical works or does not allow another **collective management organisation** to represent those rights for such purpose by one year after the transposition date of this Directive, rightholders who have authorised that **collective management organisation** to represent their online rights in musical works can **terminate the**

themselves or through any *collecting society* complying with the provisions of this Title or any other party they authorise. ***The collecting society which does not grant or offer to grant multi-territorial licences shall continue to grant or offer to grant licences for the online rights in musical works of such rightholders for their use in the territory of the Member State where the collecting society is established, unless the rightholders terminate their authorisation to manage them.***

rights management authorisation or withdraw the rights, with a view to granting multi-territorial licences in their online rights in musical works themselves or through any ***collective management organisation*** complying with the provisions of this Title or any other party they authorise.

Amendment 143

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 ***21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 35(1a)*** shall also apply to entities owned, in whole or in part, ***or controlled directly or indirectly, by a collective management organisation*** and which offer or grant multi-territorial licences for online rights in musical works.

Amendment 144

Proposal for a directive Article 34 – title

Text proposed by the Commission

Dispute resolution for members and rightholders

Amendment

Complaints procedures

Amendment 145

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

Amendment

1. Member States shall ensure that ***collective management organisations*** make available to their members, rightholders ***and collective management***

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.

organisations 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.

Amendment 146

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. ***Collective management organisations*** shall respond in writing to complaints by members, rightholders ***or collective management organisations on whose behalf it manages rights under a representation agreement***. Where the ***collective management organisation*** refuses the complaint, it shall give reasons.

Amendment 147

Proposal for a directive Article 34 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Amendment 148

Proposal for a directive Article 35 – title

Text proposed by the Commission

Dispute resolution for users

Amendment

Alternative dispute resolution procedures

Amendment 149

Proposal for a directive Article 35 – paragraph 1

Text proposed by the Commission

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***.

Amendment

1. Member States ***may provide*** that disputes between ***collective management organisations, members of collective management organisations, rightholders or users regarding the provisions of national law adopted pursuant to the requirements of this Directive are to*** be submitted to ***a rapid, independent and impartial alternative dispute resolution procedure***.

Amendment 150

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

Text proposed by the Commission

Amendment

1a. Member States shall ensure that, for the purposes of Title III, disputes involving the issue or proposed issue by collective management organisations of multiterritorial licences for online rights in musical works can 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 15, 22, 23, 24 and 25;

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

(c) disputes with another collective management organisation regarding the application of Articles 24, 25, 26, 28 and 29.

Amendment 151

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 152

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 153

Proposal for a directive

Article 36 a (new) – paragraph 1

Text proposed by the Commission

Amendment

Article 36a

Dispute resolution

1. Member States shall ensure that disputes between collective management organisations and users concerning, inter alia, existing or proposed licensing conditions, tariffs, the calculation of tariffs or any refusal to grant or renew a licence can be submitted to a court or to an independent and impartial dispute resolution body with expertise in intellectual property law.

Amendment 154

Proposal for a directive

Article 36 a (new) – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall provide in their specific dispute resolution legislation that the users are to deposit an interim tariff in an escrow account until the final and irrevocable decision is taken by a court or dispute resolution body in relation to the disputed tariff.

Amendment 155

Proposal for a directive

Article 36 a (new) – paragraph 3

Text proposed by the Commission

Amendment

3. Articles 34, 35 and Article 36a(1) shall be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.

Amendment 156

Proposal for a directive Article 37 – title

Text proposed by the Commission

Complaints

Amendment

Compliance with this Directive

Amendment 157

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 collective management organisations established on their territory with the provisions of national law adopted under this Directive.***

Amendment 158

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

Text proposed by the Commission

Amendment

1a. Member States shall ensure that procedures are set up enabling members of a collective management organisation, rightholders, collective management organisations covered by this Directive, users and other interested parties to submit complaints to the competent authorities with regard to the activities of collective management organisations which are covered by this Directive.

Amendment 159

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

Text proposed by the Commission

Amendment

1b. Member States shall provide that their respective competent authorities impose appropriate administrative sanctions and take appropriate measures where national provisions adopted in 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.

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

Amendment 160

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 and 40 by [date].

Amendment 161

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

Amendment 162

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.

Amendment 163

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, and 40 by [date]. ***The Commission shall make that information available on its website.***

Amendment 164

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

Amendment 165

Proposal for a directive Article 40 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 166

Proposal for a directive Article 41

Text proposed by the Commission

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

Amendment

By [5 years after the end of the transposition period (date)], the Commission shall assess the application of this Directive and report to the European Parliament and to the Council on the application of this Directive, including its impact on the development of cross-border services and on cultural diversity, and, if necessary, on the need to review it. ***The report shall also be used to assess the financial impact of implementing this Directive and the possibility of introducing related funding for collective management organisations, if necessary.*** The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.

Amendment 167

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 Directive 95/46/EC of the European Parliament and of the Council 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.

Amendment 168

**Proposal for a directive
Article 41 b (new)**

Text proposed by the Commission

Amendment

Article 41b

Committee procedure

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.

Amendment 169

**Proposal for a directive
Article 42 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

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.

Amendment

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.