

29.1.2014

A7-0281/170

Amendment 170

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on behalf of the Committee on Legal Affairs

Report

A7-0281/2013

Marielle Gallo

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

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

Proposal for a directive

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AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

DIRECTIVE 2014/.../EU

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50(1), 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

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Acting in accordance with the ordinary legislative procedure²,

Whereas:

¹ OJ C 44, 15.2.2013, p. 104.

² Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of

- (1) The Union **Directives** which have been adopted in the area of copyright and related rights already provide a high level of protection for rightholders and thereby **■** a framework **wherein** the exploitation of content protected by those rights can take place. **Those Directives** contribute to the development and maintenance of creativity. In an internal market where competition is not distorted, protecting innovation and intellectual creation also encourages investment in innovative services and products.
- (2) The dissemination of content which is protected by copyright and related rights **■** , including books, audio-visual productions and recorded music, **and services linked thereto, requires** the licensing of rights by different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the **rightholder** to choose between the individual or collective management of **his** rights, **unless Member States provide otherwise, in compliance with Union law and the international obligations of the Union and its Member States**. Management of copyright and related rights includes granting of licences to users, auditing of users, monitoring of the use of rights, enforcement of copyright and related rights, collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. **Collective management organisations** enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets.
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- (2a) *Article 167 of the Treaty on the Functioning of the European Union (TFEU) 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, and should continue to play, an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their rightholders and the public.*
- (3) When established in the Union, *collective management organisations should be able to enjoy the freedoms provided by the Treaties when representing* rightholders who are resident or established in other Member States or *granting* licences to users who are resident or established in other Member States.

- (4) There are significant differences in the national rules governing the functioning of *collective management organisations*, in particular as regards their transparency and accountability *to* their members and rightholders. *This has led in a number of instances to* difficulties, *in particular for non-domestic* rightholders *when they seek to exercise* their rights, and *to* 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. ■
- (5) The need to improve the functioning of *collective management organisations* has already been *identified* in ■ Commission Recommendation 2005/737/EC¹. *That Recommendation* set out a number of principles, such as the freedom of rightholders to choose their *collective management organisations*, ■ equal treatment of categories of rightholders and ■ equitable distribution of royalties. It called on *collective management organisations* to provide users with sufficient information on tariffs and repertoire in advance of ■ negotiations *between them*. *It also* contained recommendations on accountability, rightholder representation in the decision-making bodies of *collective management organisations* and dispute resolution. *However, the* Recommendation ■ has been unevenly followed.

¹ *Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services* (OJ L 276, 21.10.2005, p. 54).

- (6) The protection of the interests of the members of *collective management organisations*, rightholders and third parties requires that the laws of the Member States relating to copyright management and multi-territorial licensing *of* online rights in musical works *should* be coordinated with a view to having equivalent safeguards throughout the Union. Therefore, this Directive should have as a legal base Article *50(1) TFEU*.
- (7) The aim of this Directive is to provide for coordination of national rules concerning access to the activity of managing copyright and related rights by *collective management organisations*, the modalities for their governance, and their supervisory framework, and it should therefore also have as a legal base Article 53(1) TFEU. In addition, since it is concerned with a sector offering services across the Union, this Directive should have as a legal base Article 62 TFEU
- (7a) *The aim of this Directive is to lay down requirements applicable to collective management organisations, in order to ensure a high standard of governance, financial management, transparency and reporting. This should not, however, prevent Member States from maintaining or imposing, in relation to collective management organisations established in their territories, more stringent standards than those laid down in Title II of this Directive, provided that such more stringent standards are compatible with Union law.***

- (7b) Nothing in this Directive should preclude a Member State from applying the same or similar provisions to collective management organisations which are established outside the Union but which operate in that Member State.***
- (7c) Nothing in this Directive should preclude collective management organisations from concluding representation agreements with other collective management organisations – in compliance with the competition rules laid down by Articles 101 and 102 TFEU – in the area of rights management in order to facilitate, improve and simplify the procedures for granting licences to users, including for the purposes of single invoicing, under equal, non-discriminatory and transparent conditions, and to offer multi-territorial licences also in areas other than those referred to in Title III of this Directive.***

- (7d) *This Directive, while applying to all collective management organisations, with the exception of Title III, which applies only to collective management organisations managing authors' rights in musical works for online use on a multi-territorial basis, does not interfere with arrangements concerning the management of rights in the Member States such as individual management, the extended effect of an agreement between a representative collective management organisation and a user, i.e. extended collective licensing, mandatory collective management, legal presumptions of representation and transfer of rights to collective management organisations.*
- (7e) *This Directive does not affect the possibility for Member States to determine by law, by regulation or by any other specific mechanism to that effect, rightholders' fair compensation for exceptions or limitations to the reproduction right provided for in Directive 2001/29/EC of the European Parliament and of the Council¹ and rightholders' remuneration for derogations from the exclusive right in respect of public lending provided for in Directive 2006/115/EC of the European Parliament and of the Council² applicable in their territory as well as the conditions applicable for their collection.*

¹ *Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).*

² *Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28).*

(7f) *This Directive does not require collective management organisations to adopt a specific legal form. In practice, those organisations operate in various legal forms such as associations, cooperatives or limited liability companies, which are controlled or owned by holders of copyright and related rights or by entities representing such rightholders. In some exceptional cases, however, due to the legal form of a collective management organisation, the element of ownership or control is not present. This is, for example, the case for foundations, which do not have members. None the less, the provisions of this Directive should also apply to those organisations. Similarly, Member States should take appropriate measures to prevent the circumvention of the obligations under this Directive through the choice of legal form. It should be noted that entities which represent rightholders, and which are members of collective management organisations may be other collective management organisations, associations of rightholders, unions or other organisations.*

- (7g) *Rightholders should be free to entrust the management of their rights to independent management entities. Such independent management entities are commercial entities which differ from collective management organisations inter alia because they are not owned or controlled by rightholders. However, to the extent that such independent management entities carry out the same activities as collective management organisations, they should be obliged to provide certain information to the rightholders they represent, collective management organisations, users and the public.***
- (7h) *Audio-visual producers, record producers and broadcasters license their own rights, in certain cases alongside rights that have been transferred to them by, for instance, performers, on the basis of individually negotiated agreements, and act in their own interest. Book, music or newspaper publishers license rights that have been transferred to them on the basis of individually negotiated agreements and act in their own interest. Therefore audio-visual producers, record producers, broadcasters and publishers should not be regarded as 'independent management entities'. Furthermore, authors' and performers' managers and agents acting as intermediaries and representing rightholders in their relations with collective management organisations should not be regarded as 'independent management entities' since they do not manage rights in the sense of setting tariffs, granting licences or collecting money from users.***

- (7i) *Collective management organisations should be free to choose to have certain of their activities, such as the invoicing of users or the distribution of amounts due to rightholders, carried out by subsidiaries or by other entities that they control. In such cases, those provisions of this Directive that would be applicable if the relevant activity were carried out directly by a collective management organisation should be applicable to the activities of the subsidiaries or other entities.*
- (8) In order to ensure that holders of copyright and related rights can *benefit fully* 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 statute of *collective management organisations*. Moreover, *a collective management organisation* should not, when providing its management services, discriminate directly or indirectly between rightholders on the basis of their nationality, place of residence or place of establishment.

- (9) Having regard to *the freedoms* established in the TFEU, collective management of *copyright and related rights* should entail *a rightholder being* able freely to *choose a collective management organisation* for the management of *his* rights, *whether those rights be rights of communication to the public or reproduction rights, or categories of rights related to forms of exploitation such as broadcasting, theatrical exhibition or reproduction for online distribution*, provided *that the collective management organisation that the rightholder wishes to choose* already manages such rights or categories of rights.

The rights, categories of rights or types of works and other subject-matter managed by the collective management organisation should be determined by the general assembly of members of that organisation if they are not already determined in its statute or prescribed by law. It is important that the rights and categories of rights be determined in a manner that maintains a balance between the freedom of rightholders to dispose of their works and other subject-matter and the ability of the organisation to manage the rights effectively, taking into account in particular the category of rights managed by the organisation and the creative sector in which it operates. Taking due account of that balance, rightholders should be able easily to withdraw such rights or categories of rights from a collective management organisation and to manage those rights individually or to entrust or transfer the management of all or part of them to another collective management organisation or another entity, irrespective of the Member State of nationality, residence or establishment of the collective management organisation, the other entity or the rightholder. Where a Member State, in compliance with Union law and the international obligations of the Union and its Member States, provides for mandatory collective management of rights, rightholders' choice would be limited to other collective management organisations.

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. *As far as non-commercial uses are concerned, Member States should provide that collective management organisations take the necessary*

steps to ensure that their rightholders can exercise the right to grant licences for such uses. Such steps should include, inter alia, a decision by the collective management organisation on the conditions attached to the exercise of that right as well as the provision to their members of information on those conditions. Collective management organisations should inform rightholders of their choices and allow them to exercise the rights related to those choices as easily as possible. Rightholders who have already authorised the collective management organisation may be informed via the website of the organisation. A requirement for the consent of rightholders in the authorisation to the management of each right, category of rights or type of works and other subject-matter should not prevent the rightholders from accepting proposed subsequent amendments to that authorisation by tacit agreement in accordance with the conditions set out in national law. Neither contractual arrangements according to which a termination or withdrawal by rightholders has an immediate effect on licences granted prior to such termination or withdrawal, nor contractual arrangements according to which such licences remain unaffected for a certain period of time after such termination or withdrawal, are, as such, precluded by this Directive. Such arrangements should not, however, create an obstacle to the full application of this Directive. This Directive should not prejudice the possibility for rightholders to manage their rights individually, including for non-commercial uses.

- (10) Membership of *collective management organisations* should be based on objective, *transparent* and non-discriminatory criteria, including as regards publishers who by virtue of an agreement on the exploitation of rights ■ are entitled to a share of the income from the rights managed by *collective management organisations* and to collect such income from the *collective management organisations*. *Those criteria should not oblige collective management organisations to accept members the management of whose rights, categories of rights or types of works or other subject-matter falls outside their scope of activity. The records kept by a collective management organisation should allow for the identification and location of its members and rightholders whose rights the organisation represents on the basis of authorisations given by those rightholders.*

- (10a) *In order to protect those rightholders whose rights are directly represented by the collective management organisation but who do not fulfil its membership requirements, it is appropriate to require that certain provisions of this Directive relating to members be also applied to such rightholders. Member States should be able also to provide such rightholders with rights to participate in the decision-making process of the collective management organisation.*
- (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 the organisation's decision-making process. Some collective management organisations have different categories of members, which may represent different types of rightholders, such as producers and performers. The representation in the decision-making process of those different categories of members should be fair and balanced. The effectiveness of the rules on the general assembly of members of collective management organisations would be undermined if there were no provisions on how the general assembly should be run. Thus, it is necessary to ensure that the general assembly is convened regularly, and at least annually, and that the most important decisions in the collective management organisation are taken by the general assembly.*

- (12) *All members of collective management organisations should be allowed to participate and vote in the general assembly of members. The exercise of those rights should be subject only to fair and proportionate restrictions. In some exceptional cases, collective management organisations are established in the legal form of a foundation, and thus have no members. In such cases, the powers of the general assembly of members should be exercised by the body entrusted with the supervisory function. Where collective management organisations have entities representing rightholders as their members, as may be the case where a collective management organisation is a limited liability company and its members are associations of rightholders, Member States should be able to provide that some or all powers of the general assembly of members are to be exercised by an assembly of those rightholders. The general assembly of members should, at least, have the power to set the framework of the activities of the management, in particular with respect to the use of rights revenue by the collective management organisation. This should, however, be without prejudice to the possibility for Member States to provide for more stringent rules on, for example, investments, mergers or taking out loans, including a prohibition on any such transactions. Collective management organisations should encourage the active participation of their members in the general assembly. The exercise of voting rights should be facilitated for members who attend the general assembly and also for those who do not. In addition to being able to exercise their rights by electronic means, members should be allowed to participate and vote in the general assembly of members through a proxy. Proxy voting should be restricted in cases of conflicts of interest. At the same time, Member States should provide for restrictions as regards proxies only if this does not prejudice the appropriate and effective participation of members in the decision-making process. In particular, the appointment of proxy-holders contributes to the appropriate and effective participation of members in the decision-making process and allows rightholders to have a true opportunity to opt for a collective management organisation of their choice, irrespective of the Member State of establishment of the organisation.*

- (13) Members should be allowed to participate in *the continuous* monitoring of the management of *collective management organisations*. To that end, *those organisations* should *have* a supervisory function appropriate to their organisational structure and should allow members to be represented in the body that exercises that function. *Depending on the organisational structure of the collective management organisation, the supervisory function may be exercised by a separate body, such as a supervisory board, or by some or all of the directors in 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, including persons with relevant professional expertise and rightholders who do not fulfil the membership requirements or who are represented by the organisation not directly but via an entity which is a member of the collective management organisation.*

- (14) For reasons of sound management, the management of a *collective management organisation* must be independent. Managers, *whether elected as directors or hired or employed by the organisation on the basis of a contract*, should be required to declare, *prior to taking up their position and thereafter on a yearly basis*, whether there are conflicts between their interests and those of the *rightholders that are represented by the collective management organisation*. *Such annual statements should be also made by persons exercising the supervisory function. Member States should be free to require collective management organisations to make such statements public or to submit them to public authorities.*
- (15) *Collective management organisations* collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. That revenue is ultimately due to rightholders, who may *have a direct legal relationship with the organisation, or may be represented via an entity which is a member of the collective management organisation or via a representation agreement*. It is therefore important that *a collective management organisation exercise* the utmost diligence in collecting, managing and distributing *that* revenue. Accurate distribution is only possible where *the collective management organisation maintains* proper records of membership, licences and use of works and other subject-matter. *Relevant data that are required for the efficient collective management of rights* should also be provided by rightholders and users and verified by the *collective management organisation*.

(15a) Amounts collected and due to rightholders should be *kept* separately *in the accounts* from any own assets *the organisation may have*. *Without prejudice to the possibility for Member States to provide for more stringent rules on investment, including a prohibition of investment of the rights revenue, where such amounts are invested, this should be carried out in accordance with the general investment and risk management policy of the collective management organisation*. In order to maintain a high level of protection of the rights of rightholders and to ensure that any income *that may arise from the* exploitation of such rights accrues to their benefit, the investments made and held by the *collective management organisation* should be managed in accordance with criteria which would oblige the *organisation* to act prudently, while allowing *it* to decide on the most secure and efficient investment policy. This should allow the *collective management organisation* to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and does not unduly prejudice any rights revenue owed to rightholders.■

- (16) Since rightholders are entitled to be remunerated for the exploitation of their rights, it is important *that* management fees *do not exceed justified costs of the management of the rights and that any deduction other than in respect of management fees, for example a deduction for social, cultural or educational purposes, should* be decided by the members of *the collective management organisation*. The *collective management organisations* should be transparent towards rightholders regarding the rules governing *such* deductions. *The same requirements should apply to any decision to use the rights revenue for collective distribution, such as scholarships. Rightholders* should have access, *on* a non-discriminatory *basis*, to any social, cultural or educational service funded through such deductions. *This* Directive should not affect *deductions under* national law, *such as deductions for the provision of social services by collective management organisations to rightholders*, as regards any aspects that are not regulated by this Directive, *provided that such deductions are in compliance with Union law*.

(16a) *The distribution and payment of amounts due to individual rightholders or, as the case may be, to categories of rightholders, should be carried out in a timely manner and in accordance with the general policy on distribution of the collective management organisation concerned, including when they are performed via another entity representing the rightholders. Only objective reasons beyond the control of a collective management organisation can justify delay in the distribution and payment of amounts due to rightholders. Therefore, circumstances such as the rights revenue having been invested subject to a maturity date should not qualify as valid reasons for such a delay. It is appropriate to leave it to Member States to decide on rules ensuring timely distribution and the effective search for, and identification of, rightholders in cases where such objective reasons occur. In order to ensure that the amounts due to rightholders are appropriately and effectively distributed, without prejudice to the possibility for Member States to provide for more stringent rules, it is necessary to require collective management organisations to take reasonable and diligent measures, on the basis of good faith, to identify and locate the relevant rightholders. It is also appropriate that members of a collective management organisation, to the extent allowed for under national law, should decide on the use of any amounts that cannot be distributed in situations where rightholders entitled to those amounts cannot be identified or located.*

- (17) *Collective management organisations* should be able to manage rights and collect revenue from their exploitation ■ under representation agreements with other *organisations*. To protect the rights of the members of the other *collective management organisation, a collective management organisation* should not distinguish between the rights it manages under representation agreements and those it manages directly for its rightholders. Nor should the *collective management organisation* be allowed to apply deductions to the rights revenue collected on behalf of another *collective management organisation, other than deductions in respect of management fees*, without the express consent of the other *organisation*. *It is also appropriate to require collective management organisations to distribute and make payments to other organisations on the basis of such representation agreements no later than when they distribute and make payments to their own members and to non-member rightholders whom they represent. Furthermore, the recipient organisation should in turn be required to distribute the amounts due to the rightholders it represents without delay.*

- (18) Fair *and non-discriminatory* commercial terms in licensing are particularly important to ensure that users can *obtain licences for* works and other ■ subject-matter *in respect of* which a *collective management organisation* represents rights, and to ensure the *appropriate* remuneration of rightholders. *Collective management organisations* and users should therefore conduct licensing negotiations in good faith and apply tariffs *which should be* determined on the basis of objective *and non-discriminatory* criteria. *It is appropriate to require that the licence fee or remuneration determined by collective management organisations be reasonable in relation to, inter alia, the economic value of the use of the rights in a particular context. Finally, collective management organisations should respond without undue delay to users' requests for licences.*
- (18a) *In the digital environment, collective management organisations are regularly required to license their repertoire for totally new forms of exploitation and business models. In such cases, and in order to foster an environment conducive to the development of such licences, without prejudice to the application of competition law rules, collective management organisations should have the flexibility required to provide, as swiftly as possible, individualised licences for innovative online services, without the risk that the terms of those licences could be used as a precedent for determining the terms for other licences.*

(18b) *In order to ensure that collective management organisations can comply with the obligations set out in this Directive, users should provide those organisations with relevant information on the use of the rights represented by the collective management organisations. This obligation should not apply to natural persons acting for purposes outside their trade, business, craft or profession, who therefore fall outside the definition of user as laid down in this Directive. Moreover, the information required by collective management organisations should be limited to what is reasonable, necessary and at the users' disposal in order to enable such organisations to perform their functions, taking into account the specific situation of small and medium-sized enterprises. That obligation could be included in an agreement between a collective management organisation and a user; this does not preclude national statutory rights to information. The deadlines applicable to the provision of information by users should be such as to allow collective management organisations to meet the deadlines set for the distribution of amounts due to rightholders. This Directive should be without prejudice to the possibility for Member States to require collective management organisations established in their territory to issue joint invoices.*

(19) In order to enhance the trust of rightholders, users and other *collective management organisations* in the management *of rights* by *collective management organisations*, each *collective management organisation* should *comply with* specific transparency *requirements*. Each *collective management organisation or its member being an entity responsible for attribution or payment of amounts due to rightholders* should therefore *be required to provide certain information to* individual rightholders *at least once a year, such as* the amounts *attributed or* paid to them and the **■** deductions made. *Collective management organisations* should also be required to provide sufficient information, including financial information, to the other *collective management organisations* whose rights they manage *under* representation agreements.

(19a) *In order to ensure that rightholders, other collective management organisations and users have access to information on the scope of activity of the organisation and the works or other subject-matter that it represents, a collective management organisation should provide information on those issues in response to a duly justified request. The question whether, and to what extent, reasonable fees can be charged for providing this service should be left to national law. Each collective management organisation should also make public information on its structure and on the way in which it carries out its activities, including in particular its statutes and general policies on management fees, deductions and tariffs.*

- (20) In order to ensure that rightholders are in a position to monitor *and compare* the *respective performances* of *collective management organisations, such organisations* should make public an annual transparency report comprising comparable audited financial information specific to *their* activities. *Collective management organisations* should also make public an annual special report, *forming part of the annual transparency report*, on the use of amounts dedicated to social, cultural and educational services. *This Directive should not prevent a collective management organisation from publishing the information required by the annual transparency report in a single document, for example as part of its annual financial statements, or in separate reports.*

- (21) Providers of online services which make use of musical works, such as music services that allow consumers to download music or to listen to it in streaming mode, as well as other services providing access to films or games where music is an important element, must first obtain the right to use such works. Directive 2001/29/EC requires *that* a licence *be obtained* for each of the rights in the online exploitation of musical works. *In respect of authors, those* rights are the exclusive right of reproduction and the exclusive right of communication to the public of musical works, which includes the right of making available. Those rights may be managed by the individual rightholders themselves, such as authors or music publishers, or by *collective management organisations* that provide collective management services to rightholders. Different *collective management organisations* may manage authors' rights of reproduction and communication to the public. Furthermore, there are cases where several rightholders have rights in the same work and may have authorised different *organisations* to license their respective shares of rights in the work. Any user wishing to provide an online service offering a wide choice of musical works to consumers *needs* to aggregate rights in works from different rightholders and *collective management organisations*.

- (22) While the internet knows no borders, the online market for music services in the **Union** is still fragmented, and a **digital** single market has not **yet** been fully achieved. The complexity and difficulty associated with the collective management of rights in Europe has, in a number of cases, exacerbated the fragmentation of the European digital market for online music services. This situation **is** in stark contrast to the rapidly growing demand **on the part** of consumers for access to digital content and associated innovative services, including across national borders.
- (23) Commission Recommendation 2005/737/EC promoted a new regulatory environment better suited to the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that, in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online environment and is multi-territorial. However, the Recommendation **■** has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works **or** to address the specific demands of multi-territorial licensing.

(24) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by **collective management organisations** in an increasingly cross-border context. It is therefore appropriate to provide a set of rules **prescribing** basic conditions for the provision by **collective management organisations** of multi-territorial collective licensing of authors' rights in musical works for online use, **including lyrics. The same rules should apply to such licensing for all musical works, including musical works incorporated in audio-visual works. However, online services solely providing access to musical works in sheet music form should not be covered. The provisions of this Directive** should ensure the necessary minimum quality of 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 **rights**, thus reducing the number of licences a user needs to operate a **multi-territory, multi-repertoire** service. Those provisions should enable a **collective management organisation** to request another **organisation** to represent its repertoire on a multi-territorial basis where it cannot **or does not wish to** fulfil the requirements itself. There should be an obligation on the requested **organisation**, provided that it **already** 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 **online infringements of copyright**.

(25) The availability of accurate and comprehensive information on **■** musical works, rightholders and the rights that each *collective management organisation* is authorised to represent in a given *territory* is of particular importance for an effective and transparent licensing process, for the subsequent *processing* of the *users' reports* and the related invoicing of service providers, and for the distribution of amounts due **■**. For that reason, *collective management organisations* granting multi-territorial licences for musical works should be able to process such detailed data quickly and accurately. This requires the use of **■** databases on ownership of rights that are licensed on a multi-territorial basis, containing data that allow for the identification of works, rights *and* rightholders *that a collective management organisation* is authorised to represent *and of the territories covered by the authorisation*. *Any changes to that information should be taken into account without undue delay and the databases should be continually updated*. Those databases should also help to match information on works with information on phonograms or any other fixation in which the work has been incorporated. It is also important to ensure that prospective users and rightholders, *as well as collective management organisations*, have access to the information they need *in order* to identify the repertoire that those *organisations* are representing. *Collective management organisations should be able to take measures* to protect the accuracy and integrity of the data, to control their reuse or to protect commercially sensitive information.

(26) In order to ensure that the data on the music repertoire they process are as accurate as possible, *collective management organisations* granting multi-territorial licences in musical works should be required to update their databases continuously and without delay *as necessary*. They should establish easily accessible procedures to enable *online service providers, as well as* rightholders and other *collective management organisations, to inform them of any inaccuracy that the organisations’* databases may contain in respect of works they own or control, including rights – in whole or in part – and *territories* for which they have mandated the relevant *collective management organisation* to act, *without however jeopardising the veracity and integrity of the data held by the collective management organisation. Since Directive 95/46/EC of the European Parliament and of the Council¹ grants to every data subject the right to obtain rectification, erasure or blocking of inaccurate or incomplete data, this Directive should also ensure that inaccurate information regarding rightholders or other collective management organisations in the case of multi-territorial licences is to be corrected without undue delay. Collective management organisations* should also have the capacity to process electronically the registration of works and authorisations to manage rights. Given the importance of information automation for the fast and effective processing of data, *collective management organisations* should provide for the use of electronic means for the structured communication of that information by rightholders. *Collective management organisations* should, as far as possible, ensure that such electronic means take into account the relevant *voluntary* industry standards or practices developed at international *or Union* level.

¹ *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).*

(27) **█** Industry standards for music use, sales reporting and invoicing are instrumental in *improving* efficiency in the exchange of data between *collective management organisations* and users. *Monitoring* the use of licences should respect fundamental rights, *including* the right to respect *for* private and family life and *the right to protection of personal data* **█** . In order to ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, *collective management organisations* should be required to invoice service providers and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that users *provide collective management organisations* with accurate and timely reports on the use of works. *Collective management organisations* should not be required to accept users' reports in proprietary formats when widely used industry standards are available. *Collective management organisations should not be prevented from outsourcing services relating to the granting of multi-territorial licences for online rights in musical works. Sharing or consolidation of back-office capabilities should help the organisations to improve management services and rationalise investments in data management tools.*

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(29) Aggregating ■ different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer *services*. *This* aggregation of repertoires should facilitate the development of new online services, and should also result in a reduction of transaction costs *being* passed on to consumers. Therefore, *collective management organisations* that are willing or not able to grant multi-territorial licences directly in their own music repertoire should be encouraged *on a voluntary basis* to mandate other *collective management organisations to manage* their repertoire *on a non-discriminatory basis*. *Exclusivity* in agreements on multi-territorial licences would restrict the choices available to users seeking multi-territorial licences and also restrict the choices available to *collective management organisations* seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between *collective management organisations* providing for multi-territorial licensing should be concluded on a non-exclusive basis.

- (30) The transparency of the conditions under which *collective management organisations* manage online rights is of particular importance *to members of collective management organisations*. *Collective management organisations* should therefore provide sufficient information to *their members* on the main terms of any agreement mandating any other *collective management organisation* to represent *those members'* online music rights for the purposes of multi-territorial licensing.

- (31) It is also important to require any *collective management organisations* that offer or grant multi-territorial licences to agree to represent the repertoire of any *collective management organisations* that decide not to do so directly. To ensure that this requirement is not disproportionate and does not go beyond what is necessary, the requested *collective management organisation* should only be required to accept the representation if the request is limited to the online right or categories of online rights *that* it represents *itself*. Moreover, this requirement should *only apply* to *collective management organisations* which aggregate repertoire and should not extend to *collective management organisations* which provide multi-territorial licences for their own repertoire only. Nor should it apply to *collective management organisations* which merely aggregate rights in the same works for the purpose of being able to license jointly both the right of reproduction and the right of communication to the public in respect of such works. *To protect the interests of the rightholders of the mandating collective management organisation and to ensure that small and less well-known repertoires in Member States can access the internal market on equal terms, it is important that the repertoire of the mandating collective management organisation be managed on the same conditions as the repertoire of the mandated collective management organisation and that it is included in offers addressed by the mandated collective management organisation to online service providers. The management fee charged by the mandated collective management organisation should allow that organisation to recoup the necessary and reasonable investments incurred.* Any agreement whereby a *collective management organisation* mandates another *organisation* or *organisations* to grant multi-territorial licences in its own music repertoire for online use should not prevent *the first-mentioned collective management organisation* from continuing to grant licences limited to the territory of the Member State where *that organisation* is established, in its own repertoire and in any other repertoire it may be authorised to represent in *that territory*.

- (32) The objectives and effectiveness of the rules on multi-territorial licensing by *collective management organisations* would be *significantly* jeopardised if rightholders were not able to exercise *such* rights *in respect of* multi-territorial licences when the *collective management organisation* to which they have granted their rights *did* not grant or offer multi-territorial licences and *furthermore did* not want to mandate another *collective management organisation* to do so. For this reason, it *would be* important in such circumstances to enable rightholders to exercise the right to grant the multi-territorial licences required by online service providers themselves or through another party or parties, *by withdrawing from their original collective management organisation their rights to the extent necessary for multi-territorial licensing for online uses, and to leave the same rights with their original organisation for the purposes of mono-territorial licensing.*

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(35) Broadcasting organisations generally rely on a licence from a local *collective management organisation* for their own broadcasts of television and radio programmes which include musical works. That 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 rights in musical works 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 online rights in musical works. Such *a* derogation should be limited to what is necessary in order 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 the television or radio programme concerned. That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, *nor* lead to restrictive practices, such as market or customer sharing, *which would be* in breach of Articles 101 or 102 TFEU.

(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 handling complaints . Those procedures should also be made available to other rightholders **directly** represented by the **organisation and to other collective management organisations on whose behalf it manages rights under a representation agreement**. Furthermore, **Member States should be able to provide that disputes between collective management organisations, their members, rightholders or users as to the application of this Directive can be submitted to a rapid, independent and impartial alternative dispute resolution procedure. In particular, the effectiveness of the rules on multi-territorial licensing of online rights in musical works could be undermined if disputes between collective management organisations and other parties were not resolved quickly and efficiently**. As a result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for **the possibility of** easily accessible, efficient and impartial out-of-court procedures, **such as mediation or arbitration**, for resolving conflicts between, on the one hand, **collective management organisations granting multi-territorial licences** and, on the other, online service providers, rightholders or other **collective management organisations**. **This Directive neither prescribes a specific manner in which such alternative dispute resolution should be organised, nor determines which body should carry it out, provided that its independence, impartiality and efficiency are guaranteed. Finally, it is also appropriate to require that Member States have independent, impartial and effective dispute resolution procedures, via bodies possessing expertise in intellectual property law or via courts, suitable for settling commercial disputes between collective management organisations and users on existing or proposed licensing conditions or on a breach of contract.**

(37) **█** Member States should establish appropriate procedures by means of which it will be possible *to monitor compliance by collective management organisations with this Directive. While it is not appropriate for this Directive to restrict the choice of Member States as to competent authorities, nor as regards the ex-ante or ex-post nature of the control over collective management organisations, it should be ensured that such authorities are capable of addressing in an effective and timely manner any concern that may arise in the application of this Directive. Member States should not be obliged to set up new competent authorities. Moreover, it should also be possible for members of a collective management organisation, rightholders, users, collective management organisations and other interested parties to notify a competent authority in respect of activities or circumstances which, in their opinion, constitute a breach of law by collective management organisations and, where relevant, users. Member States should ensure that competent authorities have the power to impose sanctions or measures where provisions of national law implementing this Directive are not complied with. This Directive does not provide for specific types of sanctions or measures, provided that they are effective, proportionate and dissuasive. Such sanctions or measures may include orders to dismiss directors who have acted negligently, inspections at the premises of a collective management organisation or, in cases where an authorisation is issued for an organisation to operate, the withdrawal of such authorisation. This Directive should remain neutral as regards the prior authorisation and supervision regimes in the Member States, including a requirement for the representativeness of the collective management organisation, in so far as those regimes are compatible with Union law and do not create an obstacle to the full application of this Directive.*

(37a) In order 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 Commission should cooperate with each other to that end. *Member States should provide each other with mutual assistance by way of exchange of information between their competent authorities in order to facilitate the monitoring of collective management organisations.*

(38) It is important for *collective management organisations* to respect the rights to private life and personal data protection of any rightholder, member, user and other individual whose personal data they process. Directive 95/46/EC governs the processing of personal data carried out in the Member States in the context of *that* Directive and under the supervision of the Member *States'* competent authorities, in particular the public independent authorities designated by the Member States. Rightholders should be given appropriate information about the processing of their data, the recipients of those data, time limits for the retention of *such* data in *any* database, and the way in which *rightholders* can exercise their rights to access, correct or delete their personal data concerning them in accordance with Directive 95/46/EC. In particular, unique identifiers which allow for the indirect identification of a person should be treated as personal data within the meaning of that Directive.

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- (40) Provisions on enforcement measures should be without prejudice to the competencies of ***national*** independent public ■ authorities established by the Member States pursuant to Directive 95/46/EC to monitor compliance with national provisions adopted in implementation of that Directive.
- (41) This Directive respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union ('the Charter'). ***Provisions*** in this Directive ***relating to*** dispute resolution ■ should not prevent ■ parties from exercising their right of access to a tribunal as guaranteed in the Charter ■ .
- (42) Since the ***objectives*** of this Directive, ***namely*** to improve the ability of their members to exercise control over the activities of ***collective management organisations***, to guarantee sufficient transparency by ***collective management organisations*** and to improve the multi-territorial licensing of authors' rights in musical works for online use, cannot be sufficiently achieved by Member States but can rather, by reason of ***their*** scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve ***those objectives***.

- (43) The provisions of this Directive are without prejudice to the application of **■** rules *on competition*, and any other relevant law in other areas including confidentiality, trade secrets, privacy, access to documents, the law of contract and private international law relating to the conflict of laws and the jurisdiction of courts, *and workers' and employers' freedom of association and their right to organise*.
- (44) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (45) *The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council² and delivered an opinion on 9 October 2012,*

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ C 369, 17.12.2011, p. 14.

² *Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).*

TITLE I

GENERAL PROVISIONS

Article 1

Subject-matter

This Directive lays down requirements necessary to ensure the proper functioning of the management of copyright and related rights by *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.

Article 2

Scope

1. Titles I, II, IV *and* V with the exception of Articles 35(1a) and 40 apply to all *collective management organisations* established in the Union.
2. Title III and Articles 35(1a) and 40 apply to *collective management organisations established in the Union* managing authors' rights in musical works for online use on a multi-territorial basis.

3. *The relevant provisions of this Directive apply to entities directly or indirectly owned or controlled, wholly or in part, by a collective management organisation, provided that such entities carry out an activity which, if carried out by the collective management organisation, would be subject to the provisions of this Directive.*
4. *Article 15(1), Articles 16 and 18, points (a), (b), (ba), (d), (e) and (f) of Article 19(1) and Articles 37 and 41b apply to all independent management entities established in the Union.*

Article 3
Definitions

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

- (a) *'collective management organisation'* means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement **■** to manage copyright *or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders*, as its sole or main purpose, and which *fulfils one or both of the following criteria:*
 - (i) *it is owned or controlled by its members;*
 - (ii) *it is organised on a not-for-profit basis;*

- (aa) *'independent management entity' means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which is:*
- (i) *neither owned nor controlled, directly or indirectly, wholly or in part, by rightholders, and*
 - (ii) *organised on a for-profit basis;*
- (b) 'rightholder' means any ■ person or ■ entity, other than a *collective management organisation*, that holds a copyright or related right or, under an agreement for the exploitation of rights *or by law*, is entitled to a share of the rights revenue ■ ;
- (c) 'member ■ ' means a rightholder or an entity ■ representing rightholders, including other *collective management organisations* and associations of rightholders, fulfilling the membership requirements of the *collective management organisation and admitted by it*;
- (d) 'statute' means the memorandum and articles of association, the statute, the rules or documents of constitution of a *collective management organisation*;

- (da) ***'general assembly of members' means the body in the collective management organisation wherein members participate and exercise their voting rights, regardless of the legal form of the organisation;***
- (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;***
- (f) 'rights revenue' means income collected by a ***collective management organisation*** on behalf of rightholders, whether deriving from an exclusive right, a right to remuneration or a right to compensation;
- (g) 'management fees' means the amounts charged, ***deducted or offset by a collective management organisation from rights revenue or from any income arising from the investment of rights revenue*** in order to cover the costs of its management of copyright or related rights ■ ;

- (h) 'representation agreement' means any agreement between *collective management organisations* whereby one *collective management organisation* mandates another *collective management organisation* to manage the rights it represents, including an agreement concluded under Articles 28 and 29;
- (i) 'user' means any **■** person or **■** entity *that* is carrying out acts subject to the authorisation of rightholders, **■** remuneration of rightholders or **■** payment of compensation to rightholders and is not acting in the capacity of a consumer;
- (j) 'repertoire' means the works *in respect of* which a *collective management organisation* manages rights;
- (k) 'multi-territorial licence' means a licence which covers the territory of more than one Member State;
- (l) 'online rights in musical works' means any of the rights *of an author* in a musical work provided for under Articles 2 and 3 of Directive 2001/29/EC which are required for the provision of an online service.

■

TITLE II

COLLECTIVE MANAGEMENT ORGANISATIONS

Chapter 1

Representation of rightholders and membership and organisation of collective management organisations

Article 4

General principles

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

Article 5
Rights of rightholders

1. Member States shall ensure that rightholders have the rights laid down in paragraphs 2 to 7 and that ***those rights are set out*** in the statute or **■** membership terms of the ***collective management organisation***.
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 ***territories*** of their choice, irrespective of the Member State of ***nationality***, residence or **■** establishment of either the ***collective management organisation*** or the rightholder. ***Unless the collective management organisation has objectively justified reasons to refuse management, it shall be obliged to manage such rights, categories of rights or types of works and other subject-matter, provided that their management falls within the scope of its activity.***
 - 2a. ***Rightholders shall have the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject-matter that they may choose.***

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 *by them* to a *collective management organisation* or to withdraw from a *collective management organisation* any of the rights, categories of rights or types of works and other subject-matter of their choice, *as determined pursuant to paragraph 2*, for the *territories* of their choice, upon serving reasonable notice not exceeding six months. The *collective management organisation* may decide that such termination or withdrawal is to take effect only at the ■ end of the financial year ■ .
4. If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under Articles *11*, *12*, *16*, *18*, *26* and *34* ■ .
5. *A collective management organisation* shall not restrict the exercise of rights provided for under paragraphs 3 and 4 by requiring, as a condition for the exercise of those rights, that the management of rights or categories of rights or types of works and other subject-matter which are subject to the termination or the withdrawal *be* entrusted to another *collective management organisation*.

6. ***In cases where a rightholder authorises a collective management organisation to manage his rights, he shall give*** consent specifically for each right or category of rights or type of works and other subject-matter which he authorises the ***collective management organisation*** to manage. ***Any*** such consent ***shall be*** evidenced in documentary form.
7. A ***collective management organisation*** shall inform rightholders of their rights under paragraphs 1 to 6, ***as well as of any conditions attached to the right set out in paragraph 2a***, before obtaining their consent to its managing any right or category of rights or type of works and other subject-matter.

A collective management organisation shall inform ***those rightholders who have already authorised it*** of their rights under paragraphs 1 to 6, ***as well as of any conditions attached to the right set out in paragraph 2a, by ...*** * .

* OJ: please insert the date: 30 months after the entry into force of this Directive.

Article 6

Membership rules of *collective management organisations*

1. Member States shall ensure that *collective management organisations* comply with the rules laid down in paragraphs 2 to 5.
2. *A collective management organisation shall accept rightholders and entities representing rightholders, including other collective management organisations and associations of rightholders, as members if they fulfil the membership requirements, which shall be based on objective, transparent and non-discriminatory criteria. Those membership requirements shall be included in the statute or membership terms of the collective management organisation and shall be made publicly available. In cases where a collective management organisation refuses to accept a request for membership, it shall provide the rightholder with a clear explanation of the reasons for its decision.*
3. The statute of a *collective management organisation* shall provide for appropriate and effective mechanisms for the participation of its members in the *organisation's* decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.

4. *A collective management organisation* shall allow its members to communicate *with it* by electronic means, including for the purposes of exercising members' rights.■
5. *A collective management organisation* shall keep records of *its* members *and shall* regularly *update those records*.

Article 6a

Rights of rightholders who are not members of the collective management organisation

1. *Member States shall ensure that collective management organisations comply with the rules laid down in Articles 6(4), 18, 28(2) and 34 in respect of rightholders who have a direct legal relationship by law or by way of assignment, licence or any other contractual arrangement with them but are not their members.*
2. *Member States may apply other provisions of this Directive to the rightholders referred to in paragraph 1.*

Article 7

General *assembly* of members of the *collective management organisation*

1. Member States shall ensure that the general *assembly* of members ■ is organised in accordance with the rules laid down in paragraphs 2 to 8.
2. A general *assembly* of members ■ shall be convened at least once a year.
3. The general *assembly of members* shall decide on any amendments to the statute and to the membership terms of the *collective management organisation*, where *those* terms are not regulated by the statute.

4. The general *assembly of members* shall ■ decide on the appointment or dismissal of the directors, *review their general performance* and approve their remuneration and other benefits such as *monetary and* non-monetary benefits, pension awards *and entitlements, rights* to other awards and rights to severance pay.

In a collective management organisation with a dual board system, the general *assembly of members* shall not decide on the appointment or dismissal of members of the management board or *approve their remuneration and other benefits where the power to take such decisions is delegated to* the supervisory board ■ .

5. In accordance with the provisions laid down in Chapter 2 of Title II, the general *assembly of members* shall *decide at least* on the following issues:
- (a) the *general* policy on the distribution of amounts due to rightholders ■ ;
 - (b) *the general policy on* the use of *non-distributable amounts*;
 - (c) the general investment policy ■ with regard to rights revenue *and to any income arising from the investment of rights revenue*;

- (d) *the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;*
- (da) *the use of non-distributable amounts;*
- (db) *the risk management policy;*
- (e) *the approval of any acquisition, sale or hypothecation of immovable property;*
- (f) *the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;*
- (g) *the approval of taking out loans, granting loans or providing security for loans.*

- 5a. *The general assembly of members may delegate the powers listed in points (db), (e), (f) and (g) of paragraph 5, by a resolution or by a provision in the statute, to the body exercising the supervisory function.*
- 5b. *For the purposes of points (a) to (d) of paragraph 5, Member States may require the general assembly of members to determine more detailed conditions for the use of the rights revenue and the income arising from the investment of rights revenue.*
6. The general *assembly of members* shall control the activities of the *collective management organisation* by, at least, deciding on the appointment and removal of the auditor and approving the annual transparency report *referred to in Article 20*.
- Member States may allow alternative systems or modalities for the appointment and removal of the auditor, provided that those systems or modalities are designed to ensure the independence of the auditor from the persons who manage the business of the collective management organisation.*

7. *All members of the collective management organisation shall have the right to participate in, and the right to vote at, the general assembly of members. However, Member States may allow for restrictions on the right of the members of the collective management organisation to participate in, and to exercise voting rights at, the general assembly of members, on the basis of one or both of the following criteria:*

- (a) duration of membership;
- (b) amounts received or due to a member ■ ,

provided that such criteria are determined and applied in a manner that is fair and proportionate.

The criteria laid down in points (a) and (b) of the first subparagraph shall be included in the statute or the membership terms of the *collective management organisation* and shall be made publicly available in accordance with Articles 17 and 19.

8. Every member of a *collective management organisation* shall have the right to appoint any other *person* or *entity* as a proxy holder to *participate in*, and vote at, the general *assembly of members* on his behalf, *provided that such appointment does not result in a conflict of interest which might occur, for example, where the appointing member and the proxy holder belong to different categories of rightholders within the collective management organisation.*

However, Member States may provide for restrictions concerning the appointment of proxy holders and the exercise of the voting rights of the members they represent if such restrictions do not prejudice the appropriate and effective participation of members in the decision-making process of a collective management organisation.

Each proxy shall be valid for a single general assembly of members. The proxy holder shall enjoy the same rights in the general assembly of members as those to which the appointing member would be entitled. The proxy holder shall cast votes in accordance with the instructions issued by the appointing member.

- 8a. *Member States may decide that the powers of the general assembly 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 8 shall apply to the assembly of delegates mutatis mutandis.

- 8b.** *Member States may decide that where a collective management organisation, by reason of its legal form, does not have a general assembly of members, the powers of that assembly are to be exercised by the body exercising the supervisory function. The rules laid down in paragraphs 2 to 5, 5b and 6 shall apply mutatis mutandis to such body exercising the supervisory function.*
- 8c.** *Member States may decide that where a collective management organisation has members who are entities representing rightholders, all or some of the powers of the general assembly of members are to be exercised by an assembly of those rightholders. The rules laid down in paragraphs 2 to 8 shall apply mutatis mutandis to the assembly of rightholders.*

Article 8
Supervisory function

1. Member States shall ensure that each *collective management organisation has in place* a supervisory function *for* continuously monitoring the activities and the performance of the duties of the persons *who manage the business of the organisation*.
 - 1a. *There shall be fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function.*
 - 1b. *Each person exercising the supervisory function shall make an annual individual statement on conflicts of interest, containing the information referred to in the second subparagraph of Article 9(2), to the general assembly of members.*
2. The body *exercising* the supervisory function shall meet regularly and shall have at least the following powers:

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- (d) to exercise the powers delegated to it by the general assembly of members, including under Article 7(4) and (5a);*
 - (e) 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 assembly of members and, in particular, of the general policies listed in points (a) to (d) of Article 7(5).*
- 2b. The body exercising the supervisory function shall report on the exercise of its powers to the general assembly of members at least once a year.*

Article 9

Obligations of the persons who ■ manage the business of the *collective management organisation*

1. Member States shall ensure that *each collective management organisation takes all necessary measures so that* the persons who ■ manage its business *do so* in a sound, prudent *and appropriate* manner, using sound administrative and accounting procedures and internal control mechanisms.
2. Member States shall ensure that *collective management organisations put in place and apply* procedures to avoid conflicts of interest, *and where such conflicts cannot be avoided*, to identify, manage, monitor and disclose *actual or potential* conflicts of interest in such a way as to prevent them from adversely affecting the *collective* interests of *the rightholders whom the organisation represents*.

The procedures referred to in the first subparagraph shall include an annual individual statement by each of *the persons referred to in paragraph 1 to the general assembly of members*, containing the following information:

- (a) any interests in the *collective management organisation*;
- (b) any remuneration received *in the preceding financial year* from the *collective management organisation*, including in the form of pension schemes, *benefits in kind* and other types of *benefits*;

- (c) any amounts received *in the preceding financial year* as a rightholder from the *collective management organisation*;
- (d) a declaration concerning any actual or potential conflict between any personal interests and those of the *collective management organisation* or between any obligations owed to the *collective management organisation* and any duty owed to any other *natural* or *legal* person.

Chapter 2

Management of rights revenue

Article 10

Collection and use of rights revenue

- 1. *Member States shall ensure that collective management organisations comply with the rules laid down in paragraphs 1 to 4.*
- 1. *A collective management organisation shall be diligent in the collection and management of rights revenue.*

2. *A collective management organisation* shall keep separate *in its accounts*:
- (a) rights revenue and any income *arising* from *the investment of rights revenue*; *and*
 - (b) *any own assets it may have and income arising from such assets*, from management *fees* or from other activities.
3. *A collective management organisation* shall not be permitted to use rights revenue *or* any income *arising* from *the investment of rights revenue for purposes other than distribution to rightholders*, except where it is allowed to deduct *or offset* its management fees *in compliance with a decision taken in accordance with point (d) of Article 7(5) or to use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with Article 7(5)*.

4. Where *a collective management organisation* invests **█** rights revenue *or* any income *arising* from *the* investment *of rights revenue*, it shall do so *in the best interests of the rightholders whose rights it represents*, in accordance with the general investment *and risk management* policy referred to in *points (c) and (db) of Article 7(5) and having regard to* the following rules:
- (a) **█** where there is any potential conflict of interest, the *collective management organisation* shall ensure that the investment is made in the sole interest of *those rightholders*;
 - (b) the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
 - (c) the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.

Article 11
Deductions

1. Member States shall ensure that *where a rightholder authorises a collective management organisation to manage his rights, the collective management organisation* is required to *provide the rightholder with information on management fees and other deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his consent to its managing his rights.*
 - 1a. *Deductions shall 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 shall be established on the basis of objective criteria.*
 - 1b. *Management fees shall not exceed the justified and documented costs incurred by the collective management organisation in managing copyright and related rights.*

Member States shall ensure that the requirements applicable to the use and the transparency of the use of amounts deducted or offset in respect of management fees apply to any other deductions made in order to cover the costs of managing copyright and related rights.

2. ***Where a collective management organisation provides social, cultural or educational services funded through deductions from rights revenue or from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria, in particular as regards access to, and the extent of, those services.***



Article 12

Distribution of amounts due to rightholders

1. ***Without prejudice to Articles 14(3) and 26, Member States shall ensure that each collective management organisation regularly, diligently and accurately distributes and pays amounts due to rightholders in accordance with the general policy on distribution referred to in point (a) of Article 7(5).***

Member States shall also ensure that collective management organisations or their members who are entities representing rightholders distribute and pay those amounts to rightholders as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation or, where applicable, its members from meeting that deadline.

2. Where the amounts due to rightholders cannot be distributed *within the deadline set in paragraph 1 because the relevant rightholders cannot be identified or located and the exception to that deadline does not apply, those amounts shall be kept separate in the accounts of the collective management organisation.*
3. *The collective management organisation shall take all necessary measures, consistent with paragraph 1, to identify and locate the rightholders. In particular, at the latest three months after the expiry of the deadline set in paragraph 1, the collective management organisation shall make available information on works and other subject-matter for which one or more rightholders have not been identified or located to:*
 - (a) *the rightholders that it represents or the entities representing rightholders, where such entities are members of the collective management organisation, and*
 - (b) *all collective management organisations with which it has concluded representation agreements.*

The information referred to in the first subparagraph shall include, where available, the following:

- (a) *the title of the work or other subject-matter,*
- (b) *the name of the rightholder,*
- (c) *the name of the relevant publisher or producer, and*
- (d) *any other relevant information available which could assist in identifying the rightholder.*

The collective management organisation shall also verify the records referred to in Article 6(5) and other readily available records. If the abovementioned measures fail to produce results, the collective management organisation shall make that information available to the public at the latest one year after the expiry of the three-month period.

4. *Where the amounts due to rightholders cannot be distributed after three years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collective management organisation has taken all necessary measures to identify and locate the rightholders referred to in paragraph 3, those amounts shall be deemed non-distributable.*
5. *The general assembly of members of a collective management organisation shall decide on the use of the non-distributable amounts in accordance with point (b) of Article 7(5), without prejudice to the right of rightholders to claim such amounts from the collective management organisation in accordance with the laws of the Member States on the statute of limitations of claims.*
6. *Member States may limit or determine the permitted uses of non-distributable amounts, inter alia by ensuring that such amounts are used in a separate and independent way in order to fund social, cultural and educational activities for the benefit of rightholders.*

Chapter 3

Management of rights on behalf of other *collective management organisations*

Article 13

Rights managed under representation agreements

Member States shall ensure that a *collective management organisation* does not discriminate *against any rightholder* 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 amounts due to rightholders.

Article 14

Deductions and payments in representation agreements

1. ***Member States shall ensure that a collective management organisation does not make deductions, other than in respect of management fees, from the rights revenue derived from the rights it manages on the basis of a representation agreement, or from any income arising from the investment of that rights revenue, unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.***
2. The ***collective management organisation*** shall regularly, diligently and accurately distribute and pay amounts due to other ***collective management organisations***.
3. ***The collective management organisation shall carry out such distribution and payments to the other collective management organisation as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation from meeting that deadline.***

The other collective management organisation, or, where it has as members entities representing rightholders, those members, shall distribute and pay the amounts due to rightholders as soon as possible but no later than six months from receipt of those amounts, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation or, where applicable, its members from meeting that deadline.

Chapter 4

Relations with users

Article 15

Licensing

1. *Member States shall ensure that collective management organisations and users* █ *conduct negotiations for the licensing of rights in good faith. Collective management organisations and users shall provide each other with* all necessary information █ .

2. Licensing terms shall be based on objective *and non-discriminatory* criteria. *When licensing rights, collective management organisations shall not be required to use, as a precedent for other online services, licensing terms agreed with a user where the user is providing a new type of online service which has been available to the public in the Union for less than three years.*

Rightholders shall receive appropriate remuneration for the use of their rights. Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade, taking into account the nature and scope of the use of the work and other subject-matter, as well as in relation to the economic value of the service provided by the collective management organisation. Collective management organisations shall inform the user concerned of the criteria used for the setting of those tariffs.

■

- 2a. *Collective management organisations shall reply without undue delay to requests from users, indicating inter alia the information needed in order for the collective management organisation to offer a licence.*

Upon receipt of all relevant information, the collective management organisation shall, without undue delay, either offer a licence or provide the user with a reasoned statement explaining why it does not intend to license a particular service.

3. *A collective management organisation shall allow users to communicate **with it** by electronic means, including, where appropriate, for the purpose of reporting on the use of the licence.*

Article 15a

Users' obligations

Member States shall adopt provisions to ensure that users provide a collective management organisation, within an agreed or pre-established time and in an agreed or pre-established format, with such relevant information at their disposal on the use of the rights represented by the collective management organisation as is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightholders. When deciding on the format for the provision of such information, collective management organisations and users shall take into account, as far as possible, voluntary industry standards.

Chapter 5

Transparency and reporting

Article 16

Information provided to rightholders on the management of their rights

1. ***Without prejudice to paragraph 2 of this Article and Articles 17 and 26(2)***, Member States shall ensure that a ***collective management organisation*** makes available, ***not less than once a year, to each rightholder to whom it has attributed rights revenue or made payments in the period to which the information relates, at least*** the following information **■** :
 - (a) any ***contact details*** which the rightholder has authorised the ***collective management organisation*** to use ***in order*** to identify and locate the rightholder;
 - (b) the rights revenue ***attributed to*** the rightholder;
 - (c) the amounts ***paid by the collective management organisation*** to the rightholder per category of rights managed and ***per*** type of use **■** ;

- (d) the period during which the use took place for which amounts *were attributed and paid* to the rightholder, *unless objective reasons relating to reporting by users prevent the collective management organisation from providing this information*;
- (e) deductions made in respect of management fees ■ ;
- (f) deductions made for any purpose other than in respect of management fees, including those that may be required by national law for the provision of any social, cultural or educational services ■ ;
- (g) any *rights revenue attributed* to the rightholder which *is* outstanding for *any* period ■ .

■

2. *Where a collective management organisation attributes rights revenue and has as members entities which are responsible for the distribution of rights revenue to rightholders, the collective management organisation shall provide the information listed in paragraph 1 to those entities, provided that they do not have that information in their possession. Member States shall ensure that the entities make at least the information listed in paragraph 1 available, not less than once a year, to each rightholder to whom they have attributed rights revenue or made payments in the period to which the information relates.*

Article 17

Information provided to other *collective management organisations* on the management of rights under representation agreements

Member States shall ensure that a *collective management organisation* makes *at least* the following information available, *not less than* once a year *and* by electronic means, to *collective management organisations* on whose behalf it manages rights under a representation agreement, for *the period to which the information relates*:

- (a) ***the rights revenue attributed, the amounts paid by the collective management organisation per category of rights managed, and per type of use, for the rights it manages under the representation agreement, and any rights revenue attributed which is outstanding for any period;***
- (b) deductions made in respect of management fees **■** ;
- (ba) ***deductions made for any purpose other than in respect of management fees as referred to in Article 14;***
- (c) information on any licences ***granted or refused with regard*** to works and other subject-matter covered by the representation agreement;
- (d) resolutions ***adopted by the general assembly of members in so far as those resolutions are relevant to the management of the rights under the representation agreement.***

Article 18

Information provided to rightholders, **■** other *collective management organisations* and users
on request

1. ***Without prejudice to Article 23***, Member States shall ensure that, ***in response to a duly justified request***, a *collective management organisation* makes ***at least*** the following information available ***by electronic means and without undue delay to any collective management organisation*** on whose behalf it manages rights under a representation agreement or ***to any rightholder or to any user***:

■

- (b) ***the works or other subject-matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or where, due to the scope of activity of the collective management organisation, such works or other subject-matter cannot be determined, the types of works or of other subject-matter it represents, the rights it manages and the territories covered;***

■

Article 19

Disclosure of information to the public

1. Member States shall ensure that a ***collective management organisation*** makes public ***at least*** the following information:
 - (a) ***its*** statute;
 - (b) ***its*** membership terms and ***the*** terms of termination of **■** authorisation to manage rights, if these are not included in the statute;
 - (ba) standard licensing contracts and standard applicable tariffs, including discounts;***
 - (c) the list of the persons referred to in Article 9;
 - (d) ***its general policy*** on distribution of amounts due to rightholders;
 - (e) ***its general policy*** on management fees;
 - (f) ***its general policy*** on deductions, other than in respect of management fees, from rights revenue and from any income arising from the investment of rights revenue , including deductions for the purposes of social, cultural and educational services;

(fa) *a list of the representation agreements it has entered into, and the names of the collective management organisations with which those representation agreements have been concluded;*

(fb) *the general policy on the use of non-distributable amounts;*

(g) *the* complaint handling and dispute resolution procedures available in accordance with Articles 34, 35 and 36a.

2. The *collective management organisation* shall publish, and keep up to date, on its public website the information referred to in paragraph 1.

Article 20

Annual transparency report

1. Member States shall ensure that a *collective management organisation, irrespective of its legal form under national law*, draws up and *makes* public an annual transparency report, including *the* special report *referred to in paragraph 3*, for each financial year no later than *eight* months following the end of that financial year. ■

The *collective management organisation* shall publish on its website the annual transparency report, which shall remain available to the public on that website for at least five years.

2. The annual transparency report shall contain at least the information set out in *the Annex* .
3. A special report **■** shall *address* the use of the amounts deducted for the purposes of social, cultural and educational services and shall contain at least the information set out in point 3 of *the Annex* .
4. The accounting information *included* in the annual transparency report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council¹ .

The audit report, including any qualifications *thereto*, shall be reproduced in full in the annual transparency report.

¹ ***Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated account, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).***

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

TITLE III

MULTI-TERRITORIAL LICENSING OF ONLINE RIGHTS IN MUSICAL WORKS BY *COLLECTIVE MANAGEMENT ORGANISATIONS*

Article 21

Multi-territorial licensing in the internal market

1. Member States shall ensure that *collective management organisations* established in their territory comply with the requirements *of* this Title when granting multi-territorial licences for online rights in musical works.

Article 22

Capacity to process multi-territorial licences

- 1 Member States shall ensure that a ***collective management organisation*** which grants multi-territorial licences for online rights in musical works has sufficient capacity to process electronically, in an efficient and transparent manner, **■** data needed for the administration of such licences, including for the purposes of identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.
2. For the purposes of paragraph 1, a ***collective management organisation*** shall comply, at least, with the following conditions:
 - (a) to have the ability to **■** identify ***accurately*** the musical works, wholly or in part, which the ***collective management organisation*** is authorised to represent;
 - (b) to have the ability to ***identify accurately***, wholly or in part, **■** with respect to each ***relevant territory, the rights and their corresponding rightholders*** for each musical work or share ***therein*** which the ***collective management organisation*** is authorised to represent;

- (c) **to make** use of unique identifiers in order to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or Union level;



- (e) to make **use of adequate means** in order to identify and resolve in a timely and effective manner inconsistencies in data held by other **collective management organisations** granting multi-territorial licences **for** online rights in musical works.

Article 23

Transparency of multi-territorial repertoire information

1. **Member States shall ensure that a collective management organisation** which grants multi-territorial licences for online rights in musical works **provides** to online service providers, **to** rightholders **whose rights it represents** and **to** other **collective management organisations**, by electronic means, **in response to a duly justified request**, up-to-date information allowing the identification of the online music repertoire it represents. This shall include:

- (a) the musical works represented;
 - (b) the rights represented wholly or in part; and
 - (c) the *territories* covered.
2. The *collective management organisation* may take reasonable measures, *where necessary*, to protect the accuracy and integrity of the data, to control their reuse and *to protect* commercially sensitive information.

Article 24

Accuracy of multi-territorial repertoire information

1. *Member States shall ensure that a collective management organisation* which grants multi-territorial licences for online rights in musical works *has in place arrangements* to enable rightholders, *other collective management organisations and online service providers to request a correction* of the data referred to in the list of conditions under Article 22(2) or the information provided under Article 23, where such rightholders, *collective management organisations and online service providers*, 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.

2. The *collective management organisation* shall provide rightholders whose musical works are included in its own music repertoire *and rightholders who have entrusted the management of their online rights in musical works to it in accordance with Article 30(1)* with *the* means of submitting *to it in* electronic *form* information concerning their musical works, their rights in those works *and the territories in respect of which the rightholders authorise the organisation*. When doing so, the *collective management organisation* and the rightholders shall take into account, as far as possible, *voluntary* industry standards or practices regarding the exchange of data developed at international or Union level, allowing rightholders to specify the musical work, wholly or in part, the online rights, wholly or in part, and the *territories* in respect of which they authorise the *organisation*.

3. *Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated collective management organisation shall also apply paragraph 2 of this Article with respect to the rightholders whose musical works are included in the repertoire of the mandating collective management organisation, unless the collective management organisations agree otherwise.*

Article 25

Accurate and timely reporting and invoicing

1. **Member States shall ensure that a collective management organisation monitors** the use of online rights in musical works which it represents, wholly or in part, by online service providers to which it has granted a multi-territorial licence for those rights.
2. The **collective management organisation** shall offer online service providers the possibility of reporting **by electronic means** the actual use of online rights in musical works **and online service providers shall accurately report the actual use of those works**. The **collective management organisation** shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The **collective management organisation** may refuse to accept reporting by the **online service provider** in a proprietary format if the **organisation** allows for reporting using an industry standard for the electronic exchange of data.

3. The **collective management organisation** shall invoice the online █ service provider by electronic means. The **collective management organisation** shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level. The invoice shall identify the works and rights which are licensed, wholly or in part, on the basis of the data referred to in the list of conditions under Article 22(2), and the corresponding actual uses, to the extent that this is possible on the basis of the information provided by the **online service provider** and the format used to provide that information. ***The online service provider may not refuse to accept the invoice because of its format if the collective management organisation is using an industry standard.***
4. The **collective management organisation** shall invoice the online █ service provider accurately and without delay after the actual use of the online rights in that musical work is reported, except where ***this is not possible for reasons*** attributable to the online █ service provider.
5. The **collective management organisation** shall have in place adequate **arrangements** enabling the online █ service provider to challenge the accuracy of the invoice, including when the online █ service provider receives invoices from one or more **collective management organisations** for the same online rights in the same musical work.

Article 26

Accurate and timely payment to rightholders

1. ***Without prejudice to paragraph 4***, Member States shall ensure that a ***collective management organisation*** which grants multi-territorial licences for online rights in musical works distributes amounts due to rightholders accruing from such licences accurately and without delay after the actual use of the work is reported, except where ***this is not possible for reasons*** attributable to the online **■** service provider.
2. ***Without prejudice to paragraph 4***, the ***collective management organisation*** shall provide at least the following information to rightholders ***together with each payment it makes under paragraph 1***:
 - (a) the period during which the uses took place for which amounts are due to rightholders and the ***territories*** in which the uses took place;
 - (b) ***the amounts collected, deductions made and amounts distributed by the collective management organisation*** for each online right in any musical work ***which rightholders have authorised the collective management organisation***, wholly or in part, ***to represent***;

- (c) *the* amounts collected for *rightholders*, deductions made, and amounts distributed by the *collective management organisation in respect of each online service provider*.

■

4. Where a *collective management organisation* mandates another *collective management organisation* to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated *collective management organisation* shall distribute the amounts referred to in paragraph 1 *accurately and without delay*, and shall provide the information referred to in paragraph 2 to the mandating *collective management organisation*. *The mandating collective management organisation* shall be responsible for *the* subsequent distribution of *such amounts* and *the provision of such* information to rightholders, unless *the collective management organisations* agree otherwise.

■

Article 28

Agreements between *collective management organisations* for multi-territorial licensing

1. **Member States shall ensure that any** representation agreement between *collective management organisations whereby a collective management organisation* mandates another *collective management organisation* to grant multi-territorial licences for the online rights in musical works in its own music repertoire is of a non-exclusive nature. The mandated *collective management organisation* shall manage *those* online rights on *a non-discriminatory basis*.
2. The mandating *collective management organisation* shall inform its members of the *main terms* of the agreement, *including its duration and* the costs of the services provided by the *mandated collective management organisation*.
3. The mandated *collective management organisation* shall inform the mandating *collective management organisation* of the *main* terms *according to* which *the latter's* online rights are to be licensed, including the nature of the exploitation, all provisions which relate to or affect the licence fee, the duration of the licence, *the* accounting periods and the territories covered.

Article 29

Obligation to represent another *collective management organisation* for multi-territorial licensing

1. ***Member States shall ensure that where a collective management organisation which does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire requests another collective management organisation to enter into a representation agreement to represent those rights, the requested collective management organisation is required to agree to 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 collective management organisations.***
 - 1a. ***The requested collective management organisation shall respond to the requesting collective management organisation in writing and without undue delay.***
 - 1b. ***Without prejudice to paragraphs 2 and 3, the requested collective management organisation shall manage the represented repertoire of the requesting collective management organisation on the same conditions as those which it applies to the management of its own repertoire.***
 - 1c. ***The requested collective management organisation shall include the represented repertoire of the requesting collective management organisation in all offers it addresses to online service providers.***

2. ■ The management fee for the service provided by the requested *collective management organisation* to the requesting *organisation* shall not exceed the costs reasonably incurred by the requested *collective management organisation*.
3. The requesting *collective management organisation* shall make available to the requested *collective management organisation* information *relating to* its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested *collective management organisation* to meet the requirements of this Title, the requested *collective management organisation* shall be entitled to charge for the ■ costs *reasonably* incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

Article 30

Access to multi-territorial licensing

Member States shall ensure that where a *collective management organisation* does not grant or offer to grant multi-territorial licences for online rights in musical works or does not allow another *collective management organisation* to represent those rights for such purpose by ...^{*}, rightholders who have authorised that *collective management organisation* to represent their online rights in musical works can *withdraw from that collective management organisation the online rights in musical works for the purposes of multi-territorial licensing in respect of all territories without having to withdraw the online rights in musical works for the purposes of mono-territorial licensing, so as to grant multi-territorial licences for their online rights in musical works themselves or through any other party they authorise or through any collective management organisation* complying with the provisions of this Title.

■

* OJ: please insert the date: 36 months after the entry into force of this Directive.

Article 33

Derogation for online music rights required for radio and television programmes

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

TITLE IV

ENFORCEMENT MEASURES

Article 34

Complaints procedures

1. Member States shall ensure that *collective management organisations* make available to their members, and *to collective management organisations on whose behalf they manage rights under a representation agreement*, effective and timely procedures for dealing with complaints, particularly in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.
2. *Collective management organisations* shall respond in writing to complaints by members or *by collective management organisations on whose behalf they manage rights under a representation agreement*. Where the *collective management organisation rejects* a complaint, it shall give reasons.

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Article 35

Alternative dispute resolution procedures

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* can be submitted to *a rapid, independent and impartial alternative dispute resolution procedure*.
- 1a. *Member States shall ensure, for the purposes of Title III, that the following disputes relating to a collective management organisation established in their territory which grants or offers to grant multi-territorial licences for online rights in musical works can be submitted to an independent and impartial alternative dispute resolution procedure:*
 - (a) *disputes with an actual or potential online service provider regarding the application of Articles 15, 23, 24 and 25;*
 - (b) *disputes with one or more rightholders regarding the application of Articles 23, 24, 25, 26, 28, 29 and 30;*
 - (c) *disputes with another collective management organisation regarding the application of Articles 23, 24, 25, 26, 28 and 29.*

Article 36a
Dispute resolution

1. *Member States shall ensure that disputes between collective management organisations and users concerning, in particular, existing and proposed licensing conditions or a breach of contract can be submitted to a court, or if appropriate, to another independent and impartial dispute resolution body where that body has expertise in intellectual property law.*
2. *Articles 34 and 35 and paragraph 1 of this Article shall be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.*

Article 37
Compliance

- 1. *Member States shall ensure that compliance by collective management organisations established in their territory with the provisions of national law adopted pursuant to the requirements laid down in this Directive is monitored by competent authorities designated for that purpose.*

1. Member States shall ensure that procedures *exist* enabling members of a *collective management organisation*, rightholders, users, *collective management organisations* and other interested parties *to notify the* competent authorities *designated for that purpose of* activities *or circumstances which, in their opinion, constitute a breach of the provisions of national law adopted pursuant to the requirements laid down in* this Directive.
2. Member States shall █ ensure that █ the competent authorities *designated for that purpose have the power to impose appropriate sanctions or to take appropriate measures where* the provisions of national law adopted *in implementation of* this Directive *have not been complied with. Those sanctions and measures shall be effective, proportionate and dissuasive.*

Member States shall notify the Commission of the competent authorities referred to in this Article and in Articles 39a and 40 by The Commission shall publish the information received in that regard.*

█

* OJ: please insert the date: 24 months after the entry into force *of this Directive*.

Article 39a

Exchange of information between competent authorities

- 1. In order to facilitate the monitoring of the application of this Directive, each Member State shall ensure that a request for information received from a competent authority of another Member State, designated for that purpose, concerning matters relevant to the application of this Directive, in particular with regard to the activities of collective management organisations established in the territory of the requested Member State, is responded to without undue delay by the competent authority designated for that purpose, provided that the request is duly justified.*
- 2. Where a competent authority considers that a collective management organisation established in another Member State but acting within its territory may not be complying with the provisions of the national law of the Member State in which that collective management organisation is established which have been adopted pursuant to the requirements laid down in this Directive, it may transmit all relevant information to the competent authority of the Member State in which the collective management organisation is established, accompanied where appropriate by a request to that authority that it take appropriate action within its competence. The requested competent authority shall provide a reasoned reply within three months.*
- 3. Matters as referred to in paragraph 2 may also be referred by the competent authority making such a request to the expert group established in accordance with Article 41a.*

Article 40

Cooperation for the development of multi-territorial licensing

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2. The Commission shall foster a regular exchange of information between the competent authorities *designated for that purpose in* Member States, and between those authorities and the Commission, on the situation and development of multi-territorial licensing.
3. The Commission shall conduct regular consultations with representatives of rightholders, *collective management organisations*, users, consumers and other interested parties on their experience with the application of the provisions of Title III of this Directive. The Commission shall provide competent authorities with all relevant information *that emerges* from those consultations, within the framework *of the exchange of information* provided for in paragraph 2.

4. Member States shall ensure that *by...*^{*}, their competent authorities provide the Commission with a report on the situation and development of multi-territorial licensing in their territory. The report shall include information on, in particular, the availability of multi-territorial licences in the Member State concerned and compliance by *collective management organisations* with the *provisions of national law adopted in implementation of* Title III of this Directive, together with an *assessment of the development of multi-territorial licensing of online rights in musical works by users*, consumers, rightholders and other interested parties.

* OJ: please insert the date: **42** months after the *entry into force of this Directive*.

5. On the basis of the reports received pursuant to paragraph 4 and the information gathered pursuant to paragraphs 2 and 3, the Commission shall assess the application of Title III of this Directive. If necessary, and where appropriate on the basis of a specific report, it shall consider further steps to address **any** identified problems **■** .
- That** assessment shall cover, in particular, the following:
- (a) the number of **collective management organisations** meeting the requirements **of** Title III;
 - (b) the **application of Articles 28 and 29, including** the number of representation agreements **concluded by collective management organisations** pursuant to **those** Articles;
 - (c) the proportion of repertoire in the Member States which is available for licensing on a multi-territorial basis.

TITLE V

REPORTING AND FINAL PROVISIONS

Article -41

Notification of collective management organisations

By...^{}, Member States shall provide the Commission, on the basis of the information at their disposal, with a list of the collective management organisations established in their territories.*

Member States shall notify any changes to that list to the Commission without undue delay.

The Commission shall publish that information and keep it up to date.

^{*} OJ: please insert the date: **24** months after the entry into force of this Directive.

Article 41

Report

By ...^{*}, the Commission shall assess the application of this Directive and submit to the European Parliament and to the Council a report on the application of this Directive. That report shall include an assessment of the impact of this Directive on the development of cross-border services, on cultural diversity, *on the relations between collective management organisations and users and on the operation in the Union of collective management organisations established outside the Union*, and, if necessary, on the need *for a* review. The Commission's report shall be accompanied, if appropriate, by a legislative proposal.

Article 41a

Expert group

An expert group is hereby established. It shall be composed of representatives of the competent authorities of the Member States. The expert group shall be chaired by a representative of the Commission and shall meet either on the initiative of the chairman or at the request of the delegation of a Member State. The tasks of the group shall be as follows:

^{*} OJ: please insert the date: 7 years after the entry into force of this Directive

- (a) *to examine the impact of the transposition of this Directive on the functioning of collective management organisations and independent management entities in the internal market, and to highlight any difficulties;*
- (b) *to organise consultations on all questions arising from the application of this Directive;*
- (c) *to facilitate the exchange of information on relevant developments in legislation and case-law, as well as relevant economic, social, cultural and technological developments, especially in relation to the digital market in works and other subject-matter.*

Article 41b

Protection of personal data

The processing of personal data carried out within the framework of this Directive shall be subject to Directive 95/46/EC.

Article 42
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...^{*}. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

^{*} OJ: please insert the date: **24** months after the entry into force of *this* Directive

Article 43
Entry into force

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

Article 44
Addressees

This Directive is addressed to the Member States.

Done at ,

For the European Parliament

For the Council

The President

The President

ANNEX

1. Information to be provided in the annual transparency report referred to in Article 20(2):
 - (a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash-flow statement;
 - (b) a report on the activities in the financial year;
 - (ba) information on refusals to grant a licence pursuant to Article 15(2a);**
 - (c) a description of the legal and governance structure of the *collective management organisation*;
 - (d) information on any entities *directly or indirectly owned or controlled, wholly or in part, by the collective management organisation*;
 - (e) information on the total amount of remuneration paid to the persons referred in *Articles 8(1b) and 9* in the previous year, and on other benefits granted to them;

- (f) the financial information referred to in point 2 of this Annex;
 - (g) a special report on the use of any amounts deducted for the purposes of social, cultural and educational services, containing the information referred to in point 3 of this Annex.
2. Financial information to be provided in the annual transparency report:
- (a) financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance), **including information on the income arising from the investment of rights revenue and the use of such income (whether it is distributed to rightholders or other collective management organisations, or otherwise used);**
 - (b) financial information on the cost of **rights** management **■** and other services provided by the **collective management organisation** to rightholders, with a comprehensive description of at least the following items:
 - (i) all operating and financial costs, with a breakdown per category of rights managed and, **where costs are indirect and cannot be attributed to one or more categories of rights**, an explanation of the method used to allocate **such** indirect costs;

- (ii) operating and financial costs, with a breakdown per category of rights managed *and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs*, only with regard to the management of rights, *including management fees deducted from or offset against rights revenue or any income arising from the investment of rights revenue in accordance with Article 10(3) and Article 11(1), (1a) and (1b)*;
- (iii) operating and financial costs with regard to services other than the management of rights, *but* including social, cultural and educational services;
- (iv) resources used to cover costs;
- (v) deductions made from rights revenues, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs relating to the management of rights or to social, cultural or educational services;

- (vi) the percentages that the cost of the *rights* management **█** and other services provided by the *collective management organisation* to rightholders represents compared to the rights *revenue* in the relevant financial year, per category of rights managed, **and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;**
- (c) financial information on amounts due to rightholders, with a comprehensive description of at least the following items:
 - (i) the total amount attributed to rightholders, with a breakdown per category of rights managed and type of use;
 - (ii) the total amount paid to rightholders, with a breakdown per category of rights managed and type of use;
 - (iii) the frequency of payments, with a breakdown per category of rights managed and per type of use;

- (iv) the total amount collected but not yet attributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;
- (v) the total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;
- (vi) where a *collective management organisation* has not carried out the distribution and payments within the deadline set in Article 12(1), the reasons for the delay;
- (vii) *the total non-distributable amounts, along with an explanation of the use to which those amounts have been put;*

- (d) information on **■** relationships with other *collective management organisations*, with a description of at least the following items:
- (i) **■** amounts received from other *collective management organisations* and amounts paid to other *collective management organisations*, with a breakdown per category of rights, *per type of use and per organisation*;
 - (ii) management fees **■** and other deductions from the rights revenue due to other *collective management organisations*, with a breakdown per category of rights, *per type of use and per organisation*;
 - (iii) management fees **■** and other deductions from the amounts paid by other *collective management organisations*, with a breakdown per category of rights and per *organisation*;
 - (iv) *amounts* distributed *directly* to rightholders originating from other *collective management organisations*, with a breakdown per category of rights and per *organisation*.

3. Information to be provided in the special report referred to in Article 20(3):
- (a) the amounts ***deducted*** for the purposes of social, cultural and educational services in the financial year, with a breakdown ***per type of purpose and, for each type of purpose, with a breakdown*** per category of rights managed and per type of use;
 - (b) ***an*** explanation of the use of ***those*** amounts, with a breakdown per type of purpose ***including the costs of managing amounts deducted to fund social, cultural and educational services and of the separate amounts used for social, cultural and educational services.***

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