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Committee on the Internal Market and Consumer Protection

2012/0180(COD)

24.6.2013

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council
on collective management of copyright and related rights and multi-territorial
licensing of rights in musical works for online uses in the internal market
(COM(2012)0372 – C7-0183/2012 – 2012/0180(COD))

Rapporteur: Toine Manders

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SHORT JUSTIFICATION

Context

In July 2012, the Commission proposed a Directive which contains general provisions on collective rights management for all sectors. Additionally, it includes specific provisions for multi-territorial licensing of online music. This proposal has to be regarded in the context of the Commission's 2010 Communication on the Digital Agenda for Europe and the Europe 2020 Strategy for smart, sustainable, and inclusive growth. It aims to facilitate the licensing of rights and, more generally, access to attractive digital content, in particular in a cross-border context, thereby ensuring that consumers and businesses can take full advantage of the opportunities of the Digital Single Market.

As noted in the Single Market Act of April 2011, intellectual property is among the key areas for which action is required on EU level to combat the current crisis, boost growth and enhance confidence in the Single Market. Studies demonstrate that creative industries contribute significantly to the GDP and employment of the Member States. However, the management of collective rights in the EU is still opaque. In particular, the systems in place for collection of rights revenues, the calculations of tariffs and the distribution of collected fees have been subject to debate for a number of years.

Right-holders often complain that they do not receive what they are entitled to. There is a risk of confusion and distrust among them caused by lengthy and unclear procedures for payment and distribution of fees by collecting societies. This hinders creativity and leads to a less transparent internal market. There are also requests for more clarity on the use of amounts that cannot be distributed. Users, on the other hand, often find it difficult to understand what fees they should pay and which collecting society is responsible for which fee.

Finally, collecting societies provide services for one or more groups of rights and right-holders in a Member State and are in many cases de jure or de facto monopolies. Therefore, we cannot yet speak of a truly competitive single market in this field.

Rapporteur's Remarks

The Commission proposal is a great leap forward in the field of collective rights management and your Rapporteur shares the Commission's view that a legal framework needs to be put in place in this area.

However, in order to foster more innovation and intellectual creation across the Single Market for the benefit of artists, service providers, consumers and the European economy as a whole, we need to be bolder. Your Rapporteur would like to see that the Directive brings, inter alia, increased transparency for users and right-holders alike, lower administrative burdens, as well as better protection of the interests of right-holders. This opinion seeks to contribute to achieving those objectives by addressing the following main issues.

Firstly, in order to ensure better transparency for users and prevent double-invoicing, collecting societies should cooperate in such a manner that they form a central point of contact for the users. They should work together to ensure that a user receives a single

invoice. A precondition for all of that is a well functioning system of data sharing between those collecting societies.

Secondly, the license tariffs/fees should be more transparent. The single invoice should include a clear indication of the collecting societies involved, the works licensed and their actual uses. In case of a dispute, independent and impartial bodies with appropriate expertise should be available to resolve such disputes. In addition, the transparency requirements should apply to all collecting societies so as to avoid fragmentation. This Directive should also make full use of the current technological advancements by encouraging users, right-holders and collecting societies to obtain and share information through individual online accounts.

Thirdly, prudent use of revenues collected should be encouraged and risky investments of those revenues should therefore be curtailed. Collecting societies should refrain from investing assets in a manner that could result in a loss of revenues belonging to right-holders.

Fourthly, the rights and interests of right-holders should be better protected by ensuring that the management of their rights is backed up by more frequent and regular payments and distribution of the amounts, as well as better transparency on the use of their works.

Finally, your Rapporteur welcomes Title III of draft Directive on multiterritorial licensing of online rights in musical works. Freedom of establishment and of provision of services, including collective rights management services, across borders is a corner-stone of the Single Market as provided for by the Treaty and the Services Directive and should therefore be fully implemented.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 2

Text proposed by the Commission

(2) The dissemination of content which is protected by copyright and related rights and the linked services, including books, audiovisual productions and recorded music require the licensing of rights by

Amendment

(2) The dissemination of content which is protected by copyright and related rights and the linked services, including books, audiovisual productions and recorded music require the licensing of rights by

different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the rightholders to choose between the individual or collective management of their rights. Management of copyright and related rights includes the granting of licences to users, the auditing of licensees and monitoring of the use of rights, the enforcement of copyright and related rights, the collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collecting societies enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets. Moreover, they have an important social and cultural role as promoters of the diversity of cultural expressions by enabling the smallest and less popular repertoires to access the market. *Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action, in particular in order to respect and to promote the diversity of its cultures.*

different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the rightholders to choose between the individual or collective management of their rights. Management of copyright and related rights includes the granting of licences to users, the auditing of licensees and monitoring of the use of rights, the enforcement of copyright and related rights, the collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collecting societies enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets. Moreover, they have an important social and cultural role as promoters of the diversity of cultural expressions by enabling the smallest and less popular repertoires to access the market.

Amendment 2

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action, in particular in order to respect and to promote the diversity of its cultures. It follows from this that Member States should preserve, respect and promote cultural diversity. Collective management organisations have and shall continue to

have an important role as promoters of cultural diversity in Europe and of culturally diverse creative industries, both by enabling the smallest and less popular repertoires and new artists to access the market and by providing social, cultural and educational services for the benefit of their rightholders and the public.

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) When established in the Union, collecting societies – as service providers – must comply with the national requirements pursuant to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market which seeks to create a legal framework for ensuring the freedom of establishment and the free movement of services between the Member States. This implies that collecting societies should be free to provide their services across borders, to represent rightholders resident or established in other Member States or grant licences to users resident or established in other Member States.

deleted

Amendment 4

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) This directive lays down the minimum provisions necessary to achieve free movement of collective rights management services in the Single Market. It does not interfere with the right of Member States to put in place authorisation requirements for the establishment of collective management organisations and their supervision.

Amendment 5

Proposal for a directive

Recital 4

Text proposed by the Commission

Amendment

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

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

Amendment 6

Proposal for a directive Recital 8

Text proposed by the Commission

(8) In order to ensure that holders of copyright and related rights can fully benefit from the internal market when their rights are being managed collectively and that their freedom to exercise their rights is not unduly affected, it is necessary to provide for the inclusion of appropriate safeguards in the constituting documents of collective management organisations. Moreover, ***in accordance with Directive 2006/123/EC*** collective management organisations should not discriminate, directly or indirectly, between rightholders on the basis of their nationality, place of residence or place of establishment when providing their management services.

Amendment

(8) In order to ensure that holders of copyright and related rights can fully benefit from the internal market when their rights are being managed collectively and that their freedom to exercise their rights is not unduly affected, it is necessary to provide for the inclusion of appropriate safeguards in the constituting documents of collective management organisations. Moreover, collective management organisations should not discriminate, directly or indirectly, between rightholders on the basis of their nationality, place of residence or place of establishment when providing their management services. ***Any direct or indirect discrimination on the basis of existing licences, extent of repertoire or expected sales should be prohibited.***

Amendment 7

Proposal for a directive Recital 9

Text proposed by the Commission

(9) Having the freedom to provide and to receive collective management services across national borders entails that rightholders are able to freely choose the collecting society for the management of their rights, such as public performance or broadcasting rights, or categories of rights, such as interactive communication to the public, provided the collecting society already manages such rights or categories of rights. This implies that rightholders can

Amendment

(9) Having the freedom to provide and to receive collective management services across national borders entails that rightholders are able to freely choose the collecting society for the management of their rights, such as public performance or broadcasting rights, or categories of rights, such as interactive communication to the public, provided the collecting society already manages such rights or categories of rights. This implies that rightholders can

easily withdraw their rights or categories of rights from a collecting society and entrust or transfer all or part of them to another collecting society or another entity irrespective of the Member State of residence or the nationality of either the collecting society or the rightholder. Collecting societies managing different types of works and other subject matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject matter. Collecting societies should inform rightholders of this choice and allow them to exercise it as easily as possible. Finally, this Directive should *not prejudice* the possibilities of rightholders to manage their rights individually, including for non-commercial uses.

easily withdraw their rights or categories of rights from a collecting society and entrust or transfer all or part of them to another collecting society or another entity irrespective of the Member State of residence or the nationality of either the collecting society or the rightholder. Collecting societies managing different types of works and other subject matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject matter. Collecting societies should inform rightholders of this choice and allow them to exercise it as easily as possible. Finally, this Directive should *protect and enhance* the possibilities of rightholders to manage their rights individually, including for non-commercial uses.

Amendment 8
Proposal for a directive
Recital 10

Text proposed by the Commission

(10) Membership of collecting societies should be based on objective and non-discriminatory criteria including as regards publishers who by virtue of an agreement on the exploitation of rights, are entitled to a share of the income from the rights managed by collecting societies and to collect such income from the collecting society.

Amendment

(10) Membership of collecting societies should be based on objective and non-discriminatory criteria including as regards *associations of rightholders, such as other collective societies rightholders' unions, and* publishers who by virtue of an agreement on the exploitation of rights, are entitled to a share of the income from the rights managed by collecting societies and to collect such income from the collecting society.

Amendment 9
Proposal for a directive

Recital 11

Text proposed by the Commission

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

Amendment

(11) *Collective management organisations should* act in the best *collective* interests of *the rightholders they represent*. It is therefore important to provide for systems which enable members of collecting societies to exercise their membership rights by participating in the societies' decision-making process. The representation *in the decision-making process* of the different categories of members, *such as producers or performers*, should be fair and balanced. The effectiveness of the rules on the general *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*.

Amendment 10

Proposal for a directive

Recital 12

Text proposed by the Commission

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

Amendment

(12) Members of collecting societies should be *entitled* to participate and vote in the general meeting; the exercise of these rights may only be subject to fair and proportionate restrictions. The exercise of rights *to vote and stand for election* should be made easy *for all members, and should where possible take place by electronic means*.

Amendment 11

Proposal for a directive Recital 13

Text proposed by the Commission

(13) Members should be allowed to take part in monitoring the management of **collecting societies**. To this end, **collecting societies** should establish a supervisory function appropriate to their organisational structure and allow members to be represented in the body that exercises this function. To avoid imposing excessive burden on smaller collecting societies and to make the obligations arising from this Directive proportionate, Member States should be able to, if they consider this to be necessary, exclude the smallest collecting societies from having to organise such a supervisory function.

Amendment

(13) Members should be allowed to take part in monitoring the management of **collective management organisations**. To this end, **collective management organisations** should establish a supervisory function appropriate to their organisational structure and allow members, **representing different categories of rightholders**, to be represented in **a balanced manner in** the body that exercises this function. To avoid imposing excessive burden on smaller collecting societies and to make the obligations arising from this Directive proportionate, Member States should be able to, if they consider this to be necessary, exclude the smallest collecting societies from having to organise such a supervisory function.

Amendment 12

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Collecting societies collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that society, or another society. It is therefore important that collecting societies exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where collecting societies maintain proper records of membership, licences and use of works and other subject matter. Where

Amendment

(15) Collecting societies collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that society, or another society. It is therefore important that collecting societies exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where collecting societies maintain proper records of membership, licences and use of works and other subject matter. Where

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

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Amendment 13

Proposal for a directive

Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Where the amounts due to rightholders cannot be distributed, because the collective management organisation failed to identify and locate the rightholders, it would provide a disincentive for the collective management organisations to be diligent in their effort to locate the proper rightholders, if they were allowed to keep the money and use it for other purposes. It is therefore appropriate that the amounts that cannot be distributed be transferred to a cultural fund set up and managed for this purpose by the collective management organisation. The specific activities to be financed from such a fund should be decided by the general meeting.

Amendment 14

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(16) Since rightholders are entitled to be remunerated for the exploitation of their rights, it is important for any deduction, other than management fees or deductions required by national law, to be decided by ***the*** members of collecting societies and for the societies to be transparent towards rightholders regarding the rules governing those deductions. Any such rightholder should have access in a non-discriminatory manner to any social, cultural or educational service funded through such deductions. However, this Directive should not affect national law on any aspects that are not regulated by this Directive.

(16) Since rightholders are entitled to be remunerated for the exploitation of their rights, it is important for any deduction, other than management fees, ***for example a deduction for social, cultural or educational purposes***, or deductions required by national law, to be decided by ***all*** members of collecting societies and for the societies to be transparent towards rightholders regarding the rules governing those deductions. Any such rightholder should have access ***easily and*** in a non-discriminatory manner to any social, cultural or educational service funded through such deductions. However, this Directive should not affect national law on

any aspects that are not regulated by this Directive.

Amendment 15
Proposal for a directive
Recital 18

Text proposed by the Commission

(18) Fair commercial terms in licensing are particularly important to ensure that users can license the works and other protected subject-matter for which a collecting society represents rights and to ensure the remuneration of rightholders. Collecting societies and users should therefore conduct licensing negotiations in good faith and apply tariffs determined on the basis of objective criteria.

Amendment

(18) Fair commercial terms in licensing are particularly important to ensure that users can license the works and other protected subject-matter for which a collecting society represents rights and to ensure the remuneration of rightholders. Collecting societies and users should therefore conduct licensing negotiations in good faith and apply tariffs determined on the basis of objective ***and non-discriminatory*** criteria.

Amendment 16
Proposal for a directive
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Collecting societies and users should also establish communication procedures in order to allow users to provide necessary information on the use of the licences and to report accurately, to the extent possible, on the actual use of the works licensed.

Amendment 17

Proposal for a directive Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) To enhance transparency and prevent situations where users receive more than one invoice for the same rights in the same works, collecting societies may be required, in compliance with Union law, to cooperate closely among themselves. This cooperation could include pooling of information on licences and use of works in a common database and issuing single joint invoices to each user.

Amendment 18

Proposal for a directive Recital 20

Text proposed by the Commission

Amendment

(20) To ensure that rightholders are in a position to monitor the performance of their collecting societies and compare their respective performance, collecting societies should make public an annual transparency report comprising comparable audited financial information specific to the activities of collecting societies. Collecting societies should also make public an annual special report on the use of amounts dedicated to social, cultural and educational services. ***To avoid imposing excessive burden on smaller collecting societies and to make the obligations arising from this Directive proportionate, Member States should be able to, if they consider this to be necessary, exclude the smallest collecting societies from certain transparency obligations.***

(20) To ensure that rightholders are in a position to monitor the performance of their collecting societies and compare their respective performance, collecting societies should make public an annual transparency report comprising comparable audited financial information specific to the activities of collecting societies. Collecting societies should also make public an annual special report on the use of amounts dedicated to social, cultural and educational services.

Amendment 19

Proposal for a directive Recital 22

Text proposed by the Commission

(22) While the Internet knows no borders, the online market for music services in the EU is still fragmented, and a single market has still not been fully achieved. The complexity and difficulty associated with the collective management of rights in Europe has, in a number of instances, exacerbated the fragmentation of the European digital market for online music services. This situation comes in stark contrast to the fast growing demand of consumers for access to digital content and associated innovative services, including across national borders.

Amendment

(22) While the Internet knows no borders, the online market for music services in the EU is still fragmented, and a single market has still not been fully achieved. The complexity and difficulty associated with the collective management of rights in Europe has, in a number of instances, exacerbated the fragmentation of the European digital market for online music services. This situation comes in stark contrast to the fast growing demand of consumers for access to digital content and associated innovative services, including across national borders. ***As a result, the potential of information technology remains untapped and consumers are deprived of a truly borderless digital single market for music. It is therefore important to move forward in order to ensure freedom of movement of services and goods, both in the physical and digital environment.***

Amendment 20

Proposal for a directive Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) The provision of multi-territorial multi-repertoire licences for online music rights and the safeguarding of a fair and adequate remuneration for rightholders by collective management organisations lie in the general economic and cultural interest of the European Union and its citizens. Cross-border cooperation of

collective management organisations or the consolidation of their licensing activities to pool their respective complementary repertoires is indispensable for the establishment and the functioning of an efficient system of multi-territorial multi-repertoire licences for online rights in musical works.

Amendment 21

Proposal for a directive Recital 24

Text proposed by the Commission

(24) *In the online music sector, where* collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by collecting *societies*, in an increasingly cross-border context. It is therefore appropriate to provide for a set of rules coordinating basic conditions for the provision by collecting *societies* of multi-territorial collective licensing of authors' online rights in musical works. These provisions should ensure the necessary minimum quality of the cross-border services provided by collecting *societies*, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and thus reducing the number of licences a user needs to operate a multi-territorial service. These provisions should enable a collecting *society* to request another collecting *society* to represent its repertoire on a multi-territorial basis where it cannot fulfil the requirements itself. There should be an obligation on the requested *society*, provided that it aggregates repertoire and

Amendment

(24) *Unlike other creative sectors where direct licensing plays a more prominent role, the* collective management of authors' rights on a territorial basis remains the norm *in the music sector. Therefore*, it is essential to create conditions conducive to the most effective licensing practices by collecting *management organisations*, in an increasingly cross-border context. It is therefore appropriate to provide for a set of rules coordinating basic conditions for the provision by collecting *management organisations* of multi-territorial collective licensing of authors' online rights in musical works, *thereby enhancing consumer choice and advancing towards completion of the Digital Single Market.* These provisions should ensure the necessary minimum quality of the cross-border services provided by collecting *management organisations*, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and thus reducing the number of licences a user needs to operate a multi-territorial service. These provisions should enable a collecting *management organisation* to

offers or grants multi-territorial licences, to accept the mandate of the requesting **society**. The development of legal online music services across the Union should also contribute to the fight against piracy.

request another collecting **management organisation** to represent its repertoire on a multi-territorial basis where it cannot fulfil the requirements itself. There should be an obligation on the requested **organisation**, provided that it aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting **organisation, without abusing its market power**. The development of legal online music services across the Union should also contribute to the fight against piracy.

Amendment 22

Proposal for a directive Recital 35

Text proposed by the Commission

(35) Broadcasting organisations generally rely on a licence from a local collecting society, for their own broadcasts of television and radio programmes which include musical works. ***This licence is often limited to broadcasting activities.*** A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online music rights ***for the purposes of simultaneous and delayed transmission online of television and radio broadcasts,*** it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of musical works for online uses. Such derogation should be limited to what is necessary to allow access to television or radio programmes online and ***to material having a clear and subordinate relationship to the original broadcast produced for purposes such as supplementing, previewing or reviewing that television or***

Amendment

(35) Broadcasting organisations generally rely on a licence from a local collecting society, for their own broadcasts of television and radio programmes which include musical works. A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online music rights ***in the interest of online accessibility,*** it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of musical works for online uses. Such derogation should be limited to what is necessary to allow access to television or radio programmes online and ***make possible online offers connected to linear broadcasting.*** That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, or lead to restrictive practices, such as market or customer

radio programme. That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, or lead to restrictive practices, such as market or customer sharing, in breach of Articles 101 or 102 of the Treaty on the Functioning of the European Union.

sharing, in breach of Articles 101 or 102 of the Treaty on the Functioning of the European Union.

Amendment 23

Proposal for a directive Recital 36

Text proposed by the Commission

(36) It is necessary to ensure the effective enforcement of the provisions of the national law adopted pursuant to this Directive. Collecting societies should offer their members specific procedures for the handling of complaints and the resolution of disputes. These procedures should also be made available to other rightholders represented by the collecting society. It is also appropriate to ensure that Member States have independent, impartial and effective dispute resolution bodies capable of settling commercial disputes between collecting societies and users on existing or proposed licensing conditions as well as on situations in which the granting of a licence is refused. Furthermore, the effectiveness of the rules on the multi-territorial licensing of online rights in musical works could be undermined if disputes between collecting societies and their counterparts were not solved quickly and efficiently by independent and impartial bodies. As a result, it is appropriate to provide, without prejudice to the right of access to a **tribunal**, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between collecting societies, on the one hand, and online

Amendment

(36) It is necessary to ensure the effective enforcement of the provisions of the national law adopted pursuant to this Directive. Collecting societies should offer their members specific procedures for the handling of complaints and the resolution of disputes. These procedures should also be made available to other rightholders represented by the collecting society. It is also appropriate to ensure that Member States have independent, impartial and effective dispute resolution bodies capable of settling commercial disputes between collecting societies and users on existing or proposed licensing conditions as well as on situations in which the granting of a licence is refused. Furthermore, the effectiveness of the rules on the multi-territorial licensing of online rights in musical works could be undermined if disputes between collecting societies and their counterparts were not solved quickly and efficiently by independent and impartial bodies. As a result, it is appropriate to provide, without prejudice to the right of access to a **court**, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between collecting societies, on the one hand, and online

music service providers, rightholders or other collecting societies, on the other.

music service providers, rightholders or other collecting societies, on the other.

Amendment 24

Proposal for a directive Recital 41

Text proposed by the Commission

(41) This Directive respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union. The requirement in the Directive that dispute resolution mechanisms should be made available to members, rightholders, users and collecting societies should not prevent the parties from exercising their right of access to a **tribunal** as guaranteed in the Charter of Fundamental Rights of the European Union.

Amendment

(41) This Directive respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union. The requirement in the Directive that dispute resolution mechanisms should be made available to members, rightholders, users and collecting societies should not prevent the parties from exercising their right of access to a **court** as guaranteed in the Charter of Fundamental Rights of the European Union.

Amendment 25

Proposal for a directive Article 1

Text proposed by the Commission

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

Amendment

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 collecting societies of authors' rights in musical works for online use.

(This change applies throughout the text.)

Amendment 26

Proposal for a directive

Article 3 – point a

Text proposed by the Commission

(a) ‘**collecting society**’ means any organisation **which is** authorised by law or by way of assignment, licence or any other contractual arrangement, **by more than one rightholder, to manage copyright or rights related to copyright** as its sole or **main purpose and** which is owned or controlled by its members;

Amendment

(a) ‘**collective management organisation**’ means any organisation 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 **one of its main purposes**, which is:

(i) owned or controlled by its members, **and/or**

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

Amendment 27

Proposal for a directive

Article 3 – point a a (new)

Text proposed by the Commission

Amendment

(aa) ‘**online rights pool**’ means any form of cooperation of collective management organisations with other collective management organisations and/or entities within the meaning of Article 31 of this Directive which serves the purpose of granting licences for online rights in musical works covering the repertoire of all participating collective management organisations and entities involved;

Amendment 28

Proposal for a directive

Article 3 – point f

Text proposed by the Commission

Amendment

(f) ‘rights revenue’ means income collected by a **collecting society** on behalf of rightholders, whether from an exclusive

(f) ‘rights revenue’ means income collected by a **collective management organisation** on behalf of rightholders, whether from an

right, a right to remuneration or a right to compensation;

exclusive right, a right to remuneration or a right to compensation;

Amendment 29

Proposal for a directive

Article 3 – point 1

Text proposed by the Commission

(l) ‘online rights in musical works’ means any of the rights in a musical work provided under Articles 2 and 3 of Directive 2001/29/EC which are required for the provision of an online music service;

Amendment

(l) ‘online rights in musical works’ means any of the **author’s** rights in a musical work provided under Articles 2 and 3 of Directive 2001/29/EC which are required for the provision of an online music service;

Amendment 30

Proposal for a directive

Article 4

Text proposed by the Commission

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

Amendment

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

Amendment 31

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that rightholders are free to entrust their rights to a collective management organisation and that when they have

decided to do so, this decision prevails over any presumption of transfer of rights.

Amendment 32

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Rightholders shall have the right to authorise a ***collecting society*** of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the Member State of residence or of establishment or the nationality of either the ***collecting society*** or the rightholder.

Amendment

2. Rightholders shall have the right to authorise a ***collective management organisation*** of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the Member State of residence or of establishment or the nationality of either the ***collective management organisation*** or the rightholder.

Without prejudice to the rightholder's freedom to choose a collective management organisation, the rights, categories of rights or types of works and other subject matter managed by the collective management organisation shall be determined by the general meeting of members in accordance with Article 7(3).

Amendment 33

Proposal for a directive Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Rightholders shall have the right to grant free licences for the use of their rights. In this case, rightholders shall inform their collective management organisations for which works such a licence will be granted.

Amendment 34

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted to a **collecting society** or to withdraw from a **collecting society** any of the rights or categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, upon serving reasonable notice not exceeding six months. The collecting society may decide that such termination or withdrawal will take effect only at the middle and at the end of the financial year, whichever is sooner after the expiry of the notice period.

Amendment

3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted to a **collective management organisation** or to withdraw from a **collective management organisation** any of the rights or categories of rights or types of works and other subject matter of their choice, **at any time during the term of the authorisation**, for the Member States of their choice, upon serving reasonable notice not exceeding six months. The collecting society may decide that such termination or withdrawal will take effect only at the middle and at the end of the financial year, whichever is sooner after the expiry of the notice period.

Member States may provide for measures, in compliance with Articles 101 and 102 TFEU, allowing collecting societies to adopt adjusted detailed rules aimed at restricting the scope for rightholders to go back and forth in an objectively abusive manner.

Amendment 35

Proposal for a directive Article 5 – paragraph 5

Text proposed by the Commission

5. **Collecting societies** shall not restrict the exercise of rights provided under paragraphs 3 and 4 by requiring that the management of rights or categories of rights or type of works and other subject matter which are subject to the termination or the withdrawal are entrusted to another

Amendment

5. **Collective management organisations** shall not restrict the exercise of rights provided under paragraphs 3 and 4 by requiring that the management of rights or categories of rights, **works** or type of works and other subject matter which are subject to the termination or the withdrawal are

collecting society.

entrusted to another *collective management organisation*.

Amendment 36

Proposal for a directive Article 5 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that the rightholder gives express consent specifically for each right or category of rights or type of works and other subject matter which that rightholder authorises the *collecting society* to manage and that any such consent is evidenced in documentary form.

Amendment

6. Member States shall ensure that the rightholder gives express consent specifically for each right or category of rights, **works** or type of works and other subject matter which that rightholder authorises the *collective management organisation* to manage and that any such consent is evidenced in documentary form.

Amendment 37

Proposal for a directive Article 5 – paragraph 6 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

First subparagraph of this paragraph is without prejudice to the arrangements in the Member States concerning the administration of rights through extended collective licenses, mandatory collective management or similar arrangements or a combination of them, and legal presumptions of representation or transfer of rights.

Amendment 38

Proposal for a directive Article 5 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Each member of a collective management organisation shall have the right to request external independent audits of their collective management organisation at any time during the term of the authorisation.

Amendment 39

Proposal for a directive

Article 5 – paragraph 7 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 40

Proposal for a directive

Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Collecting societies shall accept rightholders, ***or any other members as defined in Article 3(c)***, as members if they fulfil the membership requirements. They may only refuse a request for membership on the basis of objective and ***transparent*** criteria. ***The rightholder must be given a clear explanation as to why the request for membership was refused.*** These criteria shall be included in the statute or the membership terms of the collecting society and shall be made publicly available. ***The criteria must be non-discriminatory and must not result in members being arbitrarily excluded on the grounds of the size of their repertoire, the expected volume of income in the form of***

fees or earlier licensing agreements.

Amendment 41

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

3. The statute of the collecting society shall provide for appropriate and effective mechanisms of participation of its members in the collecting society's decision-making process. The representation of the different categories of members *in* the decision-making process shall be fair and balanced.

Amendment

3. The statute of the collecting society shall provide for appropriate and effective mechanisms of participation of its members in the collecting society's decision-making process. The representation of the different categories of members ***at all levels of*** the decision-making process shall be fair and balanced.

Amendment 42

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

2. A general meeting of the members of the collecting society shall be convened at least once a year.

Amendment

2. A general meeting of the members of the collecting society shall be convened at least once a year. ***The general meeting shall be empowered to take the strategic decisions in the collective management organisation. The power to take any other decisions may be delegated by the general meeting to the body exercising the supervisory function, whilst ensuring that rightholders with niche repertoire are adequately represented in that body.***

Amendment 43

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 44

Proposal for a directive

Article 7 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 45

Proposal for a directive

Article 7 – paragraph 5 – point a

Text proposed by the Commission

(a) the policy on the distribution of the amounts due to rightholders, ***except where the general meeting decides to delegate this decision to the body exercising the supervisory function;***

Amendment

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

Amendment 46

Proposal for a directive

Article 7 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) the use of the amounts due to rightholders which cannot be distributed as set out in Article 12(2) except where the general meeting decides to delegate this decision to the body exercising the supervisory function;

deleted

Amendment 47

Proposal for a directive Article 7 – paragraph 6

Text proposed by the Commission

Amendment

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

6. The general meeting 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 and the auditor's report. *If the financial management practice of the collective management organisation is reasonably in doubt, the general meeting may decide to conduct an internal or external audit. The result of such audit shall be communicated to all members and if necessary to the competent national authority, so that appropriate procedures can be initiated.*

Amendment 48

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

Text proposed by the Commission

Amendment

7. Any restriction on *the right of the members of the collecting society to participate and to exercise voting rights at the general meeting* shall be fair and

7. Every member of a collective management organisation shall have the right to participate in and to stand for election and vote at the general meeting,

proportionate and be based on *the following criteria*:

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

Amendment 49

Proposal for a directive Article 7 – paragraph 8

Text proposed by the Commission

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

Amendment 50

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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

including, where appropriate, by electronic vote. Any restriction on *that* right shall be fair and proportionate and *shall be limited to the criteria* based on *the* duration of membership.

Amendment

8. Every member of a **collective management organisation** shall have the right to appoint any other **member** or a legal person *in the same category* as a proxy holder to attend and vote at the general meeting in his name. *To be valid, the proxy shall have been given freely by the member to the proxy holder no more than three months before its use. The number of proxies that may be held by a single proxy holder shall be limited.*

Amendment

1. Member States shall ensure that the **collective management organisation** establishes a supervisory function responsible for continuously monitoring the activities and the performance of the duties of the persons entrusted with managerial responsibilities in *that organisation*. There shall be fair and balanced representation of the members of

body exercising this function in order to ensure their effective participation.

the *collective management organisation, representing different categories of rightholders, including niche repertoire*, in the body exercising this function in order to ensure their effective participation.

Amendment 51

Proposal for a directive

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The body entrusted with the supervisory function shall report on the exercise of its responsibilities to the general meeting provided for in Article 7.

Amendment 52

Proposal for a directive

Article 8 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. Member States may decide that paragraphs 1 and 2 shall not apply to a collecting *society* which on its balance sheet date does not exceed the limits of two of the three following criteria:

3. Paragraphs 1 and 2 shall not apply to a collecting *management organisation* which on its balance sheet date does not exceed the limits of two of the three following criteria:

Amendment 53

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that the persons who effectively manage the business of a collecting society and its directors, *with the exception of the directors exercising supervisory function*,

Member States shall ensure that the persons who effectively manage the business of a collecting society and its directors design procedures so as to avoid conflicts of interest. The collecting society

design procedures so as to avoid conflicts of interest. The collecting society shall have procedures to identify, manage, monitor and disclose conflicts of interest in order to prevent them from adversely affecting the interests of members of the society.

shall have procedures to identify, manage, monitor and disclose conflicts of interest in order to prevent them from adversely affecting the interests of members of the society.

Amendment 54

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

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

Amendment

Those procedures shall include an individual statement by each of those persons and directors, **given** to the body entrusted with the supervisory function, **and made publicly available through the website of the collective management organisation, in accordance with applicable law on privacy in the Member State. The statement shall be made before each of those persons take up their duties, and shall thereafter be renewed annually. The statement shall contain** the following information:

Amendment 55

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. **Collective management organisations** shall be diligent, **accurate and transparent** in the collection and the management of rights revenue. **Without prejudice to the extended collective licensing arrangements, collective management organization shall only collect rights revenue on behalf of rightholders whose rights it is authorised to represent.**

Amendment 56
Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

3. The collecting society shall not be allowed to use rights revenue and any income derived from its investment for its own account, save that it may deduct its management fees.

Amendment

3. The collecting society shall not be allowed to use rights revenue and any income derived from its investment for its own account, save that it may deduct its management fees ***according to the rules referred to in Article 7(5)(d).***

Amendment 57

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

Text proposed by the Commission

4. Where, pending the distribution of the amounts due to rightholders, the collecting society invests the rights revenue and any income derived from its investment, it shall do so in accordance with the general investment policy referred to in Article 7(5)(c) and the following rules:

Amendment

4. Where, pending the distribution of the amounts due to rightholders, the collecting society invests the rights revenue and any income derived from its investment, it shall do so ***in the best interests of the rightholders whose rights it represents and in*** accordance with the general investment policy referred to in Article 7(5)(c) and the following rules:

Amendment 58

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

Text proposed by the Commission

(a) ***the assets shall be invested in the best interests of members;*** where there is any potential conflict of interest, the collecting society shall ensure that the investment is made in the sole interest of ***members;***

Amendment

(a) where there is any potential conflict of interest, the collecting society shall ensure that the investment is made in the sole interest of ***these rightholders;***

Amendment 59

Proposal for a directive

Article 10 – paragraph 4 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the assets shall only be invested, directly or indirectly, in investment products where the principal amount is not reduced at the end of the maturity of those products;

Amendment 60

Proposal for a directive

Article 10 – paragraph 4 – point b b (new)

Text proposed by the Commission

Amendment

(bb) the assets shall be invested in a manner which does not prejudice any amounts due to rightholders;

Amendment 61

Proposal for a directive

Article 11 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Member States shall ensure that, where a collecting society provides social, cultural or educational services funded through deductions from rights revenue, rightholders ***are*** entitled to the following:

2. Member States shall ensure that, where a collecting society provides social, cultural or educational services funded through deductions from rights revenue ***and from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria, in particular in relation to access to and the extent of those services. Where the collecting society provides such services, rightholders shall be*** entitled to the following:

Amendment 62

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the **collecting society** regularly and diligently distributes and pays amounts due to all rightholders it represents. The **collecting society** shall carry out such distribution and payments no later than 12 months **from the end of the financial year in which** the rights revenue was collected, **unless objective reasons related in particular to reporting by users, the identification of rights, rightholders or to the matching of information on works and other subject matter with rightholders prevent the collecting society from respecting this deadline**. The **collecting society** shall carry out such distribution and payments accurately, ensuring equal treatment of all categories of rightholders.

Amendment

1. Member States shall ensure that the **collective management organisation** regularly, **transparently, in a timely manner** and diligently distributes and pays amounts due to all rightholders it represents. The **collective management organisation** shall carry out such distribution and payments **without undue delay and** no later than 12 months **after** the rights revenue was collected. The **collective management organisation** shall carry out such distribution and payments **at least on a quarterly basis and** accurately, ensuring equal treatment of all categories of rightholders.

Amendment 63

Proposal for a directive Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States may allow collecting societies to derogate from the obligation on the distribution and payments set out in paragraph 1 in situations where this is justified by objective reasons related in particular to reporting by users, the identification of rights, rightholders or to the matching of information on works and other subject matter with rightholders that prevent the collecting societies from respecting the frequency and deadline provided in that paragraph. In such situations collecting shall carry out the

distribution and payments to the rightholders as soon as possible.

Amendment 64

Proposal for a directive

Article 12 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Collective management organisation shall start distributing rights holder revenue when the amount collected reasonably covers collection costs. The minimum level required before distribution takes place may not unreasonably exceed the lowest minimum amount utilized by comparable collective management organisations.

Amendment 65

Proposal for a directive

Article 12 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the amounts due to rightholders cannot be distributed, after five years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collecting society has taken all necessary measures to identify and locate the rightholders, the collecting society shall ***decide on the use of the amounts concerned in accordance with Article 7(5)(b), without prejudice to the right of the rightholder to claim such amounts from the collecting society.***

2. Where the amounts due to rightholders cannot be distributed, after five years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collecting society has taken all necessary measures to identify and locate the rightholders, the collecting society shall ***use this amount for its cultural fund. If no such fund exists, the collecting society shall repay the amount to the users.***

Amendment 66
Proposal for a directive
Article 12 – paragraph 3

Text proposed by the Commission

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

Amendment

3. For the purposes of paragraph 2, ***the collecting society shall put in place effective*** measures to identify and locate rightholders ***while ensuring appropriate safeguards to deter fraud. Such measures*** shall include verifying membership records and making available to the members of the collecting society as well as to the public a list of works and other subject matter for which one or more rightholders have not been identified or located ***including, where available, the title of the work, the name of the author, the name of the publisher and any other relevant information available which could be necessary to identify the rightholders.***

Amendment 67

Proposal for a directive
Article 13

Text proposed by the Commission

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

Amendment

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

Amendment 68

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The ***collective management organisation*** society shall regularly, ***transparently, in a timely manner,*** diligently and accurately distribute and pay amounts due to other ***collective management organisations***. ***The collective management organisation shall carry out such distribution and payments to other collective management organisations without undue delay and no later than 12 months after the rights revenue was collected. The collective management organisation shall carry out such distribution and payments at least on a quarterly basis.***

Amendment 69

Proposal for a directive

Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may allow collective management organisations to derogate from the obligation on the distribution and payments set out in paragraph 2 in situations where this is justified by objective reasons related in particular to reporting by users, the identification of rights, rightholders or to the matching of information on works and other subject matter with rightholders that prevent the collective management organisation from respecting the frequency and deadline provided in that paragraph. In such situations, collective management organisations shall carry out the distribution and payments to other collective management organisations as soon as possible.

Amendment 70

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

2. Licensing terms shall be based on objective ***and non-discriminatory*** criteria, in particular in relation to tariffs.

Amendment 71

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

Tariffs for exclusive rights ***and rights to remuneration*** shall ***properly*** reflect the economic value of the ***use of the*** rights in trade and ***the nature and scope of use of the works and other protected subject-matter and the economic value*** of the service provided by the collecting society.

Amendment 72

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 3

Text proposed by the Commission

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

Amendment

In the absence of any national law which establishes the amounts due to rightholders in respect of a right to compensation, the collecting society shall base its own determination of those amounts due, on ***non-discriminatory criteria, ensuring fair compensation for the use made of the works and other protected subject-matter***.

Amendment 73

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Obligations of collective management organisations and users

- 1. For the purpose of the effective administration of rights, Member States shall ensure that collective management organisations and users establish procedures so that the jointly agreed deadlines are respected and that replies to their respective requests are provided in a reasonable time period.***
- 2. Collecting societies shall respond to licensing requests and make an offer to the user without undue delay following receipt of the request, provided that the collecting society has received all the information it needs to make such an offer.***
- 3. Users shall communicate to collective management organisations complete and accurate information on the usage of works and other subject matter in order to allow collective management organisations to determine applicable fees and to distribute the amounts due to rightholders accurately and in accordance with the obligations imposed by this directive.***
- 4. Users shall pay licence fees or remuneration to the collective management organisation in a timely manner.***

Amendment 74

Proposal for a directive

Article 15 b (new)

Text proposed by the Commission

Amendment

Article 15 b

Cooperation between collective management organisations and invoicing

1. Member States shall promote and encourage cooperation between collective management organisations for the benefit of their rightholders, members and users.

2. Member States may require that collecting societies established in their territory, in compliance with Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), grant their rightholders, members and users access to information on the licences issued and the use of works and other protected subject-matter in a common database.

3. Member States may require that collecting societies established in their territory issue a single joint invoice to each user in respect of the rights in the works and other protected subject-matter which have been licensed, in compliance with Articles 101 and 102 TFEU. The single invoice shall be transparent and shall identify the collecting societies concerned, and the use of the repertoire that has been charged for. The invoice shall also indicate clearly the amounts due to each category of rightholders and the amounts to be used to cover management fees.

4. Paragraphs 2 and 3 shall not apply to the collective management of online rights in musical works and the collective management of rights in works and other subject matter on a multi-territorial basis.

Amendment 75
Proposal for a directive
Article 16 – introductory part

Text proposed by the Commission

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

Amendment

Member States shall ensure that a collecting society makes available at least once a year, by electronic means ***and where appropriate on a more regular basis through individual on-line accounts,*** the following information to each rightholder it represents ***directly***:

Amendment 76
Proposal for a directive
Article 16 – point b a (new)

Text proposed by the Commission

Amendment

(ba) upon request, the applicable licensing contracts and tariffs;

Amendment 77

Proposal for a directive
Article 18 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that a collecting society makes the following information available at the request of any rightholder whose rights it represents, any collecting society on whose behalf it manages rights under a representation agreement or any user, by electronic means, without undue delay:

deleted

(a) standard licensing contracts and applicable tariffs;

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

(c) a list of representation agreements it

has entered into, including information on other collecting societies involved, the repertoire represented and the territorial scope covered by any such agreement.

Amendment 78

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

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

Amendment

2. *A collective management organisation* shall make available at the request of any rightholder or any *collective management organisation*, any information on works for which one or more rightholders have not been identified *in accordance with the provisions laid down in Directive 2012/28/EU on Certain Permitted Uses of Orphan Works*, including, where available, the title of the work, the name of the author, the name of the publisher and any other relevant information available which could be necessary to identify the rightholders.

Amendment 79

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that a *collecting society* makes *public* the following information:

- (a) the statute;
- (b) the membership terms and terms of termination of the authorisation to manage

Amendment

1. Member States shall ensure that a *collective management organisation* makes *available through a publicly accessible website at least* the following information:

- (a) the statute;
- (b) the membership terms and terms of termination of the authorisation to manage

rights, if not included in the statute;
(c) the list of the persons referred to in Article 9;
(d) rules on distribution of the amounts due to rightholders;
(e) rules on management fees;
(f) rules on deductions from rights revenue for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;

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

rights, if not included in the statute;
(c) the list of the persons referred to in Article 9;
(d) rules on distribution of the amounts due to rightholders;
(e) rules on management fees;
(f) rules on deductions from rights revenue for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;

(fa) standard licensing contracts and applicable tariffs;

(fb) the repertoire and rights it manages and the Member States covered or, where due to the scope of activity of the collecting society the repertoire cannot be determined, the categories of works or of other subject matter it represents, the rights it manages and the Member States covered;

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

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

Amendment 80
Proposal for a directive
Article 20 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

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

Amendment 81

Proposal for a directive Article 23 – paragraph 2

Text proposed by the Commission

2. The collecting society may take reasonable measures to protect the accuracy and integrity of the data, **to control its re-use** and to protect personal data and commercially sensitive information.

Amendment

2. The collecting society may take reasonable measures to protect the accuracy and integrity of the data and to protect personal data and, **when necessary**, commercially sensitive information.

Amendment 82

Proposal for a directive Article 23 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall promote and encourage collective management organisations and commercial operators to set up an accurate, comprehensive and updated Global Repertoire Database to facilitate multi-territorial and multi-repertoire licensing.

Amendment 83

Proposal for a directive Article 25 – paragraph 2

Text proposed by the Commission

2. The collecting society shall offer online music service providers the possibility of reporting the actual use of online rights in musical works by electronic means. The

Amendment

2. The collecting society shall offer online music service providers the possibility of reporting the actual use of online rights in musical works, **in accordance with Article**

collecting society shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The collecting society may refuse to accept reporting by the user in a proprietary format if the society allows for reporting using an industry standard for the electronic exchange of data.

15a, by electronic means. The collecting society shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The collecting society may refuse to accept reporting by the user in a proprietary format if the society allows for reporting using an industry standard for the electronic exchange of data.

Amendment 84

Proposal for a directive Article 28 – paragraph 1

Text proposed by the Commission

1. Any representation agreement between **collecting societies** whereby a **collecting society** mandates another **collecting society** to grant multi-territorial licences for the online rights in musical works in its own music repertoire shall **be of a non-exclusive nature. The mandated collecting society shall manage those online rights on non-discriminatory terms.**

Amendment

1. ***In order to allow the aggregation of a multiplicity of repertoires and to be able to grant multi-repertoire and multi-territorial licences, collective management organisations shall have the possibility to conclude representation agreements with other collective management organisations.*** 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 **for certain territories shall preserve the ability of the mandating organisation to mandate another organisation or entity, such as online rights pool.**

Amendment 85

Proposal for a directive

Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The mandated collective management organisation shall manage those online rights on non-discriminatory terms.

Amendment 86

Proposal for a directive

Article 28 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In compliance with Articles 101 and 102 TFEU, Member States shall promote and encourage cooperation between collective management organisations, referred to in Article 15b, in the fields of management, administration and licensing of online rights in musical works on a cross-border basis.

Such cooperation between collective management organisations may be based on representation agreements referred to in paragraph 1 or any other form of cooperation among collective management organisations for the purpose of pooling of their respective repertoires into online rights pools and granting and administration of multi-territorial and multi-repertoire licences for the online rights in musical works.

Such cooperation shall not interfere with the rights and obligations of collective management organisations under this Directive in respect of licensing terms and conditions.

Amendment 87

Proposal for a directive

Article 29 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 88

Proposal for a directive

Article 29 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The requested collecting society that decides not to accept the request referred to in paragraph 1 shall inform the requesting collecting society, in writing, of its decision and of the reasons behind such a decision.

Amendment 89

Proposal for a directive

Article 29 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The requested collective management organisation shall be obliged to actively represent the rights of the requesting collective management organisation in the same and non-discriminatory way as it represents its own repertoire when granting or offering multi territorial licenses.

Amendment 90

Proposal for a directive

Article 29 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The requested collective management organisation shall offer the requesting collective management organisation's repertoire to users on the same conditions as its own repertoire.

Amendment 91

Proposal for a directive

Article 31

Text proposed by the Commission

Amendment

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

Articles ***19(1)(fa)***, ***19(1)(fc)***, ***21***, 22, 23, 24, 25, 26, 27, ***28, 29***, 32 and 36 shall also apply to entities owned, in whole or in part, by a collecting society and which offer or grant multi-territorial licences for online rights in musical works.

Amendment 92

Proposal for a directive

Article 31 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Articles 28 and 29 shall not apply if such entity grants or offers to grant multi-territorial licences for online rights in musical works of one individual rightholder or merely aggregates rights in the same musical works for the sole purpose of being able to license jointly both reproduction and communication to the public rights in such works.

Amendment 93

Proposal for a directive Article 34 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that ***collecting societies*** make available to their members and rightholders effective and timely procedures for dealing with complaints and for resolving disputes in particular in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.

Amendment

1. Member States shall ensure that ***collective management organisations*** make available to their members and rightholders effective and timely procedures for dealing with complaints and for resolving disputes in particular in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions. ***The procedures for dealing with complaints and for resolving disputes shall be independent and made available for both copyright and neighbouring rights.***

Amendment 94

Proposal for a directive Article 35 – title

Text proposed by the Commission

Dispute resolution ***for*** users

Amendment

Dispute resolution ***with*** users

Amendment 95

Proposal for a directive Article 35 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that disputes between ***collecting societies*** and users concerning existing and proposed licensing conditions, tariffs, and any refusal to grant

Amendment

1. Member States shall ensure that disputes between ***collective management organisations*** and users concerning existing and proposed licensing conditions,

a licence can be submitted to *a court, and if appropriate, to an* independent and impartial dispute resolution body.

tariffs, *the calculation of tariffs*, and any refusal to grant a licence can be submitted to *a specialised*, independent and impartial dispute resolution body.

Amendment 96

Proposal for a directive

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The administrative costs of seeking recourse to such a dispute resolution shall be reasonable.

Amendment 97

Proposal for a directive

Article 36 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) disputes with another collecting society on the application of Articles 24, 25, 26, 28 and 29.

(c) disputes with another collecting society on the application of Articles **22, 23**, 24, 25, 26, 28 and 29.

Amendment 98

Proposal for a directive

Article 37 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. 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. To this end, Member States may require that collective management

organisations obtain an authorisation from the competent authority before commencing the collective management of copyrights or related rights.

Amendment 99

Proposal for a directive Article 41

Text proposed by the Commission

Report

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

Amendment

Report *and review*

By [5 years after the end of the transposition period (date)], the Commission shall assess the application of this Directive and report to the European Parliament and to the Council on the application of this Directive, including *the assessment of the costs and benefits of common databases, joint invoicing and pooling of online rights among collective management organisations and of the impact of the Directive* on the development of cross-border services and on cultural diversity, and, if necessary, on the need to review it. The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.

PROCEDURE

Title	Collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market		
References	COM(2012)0372 – C7-0183/2012 – 2012/0180(COD)		
Committee responsible Date announced in plenary	JURI 11.9.2012		
Opinion by Date announced in plenary	IMCO 11.9.2012		
Rapporteur Date appointed	Toine Manders 18.9.2012		
Discussed in committee	21.3.2013	24.4.2013	30.5.2013
Date adopted	18.6.2013		
Result of final vote	+: 34 -: 0 0: 1		
Members present for the final vote	Pablo Arias Echeverría, Jorgo Chatzimarkakis, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia de Campos, Christian Engström, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Toine Manders, Hans-Peter Mayer, Sirpa Pietikäinen, Phil Prendergast, Zuzana Roithová, Heide Rühle, Matteo Salvini, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Gino Trematerra, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler		
Substitute(s) present for the final vote	Raffaele Baldassarre, Nora Berra, Jürgen Creutzmann, María Irigoyen Pérez, Olle Schmidt, Marc Tarabella, Sabine Verheyen		
Substitute(s) under Rule 187(2) present for the final vote	Claudette Abela Baldacchino, Julie Girling		