



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-9999/2013

2.8.2013

*****I**
REPORT

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

Committee on Legal Affairs

Rapporteur: Marielle Gallo

Symbols for procedures

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

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

Amendments to a draft act

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

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

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE	82
OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY	109
OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION	146
OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION.....	198
PROCEDURE	265

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

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

¹ OJ C 44, 15.2.2013, p. 104.

Amendment 1
Proposal for a directive
Recital 2

Text proposed by the Commission

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

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

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.

Text proposed by the Commission

Amendment

(2a) Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural diversity into account in its action and to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. Collective management organisations play an important role in the promotion and preservation of cultural diversity, enabling rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets. Moreover, they play an important social and cultural role as promoters of the diversity of cultural expressions, by enabling the smallest and less popular repertoires to access the market.

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

Text proposed by the Commission

Amendment

(3) When established in the Union, 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

deleted

established in other Member States.

Amendment 4

Proposal for a directive Recital 4

Text proposed by the Commission

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

Amendment

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

Amendment 5

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

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

outside of the Union, are engaged in activities in their territory.

Amendment 6

Proposal for a directive Recital 7 b (new)

Text proposed by the Commission

Amendment

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

Amendment 7

Proposal for a directive Recital 7 c (new)

Text proposed by the Commission

Amendment

(7c) This Directive is without prejudice to arrangements in the Member States concerning the management of rights, such as extended collective licensing or legal presumptions of representation or transfer, provided that the arrangements in question are compatible with Union law and with the international obligations of the Union and of the Member States.

Amendment 8
Proposal for a directive
Recital 7 d (new)

Text proposed by the Commission

Amendment

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

Amendment 9
Proposal for a directive
Recital 7 e (new)

Text proposed by the Commission

Amendment

(7e) This Directive is without prejudice to the legal form traditionally chosen by Member States for the operation of collective management organisations. Member States should not be required to change the legal form of those organisations. The provisions of this Directive are without prejudice to rightholders' freedom of association and their right to organise themselves. This Directive is without prejudice to the freedom of association of employers and workers, their freedom to establish professional organisations and trade unions of their own choosing to defend their interests and the freedom to negotiate and conclude collective agreements in accordance with national law.

Amendment 10
Proposal for a directive
Recital 7 f (new)

Text proposed by the Commission

Amendment

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

Amendment 11
Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

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

deleted

Amendment 12
Proposal for a directive
Recital 9

Text proposed by the Commission

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

Amendment 13
Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9) Having the freedom to receive collective management services across national borders entails that rightholders are able to freely choose the **collective management organisation** for the management of their rights, such as public performance or broadcasting rights, or categories of rights, such as interactive communication to the public, provided the **collective management organisation** already manages such rights or categories of rights. **The general meeting of members of a collective management organisation should determine the rights, categories of rights, types of works and other subject matter that are to be managed by the collective management organisation. The decisions of the general meeting of members should take account of rightholders' individual freedom to dispose of their works and to freely choose the collective management organisation which will manage their rights. The general meeting of members should also take account of the specific features of the cultural sector concerned, such as the audiovisual sector, and the necessary undertakings on the part of rightholders to enable the collective management organisation to perform its task effectively.** Finally, this Directive should not prejudice the possibilities of rightholders to manage their rights individually, including for non-commercial uses.

Amendment

(9a) Authorisation by the rightholders is not required if collective rights

management is mandatory under national law.

Amendment 14

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

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

works and other subject matter. Such collective management organisations should inform rightholders of this option and allow them to exercise it as easily as possible.

Amendment 15

Proposal for a directive Recital 11

Text proposed by the Commission

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

Amendment

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

Amendment 16

Proposal for a directive Recital 12

Text proposed by the Commission

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

Amendment

(12) **All members** of **collective management organisations** should be allowed to participate and vote in the general meeting **of members**; the exercise of these rights **should** only be subject to fair and proportionate restrictions. **In some exceptional cases, collective management organisations have been established in the legal form of a foundation, hence they have no membership. In such cases, the powers of the general meeting of members should be exercised by the body entrusted with the supervisory function. The general meeting of members should, at least, have the power to set the framework of the activities of the management, particularly as regards the use of rights revenue by the collective management organisation. Collective management organisations should encourage the active participation of their members in the general meeting. However, the** exercise of voting rights should be made easy **for those members of the collective management organisation who do not attend the general meeting. Therefore, members should be allowed to participate and vote in the general meeting through a proxy. In addition, it should be possible for Member States to allow collective management organisations to introduce electronic voting.**

Amendment 17

**Proposal for a directive
Recital 13**

Text proposed by the Commission

(13) Members should be allowed to take part in monitoring the management of **collecting societies**. To this end, **collecting**

Amendment

(13) Members should be allowed to take part in **the continuous** monitoring **of** the management of **collective management**

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.**

organisations. To this end, **such organisations** should **have** a supervisory function appropriate to their organisational structure and **should** allow members to be represented in the body that exercises this function. **Depending on the organisational structure of the collective management organisation, the supervisory function can be exercised by a separate body, such as a supervisory board, or by the directors of the administrative board who do not manage the business of the collective management organisation. The requirement of fair and balanced representation of members should not prevent the collective management organisation from appointing third parties to exercise the supervisory function.**

Amendment 18

Proposal for a directive Recital 14

Text proposed by the Commission

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

Amendment

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

Amendment 19

Proposal for a directive Recital 15

(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

(15) **Collective management organisations** collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that **organisation**, or **to another organisation**. It is therefore important that **collective management organisations** exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where **collective management organisations** maintain proper records of membership, licences and use of works and other subject matter. Where appropriate, data should also be provided by rightholders and users and verified by the **collective management organisations**. Amounts collected and due to rightholders should be managed separately from any own assets of the **collective management organisation** and if they are invested pending their distribution to rightholders, this should be carried out in accordance with the investment policy decided by the **collective management organisations'** general meeting **of members**. In order to maintain a high level of protection for the rights of rightholders and to ensure that any income which may be derived from exploitation of their rights accrues for the benefit of rightholders, the investments made and held by the **collective management organisation** should be managed in accordance with criteria which would oblige the **collective management organisation** to act prudently, while allowing **it** to decide on the most secure and efficient investment policy. This should allow **collective management organisations** to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and which does not unduly prejudice any rights revenue owed

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.*

to rightholders. Moreover, in order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require *collective management organisations* to undertake diligent and good faith reasonable measures to identify and locate the relevant rightholders. *When rightholders cannot be identified or located after a diligent search, Member States should ensure that those amounts are managed separately and in an independent way, for example by the setting-up of a special fund by the Member State in which the money is collected, in order to fund cultural, social or educational services.*

Amendment 20
Proposal for a directive
Recital 18

Text proposed by the Commission

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

Amendment

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

economic value of the use of the rights in trade. The user concerned should be notified of those criteria without delay.

Amendment 21

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

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

Amendment 22

Proposal for a directive Recital 18 b (new)

Text proposed by the Commission

Amendment

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

Amendment 23

Proposal for a directive Recital 19

Text proposed by the Commission

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

Amendment 24

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

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

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

other subject matter which the collective management organisations represent.

Amendment 25
Proposal for a directive
Recital 20

Text proposed by the Commission

(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.*

Amendment 26
Proposal for a directive
Recital 23

Text proposed by the Commission

(23) Commission Recommendation 2005/737/EC promoted a new regulatory environment better suited to the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online

Amendment

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

Amendment

(23) Commission Recommendation 2005/737/EC promoted a new regulatory environment better suited to the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online

environment and which is multi-territorial. However, the Recommendation, *due to its voluntary nature*, has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works and to address the specific demands of multi-territorial licensing.

Amendment 27

Proposal for a directive Recital 24

Text proposed by the Commission

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

environment and which is multi-territorial. However, the Recommendation has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works and to address the specific demands of multi-territorial licensing.

Amendment

(24) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by *collective management organisations*, in an increasingly cross-border context. *In order to allow the aggregation of a multiplicity of repertoires and to be able to grant multi-repertoire and multi-territorial licences, it should be possible for collective management organisations to conclude representation agreements with other collective management organisations for the coordination and efficiency of such licenses on equal and non-discriminatory terms.* It is appropriate to provide for a set of rules coordinating basic conditions for the provision by *collective management organisations* of multi-territorial collective licensing of authors' online rights in musical works. These provisions should ensure the necessary minimum quality of the cross-border services provided by *collective management organisations*, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire

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.

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

Amendment 28
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) The objectives and the effectiveness of the rules on multi-territorial licensing by *collecting societies* would be largely jeopardised if rightholders were not able to exercise their rights by granting multi-territorial licences when the *collecting society* to which they have granted their rights does not grant or offer multi-territorial licences and does not want to mandate another *collecting society* to do so. For this reason, it is important in such circumstances, to enable rightholders to exercise the right to grant the multi-territorial licences required by online service providers themselves or through another party or parties, *without having to withdraw their* rights from the *collecting society*.

Amendment

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

Amendment 29
Proposal for a directive
Recital 33

Text proposed by the Commission

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

Amendment

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

Amendment 30

Proposal for a directive
Recital 35

Text proposed by the Commission

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

Amendment

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

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

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

Amendment 31
Proposal for a directive
Recital 36

Text proposed by the Commission

(36) It is necessary to ensure the effective enforcement of the provisions of the national law adopted pursuant to this Directive. **Collecting societies** should offer their members specific procedures for the handling of complaints and the resolution of disputes. These procedures should also be made available to other rightholders represented by the **collecting society**. It is also appropriate to ensure that Member States have independent, impartial and effective dispute resolution bodies capable of settling commercial disputes between **collecting societies** and users on existing or proposed licensing conditions as well as on situations in which the granting of a licence is refused. Furthermore, the effectiveness of the rules on the multi-territorial licensing of online rights in musical works could be undermined if disputes between **collecting societies** and their counterparts were not solved quickly and efficiently by independent and impartial bodies. As a

Amendment

(36) It is necessary to ensure the effective enforcement of the provisions of national law adopted pursuant to this Directive. **Collective management organisations** should offer their members specific procedures for the handling of complaints and the resolution of disputes. These procedures should also be made available to other rightholders represented by the **collective management organisation and to collective management organisations on whose behalf it manages rights under a representation agreement**. It is also appropriate to ensure that Member States have independent, impartial and effective dispute resolution bodies **with expertise in intellectual property law**, capable of settling, **within a reasonable period**, commercial disputes between **collective management organisations** and users on existing or proposed licensing conditions as well as on situations in which the granting of a licence is refused. **Member**

result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between *collecting societies*, on the one hand, and online music service providers, rightholders or other *collecting societies*, on the other.

States should ensure that their relevant national dispute resolution bodies have a minimum degree of training and experience in the field of intellectual property. Furthermore, the effectiveness of the rules on the multi-territorial licensing of online rights in musical works could be undermined if disputes between *collective management organisations* and their counterparts were not solved quickly and efficiently by independent and impartial bodies. As a result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between *collective management organisations*, on the one hand, and online music service providers, rightholders or other *collective management organisations*, on the other.

Amendment 32
Proposal for a directive
Recital 37

Text proposed by the Commission

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against *collecting societies* who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.

Amendment

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against *collective management organisations* who do not comply with the law, *to control the activities of collective management organisations* and to ensure that, where appropriate, effective, proportionate and dissuasive sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures, *controlling the activities of collective management organisations* and *imposing* sanctions. *The competent authorities should be impartial and should have the necessary expertise, particularly in intellectual property law, and resources to successfully perform the tasks entrusted to*

them. Member States should not be obliged to set up new competent authorities. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end. ***This Directive should remain neutral as regards the prior authorisation and supervision regimes in the Member States in so far as they are compatible with Union law and do not create an obstacle to the full application of this Directive. This Directive does not affect national authorisation regimes for collective management organisations in so far as they are compatible with Union law and do not create an obstacle to the full application of this Directive.***

Amendment 33
Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 34
Proposal for a directive
Recital 40 a (new)

Text proposed by the Commission

Amendment

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

¹ OJ L 55, 28.2.2011, p. 13.

Amendment 35
Proposal for a directive
Recital 40 b (new)

Text proposed by the Commission

Amendment

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

Amendment 36
Proposal for a directive
Article 1

Text proposed by the Commission

Amendment

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

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

lays down requirements for multi-territorial licensing by *collecting societies* of authors' rights in musical works for online use.

organisations. It also lays down requirements for multi-territorial licensing by *collective management organisations* of authors' rights in musical works for online use.

Amendment 37
Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may decide that Title II and Title IV, with the exception of Articles 35(1a) and 40, are to apply to collective management organisations established outside the Union which engage in activities in their territory.

Amendment 38
Proposal for a directive
Article 2 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

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

Amendment 39
Proposal for a directive
Article 2 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

Articles 10, 11(1), 12, 16, 19 and 20 of

Title II and Articles 35(1) and 37 of Title IV shall apply to entities that manage on a commercial basis within the Union, as their sole or main purpose, copyright or rights related to copyright on behalf of more than one rightholder.

Amendment 40
Proposal for a directive
Article 2 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

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

Amendment 41
Proposal for a directive
Article 3 – point a

Text proposed by the Commission

Amendment

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

(a) *'collective management organisation'* means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement, by more than one rightholder, to manage copyright *for the collective benefit of the said rightholders*, as its sole or main purpose and which *fulfils at least one of*

by its members;

the following criteria:

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

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

Amendment 42
Proposal for a directive
Article 3 – point b

Text proposed by the Commission

(b) 'rightholder' means any natural person or legal entity other than a ***collecting society*** that holds a copyright or related right or who under an agreement for the exploitation of rights is entitled to a share of the rights revenue from any of the rights managed by the ***collecting society***;

Amendment

(b) 'rightholder' means any natural person or legal entity other than a ***collective management organisation*** that holds a copyright or related right or who, under an agreement for the exploitation of rights ***or by law***, is entitled to a share of the rights revenue from any of the rights managed by the ***collective management organisation***;

Amendment 43
Proposal for a directive
Article 3 – point c

Text proposed by the Commission

(c) 'member of a ***collecting society***' means a rightholder or an entity directly representing rightholders, including other ***collecting societies*** and associations of rightholders, fulfilling the membership requirements of the ***collecting society***;

Amendment

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

Amendment 44
Proposal for a directive
Article 3 – point d a (new)

Text proposed by the Commission

Amendment

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

Amendment 45

Proposal for a directive Article 3 – point e

Text proposed by the Commission

Amendment

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

(e) 'director' means:

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

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

Justification

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

Amendment 46

Proposal for a directive Article 3 – point f

Text proposed by the Commission

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

Amendment

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

Amendment 47
Proposal for a directive
Article 3 – point g

Text proposed by the Commission

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

Amendment

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

Amendment 48

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 49
Proposal for a directive
Article 3 – point i

Text proposed by the Commission

(i) 'user' means any natural person or legal entity who is carrying out acts subject to the authorisation of rightholders, the remuneration of rightholders or the payment of compensation to rightholders and who is not acting in the capacity of a consumer;

Amendment

(i) 'user' means any natural person or legal entity who is carrying out acts subject to the authorisation of rightholders, the remuneration of rightholders or the payment of compensation to rightholders and who is not acting in the capacity of a consumer, ***in other words, for purposes which do not form part of his professional or commercial activity***;

Amendment 50
Proposal for a directive
Article 3 – point j

Text proposed by the Commission

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

Amendment

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

Amendment 51
Proposal for a directive
Article 3 – point m

Text proposed by the Commission

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

Amendment

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

Amendment 52
Proposal for a directive
Article 4

Text proposed by the Commission

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

Amendment 53
Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment

2. Rightholders shall have the right to authorise a **collective management organisation** of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the Member State of residence or of establishment or the nationality of either the **collective management organisation** or the rightholder. ***In accordance with Article 7, the general meeting of members of the collective management organisation shall decide the rights, categories of rights or types of works and other subject matter that can be managed by the collective management organisation.***

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

rightholders to enable the collective management organisation to perform its task effectively.

Amendment 54

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

Text proposed by the Commission

Amendment

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

Amendment 55

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted to a *collecting society* or to withdraw from a *collecting society* any of the rights or categories of rights or types of works and other subject matter of their choice, for the 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.

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

whichever is sooner after the expiry of the notice period.

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

Amendment 56
Proposal for a directive
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 57
Proposal for a directive
Article 5 – paragraph 6

Text proposed by the Commission

Amendment

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

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.

matter which that rightholder authorises the *collective management organisation* to manage and that any such consent is evidenced in documentary form.

Amendment 58

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 59

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 60

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 61

Proposal for a directive Article 7 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 62

Proposal for a directive Article 7 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

In a collective management organisation with a dual board system, the general meeting of members may decide to delegate to the supervisory board decisions on the appointment or dismissal

them.

of members of the management board or
*on approval of their remuneration and
other benefits.*

Amendment 63
Proposal for a directive
Article 7 – paragraph 5 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 64
Proposal for a directive
Article 7 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 65
Proposal for a directive
Article 7 – paragraph 5 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 66
Proposal for a directive
Article 7 – paragraph 5 – point d

Text proposed by the Commission

(d) the rules on deductions from rights revenue.

Amendment

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

Amendment 67
Proposal for a directive
Article 7 – paragraph 5 – point d a (new)

Text proposed by the Commission

Amendment

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

Amendment 68
Proposal for a directive
Article 7 – paragraph 5 – point d b (new)

Text proposed by the Commission

Amendment

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

Amendment 69
Proposal for a directive
Article 7 – paragraph 5 – point d c (new)

Text proposed by the Commission

Amendment

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

Amendment 70
Proposal for a directive
Article 7 – paragraph 5 – point d d (new)

Text proposed by the Commission

Amendment

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

Amendment 71
Proposal for a directive
Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

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

Amendment 72
Proposal for a directive
Article 7 – paragraph 6

Text proposed by the Commission

Amendment

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

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

Where there are serious doubts concerning the financial conduct of the collective management organisation, the general meeting of members may decide

to appoint an external auditor to carry out checks. The results of that audit shall be notified to the members of the collective management organisation and to the competent national authority.

Amendment 73

Proposal for a directive

Article 7 – paragraph 7 – subparagraph 1

Text proposed by the Commission

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

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

Amendment

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

Amendment 74

Proposal for a directive

Article 7 – paragraph 8

Text proposed by the Commission

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

Amendment

8. Every member of a *collective management organisation* shall have the right to appoint any other *member of that collective management organisation who falls within the same category of rightholders* as a proxy holder to attend

and vote at the general meeting of *members* in his name. *Every member shall also have the right to appoint a professional, such as an agent or a lawyer, as a proxy holder provided that there is no conflict of interest.*

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

Amendment 75

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

Text proposed by the Commission

Amendment

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

Amendment 76

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

Text proposed by the Commission

Amendment

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

Amendment 77

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

Text proposed by the Commission

Amendment

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

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

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

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

Amendment 78

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Member States shall ensure that the ***collective management organisation has a body entrusted with*** a supervisory function ***which is*** responsible for ***continuous*** monitoring ***of*** the activities and the performance of the duties of the persons ***who manage the business of the organisation***. There shall be fair and balanced representation of ***the different categories of rightholders that are members of the collective management organisation*** in the body exercising ***the supervisory function***.

Each member of the body exercising the

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

Amendment 79
Proposal for a directive
Article 8 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

deleted

Amendment 80
Proposal for a directive
Article 8 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 81
Proposal for a directive
Article 8 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

deleted

Amendment 82
Proposal for a directive
Article 8 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

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

Amendment 83

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 84

Proposal for a directive

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 85

Proposal for a directive

Article 8 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

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

Amendment 86
Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

(a) balance sheet total: EUR 350.000;

(b) net turnover: EUR 700 000;

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

Amendment 87
Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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

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

The persons who manage the business of a collective management organisation shall, within a reasonable period of time, take decisions concerning the conditions

for granting licences and the conclusion of contracts.

Amendment 88

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

Text proposed by the Commission

Member States shall ensure that *the persons who effectively manage the business of a collecting society and its directors, with the exception of the directors exercising supervisory function, design* procedures so as to avoid conflicts of interest. The *collecting society* shall have procedures to identify, manage, monitor and disclose conflicts of interest in order to prevent them from adversely affecting the interests of members *of the society*.

Amendment

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

Amendment 89

Proposal for a directive Article 9 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 90

Proposal for a directive

Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 91 Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 92 Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Amendment 93 Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

Amendment

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

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

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

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

Amendment 94
Proposal for a directive
Article 10 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 95
Proposal for a directive
Article 10 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

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

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

Amendment 96
Proposal for a directive
Article 10 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(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;*

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

Amendment 97
Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that agreements governing the relationship of the *collecting society* with its members and rightholders shall specify deductions applicable to the rights revenue referred to in *point* (e) of Article 16.

Amendment

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

Amendment 98
Proposal for a directive
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 99
Proposal for a directive
Article 11 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

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

from its investment.

Amendment 100

Proposal for a directive

Article 11 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

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

Amendment 101

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Collective management organisations may carry out such distribution and payments after the expiry of the deadline referred to in the first subparagraph when objective

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

Amendment 102

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

2. *Collective management organisations shall take all necessary measures to identify and locate the rightholders. Member States shall ensure that, where* the amounts due to rightholders cannot be distributed, after *three* years from the end of the financial year in which the collection of the rights revenue occurred, *those amounts are managed separately and in an independent way in order to fund cultural, social or educational services*, without prejudice to the right of the rightholder to claim such amounts from the *collective management organisation in accordance with the laws of the Member States on the limitation of claims*.

Amendment 103

Proposal for a directive Article 12 – paragraph 3

Text proposed by the Commission

3. For the purposes of paragraph 2,

Amendment

3. For the purposes of paragraph 2, *the*

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.

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

Amendment 104

Proposal for a directive Article 13

Text proposed by the Commission

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

Amendment

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

Amendment 105

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. *Member States shall ensure that a collective management organisation does* not apply deductions, other than *reasonable* management fees, to the rights revenue derived from the rights it manages

unless the other collecting society expressly consents to such deductions.

on the basis of a representation agreement,
or to any income arising from the investment of that rights revenue.

Amendment 106

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 107

Proposal for a directive Article 15 – title

Text proposed by the Commission

Licensing

Amendment

Licensing *and conditions on the use of rights*

Amendment 108

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 109

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

Text proposed by the Commission

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

Amendment

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

Amendment 110

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 111

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 112

Proposal for a directive Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 113

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Obligations of users

1. Member States shall ensure that users comply with the deadlines and schedules set for payments as provided for in the licences and agreements concluded with the collective management organisations in order for those organisations to be able to comply with their own deadlines for distribution to rightholders.

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

Amendment 114

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

Text proposed by the Commission

Amendment

Article 15b

***Representation agreements between
collective management organisations***

Collective management organisations shall have the right to conclude representation agreements with other collective management organisations in the area of rights management in order to facilitate, improve and simplify the procedures for licensing users, including for the purposes of single invoicing, under

equal, non-discriminatory and transparent conditions, and to offer multi-territorial licenses, in particular, in areas other than those referred to in Title III.

Amendment 115

Proposal for a directive Article 16 – title

Text proposed by the Commission

Information provided to rightholders on the management of their rights

Amendment

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

Amendment 116

Proposal for a directive Article 16 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 117

Proposal for a directive Article 16 – point e

Text proposed by the Commission

(e) the deductions made for management

Amendment

(e) *the amount of the management fees in*

fees in the period concerned;

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

Amendment 118

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

Text proposed by the Commission

Amendment

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

Amendment 119

Proposal for a directive Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 120

Proposal for a directive Article 16 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

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

Amendment 121

Proposal for a directive Article 18

Text proposed by the Commission

Amendment

Article 18

deleted

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

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

(a) standard licensing contracts and applicable tariffs;

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

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

2. In addition, a collecting society shall make available at the request of any rightholder or any collecting society, any information on works for which one or more rightholders have not been identified including, where available, the

title of the work, the name of the author, the name of the publisher and any other relevant information available which could be necessary to identify the rightholders.

Amendment 122

Proposal for a directive Article 19 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 123

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

Text proposed by the Commission

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

Amendment

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

Amendment 124

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

Text proposed by the Commission

(e) rules on management fees;

Amendment

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

Amendment 125

Proposal for a directive Article 19 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Amendment 126

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 127

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ga) standard licensing contracts and applicable tariffs;

Amendment 128

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 129

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 130

Proposal for a directive

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

Text proposed by the Commission

Amendment

(gd) any information on works for which one or more rightholders have not been identified including, where available, the title of the work, the name of the author, the name of the publisher and any other relevant information available which could be necessary in order to identify the rightholders.

Amendment 131

Proposal for a directive

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

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

Amendment 132
Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that compliance by collecting societies with those requirements can be effectively reviewed by the competent authorities referred to in Article 39.

deleted

Amendment 133
Proposal for a directive
Article 22 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

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

Amendment 134
Proposal for a directive
Article 23 – paragraph 1

Text proposed by the Commission

Amendment

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

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

represented.

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

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

(c) the Member States represented.

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

Amendment 135
Proposal for a directive
Article 23 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Amendment 136

Proposal for a directive
Article 24 – paragraph 1

Text proposed by the Commission

Amendment

1. A **collecting society** which grants multi-territorial licences for online rights in musical works shall have procedures in place to enable rightholders **and other collecting societies** to object to the contents of the data referred to in Article 22(2) or to information provided under Article 23, where such rightholders **and collecting societies**, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect

1. A **collective management organisation** which grants multi-territorial licences for online rights in musical works shall have procedures in place to enable rightholders, **other collective management organisations and users** to object to the contents of the data referred to in Article 22(2) or to information provided under Article 23, where such rightholders, **collective management organisations and users**, on the basis of reasonable evidence,

of their online rights in musical works. Where the claims are sufficiently substantiated, the *collecting society* shall ensure that the data or the information are corrected without undue delay.

believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the *collective management organisation* shall ensure that the data or the information are corrected without undue delay.

Amendment 137
Proposal for a directive
Article 25 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

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

Amendment 138

Proposal for a directive
Article 28 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Amendment 139

Proposal for a directive

Article 28 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 140

Proposal for a directive

Article 29 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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**.

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

Amendment 141

Proposal for a directive

Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 142
Proposal for a directive
Article 30

Text proposed by the Commission

Member States shall ensure that where a **collecting society** does not grant or offer to grant multi-territorial licences in online rights in musical works or does not allow another **collecting society** to represent those rights for such purpose by one year after the transposition date of this Directive, rightholders who have authorised that **collecting society** to represent their online rights in musical works can **grant** multi-territorial licences in their online rights in musical works themselves or through any **collecting society** complying with the provisions of this Title or any other party they authorise. ***The collecting society which does not grant or offer to grant multi-territorial licences shall continue to grant or offer to grant licences for the online rights in musical works of such rightholders for their use in the territory of the Member State where the collecting society is established, unless the rightholders terminate their authorisation to manage them.***

Amendment 143
Proposal for a directive
Article 31

Text proposed by the Commission

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

Amendment

Member States shall ensure that where a **collective management organisation** does not grant or offer to grant multi-territorial licences in online rights in musical works or does not allow another **collective management organisation** to represent those rights for such purpose by one year after the transposition date of this Directive, rightholders who have authorised that **collective management organisation** to represent their online rights in musical works can **terminate the rights management authorisation or withdraw the rights, with a view to granting** multi-territorial licences in their online rights in musical works themselves or through any **collective management organisation** complying with the provisions of this Title or any other party they authorise.

Amendment

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

rights in musical works.

Amendment 144
Proposal for a directive
Article 34 – title

Text proposed by the Commission

Dispute resolution for members and rightholders

Amendment

Complaints procedures

Amendment 145
Proposal for a directive
Article 34 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that ***collecting societies*** make available to their members ***and*** rightholders effective and timely procedures for dealing with 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, rightholders ***and collective management organisations on whose behalf it manages rights under a representation agreement*** effective and timely procedures for dealing with complaints and for resolving disputes, in particular in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.

Amendment 146
Proposal for a directive
Article 34 – paragraph 2

Text proposed by the Commission

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

Amendment

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

collective management organisation
refuses the complaint, it shall give reasons.

Amendment 147
Proposal for a directive
Article 34 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 148
Proposal for a directive
Article 35 – title

Text proposed by the Commission

Amendment

Dispute resolution for users

Alternative dispute resolution procedures

Amendment 149
Proposal for a directive
Article 35 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 150
Proposal for a directive
Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that, for the purposes of Title III, disputes involving the issue or proposed issue by collective management organisations of multiterritorial licences for online rights in musical works can be subject to an independent and impartial alternative disputes resolution procedure in the following cases:

(a) disputes with a present or future online music services provider regarding the application of Articles 15, 22, 23, 24 and 25;

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

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

**Amendment 151
Proposal for a directive
Article 35 – paragraph 2**

Text proposed by the Commission

Amendment

2. Where the obligation set out in paragraph 1 is implemented by recourse to an independent and impartial dispute resolution body, this shall not prevent the parties from asserting and defending their rights by bringing an action before a court.

deleted

**Amendment 152
Proposal for a directive
Article 36**

Text proposed by the Commission

Amendment

Article 36

deleted

Alternative dispute resolution

1. Member States shall ensure, for the purposes of Title III, that the following disputes of a collecting society which grants or offers to grant multi-territorial licences in online rights in musical works can be submitted to an independent and impartial alternative dispute resolution bodies:

(a) disputes with an actual or potential online music service provider on the application of Articles 22, 23 and 25;

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

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

2. Collecting societies shall inform the relevant parties of the availability of alternative dispute resolution procedures as referred to in paragraph 1.

3. The procedures referred to in paragraphs 1 to 2 shall not prevent the parties from asserting and defending their rights by bringing an action before a court.

Amendment 153

Proposal for a directive

Article 36 a (new) – paragraph 1

Text proposed by the Commission

Amendment

Article 36a

Dispute resolution

1. Member States shall ensure that disputes between collective management organisations and users concerning, inter

alia, existing or proposed licensing conditions, tariffs, the calculation of tariffs or any refusal to grant or renew a licence can be submitted to a court or to an independent and impartial dispute resolution body with expertise in intellectual property law.

Amendment 154

Proposal for a directive Article 36 a (new)– paragraph 2

Text proposed by the Commission

Amendment

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

Amendment 155

Proposal for a directive Article 36 a (new) – paragraph 3

Text proposed by the Commission

Amendment

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

Amendment 156

Proposal for a directive Article 37 – title

Text proposed by the Commission

Amendment

Complaints

Compliance with this Directive

Amendment 157

Proposal for a directive

Article 37 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ***ensure that procedures are set up for members of a collecting society, rightholders, users and other interested parties to submit complaints to the competent authorities with regard to the activities of collecting societies which are covered by this Directive.***

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

Amendment 158

Proposal for a directive

Article 37 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 159

Proposal for a directive

Article 37 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States shall provide that their

respective competent authorities impose appropriate administrative sanctions and take appropriate measures where national provisions adopted in implementation of this Directive have not been complied with, and shall ensure that they are applied. The sanctions and measures shall be effective, proportionate and dissuasive.

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

Amendment 160
Proposal for a directive
Article 37 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

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

Amendment 161
Proposal for a directive
Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall take all the necessary measures to ensure that the complaints procedures referred to in paragraph 1 are administered by the competent authorities empowered to ensure compliance with the provisions of national law adopted pursuant to the requirements laid down in this Directive.

deleted

Amendment 162
Proposal for a directive
Article 38

Text proposed by the Commission

Amendment

Article 38

deleted

Sanctions or measures

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

2. Member States shall notify the Commission of the rules referred to in paragraph 1 by [date] and shall notify it without delay of any subsequent amendment affecting them.

Amendment 163
Proposal for a directive
Article 39 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 164
Proposal for a directive
Article 39 – paragraph 2

Text proposed by the Commission

Amendment

The Commission shall make that information available on its website.

deleted

Amendment 165
Proposal for a directive
Article 40 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 166

Proposal for a directive
Article 41

Text proposed by the Commission

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

Amendment

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

Amendment 167
Proposal for a directive
Article 41 a (new)

Text proposed by the Commission

Amendment

Article 41a

Protection of personal data

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

¹ OJ L 281 23.11.1995, p. 31.

Amendment 168
Proposal for a directive
Article 41 b (new)

Text proposed by the Commission

Amendment

Article 41b

Committee procedure

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

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

Amendment 169
Proposal for a directive
Article 42 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after the entry into

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after the entry into

force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

20.6.2013

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

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: Helmut Scholz

SHORT JUSTIFICATION

With this legislative proposal for a Directive the Commission aims to put in place an appropriate legal framework for the collective management of rights that are administered by collecting societies on behalf of rightholders by providing for rules ensuring the better governance and greater transparency of all collecting societies and also by encouraging and facilitating the multi-territorial licensing of the rights of authors in their musical works by collecting societies representing authors, in particular in the new digital environment.

In doing so the Commission is reacting to several calls by the Parliament in a series of resolutions of 2004¹, 2007² and 2008³, to propose a binding legal instrument in this area. It needs to be pointed out that not all considerations expressed by the Parliament have been addressed, especially those on the cross-border licences for online rights regarding works in music under the Commission recommendation of 2005⁴.

The current legal framework as to authors' rights in the EU has been lagging behind the fast developments in digital society. Online licensing should ease the access to music content online across the EU (download and streaming services) and collecting societies established in the EU will provide licenses also to online service providers established abroad for music originating abroad. These issues have implications for commercial aspects of intellectual property and competitiveness and have a clearly international dimension. From this standpoint, creating a level playing field among collecting societies by introducing the standards on governance and transparency applicable to all societies should facilitate access to

¹ Resolution of 15 January 2004 (OJ C 92 E, p. 425).

² Resolution of 13 March 2007 (OJ C 301 E, p. 64).

³ Resolution of 25 September 2008 (OJ C 8 E, p. 105).

⁴ OJ L 276, p. 54.

online music.

Your rapporteur wishes to make sure that increased demands introduced by this legislation with regard to transparency and administrative capacities of collecting societies do not lead to discrimination of the EU based collecting societies and commercial agents compared to their non-EU based competitors operating in the EU market, and to discourage off-shoring of collecting societies. At the same time your rapporteur aims to ensure that EU collecting societies continue to play an important role in safeguarding cultural diversity and become attractive rights management partners for European and international artists while insuring a timely remuneration of authors and maintaining their highest control on who shall represent them on which rights.

Nonetheless the contribution of trade policy is essentially supportive – avoiding unnecessary barriers and ensuring the competitiveness internationally. For this reason, the opinion seeks to adopt a modest approach, restricting itself to the aspects of the Commission’s proposal that are most relevant to international trade.

AMENDMENTS

The Committee on International Trade 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 1 a (new)

Text proposed by the Commission

Amendment

(1a) The aim is to achieve a balanced model that gives users and citizens easy access to cultural content and goods, respects the rights of creators and rightholders and allows those who so desire to create their own content and share it without acquiring intellectual property rights (IPR). Modern EU legislation which is adapted to current needs in the field of IPR enforcement in the digital domain will serve as the basis for establishing agreements with our trading partners.

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

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

Amendment

(2) The dissemination of content which is protected by copyright and related rights and the linked services, including books, audiovisual productions and recorded music require the licensing of rights by different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the rightholders to choose between the individual or collective management of their rights. Management of copyright and related rights includes the granting of licences to users, the auditing of licensees and monitoring of the use of rights, the enforcement of copyright and related rights, the collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. *Collective management organisations* enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets. 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.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

Collective management organisations (CMOs) encompass all forms of entities dealing with

collective rights management, such as collecting societies. This more general term is preferable in order to ensure a level playing field. Consistent with draft opinions from CULT and IMCO.

Amendment 3

Proposal for a directive

Recital 3

Text proposed by the Commission

(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.

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. ***In this context, reminds that the derogation in article 17(11) for intellectual property rights from the principle of freedom to provide cross-border services without unjustified restriction, covers the rights as such (existence of the right, scope and exceptions, duration, etc.) and it does not concern services linked to the management of such rights, such as those provided by collective management organisations.*** This implies that **collective management organisations** 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.

Justification

This addition reflects the Commission's interpretation of the derogation for intellectual property rights as explained in the Commission's "Handbook on implementation of the Services Directive". [European Commission, DG Internal Market and Services (2007). "Handbook on implementation of the Services Directive", p. 42]

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

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

Amendment

(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, ***rightholders and users***. Beyond the difficulties non-domestic rightholders face when exercising their rights and the too often poor financial management of the revenues collected, problems with the functioning of 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 5

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

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.

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 **works**, 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 ***or placement in the public domain.***

Justification

Rightholders should retain the right to freely decide over the rights to their own works, including the right to place the work in the public domain.

Amendment 6

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

Amendment

(13) Members should be allowed to take part in monitoring the management of collecting societies. To this end, collecting societies should establish a supervisory function appropriate to their organisational structure and allow ***all categories of*** members to be represented in the body that

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.*

exercises this function.

Amendment 7

Proposal for a directive Recital 14

Text proposed by the Commission

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

Amendment

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

Justification

Conflicts of interest need to be disclosed before a manager or executive director takes up his or her duties. Consistent with draft opinion from CULT.

Amendment 8

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

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.

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 *and transparent* 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 *a secure and profitable* asset allocation that *prevents* 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.

Amendment 9

Proposal for a directive

Recital 20

Text proposed by the Commission

(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.***

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.

Justification

Excluding small collective management organisations from reporting obligations goes counter to the purpose of the directive. Additionally, this recital should be consistent with revisions to articles 8.3 and 20.5. Consistent with draft opinion from IMCO.

Amendment 10

Proposal for a directive

Recital 37

Text proposed by the Commission

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make

Amendment

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make

complaints against collecting societies who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.

complaints against collecting societies who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive *measures and* sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.

Amendment 11

Proposal for a directive Article 1 – paragraph 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, *efficient, transparent and accountable* functioning of the management of copyright and related rights by *collective management organisations*. It also lays down requirements for multi-territorial licensing by *collective management organisations* of authors' rights in musical works for online use.

Amendment 12

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

Titles I, II and IV with the exception of Articles 36 and 40 shall apply *to all*

Amendment

Title I, Articles 13, 14, 15 to 19, 24(2), 31 and Title IV with the exception of Articles

collecting societies established *in* the Union.

36 and 40 shall *also* apply, *for their operations carried out in the Union, and with regard to rightholders residing in or established in the Union*, to collecting societies established *outside* the Union.

Amendment 13

Proposal for a directive Article 2 – paragraph 2

Text proposed by the Commission

Title III and Articles 36 and 40 of Title IV shall *only* apply *to those collecting societies managing authors' rights in musical works for online use on a multi-territorial* basis.

Amendment

Title I, Articles 10, 11(1), 12, 15, 16 to 20, Title III and Articles 34, 35, 37 and 38 shall also apply, for their operations carried out in the Union and with regard to rightholders residing in or established in the Union, to independent rights management service providers established inside or outside the Union who act as agents for rightholders for the collective management of their rights and operate in the Union on a commercial basis.

Amendment 14

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

Text proposed by the Commission

Amendment

Titles I and II, as well as Articles 34, 35 and 37 to 39 shall also apply to entities directly or indirectly owned or controlled, in whole or in part, by one or more collecting societies provided that these entities carry out activity which, if carried out by a collecting society, would be subject to these provisions

Amendment 15

Proposal for a directive

Article 3 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 16

Proposal for a directive

Article 3 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) ‘commercial operator’ means any entity which is authorised by way of any contractual arrangement to manage copyright or rights related to copyright on behalf of rightholders on a commercial basis;

Justification

In order to establish a level playing field within the framework of rights management, publishers and record companies - who also manage rightholders rights - should be subject to a minimum set of transparency rules. Consistent with draft opinion from CULT.

Amendment 17

Proposal for a directive

Article 3 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) ‘member **of a collecting society**’ means a rightholder or an entity directly representing rightholders, including other **collecting societies** and associations of rightholders, fulfilling the membership requirements of the **collecting society**;

(c) ‘member’ means a rightholder or an entity directly representing rightholders, including other **collective management organisations** and associations of rightholders, fulfilling the membership requirements of the **collective management organisation, regardless of its legal form**;

Justification

Clarification needed in relation to the variety of legal forms of collective management organisations within different member states. Consistent with draft opinion from CULT.

Amendment 18

**Proposal for a directive
Article 3 – paragraph 1 – 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 right, a right to remuneration **or a right to compensation**;

(f) ‘rights revenue’ means income collected by a **collective management organisation** on behalf of **its members**, whether from an exclusive right **or** a right to remuneration **and including any income derived from the investments of rights revenue**;

Justification

Art. 10 mentions that investment income should be kept separate from the collective management organisation's own funds, but not that it should actually be paid out to the rightholders. Consistency with draft opinion from CULT.

Amendment 19

**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 **established in the Union** to manage the rights, categories of rights, types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the **rightholder's** residence, establishment or nationality.

Amendment 20

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights, **works or** types of works and other subject matter granted to a **collective management organisation** or to withdraw from a **collective management organisation** any of the rights or categories of rights, **works 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 **collective management organisation** 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.

Justification

Rightholders should retain the right to freely decide over the rights to their own works. In other countries, for instance in the United States, rightholders have the right to withdraw individual works from their collective management organisation. Consistent with draft opinion from CULT.

Amendment 21

Proposal for a directive Article 6 – paragraph 5

Text proposed by the Commission

5. Collecting societies shall **keep** records **of** members which are regularly updated so that members can be properly identified and located.

Amendment

5. Collecting societies shall **keep publicly accessible** records **of their** members **and their respective rights or works** which **the rightholders authorise the collecting society to manage**. **The records** are regularly updated so that **both** members **and their managed rights and works** can be properly identified and located.

Amendment 22

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

Text proposed by the Commission

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

Amendment

deleted

Justification

Conditioning the right to vote on amounts received is undemocratic. Since the income distribution of rights holders in collective management organisations is extremely unequal, restricting voting power according to amounts received may give rise to unreasonably large differences in influence.

Amendment 23

Proposal for a directive Article 7 – paragraph 8

Text proposed by the Commission

Amendment

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

8. Every member of a **collective management organisation** 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. **To be valid, the proxy shall have been given by the member to the proxy holder no more than three months before its use.**

Justification

To avoid that music publishers and/or record companies make it a standard practice to demand a permanent proxy from new artists that they sign a contract with, which over time would allow them to take control of the collecting societies. Consistent with draft opinion from CULT.

Amendment 24

Proposal for a directive Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

(a) balance sheet total: EUR 350 000;

(b) net turnover: EUR 700 000;

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

Justification

Excluding small collective management organisations from any kind of supervisory function goes counter to the purpose of the directive. Even small companies and organizations typically require a board. Consistent with draft opinions from CULT and IMCO.

Amendment 25

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. ***Except in member states with systems of extended collective licensing, a collective management organization shall ensure that it only collects rights revenue on behalf of rightholders whose rights it is authorised to represent.***

Justification

Harmonise with articles 12.1 and 14.2 which says payments must be made accurately. If payments must be accurate it stands to reason that the collection and management should also have to be. Additionally, collective management organisations should only collect on behalf of actual members and rightholders whose rights they manage under a representation agreement. Consistency with draft opinion from CULT.

Amendment 26

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).***

Justification

Clarification. Consistent with draft opinion from IMCO.

Amendment 27

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 organisations** regularly 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 **six months after** 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 **collective management organisation** from respecting this deadline. The **collective management organisation** shall carry out such distribution and payments accurately, ensuring equal treatment of all categories of rightholders.

Amendment 28

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 collecting society shall regularly, diligently, **accurately and without undue delay** distribute and pay amounts due to other collecting societies.

Amendment 29

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 **fair, reasonable and non-discriminatory** criteria, in particular in relation to tariffs.

Justification

Fair, reasonable and non-discriminatory criteria constitute a standard wording in licensing.

Amendment 30

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 shall reflect the economic value of the rights in trade and **shall be reasonable in relation to the economic value** of the service provided by the collecting society.

Justification

Modification is introduced to better reflect the case law of the Court of Justice, Canal 5 vs. STIM case (C-52/07).

Amendment 31

Proposal for a directive

Article 18 – title

Text proposed by the Commission

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

Amendment

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

Justification

Strengthens the transparency obligation. See amendments to Article 18, paragraphs 1 and 2.

Amendment 32

Proposal for a directive

Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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

Justification

Strengthens the transparency obligation. See amendments to the title of Article 18 and its paragraph 2.

Amendment 33

Proposal for a directive

Article 18 – paragraph 1 – point c

Text proposed by the Commission

(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

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

Amendment 34

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

Amendment

2. In addition, a collecting society shall make available **to** any rightholder or any collecting society, any information on

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.

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.

Justification

Strengthens the transparency obligation. See amendments to the title of Article 18 and its paragraph 1.

Amendment 35

**Proposal for a directive
Article 19 – paragraph 1 – introductory part**

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that a **collective management organisation** makes public the following information **preferably through publicly accessible and searchable interfaces**:

Justification

Improved transparency. Consistent with draft opinion from CULT.

Amendment 36

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

Text proposed by the Commission

Amendment

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

Justification

Strengthens the transparency obligation. Consistent with draft opinion from CULT.

Amendment 37

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ga) applicable tariffs.

Justification

Requirements of transparency should include the applicable tariffs.

Amendment 38

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ga) 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 on works for which one or more rightholders have not been identified.

Amendment 39

Proposal for a directive

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Collective management organisations shall ensure that, in accordance with point (ab) of paragraph 1, the information on repertoire is accurate and regularly updated. In this respect, they shall particularly ensure that the information concerning works whose term of protection is about to terminate is accurate and regularly updated, and made

available to the public.

Justification

Accurate information about when a specific work will fall into the Public Domain is important to the public. Such information should be regularly updated. Consistent with draft opinion from CULT.

Amendment 40

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

Text proposed by the Commission

Amendment

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

deleted

(a) balance sheet total: EUR 350 000;

(b) net turnover: EUR 700 000;

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

Justification

In order to keep collecting societies accountable, publication of annual transparency report should apply to all of them.

Amendment 41

**Proposal for a directive
Article 22 – paragraph 2 – point e a (new)**

Text proposed by the Commission

Amendment

(ea) The ability to offer both the reproduction (mechanical) and the communication (performance) right in the musical works it seeks to license by means of multi-territorial licenses.

Justification

The division of licenses into separate mechanical and performing rights makes little sense in an online environment. Such fragmentation creates excess costs for users and raises transaction costs.

Amendment 42

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.

Justification

Collection societies should not be granted the power to limit the "re-use" of information, an important and foundational human right.

Amendment 43

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

1. A collecting society which grants multi-territorial licences for online rights in musical works shall have procedures in place to enable rightholders and other collecting societies to object to the contents of the data referred to in Article 22(2) **or** to information provided under Article 23, where such rightholders **and** collecting societies, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the collecting society shall ensure that the

Amendment

1. A collecting society which grants multi-territorial licences for online rights in musical works shall have procedures in place to enable rightholders and other collecting societies to object to the contents of the data referred to in Article 22(2) **and rightholders, other collecting societies and online music service providers to object** to information provided under Article 23, where such rightholders, collecting societies **and online music service providers** on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of

data or the information are corrected without undue delay.

their online rights *or licences* in musical works. Where the claims are sufficiently substantiated, the collecting society shall ensure that the data or the information are corrected without undue delay.

Justification

The right to object should be given to online music service providers too.

Amendment 44

**Proposal for a directive
Article 29 – paragraph 2 – subparagraph 1**

Text proposed by the Commission

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

Amendment

The requested 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.

Justification

The requested society should be required to accept within a reasonable time. Consistency with draft opinions from IMCO and ITRE.

Amendment 45

**Proposal for a directive
Article 31 – paragraph 1**

Text proposed by the Commission

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

Amendment

This Title as well as Articles 36 and 40 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 46

Proposal for a directive

Article 36 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Justification

Disputes between collective management organisations about capacity to process and repertoire transparency should be subject to dispute resolution. Consistent with draft opinion from IMCO.

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	INTA 13.12.2012		
Rapporteur Date appointed	Helmut Scholz 26.11.2012		
Discussed in committee	20.3.2013	24.4.2013	27.5.2013
Date adopted	18.6.2013		
Result of final vote	+: 23	–: 0	0: 4
Members present for the final vote	Maria Badia i Cutchet, David Campbell Bannerman, María Auxiliadora Correa Zamora, Christofer Fjellner, Yannick Jadot, Metin Kazak, Franziska Keller, Bernd Lange, David Martin, Vital Moreira, Paul Murphy, Cristiana Muscardini, Helmut Scholz, Peter Šťastný, Robert Sturdy, Henri Weber, Iuliu Winkler, Paweł Zalewski		
Substitute(s) present for the final vote	Josefa Andrés Barea, Catherine Bearder, Albert Deß, Elisabeth Köstinger, Emma McClarkin, Mario Pirillo, Miloslav Ransdorf, Peter Skinner, Jarosław Leszek Wałęsa		
Substitute(s) under Rule 187(2) present for the final vote	Paul Rübig		

24.6.2013

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

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: Luigi Berlinguer

SHORT JUSTIFICATION

Europe's creative industries have a high potential for jobs and growth creation. Our cultural diversity also offers a unique advantage and opportunity on the world stage. This Directive should therefore facilitate the vitality of our creative industries while preserving the ability of collective rights management organisations to serve local and niche repertoires on a solidarity basis. The ITRE rapporteur expresses general satisfaction with the overall profile of the proposal, which is going to provide European collective management organisations, users, beneficiaries and artists with a fundamentally new tool for the better functioning of the online music sector in Europe. Particularly important is the first part of the Directive, covering the issue of transparency and good governance: some of the measures suggested in the opinion aim at improving the effectiveness and functionality of that new system. The ITRE rapporteur also wishes to make sure that the provisions introduced by the proposal do not discriminate against European collective management organisations (including online service providers and agents) compared to non-EU organisations.

AMENDMENTS

The Committee on Industry, Research and Energy 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 3

Text proposed by the Commission

(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.

Amendment

deleted

Amendment 2

Proposal for a directive Recital 4

Text proposed by the Commission

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

Amendment

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

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.

organisations, rightholders and users alike, *for whom it is too complicated to assert their rights in other Member States*. These difficulties do not arise in the functioning of independent rights management service providers who act as agents for rightholders for the management of their rights on a commercial basis and in which rightholders do not exercise membership rights.

Amendment 3

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) This Directive is without prejudice to the arrangements in the Member States concerning the management of rights by collective management organisations, such as extended or mandatory collective licensing, legal presumptions of representation or transfer, or a combination of them.

Amendment 4

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) This Directive should aim at coordinating national rules concerning the access to the activity of managing copyright and related rights by collecting societies, the modalities for their governance, and their supervisory framework and is also based on Article 53(1) of the Treaty. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 of the Treaty.

deleted

Justification

Recital to be replaced by new recital 7a.

Amendment 5

Proposal for a directive

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) This Directive is without prejudice to the legal form traditionally chosen by the Member States for the operation of the collective management organizations. The Member States should not be required to change the legal form of these organizations. The provisions of the Directive are without prejudice to right holders' freedom of association and their right to organize themselves.

Justification

It is imperative that the directive shall not have a negative effect on established modes of governance and functioning internal practises of CMO's based on applicable national law. This goal has been generally endorsed by many interested parties including the European Commission.

Amendment 6

Proposal for a directive

Recital 9

Text proposed by the Commission

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

(9) Having the freedom to ***receive services for*** collective management ***of copyright and related rights*** across national borders entails that rightholders are able to freely choose the ***collective management organisation*** for the management of their rights, such as public performance or broadcasting rights, or categories of rights, such as interactive communication to the public, provided the ***collective***

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.

management organisation already manages such rights or categories of rights. This implies that rightholders can easily withdraw their rights or categories of rights from a *collective management organisation* and entrust or transfer all or part of them to another *collective management organisation* or another entity irrespective of the Member State of residence or the nationality of either the *collective management organisation* or the rightholder. *Collective management organisations* managing different types of works and other subject matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject matter. *Collective management organisations* 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.

Amendment 7

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Whereas the individual exercise of exclusive economic rights, such as is often the case in the audiovisual sector, is also consistent with internal market goals and reduces the potential for fragmentation, through the consolidation of exploitation rights in the producer.

Amendment 8

Proposal for a directive Recital 12

Text proposed by the Commission

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

Amendment

(12) **All** members of **collective management organisations** should be allowed to participate and vote in the general meeting; the exercise of these rights may only be subject to fair and proportionate restrictions. The exercise of voting rights should be made easy, **and whenever possible by electronic means**.

Justification

Inclusive as well as efficient member participation should be encouraged. [Consistent with draft opinion from CULT.]

Amendment 9

**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 **the different categories of** members to be represented **in fair and balanced manner** in the body that exercises this function.

Amendment 10

**Proposal for a directive
Recital 15**

(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

(15) **Collective management organisations** collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that society, or another society. It is therefore important that **collective management organisations** exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where **collective management organisations** maintain proper records of membership, licences and use of works and other subject matter. Where appropriate, data should also be provided by rightholders and users and verified by the **collective management organisations**. Amounts collected and due to rightholders should be managed separately from any own assets of the **collective management organisation** and, if they are invested, pending their distribution to rightholders, this should be carried out in accordance with the investment policy decided by the **collective management organisations'** general meeting. In order to maintain a high level of protection for the rights of rightholders and to ensure that any income which may be derived from exploitation of their rights accrues for the benefit of rightholders, the investments made and held by the **collective management organisation** should be managed in accordance with criteria which would oblige the **collective management organisation** to act prudently, while allowing the **collective management organisation** to decide on the most secure and efficient investment policy. This should allow the **collective management organisation** to opt for ***a secure and profitable asset allocation that prevents exposure to risk of any rights revenue invested and which does not unduly***

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.

prejudice any rights revenue owed to rightholders. Moreover, in order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require *collective management organisations* to undertake diligent and good faith reasonable measures to identify and locate the relevant rightholders. It is also appropriate to provide for the approval by members of *collective management organisations* of the rules governing any situation where, due to the lack of identified or located rightholders, amounts collected cannot be distributed.

Justification

In order to prevent unnecessary risks to the revenue that belongs to rightholders, collective management organisations should employ a secure and low risk investment strategy. [Consistent with draft opinion from IMCO.]

Amendment 11

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 collective management organisations of multi-territorial collective licensing of authors' online rights in musical works. These provisions should ensure the necessary minimum quality of the cross-border services provided by *collecting societies*, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the

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 *collective 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 collective management organisations of multi-territorial collective licensing of authors' online rights in musical works. These provisions should ensure the necessary minimum quality of the cross-border services provided by *collective management organisations*,

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 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*.

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 offers or grants multi-territorial licences, to accept the mandate of the requesting society, *without abusing its market power*. The development of legal online music services across the Union should also contribute to *a decrease in unauthorized copying of music*.

Amendment 12

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*

Amendment

(35) Broadcasting organisations generally rely on a *blanket* licence from a local collecting society *for the rights to the world repertoire of* musical works *in order to communicate and make available to the public their own television and radio programmes and online services related to their broadcasts, such as material which supplements, enriches or otherwise expands on the broadcaster's programme offerings. Such blanket licences for broadcasters respond to an actual need, are well established and generally accepted by right holders, broadcasters and collective management organisations alike. This directive should therefore maintain that established practice so as to*

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

avoid the application of different rules for the licensing of broadcasters' offline and online services. For this reason it is necessary to exempt collective management organisations from the application of Title III when they license online services to broadcasters that are related to their offline broadcast services. This should not operate so as to distort competition with other services which give consumers access to individual musical works online, or lead to restrictive practices, such as market or customer sharing, *and should remain in compliance with national and Union law, in particular* Articles 101 or 102 of the Treaty on the Functioning of the European Union.

Justification

Broadcasters include in their online services not only broadcast programmes or parts thereof but also other programme material provided under the broadcaster's editorial control and responsibility which normally bears a relationship with the broadcaster's offline activities. As the exact scope and extent of that material will be subject to contractual arrangements between broadcasters and the music right holders or collective management organisations concerned, it should not be defined in advance by the Directive.

Amendment 13

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

Amendment

(36) It is necessary to ensure the effective enforcement of the provisions of the national law adopted pursuant to this Directive. *Collective management organisations* should offer their members specific procedures for the handling of complaints and the resolution of disputes. These procedures should also be made available to other rightholders represented by the collecting society. It is also appropriate to ensure that Member States have independent, impartial and effective

of settling commercial disputes between **collecting societies** and users on existing or proposed licensing conditions as well as on situations in which the granting of a licence is refused. Furthermore, the effectiveness of the rules on the multi-territorial licensing of online rights in musical works could be undermined if disputes between **collecting societies** and their counterparts were not solved quickly and efficiently by independent and impartial bodies. As a result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between **collecting societies**, on the one hand, and online music service providers, rightholders or other **collecting societies**, on the other.

dispute resolution bodies capable of settling commercial disputes between **collective management organisations** 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 **collective management organisations** and their counterparts were not solved quickly and efficiently by independent and impartial bodies. As a result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between **collective management organisations**, on the one hand, and online music service providers, rightholders or other **collective management organisations**, on the other. ***These dispute resolution bodies should have special knowledge of intellectual property matters and they should base their decisions on objective standards and criteria, such as the "fair value in trade" established by the CJEU. In order to secure payment, users should be required to make payments to the collective management organisations, while the process is pending, according to the existing tariff where such tariff exists or based on an interim order by the court where no pre-existing applicable tariff is set.***

Justification

To ensure that national dispute resolution bodies have the required expertise and that their decisions follow the same fair principles across the internal market, these bodies should consist of dedicated judges that have special knowledge of IP matters and the decisions should be made following the criteria set out in Article 15(2). Parties may abuse the use of dispute resolution mechanisms, for example, to avoid or delay obligations such as payment of the licence fees. To ensure that these dispute resolution mechanisms are used in good faith, and given the potential length of dispute resolution proceedings, the provisions should specify that where a dispute resolution process is pending, users may only use the works or other protected content provided that, as a minimum obligation, they pay the tariffs published by

the CMO or, where there is no pre-existing tariff, a monthly fee set by the dispute resolution body, into an escrow account. The collective management organisation or the user, as the case may be, should be required to pay the balance between the payments made and the new tariff set by the competent body no later than 30 days after the decision has been made by that body.

Amendment 14

Proposal for a directive

Recital 37

Text proposed by the Commission

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against **collecting societies** who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.

Amendment

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against **collective management organisations** who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive sanctions **or measures** are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.

Justification

Clarification of Member State enforcement options. [Consistent with draft opinion from CULT.]

Amendment 15

Proposal for a directive

Recital 43

Text proposed by the Commission

(43) The provisions of this Directive are

Amendment

(43) The provisions of this Directive are

without prejudice to the application of competition law rules, and any other relevant law in other areas including confidentiality, trade secrets, privacy, access to documents, the law of contract and private international law relating to the conflict of laws and the jurisdiction of courts.

without prejudice to the application of competition law rules, and any other relevant law in other areas including confidentiality, *in particular with respect to individual agreements and non-disclosure agreements*, trade secrets, privacy, access to documents, the law of contract and private international law relating to the conflict of laws and the jurisdiction of courts.

Amendment 16

Proposal for a directive Article 1 – paragraph 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 *collective management organisations* of authors' rights in musical works for online use.

(Global change)

Amendment 17

Proposal for a directive Article 2- paragraph 1

Text proposed by the Commission

Titles I, II and IV *with the exception of Articles 36 and 40* shall apply to all *collecting societies* established in the Union.

Amendment

Titles I, II and IV *of this Directive shall apply to all collective management organisations* established in the Union. *Member States may extend the application of this Directive to Title I, chapters 2 to 5 of Title II and Title IV with the exception of Articles 36 and 40 to non-EU collective*

management organisations licensing the use of rights in their territory.

Amendment 18

Proposal for a directive

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Title I, Articles 10, 11(1), 12, 15, 16, 18, 19 and 20 of Title II, Title III and Articles 34, 35, 37 and 38 of Title IV shall also apply to independent rights management service providers established inside or outside the Union who act as agents for rightholders for the management of their rights and operate in the Union on a commercial basis.

Amendment 19

Proposal for a directive

Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

Title III shall however not apply when collective management organisations grant licenses for such musical works, in compliance with national and community law, to broadcasters in relation to online services that are related to their offline broadcast services.

Justification

Ex article 33 - Broadcasters include in their online services not only broadcast programmes or parts thereof but also other programme material provided under the broadcaster's editorial control and responsibility which normally bears a relationship with the broadcaster's offline activities. As the exact scope and extent of that material will be subject to contractual arrangements between broadcasters and the music right holders or collective management organisations concerned, it should not be defined in advance by the Directive.

Amendment 20

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

Text proposed by the Commission

Amendment

This Directive does not interfere with any arrangements concerning extended or mandatory collective licensing at national level.

Amendment 21

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

Text proposed by the Commission

Amendment

This Directive does not derogate from the European regulations concerning the protection of individuals as regards the processing of personal data.

Amendment 22

Proposal for a directive Article 3 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

(a) '***collective management organisation***' means any organisation 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***, and which is:

(i) owned or directly or indirectly controlled by its rightholders, or

(ii) organised as a not for profit organisation.

Amendment 23

Proposal for a directive

Article 3 – paragraph 1 – point c

Text proposed by the Commission

(c) ‘member *of a collecting society*’ means a rightholder or an entity directly representing rightholders, including other *collecting societies* and associations of rightholders, fulfilling the membership requirements of the *collecting society*;

Amendment

(c) ‘member’ means a rightholder or an entity directly representing rightholders, including other *collective management organisations* and associations of rightholders, fulfilling the membership requirements of the *collective management organisation, regardless of its legal form*;

Justification

Clarification needed in relation to the variety of legal forms of collective management organisations within different Member States. [Consistent with draft opinion from CULT.]

Amendment 24

Proposal for a directive

Article 3 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

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

Justification

Article 10.2 states that income derived from investments of rights revenue should be "kept separate" but does not make clear that such income belongs to and should, eventually, be paid out to rightholders. Including this income stream in the definition is the easiest way to remedy this. [Consistency with draft opinion from CULT.]

Amendment 25

Proposal for a directive

Article 3 – paragraph 1 – point k

Text proposed by the Commission

(k) ‘multi-territorial licence’ means a licence which covers the territory of more than one Member State;

Amendment

(k) ‘multi-territorial licence’ **for an online music service** means a licence which covers the territory of more than one Member State;

Amendment 26

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. **Collective management organisations shall have the right to require the exclusive assignment of the rights in all works of their members.**

Justification

A recent declaration adopted by more than 40 independent European associations of music creators called for the maintenance of the exclusive assignment of the performing right to their collective management organisation. This entails that music writers assign the performing right in all their works to the society of their choice. This provides the CMO with legal certainty because it knows that it represents the performing rights of all works of its’ members. The split of works (some compositions in one society, others in another one) would be detrimental: CMO’s would lose the certainty needed for blanket licenses as requested e.g. by public broadcasters. The consequences are that obtaining licenses will be more burdensome and costly.

Amendment 27

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 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; ***this paragraph does not apply to the arrangements in the Member States concerning the administration of rights through extended collective licenses, legal presumptions of representation or transfer, mandatory collective management or similar arrangements or a combination of them.***

Justification

Collective societies shall not be obligated to get consent from right holders that are covered by extended collective licenses or similar schemes in a member state. The amendment has thus the purpose to secure the continuation of well functioning systems of collective management of copyright and ensure rights holders' income and users' possibilities to obtain rights clearances and licenses.

Amendment 28

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

Amendment

2. ***A collective management organisation*** shall accept rightholders ***and entities representing rightholders, including other collective management organisations and associations of rightholders*** as members if they fulfil the membership requirements, ***which shall be based on objective and***

and shall be made publicly available.

non-discriminatory criteria. These criteria shall be included in the statute or the membership terms of the collecting society and shall be made publicly available.

Amendment 29

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The statute of the ***collective management 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 30

Proposal for a directive Article 7 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

The general meeting 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.

Justification

The relationship between the general meeting and the directors should be clear. [Consistent with draft opinion from IMCO.]

Amendment 31

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that the **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 **different categories of** members of the **collective management organisation** in the body exercising this function in order to ensure their effective participation.

Justification

Maintaining the balance between the different categories of members is of great importance to artists and authors and should be made explicit. [Consistent with draft opinion from CULT.]

Amendment 32

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.

Justification

Informing the general meeting is standard practice in organizational good governance. [Consistent with draft opinion from IMCO.]

Amendment 33

Proposal for a directive Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

(a) balance sheet total: EUR 350 000;

(b) net turnover: EUR 700 000;

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

Amendment 34

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

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.

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).***

Justification

Clarifying that any deductions have to be made according to the rules that have been decided on by the general meeting. [Consistent with draft opinion from IMCO.]

Amendment 35

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 organisations** **distribute** and **pay regularly and diligently amounts** due to **the** rightholders it represents. The **collective management organisations** shall, **taking into account the state of technology**, carry out such distribution and payments **without undue delay and at least on a semestral basis and** 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 **collective management organisations** from respecting this deadline. The **collective management organisations** shall carry out such distribution and payments accurately, ensuring equal treatment of all categories of rightholders.

Amendment 36

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where the amounts due to rightholders cannot be distributed, after **three** years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the **collective management organisation** has taken all necessary measures to identify and locate the rightholders, the **collective management organisation** 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 **collective**

management organisation and provided that the collective management organisation ensures that the revenue is distributed in proportion to the revenues received by rightholders for the relevant financial year. Collective management organisations may distribute amounts due to rightholders who cannot be identified before the expiration of the three-year period if allowed under national law.

Amendment 37

Proposal for a directive Article 12 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 38

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 39

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 **be reasonable in relation to in particular the economic** value of the **use of the** rights in trade **taking into account the nature and scope of the use of the work and other subject matter, as well as to the economic value** of the service provided by the **collective management organisation**.

Amendment 40

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 **collective management organisation** shall base its own determination of those amounts due, on the economic value of those rights in trade.

Amendment 41

Proposal for a directive

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. A collective management organisation providing licences shall not be required to use as a precedent for other types of services licensing terms agreed with a service provider, when such service provider is providing a new type of service

which has been available to the public for less than three years.

Amendment 42

Proposal for a directive

Article 15 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Users shall provide collective management organisations, in an adopted or agreed format and timeframe, with information necessary to enable the accurate analysis of the use of their repertoires. 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. Where users fail to report to collective management organisations in a manner that enables the collective management organisations to make timely and accurate distributions to individual rightholders, Member States shall ensure that collective management organisations shall be discharged of their obligations under this Directive related to distribution of revenues to individual rightholders, and the collective management organisations may charge such users additional fees to cover the additional administrative costs caused by missing or insufficient usage reports.

Amendment 43

Proposal for a directive

Article 15 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Collective management organisations shall be permitted to include a right of audit in their licences, subject to

reasonable conditions, in order to verify the compliance with the terms of the licence and the declaration of qualifying revenue.

Amendment 44

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

Text proposed by the Commission

Amendment

3c. Users should pay licence fees and remunerations to the collective management organisations in a timely manner whenever there is a generally applicable or court-determined tariff in force. Where users fail to pay such licence fees or remuneration in a timely manner, Member States shall ensure that collective management organisations may charge such users additional fees to cover the administrative costs caused by the failure to voluntarily pay the licence fees or remunerations.

Amendment 45

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Collective management organisations shall respond to communications from persons requesting a license for online services within a reasonable time period and shall propose a license within 6 months of receiving a request for a license with the relevant information. If a collective management organisation does not comply with these deadlines, the

person requesting a license shall be entitled to access dispute resolution pursuant to Articles 35, 36 and 37.

Justification

Taking up the proposed amendment of the rapporteur. However, there cannot be strict deadlines as licencing agreements can differ significantly in their complexity, depending e.g. on what type or number of rights are concerned.

Amendment 46

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

Text proposed by the Commission

Amendment

Article 15b

Refusal to grant a license:

1. The collective management organisation shall not, without important and justified reasons, refuse to grant a license for the use of works or other protected subject-matter within the scope of the repertoire it represents. In particular, the collective management organisation shall not refuse to grant a license, including a multi-territorial license, for the reasons related to profitability of such license.

2. When refusing to grant a license, the collective management organisation shall inform rightholders it represents, other collective management organisations on whose behalf it manages rights under a representation agreement and the user, of the reasons of such refusal.

Amendment 47

**Proposal for a directive
Article 18 – paragraph 1 – introductory part**

Text proposed by the Commission

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:

Amendment

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

Amendment 48

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. In addition, a **collective management organisation** shall make available **to** any rightholder or any **collective management organisation**, 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 49

Proposal for a directive
Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that a **collective management organisation** makes public the following information **preferably through publicly accessible and searchable interfaces**:

Justification

Interoperability in electronic networks should be encouraged. [Consistent with draft opinion from CULT.]

Amendment 50

Proposal for a directive Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

(a) balance sheet total: EUR 350 000;

(b) net turnover: EUR 700 000;

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

deleted

Amendment 51

Proposal for a directive Article 25 – paragraph 1

Text proposed by the Commission

Amendment

1. A collecting society shall **monitor** the use of online rights in musical works which it represents, in whole or in part, by online music service providers to which it has granted a multi-territorial licence for those rights.

1. A collecting society shall **agree with the online music service provider on the provision of information regarding** the use of online rights in musical works which it represents, in whole or in part, by online music service providers to which it has granted a multi-territorial licence for those rights.

Justification

The term "monitor" can be interpreted as technical monitoring which does not work well for some online services.

Amendment 52

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 societies shall have the possibility to conclude representation agreements with other collective management societies for the coordination and efficiency of such licenses under equal and non-discriminatory terms.*** Any representation agreement between **collective management** societies whereby a **collective management** society mandates another **collective management** society to grant multi-territorial licences for the online rights in musical works in its own music repertoire ***should preserve the ability for the mandating society to mandate another society and*** shall be of a non-exclusive nature. The mandated **collective management organisation** shall manage those online rights on non-discriminatory terms.

Amendment 53

Proposal for a directive Article 28 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 54

Proposal for a directive

Article 28 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The Commission shall assess and report to the European Parliament and the Council on the need for sector specific rules, with a view to the implementation of paragraph 3 of Article 101 of the TFEU, covering representation agreements and online rights pools, exchanges of information as well as other forms of cooperation among collective management societies for the purpose of granting and administration of multi-territorial multi-repertoire licences and/or for the purpose of establishing uniform or mutually agreeable tariffs and conditions for such licences.

Justification

Cooperation of collective management organizations should be encouraged but this also requires legal certainty as to the applicable competition rules. The risk of facing antitrust investigations due to cooperation appears significant and should therefore be clarified.

Amendment 55

Proposal for a directive

Article 29 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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***.

2. The requested ***collective management organisation*** shall accept such a request ***without delay*** if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other ***collective management organisations***.

Amendment 56

Proposal for a directive

Article 29 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The management fee for the service provided by the requested **collecting society** to the requesting **society** shall not exceed the costs reasonably incurred by the requested **collecting society** in managing the repertoire of the requesting collecting society and a reasonable profit margin.

Amendment

The management fee for the service provided by the requested **collective management organisation** to the requesting **organisation** shall not exceed the costs reasonably incurred by the requested **collective management organisation** in managing the repertoire of the requesting **organisation** and a reasonable profit margin **economically viable for all parties involved**.

Amendment 57

Proposal for a directive

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

Text proposed by the Commission

Amendment

The requested collective management organisation shall license the requesting collective management organisation's repertoire, in its relations with users, on the same conditions as its own repertoire and shall not exclude the requesting organisation's repertoire from the licensed repertoire without the requesting organisation's consent.

Justification

The amendment is identical to rapporteur's amendment 25, changing the place of the amendment whilst preserving the original Commission proposal for Art. 29(3). This article and amendment proposed highlight that the repertoires of small and medium-sized CMO's should be sufficiently protected in order fully to contribute for the development and promotion of cultural diversity in Europe and would receive equal treatment when licensing the cross-border online music in Europe .

Amendment 58

Proposal for a directive Article 33 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

For greater clarity and conformity with Recital 35, the broadcaster exception should cover previews. [Consistent with draft opinion from IMCO.]

Amendment 59

Proposal for a directive Article 35 – title

Text proposed by the Commission

Dispute resolution **for** users

Amendment

Dispute resolution **with** users

Amendment 60

Proposal for a directive Article 35 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that disputes between *collective management organisations* and users concerning existing and proposed licensing conditions, tariffs, *the calculation of tariffs*, and any refusal to grant a licence *or to comply with its terms* can be submitted to a court, and if appropriate, to an independent and impartial dispute resolution body. *Member States shall ensure that these dispute resolution bodies are specialised in intellectual property matters and that their decisions are made on the basis of the criteria set out in Article 15(2).*

Amendment 61

**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.

Justification

To ensure a level playing field for smaller players seeking dispute resolution the administrative costs must be reasonable. [Consistent with draft opinion from IMCO.]

Amendment 62

**Proposal for a directive
Article 35 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. Member States shall ensure that where users have recourse to dispute resolution under this Article, they have an

obligation to pay to the collective management organisation, while the process is pending:

(a) The pre-existing tariff applicable to the use in question, if such tariff exists.

(b) An interim non-prejudicial monthly payment determined by the dispute resolution body if there is no pre-existing tariff for the use in question.

Amendment 63

Proposal for a directive Article 35 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall ensure that the collective management organisations or users, as the case may be, shall pay the balance between the payments made and the new tariff set by the competent body no later than 30 days after the decision has been made by that body.

Amendment 64

Proposal for a directive Article 38 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Member States shall **ensure** that their respective competent authorities **have the power to impose** appropriate administrative sanctions and **to take appropriate measures, or, alternatively, designate appropriate bodies**, where the provisions of the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied. **These** sanctions and measures shall be effective, proportionate

and dissuasive.

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	ITRE 11.9.2012
Rapporteur Date appointed	Luigi Berlinguer 5.11.2012
Discussed in committee	13.5.2013
Date adopted	20.6.2013
Result of final vote	+: 52 -: 0 0: 0
Members present for the final vote	Josefa Andrés Barea, Jean-Pierre Audy, Ivo Belet, Bendt Bendtsen, Fabrizio Bertot, Jan Březina, Maria Da Graça Carvalho, Giles Chichester, Jürgen Creutzmann, Pilar del Castillo Vera, Dimitrios Droutsas, Christian Ehler, Vicky Ford, Adam Gierek, Robert Goebbels, Fiona Hall, Jacky Héning, Edit Herczog, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Philippe Lamberts, Judith A. Merkies, Jaroslav Paška, Aldo Patriciello, Vittorio Prodi, Herbert Reul, Teresa Riera Madurell, Jens Rohde, Paul Rübig, Francisco Sosa Wagner, Konrad Szymański, Britta Thomsen, Patrizia Toia, Ioannis A. Tsoukalas, Niki Tzavela, Marita Ulvskog, Vladimir Urutchev, Kathleen Van Brempt, Alejo Vidal-Quadras
Substitute(s) present for the final vote	Jerzy Buzek, Ioan Enciu, Andrzej Grzyb, Roger Helmer, Jolanta Emilia Hibner, Gunnar Hökmark, Bernd Lange, Hannu Takkula
Substitute(s) under Rule 187(2) present for the final vote	Bas Eickhout, Indrek Tarand, Keith Taylor

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

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 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**

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.

Functioning of the European Union requires the Union to take cultural aspects into account in its action, in particular in order to respect and to promote the diversity of its cultures.

Amendment 2

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural 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

deleted

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

Amendment 4

Proposal for a directive Recital 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

(4) There are significant differences in the national rules governing the functioning of collecting societies, in particular as regards

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

Amendment 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.

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

(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 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.

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 ***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 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

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 *a secure and profitable* asset allocation that *prevents* exposure to risk of any rights revenue invested and which does

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.

not prejudice any rights revenue owed to rightholders. Moreover, in order to ensure that the amounts due to rightholders are appropriately, *timely* 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.

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

PE510.562v02-00

156/265

RR\510562EN.doc

Recital 16

Text proposed by the Commission

(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.

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, *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

(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.***

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.

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

(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

Amendment

(24) ***In the online music sector, where*** collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by 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***,

(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***

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 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.

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 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

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

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

rights *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 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

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 **tribunal**, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between collecting societies, on the one hand, and online music service providers, rightholders or other collecting societies, on the other.

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.

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

Amendment

This Directive lays down requirements

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

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 (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

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

Amendment

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

Amendment 29

Proposal for a directive Article 3 – point l

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

Amendment

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.

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

Amendment

3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted to a ***collecting society*** or to withdraw from a ***collecting society*** any of the rights or categories of rights or types of works and other subject matter of their choice, for the 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.

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 **collecting society**.

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 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

Amendment

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

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

Amendment

2. Collecting societies shall accept rightholders as members if they fulfil the membership requirements. They may only

2. Collecting societies shall accept rightholders, *or any other members as defined in Article 3(c)*, as members if they

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.

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

Amendment

(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*;

amounts due to rightholders;

Amendment 46

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

Text proposed by the Commission

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

Amendment

deleted

Amendment 47

Proposal for a directive Article 7 – paragraph 6

Text proposed by the Commission

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

Amendment

6. The general meeting shall control the activities of the *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

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 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

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, 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 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

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

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 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

Member States shall ensure that the persons who effectively manage the business of a collecting society and its directors, ***with the exception of the directors exercising supervisory function,*** design procedures so as to avoid conflicts of interest. The collecting society shall have procedures to identify, manage, monitor and disclose conflicts of interest in order to prevent them from adversely affecting the interests of members of the society.

Amendment

Member States shall ensure that the persons who effectively manage the business of a collecting society and its directors design procedures so as to avoid conflicts of interest. The collecting society shall have procedures to identify, manage, monitor and disclose conflicts of interest in order to prevent them from adversely affecting the interests of members of the society.

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

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:

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

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

Amendment 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 67

Proposal for a directive
Article 13

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 ***use this amount for its cultural fund. If no such fund exists, the collecting society shall repay the amount to the users.***

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.***

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

Amendment

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

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

Amendment

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

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***

society.

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

Amendment

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.

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 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;

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;
- (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*

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

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

Amendment

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

deleted

(a) balance sheet total: EUR 350 000;

(b) net turnover: EUR 700 000;

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

Amendment 81

Proposal for a directive
Article 23 – paragraph 2

Text proposed by the Commission

Amendment

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.

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

Amendment

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 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.

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 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

Amendment

1. Any representation agreement between ***collecting societies*** whereby a ***collecting society*** mandates another ***collecting society*** to grant multi-territorial licences for the

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

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.*

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

Amendment

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.

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

Amendment

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

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

Amendment

(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

Amendment

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.

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		

1.7.2013

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

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: Helga Trüpel

SHORT JUSTIFICATION

Though designed on a not for profit basis, Collective Management Organisations (CMOs) are economic entities operating on the market. They are however distinct from other services providers as they have an important role to play to protect and promote cultural diversity, by safeguarding less popular or famous artists, by enabling equal access of repertoires to the market as well as by promoting niche and local repertoires. It is also their mission to protect and defend the interests of all their members, regardless of their talent or success. In some Member States, CMOs are even legally compelled to support artistic creation by providing financial assistance to specific cultural and social purposes.

Thus, if artists are amongst EU society's most valuable assets, CMOs, facilitating licensing of copyright and related rights and lowering transaction costs, are the best means through which artists can be remunerated via copyright.

While the importance of collective right management as a principle is obvious, in recent years, more concerns and criticism have been raised by both rightholders and users on the functioning of CMOs, calling for better management and efficiency, improved transparency on tariffs, revenue distribution and accounting practices as well as better governance.

Meanwhile, the online environment has brought new challenges to businesses and policy makers. So have the objectives of the EU single market. Changes to copyright licensing are required as online services are not limited by national borders. The emergence of such services constitutes a challenge for CMOs which have traditionally granted licences on a territorial basis for their own/domestic repertoire.

The Rapporteur believes that collective rights management, when properly functioning, is the most effective way for rights licensing to benefit rightholders. To preserve this role there is an

urgent need to reform collective rights management.

The Rapporteur welcomes therefore the Commission's proposal which constitutes a timely opportunity for the legislator to address these issues.

The Commission's proposal provides a flexible framework which regulates collective management of copyright and related rights through provisions on better transparency, governance and enforcement as well as multi-territorial licensing for online use.

The Rapporteur believes that it is essential to ensure a fair and transparent competitive system in order to avoid downward pressure on rightholders' revenues and to create a level playing field.

It is therefore necessary to clarify some of the proposed provisions, as well as to suggest additional ones, to strengthen some specific points. In particular, commercial operators, which are authorised by way of contractual arrangements to manage copyright or rights related to copyright on behalf of rightholders, although not in the scope of this Directive, should be submitted to some transparency requirements. Better transparency also implies that as much information as possible is made available to the public, whilst ensuring the protection of personal data.

Rightholders should be placed in a better position to negotiate their rights and be able to take a better part in the governance of the CMOs of which they are members. They should be free to choose the CMO of their choice in the EU, regardless of their country of residence or nationality, for their representation. It is however essential to ensure that such a right does not have negative effects on local and niche repertoires, given the risk of rights concentration in the bigger CMOs.

Monitoring has to be ensured so provisions are properly enforced in all Member States.

The Rapporteur would like to stress that rightholders should have the possibility to make their works available under an open content licence of their choice, for instance under Creative Commons, without necessarily opting out from the collective management system.

Furthermore, the Rapporteur would like to give even more flexibility to rightholders in the management of the rights. CMOs should provide accurate repertory information, in particular for works falling into the Public Domain. CMOs should ensure that the information in respect of the works whose term of protection terminates is accurate and regularly updated, in order to exempt such works from licensing and avoid claims to be enforced by CMOs in that regard.

It is also important to ensure that there is no fragmentation of repertoire in particular in the context of digital market. To this end, CMOs should cooperate, as their role for licensing in the online music world is crucial to develop a genuine EU digital single market.

Offering a new regulatory environment to improve the functioning of CMOs and to allow them to manage rights across the Union, is essential to raise their capacity to provide good services to rightholders and in doing so, to demonstrate the added value of collective rights management over other forms of copyright management.

AMENDMENTS

The Committee on Culture and Education 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 1

Text proposed by the Commission

(1) The directives which have been adopted in the area of copyright and related rights already provide a **high level** of protection for rightholders and thereby for a framework where the exploitation of content protected by these rights can take place. They contribute to developing and maintaining creativity. In an internal market where competition is not distorted, **protecting** innovation and intellectual creation also encourages investment in innovative services and products.

Amendment

(1) The directives which have been adopted in the area of copyright and related rights already provide a **degree** of protection for rightholders and thereby for a framework where the exploitation of content protected by these rights can take place. They contribute to developing and maintaining creativity, **as well as promoting and safeguarding cultural diversity**. In an internal market where competition is not distorted, **fostering** innovation and **protecting** intellectual creation also encourages investment in innovative services and products.

Amendment 2

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The services of collective management organisations to rightholders and users are vital for the development and maintenance of the cultural scene in Europe and to the growth of culturally diverse creative industries. Collective management organisations support creators by developing important social and cultural activities, by ensuring market access for demanding or less popular repertoires and new artists.

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

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

Amendment

(2) The dissemination of content which is protected by copyright and related rights and the linked services, including books, ***photographs***, 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 ***transparent*** distribution of the amounts due to rightholders. ***Collective management organisations, as a form of self-organisation for artists***, enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves ***at all, or only with difficulty***, including in non-domestic markets. ***Due account should be taken of their functions as trustees and their particular responsibility for cultural and social aspects and society as such.*** 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. ***In***

doing so, collective management organisations contribute significantly to the development of the cultural and artistic scene in Europe as well as to the growth of cultural and creative industries.

Amendment 4

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) It is essential to create a level playing field for fair competition in copyright management and to protect the rights and economic interest of rightholders. In this regard, this Directive reflects the specific role of collective management organisations for rightholders and users alike and brings precision and adjustments to the rules governing the free movement of services.

Amendment 5

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) Collective management organisations, because of their social and cultural role, should set up social, cultural or educational amenities open to all members of such organisations on an equal footing.

Amendment 6

Proposal for a directive Recital 2 c (new)

Text proposed by the Commission

Amendment

(2c) It is imperative, however, that account is taken of the specific nature of collective management organisations serving the audiovisual and live entertainment sectors, which function very differently from the music sector.

Amendment 7

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 8

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) A suitable legal framework for collective management organisations should be established and, in particular, those Member States that do not yet have a supervisory body should establish one so as to facilitate the proper transposition of the EU legislation.

Amendment 9

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 ***collective management organisations***, in particular as regards their transparency and accountability towards their members and rightholders. ***Furthermore,*** problems with the functioning of ***collective management organisations*** lead to inefficiencies in the exploitation of copyright and related rights across the internal market to the detriment of the members of ***collective management organisations***, rightholders and users alike. 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, ***provided that they do not compete directly with management organisations in the areas of collecting and distributing monies due to rightholders. In such cases the criteria of membership and control by the membership are not relevant.***

Amendment 10

Proposal for a directive Recital 5

Text proposed by the Commission

(5) The need to improve the functioning of **collecting societies** has already been identified in the past. Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services set out a number of principles, such as the freedom of rightholders to choose their **collecting society**, the equal treatment of categories of rightholders and the equitable distribution of royalties. It also called on **collecting societies** to provide users with sufficient information on tariffs and repertoire in advance of the negotiations. Finally, it contained recommendations on accountability, rightholder representation in the decision-making bodies of **collecting societies** and dispute resolution. Commission Recommendation 2005/737/EC was however a non-binding instrument limited in scope. Consequently, it has been unevenly followed.

Amendment

(5) The need to improve the functioning of **collective management organisations** has already been identified in the past. Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services set out a number of principles, such as the freedom of rightholders to choose their **collective management organisation**, the equal treatment of categories of rightholders and the equitable distribution of royalties. It also called on **collective management organisations** to provide users with sufficient information on tariffs and repertoire in advance of the negotiations. Finally, it contained recommendations on accountability, rightholder representation in the decision-making bodies of **collective management organisations** and dispute resolution. Commission Recommendation 2005/737/EC was however a non-binding instrument limited in scope. Consequently, it has been unevenly followed.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

Collective management organisations (CMOs) encompass all forms of entities dealing with collective rights management, such as collecting societies. This is a more general term which should be used to cover as many entities as possible operating in this field.

Amendment 11

Proposal for a directive Recital 6

Text proposed by the Commission

(6) The protection of the interests of the members of *collecting societies*, rightholders and third parties requires that the laws of the Member States related to copyright management and multi-territorial licensing for online rights in musical works be coordinated with a view to having equivalent safeguards throughout the Union. *Accordingly, the Directive is based on Article 50(2)(g) of the Treaty.*

Amendment

(6) The protection of the interests of the members of *collective management organisations*, rightholders and third parties requires that the laws of the Member States related to copyright management and multi-territorial licensing for online rights in musical works be coordinated with a view to having equivalent safeguards throughout the Union.

Amendment 12

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 *collecting societies*. Moreover, *in accordance with Directive 2006/123/EC collecting societies* should not discriminate, directly or indirectly, between rightholders on the basis of their nationality, place of residence or place of establishment when providing their management services.

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.

Amendment 13

Proposal for a directive Recital 9

Text proposed by the Commission

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

Amendment

(9) Having the freedom to receive *services for* collective management *of copyright and related rights and other subject matter* across national borders entails that rightholders are able to freely choose the *collective management organisation* for the management of their rights, such as public performance or broadcasting rights, or categories of rights, such as interactive communication to the public, provided the *collective management organisation* already manages such rights or categories of rights. This implies that rightholders can easily withdraw their rights or categories of rights from a *collective management organisation* and, *if necessary*, entrust or transfer all or part of them to another *collective management organisation* or another entity irrespective of the Member State of residence or the nationality of either the *collective management organisation* or the rightholder. *Collective management organisations* managing different types of works and other subject matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject matter. *Collective management organisations* 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 for non-commercial uses.

Amendment 14

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) In implementing the provisions of the Directive, account should be taken of the specificity of each sector. In this context, collective management organisations are the preferred way to ensure fair remuneration for authors. Collective management organisations must be able to perform their task of pooling management costs for the benefit of their members and in the interests of legal certainty for users and of defending and promoting cultural diversity.

Amendment 15

Proposal for a directive Recital 12

Text proposed by the Commission

Amendment

(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.

(12) The interests of all members of collective management organisations should be represented at the general meeting and all members of collective management organisations should be allowed to participate and vote in the general meeting. The exercise of voting rights should be made as easy as possible and whenever possible by electronic means.

Amendment 16

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 **all the different categories of** members to be represented **in equal manner** in the body that exercises this function.

Amendment 17

Proposal for a directive Recital 14

Text proposed by the Commission

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

Amendment

(14) For reasons of sound management, a **collective management organisation's** management must be independent. Managers and executive directors should be required to declare **before taking up their duties in a collective management organisation** whether there are conflicts between their interests and those of the **organisation**. **Moreover, they should also be required to make such declarations of conflict of interest every year after taking up their duties in a collective management organisation.**

Amendment 18

Proposal for a directive Recital 15

Text proposed by the Commission

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

Amendment

(15) *Collective management organisations* collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may be members of that *collective management organisation*, or another *organisation*. It is therefore important that *collective management organisations* exercise the utmost diligence, *with maximum efficiency*, in collecting, managing and distributing that revenue. Accurate distribution is only possible where *collective management organisations* maintain proper *and transparent* records of membership, licences and use of works and other subject matter. Data *on the use of the rights managed by collective management organisations* should also be provided by rightholders and users *with due speed and care*, and verified by *those organisations*. Amounts collected and due to rightholders should be managed separately from any own assets of the *collective management organisation* and, if they are invested, pending their distribution to rightholders, this should be carried out in accordance with the investment policy decided by the *collective management organisation's* 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 *collective management organisation* should be managed in accordance with criteria which would oblige the *organisation* to act prudently, while allowing *it* to decide on the most secure and efficient investment policy. *As*

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.

the collective management of rights by collective management organisations is not a profit-making activity, these organisations should opt for an asset allocation that is suitable in terms of its precise nature and duration, and avoids any exposure to risk of rights revenue. This should allow the *collective management organisation* to opt for a *secure and profitable* asset allocation that *prevents* exposure to risk of any rights revenue invested and which does not unduly prejudice any rights revenue owed to rightholders. Moreover, in order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require *collective management organisations* to undertake diligent and good faith reasonable measures to identify and locate the relevant rightholders. It is also appropriate to provide for the approval by members of *collective management organisations* of the rules governing any situation where, due to the lack of identified or located rightholders, amounts collected cannot be distributed.

Amendment 19

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 *collective management organisation* represents rights and to ensure the remuneration of rightholders. *Collective management organisations* and users should therefore conduct licensing negotiations in good faith and apply tariffs determined on the basis of objective *and non-discriminatory*

criteria.

Amendment 20

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) To enhance transparency and prevent situations where users receive more than one invoice for the same rights in the same works, collective management organisations should be required to cooperate closely among themselves. This cooperation should include pooling of information on licences and use of works in a common database, coordinated and joint invoicing and collecting of rights revenues.

Amendment 21

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

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

(19) To enhance the trust of rightholders, users and other ***collective management organisations*** in the management services provided by ***collective management organisations***, each ***collective management organisation*** should be required to set up specific transparency measures. Each ***collective management organisation*** should therefore inform individual rightholders of the amounts paid to them and the corresponding deductions made. ***Collective management organisations*** should also be required to provide sufficient information, including financial information, to the other ***collective management organisations*** whose rights they manage through representation agreements. Each ***collective***

carries out its activities. *Collecting societies* should in particular disclose to rightholders, users and other *collecting societies* the scope of their repertoire and their rules on fees, deductions and tariffs.

management organisation should also make public *all relevant* information *in standardised form* to ensure that rightholders, users and other *collective management organisations* understand how it is structured and how it carries out its activities. *Collective management organisations* should in particular disclose to rightholders, users and other *collective management organisations, on the basis of standardised information categories*, the scope of their repertoire and their rules on fees, deductions and tariffs.

Amendment 22

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 *legally available* digital content and associated innovative services, including across national borders. *It is therefore increasingly necessary to adapt copyright law to the digital age.*

Amendment 23

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 lies 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 24

Proposal for a directive Recital 23

Text proposed by the Commission

Amendment

(23) Commission Recommendation 2005/737/EC promoted a new regulatory environment ***better suited to*** the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online environment and which is multi-territorial. However, the Recommendation, ***due to its voluntary nature***, has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works and to address the specific demands of

(23) Commission Recommendation 2005/737/EC promoted a new regulatory environment ***for*** the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online environment and which is multi-territorial. However, the Recommendation has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works and to address the specific demands of multi-territorial licensing.

multi-territorial licensing.

Amendment 25

Proposal for a directive Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Moreover, this Directive takes into account the possibility of distinguishing between commercial use, private use and free use of material, in the latter case made available on a non-profit basis. In addition, rightholders have the option of managing their rights themselves or transferring them to another organisation or association.

Amendment 26

Proposal for a directive Recital 24

Text proposed by the Commission

Amendment

(24) ***In the online music sector***, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by ***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

(24) ***Unlike other creative sectors***, where ***direct licensing plays a greater role***, collective management of authors' rights on a territorial basis remains the norm ***in the online music sector***. It is ***therefore*** essential to create conditions conducive to the most effective licensing practices by ***collective management organisations***. It is therefore appropriate to provide for a set of rules coordinating basic conditions for the provision by ***collective 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 ***collective management organisations***, notably in terms of transparency of repertoire

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

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, thus reducing the number of licences a user needs to operate a multi-territorial service **and enabling them to be issued more efficiently**. These provisions should enable a **collective management organisation** to request another **collective management organisation** to represent its repertoire on a multi-territorial basis where it cannot fulfil the requirements itself. There should be an obligation on the requested **organisation**, provided that it aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting **organisation**. The development of legal online music services across the Union should also contribute to the fight against piracy.

Amendment 27

Proposal for a directive Recital 26

Text proposed by the Commission

(26) To ensure that the data on the music repertoire they process is as accurate as possible, **collecting societies** granting multi-territorial licences of musical works should be required to update their databases continuously and without delay. They should establish easily accessible procedures to enable rightholders **and other collecting societies** whose repertoire they may represent to inform them about any inaccuracy that the **collecting societies** databases may contain in respect of works they own or control, including rights – in whole or in part – and Member States for which they have mandated the relevant **collecting society** to act. They should also have the capacity to process electronically the registration of works and authorisations

Amendment

(26) To ensure that the data on the music repertoire they process is as accurate as possible, **collective management organisations** granting multi-territorial licences of musical works should be required to update their databases continuously and without delay. They should establish easily accessible procedures to enable rightholders, other **collective management organisations** whose repertoire they may represent, **users and consumers** to inform them about any inaccuracy that the **collective management organisations** databases may contain in respect of works they own or control, including rights – in whole or in part – and Member States for which they have mandated the relevant **collective**

to manage rights. Given the importance of information automation for the fast and effective processing of data, *collecting societies* should provide for the use of electronic means for the structured communication of *that* information by rightholders. *Collecting societies* should, as far as possible, ensure that such electronic means take into account the relevant industry standards or practices developed at international level or at the level of the Union.

management organisation to act. They should also have the capacity to process electronically the registration of works and authorisations to manage rights. Given the importance of information automation for the fast and effective processing of data, *collective management organisations* should provide for the use of electronic means for the structured communication of information – *confined to the information required for this transaction* – by rightholders. *Collective management organisations* should, as far as possible, ensure that such electronic means take into account the relevant industry standards or practices developed at international level or at the level of the Union.

Amendment 28

Proposal for a directive Recital 27

Text proposed by the Commission

(27) Digital technology allows the automated monitoring by *collecting societies* of the use by the licensee of the licensed musical works and facilitates invoicing. Industry standards for music usage, sales reporting and invoicing are instrumental to improve the efficiency in the exchange of data between *collecting societies* and users. The monitoring of the use of licences should respect fundamental rights, namely the right to respect of private and family life and data protection. To ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, *collecting societies* should be required to *invoice service providers* and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that licensees make every effort to provide *collecting societies* with accurate and timely reports

Amendment

(27) Digital technology allows the automated monitoring by *collective management organisations* of the use by the licensee of the licensed musical works and facilitates invoicing. Industry standards for music usage, sales reporting and invoicing are instrumental to improve the efficiency in the exchange of data between *collective management organisations* and users. The monitoring of the use of licences should respect fundamental rights, namely the right to respect of private and family life and data protection. To ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, *collective management organisations* should be required to *establish cooperation procedures among themselves so as to ensure that each user receives a single joint invoice* and to distribute amounts due to rightholders without delay. For this

on the use of the works. **Collecting societies** should not be required to accept users' reports in proprietary formats when widely used industry standards are available.

requirement to be effective, it is necessary that licensees make every effort to provide **collective management organisations** with accurate and timely reports on the use of the works. **Collective management organisations** should not be required to accept users' reports in proprietary formats when widely used industry standards are available.

Amendment 29

Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) While the transparency and accuracy of repertoire information, timely and accurate reporting, invoicing and payments to rightholders are indispensable for the functioning of multi-territorial licensing in the internal market, it is also appropriate to require that collective management organisations managing authors' rights in musical works meet these higher standards with respect to all other forms of exploitation of those works and to all types of licences they provide. However it needs to be recognised that meeting the standards laid down for accurate invoicing and payments to rightholders also require an improvement in the accuracy of reporting by users, in particular in the offline environment. Therefore, collective management organisations need not comply with these requirements before 2020.

Amendment 30

Proposal for a directive Recital 29

Text proposed by the Commission

(29) Aggregating of different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer that service. That aggregation of repertoires should facilitate the development of new online services, and should also result in a reduction of transaction costs that are passed on to consumers. Therefore, **collecting societies** that are not willing to or are not able to grant multi-territorial licences directly in their own music repertoire should **be encouraged to** mandate other **collecting societies** voluntarily with the task of managing their repertoire under non-discriminatory terms. Where the request to mandate takes place, the requested **collecting society** should be required to accept, provided that it aggregates repertoire and offers or grants multi-territorial licences. In addition, exclusivity in agreements on multi-territorial licenses would restrict the choices available to users seeking multi-territorial licenses and also restrict the choices available to **collecting societies** seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between **collecting societies** providing for multi-territorial licensing should be concluded on a non-exclusive basis.

Amendment

(29) Aggregating of different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer that service. That aggregation of repertoires should facilitate the development of new online services, and should also result in a reduction of transaction costs that are passed on to consumers. Therefore, **collective management organisations** that are not willing to or are not able to grant multi-territorial licences directly in their own music repertoire should mandate other **collective management organisations** voluntarily with the task of managing their repertoire under non-discriminatory terms. Where the request to mandate takes place, the requested **collective management organisation** should be required to accept, provided that it aggregates repertoire and offers or grants multi-territorial licences . In addition, exclusivity in agreements on multi-territorial licences would restrict the choices available to users seeking multi-territorial licences and also restrict the choices available to **collective management organisations** seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between **collective management organisations** providing for multi-territorial licensing should be concluded on a non-exclusive basis.

Amendment 31

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

Amendment

(35) Broadcasting organisations generally rely on a **blanket** licence from a local **collective management organisation in order to acquire rights to the worldwide repertoire of musical works – in order to communicate them and make them available – and to be able to provide the public with television and radio programmes and online services. Such blanket licences for broadcasting organisations, which are based on their actual needs, have become firmly established and are recognised by rightholders, broadcasting organisations and collective management organisations alike. This Directive should therefore uphold this well-established practice in order to avoid a situation where different rules apply to licences issued for broadcasters’ online and offline services. It is therefore necessary to exempt collective management organisations from the provisions of Title III where they issue licences for broadcasters’ online services related to their offline services; such licences should be issued in accordance with national and European Union law, in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union.**

Amendment 32

Proposal for a directive Recital 37

Text proposed by the Commission

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against **collecting societies** who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.

Amendment

(37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to make complaints against **collective management organisations** who do not comply with the law and to ensure that, where appropriate, effective, proportionate and dissuasive **measures and** sanctions are imposed. Member States should determine which authorities should be responsible for administering the complaints procedures and sanctions. To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the European Commission should cooperate with each other to this end.

Amendment 33

Proposal for a directive Recital 42 a (new)

Text proposed by the Commission

Amendment

(42a) While it is legitimate to recognise the rightholder's freedom to enter into, withdraw from or terminate a rights management arrangement, it is essential that this should go hand in hand with respect for economic imperatives, and for the nature and quality of the service provided by the collective management organisation.

Amendment 34

Proposal for a directive Article 1 – paragraph 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, *in particular with regard to transparency and reporting*, by *collective management organisations and other entities having right to manage activities on behalf of rightholders*. It also lays down requirements for multi-territorial licensing by *collective management organisations* of authors' rights in musical works for online use.

Amendment 35

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

Text proposed by the Commission

Amendment

Member States shall ensure that by 1 January 2020, all collective management organisations established in the Union managing authors' rights in musical works shall comply with the standards set out in Articles 23, 24, 25 and 26 with respect to all forms of exploitation of musical works.

Amendment 36

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

Text proposed by the Commission

Amendment

Title I, Articles 13, 14, 15, 17 and 18 of Title II and Title IV with the exception of Articles 36 and 40 shall also apply, for

their operations carried out in at least one EU Member State, to collective management organisations and to independent commercial operators owned or controlled, in whole or in part, by a collective management organisation which as its principal or main activity offers collective rights management services to holders of copyright or rights related to copyright established outside the Union.

Amendment 37

Proposal for a directive Article 2 – paragraph 2

Text proposed by the Commission

Title III and Articles 36 and 40 of Title IV shall only apply to those **collecting societies** managing authors' rights in musical works for online use on a multi-territorial basis.

Amendment

Title I, Articles 10, 11(1), 12, 15, 16, 18, 19 and 20 of Title II, Title III and Articles 34, 35, 37 and 38 of Title IV shall also apply to independent commercial operators, to legal persons and any entity that exercise the same function as a collective management organisation based inside or outside the Union, who act as agents for rightholders for the management of their rights and operate in the Union on a commercial basis. Title III and Articles 36 and 40 of Title IV shall only apply to those **collective management organisations and other rights management entities** managing authors' rights in musical works for online use on a multi-territorial basis.

Amendment 38

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

Text proposed by the Commission

Amendment

Title III shall not apply to collective management organisations which, in accordance with national and EU law, grant licences to broadcasters for the use in their online services and where such use is related to their offline services.

Amendment 39

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

Text proposed by the Commission

Amendment

This Directive, while applying to all collective management organisations, does not interfere with national arrangements on the extended collective licensing or the mandatory collective management of rights.

Amendment 40

Proposal for a directive Article 3 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

(a) ‘***collective management organisation***’ means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement, by ***a substantial number of rightholders***, to manage copyright or rights related to copyright and which is owned or controlled by its members ***or which is a not-for-profit organisation***;

Amendment 41

Proposal for a directive

Article 3 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) ‘independent provider, operator or commercial agent’ means any entity that engages principally or mainly in business activities offering collective management services of rights to rightholders on a commercial basis.

Amendment 42

Proposal for a directive

Article 3 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) ‘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 serve the purpose of granting licences for online rights in musical works covering the repertoire of all participating collective management organisations and entities involved.

Amendment 43

Proposal for a directive

Article 3 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) ‘rightholder’ means any natural person or legal entity other than a **collecting society** that holds a copyright or related right **or who under an agreement for the exploitation of rights is entitled to a share**

(b) ‘rightholder’ means any natural person or legal entity other than a **collective management organisation** that holds a copyright or related right;

of the rights revenue from any of the rights managed by the collecting society;

Amendment 44

Proposal for a directive

Article 3 – paragraph 1 – point c

Text proposed by the Commission

(c) ‘member of a **collecting society**’ means a rightholder or an entity directly representing rightholders, including other **collecting societies** and associations of rightholders, **fulfilling the membership requirements of the collecting society;**

Amendment

(c) ‘member of a **collective management organisation**’ means a rightholder or an entity directly representing rightholders, including other **collective management organisations** and associations of rightholders, **which has been accepted as a member;**

Amendment 45

Proposal for a directive

Article 3 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

(e) ‘director’ means any individual managing **person**, any member of the administrative board, the management or the supervisory board of a **collective management organisation;**

Amendment 46

Proposal for a directive

Article 3 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) ‘administrator’ means any member of the board, the executive board or the supervisory board of a collective management organisation;

Amendment 47

Proposal for a directive

Article 3 – paragraph 1 – point e b (new)

Text proposed by the Commission

Amendment

(eb) ‘supervisory board’ means a permanent body of the collective management organisation composed of persons appointed by the members of the collective management organisation whose function is to control the actions of that organisation. It shall report annually to the general meeting of members on the controls it has carried out and any action it has taken;

Amendment 48

Proposal for a directive

Article 3 – paragraph 1 – 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 right, a right to remuneration or a right to compensation;

(f) ‘rights revenue’ means income collected by a ***collective management organisation*** on behalf of rightholders, whether from an exclusive right, a right to remuneration or a right to compensation ***as well as any financial revenue, such as interest payments of amounts collected by a collective management organisation on behalf of rightholders;***

Amendment 49

Proposal for a directive

Article 3 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) ‘management fees’ means the amount ***charged*** by a ***collecting society*** in order to cover the costs of ***its*** management of copyright or related rights ***services***;

(g) ‘management fees’ means the amount ***deducted*** by a ***collective management organisation from the rights revenues*** in order to cover the costs of management of

copyright or related rights;

Amendment 50

Proposal for a directive

Article 3 – paragraph 1 – point k

Text proposed by the Commission

(k) ‘multi-territorial licence’ means a licence which covers the territory of more than one Member State;

Amendment

(k) ‘multi-territorial licence’ means a licence **for an online music service** which covers the territory of more than one Member State;

Amendment 51

Proposal for a directive

Article 3 – paragraph 1 – point m a (new)

Text proposed by the Commission

Amendment

(ma) ‘commercial’ shall be defined as follows: if content, protected by authors’ rights, is being offered directly on an internet site, which acquires revenues to a non-negligible degree through donations, for example via membership contributions, through payments by clients or via advertisement through links to other homepages, such an activity shall be considered to be commercial.

Amendment 52

Proposal for a directive

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

General principle

1. The Member States shall ensure that collective management organisations under their jurisdiction comply with the

provisions of this Directive. For the purposes of this Directive, the jurisdiction of a Member State shall cover both collective management organisations established in that Member State and collective management organisations which license a significant proportion of their repertoire in that Member State.

2. A Member State may require collective management organisations under its jurisdiction or operating in its territory to comply with stricter or more detailed rules in the areas coordinated by this Directive, provided such requirements are compatible with EU law.

3. In cases where a Member State:

(a) has exercised its freedom under paragraph 2 to adopt more detailed or stricter rules of general public interest; and

(b) comes to the conclusion that a collective management organisation under the jurisdiction of another Member State is carrying out significant licensing operations on its territory, it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems that arise.

Amendment 53

Proposal for a directive Article 4 – paragraph 1

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** and do not impose on **them** any obligations which **could undermine** the protection of **their** rights and **their** interests, **provided they allow the collective management organisations sufficient**

discretion to negotiate with rights users.

Amendment 54

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 55

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

Text proposed by the Commission

Amendment

1a. This Directive shall not allow to cherry-pick the most popular and most successful works for individual management while leaving the rest that is more costly to manage and less profitable to the collective management organisations.

Amendment 56

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

Text proposed by the Commission

Amendment

1b. It is also important to give more flexibility to rightholders in the management of their rights. Therefore collective management organisations managing different types of works and other subject matter, such as literary,

musical or photographic works, shall also allow more flexibility to rightholders as regards the management of different types of works and other subject matter on work-by-work basis management for non-commercial use. Collective management organisations shall therefore inform rightholders of this opportunity and allow them to exercise it as easily as possible.

Amendment 57

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. *According to the rules collectively decided at the General Assembly,* rightholders *may* authorise a *collective management organisation* of their choice to manage the 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. *A collective management organisation may refuse to accept a mandate from a rightholder where the collective management organisation does not manage the rights covered by the mandate.*

Justification

The term ‘categories of rights’ is not appropriate as it only holds relevance for music related societies.

Amendment 58

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

Text proposed by the Commission

Amendment

2a. Rightholders shall have the right to grant licences free of charge for the non-commercial use of their works and rights, including categories of rights, works or particular types of such works. In this case, rightholders shall inform in due time the collective management organisations authorised to manage the rights of such works that such a free licence has been granted. Information on such works shall be publicly available.

Justification

Flexibility should be given to rightholders in the management of their works: rightholders should have the right to decide if some of their works could be used under free licensing, such as Creative Commons, without jeopardising their membership to the CMO which represents them.

Amendment 59

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. Rightholders shall have the right to terminate the authorisation to manage rights, ***categories of rights*** or types of works and other subject matter granted to a ***collecting society*** or to withdraw from a ***collecting society any of the rights or categories of rights*** or types of works and other subject matter of their choice, for the Member States of their choice, upon serving reasonable notice not exceeding six months. The ***collecting society*** may decide that such termination or withdrawal will

3. Rightholders shall have the right to terminate the authorisation to manage ***the*** rights, or types of works and other subject matter granted to a ***collective management organisation*** or to withdraw from a ***collective management organisation*** the 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 ***collective management***

take effect only at the middle and at the end of the financial year, whichever is sooner after the expiry of the notice period.

organisation 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 60

Proposal for a directive

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Collective management organisations shall retain the ability to lay down rules in their membership contracts on how to prevent unconscionable withdrawals.

Amendment 61

Proposal for a directive

Article 5 – paragraph 5

Text proposed by the Commission

Amendment

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 **collecting society**.

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 or type of works and other subject matter which are subject to the termination or the withdrawal are entrusted to another **collective management organisation**. **These provisions shall not apply to collective management organisations which administer the rights of authors in the audiovisual field in respect of which Member States may possibly envisage provisions on suitable conditions for withdrawal.**

Amendment 62

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 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 **with the exception of models of non-voluntary collective management. This paragraph does not apply to the arrangements in the Member States concerning the administration of rights through extended collective licenses, legal presumptions of representation or transfer, mandatory collective management or similar arrangements or a combination of them.**

Amendment 63

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

Text proposed by the Commission

Amendment

7a. Without prejudice to Article 20(4), rightholders shall have the right to request external independent audits of their collective management organisation at any time during the term of the authorisation.

Amendment 64

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 *statutes* of the *collective management organisations* shall *lay down* appropriate, effective *and transparent* mechanisms of participation of *their* members in the decision-making process *of the collective management organisation*. The representation of the different categories of members *at all levels of* the decision-making process shall be fair and *organised on a footing of equality*.

Amendment 65

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

Text proposed by the Commission

Amendment

5a. Collective management organisations shall make publicly accessible the list of their members and their respective rights or category of rights or works or type of works and other subject matter which the rightholders authorise the collective management organisation to manage, and their rules on fees, deductions and tariffs, on the basis of standardised categories of information, provided that the protection of the personal data of rightholders is preserved. This list is regularly updated so that both members and their managed rights and works can be properly identified and located.

Amendment 66

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 statute and the membership terms of the *collective management organisation as well as any amendments thereof shall be adopted* by the *general meeting*.

Amendment 67

Proposal for a directive Article 7 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

The general meeting shall have the power to decide on the appointment or dismissal of the *administrators and* 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 68

Proposal for a directive Article 7 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

The general meeting shall not decide on the appointment or dismissal of the individual managing director where *the body responsible for exercising* the supervisory *function* has the power to appoint or dismiss them.

Amendment 69

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, except where the general meeting decides to delegate this decision ***to the management board or*** to the body exercising the supervisory function;

Amendment 70

Proposal for a directive

Article 7 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

b) the 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 management board or*** to the body exercising the supervisory function;

Amendment 71

Proposal for a directive

Article 7 – paragraph 6

Text proposed by the Commission

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

Amendment

6. The general meeting shall control the activities of the ***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. ***Where any serious doubt is raised regarding the financial management of the collective***

management organisation, the general meeting shall be entitled to ask for an external audit of the collective management organisation. The result of such external audit shall be communicated to all members as well as to the public.

Amendment 72

Proposal for a directive

Article 7 – paragraph 7 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

Every member of a collective management organisation shall have the right to vote at the general meeting, including by electronic vote. Any restriction on the right of *a member* of the *collective management organisation* to participate and to exercise *its* voting rights at the general meeting shall be fair and proportionate and be based on the following criteria:

Amendment 73

Proposal for a directive

Article 7 – paragraph 7 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

b) amounts received or due to a member *since joining the collective management organisation*.

Amendment 74

Proposal for a directive

Article 7 – paragraph 8

Text proposed by the Commission

8. Every member of a *collecting society* shall have the right to appoint any other

Amendment

8. Every member of a *collective management organisation* shall have the

natural or legal person as a proxy holder to attend and vote at the general meeting in his name.

right to appoint any other natural or legal person as a proxy holder to attend and vote at the general meeting *of members* in his name. ***There shall be fair and balanced representation of the different categories of members of the collective management organisation. The proxy holder shall enjoy the same rights in the general meeting of the members as those to which the appointing member would be entitled such as distance voting. The proxy holder may not be a natural or legal person who falls within another category of rightholders.***

Amendment 75

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that the ***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 ***equal*** representation of ***all the different categories of*** members of the ***collective management organisation*** in the body exercising this function in order to ensure their effective participation.

Amendment 76

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 77

Proposal for a directive Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

a) balance sheet total: EUR 350 000;

b) net turnover: EUR 700 000;

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

Amendment 78

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, 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**.

Member States shall ensure that the persons who effectively manage the business of a **collective management organisation** and its directors, with the exception of the directors exercising supervisory function, design procedures so as to avoid conflicts of interest. The **collective management organisation** 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 **organisation**. **Such procedures shall also require that before taking up their duties and then once a year such persons and directors, make an individual statement on conflict of interests to the body**

entrusted with the supervisory function and to the members of the organisation, as well as make such a statement publicly accessible through the website of the collective management organisation.

Amendment 79

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.

Amendment 80

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The *collective management organisation* shall manage and keep separate ***in accounting terms*** the rights revenue and any income derived from its investment from its own assets, the income derived from its management services or the income derived from any other activities.

Amendment 81

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that agreements governing the relationship of the *collecting society* with its members ***and***

Amendment

1. Member States shall ensure that agreements governing the relationship of the ***collective management organisation***

rightholders shall specify deductions applicable to the rights revenue referred to in point (e) of Article 16.

with its members shall specify **the rules governing the calculation of the** deductions applicable to the rights revenue referred to in point (e) of Article 16. **The percentage of these deductions shall be reasonable and clearly justified in the billing forms that the collective management organisation has to provide to its members and rightholders.**

Amendment 82

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

Text proposed by the Commission

Amendment

1a. Member States shall ensure that deductions made for management fees shall not exceed justified and documented costs incurred for the purpose of managing copyright and related rights.

Amendment 83

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

Text proposed by the Commission

Amendment

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

Amendment 84

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

2. Member States shall ensure that, where a **collective management organisation**

or educational services funded through deductions from rights revenue, **rightholders** are entitled to the following:

provides social, cultural or educational services funded through deductions from rights revenue, **the members of the collective management organisation** are entitled to the following **services**:

Amendment 85

Proposal for a directive

Article 11 – paragraph 2 – point b

Text proposed by the Commission

b) rightholders who have terminated the authorisation to manage rights or categories of rights or types of works and other subject matter or who have withdrawn their rights or categories of rights or types of works and other subject matter from the **collecting society**, continue to have access to **those** services. The criteria in relation to the access to and the extent of those services may take into consideration the rights revenue generated by those rightholders and the duration of the authorisation to manage rights, provided that such criteria are also applicable to rightholders who have not terminated such authorisation or have not withdrawn their rights or categories of rights or types of works and other subject matter from the **collecting society**.

Amendment

b) rightholders who have terminated the authorisation to manage rights or categories of rights or types of works and other subject matter or who have withdrawn their rights or categories of rights or types of works and other subject matter from the **collective management organisation**, continue to have access to **withdrawal** services. The criteria in relation to the access to and the extent of those services may take into consideration the rights revenue generated by those rightholders and the duration of the authorisation to manage rights, provided that such criteria are also applicable to rightholders who have not terminated such authorisation or have not withdrawn their rights or categories of rights or types of works and other subject matter from the **collective management organisation**.

Amendment 86

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

Amendment

1. Member States shall ensure that the **collective management organisation** regularly and diligently distributes and pays amounts due to all rightholders it represents **in accordance with a**

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.

transparent distribution procedure ensuring equal treatment. The **collective management organisation** shall carry out such distribution and payments **without undue delay as soon as the amount for a rightholder covers the collection costs and maintenance for the corresponding rights and administrative costs, after a period of three months and** no later than **six** months from the **collection of the relevant right revenues.** The **collective management organisation** shall carry out such distribution and payments accurately, ensuring equal treatment of all categories of rightholders.

Amendment 87

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where the amounts due to rightholders cannot be distributed after **three** years from the end of the financial year in which the collection of the rights revenue occurred, **or earlier where national legislation or the statute of the collective management organisation provides for a shorter period,** and provided that the **collective management organisation** has taken all necessary measures to identify and locate the rightholders, **and** without prejudice to the right of the rightholder to claim such amounts from the **collective management organisation, the amounts collected shall either be redistributed by the collective management organisation to its members, or attributed to cultural and social funds targeting artists and the promotion of young under the control of members of collective management organisations making decision at the general meeting.**

Amendment 88

Proposal for a directive

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Sums which have not been claimed by rightholders upon the expiry of a period which may not exceed three years and which have not therefore been distributed must be reinvested in economic or social measures in the cultural and creative sector. It shall be for the general meeting, acting in accordance with Article 7(5)(b), to determine how these sums shall be spent. Furthermore, the general meeting may also decide to earmark some of the sums collected by the collective management organisation each year for measures to support the creation and dissemination of works, training, the safeguarding and promotion of the interests of rightholders and, more generally, measures to foster cultural and artistic diversity.

Amendment 89

Proposal for a directive

Article 12 – paragraph 3

Text proposed by the Commission

Amendment

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.

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

Amendment 90

Proposal for a directive Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that users inform collective management organisations in due time, about the nature and the manner of the actual use of the works concerned, where such information cannot be obtained by the collective management organisation itself. When necessary, these information and documents should be provided in an electronic form allowing for its processing by the collective management organisation.

Amendment 91

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Amendment 92

Proposal for a directive Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that collective management organisations respond to licensing requests within 14 calendar days and make an offer to the

user within 60 calendar days following receipt of the request, provided that the collective management organisation has received all the information it needs to make such an offer.

Amendment 93

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 94

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 fair remuneration must take account of the need for rightholders to receive reasonable remuneration***, the overall value of the ***repertoire of the collective management organisation and of the economic benefit which users obtain from the collective management of their rights***.

Amendment 95

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

In order to deter any attempt to defer payment to collective management organisations on the grounds that the tariffs are being challenged and to discourage delaying tactics of any kind, a

mechanism shall be introduced whereby the sums in question are frozen.

Amendment 96

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 3 b (new)

Text proposed by the Commission

Amendment

Member States shall ensure that users forward to collective management organisations declarations concerning the use of the works and other subject matter, in an agreed format and by a set deadline, in such a way as to enable collective management organisations to determine what fees are applicable and distribute the amounts due to rightholders in an appropriate manner consistent with the provisions of this Directive.

Amendment 97

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 3 c (new)

Text proposed by the Commission

Amendment

If a general tariff applies, or if such a tariff has been set by a court, Member States shall ensure that users pay the fees due to collective management organisations by a set deadline.

Amendment 98

Proposal for a directive

Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Refusal to grant a licence

1. The collective management organisation shall not, without important and justified reasons, refuse to grant a licence for the use of works or other protected subject-matter within the scope of the repertoire it represents. In particular, the collective management organisation shall not refuse to grant a licence, including a multi-territorial licence, for the reasons related to profitability of such licence.

2. When refusing to grant a licence, the collective management organisation shall inform rightholders it represents, other collective management organisations on whose behalf it manages rights under a representation agreement and the user, of the reasons of such refusal.

Amendment 99

Proposal for a directive

Article 16 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the members of a collective management organisation must forward to the latter, within a reasonable period, detailed information concerning the possible uses of the work, with a view to facilitating the smooth running of the organisation;

Amendment 100

Proposal for a directive

Article 16 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the amounts due to the rightholder per category of rights managed, **and** type of use, paid by the *collecting society* to the rightholder in the period concerned;

(c) the amounts due to the rightholder per category of rights managed, **per** type of use, **and per work** paid by the *collective management organisation* to the

rightholder in the period concerned;

Amendment 101
Proposal for a directive

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that commercial agents, as defined in point (aa) of Article 3, make available at least once a year, by electronic means, the information described in points (a), (b), (c), (d) and (g) of paragraph 1 of this Article, to each rightholder whose rights they manage.

Amendment 102

Proposal for a directive
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Information provided to users

The collective management organisation shall invoice users, whenever possible, by electronic means. The standard invoice shall identify, to the extent this is possible, the works and rights which are licensed in whole or in part and the corresponding actual uses.

Amendment 103

Proposal for a directive
Article 16 b (new)

Text proposed by the Commission

Amendment

Article 16b

Information provided to users by

commercial operators

1. Commercial operators, as defined in point (aa) of Article 3, shall invoice users by electronic means, whenever possible, even when regular paper invoice are sent. Commercial operators shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level. The invoice shall identify the works and rights which are licensed, in whole or in part, and the corresponding actual uses whenever possible.

2. Commercial operators shall invoice the online music service provider accurately and without delay after the actual use of the works.

3. Commercial operators shall have adequate procedures in place for the user to challenge the accuracy of the invoice.

Amendment 104

**Proposal for a directive
Article 17 – paragraph 1 – point a**

Text proposed by the Commission

(a) the amounts due to rightholders per category of rights managed, **and** per type of use paid by the **collecting society** for the licensing of the rights it manages under the representation agreement;

Amendment

(a) the amounts due to rightholders per category of rights managed, per type of use **and per work** paid by the **collective management organisation** for the licensing of the rights it manages under the representation agreement;

Amendment 105

**Proposal for a directive
Article 18 – title**

Text proposed by the Commission

Information provided to rightholders, members, other **collecting societies** and

Amendment

Information provided to rightholders, members, other **collective management**

users *on request*

organisations and users

Amendment 106

Proposal for a directive

Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

1. Member States shall ensure that a ***collective management organisation*** makes the following information available, ***while respecting personal data protection,*** ***to*** any rightholder whose rights it represents, ***to*** any ***collective management organisation*** on whose behalf it manages rights under a representation agreement or ***to*** any user, by electronic means, without undue delay:

Amendment 107

Proposal for a directive

Article 18 – paragraph 1 – point a

Text proposed by the Commission

(a) standard licensing contracts and applicable tariffs;

Amendment

deleted

Amendment 108

Proposal for a directive

Article 18 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) ***the list of its members,*** the repertoire and ***the specific*** rights it manages ***on their behalf,*** and the Member States covered, ***without revealing personal data and sensitive information about the rightholders;***

Amendment 109

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 *publicly* available 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. *The rightholders shall have the right to ask their collective management organisation that their personal data and sensitive information remain confidential.*

Amendment 110

Proposal for a directive Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 111

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

Text proposed by the Commission

Amendment

(aa) standard licensing contracts and applicable tariffs;

Amendment 112

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 113

Proposal for a directive

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Collective management organisations shall ensure that, in accordance with point (ab) of paragraph 1, the information on repertoire is accurate and regularly updated. In this respect, they shall particularly ensure that the information concerning the works whose terms of protection terminate is accurate and regularly updated, and made available to the public.

Justification

Accurate information should be provided by CMOs about works falling into the Public Domain. Such information should be regularly updated.

Amendment 114

Proposal for a directive

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

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

criteria:

a) balance sheet total: EUR 350.000;

b) net turnover: EUR 700 000;

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

Amendment 115

Proposal for a directive

Article 22 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

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

Amendment 116

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 117

Proposal for a directive

Article 25 – paragraph 1

Text proposed by the Commission

1. *A collecting society shall monitor* the use of online rights in musical works which

Amendment

1. ***The Member States shall ensure that the collective management organisation***

it represents, in whole or in part, by online music service providers to which it has granted a multi-territorial licence for those rights.

monitors the use of online rights in musical works which it represents, in whole or in part, by online music service providers to which it has granted a multi-territorial licence for those rights.

Amendment 118

Proposal for a directive Article 26 – paragraph 4

Text proposed by the Commission

4. Where a *collecting society* mandates another *collecting society* to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated *collecting society* shall distribute the amounts referred to in paragraph 1 and provide the information referred to in paragraph 2 to the mandating *collecting society*, which shall be responsible for its subsequent distribution and information to rightholders, *unless they agree otherwise*.

Amendment

4. Where a *collective management organisation* mandates another *collective management organisation* to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated *collective management organisation* shall distribute the amounts referred to in paragraph 1 and provide the information referred to in paragraph 2 to the mandating *collective management organisation*, which shall be responsible for its subsequent distribution and information to rightholders.

Amendment 119

Proposal for a directive Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall promote and encourage cooperation between collective management organisations in the fields of management, administration and licensing of rights.

Amendment 120

Proposal for a directive Article 28 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States shall ensure that collective management organisations retain the right to determine autonomously the conditions, in particular in relation to tariffs, according to which they authorise the use of their repertoire.

Amendment 121

Proposal for a directive Article 28 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Amendment 122

Proposal for a directive Article 29 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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

The requested ***collective management organisation*** shall accept such a request ***within 1 month after receipt***, if it is already granting or offering to grant multi-territorial licences for the same category of

repertoire of one or more other *collecting societies*.

online rights in musical works in the repertoire of one or more other *collective management organisations*.

Amendment 123

Proposal for a directive Article 29 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The management fee for the service provided by the requested *collecting society* to the requesting *society* shall not exceed the costs reasonably incurred by the requested *collecting society* in managing the repertoire of the requesting *collecting society* and a reasonable profit margin.

Amendment

The management fee for the service provided by the requested *collective management organisation* to the requesting *organisation* shall not exceed the costs reasonably incurred by the requested *collective management organisation* in managing the repertoire of the requesting *collective management organisation* and a reasonable profit margin *economically viable for all parties involved*.

Amendment 124

Proposal for a directive Article 29 – paragraph 3

Text proposed by the Commission

3. The requesting *collecting society* shall make available to the requested *collecting society* the information on its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested *collecting society* to meet the requirements of this Title, the requested *collecting society* shall be entitled to charge for the reasonable costs incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

Amendment

3. The requesting *collective management organisation* shall make available to the requested *collective management organisation, in electronic form*, the information on its own music repertoire required for the provision of multi-territorial licences for online rights in musical works, *on the basis of standardised information categories*. Where information is insufficient or provided in a form that does not allow the requested *collective management organisation* to meet the requirements of this Title, the requested *collective management organisation* shall be entitled to charge for the reasonable costs incurred

in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

Amendment 125

Proposal for a directive Article 30 – paragraph 1

Text proposed by the Commission

Member States shall ensure that where a **collecting society** does not grant or offer to grant multi-territorial licences in online rights in musical works or does not allow another **collecting society** to represent those rights for such purpose by one year after the transposition date of this Directive, rightholders who have authorised that **collecting society** to represent their online rights in musical works can grant multi-territorial licences in their online rights in musical works themselves or through any **collecting society** complying with the provisions of this Title or any other party they authorise. The **collecting society** which does not grant or offer to grant multi-territorial licences shall continue to grant or offer to grant licences for the online rights in musical works of such rightholders for their use in the territory of the Member State where the **collecting society** is established, unless the rightholders terminate their authorisation to manage them.

Amendment

Member States shall ensure that where a **collective management organisation** does not grant or offer to grant multi-territorial licences in online rights in musical works or does not allow another **collective management organisation** to represent those rights for such purpose by one year after the transposition date of this Directive, rightholders who have authorised that **collective management organisation** to represent their online rights in musical works can grant multi-territorial licences in their online rights in musical works themselves or through any **collective management organisation** complying with the provisions of this Title or any other party they authorise. **The rightholders shall notify the affected collective management organisation of their decision without delay.** The **collective management organisation** which does not grant or offer to grant multi-territorial licences shall continue to grant or offer to grant licences for the online rights in musical works of such rightholders for their use in the territory of the Member State where the **collective management organisation** is established, unless the rightholders terminate their authorisation to manage them.

Amendment 126

Proposal for a directive Article 33

Text proposed by the Commission

Article 33

*Derogation for online music rights
required for radio and television
programmes*

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

Amendment

deleted

Amendment 127

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.

Amendment 128

Proposal for a directive Article 35 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that disputes between *collective management organisations* and users concerning existing and proposed licensing conditions, tariffs, *the calculation of tariffs* and any refusal to grant a licence can be submitted to a court, and if appropriate, to an independent and impartial dispute resolution body. *However, if the law of the Member State concerned so permits, priority shall be given to mediation.*

Amendment 129

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 130

Proposal for a directive Article 35 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that if users challenge the tariffs charged by a collective management organisation

before a court or an independent and impartial dispute resolution body the sums in question are frozen until such time as the dispute has been settled.

Amendment 131

Proposal for a directive Article 35 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The dispute resolution body shall have all the necessary powers to permit the procedure to take place in good time and be completed rapidly in the interests of all parties.

Amendment 132

Proposal for a directive Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall *take all the necessary measures to ensure that the complaints procedures referred to in paragraph 1 are administered by the competent authorities empowered to ensure* compliance with the provisions of national law adopted pursuant to the requirements laid down in this Directive.

2. Member States shall ensure that compliance *by the collective management organisations established on their territory* with the provisions of national law adopted *and implemented* pursuant to the requirements laid down in this Directive *is monitored by the authorities empowered to do so.*

Amendment 133

Proposal for a directive Article 38 – title

Text proposed by the Commission

Amendment

Sanctions *or* measures

Monitoring of compliance with the national provisions: sanctions and measures

Amendment 134

Proposal for a directive Article 38 – paragraph 1

Text proposed by the Commission

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

Amendment

1. **Member States shall designate competent authorities which continuously monitor collective management organisations established on their territory.** Member States shall **ensure** that competent authorities **have the power to impose** appropriate sanctions and **to take appropriate** measures where the provisions of national **law** adopted in the implementation of this Directive have not been complied with. **These** sanctions and **or** measures shall be effective, proportionate and dissuasive.

Amendment 135

Proposal for a directive Article 38 – paragraph 2

Text proposed by the Commission

2. **Member States shall notify the Commission of the rules referred to in paragraph 1 by [date] and shall notify it without delay of any subsequent amendment affecting them.**

Amendment

deleted

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	CULT 11.9.2012
Rapporteur Date appointed	Helga Trüpel 19.9.2012
Discussed in committee	23.1.2013 23.4.2013
Date adopted	18.6.2013
Result of final vote	+: 24 -: 0 0: 3
Members present for the final vote	Zoltán Bagó, Lothar Bisky, Piotr Borys, Jean-Marie Cavada, Silvia Costa, Santiago Fisas Ayxela, Lorenzo Fontana, Mary Honeyball, Petra Kammerevert, Emma McClarkin, Marek Henryk Migalski, Katarína Neveďalová, Doris Pack, Chrysoula Paliadeli, Monika Panayotova, Gianni Pittella, Marie-Thérèse Sanchez-Schmid, Marco Scurria, Hannu Takkula, László Tőkés, Helga Trüpel, Milan Zver
Substitute(s) present for the final vote	François Alfonsi, Liam Aylward, Ivo Belet, Nadja Hirsch, Georgios Papanikolaou, Inês Cristina Zuber

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)			
Date submitted to Parliament	11.7.2012			
Committee responsible Date announced in plenary	JURI 11.9.2012			
Committee(s) asked for opinion(s) Date announced in plenary	INTA 13.12.2012	ITRE 11.9.2012	IMCO 11.9.2012	CULT 11.9.2012
Rapporteur(s) Date appointed	Marielle Gallo 9.7.2012			
Discussed in committee	6.11.2012	18.3.2013	19.3.2013	29.5.2013
	20.6.2013			
Date adopted	9.7.2013			
Result of final vote	+: -: 0:	22 0 0		
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Bernhard Rapkay, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka			
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Axel Voss			
Substitute(s) under Rule 187(2) present for the final vote	Jörg Leichtfried, Anna Záborská			