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Principles for Collective Management Organisations' Codes of Conduct

1. Introduction

Collective management organisations (“CMOs”) provide valuable services, both to creators and rightsholders of copyright works, and also to those who wish to make use of such works where a licence is required. At the same time, it is important that all concerned understand clearly how a CMO operates, what rules govern its conduct, what licensees and members may reasonably expect from a collective management organisation, and how these individuals may raise queries or complaints; and what CMOs are entitled to expect of their members and licensees. Many CMOs already take steps to provide such information, in one form or another, and have standards and procedures in place. However, as further recognition of the importance of this clarity and transparency, UK CMOs from a range of industries have developed this policy framework to establish a common set of principles of good practice providing a set of minimum terms to be used by CMOs as the basis for individual codes of conduct.

The purpose of such codes is to set the standards CMOs apply in terms of their dealings with members and licensees and in the operation of their internal governance processes and to provide members and licensees with core information about CMOs.

The principles and standards outlined in this policy framework should serve as a solid foundation on which CMOs can build individual codes of conduct. However, it is recognised that, to work effectively for each CMO's members and licensees, each CMO's code of conduct should apply the principles in the context of (and in a way that caters appropriately for) that CMO's particular role, nature, industry, membership base and licensee markets. Similarly, the principles outlined in this policy framework are minimum terms; CMOs may decide for themselves to go further as circumstances permit or require. CMOs will consult with their members and licensees and/or suitable representative bodies as appropriate, prior to the introduction of individual codes.

2. Objectives

The objectives of this policy framework are:

1. to provide a framework for codes of conduct for individual CMOs which will:
 - identify the rules governing a CMO's governance structure, licensing arrangements, royalty collection and distribution practices, administration charges;
 - clarify service levels for members and licensees;
 - set out requirements for rates to be fair and consistent across all users;
 - provide for transparency in terms of access to licence tariffs;
 - explain the implications of a member's mandate to a collective management organisation;
 - clarify complaints/disputes procedures for members and licensees.
2. to promote generally a visible commitment by CMOs in the UK to providing awareness of and access to information about copyright and the role and function of CMOs in administering copyright on behalf of their members and providing licensing solutions to users;
3. to promote confidence in CMOs and their effective administration of copyright and delivery of licensing solutions in the UK;
4. to promote confidence generally in the commitment of CMOs collectively to

principles of good governance, transparency and accountability in their management of copyright and provision of licensing solutions in the UK; and

5. to thereby enhance the experience of members and licensees when dealing with CMOs and empower them to fairly and properly benchmark the service they are receiving.

3. CMO Codes of Conduct: content

This part of the policy framework sets out the components which should be reflected in a CMO's code of conduct, taking account of that CMO's particular role, nature, industry, membership base and licensee markets. In applying these principles to their individual codes, CMOs should observe the following:

- Separate Codes may be desirable for members and licensees, as the information and standards relevant to each of these two groups may differ and separate Codes may help to make the relevant content more accessible to each group.
- CMOs should ensure that their Codes are written in plain English, and where necessary supplemented by practical and suitable explanatory material.
- Much of the information referred to below will have already been "codified" in the CMO's constitutional documents and/or contract of membership, the terms and conditions of its licences and licensing schemes; or other sources of information formally published by the CMO. Where this is the case, suitable cross reference can be made in the code.
- When considering the level of detail to provide, CMOs should have regard to the desire for Codes to be user-friendly and in plain English, and to what is appropriate given their particular role, nature, industry, membership base and licensee markets.
- Each CMO should ensure that its staff (and any third parties acting on behalf of the CMO in dealings with members or licensees) are appropriately trained in relation to the Codes (and each CMO should include a stated commitment in this respect as part of its Code).
- Each CMO Code should include appropriate mechanisms for the review of the CMO's performance against its Code and means by which any findings from such reviews are brought to the attention of relevant stakeholders.
- In particular, each CMO should provide appropriate access to an ombudsman-style independent complaints review service for its members and licensees to use in circumstances where the CMO's complaints procedure has not resolved a complaint to the complainant's satisfaction.
- Each CMO should review its Code on a regular basis and update it as appropriate (such process to make appropriate use of further feedback from members and licensees or their representative bodies, and the findings of any reports from the proposed Independent Code Reviewer – see part 4 of the policy framework below).

The suggested content below is divided into themed sections. Each section starts with a summary of what that section should be seeking to achieve, followed by a list of the suggested content to include in relation to that section. However, it is not suggested that individual Codes necessarily need to adopt this structure and it is for individual CMOs to determine how best to structure and present their Codes in the circumstances.

Introduction to CMOs

Provide a summary introduction to the role and function of CMOs, which may include all or any of the following suggestions:

- *CMOs organisations with a primary responsibility to members and copyright owners who create and/or publish copyright material;*
- *They provide a simple mechanism for obtaining permission to use copyright material;*

- They provide an efficient system of collection and distribution of licence fees for use of copyright material;
- They provide efficiencies in overall transaction costs/administration associated with the exploitation of copyright material to the benefit both of copyright holders and users.

Transparency

These elements should explain what the CMO does, who it does it for, what it costs, where to get more information

- Explain that in the operation of their services CMOs will comply with the terms of their individual constitution, membership agreements and any applicable legislation or other relevant legal regulation.
- Explain the rights administered by the CMO.
- Identify the rightsholders on whose behalf the CMO acts.
- Explain the basis for the authority to act (e.g. membership agreements, etc).
- Summarise licensing schemes, terms and conditions and tariffs, etc:
 - explain where more details can be found so as to provide a full picture of the whole agreement into which a licensee may be entering including information on any relevant related licensing scheme(s) or licences operated by other CMOs or right holders;
 - where applicable, clarify how these have been negotiated (e.g. with a relevant trade association);
 - explain how and when terms and conditions are reviewed;
 - explain if licences grant any powers to the CMO to visit the licensee's premises for compliance purposes, and if so, how these powers may be exercised.
- Summarise membership agreements and mandates:
 - Explain who can join, and the procedures for doing so, the terms of membership and where these can be found;
 - Explain the nature of the grant or transfer of rights: exclusive licence, assignment, etc and the implications of this for the member;
 - Explain the scope of the authority granted under the agreement;
 - Explain if and how the member may restrict the authority to act and/or require consultation (if applicable);
 - Explain arrangements for terminating membership and describe implications of termination;
 - Successors in title: explain what happens if the member dies or (if corporate) dissolves while still a member of the CMO.
- Clarify administration & other charges:
 - State clearly the charges associated with a licensing scheme;
 - State what happens to any interest earned on revenues held before distribution to members;
 - State clearly what other deductions, if any, are made by the CMO, and for what purpose (and where further information can be found on the activities to which these deductions are put).
- Signpost sources of other information using publicly accessible websites where possible:
 - Clarify where and how to access:
 - a copy of the CMO's annual report;
 - a copy of the CMO's audited accounts;
 - a copy of the CMO's Memorandum/Articles of Association/constitution any published distribution policies;
 - details of the repertoire of rights administered by the CMO;
 - details of the complaints and dispute resolution procedure;
 - Clarify where and how to access a copy of this Policy Framework, so as to demonstrate how a CMO's Code complies with it;
 - State any charges applicable to the supply of these items.

Accountability and consultation

These elements should show how a CMO is constituted and governed, how members can participate in decision-making processes; and when and how a CMO will consult with licensees and other users about changes to its licensing schemes and any other terms and conditions affecting them.

- *Governance:*
 - *State how members will be represented on the governing body/board of directors;*
 - *State how the governing body is composed, how it is appointed, terms of office, and the cycle of changes to the governing body;*
 - *Explain any technical/regional committee or council structures, and how these are appointed;*
 - *Explain how members can apply to be on the governing body or any committees/regional councils etc.*
- *Members' meetings and voting rights:*
 - *Explain the frequency of general meetings and how members will be notified;*
 - *Explain what voting rights they have;*
 - *Explain what rights members have to call a special meeting and how to do it;*
 - *Explain how members can still exercise voting rights even if they cannot attend (proxies, etc).*
- *Consultation and changes:*
 - *State how members will be consulted about changes to existing licences and development of new licences materially affecting or likely to affect the management of their rights and/or the collection and distribution of income to them;*
 - *State how actual and prospective licensees will be consulted about changes or new developments materially affecting or likely to affect their licensing requirements (including changes to tariffs or fees).*

Service levels & operational issues

These elements should show the service levels a CMO offers to members and licensees.

- *Royalty distributions:*
 - *Explain the frequency of distributions;*
 - *Explain what information will be provided in individual royalty statements to members (e.g. the source of royalties including where applicable the uses and the period to which the royalty relates, any deductions for administration, and any other deductions (including tax, cultural funds, etc. as applicable).*
- *Access:*
 - *Provide clear signposts for how to contact the CMO, giving postal address(es), email addresses, telephone and fax numbers and any other communications methods;*
 - *Provide a clear statement of the hours and days of the week during which the CMO may be contacted;*
 - *Give details of any special access provisions which the CMO may offer (e.g. Braille publications);*
 - *State any specific undertakings (e.g. telephone calls will be answered within XX seconds; all queries will be responded to within a reasonable timescale, e.g. XX days, etc).*
- *Payments to a CMO:*
 - *Provide information to enable licensees to pay by whatever means the CMO has at its disposal for receiving payments (credit or debit card by telephone, cheque, direct debit, other means as relevant);*
 - *Clarify refund policies and timescales in which any agreed refund will be paid.*
- *Right to cancel:*
 - *Explain any procedures by which a licensee can cancel a licence, any notice provisions which may apply, and any periods during which the right to cancel may subsist.*

- *Personal data:*
 - *Explain any requirements for changes to member or licensee data, and whether these must be in writing;*
 - *Keep data up to date by providing easy means for members to notify the CMO of any changes to their personal information.*

Data protection

- *Summarise the CMO's obligations under the Data Protection Act 1998 (as modified and extended by the Privacy and Electronic Communications (EC Directive) Regulations 2003);*
- *Provide a clear signpost to the CMO's data protection and privacy policies;*
- *State clearly how any individual can notify the CMO of their wish not to receive certain material via certain media from the CMO.*

Queries, complaints and dispute resolution

These elements should show how a member or licensee can express their dissatisfaction, formally and informally (including a formal complaints procedure).

- *Explain the procedure for those wishing to report an administrative error or register a complaint with the CMO about any aspect of its dealings with them, including any failure to adhere to the Code, giving the means by which the individual can address the organisation (post, telephone, email, etc.) and giving a timescale within which the matter can be resolved, with an undertaking to notify the individual if the matter cannot be resolved within the timescale given.*
- *Explain the formal complaints procedure and the circumstances under which it may be used, and to whom a complaint may be addressed.*
- *Describe the appeal stages and timescales which will apply if a complaint has not been dealt with to an individual's satisfaction.*
- *Describe the further stages which an individual may invoke, if necessary (including the independent complaints review mechanism offered by the CMO).*
- *In addition to describing the procedures for dealing with complaints and disputes relating to its internal operation, a CMO's code should also separately highlight the functions of the Copyright Tribunal in relation to licensing bodies and schemes, contact details for which should be supplied (or explain that the CMO will highlight this when relevant, when responding to individual complaints or disputes).*

4. Review of this Policy Framework

CMO members of the BCC must adopt codes of conduct, compliant with the principles and standards set out in this policy framework, within twelve months after the publication of this policy framework.

The BCC will convene a Policy Framework Review working party made up of BCC members (which may include but will not be limited to representatives from UK CMOs). Twelve months after the publication of this policy framework this working party shall conduct a review amongst CMOs to ascertain:

- whether each CMO has a code, or where applicable codes, in place;
- the extent to which a CMO code has been implemented;
- the extent to which a CMO code has been updated;
- the extent to which a CMO code complies with the principles and standards set out in the policy framework.

The results of this initial review will inform any proposals for amendments to the terms of the policy framework, such amendments to be subject to appropriate consultation with relevant stakeholders. The review process will include collation of the information gathered by the working party and the reporting of findings to the full BCC membership.

Independent Code Reviewer

As part of the initial review in November 2012, the BCC intends to publish proposals for the appointment of an Independent Code Reviewer (currently envisaged to be a retired member of the judiciary or someone of equivalent experience) to conduct subsequent reviews of this policy framework and the operation of CMO codes under it. The proposals will also cover the process and remit for these reviews. The BCC anticipates that the first review by the Independent Code Reviewer will take place one year after the deadline for implementation of CMO codes under this policy framework, and that subsequent reviews will take place at three-yearly intervals. The BCC welcomes the input of CMOs, members and licensees to inform development of the Independent Code Review process and remit.