

30 March 2015

Copyright and Enforcement Directorate
IPO
First Floor
4 Abbey Orchard Street
London SW1P 2HT

copyrightconsultation@ipo.gov.uk

Dear Sir/Madam,

**Collective rights management in the digital single market
Response to the consultation on the implementation of the EU Directive on the
collective management of copyright and multi-territorial licensing of online music
rights in the internal market**

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the Creative and Cultural Industries. Our members also include collective management organisations which represent right holders and which enable access to works of creativity. A list of BCC member organisations can be found at <http://www.britishcopyright.org/bcc-members/member-list>.

Introduction

The BCC welcomes Government's recognition of the role which UK CMOs play in supporting the creative industries and its acknowledgement of the high standards of governance and transparency that UK CMOs set worldwide.

The BCC, through the development of its *Principles of Good Practice for Collective Management Organisations Codes of Conduct*¹, played an important role in helping UK CMOs to develop or update their codes of conduct. The BCC, therefore, feels that it is appropriate that it should comment on points relating to the first of the Directive's policy aims, that is:

"Modernise and improve standards of governance, financial management and transparency of all EU CMOs, thereby ensuring, amongst other things, that rightsholders have more say in the decision making process and receive accurate and timely royalty payments."

The BCC has limited itself to a few high level comments on the practical application of these aspects of the Directive in the UK. We leave it to individual members to respond on the complex detail and compliance costs of the Directive. Neither has the BCC attempted to cover matters relating to multi-territorial licensing for online musical works leaving it to the

¹ http://www.britishcopyright.org/files/9714/1312/6511/BCCPGP_Policy_Framework_250512.pdf

music industry and to music CMOs to respond on this matter. Nevertheless, given the work it has done in helping the UKs CMOs to establish codes and maintain their high standards, the BCC asks IPO to take its response into account.

Summary

- **The BCC supports implementation through Option 2.**
- **Consideration must be given to the time needed by CMOs to implement the regulations.**
- **There must be an obligation on users to provide data which is accurate and proportionate with respect to the type of user and the way in which they use the licensed works.**
- **“relevant information” goes further than user reporting and incorporates information necessary for licensing as well.**
- **The costs of the National Competent Authority should be borne by IPO as part of its contribution towards providing the UK with a suitable IP framework.**
- **CMOs should be able to refer matters to the Copyright Tribunal as part of implementing the Government’s dispute resolution obligations under Article 35 of the Directive.**
- **Government must provide simple, clear and concise guidance notes on how the new legislation will work.**

Proposals for implementation

Initial Analysis of Options

Q1. Please say whether and why you would prefer to implement using Option 1 or 2

The BCC supports **Option 2**.

Although the 2014 Regulations are already in force and UK CMOs have implemented these into their own codes and standards, the BCC recommends that the existing regulatory framework, including the 2014 Regulations, be replaced with new Regulations that transpose the wording of the Directive into UK law.

The BCC agrees with IPOs initial analysis which takes the view that Option 1, may be problematic. We agree with the argument that the 2014 Regulations are not the most suitable vehicle for transposition.

Moreover, the BCC’s own Principles² focused on the standards of transparency and therefore the BCC welcomes the similar focus in the Directive.

² Note on BCC Principles: Contrary to the recommendation made in the Independent Code Review Report the BCC has, for the moment, retained its own Principles, largely because they set a standard for self-regulation by CMOs and also because the process by which the Principles were developed and updated has been a useful and educational one for all BCC members. The BCC will re-consider this decision, once the Directive has been implemented.

Title II: Collective management organisations The General Assembly of Members

The BCC leaves it to others to respond directly to the questions under this heading. However, it seems appropriate at this point to comment on the implementation schedule. With a deadline for implementation of 10 April 2016, the BCC urges government to finalise the Regulations at a sufficiently early stage to allow CMOs to adjust their own structures and to amend their own Constitutions in line with any new Regulations, within that timescale. This will include member consultation, legal advice, the calling and holding of Annual or Extraordinary General Meetings to amend their Constitutions, possible introduction of new accounting software, etc.

Chapter 4 - Relations with users

Q27. What do you consider should be the “necessary information” CMOs and users respectively should provide for in licensing negotiations (Article 16(1))?

Q28. What is “relevant information” for the purpose of user reporting?

The BCC welcomes the new obligations in relation to the provision of data (Article 17) but emphasises that for the purposes of **Transparency and Reporting (Chapter 5)**, effective **Management of rights revenue (Chapter 2)** and **Management of rights on behalf of other CMOs (Chapter 3)** the provision of high quality, granular, and timely usage data is often critical to the transparent and accurate distribution of revenue.

If users, particularly SMEs, want the convenience and benefits of collective licensing arrangements then they should, in some instances, be willing to accept an obligation to provide data of the highest possible quality and veracity. However, the BCC also recognises that this will not always be necessary. Nevertheless, users will be required to provide data which is accurate and proportionate with respect to the type of user and the way that they use the licensed works. Some of the BCC’s CMO members support the development of sector specific standards for establishing “relevant information”.

The BCC notes that the wording of the Directive states that relevant information is for the purpose of “the collection of rights revenue and for the distribution and payment of amounts due to rightholders”. This goes further than “user reporting” and incorporates information necessary for licensing as well.

The Regulations should include nothing that encourages users to use Recital 33 related wording as a “get-out” clause and we would go so far as to say that the Regulations should actively disincentivise users from attempting to do so.

Title IV: Enforcement

CMOs should be able to refer matters to the Copyright Tribunal, as part of implementing the Government’s dispute resolution obligations under Article 35 of the Directive.

Comment on costs

The BCC wishes to correct the ongoing misconception (in the Impact Assessment and elsewhere in the consultation) that CMOs can somehow absorb costs without passing them on to rightholders.

CMOs do not have independent sources of revenue. The revenue which a CMO generates comes from licensees and goes to rights holders. Costs for the operation of the CMO, on a

not-for-profit basis, are approved by members and are then deducted from that revenue. If those costs increase then royalties are reduced. There is little point in asking CMOs “how they plan to handle compliance costs”³, there is only one source of income available to them and they have to include compliance costs within the operating costs of the CMO borne by the members.

If the option of passing the compliance costs of the proposed National Competent Authority on to CMOs is also pursued, then that cost too would ultimately be borne by rightsholders. The BCC takes the view that the costs of the National Competent Authority should be borne by IPO as part of its contribution towards providing the UK with a suitable IP framework.

Guidance Notes

The BCC emphasises the importance of Government providing simple, clear and concise guidance notes explaining how the new legislation will work.

Yours sincerely,



Janet Ibbotson
Chief Executive Officer

³ Impact Assessment, Evidence Base, Page 9, Costs to rightsholders