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2009 - 2014

Committee on Culture and Education

2012/0180(COD)

28.3.2013

DRAFT 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

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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 licenses 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 license 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

Amendment

(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.

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, protecting innovation and intellectual creation also encourages investment in innovative services and products.

Or. en

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

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. *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

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.

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.***

Or. en

Justification

Collective management organisations (CMOs) are not like any other service providers, as they have a specific social and cultural role, which should be emphasised.

Amendment 3

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.

Or. en

Amendment 4

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) The de jure and de facto monopolies which collective management organisations generally enjoy do not in principle pose a problem for competition, provided that they do not impose unreasonable restrictions on their members or on access to rights by prospective users. Collective management organisations carry out tasks in the public interest and in the interest of rightholders and users. In this regard, competition law examines possible abuses of monopoly by collective management organisations in individual cases so as to be able successfully to ensure rights management.

Or. en

Amendment 5

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

(3) When established in the Union, ***collective management organisations*** – 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 ***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.

established in other Member States or grant licences to users resident or established in other Member States. *Their specificities should be nevertheless taken into account as collective management organisations are not like any other services providers. They are subject to supervision of national authorities and obliged to respect certain specific requirements in the Member State where they are established. Moreover, in most Member States, collective management organisations have a specific role in supporting cultural and social funds, which contributes to promote the public interest as part of cultural policy of the Member States.*

Or. en

Amendment 6

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*

Amendment

(4) There are significant differences in the national rules governing the functioning of *collective management organisations due to historical, legal, economic and, above all, cultural diversity among Member States*, 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 *considering revenues collected may have been often poorly managed*, 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.

rightholders do not exercise membership rights.

Or. en

Amendment 7

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 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.

(If this amendment is adopted, the corresponding change shall apply throughout the text.)

Or. en

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 8

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 *services for* collective management *of copyright, 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 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.

Or. en

Amendment 9

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 voting rights should be made easy, *and whenever possible by electronic means*.

Or. en

Amendment 10

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 the body that exercises this function.

Amendment 11**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 12**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 environment and which is multi-territorial. However, the Recommendation, **due to its voluntary nature**, has not been sufficient to

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 has not been sufficient to encourage the

encourage the widespread multi-territorial licensing of online rights in musical works and to address the specific demands of multi-territorial licensing.

widespread multi-territorial licensing of online rights in musical works and to address the specific demands of multi-territorial licensing.

Or. en

Amendment 13

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

Amendment

(35) Broadcasting organisations generally rely on a licence from a local ***collective management organisation*** for their own broadcasts of television and radio programmes which include musical works. A licence for online rights in musical works would be required in order to allow such television or radio ***programmes*** to be also available online. To facilitate the licensing of online music rights for the purposes of ***making available*** online of television and radio ***programmes***, it is necessary to ***clarify that the multi-territorial licensing of musical works does not apply to such online use by broadcasters.*** Such ***clarification*** should allow ***collective management organisations to continue to grant 'blanket licences' for the world repertoire to broadcasters for the music use in both their offline and online services in accordance with the national law of the Member State concerned and thereby enhance citizens'*** access to television or radio programmes online and to material supplementing, previewing or reviewing that television or radio programme. ***Such blanket licences*** 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

Functioning of the European Union.

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

Or. en

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.

Or. en

Amendment 15

Proposal for a directive

Article 1 – paragraph 1

Text proposed by the Commission

This Directive lays down requirements necessary to ensure the proper functioning

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.

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.

Or. en

Amendment 16

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

Text proposed by the Commission

Amendment

By 2020, all collective management organisations established in the Union shall enforce for all forms of exploitation of works, the highest standards of transparency on repertoire information, timely and accurate reporting on invoicing and payments to rightholders, as described in Articles 23, 25 and 26 for all types of licensing they provide.

Or. en

Justification

The transparency and accountability requirements as proposed in this draft Directive should be in a longer term applicable to all forms of exploitation of musical works, which represent the major part of all authors' revenues.

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 with the exception of Articles 36 and 40 shall apply to all **collective management organisations and other rights management entities** established in the Union.

Or. en

Justification

Other rights management entities, such as CELAS, should be submitted to the same provisions than CMOs.

Amendment 18

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 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.

Or. en

Justification

Same justification as Amendment 17.

Amendment 19

Proposal for a directive

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Articles 10, 11(1), 12, 15, 16, 18, 19 and 20 of Title I, Title III and Articles 34, 35, 37 and 38 of Title IV shall also apply to all rights management entities, acting on behalf of rightholders for the management of their rights on a commercial basis.

Or. en

Justification

Same justification as Amendment 17.

Amendment 20

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 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 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. en

Amendment 21

Proposal for a directive

Article 3 – 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;

Or. en

Justification

Although not within the scope of this Directive, commercial operators, such as publishers and record companies, should be submitted to a minimum set of transparency and accountability rules, to the benefit and the protection of the rightholders, as well as to ensure fair competition in copyright management.

Amendment 22

Proposal for a directive

Article 3 – point a b (new)

Text proposed by the Commission

Amendment

(ab) ‘other rights management entity’ means any entity which manages copyright or rights related to copyright as its sole or main purpose and which is owned in whole or in part by at least one collective management organisation;

Or. en

Amendment 23

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’ 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*;

Or. en

Amendment 24

Proposal for a directive Article 3 – 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*;

Or. en

Amendment 25

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 *as well as any financial revenue, such as interest*

payments of amounts collected by a collective management organisation on behalf of rightholders;

Or. en

Amendment 26

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 **deducted by a collective management organisation from the rights revenue** in order to cover the costs of its management of copyright or related rights services;

Or. en

Amendment 27

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.

Or. en

Amendment 28

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, **works** 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.

Or. en

Amendment 29

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 non-commercial use of their works and rights. 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 license has been granted.

Or. en

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 30

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 shall have the right to** decide **if** such termination or withdrawal will take effect only at the middle **or** at the end of the financial year, whichever is sooner after the expiry of the notice period.

Or. en

Amendment 31

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.

Or. en

Amendment 32

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.

Or. en

Amendment 33

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.

Or. en

Amendment 34

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, provided that the protection of the personal data of rightholders is preserved.

Or. en

Amendment 35

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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.

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.

Or. en

Amendment 36

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

Text proposed by the Commission

Amendment

(b) the use of the amounts due to rightholders which cannot be distributed as set out in Article 12(2) except where the general meeting decides to delegate

deleted

this decision to the body exercising the supervisory function;

Or. en

Amendment 37

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.*

Or. en

Amendment 38

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:

Or. en

Amendment 39

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 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.***

Or. en

Amendment 40

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.

Amendment 41

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:

deleted

Or. en

Amendment 42

Proposal for a directive

Article 8 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) balance sheet total: EUR 350 000;

deleted

Or. en

Amendment 43

Proposal for a directive

Article 8 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) net turnover: EUR 700 000;

deleted

Or. en

Amendment 44

Proposal for a directive

Article 8 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 45

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 **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.**

Or. en

Amendment 46

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.

Or. en

Amendment 47

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 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.***

Or. en

Amendment 48

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

Text proposed by the Commission

Amendment

1a. Member States shall ensure that collective management organisations provide social, cultural and educational

services to their members.

Or. en

Amendment 49

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 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 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.

Or. en

Amendment 50

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

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 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.*

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 artists under the control of Member States or under the control of members of collective management organisations making decision at the general meeting in accordance with Article 7.

Or. en

Amendment 51

Proposal for a directive Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Revenues derived from financial investment should either be distributed to members of the collective management organisations or used according to a decision annually taken by the general meeting of the collective management organisations in accordance with Article 7.

Or. en

Amendment 52

Proposal for a directive Article 12 – paragraph 3

Text proposed by the Commission

Amendment

3. For the purposes of paragraph 2,

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.

measures to identify and locate rightholders shall include verifying membership records and making available ***regularly and at least annually*** 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.

Or. en

Amendment 53

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, and in case of long-term use at regular intervals, 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.

Or. en

Amendment 54

Proposal for a directive

Article 16 – 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;

Or. en

Amendment 55
Proposal for a directive

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that commercial operators, 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.

Or. en

Amendment 56

Proposal for a directive
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Information provided to users

1. The collective management organisation shall invoice users by electronic means, whenever possible, even when regular paper invoice are sent. The collective management organisation shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level. The invoice shall identify the works and rights which are licensed, in whole or in part, and the corresponding actual uses, to the extent this is possible on the basis of the information obtained by the collective management organisation and shared with the user when the user is not the source of the information.

2. The collective management

organisation shall invoice the online music service provider accurately and without delay after the actual use of the rights.

3. The collecting management organisation shall have adequate procedures in place for the user to challenge the accuracy of the invoice, including when the user receives invoices from one or more collective management organisations for the same rights on the same works.

Or. en

Amendment 57

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.

Or. en

Amendment 58

Proposal for a directive Article 17 – 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;

Or. en

Amendment 59

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 *collective management organisations* and users

Or. en

Amendment 60

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

Amendment

1. Member States shall ensure that a *collective management organisation*

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:

makes the following information available *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:

Or. en

Amendment 61

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*;

Or. en

Amendment 62

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 *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.

Or. en

Amendment 63

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*:

Or. en

Amendment 64

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;

Or. en

Amendment 65

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 66

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.

Or. en

Justification

Accurate information should be provided by CMOs about works falling into the Public Domain. Such information should be regularly updated.

Amendment 67

Proposal for a directive

Article 20 – paragraph 5 - introductory part

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*

Or. en

Amendment 68

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

Text proposed by the Commission

Amendment

(a) balance sheet total: EUR 350 000; *deleted*

Or. en

Amendment 69

Proposal for a directive Article 20 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) net turnover: EUR 700 000; *deleted*

Or. en

Amendment 70

Proposal for a directive Article 20 – paragraph 5 – point c

Text proposed by the Commission

Amendment

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

Or. en

Amendment 71

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

(d) the taking into account, without undue delay, of any changes to the information

described in *point* (a),

described in *points* (a) *and* (b),

Or. en

Amendment 72

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*.

Or. en

Amendment 73

Proposal for a directive

Article 33

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

Amendment

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 *of* 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 *other* material *in their broadcast-*

produced by the broadcaster which is ancillary to the initial broadcast of its radio or television programme.

related online services.

Or. en

Amendment 74

Proposal for a directive Article 38 – title

Text proposed by the Commission

Sanctions *or* measures

Amendment

Monitoring of compliance with the national provisions: sanctions and measures

Or. en

Amendment 75

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 or establish competent authorities which continuously monitor collective management organisations active in their territory. Member States shall provide that their respective competent authorities may take appropriate administrative sanctions and/or 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.

Or. en

Amendment 76

Proposal for a directive

Article 38 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In respect of statutory remuneration and compensation rights and those exclusive rights, for which national or Union law requires collective management, Member States' competent authorities shall ensure that collective management organisations which administer these rights comply with the corresponding national provisions. Without prejudice to Article 40, this applies also to the management of rights by way of contractual agreement.

Or. en

Amendment 77

Proposal for a directive

Article 38 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States shall ensure that decisions taken by their competent authorities in respect of the collective management organisations pursuant to the national laws, regulations and administrative provisions adopted in accordance with this Directive may be contested before the courts.

Or. en