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From: General Secretariat

To: Working Party on Intellectual Property (Copyright)

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Subject: 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
- Presidency compromise proposal

Delegations will find attached a Presidency compromise proposal regarding the above-mentioned proposed Directive.

Changes to the Commission proposal (12669/12) are marked.

Presidency Compromise

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular [Articles 50(2)(g), 53 and 62] thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

[...]

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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. Those Directives 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.

¹ OJ C , , p. .

- (2) The dissemination of content which is protected by copyright and related rights [...] including books, audiovisual productions and recorded music, and services linked thereto, 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 rightholder to choose between the individual or collective management of his rights, unless Member States provide otherwise, in compliance with Union law and the international obligations of the Union and its Member States. Management of copyright and related rights includes the granting of licences to users, the auditing of licensees, the 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. [...]
- (2a) Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action, in particular in order to respect and to promote the diversity of its cultures. It follows from this that Member States should preserve, respect and promote cultural diversity. Collective management organisations have and shall continue to have an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their rightholders and the public.
- (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 market² 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 to grant licences to users resident or established in other Member States.
- (4) There are significant differences in the national rules governing the functioning of collective management organisations, in particular as regards their transparency and accountability towards their members and rightholders. This has led, in a number of instances, to difficulties in particular for non-domestic rightholders in exercising their rights and to [...] poor financial management of the revenues collected. Problems with the functioning of collective management organisations lead to inefficiencies in the exploitation of copyright and related rights across the internal market to the detriment of the members of collective management organisations, rightholders and users alike. [...]

² OJ L 376, 27.12.2006, p.36.

- (5) The need to improve the functioning of collective management organisations was identified in [...] Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services.³ This Recommendation set out a number of principles, such as the freedom of rightholders to choose their collective management organisations, equal treatment of categories of rightholders and equitable distribution of royalties. It called on collective management organisations to provide users with sufficient information on tariffs and repertoire in advance of [...] negotiations between them. Finally, it contained recommendations on accountability, rightholder representation in the decision-making bodies of collective management organisations and dispute resolution. However, the Recommendation [...] has been unevenly followed.
- (6) The protection of the interests of the members of collective management organisations, rightholders and third parties requires that the laws of the Member States related to copyright management and multi-territorial licensing of online rights in musical works should be coordinated with a view to having equivalent safeguards throughout the Union. [Accordingly, the Directive is based on Article 50(2)(g) of the Treaty.]
- (7) This Directive should aim at coordinating national rules concerning the access to the activity of managing copyright and related rights by collective management organisations, the modalities for their governance, and their supervisory framework [and is also based on Article 53(1) of the Treaty]. [In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 of the Treaty.]
- (7a) *(Recital on minimum harmonisation to be added)*
- (7b) Nothing in this Directive should preclude a Member State from applying the same or similar provisions to collective management organisations established outside the Union but which is providing services in that Member State.
- (7c) This Directive is without prejudice to the arrangements in the Member States concerning the management of rights such as extended collective licensing, compulsory collective management and legal presumptions of representation, or transfer of rights, provided that such arrangements are compatible with Union law and the international obligations of the Union and its Member States.
- (7d) Collective management organisations operate in various legal forms such as associations, cooperatives or limited-liability companies, which are controlled or owned by holders of copyright and related rights or by entities representing such rightholders. In some exceptional cases however, due to the legal form of a collective management organisation, the element of ownership or control is not present. This is the case for foundations, which do not have membership. Nonetheless, the provisions of the Directive should also apply to them. Moreover, entities representing rightholders and being members of collective management organisations may be other collective management organisations, associations of rightholders, unions and other organisations. The provisions of the Directive are without prejudice to workers' and employers' freedom of association and their right to organise.

³ OJ L 276, 21.10.2005, p. 54.

- (8) In order to ensure that holders of copyright and related rights can fully benefit from the internal market when their rights are being managed collectively and that their freedom to exercise their rights is not unduly affected, it is necessary to provide for the inclusion of appropriate safeguards in the constituting documents of collective management organisations. Moreover, [in accordance with Directive 2006/123/EC] collective management organisations should not discriminate, directly or indirectly, between rightholders on the basis of their nationality, place of residence or place of establishment when providing their management services.
- (9) Having the freedom to provide and to receive collective management services across national borders entails that a rightholder is able to freely choose a collective management organisation for the management of his rights, whether they be communication to the public [...] or reproduction rights, or categories of rights such as broadcasting, theatrical exhibition, or reproduction for online distribution, but provided that the collective management organisation the rightholder wishes to choose already manages such rights or categories of rights. The rights, categories of rights or types of works and other subject matter managed by the collective management organisation should be determined by the general assembly of members, without prejudicing the right of the rightholder to make such a choice under this Directive. It is important that the rights and categories of rights are determined in a manner that maintains a balance between the freedom of rightholders to dispose of their works and other subject matter and the ability of the organisation to effectively manage the rights taking into account, in particular, the type of rights managed by the organisation and the creative sector in which the organisation operates. [...] Rightholders should be able to 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 possibility for rightholders to manage their rights individually, including for non-commercial uses.
- (10) Membership of collective management organisations should be based on objective and non-discriminatory criteria including as regards publishers who by virtue of an agreement on the exploitation of rights, are entitled to a share of the income from the rights managed by collective management organisations and to collect such income from the collective management organisations. The records kept by a collective management organisation should allow for the identification and location of its members and rightholders whose rights the organisation represents on the basis of authorisations given by these rightholders.

- (10a) In order to protect those rightholders whose rights are directly represented by the collective management organisation but who do not fulfil its membership requirements, it is appropriate to require that certain provisions of the Directive addressed to members are also applied to such rightholders. Member States may also provide such rightholder with rights to participate in the decision-making process of the collective management organisation.
- (11) Collective management organisations should act in the best collective interests of the rightholders they represent. It is therefore important to provide for systems which enable the members of a collective management organisation to exercise their membership rights by participating in an organisation's decision-making process. The representation in the decision-making process of the different categories of members, such as producers or performers, should be fair and balanced. The effectiveness of the rules on the general assembly of members of collective management organisations would be undermined if there were no provisions on how the general assembly should be run. Thus, it is necessary to ensure that the general assembly is convened regularly, and at least annually, and that the most important decisions in the collective management organisation are taken by the general assembly.
- (12) Members of collective management organisations should be allowed to participate and vote in the general assembly of members; the exercise of these rights should only be subject to fair and proportionate restrictions. In some exceptional cases, collective management organisations have been established in the legal form of a foundation, hence they have no membership. In such cases, the powers of the general assembly of members should be exercised by the body entrusted with the supervisory function. The general assembly of members should, at least, have the power to set the framework of the activities of the management, in particular with respect to the use of rights revenue by the collective management organisation. The exercise of voting rights should be made easy. In addition to the exercise of members' rights by electronic means, members should be allowed to participate and vote in the general assembly of members through a proxy. Proxy voting should only be restricted in order to address potential conflicts of interest between the appointing member and the proxy holder and, if so decided by a Member State, in order to limit the number of votes a single proxy holder may exercise.
- (13) Members should be allowed to take part in the continuous monitoring of the management of collective management organisations. To this end, these organisations should have a supervisory function appropriate to their organisational structure and allow members to be represented in the body that exercises this function. Depending on the organisational structure of the collective management organisation, the supervisory function may be exercised by a separate body, such as a supervisory board, or be entrusted to some of the directors in the administrative board. The requirement of fair and balanced representation of members should not prevent the collective management organisation from electing third parties as directors to the body exercising the supervisory function, including professional members, and rightholders who do not fulfil the membership requirements or who are not directly represented by the organisation but via an entity which is a member of the collective management organisation. [...]

- (14) For reasons of sound management, a collective management organisation's management must be independent. Managers, whether elected as directors by the general assembly of members or hired or employed through a contract by the organisation, should be required to declare annually [...] whether there are conflicts between their interests and those of the rightholders that are represented by the collective management organisation. Member States should be free to require collective management organisations to make such statements public or submit them to public authorities.
- (15) Collective management organisations collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders who may have a direct legal relationship with the organisation, or may be represented via an entity which is the member of the collective management organisation. It is therefore important that a collective management organisation exercises the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where the collective management organisation maintains proper records of membership, licences and use of works and other subject matter. [...] Relevant data that is required for the efficient collective management of rights should also be provided by rightholders and users and verified by the collective management organisation. Amounts collected and due to rightholders should be kept separately in the accounts from any own assets the organisation may have. Without prejudice to the possibility for Member States to provide for more stringent rules on investment, where such amounts are invested, [...] this should be carried out in accordance with the collective management organisation's general investment and risk management policy. In order to maintain a high level of protection for the rights of rightholders and to ensure that any income that may arise from the exploitation of their rights accrues to the benefit of rightholders, the investments made and held by the collective management organisation should be managed in accordance with criteria which would oblige the organisation to act prudently, while allowing it to decide on the most secure and efficient investment policy. This should allow the collective management organisation to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and which does not unduly prejudice any rights revenue owed to rightholders. Moreover, the distribution and payment of the amounts due to individual rightholders or, as the case may be, to categories of rightholders, should be carried out in a timely manner, including when performed via another entity representing the rightholders. In order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require collective management organisations to diligently take reasonable measures, on the basis of good faith, to identify and locate the relevant rightholders. It is also appropriate to provide for approval by the members of the collective management organisation of the rules governing any situation where, due to the lack of identified or located rightholders, amounts collected cannot be distributed.

- (16) Since rightholders are entitled to be remunerated for the exploitation of their rights, it is important for any deduction, other than management fees [...], for example a deduction for social, cultural or educational purposes, to be decided by the members of the collective management organisation and for collective management organisations to be transparent towards rightholders regarding the rules governing these deductions. The same requirements should apply to any decision of the members to use the rights revenue for collective distribution, such as scholarships. Rightholders should have access, on a non-discriminatory basis, to any social, cultural or educational service funded through such deductions. [...] This Directive should not affect deductions under national law on any aspects that are not regulated by this Directive provided that such deductions are in compliance with Union law.
- (17) Collective management organisations may manage rights and collect revenue from their exploitation ('rights revenue') under representation agreements with other organisations. To protect the rights of the members of the other collective management organisation, a collective management organisation should not distinguish between the rights it manages under representation agreements and those it manages directly for its rightholders. Nor should the collective management organisation be allowed to apply deductions to the rights revenue collected on behalf of another collective management organisation, other than management fees, without the other organisation's express consent. It is also appropriate to require collective management organisations to distribute and make payments to other organisations on the basis of such representation agreements no later than they distribute and pay to their own members and non-member rightholders that they represent. Furthermore, the recipient organisation should in turn be required to distribute the amounts due to the rightholders it represents without delay.
- (18) Fair commercial terms in licensing are particularly important to ensure that users can obtain licences for works and other [...] subject-matter for which a collective management organisation represents rights and to ensure the remuneration of rightholders. Collective management organisations and users should therefore conduct licensing negotiations in good faith and apply tariffs determined on the basis of objective and non-discriminatory criteria. It is appropriate to require that the licence fees or remuneration reflects, in particular, the economic value of the use of the rights in the particular context.
- (18a) In order to ensure that collective management organisations can comply with the obligations set out in this Directive, users should provide them with relevant information on the use of the rights represented by the collective management organisations. This obligation should not apply to natural persons acting for purposes outside their trade, business, craft or profession and who therefore fall outside the definition of user in this Directive.
- (19) To enhance the trust of rightholders, users and other collective management organisations in the management services provided by collective management organisations, each collective management organisation should comply with specific transparency requirements. Each collective management organisation should therefore be required to provide certain information to individual rightholders at least once a year, such as the amounts attributed or paid to them and the [...] deductions made. Collective management organisations should also be required to provide sufficient information, including financial information, to the other collective management organisations whose rights they manage through representation agreements.

- (19a) To ensure that rightholders, members, other collective management organisations and users have access to information on the scope of activity of the organisation and the repertoire it represents, a collective management organisation should also provide information on such issues upon a duly justified request. The question whether and to what extent fees can be charged for providing these services should be left to national law. Each collective management organisation should also make public information on its structure and how it carries out its activities. Collective management organisations should in particular disclose their statutes and their general policies on management fees, deductions and tariffs.
- (20) To ensure that rightholders are in a position to monitor and compare the respective performances of [...] collective management organisations, collective management organisations should make public an annual transparency report comprising comparable audited financial information specific to their activities. Collective management organisations should also make public an annual special report on the use of amounts dedicated to social, cultural and educational services. The Directive should not prevent a collective management organisation from publishing the information required by the annual transparency report in a single document, for example as part of its annual financial statements, or in separate reports [...].
- (21) The providers of online services which make use of musical works, such as music services that allow consumers to download music or to listen to it in streaming mode, as well as other services providing access to films or games where music is an important element, must first obtain the right to use such works. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society⁴ requires a licence for each of the rights in the online exploitation of musical works. These rights are the exclusive right of reproduction and the exclusive right of communication to the public of musical works, which includes the right of making available. They may be managed by the individual rightholders themselves, such as authors or music publishers, or by collective management organisations that provide collective management services to rightholders. Different collective management organisations may manage the reproduction and the communication to the public rights of authors. Furthermore, there are instances where several rightholders have rights in the same work and may have authorised different organisations to license their respective shares of rights in the work. Any user wishing to provide an online service offering a wide choice of musical works to consumers would need to aggregate rights in works from different rightholders and collective management organisations.
- (22) While the Internet knows no borders, the online market for music services in the Union is still fragmented, and a digital single market has still not been fully achieved. The complexity of and difficulty associated with the collective management of rights in Europe has, in a number of instances, exacerbated the fragmentation of the European digital market for online music services. This situation is in stark contrast to the fast growing demand on the part of consumers for access to digital content and associated innovative services, including across national borders.

⁴ OJ L 167, 22.6.2001, p. 10.

- (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 widespread multi-territorial licensing of online rights in musical works or to address the specific demands of multi-territorial licensing.
- (24) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by collective management organisations in an increasingly cross-border context. It is therefore appropriate to provide for a set of rules coordinating basic conditions for the provision by collective management organisations of multi-territorial collective licensing of authors' online rights in musical works, including musical works incorporated in audiovisual works. Online services solely providing access to musical works in sheet music form should however not be covered. The provisions of the Directive should ensure the necessary minimum quality of [...] cross-border services provided by collective management organisations, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and rights and thus reducing the number of licences a user needs to operate a multi-territory, multi-repertoire service. These provisions should enable a collective management organisation to request another organisation to represent its repertoire on a multi-territorial basis where it cannot fulfil the requirements itself. There should be an obligation on the requested organisation, provided that it already aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting organisation. The development of legal online music services across the Union should also contribute to the fight against online infringements of copyright.
- (25) The availability of accurate and comprehensive information on [...] musical works, rightholders and the rights that each collective management organisation is authorised to represent in a given territory is of particular importance for an effective and transparent licensing process, for the subsequent processing of the usage reports and the related invoicing of service providers, as well as for the distribution of amounts due to rightholders. For this reason, collective management organisations granting multi-territorial licences for musical works should be able to process such detailed data quickly and accurately. This requires the use of continually updated databases on ownership of rights that are licensed on a multi-territorial basis, containing data that allow for the identification of works, rights and rightholders [...] that a collective management organisation is authorised to represent and of the territories for which the authorisation extends. These databases should also help to match information on works with information on phonograms or any other fixation in which the work has been incorporated. It is also important to ensure that prospective licensees and rightholders have access to the information they need in order to identify the repertoire that those organisations are representing, without prejudice to any measures these organisations may [...] take to protect the accuracy and integrity of the data, to control its reuse or to protect [...] commercially sensitive information.

- (26) To ensure that the data on the music repertoire they process is as accurate as possible, collective management organisations granting multi-territorial licences of musical works should be required to update their databases continuously and without delay. They should establish easily accessible procedures to enable rightholders and other collective management organisations whose repertoire they may represent to inform them of any inaccuracy that the organisations' databases may contain in respect of works they own or control, including rights – in whole or in part – and territories for which they have mandated the relevant collective management organisation to act, without however jeopardising the veracity and integrity of the data. They should also have the capacity to electronically process the registration of works and authorisations to manage rights. Given the importance of information automation for the fast and effective processing of data, collective management organisations should provide for the use of electronic means for the structured communication of that information by rightholders. Collective management organisations should, as far as possible, ensure that such electronic means take into account the relevant voluntary industry standards or practices developed at international or Union level.
- (27) Industry standards for music usage, sales reporting and invoicing are instrumental in improving the efficiency in the exchange of data between collective management organisations and users. The monitoring of the use of licences should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data. To ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, collective management organisations should be required to invoice service providers and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that licensees make every effort to provide collective management organisations with accurate and timely reports on the use of works. Collective management organisations should not be required to accept users' reports in proprietary formats when widely used industry standards are available. Finally, collective management organisations should not be prevented from outsourcing services relating to the granting of multi-territorial licences for online rights in musical works. Sharing or consolidation of back office capabilities should help the organisations to improve management services and rationalise investments in data management tools.
- (28) *(Merged with Recital 27)*

- (29) Aggregating different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer that service. This aggregation of repertoires should facilitate the development of new online services, and should also result in a reduction of transaction costs that are passed on to consumers. Therefore, collective management organisations that are not willing to or are not able to grant multi-territorial licences directly in their own music repertoire should be encouraged on a voluntary basis to mandate other collective management organisations with the task of managing their repertoire under the same conditions as the mandated organisations manage their own repertoire for the purposes of multi-territorial licensing. Where the request to mandate takes place, the requested collective management organisation should be required to accept it, provided that it aggregates repertoire and offers or grants multi-territorial licences. Moreover, exclusivity in agreements on multi-territorial licenses would restrict the choices available to users seeking multi-territorial licenses and also restrict the choices available to collective management organisations seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between collective management organisations providing for multi-territorial licensing should be concluded on a non-exclusive basis.
- (30) The transparency of the conditions under which collective management organisations manage the online rights they have been authorised to represent is of particular importance to rightholders. Collective management organisations should therefore provide sufficient information to their rightholders on the main terms of any agreement mandating any other collective management organisation to represent their online music rights for the purposes of multi-territorial licensing.
- (31) It is also important to require any collective management organisations that offer or grant multi-territorial licences to agree to represent the repertoire of any collective management organisations that decide not to do so directly. To ensure that this requirement is not disproportionate and does not go beyond what is necessary, the requested collective management organisation should only be required to accept the representation if the request is limited to the online right or categories of online rights which it represents. Moreover, this requirement should only apply to collective management organisations which aggregate repertoire and should not extend to collective management organisations which provide multi-territorial licences for their own repertoire only. Nor should it apply to collective management organisations which merely aggregate rights in the same works for the purpose of being able to license jointly both reproduction and communication to the public rights in such works. The management fee charged by the mandated collective management organisation should allow this organisation to recoup the necessary and reasonable investments incurred. Any agreement whereby a collective management organisation mandates another organisation or organisations to grant multi-territorial licences in its own music repertoire for online use should not prevent that collective management organisation from continuing to grant licences limited to the territory of the Member State where that organisation is established, in its own repertoire and in any other repertoire it may be authorised to represent in that territory.

- (32) The objectives and the effectiveness of the rules on multi-territorial licensing by collective management organisations would be largely jeopardised if rightholders were not able to exercise their rights in respect of multi-territorial licences when the collective management organisation to which they have granted their rights did not grant or offer multi-territorial licences and furthermore did not want to mandate another collective management organisation to do so. For this reason, it would be important in such circumstances to enable rightholders to exercise the right to grant the multi-territorial licences required by online service providers themselves or through another party or parties, without having to withdraw their rights from the organisation.
- (33) In the interest of the online market, the obligations relating to the multi-territorial licensing of online rights in musical works should also apply to any entity directly or indirectly owned or controlled, in whole or in part, by a collective management organisation and which offers or grants multi-territorial licences for online rights in musical works.
- (34) In the digital environment, collective management organisations are regularly required to license their repertoire for totally new forms of exploitation and business models. In such cases and in order to foster an environment conducive to the development of such licences, [...] collective management organisations should have the flexibility required to provide, as swiftly as possible, individualised and innovative licences, without the risk of their being used as a precedent for determining the terms for other licences.
- (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. 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 a 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, nor lead to restrictive practices, such as market or customer sharing, which would be in breach of Articles 101 or 102 of the Treaty on the Functioning of the European Union.

- (36) It is necessary to ensure the effective enforcement of the provisions of the national law adopted pursuant to this Directive. Collective management organisations should offer their members specific procedures for the handling of complaints [...]. These procedures should also be made available to other rightholders represented by the organisation. It is also appropriate to require that Member States have independent, impartial and effective dispute resolution procedures, via courts or other bodies, suitable to settle commercial disputes between collective management organisations and users on existing or proposed licensing conditions or on a breach of contracts. Furthermore, the effectiveness of the rules on multi-territorial licensing of online rights in musical works could be undermined if disputes between collective management organisations and other parties were not solved quickly and efficiently [...]. As a result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for an easily accessible, efficient and impartial out-of-court procedure for resolving conflicts between collective management organisations granting multi-territorial licences, on the one hand, and online service providers, rightholders or other collective management organisations, on the other.
- (37) Moreover, Member States should establish appropriate procedures by means of which it will be possible to monitor the compliance of collective management organisations with the Directive [...]. While it is not appropriate for the Directive to restrict the choice of Member States as to competent authorities, nor as regards the ex-ante or ex-post nature of the control over collective management organisations, it should be ensured that such authorities are capable of addressing any concern that may arise in the application of this Directive in an effective and timely manner. Moreover, there should also be recourse to a competent authority in respect of those collective management organisations that do not comply with the law. 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 Commission should cooperate with each other to this end. Finally, Member States should provide each other with mutual assistance by way of exchange of information between their competent authorities in order to facilitate the monitoring of collective management organisations.
- (38) It is important for collective management organisations to respect the rights to private life and personal data protection of any rightholder, member, user and other individual whose personal data they process. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁵ governs the processing of personal data carried out in the Member States in the context of this Directive and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Rightholders should be given appropriate information about the processing of their data, the recipients of that data, time limits for retention of their data in their database, and how they can exercise their rights to access, correct or delete their personal data concerning them in accordance with Articles 10 and 11 of that Directive. In particular, unique identifiers which allow for the indirect identification of a person should be treated as personal data within the meaning of point (a) of Article 2 of that Directive.

⁵ OJ L 281, 23.11.1995, p. 31.

- (39) In the light of Article 12(b) of Directive 95/46/EC which grants to every data subject the right to obtain rectification, erasure or blocking of inaccurate or incomplete data, this Directive also ensures that inaccurate information regarding rightholders or other collective management organisations in the case of multi-territorial licenses is to be corrected without undue delay. *(NOTE: this recital is to be moved into recital 26)*
- (40) Provisions on enforcement measures should be without prejudice to the competencies of national independent public authorities established by the Member States pursuant to Article 28 of Directive 95/46/EC to monitor the respect of national provisions adopted in implementation of that Directive.
- (41) This Directive respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union. Provisions in the Directive related to dispute resolution [...] should not prevent parties from exercising their right of access to a tribunal as guaranteed in the Charter [...].
- (42) Since the objectives of this Directive, namely to improve the ability of their members to exercise control over the activities of collective management organisations, to guarantee sufficient transparency by collective management organisations and to improve the multi-territorial licensing of authors' rights for online use of musical works, cannot be sufficiently achieved by Member States and can therefore, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that same Article of the Treaty, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (43) The provisions of this Directive are without prejudice to the application of rules on competition, and any other relevant law in other areas including confidentiality, trade secrets, privacy, access to documents, the law of contract and private international law relating to the conflict of laws and the jurisdiction of courts.
- (44) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011⁶, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (45) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁷ and delivered an opinion on 9 October 2012.

⁶ OJ C 369, 17.12.2011, p. 15.

⁷ OJ L 8, 12.1.2001, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL PROVISIONS

Article 1 *Subject matter*

This Directive lays down requirements [...] to ensure the proper [...] management of copyright and related rights by collective management organisations. It also lays down requirements for multi-territorial licensing by collective management organisations of authors' rights in musical works for online use.

Article 2 *Scope*

Titles I, II, IV, with the exception of Articles 36 and 40, and IVa shall apply to all collective management organisations established in the Union.

Title III and Articles 36 and 40 [...] shall only apply to collective management organisations established in the Union managing authors' rights in musical works for online use on a multi-territorial basis.

Article 3 *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (a) 'collective management organisation' means any organisation authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders as its sole or one of its main purposes, and which is:
- (i) owned or controlled by its members, or
 - (ii) organised as a not for profit organisation.
- (b) 'rightholder' means any [...] person or [...] entity other than a collective management organisation that holds a copyright or related right or [...], under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue [...];

- (c) 'member' means a rightholder or an entity [...] representing rightholders, including other collective management organisations and associations of rightholders, fulfilling the membership requirements of the collective management organisation;
- (d) 'statute' means the memorandum and articles of association, the statute, the rules or document of constitution of a collective management organisation;
- (da) 'general assembly of members' means the body in the collective management organisation wherein members participate and exercise their voting rights, regardless of the legal form of the organisation;
- (e) 'director' means [...]:
- (i) where national law or the statute of the collective management organisation provides for a unitary board, any member of the administrative board,
- (ii) where national law or the statute of the collective management organisation provides for a dual board, any member of the management board or the supervisory board [...];
- (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;
- (g) 'management fees' means the fees deducted or offset by a collective management organisation from rights revenue or any income arising from the investment of rights revenue in order to cover the costs of its management of copyright or related rights [...];
- (h) 'representation agreement' means any agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to represent rights in its repertoire, including an agreement concluded under Articles 28 and 29;
- (i) 'user' means any [...] person or [...] entity that is carrying out acts subject to the authorisation of rightholders, remuneration for rightholders or payment of compensation to rightholders and is not acting in the capacity of a consumer;
- (j) 'repertoire' means the works [...] for which a collective management organisation manages rights;
- (k) 'multi-territorial licence' means a licence which covers the territory of more than one Member State;
- (l) 'online rights in musical works' means any of the rights in a musical work provided under Articles 2 and 3 of Directive 2001/29/EC in respect of authors' rights which are required for the provision of an online [...] service.
- (m) Deleted.

TITLE II

COLLECTIVE MANAGEMENT ORGANISATIONS

Chapter 1

Representation of rightholders, membership and organisation of collective management organisations

Article 4 General principles

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

Article 5 Rights of rightholders

1. Member States shall ensure that rightholders have the rights as laid down in paragraphs 2 to 7 and that those rights are set out in the statute or the membership terms of the collective management organisation.
2. Rightholders shall have the right to authorise a collective management organisation of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the territories 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. Unless the collective management organisation has objectively justified reasons to refuse management, the collective management organisation shall be obliged to manage such rights, categories of rights or types of works and other subject matter, provided that their management falls within its scope of activity.
3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted to a collective management organisation or to withdraw from a collective management organisation any of the rights or categories of rights or types of works and other subject matter of their choice, for the territories of their choice, upon serving reasonable notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal will take effect only at the middle and at the end of the financial year, whichever is sooner after the expiry of the notice period.

4. If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under Articles 11, 12, 16, 18, 26 and 34 [...].
5. Collective management organisation shall not restrict the exercise of rights provided under paragraphs 3 and 4 by requiring that the management of rights or categories of rights or type of works and other subject matter which are subject to the termination or the withdrawal are entrusted to another collective management organisation.
6. [...] Where a rightholder authorises a collective management organisation to manage his rights, he shall give [...] consent specifically for each right or category of rights or type of works and other subject matter which that rightholder authorises the collective management organisation to manage and that any such consent is evidenced in documentary form.
7. A collective management organisation shall inform rightholders of their rights under paragraphs 1 to 6 before obtaining their consent to manage any right or category of rights or type of works and other subject matter.

A collective management organisation shall inform the rightholders who have already authorised the collective management organisation of their rights under paragraphs 1 to 6 by [*date six months of the transposition date of this Directive*].

Article 6

Membership rules of collective management organisations

1. Member States shall ensure that collective management organisations comply with the rules laid down in paragraphs 2 to 5.
2. A collective management organisation shall accept rightholders and entities representing rightholders, including other collective management organisations and associations of rightholders as members if they fulfil the membership requirements which shall be based on objective and non-discriminatory criteria. [...] These membership requirements shall be included in the statute or the membership terms of the collective management organisation and shall be made publicly available.
3. The statute of a collective management organisation shall provide for appropriate and effective mechanisms of participation of its members in the collective management organisation's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.
4. A collective management organisation shall allow its members to communicate with the organisation by electronic means, including for the purposes of exercising members' rights. [...]

5. A collective management organisation shall keep records of its members and shall regularly update these records.

Article 6a

Rights of rightholders who are not members of the collective management organisation

1. Member States shall ensure that collective management organisations comply with the rules laid down in Articles 6(4), 6(5), and 34 in respect of rightholders who have a direct legal relationship by law or by way of assignment, licence or any other contractual arrangement with them but are not their members.
2. Member States may apply Article 6(3) and 7(8) to the rightholders referred to in paragraph 1.

Article 7

General assembly of members of the collective management organisation

1. Member States shall ensure that the general assembly of members is organised according to the rules laid down in paragraphs 1a to 8.

- 1a. Member States may decide that the powers of the general assembly of members may be exercised by an assembly of delegates elected at least every two years by the members of the collective management organisation, provided that:

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

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

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

- 1b. Member States may decide that where a collective management organisation is precluded by reason of its legal form from having a general assembly of members, the powers listed in paragraphs 3 to 6 shall be exercised by the body exercising the supervisory function.

2. A general assembly of members shall be convened at least once a year.
3. The general assembly of members shall approve any amendments to the statute and the membership terms of the collective management organisation, where those terms are not regulated by the statute.
4. The general assembly of members shall have the power to decide on the appointment or dismissal of the directors and approve their remuneration and other benefits such as non-monetary benefits, pension awards, right to other awards and rights to severance pay.

In a collective management organisation with a dual board system, the general assembly of members shall not decide on the appointment or dismissal of members of the management board [...] or approve their remuneration and other benefits where the power to take these decisions is delegated to the supervisory board.

5. In accordance with the provisions laid down in Chapter 2 of Title II, the general assembly of members shall, at least, take decisions on the following issues:

- (a) the general policy on the distribution of the amounts due to rightholders [...];
- (b) the general policy on the use of the amounts due to rightholders which cannot be distributed as set out in Article 12(2) [...];
- (c) the general investment and risk management policy [...] with regard to rights revenue and any income arising from the investment of rights revenue;
- (d) the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;
- (e) the approval of any acquisition, sale or hypothecation of immovable property by the collective management organisation;
- (f) the approval of mergers and alliances, setting-up subsidiaries, acquiring other entities or shares or rights in other entities;
- (g) the approval of taking-out loans, granting loans and providing security for loans.

The general assembly of members may delegate the powers in points (e), (f) and (g) to the body exercising the supervisory function.

6. The general assembly of members 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 [...].

Member States may allow alternative systems or modalities for the appointment of the auditor.

7. Where Member States allow for any restriction on the right of the members of the collective management organisation to participate in and to exercise voting rights at the general assembly of members, such restriction shall be based on one or both of the following criteria:

- (a) duration of membership;
- (b) amounts received or due to a member [...];

provided that such criteria are fair and proportionate.

These criteria shall be included in the statute or the membership terms of the collective management organisation and shall be made publicly available in accordance with Articles 17 and 19.

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 assembly of members in his name, provided that such appointment does not result in a conflict of interest.

Where a member appoints another member of the collective management organisation as a proxy holder, Member States may allow the collective management organisation to restrict the appointment of proxy holders to members who belong to the same category as the appointing member.

Member States may also allow a collective management organisation to impose reasonable restrictions related to the maximum number of votes a proxy holder may exercise at the general assembly of members.

The proxy holder shall enjoy the same rights in the general assembly of the members as those to which the appointing member would be entitled.

The proxy holder shall cast votes in accordance with the instructions issued by the appointing member.

Article 8 *Supervisory function*

1. Member States shall ensure that the collective management organisation has a supervisory function responsible for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation.
 - 1a. There shall be fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function in order to ensure their effective participation.
 - 1b. Each member of the body exercising the supervisory function shall make an annual individual statement on conflicts of interest containing the information referred to in Article 9(2), second subparagraph.
2. The body entrusted with the supervisory function shall meet regularly and shall have at least the following powers:
 - (a) *(moved to Article 7(5))*
 - (b) *(moved to Article 7(5))*
 - (c) *(moved to Article 7(5))*
 - (d) to exercise the powers delegated under Article 7(4) and (5);

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

3. Deleted.

Article 9

*Obligations of the persons who [...] manage the business of
the collective management organisation*

1. Member States shall ensure that a collective management organisation puts in place and applies procedures to ensure that the persons who [...] manage the business of the collective management organisation [...] do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.
2. A collective management organisation [...] puts in place and applies procedures so as to avoid conflicts of interest, and where these cannot be avoided, to identify, manage, monitor and disclose such conflicts of interest in order to prevent them from adversely affecting the collective interests of the rightholders the organisation represents.

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

- (a) any interests in the collective management organisation;
- (b) any remuneration received from the collective management organisation, including pension schemes, advantages in kind and other types of advantages;
- (c) any amounts received as a rightholder from the collective management organisation;
- (d) a declaration on any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations towards the collective management organisation and any duty to any other natural or legal person.

Chapter 2

Management of rights revenue

Article 10

Collection and use of rights revenue

0. Member States shall ensure that collective management organisations comply with the rules laid down in paragraphs 1 to 4.
1. A collective management organisation shall be diligent in the collection and management of rights revenue.

2. A collective management organisation shall [...] keep separate in its accounts:
 - (a) [...] rights revenue and any income arising from the investment of rights revenue; and
 - (b) any own assets it may have and [...] income arising from such assets, from [...] management fees or [...] from other activities.
3. A collective management organisation shall not be allowed to use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rightholders, save that it may deduct or offset its management fees or use the rights revenue or the income in compliance with a decision taken in accordance with Article 7(5).
4. Where, [...], a collective management organisation invests [...] rights revenue and any income derived from the investment of rights revenue, it shall do so in the best interests of the rightholders whose rights it represents, in accordance with the general investment and risk management policy referred to in Article 7(5)(c) and having regard to the following rules:
 - (a) [...] where there is any potential conflict of interest, the collective management organisation shall ensure that the investment is made in the sole interest of these rightholders;
 - (b) the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
 - (c) the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.

Article 11
Deductions

1. Member States shall ensure that collective management organisations inform rightholders of the general policy on deductions from the rights revenue and from any income arising from the investment of rights revenue, [...] before obtaining their consent to manage their rights.
- 1a. Management fees shall not exceed the justified costs incurred by the collective management organisation for the management of copyright and related rights.
2. [...] Where a collective management organisation provides [...] social, cultural or educational services funded through deductions from rights revenue and from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria.

Article 12
Distribution of the amounts due to rightholders

1. Without prejudice to Articles 14(3) and 26, Member States shall ensure that a collective management organisation regularly, diligently, accurately and in accordance with the general policy on distribution referred to in Article 7(5)(a) distributes and pays amounts due to the rightholders it represents. Member States shall also ensure that a collective management organisation or, where it has as members entities representing rightholders, these members distribute and pay to rightholders such amounts as soon as possible but no later than 12 months from the end of the financial year in which the rights revenue was collected, unless objective reasons related in particular to reporting by users, the identification of rights, rightholders or to the matching of information on works and other subject matter with rightholders prevent the collective management organisation or, where applicable, its members from respecting this deadline. [...]
2. Where the amounts due to rightholders cannot be distributed, after three years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collective management organisation has taken all necessary measures to identify and locate the rightholders, the collective management organisation shall decide on the use of the amounts concerned in accordance with the general policy referred to in Article 7(5)(b), without prejudice to the right of the rightholder to claim such amounts from the collective management organisation in accordance with the laws of the Member States on the statute of limitations of claims.
3. For the purposes of paragraph 2, measures to identify and locate rightholders shall include verifying [...] records referred to in Article 6(5) and other readily available records and making available to the rightholders that the collective management organisation represents, or where it has as members entities representing rightholders, to these members, to other collective management organisations as well as to the public [...] information on works [...] and other subject matter for which one or more rightholders have not been identified including, where available, the title of the work or other subject matter, the name of the rightholder, the name of the relevant publisher or producer and any other relevant information available which could assist in identifying the rightholder.

Chapter 3

Management of rights on behalf of other collective management organisations

Article 13

Rights managed under representation agreements

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

Article 14

Deductions and payments in representation agreements

1. Member States shall ensure that a collective management organisation does not apply deductions, other than management fees, to the rights revenue derived from the rights it manages on the basis of a representation agreement, and to any income arising from the investment of that rights revenue, [...] unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.
2. The collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to other collective management organisations.
3. The collective management organisation shall carry out such distribution and payments to the other collective management organisation no later than 12 months from the end of the financial year in which the rights revenue was collected, unless objective reasons related in particular to reporting by users, the identification of rights, rightholders or to the matching of information on works and other subject matter with rightholders prevent the collective management organisation from respecting this deadline.

The other collective management organisation or, where it has as members entities representing rightholders, these members shall distribute and pay the amounts due to rightholders no later than 3 months from receipt of these amounts, unless objective reasons related in particular to reporting by users, the identification of rights, rightholders or to the matching of information on works and other subject matter with rightholders prevent the collective management organisation or, where applicable, its members from respecting this deadline.

Chapter 4

Relations with users

Article 15

Licensing

1. Member States shall ensure that collective management organisations and users conduct negotiations for the licensing of rights in good faith including the provision of all necessary information on their respective services.
2. Licensing terms shall be based on objective and non-discriminatory criteria, in particular in relation to tariffs.

Tariffs for exclusive rights and rights to remuneration shall reflect in particular, the economic value of the use of the rights in trade, the nature and scope of the use of the work and other subject matter, as well the economic value of the service provided by the collective management organisation.

[...]

3. A collective management organisation shall allow users to communicate by electronic means with it, including, when appropriate, for the purpose of reporting on the use of the licence.

Article 15a

Obligations on users

Member States shall ensure that users provide a collective management organisation, without undue delay, with the information on the use of the rights represented by the collective management organisation that is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightholders.

Chapter 5

Transparency and reporting

Article 16

Information provided to rightholders on the management of their rights

1. Without prejudice to paragraph 2, Articles 17 and 26(2), Member States shall ensure that a collective management organisation makes available no less than once a year [...] to each rightholder to whom it attributed rights revenue or made payments, in the period to which the information relates, at least the following information:
 - (a) any contact details which the rightholder has authorised the collective management organisation to use in order to identify and locate the rightholder;
 - (b) the rights revenue attributed to the rightholder [...];
 - (c) the amounts paid by the collective management organisation to the rightholder per category of rights managed, and type of use [...];
 - (d) the period during which the use took place for which amounts were paid to the rightholder, unless objective reasons related to the reporting by users prevent the collective management organisation from providing this information;
 - (e) the deductions made for management fees [...];
 - (f) the deductions made for any purpose other than management fees, including those that may be required by national law for the provision of any social, cultural or educational services [...];
 - (g) any rights revenue attributed to the rightholder which is outstanding for any period.
 - (h) Deleted.
2. Where a collective management organisation has as members entities representing rightholders, the information under paragraph 1 shall be provided to these entities insofar as they are responsible for the distribution of rights revenue.

Article 17

Information provided to other collective management organisations on the management of rights under representation agreements

Member States shall ensure that a collective management organisation makes at least the following information available, no less than once a year and by electronic means, to the collective management organisation on whose behalf it manages rights under a representation agreement, for the [...] period to which the information relates:

- (a) the rights revenue attributed, the amounts paid by the collective management organisation [...] per category of rights managed, and per type of use [...] for the [...] rights it manages under the representation agreement, as well as any rights revenue attributed which is outstanding for any period ;
- (b) the deductions made for management fees [...];
- (ba) deductions made for any purpose other than management fees, including those that may be required by national law for the provision of any social, cultural or educational services;
- (c) *Deleted.*
- (d) resolutions adopted by the general assembly of members insofar as these resolutions are relevant to the management of the rights under the representation agreement.

Article 18

Information provided to rightholders, members, other collective management organisations and users on request

1. Without prejudice to Article 23, Member States shall ensure that, on the basis of a duly justified request, a collective management organisation makes at least the following information available by electronic means and without undue delay to any rightholder whose rights it represents, where it has as members entities representing rightholders, to these members, to any collective management organisation on whose behalf it manages rights under a representation agreement or to any user [...]:

(a) *Deleted. (Moved to 19(1)(ba))*

(b) the works or other subject matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or, where due to the scope of activity of the collective management organisation such works or other subject matter cannot be determined, the categories of works or of other subject matter it represents, the rights it manages and the territories covered;

(c) a list of representation agreements it has entered into, and [...] the name of the collective management organisations with which the representation agreements were concluded [...].

2. *Deleted.*

Article 19
Disclosure of information to the public

1. Member States shall ensure that a collective management organisation makes public at least the following information:
 - (a) its statute;
 - (b) its membership terms and the terms of termination of authorisation to manage rights, if not included in the statute;
 - (ba) standard licensing contracts and standard applicable tariffs including discounts;
 - (c) the list of the persons referred to in Article 9;
 - (d) its general policy on distribution of the amounts due to rightholders;
 - (e) its general policy on management fees;
 - (f) its general policy on deductions from rights revenue for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;
 - (g) the complaint handling and dispute resolution procedures available in accordance with Articles 34, 35 and 36.
2. The information referred to in paragraph 1 shall be published on the website of the collective management organisation and shall remain available to the public on that website and kept up to date.

[...]

Article 20
Annual transparency report

1. Member States shall ensure that, irrespective of its legal form under national law, a collective management organisation draws up and makes public an annual transparency report, including the special report referred to in paragraph 3, for each financial year no later than six months following the end of the financial year. [...]

The annual transparency report shall be published on the website of the collective management organisation and shall remain available to the public on that website for at least five years.
2. The annual transparency report shall contain at least the information set out in Annex I.

3. A special report [...] shall address the use of the amounts deducted for the purposes of social, cultural and educational services and shall contain at least the information set out in point 3 of Annex I.
4. The accounting information included in the annual transparency report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts⁸.

The auditor's report, including any qualifications thereto, shall be reproduced in full in the annual transparency report.

For the purposes of this paragraph, accounting information shall comprise the financial statements referred to in point 1 (a) of Annex I and any financial information referred to in points 1 (f) and (g) and in point 2 of Annex I.

5. Deleted.

TITLE III

MULTI-TERRITORIAL LICENSING OF ONLINE RIGHTS IN MUSICAL WORKS BY COLLECTIVE MANAGEMENT ORGANISATIONS

Article 21

Multi-territorial licensing in the internal market

1. Member States shall ensure that collective management organisations established in their territory comply with the requirements in this Title when granting multi-territorial licences for online rights in musical works.
2. Deleted.

⁸ OJ L 157, 9.6.2006, p. 87.

Article 22
Capacity to process multi-territorial licences

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works has sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of such licences, including for identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.
2. For the purpose of paragraph 1, a collective management organisation shall comply, at least, with the following conditions:
 - (a) the ability to accurately identify the musical works, in whole or in part, which the collective management organisation is authorised to represent;
 - (b) the ability, to accurately identify [...], in whole or in part, [...] with respect to each relevant territory, the rights and their corresponding rightholders [...] for each musical work or share therein which the collective management organisation is authorised to represent;
 - (c) the use of unique identifiers to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or Union level;
 - (d) the taking into account, without undue delay, of any changes to the information described in points (a) and (b);
 - (e) the ability to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

Article 23
Transparency of multi-territorial repertoire information

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works shall provide to online service providers, rightholders and other collective management organisations, by electronic means, on the basis of a duly justified request, up-to-date information allowing the identification of the online music repertoire it represents, [...]. This shall include the musical works represented, the rights represented, in whole or in part, and the territories represented.
2. Paragraph 1 shall be without prejudice to the possibility for a collective management organisation to take reasonable measures to protect the accuracy and integrity of the data, control its re-use and protect [...] commercially sensitive information.

Article 24
Accuracy of multi-territorial repertoire information

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works shall have arrangements in place to enable rightholders and other collective management organisations to correct [...] the data referred to in Article 22(2) or the information provided under Article 23, where such rightholders and organisations, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the collective management organisation shall ensure that the data or the information are corrected without undue delay.
2. The collective management organisation shall provide rightholders whose musical works are included in its own music repertoire with the means of submitting to it in electronic form information on their musical works, their rights in those works and the territories for which the rightholders authorise the organisation. When doing so, the collective management organisation and the rightholders shall take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data developed at international or Union level, allowing rightholders to specify the musical work, in whole or in part, the online rights, in whole or in part, and the territories for which they authorise the organisation.
3. Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated collective management organisation shall also apply paragraph 2 with respect to the rightholders whose musical works are included in the repertoire of the mandating collective management organisation, unless the collective management organisations agree otherwise.

Article 25
Accurate and timely reporting and invoicing

1. Member States shall ensure that a collective management organisation monitors the use of online rights in musical works which it represents, in whole or in part, by online service providers to which it has granted a multi-territorial licence for those rights.
2. The collective management organisation shall offer online service providers the possibility of reporting by electronic means the actual use of online rights in musical works and online service providers shall accurately report the actual use of these works. The collective management organisation shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The collective management organisation may refuse to accept reporting by the online service provider in a proprietary format if the organisation allows for reporting using an industry standard for the electronic exchange of data.

3. The collective management organisation shall invoice the online [...] service provider by electronic means. 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, on the basis of the data referred to in Article 22(2), and the corresponding actual uses, to the extent this is possible on the basis of the information provided by the online service provider and the format used to provide that information. The online service provider may not refuse to accept the invoice if the collective management organisation is using an industry standard.
4. The collective management organisation shall invoice the online [...] service provider accurately and without delay after the actual use of the online rights in that musical work is reported, except where this is not possible for reasons attributable to the online [...] service provider.
5. The collective management organisation shall have adequate arrangements in place for the online service provider to challenge the accuracy of the invoice, including when the online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

Article 26

Accurate and timely payment to rightholders

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works distributes amounts due to rightholders accruing from such licences accurately and without delay after the actual use of the work is reported, except where any delay is attributable to the online [...] service provider.
2. The collective management organisation shall provide at least the following information to rightholders together with each payment it makes under paragraph 1:
 - (a) the period during which the uses took place for which amounts are due to rightholder and the territories in which the uses took place;
 - (b) the amounts collected, deductions made and the amounts distributed by the collective management organisation for each online right in any musical work which the rightholder has authorised, in whole or in part, the collective management organisation to represent;
 - (c) the amounts collected for the rightholder, the deductions made, and the amounts distributed by the collective management organisation in respect of each online service provider.
3. Deleted.

4. Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated collective management organisation shall distribute the amounts referred to in paragraph 1 accurately and without delay, and provide the information referred to in paragraph 2 to the mandating collective management organisation. The mandating collective management organisation shall be responsible for the subsequent distribution of such amounts and the provision of such information to rightholders, unless the collective management organisations agree otherwise.

Article 27
Outsourcing
Deleted.

Article 28
Agreements between collective management organisations for multi-territorial licensing

1. Member States shall ensure that any representation agreement between collective management organisations according to which a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works in its own music repertoire shall be of a non-exclusive nature. The mandated collective management organisation shall manage these online rights on a non-discriminatory basis.
2. The mandating collective management organisation shall inform rightholders of the key terms of the agreement, including its duration and the costs of the services provided by the mandated collective management organisation.
3. The mandated collective management organisation shall inform the mandating collective management organisation of the key terms according to which the latter's online rights are to be licensed, including the nature of the exploitation, all provisions which relate to or affect the licence fee, the duration of the licence, the accounting periods and the territories covered.

Article 29
Obligation to represent another collective management organisation for multi-territorial licensing

1. Member States shall ensure that a collective management organisation which does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire can request another collective management organisation that meets the requirements of this Title to enter into a representation agreement to represent these rights in accordance with Article 28.

- 1a. In the event that the requested collective management organisation decides not to accept the request, it shall inform the requesting collective management organisation in writing and without undue delay of its decision, giving reasons for its decision.
2. The requested collective management organisation shall accept such a request if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations.
- 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. [...]
3. The requesting collective management organisation shall make available to the requested collective management organisation information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Title, the requested collective management organisation shall be entitled to charge for the costs reasonably incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

Article 30

Access to multi-territorial licensing

1. Member States shall ensure that where a collective management organisation does not grant or offer to grant multi-territorial licences for online rights in musical works or does not allow another collective management organisation to represent those rights for such a purpose by [*one year after the transposition date of this Directive*], rightholders who have authorised that collective management organisation to represent their online rights in musical works can grant multi-territorial licences in their online rights in musical works themselves, can grant such licences through any collective management organisation complying with the provisions of this Title, or can do so through any other party they authorise. A collective management organisation which does not grant or offer to grant multi-territorial licences shall continue to grant or offer to grant licences for the online rights in musical works of such rightholders for their use in the territory of the Member State where the collective management organisation is established, unless the rightholders terminate their authorisation [...].
2. Rightholders who decide to grant multi-territorial licences for their online rights in musical works themselves, through another collective management organisation, or through any other party shall notify their decision to the first-mentioned collective management organisation in paragraph 1, without undue delay. Any reversal of this decision shall also be notified.

Article 31

Multi-territorial licensing by entities owned or controlled by collective management organisations

Articles [...] 18(1)(c), 19(1)(ba), 21-30, [...] 32, 36 and 40 shall also apply to entities directly or indirectly owned or controlled, in whole or in part, by a collective management organisation and which offer or grant multi-territorial licences for online rights in musical works.

Article 32

Licensing terms for new types of online services

Member States shall ensure that licensing terms agreed in respect of multi-territorial licences for online rights in musical works between a collective management organisation and an online service provider for a new type of service which has been available to the public for less than three years may not be used as a precedent for other services.

Article 33

Derogation for online music rights required for radio and television programmes

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

TITLE IV

ENFORCEMENT MEASURES

Article 34

Complaint procedure for members [...]

1. Member States shall ensure that collective management organisations make available to their members [...] effective and timely procedures for dealing with complaints, [...] in particular in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.
2. Collective management organisations shall respond in writing to complaints by members [...]. Where the collective management organisation rejects the complaint, it shall give reasons.
3. Paragraphs 1 and 2 shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.

Article 35

Dispute resolution for users and collective management organisations

1. Member States shall ensure that disputes between collective management organisations and users concerning in particular existing and proposed licensing conditions or breach of contract [...] can be submitted to a court, or if appropriate, to another independent and impartial dispute resolution body.
2. Where the obligation set out in paragraph 1 is implemented by recourse to an independent and impartial dispute resolution body other than a court, this shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.

Article 36
Alternative dispute resolution

1. Member States shall ensure, for the purposes of Title III, that the following disputes related to a collective management organisation established in their territory which grants or offers to grant multi-territorial licences for online rights in musical works can be submitted to an independent and impartial alternative dispute resolution procedure:
 - (a) disputes with an [...] online service provider on the application of Articles [...] 23 and 25;
 - (b) disputes with one or more rightholders on the application of Articles [...] 23, 24, 25, 26, 28, 29 and 30;
 - (c) disputes with another collective management organisation on the application of Articles 23, 24, 25, 26, 28 and 29.
2. *Deleted.*
3. Paragraph 1 shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.

Article 37
Compliance with the Directive

- ~~0. Member States shall ensure that compliance by collective management organisations established in their territory with the provisions of national law adopted pursuant to the requirements laid down in this Directive is monitored by competent authorities designated for that purpose.~~
1. Member States shall ensure that procedures exist for members of a collective management organisation, rightholders, users and other collective management organisations to have recourse to competent authorities empowered to ensure the compliance of collective management organisations with the provisions of national law adopted pursuant to the requirements laid down in this Directive.
2. *Deleted.*

Article 38
Sanctions or measures

1. Member States shall ensure that competent authorities have the power to impose appropriate [...] sanctions and to take appropriate measures where the provisions of national law adopted in the implementation of this Directive have not been complied with [...]. These sanctions and measures shall be effective, proportionate and dissuasive.
2. *Deleted.*

Article 39
Competent authorities

Member States shall notify the Commission of the competent authorities referred to in Articles [...] 37, 38, 39a and 40 by the [*date of transposition*].

The Commission shall publish this information [...].

Article 39a
Exchange of information between competent authorities

In order to facilitate the monitoring of the application of this Directive, Member States shall ensure that an information request from a competent authority of another Member State on matters relevant to the application of this Directive is responded to, without undue delay, provided that the request is duly justified.

Article 40
Compliance with the provisions on multi-territorial licensing

1. Deleted (moved to 37(0)).
2. The Commission shall foster regular exchange of information between the competent authorities of the Member States and between those authorities and the Commission on the situation and development of multi-territorial licensing.
3. The Commission shall conduct regular consultations with representatives of rightholders, collective management organisations, users, consumers and other interested parties on their experience with the application of the provisions of Title III of this Directive. The Commission shall provide competent authorities with all relevant information that emerges from these consultations, in the framework of the exchange of information set out in paragraph 2.
4. Member States shall ensure that, at the latest, on [*18 months after the end of the transposition period (date)*], their competent authorities provide the Commission with a report on the situation and development of multi-territorial licensing in their territory. The report shall include information, in particular, on the availability of multi-territorial licences in the relevant Member State, the compliance of collective management organisations with provisions of national law adopted in the implementation of Title III of this Directive and the assessment of the development of multi-territorial licensing of online rights in musical works by users [...], consumers, rightholders and other interested parties.

5. On the basis of the reports under paragraph 4 and the information gathered under paragraphs 2 and 3, the Commission shall assess the application of Title III of this Directive. If necessary, and based on a specific report as appropriate, it will consider further steps to address any identified problems [...]. This assessment shall cover, in particular, the following:
- (a) the number of collective management organisations meeting the requirements of Title III;
 - (b) the application of Articles 28 and 29, including the number of representation agreements concluded by collective management organisations under these Articles;
 - (c) the proportion of repertoire in the Member States which is available for licensing on a multi-territorial basis.

TITLE IVA

DATA PROTECTION

Article 40a

Protection of personal data

The processing of personal data carried out in the framework of this Directive shall be subject to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

TITLE V

REPORTING AND FINAL PROVISIONS

Article 40b

Notification of collective management organisations

Member States shall notify the list of the collective management organisations established in their territories that are covered by Article 3(a) to the Commission by [date of transposition (date)] at the latest.

Member States shall notify any changes to this list to the Commission without undue delay.

The Commission shall publish this information and keep it up to date.

Article 41
Report

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

Article 42
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after the entry into force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of these provisions.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 43
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 44
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Annex I

1. Information to be provided in the annual transparency report referred to in Article 20(2):
 - (a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash flow statement;
 - (b) a report on the activities in the financial year;
 - (c) a description of the legal and governance structure of the collective management organisation;
 - (d) information on any entities in which the collective management organisation holds shares;
 - (e) information on the total amount of remuneration paid to the persons referred in Articles 8(1b) and 9 in the previous year, and on other benefits granted to them;
 - (f) the financial information referred to in point 2;
 - (g) a special report on the use of the amounts deducted for the purposes of social, cultural and educational services.

2. Financial information to be provided in the annual transparency report:
 - (a) Financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance).
 - (b) Financial information on the cost of management services and other services provided by the collective management organisation to rightholders, with a comprehensive description of at least the following items:
 - (i) all operating and financial costs, with a breakdown per category of rights managed and where costs are indirect and cannot be attributed to one or more categories of rights an explanation of the method used to allocate such indirect costs;
 - (ii) operating and financial costs, with a breakdown per category of rights managed, only with regard to the services for the management of rights;
 - (iii) operating and financial costs with regard to services, other than the management of rights, but including social, cultural and educational services;
 - (iv) resources used to cover costs;

- (v) deductions made to rights revenues, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs related to the management of rights or to social, cultural or educational services;
 - (vi) the percentages that the cost of the management services and other services provided by the collective management organisation to rightholders represents compared to the rights revenues in the relevant financial year, per category of rights managed.
- (c) Financial information on amounts due to rightholders with a comprehensive description of at least the following items:
- (i) total amount attributed to rightholders with a breakdown per category of rights managed and type of use;
 - (ii) total amount paid to rightholders, with a breakdown per category of rights managed and type of use;
 - (iii) frequency of payments, with a breakdown per category of rights managed and per type of use;
 - (iv) total amount collected but not yet attributed to rightholders, with a breakdown per category of rights managed and type of use and indicating the financial year in which these amounts were collected;
 - (v) total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and type of use and indicating the financial year in which these amounts were collected;
 - (vi) where a collective management organisation has not carried out the distribution and payments within the deadline set out in Article 12(1), the reasons for the delay;
 - (vii) explanation on the use of amounts that cannot be distributed to rightholders in accordance with Article 12(2).
- (d) Information on [...] relationships with other collective management organisations with a description of at least the following items:
- (i) financial flows, amounts received from other collective management organisations and amounts paid to other collective management organisations, with a breakdown per category of rights and type of use and per organisation;
 - (ii) management fees [...] and other deductions from the revenue due to other collective management organisations, with a breakdown per category of rights and per organisation;

- (iv) management fees [...] and other deductions from the amounts paid by other collective management organisations, with a breakdown per category of rights and per organisation;
- (v) amount distributed directly to rightholders originating from other collective management organisations, with a breakdown per category of rights and per organisation.

3. Information to be provided in the special report referred to in Article 20(3):

- (a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown per category of rights managed and per type of use;
- (b) an explanation of the use of these amounts, with a breakdown per type of purpose.

Annex II
[deleted]

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