Intellectual Property Office

Consultation on
draft Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014

Consultation response form

Responding to the consultation

On this form, please provide your responses to the questions outlined in this document. You do not have to complete the whole form – please answer the questions that are most relevant to you.

Please note: This consultation forms part of a publication exercise. As such, your response may be subject to publication or disclosure in accordance with access to information regimes (these are primarily the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environment Information Regulations 2004).

If you do not want part or whole of your response or name to be made public please state this clearly in the response, explaining why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system cannot be regarded as a formal request for confidentiality.

The closing date for responses is Monday 7 October 2013 at 12 midday.

About You and Your Organisation

Your name	David Harmsworth
Job Title	Director of Legal & Business Affairs
Organisation Name	**PPL**
Organisation's main products/services	Licensing sound recordings for public performance and broadcast, on behalf of record companies and performers

1. ABOUT THIS SUBMISSION

As an active participant in the process of self-regulation by UK licensing bodies (under the umbrella of the British Copyright Council's "Principles for Collective Management Organisations' Codes of Conduct", on which PPL's own Codes of Conduct for licensees and members are based) and as an active member of the IPO's Codes of Conduct Working Group, PPL welcomes the opportunity to respond to this consultation.

In addition to commenting on the specific questions posed by the consultation document about the draft Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 (the "**Regulations**"), PPL's submission includes:

(a) general comments on the draft Regulations (set out in section 2 of this submission); and

(b) drafting comments (by way of a marked-up copy of the draft Schedule to the Regulations, included as an appendix to, and which should be read in conjunction with, this submission).

PPL notes that Government is not consulting on the policy underlying the Regulations, but is instead focusing on the legal effectiveness of the Regulations and the way in which they implement Government policy. PPL's comments are similarly focused.

2. GENERAL COMMENTS

The comments set out below identify some key themes which serve as a backdrop to PPL's comments below on the specific consultation questions and the drafting comments set out in the appendix to this submission. As such, we hope that they provide further context for those comments and Government's consideration of them.

2.1 PPL and licensing bodies from across the creative industries are taking self-regulation very seriously (having been working actively on this initiative through the British Copyright Council before the Hargreaves Review) and PPL hopes that Government will approach the Regulations – and the exercise of any powers or discretions under them – in keeping with its support for self-regulation and its description of these as "backstop" powers.

2.2 We and those other bodies have between us invested considerable time, effort and cost into the self-regulatory model. We hope that the Government will seek to avoid any duplication of self- and statutory-regulated mechanisms, which would be inefficient, bureaucratic and not in the interests of members or licensees.

2.3 PPL and many others across the creative industries have voiced concerns about the lack of robust evidence and analysis to underpin recent Government policy relating to copyright – for example, the deeply flawed BOP Consulting research into collecting societies. We hope that, at all stages of the Regulations if they are invoked, a strong evidence base will be used for any key decisions or exercises of discretion by the Secretary of State.

3. RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

Question 1: Does the proposed definition correctly capture the type of body on which we consulted? Is it too narrow or too broad? What, if any impact, will this definition have on the various entities that are currently operating in the collective licensing market? Please give reasons for your answer?

1.1 As noted in the consultation document, the draft Regulations currently limit what may be deemed a "relevant licensing body" by reference to it being both (a) member owned or controlled, and (b) not-for-profit.

1.2 As a general principle, the Regulations should operate in a way that creates a "level playing-field" for organisations that are collectively managing copyright and related rights, whether those are member-owned, not-for-profit organisations or otherwise. PPL made that point when responding to the Consultation on Copyright and it remains valid. It is worth noting in this context that the existing Copyright, Designs and Patents Act 1988 ("CDPA") definition of "licensing body" – which is relevant to determining e.g. whether an organisation's activities fall within the jurisdiction of the Copyright Tribunal – does not contain limitations around whether the body is member-owned or not-for-profit.

1.3. By way of illustration, PPL is in competition with commercial agencies in the market of international collections, particularly on behalf of performers. Such commercial agencies can act for a large number of UK (and other) rightholders, in collecting the royalties generated by the exploitation of their rights in overseas territories. They will obtain mandates from those rightholders, and deduct commission for their activities. They will not be subject to the draft Regulations as currently worded – meaning that performers signing up to those agencies will not benefit from the same protection as they would if they signed up to PPL's international collections service.

1.4 However, PPL can see the potential difficulties of pre-empting the equivalent definition in (and therefore scope of) the Collective Rights Management Directive ("**CRM Directive**"). It may be better to address the inclusion of "independent management entities" when transposing the CRM Directive, although this is for Govenrment to decide.

Question 2: Are there any other circumstances in which you think that the Secretary of State may need to exercise the power to appoint an Ombudsman and/or Code Reviewer? Please describe what these are and give reasons for your answer.

2.1 PPL does not anticipate any other circumstances in which these powers would need to be used, beyond the examples given in the consultation document.

Code Reviewer

2.2 The consultation document says that the Secretary of State might need to appoint a statutory Code Reviewer if there were a systemic problem with an industry-appointed Code Reviewer, and gives the example of he or she being brought into disrepute.

2.3 It does not follow that a problem arising with the specific *person* appointed by industry would in itself mean that the *system* of having an industry-appointed Code Reviewer had failed or that a statutory appointment would then be necessary. It would (and should) be open to industry to appoint a replacement Code Reviewer in such circumstances, and greater evidence of a genuinely systemic problem should be required before statutory intervention.

Ombudsman

2.4 The consultation document says that the Secretary of State might need to appoint an Licensing Code Ombudsman if one or more collecting societies failed to appoint an ombudsman within the self-regulatory framework.

2.5 It does not follow that the creation of a statutory ombudsman (with all of the requirements, processes, administration and governance involved) would be the appropriate solution to the particular problem cited, in circumstances where there is no evidence that the industry-appointed ombudsman solution is not working and it is simply a matter of non-participation by one or more collecting societies. Instead, failure by a collecting society to appoint an ombudsman would (under the Regulations as currently drafted) be material non-compliance with the specified criteria, which would trigger the Secretary of State's powers to direct that society to adopt a code, and (if the society continued not to sign up to the industry-appointed ombudsman) to impose a code and then impose sanctions for non-compliance with that imposed code. This process could be used to prompt the non-compliant collecting society to sign up to the industry-appointed ombudsman, without the need for the creation of a new, parallel ombudsman.

2.6 See also PPL's response to Question 5 below.

Question 3: The Secretary of State must leave at least 28 days for the relevant licensing body to adopt a code of practice once it has been directed to do so. Is this a sufficient period of time for the licensing body to adopt such a code? If so, please say why. If not, please explain why not and make a case for a different period of time.

3.1 This question does not quite reflect the draft Regulations. Under Regulation 3(1), the Secretary of State would direct the licensing body to adopt a code by a commencement date that must be at least 42 days after the direction. However, under Regulation 4(1), the licensing body must notify its proposed code to the Secretary of State within 28 days of the direction (whether the commencement date is within 42 days or a later date). So there is a strict 28 day deadline for producing a code, following a direction to adopt.

3.2 It is very unlikely that a "one size fits all" approach to this deadline will be appropriate. So much will depend on the circumstances. What is appropriate in a situation where there is one (albeit material) aspect of non-compliance would be very different from a situation where there was wholesale non-compliance with the specified criteria. There may well be circumstances where the Secretary of State would reasonably wish remedial action to be taken by the collecting society quickly (because of the nature or extent of the non-compliance and the harm being caused by it), but even then setting too short a deadline will not promote the right behaviour or outcome as it makes it less likely that the remedial action will be effective.

3.3 Against that backdrop, 28 days seems too short a period to be the default period for submitting a proposed code to the Secretary of State following a direction to adopt. Even where such a direction has been given, it is likely that there will be different options for how the licensing body can achieve compliance, and it is also likely that it would be in the interests of members and licensees for the licensing body to consult on those options. That process alone could require significantly longer than 28 days. (By way of illustration, PPL held a 12-week consultation on its current Codes of Conduct.)

3.4 It should also be noted that, following a direction to adopt under Regulation 3(1), failure to adopt a code by the commencement date can be penalised with a financial sanction. This also needs to be taken into account when setting a fair and reasonable deadline.

Alternative approach

3.5 An alternative approach would be for Regulation 3(1) to provide that, where the Secretary of State directs that a code should be adopted, the direction should require the licensing body to make representations, within a specified time limit, as to (a) how long it will reasonably take to submit a proposed code to the Secretary of State (allowing for consultation etc) and (b) how long it will then take to implement the proposed code.

3.6 The Secretary of State could then make a further direction, specifying the deadline for submitting the proposed code and the commencement date for adopting it, which takes fair and proper account of those representations. That way, the Regulations need not give a longer time period in all cases, but could provide flexibility.

3.7 See also PPL's response to Question 4 below.

Question 4: Do the steps described between the Direction in Regulation 3 to the Imposition of a Code of practice in Regulation 5 make it sufficiently clear what process must be followed? If not, please say where you think the gaps are and how they might be filled.

4.1 In various instances in Regulations 3, 4 and 5, references to meeting or complying with the specified criteria should all be qualified by "in material respects" – this has been done in some places but not carried through in others.

Regulation 3 – Direction to adopt a code

4.2 Where a self-regulatory code is only materially non-compliant with certain aspects of the specified criteria, the Secretary of State should only be empowered to make a direction that *those non-compliant aspects* should be brought materially into line with the specified criteria (i.e. the remaining, materially compliant aspects of the self-regulatory code should be unaffected). Otherwise the application of Regulation 3 could waste time and costs and create inefficiency, bureaucracy and confusion.

4.3 Where the Secretary of State is of the opinion that some or all aspects of a self-regulatory code are materially non-compliant, it does not follow that the next step should be a direction to adopt a revised code (whether in whole or, as per the above comment, in part). Instead, it would be more efficient and effective (and supportive of self-regulation) for the first step to be for the Secretary of State to notify the licensing body of the alleged non-compliance and provide a period for the licensing body to either voluntarily address the issue within the self-regulatory space, or to explain to the Secretary of State why the allegation of non-compliance is misplaced.

4.4 Where a direction is made under Regulation 3, similar principles of transparency and a fair hearing should apply as they do under Regulation 5 in relation to imposition of codes (and this should be expressly drafted into Regulation 3, as in Regulation 5):

- The direction must clearly identify the alleged areas of material non-compliance with the specified criteria, and the reasons for believing them to be materially non-compliant (such reasons to cover the materiality as well as the non-compliance); and
- The direction must allow for representations to be made by the licensing body in response, and the Secretary of State must consider those representations. If the Secretary of State decides to maintain its direction that a code be adopted, reasons should be given for the rejection of the licensing body's representations.

4.5 Under Regulation 4(4), where the Secretary of State has the power to request a Code Reviewer to produce a report, it needs to be clarified that this would only apply to a Code Reviewer appointed under Regulation 6 (as it would not be appropriate for the Secretary of State to "conscript" an industry-appointed Code Reviewer in this way).

Regulation 4 – Effect of a direction to adopt a code

4.6 Under Regulation 4(3), the Secretary of State simply informs the licensing body (after submission of the proposed code and before the commencement date) whether or not the proposed code is approved. This needs to take account of the possibility that the proposed code is, in effect, partially approved and partially rejected (because it is materially compliant with the specified criteria in some, but not all respects).

Where aspects of the proposed code are materially compliant with specified criteria, they should be allowed to stand. They should not be replaced unilaterally with a statutory code simply because other aspects of the proposed code require further remedy.

4.7 The process as drafted does not give the licensing body any certainty as to *when* the outcome will be confirmed. The Secretary of State may not inform the licensing body until the day before the commencement date. The licensing body therefore would not know whether or not to continue with its preparations to launch its proposed code, pending the Secretary of State's decision. This could lead to, amongst other things, wasted costs. This uncertainty needs to be addressed, both through the overall approach to setting a commencement date (see answer to Question 3) and through a commitment from the Secretary of State to confirm whether the proposed code is approved within a minimum period prior to the commencement date.

Regulation 5 – Imposition of Code

4.8 There is a lack of clarity as regards timescales and process. Regulation 5(1)(b) requires that the Secretary of State must give notice to a licensing body that it intends to impose a code of practice, but there is no indication of how much notice will be given. A minimum period should be specified, to allow sufficient time for dealing with any representations made, and take account of the reasonable implementation time that the licensing body will require (which will depend on how different the imposed code is from the proposed code rejected by the Secretary of State).

4.9 Similarly, regulation 5(3) jumps straight to the point where the Secretary of State has decided to impose a code (presumably in spite of the licensing body's representations – see below), and notice is given to the licensing body, including details of what will be the Effective Date of the imposed code – but again there is no comfort in the Regulations regarding how much time will be allowed for implementation, even though the licensing body is obliged under the Regulations to operate in line with the imposed code from the Effective Date (and can incur a financial penalty if it fails to do so, under Regulation 10).

4.10 Regulation 5(2)(c) requires that the Secretary of State allow at least 14 days for the licensing body to make representations, but no further timescale or process is specified for dealing with those representations.

Recovery of costs

4.11 Under Regulation 8, the Secretary of State can require a licensing body "to which regulations 3 to 7 apply" to reimburse any "relevant costs" incurred by the Secretary of State. The meaning and therefore application of this provision is too vague:

- There is a difference between Regulations 3 to 7 "applying" to a licensing body and the powers under those regulations being exercised against a licensing body. We believe it is the latter, narrower scenario to which Regulation 8 is referring. The consultation document suggests that what Government has in mind is very *specific* costs recovery from a licensing body in respect of the *actual* costs incurred in relation to that licensing body. If so, Regulation 8 needs to be clarified in these respects.
- If Regulation 8 is to be used to cover costs from multiple licensing bodies, such as where a Licensing Code Ombudsman is appointed in respect of all relevant licensing bodies, Government needs to provide guidance as to how the costs will be allocated between different licensing bodies.

4.12 Regulation 8 also needs to contain safeguards, given the potential financial impact on relevant licensing bodies as private businesses. Any proposed direction for reimbursement should be subject to the same requirements of transparency and a fair hearing as set out above – i.e. with clear reasons given and a chance for the affected licensing body to make representations. There should also be the same rights to appeal against Regulation 8 reimbursement as are provided against Regulation 10 penalties.

Question 5: What should be the principal features that determine whether a Code Reviewer and/or an Ombudsman is "suitably qualified" for their statutory roles

5.1 We would refer the Government, by way of case studies, to (a) the process and criteria followed by the British Copyright Council to select the industry-appointed Code Reviewer, and (b) the remit, experience, reputation, terms of reference and governance structure of Ombudsman Services (as the industry-appointed ombudsman).

Licensing Code Ombudsman

5.2 We support the inclusion of Regulation 6(2), requiring consultation before a statutory Code Reviewer is appointed. This should also apply to Regulation 7 as regards the potential appointment of a statutory Licensing Code Ombudsman. This is particularly important if Regulation 8 might be used to recover the costs of a Licensing Code Ombudsman from all relevant licensing bodies, irrespective of whether they have been the subject of any directions under Regulations 3, 4, or 5.

5.3 A statutory Licensing Code Ombudsman would have to have clear terms of reference setting out e.g. the scope of the scheme and how it is to operate, and in the interests of transparency and good governance there should be express recognition of this requirement in Regulation 7. In addition, Regulations 7(2), 7(3) and 7(4) should all be deleted, or at least made expressly subject to those terms of reference, as otherwise the Regulations are getting into a level of detail that could impede the proper functioning of a Licensing Code Ombudsman.

5.4 For example (as recognised not least in Annex C to the consultation document itself) it is common for there to be certain procedural requirements relating to when, and indeed whether, a potential complainant can use an ombudsman scheme (such as having to exhaust the regulated body's own complaints process first). That is at odds with the drafting of Regulation 7(2), which is also wider in scope than the Enterprise and Regulatory Reform Act 2013 permits, in that it wrongly covers referral of disputes about compliance with a code of practice "or other matter". Similarly, it is not always the case that the regulated body will be bound by the ombudsman's decision, where e.g. the decision is rejected by the complainant. That is at odds with Regulation 7(4).

Powers to requisition information

5.5 Regulations 6(3) and 7(3) provide that a statutory Code Reviewer and statutory Licensing Code Ombudsman, respectively, may require licensing bodies to supply information to them for the purpose of carrying out their functions. Failure to comply can lead to a licensing body incurring a financial penalty under Regulation 10.

5.6 These provisions fail to deal with three key issues:

- *Compatibility with other legal obligations* – how would such a request be reconciled with contractual restrictions, obligations of confidentiality, data protection laws and other such legal or regulatory considerations applicable to the licensing body and which may limit its ability to respond to the request?
- *Cost to the licensing body* – there is no safeguard regarding requests which would incur unreasonable or disproportionate costs for the licensing body (which can be contrasted with safeguards applicable to subject access requests under the Data Protection Act 1998 and to Freedom of Information Act requests).
- *Timescales* – there is no safeguard regarding the frequency with which requests could be made, or the time to be allowed for responding.

5.7 Similar concerns apply to the Secretary of State's own powers under Regulation 9, which include powers (overlapping with Regulations 6(3) and 7(3)) to require information to be supplied to the Code Reviewer or Licensing Code Ombudsman.

Comments on Annex C

5.8 We note generally the contents of Annex C to the consultation document, summarising the principal features of an ombudsman scheme. The second part of Annex C sets out eight additional factors under a heading of "Statutory Ombudsman Schemes", implying that these are factors applicable only to statutory schemes. We have not been able to locate these additional factors on the Ombudsman Association website via the link provided in Annex C, so we are unsure as to their source.

5.9 We would also comment that these factors do not actually appear to be unique to statutory ombudsman schemes (with non-statutory schemes such as that provided by Ombudsman Services: Copyright Licensing possessing the same, or at least closely equivalent, factors).

Question 6: Do you consider the proposals for applying a graduated scale to financial penalties will provide a proportionate response to reflect the respective severity of the breach? Do you consider the proposed difference in the quantum of the penalties is appropriate? If not, please explain your reasons.

6.1 By "graduated scale", we presume that the consultation document is referring to the two-tier approach to financial penalties under Regulation 10, whereby failure to comply with certain provisions of the Regulations can incur a penalty of up to £50,000 whereas for others it would be up to £5,000 with a subsequent daily fine of up to £500.

6.2 The consultation document does not provide any benchmarks for these amounts and we would respectfully request that Government discloses the basis on which it has reached these amounts and the comparisons it has made to other penalty regimes to ensure that its proposals in the Regulations are fair, reasonable and proportionate. We note, for example, that the maximum fine under the CDPA following criminal conviction for unlawful public performance is £5,000, making the financial penalty for that copyright crime a tenth of what a licensing body might be fined under the Regulations. We also note that, whilst the Enterprise and Regulatory Reform Act 2013 specifies that £50,000 is the maximum amount that could be included in the Regulations, it does not follow that the Regulations must use that amount rather than a lower amount.

6.3 The consultation document suggests that Government's intention is for financial penalties under the Regulations to be proportionate to the severity of the "breach". This requires more than simply a two-tier system for different types of breach, as within each type of breach there could be very different cases. In that regard, we note that the penalties are expressed as "up to" the capped amounts. However, the Regulations are completely silent on what guidelines or framework would be used to decide the level of penalty to impose in a particular case. To give certainty to licensing bodies, and confidence in the Regulations to those whose interests they are designed to protect, there should be express reference to key principles (and/or existing Government or other guidance) on how the discretion to set the level of a penalty will be exercised.

6.4 Under Regulation 10, the financial penalties may be imposed not just on the licensing body but also on *"a director, manager or similar officer… or, where the body's affairs are managed by its members, on a member… or any other person"*:

- Director, manager or similar officer – we assume this is intending only to catch managers or officers who are effectively the equivalent of directors (akin to the approach taken in company law). It is difficult to see any justification for imposing personal liability on any other categories of individuals. We would like to see the Regulations amended to make the catchment of this wording clearer.
- Member – it is unclear what is meant by "the body's affairs are managed by its members" so in turn it is unclear when a member might be liable. We would need to understand this better before we would be able to comment further.

- Any other person – we do not understand what this is trying to cover or on what basis it has been included (as it appears to go further than the Enterprise and Regulatory Reform Act 2013 permits). We suggest it should be deleted.

Question 7: Do you think that the General Regulatory Chamber is the correct route of appeal? If not could you please say why and suggest an alternative appeal route.

7.1 Based on the summary provided in the consultation document, PPL does not have any comments on this question.

Question 8: ***(Asked on behalf of the Tribunal Procedure Committee)***
If you believe that the standard rules of procedure need to be supplemented to deal with appeals arising from these regulations, please explain why this is the case.

8.1 Based on the summary provided in the consultation document, PPL does not have any comments on this question.

APPENDIX

DRAFTING COMMENTS

Schedule

The specified criteria for the code of practice are set out in this Schedule.

The code of practice shall require the relevant licensing body to:

Obligation to rights holders

1. offer membership to all rights holders in the sector it manages;

2. have rules or constitution that enables members (and non-members if operating an ECL scheme) to withdraw their rights on reasonable notice;

3. offer fair and balanced representation of rights holder members in the internal decision making process of the relevant licensing body;

4. provide copy of rules/constitution to members and potential members;

Representation

5. act in the best interests of its members as a whole;

6. treat all members (and non member rights holders if operating an ECL scheme) fairly, honestly, reasonably, impartially, courteously and in accordance with its rules and membership agreement;

7. deal with all members transparently;

Obligations to licensees

8. treat its licensees and potential licensees fairly, honestly, impartially, courteously and in accordance with its rules and any licence agreement;

9. ensure that its dealings with licensees or potential licensees are transparent;

10. consult and negotiate fairly, reasonably and proportionately in relation to the terms and conditions of a new or significantly amended licensing scheme;

11. provide information to licensees and potential licensees about its licensing schemes, their terms and conditions and how it collects royalties;

12. ensure that all licences and licensing schemes are drafted in plain English and are accompanied by suitable explanatory material.

Licensees

13. The code of practice shall set out the requirements that the relevant licensing body will impose on licensees including:

Comment [PPL1]: A preamble should be inserted to confirm that all of the standards set out in the specified criteria are subject to other applicable laws and regulations – i.e. a licensing body will not be treated as "materially non-compliant" with these criteria if compliance would require breach of contract, breach of statutory duty, etc.

Comment [PPL2]: This is too wide, as it needs to be the relevant rights for the licensing body's type of licensing (which is not the same as being in the same sector).

Comment [PPL3]: In the interests of cost-efficiency, it would be good to have clarification here that this documentation can be "provided" by means of making it clearly available on the licensing body's website etc. This also applies to item 11.

Comment [PPL4]: This does not fully cater for the potential range of different licensees that a licensing body will have. More complex, negotiated licences may, inevitably, not be in "plain English" or require explanatory material. Some may be set by the Tribunal. Perhaps qualify with "where possible", or similar, to cater for these exceptions?

(a) to respect the rights of creators and rights holders including their right to receive fair payment when their works are used; and

(b) that copyright material will only be used in accordance with the terms and conditions of a licence.

Conduct of employees, agents and representatives

The code of practice shall require the relevant licensing body to ensure that:

14. its staff training procedures for employees, agents and representatives includes conduct that complies with the obligations to members and licensees set out in these specified criteria;

15. its staff provide licensees and potential licensees with clear information, including information about cooling off periods which may apply to new licences; and

16. its employees and agents are aware of procedures for handling complaints and resolving disputes and are able to explain those procedures to members, licensees and the general public in plain English.

Comment [PPL5]: What level of familiarity is appropriate will vary between different teams of employees; non-customer-facing teams will not need the same level of training, for example.

Information and transparency – monitoring and reporting requirements

17. The code of practice shall state that the relevant licensing body shall:

(a) inform members, licensees and potential licensees, on request, about the scope of its repertoire, any existing reciprocal representation and the territorial scope of its mandate;

(b) maintain and make available to members on request, a clear distribution policy that includes the basis for calculating remuneration, the frequency of payments, and clear information about deductions and what they are for;

(c) provide details of tariffs in a uniform format on website;

Comment [PPL6]: It might be better to refer to the details being in a "clear, accessible and, where possible, uniform format" – as where a licensing body carries out a number of distinct types of licensing it may be less useful to try and make all of those "uniform".

(d) provide details of its code of practice and complaints procedure, accessible via a link on the website homepage;

(e) undertake that all information provided is kept up to date, is readily accessible and written in clear language that can be easily understood by licensees, potential licensees and members.

Reporting requirements

18. The code of practice shall state that the relevant licensing body shall publish an annual report which includes:

Comment [PPL7]: Provided that the information is published annually and made readily accessible, it should not have to be in one single report as that may not be cost-efficient or user-friendly; some of these items might be better as website information that can be updated more often than once a year.

(a) the number of rights holders represented, whether as members or through representative arrangements including, where possible and if applicable, an estimate of the number of rights holders represented by an ECL scheme;

(b) the distribution policy;

Comment [PPL8]: This is already dealt with in item 17(b) and it does not really make sense to treat it as something published annually, so we would suggest deleting this from here.

(c) total revenue from licences granted for its repertoire during the reporting period;

(d) total costs incurred in administering licences and licensing schemes;

(e) itemised costs incurred in administering licences and licensing schemes;

(f) allocation and distribution of payments of revenues received and extent to which this is compliant with its distribution policy;

(g) procedures for the appointment of directors to the relevant licensing body and details of any appointment during the course of the reporting period;

(h) details of remuneration of each director of the relevant licensing body during the reporting period; and

Comment [PPL9]: Presumably this is intended to refer to executive statutory directors (as opposed to e.g. non-executive directors who do not receive a salary from the licensing body).

(i) a report regarding compliance with code of practice over the past year, including data on total level of complaints and resolution methods.

Complaints handling

19. The code of practice is to provide that the relevant licensing body shall adopt and publicise:

(a) procedures for dealing with complaints from members, non member rights holders (if operating an ECL scheme), licensees and potential licensees; and

(b) a complaints procedure.

Comment [PPL10]: The difference (if any) between these two items is unclear, and what is to be expected of licensing bodies under this item should be clarified.

20. The complaints procedure shall:

(a) define the categories of complaints and explain how each will be dealt with;

(b) ensure information on how to make complaints is readily accessible to members, licensees and potential licensees;

(c) provide reasonable assistance to a complainant when forming and lodging a complaint;

(d) specify who will handle a complaint on behalf of the relevant licensing body;

(e) indicate timeframe for the handling of a complaint or dispute;

(f) provide that the relevant licensing body will give a written response to each complaint made in writing;

(g) provide that the relevant licensing body will give a written decision in any dispute and give reasons for that decision;

(h) ensure that the relevant licensing body makes adequate resources available for the purpose of responding to complaints and resolving disputes; and

(i) provide that the relevant licensing body will regularly review its complaint handling and dispute resolution procedure to ensure they comply with the minimum standards.

Ombudsman Scheme

21. The code of practice shall require the relevant licensing body to appoint and fund an independent and impartial person to arbitrate on disputes.

Comment [PPL11]: Recognition should be added that an industry-wide appointment may be made.

22. The code of practice shall provide that the Ombudsman shall be the final arbiter on complaints between the relevant licensing body and its members or licensees in relation to these specified criteria for their code of practice.

Comment [PPL12]: This is potentially too restrictive, as the member or licensee may wish to pursue other legal avenues (in which case, the ombudsman outcome may not bind the licensing body either).

23. The Ombudsman service will not include matters that are within the jurisdiction of the Copyright Tribunal.

Independent Code Reviewer

24. The relevant licensing body shall appoint and fund an independent code reviewer to monitor and review the performance of the relevant licensing body against these specified criteria.

Comment [PPL13]: Recognition should be added that an industry-wide appointment may be made.

25. The independent review shall comprise an initial review of the code of practice against the specified criteria one year after implementation and then at intervals of at least three years thereafter.

26.The code of practice shall provide for the code reviewer to publicise and consult during the course of his review and to publish his conclusions.