

Consultation on Collective Rights Management in the Digital Single Market

Response on Behalf of:-

The Copyright Licensing Agency Limited ("CLA")

Authors' Licensing and Collecting Society ("ALCS")

Publishers Licensing Society ("PLS")

1. Joint Response

This Response is entered on behalf of CLA, ALCS and PLS (ALCS are separately entering a Response dealing with points of particular interest to them). CLA, ALCS and PLS are involved in the collective licensing in the UK of the right to copy, scan and store extracts (and to use and store digital extracts) from books, journals, magazines and other periodicals published in the UK and in the distribution of licence fees to the appropriate right holders. Works published in those overseas countries where a suitable Repertoire Exchange Agreement with another collective management organisation ("CMO") has been concluded are also covered by such licences.

CLA issues these licences as agent for ALCS and PLS who obtain their rights from their creators and publishers as appropriate. Both of the Societies have completed an Appendix giving details of:

- (i) their constitution;
- (ii) their governance structure;
- (iii) their membership structure;
- (iv) the way in which they obtain their mandates;
- (v) their procedures for obtaining consent/authorisation to new licence schemes; and
- (vi) their distribution policy.

2. Executive Summary

2.1 We believe the Government should adopt Option 2, repealing the Licensing Body Regulations, with full implementation of the Directive through the 'copy out' approach.

2.2 In addressing User obligations on provision of copying data imposed by Article 17 of the Directive, we believe there should be sector-specific guidelines rather than a broad industry norm which would be unworkable. It is worth noting that, in terms of those users who are

licensees, data collection requirements are already subject to the power of the Copyright Tribunal to rule on what constitutes a reasonable licence term.

As regards those users who do not take a licence (where their obligations cannot be contractually enforced) the Article 17 obligations should be implemented and supported either:

- (i) through a revision to the Civil Procedure Rules regarding pre-action disclosure and/or a revision to the CPR so that a refusal to give a declaration (or the giving of a false declaration) would be a factor to be taken into account when considering an application for additional damages under s.97 of the CDPA; or
- (ii) by giving the Copyright Tribunal the power to require disclosure and/or 'no copying' declarations.

In addition, CMOs should be given a right to launch a reference to the Copyright Tribunal and a right to take legal action in their own name pursuant to Article 4 of the Enforcement Directive.

Annex B

Consultation response form

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

We support Option 2.

Both the Government and CMOs in the UK have invested a lot of time and resources in building the voluntary self-regulation framework (individual codes of conduct complying with the BCC principles and standards) and in the development and implementation of the Licensing Body Regulations as part of the Modernising Copyright exercise last year.

This means that UK CMOs have already made significant progress in complying with the requirements of the CRM Directive. There is therefore some logic in pursuing Option 1. But, as the IPO's work on the GAP analysis shows, more needs to be done to ensure that the UK complies fully with the CRM Directive and that UK CMOs can operate in compliance with its provisions. Whilst it is tempting to deal only with the additional requirements of the CRM Directive not already reflected in the Licensing Body Regulations, there is a risk of legislative overlap and/or an inadequate transposition of the CRM Directive through a piecemeal approach.

From the perspective of CMOs, the greater concern is the risk of multiple layers of regulation producing confusion and uncertainty with an increased cost of compliance. It is also important that UK CMOs are operating under the same set of rules as their EU counterparts and this requires that there should be a consistent implementation across the EU reducing the scope for differing interpretations.

It is in the interests of users, licensees and CMOs alike that there should be one clear set of rules and the possible benefits of Option 1 are, in our view, outweighed by the risks.

2. How important is it to retain those aspects of the 2014 Regulations that go beyond the scope of the Directive?

This would risk "gold plating" the CRM Directive instead of following the preferred 'copy out' approach and risks causing confusion and possibly adding to the regulatory burden for all stakeholders.

The Consultation paper highlights some of the areas where the Licensing Body Regulation goes further than the CRM Directive:

- *requirements for licensees to respect creators rights and ensure that the use of copyright material is in accordance with the licensing terms and conditions.*
 - these are contained in the Specified Criteria which are part of the Code of Conduct which CMOs are required to adopt under the Licensing Body Regulations. As such it is hard to see how it provides a direct statutory duty on users to respect creators rights and how that could be enforceable. This principle could however usefully be incorporated into formal Guidance accompanying the Regulations.
- *requirements for users to ensure that use of copyright material is in accordance with the licensing terms and conditions.*
 - once a user takes a licence, they are obliged under contract law to comply with the terms and conditions of the licence, subject to the jurisdiction of the Copyright Tribunal. So it is hard to see how this adds anything at all and, as above, may not be enforceable directly against a user;
- *CMOs to ensure its employees, agents and representatives are trained in a code of conduct complying with the minimum standards.*
 - this would need to dovetail with the various requirements on transparency, etc. in the CRM Directive and may add another layer of regulations whereas this requirement could sit within the CMO Codes of Conduct.

All UK CMOs have now introduced codes of conduct, which were reviewed by the Independent Code Reviewer and were broadly approved. There had been very few complaints by users/licensees under the codes of conduct and none for ALCS, CLA and PLS. It might be argued that this is attributable to the effectiveness of the Licensing Body Regulations, but given the relatively few number of complaints prior to their introduction (and again none for ALCS, CLA and PLS) this seems dubious.

The introduction of voluntary Codes encouraged by the work of the IPO and the BCC has proved useful as a best practice guide for CMOs and ALCS, CLA and PLS would intend keeping their codes of conduct. We believe most other CMOs would also wish to continue with their Codes as part of a self-regulatory approach and as being the simplest way to comply with the requirements of the CRM Directive. Therefore there is no need for further regulation requiring codes of conduct or retention of those parts of the Licensing Body Regulations on that aspect.

The appropriate place to insist, as a matter of law, that CMOs should have Codes of Conduct is under the ECL Regulations where the statutory authority given to license copyright works

without right holders' express permission needs to be balanced by a requirement to have a suitable Code of Conduct with appropriate sanctions for failure to comply.

In terms of providing protection for creators' rights, it would be more useful if CMOs were to have a right to apply to the Copyright Tribunal either to refer a dispute over an existing licence scheme or to refer a case where a user will not take a licence. It would also be helpful if there were easier enforcement procedures for infringement; in particular the UK should implement Article 4 of the Enforcement Rights Directive to recognise CMOs as being entitled to seek the benefit of the measures, procedures and remedies that the Enforcement Directive requires Member States to provide.

There is also some protection for right holders (Article 17 of the CRM Directive) requiring Member States to ensure that users provide CMOs with information on the use of rights such as is necessary for the collection of revenues, as well as for distribution purposes. This suggests a clearer, legal obligation on users than is contained in the Licensing Body Regulations and again suggests there is little merit in the retention of the Licensing Body Regulations on this count.

In summary, the Licensing Body Regulations do not add significantly to the provisions of the Directive and we do not believe it would be helpful to retain any of their provisions.

- 4. If Option 2 was the preferred option, as a CMO would you consider retaining a revised code of practice as a means of making the new rules accessible to members and users?**

As above, ALCS, CLA and PLS intend to keep their codes of conduct which, as the consultation paper suggests, make the new rules accessible to members, licensees and other users. They are committed to reviewing their Codes periodically to ensure they are kept up to date and address any changing circumstances.

- 5. Given the definitions of “collective management organisation” and “independent management entity”, would you consider your organisation to be caught by the relevant provisions of the Directive? Which type of organisation do you think you are and why? Please also say whether you are a micro-business.**

ALCS, CLA and PLS are all collective management organisations within the terms of the Directive and to whom the provisions of the Directive will apply. None of the organisations is a micro-business.

- 6. If you are a right holder or a licensee, do you either have your rights managed or obtain your licences from an organisation which you think is an IME? If so, could you please identify the organisation, and explain why it is an IME.**

Not applicable.

- 7. Do you have subsidiaries? Which of the Directive’s provisions do you think would apply to them, and why? Please set out your structure clearly.**

ALCS and PLS are currently the sole members of CLA although other CMOs representing right holders whose rights can be licensed as part of CLA’s business and who are not already represented by one of the existing two members may apply to join CLA as a member.

CLA does not have any subsidiaries. ALCS has an interest in APLA (please see separate ALCS response). ALCS and PLS jointly own a newly incorporated company, Fetter Investments Ltd, which is a vehicle for funding future investments in CLA.

As a general point, all the provisions of the Directive that apply to CMOs should also apply to any subsidiaries of those CMOs where those subsidiaries are undertaking some of the activities regulated by the CRM Directive, whether or not those subsidiaries themselves would be caught by the provisions of the CRM Directive.

8. Who do you understand the “right holders” in Article 3(c) to be?

We agree that the term “right holders” should be interpreted broadly as including both members of a CMO and non-member right holders, whether or not they have signed an agreement with a CMO for the exploitation of their rights.

9. If you are a CMO, what are the practical effects of a relatively broad definition of “right holder” for you?

We have seen and agree with the response of ALCS to this question.

In the case of PLS, publishers have always resisted becoming members of a CMO, preferring instead to provide a non-exclusive mandate to the CMO(s) of their choice.

10. What do you consider falls in the scope of “non-commercial”?

We believe the term “non-commercial” includes all activities carried out on an industrial scale, whether or not for profit. Thus activities such as healthcare, transport, provision of utilities that either are or have been in the public sector might equally be carried out in the private sector, but are nevertheless conducted on a commercial scale even though they are “not for profit”. This approach is already reflected in UK law where the offences for secondary infringement focus on commercial activities, e.g. selling, hiring, exhibiting, distributing (in the course of business), but also include any distribution “otherwise than in a course of a business” where it is to “such an extent as to affect prejudicially the owner of the copyright” (s. 107 the CDPA).

11. If you are a CMO, to what extent do you already allow members scope for non-commercial licensing? Please explain how you do so?

All of the licences granted by CLA, on behalf of ALCS and PLS, are non-exclusive; therefore members and non-members alike are able to license themselves whether or not on a commercial basis.

12. What will be the impact of allowing right holders to remove rights or works from the repertoire?

The various existing licensing schemes operated by CLA on behalf of ALCS and PLS already allow right holders to choose whether or not to participate in CLA licences and/or to exclude particular works. Most of CLA's blanket licences are "opt out", that is to say all works of right holders are assumed to be included in CLA licences unless the right holder elects to exclude some or all of their works either by notice to CLA, ALCS or PLS (similarly for overseas CMOs).

However, CLA has not hitherto been able to handle exclusions that are specific to individual blanket licences, as opposed to participation in, or exclusion from, its suite of blanket licences. But the CRM Directive is clear and ALCS, CLA and PLS agree that right holders should have the choice to choose in which collective licences they wish to participate. This right to choose is now reflected in PLS' new mandate referred to above.

There will inevitably be a systems cost to this in terms of creating and maintaining separate exclusions on a licence-by-licence basis and does conflict slightly with one of the main benefits of collective licensing (that is it's simple and inclusive nature), but we agree that it is important that right holders freedom of choice is respected.

13. Under what circumstances would it be appropriate for a CMO to refuse membership to a right holder i.e. what constitutes "objective, transparent and non-discriminatory behaviour"?

No general description can be given as the test is a fact-specific one that can only be judged on a case-by-case basis. As an example, a right holder (whether an individual right holder or a CMO) that did not meet the relevant CMOs eligibility criteria for membership in terms of the types of work and/or rights being licensed could be refused membership. Similarly for a CMO that could not comply with the on-going membership conditions, such as a CMO applicant member that had inadequate distribution systems.

14. What should "fair and balanced" representation in Article 6(3) look like in practice?

ALCS, CLA and PLS, along with most other UK CMOs, are constituted as private companies limited by guarantee. Ultimate control vests in the General Meeting of the company which generally will delegate many powers to the Board of Directors. Normally the Board will comprise a majority of non-executive directors appointed by the members and which will further delegate operational powers to executive officers subject to supervisory oversight from the Board. The Directive provides a framework for what powers can be delegated by the company in a General Meeting by the Board which broadly complements existing practice in the UK. Fair and balanced representation, therefore, has to be determined by:

- a) a fair and transparent mechanism for allowing members to vote in General Meeting avoiding weighted voting systems that unfairly favour a particular type or class of member and which is disproportionate to their contribution to the company in repertoire or other terms. Typically weighted voting rights are in proportion to distribution shares and it is thus essential that the distribution systems are fair and transparent;
- b) appointment of the Board of Directors by the members: it is important that the membership of a company control the composition of the Board of Directors and that such appointments are made in a fair and transparent voting process as in a) above. But it is entirely proper that the members may allow the Board to appoint one or two Directors to reflect particular interest groups, although the overall composition of the Board should be a matter reserved to the company in General Meeting.

There may be a case on occasions for certain operational matters to be guided by consultative committees established by the Board which might seek representation from the wider membership and/or right holder community where the issues to be discussed may particularly affect one interest group.

15. What do you consider to be an appropriate “regular” timeframe for updating members’ records?

ALCS and PLS deal promptly with any changes in right holders’ details after receipt of notice from their members and update their databases as soon as practicable.

16. Is there a case for extending any additional provisions in the Directive to right holders who are not members of the CMO? If so, which are these, why would you extend them and to whom (i.e. non-members in ECL schemes, mandating right holders who are not members, or any other category of right holder you have identified in answer to question 7)? What would be the likely costs involved? What would be the impact on existing members?

We believe all the requirements in the Directive should be extended to all those non-members who, as set out in Article 7(1), have a direct legal relationship with the CMO – they are in effect quasi-members. ALCS, CLA and PLS already comply with the obligations regarding electronic communication, lists of works and categories of works included or excluded from their licences and complaints procedures (e.g. Codes of Conduct) and this includes users as well as “quasi-members”.

17. Which of the discretionary provisions of Article 8 do you think should be adopted?

While it is right that the general policy on distributable and non-distributable amounts and on investment policy should be matters reserved to the company in General Meeting as required by the Directive, it is not practical for the detailed implementation of these, and the matters listed in Articles 5 (8) and (9), to be reserved to the General Meeting.

In accordance with corporate practice in the UK, risk management policy and the acquisition of immovable property is normally delegated to the Board.

Issues regarding proxy votes should be a matter for the General Meeting to decide. Members should be free to choose whether or not to delegate mergers and loans.

18. Do you have an existing supervisory function that complies with the requirements in Article 9? If not, can you give an estimate of the likely costs of compliance?

Under UK law and for CMOs constituted as private limited companies (including CLA, ALCS and PLS), the supervisory function is carried out by the Board of Directors subject to the overriding control of the company in General Meeting.

19. Which of the Directive's provisions are existing requirements under UK company law?

We understand the IPO will be producing an analysis on this.

20. If you do not already have a distribution system that complies with the provisions of Article 13, can you say what the cost of implementing the requirements will be?

We believe the distribution systems in place ensure that CLA's distributions to its members and overseas CMOs and the distributions by ALCS and PLS to creators and publishers respectively are already in compliance with the requirements of Article 13. CLA's data collection systems on which the distributions are based are reviewed regularly to ensure that they give as accurate distribution information as is possible without incurring a disproportionate cost or being unduly burdensome on licensees.

ALCS and PLS have commissioned an independent repertoire valuation process in which various organisations representing visual creators are participating. This process is designed to review, in the light of the best available evidence, the balance of allocations of licensing

revenue between the different classes of right holders of the constituent elements of copyright in the various types of publications covered by CLA licences. A binding decision is expected later this year.

There is likely to be an additional, but at the moment unquantifiable, cost in complying with the distribution requirement for overseas right holders included in ECL licences where CLA does not have a representation agreement in place.

21. What are your organisation's current levels of undistributed and non-distributable funds, as defined in Article 13?

PLS and CLA each has under £0.5m of funds that would be deemed "non-distributable" under the Directive; please refer to the ALCS Response for its figures.

22. What is your estimate of the current size and scale of non-distributable amounts that are used to fund social, cultural and educational activities in the UK and elsewhere in the EU?

We have no information on this.

23. Do you collect for right holders who are not members of your CMO? If so, how much of that rights revenue is undistributed and/or non-distributable? If you collect for mandating right holders who are not members of your CMO, to what extent do those right holders have a say in the distribution of non-distributable amounts, and what do you think of the Government exercising its discretion in relation to those amounts?

Please see the Appendix which gives details of the structure of each of ALCS and PLS, their constitution and the way in which they derive the rights they pass on to CLA and which covers their distribution procedures. We believe CMOs are best placed to deal with the appropriate use of non-distributable funds. While Article 13.6 allows member states to 'limit or determine' the use of these funds by CMOs for social, cultural and educational purposes for the benefit of right holders, we do not believe the discretion allows the government to take control of the funds and itself disburse them.

24. What should be the criteria for determining whether deductions are 'unreasonable'?

The requirement (in Article 12) for deductions to be reasonable can only be measured by reference to the cost of producing those services, assuming that the CMO is providing those services on a cost effective basis having regard to national and international comparators. In the case of CLA, ALCS and PLS, any surplus deductions (administration charge taken but found not to be required to cover operating costs) are redistributed as soon as possible.

25. Are there any pros and cons to be particularly aware of in case the Government exercises the discretion?

The Consultation Paper correctly identifies one risk to the Government exercising its discretion. Given the protections offered to non-member rightsholders under the Directive (and in the ECL Regulations), and with the right to opt out of collective licences, it is appropriate to leave the decision on non-distributable funds to the right holders.

26. Is there currently a problem with discrimination in relation to rights managed under representation agreements? If so, what measures should be in place to guard against this?

CLA deals with the rights it receives under representation agreements in exactly the same way as it does in the case of the rights it receives from UK rightsholders via its members.

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

CMOs should continue to provide the information that is currently made available in negotiations on licence terms and conditions, licence fees and repertoire details. Users should be obliged, as required under Article 17 of the Directive, to provide relevant data as to the extent of usage of copyright works. In the case of CLA licences, this may include accurate data as to the numbers of staff or students in their institution, the extent and use of internal copying and the reliance and use of externally supplied material through document supply and media monitoring organisations.

28. What format do you think the user obligation should take and how might it be enforced? What is “relevant information” for the purpose of user reporting?

For CLA, 'relevant information' is what has been copied, how often and how many times, including details sufficient to identify the work in question (title, author, publisher and/or ISBN/ISSN).

The format should be in an automatic format that can be ingested into CLA's systems using, wherever possible, reporting tools supplied by CLA (such as its API) to reduce the burden of reporting on users. Incorporating reporting into users workflow systems not only makes it simpler for users to comply but also overcomes the enforcement issue (at least for licensees).

We would envisage the establishment of voluntary industry codes, in consultation with the IPO, for data reporting by licensees and which could include a section for use with unlicensed users to help them establish whether or not they need a licence. It is however unlikely that a common industry standard for reporting obligations on users can be established across all the CMOs as the requirements are so very different and it is likely that they will have to be agreed standards for each sector.

Please note that it is likely that an application by CLA/ALCS/PLS for authorisation to run an ECL scheme would include details of the reporting requirements forming part of the licence terms and conditions for the ECL licence.

The question assumes that the obligations set out in Article 17 of the Directive relate only to licensees and the requirements for them to provide data to the CMO in order to enable that CMO to distribute licence fees fairly amongst its rightsholders. But Article 17 sets out twin obligations on users to provide relevant information at their disposal on the use of rights as is necessary for a) the collection of rights revenue as well as b) its distribution to rightsholders.

The reference to information necessary for the "collection of rights revenue", as distinct from the provision of information required for distribution purposes, clearly suggests that all users of copyright works, whether licensed or not, should be subject to this obligation. The definition of "user" in Article 3 (k) refers to any person carrying out "acts subject to the authorisation of rightsholders" or subject to remuneration or compensation rights of rightsholders. Whilst this undoubtedly includes licensees, it surely also includes those who do not have a licence but are undertaking infringing acts; these are, in UK law, "restricted acts" where the authorisation of the rightsholders is required. The only limit is that a "user" does not include a natural person acting outside of their trade, business, craft or profession (see Recital 33) or acting in the capacity of consumer.

The question then is how could be this introduced into UK law as a legally binding obligation. CLA has previously suggested that if the rules regarding applications to the Copyright Tribunal were amended to allow licensing bodies to launch a reference, one of the powers of the

Tribunal might be to require a user who refuses to take a licence to sign a no copying declaration which declaration could be given force of law e.g. under the Statutory Declarations Act 1835; alternatively the provisions of the Fraud Act 2006 (s.2) as to false declarations could apply.

If CMOs were given their own right to sue in accordance with Article 4 of the Enforcement Directive the implementing Regulations could provide that such a declaration could be sought as part of a pre-action order for disclosure under Rule 31.16 of the Civil Procedure Rules.

If however the UK Government feels that it does not need to impose such an obligation on users in order to comply with the Directive, it could instead amend the Civil Procedure Rules so that a refusal to sign such a declaration, or the giving of a false declaration, would be a factor taken into account by the Court when assessing damages, in particular an application for additional damages under s. 97 CDPA should evidence of infringing copying by that users subsequently be discovered and used in an action for infringement. Alternatively this could be achieved by an extension to Regulation 3 (1) of the Intellectual Property (Enforcement etc.) Regulations 2006 (SI 2006 No. 1028) which deals with the factors to be considered in an assessment of damages in an action for infringement of an intellectual property right.

29. What is the scale of costs incurred in administering data returns that are incomplete and/or not in a suitable format?

A rough estimate is £250,000.

30. Which of the Transparency and Reporting obligations differ from current practice, and what will be the cost of complying with them?

The IPO analysis on what is already required by UK company law and accounting rules will be useful here but an outline response is given below. Of the matters listed in the Annex to the Directive (and by reference to their paragraph numbers):

1(c) information on refusals to grant a licence is completely new;

1(f) total remuneration plus benefits for managers and those exercising a supervisory function appears more extensive than current practice or as required by UK law although we do provide this information;

1(h) social and cultural deductions would be a new element in any event;

In the case of:

- 2 (financial information);
- 3 (information on relationships with other CMOs); and
- 4 (social, cultural and educational services)

all require in most places a breakdown of information per category of rights, type of use and, in places, per organisation. Where costs information is indirect and cannot be attributed to one or more categories of rights, an explanation of the methods used to allocate such indirect costs is required.

Whilst most of the extensive information, particularly the financial information, is already provided as part of current practice or is required by UK law and/or accounting rules it is provided on a broader level and not broken down by category. It will require systems development and is likely to be difficult and expensive to achieve this, although costs of compliance cannot yet be estimated.

31. What do you think qualifies as a “duly justified” request for the purposes of Article 20?

Any user intending to, or interested in taking, a licence from a CMO and any right holder interested in seeing what repertoire is being offered by a CMO (and on what terms) can make a “duly justified” request (licensees also, but they are entitled to, in any event, under the licence terms and as required elsewhere in the Directive). Clearly vexatious or frivolous requests would not be “duly justified”. Generally this information requirement will be met by CMOs making information available on their websites so that requests can easily be answered by a cross-reference to their website.

CLA’s website includes extensive detail on the repertoire offered, works that are included or excluded, and the territories covered. There is an additional Look-Up tool for users and licensees to use if they wish to research any particular title.

32. What factors help determine whether a CMO is able to identify musical works, rights and right holders accurately (Article 24(2))?

Not applicable.

33. What standards are currently used for unique identifiers to identify right holders and musical works? Which of these are voluntary industry standards?

Not applicable.

- 34. What would you consider to be a “duly justified request for information” (Article 25(1))? What is not?**

Not applicable.

- 35. What would you consider to be “reasonable measures” for a CMO to take to protect data (Article 25(2))? What would be an unreasonable ground to withhold information on repertoires?**

Not applicable.

- 36. What period of time would you consider would constitute “without undue delay” for the purposes of correcting data in Article 26(1) and for invoicing in Article 27(4)?**

Not applicable.

- 37. How many licensees do you have in total? Of these, are you able to say how many are small and medium enterprises and how many have a bigger turnover than you do?**

CLA has over 30,000 licences in the education sector and over 6,500 licensees in the business and public administration sector. We do not have detailed information available on the size of all of our licensees but it is likely that all HEIs, most schools and colleges, all local authorities and central government departments, most public bodies and many business licensees will be significantly larger than CLA in terms of turnover and staff numbers. Where CLA negotiates with representative bodies acting on behalf of a class of licensee, they will be many times larger than CLA.

- 38. What do you think are the most appropriate complaints procedures for handling disputes and complaints between CMOs, users and licensees, including for multi-territorial disputes? Please say why.**

We believe there are sufficient existing structures in place involving voluntary self-regulation, Codes of Conduct and Ombudsman services and the potential for third party mediation services (IPO mediation, accredited commercial mediators and possibly the WIPO mediation

service for cross-border disputes). But we think this should be a matter of choice for the CMOs and the UK can fulfil its obligation regarding the dispute resolution provisions of Article 35 through the existing structure whereby licensing disputes can be referred to the Copyright Tribunal but that, in accordance with the overriding objective of the Civil Procedure rules, mediation is encouraged and made available.

But this question does not address the issue referred to in the Consultation Paper and which arises from Article 35 regarding the imbalanced nature of the Copyright Tribunal as currently structured whereby, as the Consultation Paper notes, only users/licensees may make a claim. This has long been recognised as inappropriate and it must now be time for the Government to reform the Copyright Tribunal so that CMOs also have a right of access to this body. We are happy to meet separately with the IPO to discuss how this might work and will separately forward a copy of previous correspondence with the IPO on this.

39. What is your preferred option for the national competent authority? Please give reasons why.

We believe the IPO should be the national competent authority for the UK. It has the experience and expertise to do this, is responsible for the Copyright Tribunal and offers the IPO mediation service referred to in the previous response.

40. Bearing in mind the scope of its ongoing responsibilities, what would you consider to be an appropriate level of staffing and resources needed? Please give an upper and lower estimate.

This is something that would have to be monitored over time, depending on the number of issues referred to the NCA in accordance with the Directive, but it would seem that two members of staff ought to be supplied.

41. How should the costs of the NCA be met?

We do not believe it is appropriate for costs of the NCA, which is providing a national service as required by EU law, to be funded by private organisations such as CMOs and which, in effect, would mean that individual authors and publishers would be funding this Government service.

The Government is rightly proud of the size of the scale and importance of the creative industries in the UK; it is entirely right therefore that the Government should regard the NCA as

its investment in providing the right framework for a thriving intellectual property regime that underpins the creative industries to balance the significant investment currently being made by CMOs to comply with Codes of Conduct, the Licensing Body Regulations, the CRM Directive and the ECL Regulations.

Understandably there may be a concern that there will be deluge of unfounded complaints increasing the IPO's operating costs but this could be handled through a rigorous system of refusing to entertain those deemed frivolous or vexatious. A small application fee (perhaps in line with the fee for issuing a claim in the County Court) could also be charged to deter nuisance complaints where the fee could be recoverable by the applicant where the issue or complaint was found to be justified and the CMO at fault.

Authors Licensing and Collecting Society

1. Constitution

ALCS is a collective rights management organisation representing the interests of authors. The current membership of over 85,000 includes authors working across diverse genres for print, audio, audio-visual and digital publications. ALCS is a private company limited by guarantee owned by its members.

2. Governance Structure

ALCS is governed by a board of directors comprising the CEO, Chair and members elected by the membership. The board has the option to appoint up to three directors who may not be members subject to the proviso that the majority of directors must be members elected by the membership. Decisions at board meetings require a majority vote.

3. Membership Structure

ALCS has two categories of membership: Ordinary Members (authors) and Successor Members (the successors/beneficiaries of deceased authors/Members). All members are given equal voting rights and all have the right to stand for election to the board when vacancies arise.

4. Ways in which mandates are obtained

Authors joining ALCS are required to sign an application form which confirms their acceptance of the terms of membership as reflected in the company's Articles of Association. Under the terms of the Articles, authors provide a non-exclusive authority to ALCS to license certain rights on their behalf and institute proceedings in the event of any infringement of the rights. In the event of any proposal to extend the scope of the mandated rights, the Articles provide Members with the right to exclude their works from any such extension. The Articles also provide for a general right for members to opt their works out of any scheme on giving notice to the company.

5. Procedures for obtaining consent/authorisation to new licence schemes

Where new schemes are proposed that do not involve the extension of mandated rights but vary the means by which such rights are exercised, ALCS consults within a forum of bodies representing the different sectors of the writing community.

6. Distribution Policy

The ALCS Distribution Rules are set by the board and approved by the members in a general meeting. A sub-committee of the board, the Distribution and Membership Committee, is responsible for setting distribution policy.

Publishers Licensing Society

1. Constitution

PLS is authorised under its Articles of Association to exercise and enforce the copyright and related rights of rightsholders in literary, dramatic, musical and artistic works. In practice its core activity so far has been the collective licensing of secondary copying rights on behalf of book, journal and magazine publishers and centralised administration of publishers' rights.

PLS is a private company limited by guarantee and was incorporated in 1981.

2. Governance Structure

The Board of Directors is appointed by the members of PLS (see below). Each member is entitled to appoint at least one and no more than three directors who shall be approved in a general meeting of the members. The Board of Directors may appoint the Chief Executive to the Board. The Board may also appoint a chairman independent of any appointment of the members. Directors are appointed to serve for four years and may serve up to one further term of four years if re-elected.

The Board currently comprises the Chairman (independent of the members), the Chief Executive and nine directors (each member having appointed three directors). The practice of the members is to appoint two publishers from their membership and one employee or consultant.

3. Membership Structure

Those eligible for membership of PLS are properly constituted trade associations representing rights holders of copyright works which meet the eligibility criteria for membership as approved by the members from time to time.

The current members of PLS are the Publishers Association, the Association of Learned and Professional Society Publishers and the Professional Publishers Association.

4. Ways in which PLS obtains authority to exploit rights

PLS obtains non-exclusive authority from publishers directly when they sign a Mandate. A publisher need not be a member of a trade association member of PLS in order to sign up to PLS. PLS currently holds mandates from over 3,200 publishers.

PLS has an agreement in place with each of CLA and NLA media access under which it authorises those licensing agents to license the relevant rights for which PLS has a mandate.

The current mandate authorises PLS to license the publisher's rights through collective licensing by Copyright Licensing Agency (CLA) for paper copying of limited extracts of works. PLS is obliged to obtain the publisher's express opt-in to each and every digital licence that may be offered by CLA. PLS also seeks opt-ins to international digital licences on a territory by territory basis.

Some magazine publishers have recently required PLS to license their rights for the business and government sectors only through NLA media access and PLS has given effect to this.

Publishers are currently being invited to sign a new mandate with PLS called a Publisher Account. This will become effective on 1st July 2015. The terms and conditions reflect recent legislative changes and the new mandate includes all paper and digital copying rights from the outset. However publishers can choose to opt out their digital rights as well as any titles, licences and territories through an online account management system called PLSe, so providing full flexibility.

Publishers may terminate their PLS mandate on six months written notice.

5. Procedures for obtaining consent/authorisation to new licence schemes

When a new licensing scheme is being considered and developed PLS consults its mandating publishers, both in meetings and through its website. The relevant licensing agent is invited to present the proposal in a meeting with publishers. Publishers have a chance to test the proposal and to make suggestions as well as to give an indication as to whether their company would be likely to participate in any such new arrangement.

Once the new proposal has been fully developed and refined, usually in consultation also with potential licensees, the proposal is presented to the PLS Board and circulated to the trade association members of PLS for approval. The PLS members consult their own respective memberships to inform their decision as to whether or not to approve a particular proposal. PLS will then approve the proposal or not, according to the advice from all the members of PLS.

There is no obligation on publishers to participate in any new licence. Publishers will in future be able to opt out of any such arrangement easily through PLSe.

6. Distribution Policy

PLS's policy, set by the Board, is to distribute the licensing revenue it receives to publishers regularly, diligently and accurately in accordance with its Distribution Charter. To this end PLS:

- distributes on a title by title basis strictly in accordance with the usage data received from CLA and NLA media access as a result of their surveys and any other data collection methods. Where no data is provided (as happens most commonly with monies received from overseas) the monies are allocated to those publishers to whom PLS has already distributed on a pro rata basis. PLS has processes in place to identify and trace publishers for whom we receive monies but who have not yet mandated PLS. If we are unable to find and locate any such publishers after exhausting those procedures then the policy is to re-allocate such monies on a pro rata basis to those mandating publishers to whom we have distributed fees earned from licensing in the UK;
- distributes promptly and, subject to identifying and tracing any non-mandating publishers, no later than in the calendar month following receipt of such monies; and
- deducts 6% to cover its administration costs.

Full details of the PLS distribution policy are available on our website at <http://www.pls.org.uk/publishers/distribution-charter/>