



Implementation of the Collective Rights Management Directive

To:

Copyright and Enforcement Directorate
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From:

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On behalf of ALPSP Members

ALPSP is responding as a business representative organisation/trade body.

About ALPSP

The Association of Learned and Professional Society Publishers (ALPSP) is the international membership trade body which works to support and represent not-for-profit organisations and institutions that publish scholarly and professional content around the world. Its membership also encompasses those that partner with and provide services to not-for-profit publishers. ALPSP's has over 330 institutional members in 40 countries, who collectively publish over half the world's total active journals as well books, databases and other products.

ALPSP co-owns the Publishers Licensing Society (PLS) with the Publishers Association (PA) and the Professional Publishers Association (PPA). PLS co-owns the Copyright Licensing Agency (CLA) with the Authors Licensing and Collecting Society (ALCS).

Questions

1. Please say whether and why you would prefer to implement using Option 1 or 2?
 - 1.1. ALPSP would prefer Option 2, repeal the Licensing Body Regulations and copy-out the CRM Directive to a new set of Regulations. This would allow CMOs throughout Europe to operate under the same legislation. It would also avoid multiple layers of legislation, and prevent any confusion that would likely result.
2. How important is it to retain those aspects of the 2014 Regulations that go beyond the scope of the Directive?
 - 2.1. Many of those aspects are already included in CMO Codes of Conduct, which PLS and CLA would retain under Option 2. We would also expect the requirement for licensees to ensure that the use of copyright material is used within the licence terms and conditions to be obliged under contract law.
3. What is your best estimate for the overall cost of (a) implementation and (b) ongoing compliance with this Directive?
 - 3.1. We respectively refer you to the response submitted by the PLS, ALCS and CLA for this detail.
4. If Option 2 was the preferred option, as a CMO would you consider retaining a revised code of practice as means of making the new rules accessible to members and users?
 - 4.1. The current PLS and CLA Codes of Conduct would be retained and would be revised if required. These codes, stemming from the Principles developed by the British Copyright Council, were developed according to the provisions in the CRM, so will make the new rules accessible to members and users.
5. Given the definition 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.
 - 5.1. PLS and CLA are a collective management organisations, and neither is a micro-business.
6. If you are a rightholder 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.
 - 6.1. ALPSP mandates PLS to manage secondary rights licensing for its publications.

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.
 - 7.1. PLS and ALCS are sole owners of the CLA.
8. Who do you understand the "rightholders" in Article 3(c) to be?
 - 8.1. ALPSP would understand rightholders to include rightholders who are members and those who are not members of CMOs.
9. If you are a CMO, what are the practical effects of a relatively broad definition of "rightholder" for you?
 - 9.1. Not applicable.
10. What do you consider falls in the scope of "non-commercial"?
 - 10.1. Non-commercial covers activities for which a profit may or may not be derived. As such non-commercial activities may prejudicially affect rightholders, regardless of whether the non-commercial activity returns a 'profit'.
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?
 - 11.1. Publish rightholders mandate PLS on a non-exclusive basis, meaning that there is no restriction on the rightholder to licence their copyright works themselves.
12. What will be the impact of allowing rightholders to remove rights or works from the repertoire?
 - 12.1. Publisher rightholders already have the option to remove rights or works from licensed repertoire, through their mandate with PLS. In some licences there may be restrictions over the timing of the removal, for example, in educational licensing, removal of works is prevented part-way through a term, as the work may already have been incorporated in course materials. A request to remove a work would be implemented at the end of the academic year.
13. Under what circumstances would it be appropriate for a CMO to refuse membership to a rightholder i.e. what constitutes "objective, transparent and non-discriminatory behaviour"?
 - 13.1. It would be unfeasible for a CMO representing a particular sphere of rights to accept into membership an unrelated rightholder, as there would be no mechanism for the rights to be licensed, nor use of those rights to be appropriately remunerated.
14. What should "fair and balanced" representation in Article 6(3) look like in practice?
 - 14.1. To ensure appropriate representation of different categories of rightholders, it should be appropriate for Directors to appoint representatives of each of those particular categories. The composition of the Board of Directors, therefore, would ensure 'fair and balanced' representation.
 - 14.2. Allowing members to vote in an Annual General Meeting is a common way under Company Law to ensure fair and balanced representation.
15. What do you consider to be an appropriate "regular" timeframe for updating members' records?

- 15.1. PLS updates member records as soon as possible after receipt of notification of changes. PLS's online database also permits members' to ensure their records are accurate.
16. Is there a case for extending any additional provisions in the Directive to rightholders 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 rightholders who are not members, or any other category of rightholder you have identified in answer to question 7)? What would be the likely costs involved? What would be the impact on existing members?
- 16.1. PLS and CLA already comply with the obligations set out in Article 7(1). ALPSP does not feel it is necessary extend any further provision, other than those set out in the Directive, or in CMO Codes of Conduct.
17. Which of the discretionary provisions of Article 8 do you think should be adopted?
- 17.1. We respectively refer you to the response submitted by the PLS, ALCS and CLA.
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?
- 18.1. Under UK Company Law, the supervisory function referred to is carried out by the Board of Directors, with overriding control by the members at the Annual General meeting. PLS and CLA operate under this structure.
19. Which of the Directive's provisions are existing requirements under UK company law?
- 19.1. ALPSP respectively suggests that the IPO seek its own advice 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?
- 20.1. ALPSP believes that PLS already has a distribution policy and systems in place which comply with the provisions of Article 13.
21. What are your organisation's current levels of undistributed and non-distributable funds, as defined in Article 13?
- 21.1. We respectively refer you to the response submitted by the PLS, ALCS and CLA for this detail.
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?
- 22.1. ALPSP does not have any information on this.
23. Do you collect for rightholders 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 rightholders who are not members of your CMO, to what extent do those rightholders 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?
- 23.1. We respectively refer you to the response submitted by the PLS, ALCS and CLA for this detail.

24. What should be the criteria for determining whether deductions are ‘unreasonable’?
 - 24.1. ALPSP considers that reference should be made to the costs incurred by the CMO. CMOs should be permitted to cover the costs of administering rights licensing and the provision of services, as directed by their members.
 - 24.2. PLS and CLA already ensure that any deductions, which are surplus to operating-cost requirements, are redistributed to rightholders as soon as possible.
25. Are there any pros and cons to be particularly aware of in case the Government exercises the discretion?
 - 25.1. There are a number of protections provided to non-member rightholders, both under the Directive and under the ECL Regulations. It would therefore be appropriate to leave the decision on non-distributable monies to the members of a CMO.
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?
 - 26.1. We respectively refer you to the response submitted by the PLS, ALCS and CLA for this detail.
27. What do you consider should be the “necessary information” CMOs and users respectively should provide for in licensing negotiations (Article 16(1))?
 - 27.1. ALPSP considers that CMOs, such as PLS and CLA, should continue to provide the information they currently do in licensing negotiations, such as licence terms, fees and details of works covered by licences.
 - 27.2. Users should provide accurate detail on the use of copyright works and the numbers of staff or students licences will be required for.
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?
 - 28.1. PLS, ALCS and CLA have provided detail on this in their response, to which we refer you.
29. What is the scale of costs incurred in administering data returns that are incomplete and/or not in a suitable format?
 - 29.1. We refer you to the response submitted by the PLS, ALCS and CLA for this detail.
30. Which of the Transparency and Reporting obligations differ from current practice, and what will be the cost of complying with them?
 - 30.1. We refer you to the response submitted by the PLS, ALCS and CLA for this detail.
31. What do you think qualifies as a “duly justified” request for the purposes of Article 20?
 - 31.1. Users who already take a licence or whom are interested in taking a licence would be duly justified in making such a request to a CMO.
 - 31.2. Rightholders, whether existing members, or those considering providing a mandate would also be duly justified.
 - 31.3. Other organisations representing rightholders, or other CMOs would be duly justified if they were considering applying for membership of the existing CMO.

32. What factors help determine whether a CMO is able to identify musical works, rights and rightholders accurately (Article 24(2))?
- 32.1. Not applicable.
33. What standards are currently used for unique identified to identify rightholders and musical works? Which of these are voluntary industry standards?
- 33.1. Not applicable.
34. What would you consider to be a “duly justified request for information” (Article 25(1))? What is not?
- 34.1. 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?
- 35.1. 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)?
- 36.1. 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?
- 37.1. We refer you to the response submitted by the PLS, ALCS and CLA for this detail.
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.
- 38.1. PLS and CLA already have clear Codes of Conduct, which set out procedures for complaints.
- 38.2. Codes of Conduct are overseen by the Code Ombudsman. Given the work which has gone in to producing such codes, we consider they should now be appropriate and sufficient.
- 38.3. CMOs are able to employ independent mediation services, should a dispute arise between them.
- 38.4. However, ALPSP would like to see the anomaly that only a licensee may apply to the Copyright Tribunal resolved, such that CMOs may also apply the Tribunal.
39. What is your preferred option for the national competent authority? Please give reasons why.
- 39.1. ALPSP considers the IPO would be an appropriate option for the national competent authority, and would prevent undue expense setting up a separate body.
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.

- 40.1. There has already been a considerable degree of work to implement Codes of Conduct for CMOs in the UK. Such codes already take complaints handling into account, and themselves should be reducing issues across the industry.
 - 40.2. The resourcing of an NCA would also depend on the level at which the NCA would be expected to operate, given that this is left open to Member States.
41. How should the costs of the NCA be met?
- 41.1. ALPSP considers that a body required under EU legislation should not be funded by private organisations. There has been, and may continue to be, considerable investment undertaken by CMOs to ensure that they fully comply with the Directive. Placing further funding requirements on them further penalises rightholders under this legislation.
 - 41.2. An alternative source of funding would be from those applying to it. An application fee, perhaps returnable where a complaint is upheld, would help to dissuade any unfounded complaints, reducing any unnecessary work to be undertaken by the NCA.