Collective Rights Management in the UK
A Report on the IPO’s Activities as National Competent Authority for the Collective Management of Copyright (EU Directive) Regulations: 2017-2018
Contents

Introduction .................................................................................................................................2
Overview of Collective Rights Management in the UK .........................................................2
Priorities for 2017-18 ..............................................................................................................3
Compliance, Monitoring and Enforcement .............................................................................4
Feedback ...................................................................................................................................6
Introduction

The Collective Rights Management Directive (2014/26 EU) sets standards for the governance and behaviour of collective management organisations (CMOs) established in the European Union. The Directive also places additional obligations around the minimum quality of cross-border services to be provided by CMOs offering multi-territorial licences and certain obligations on other licensing bodies (known as ‘independent management entities’ (IMEs)), right holders, and users.

The Directive requires each Member State to designate a National Competent Authority (NCA) responsible for monitoring compliance with the Regulations, and taking enforcement action where necessary. In the UK, the Intellectual Property Office (IPO) fulfils this function on behalf of the Secretary of State for Business, Energy and Industrial Strategy (BEIS).

The IPO has published guidance on its interpretation of the Regulations, as well as further guidance on its approach to investigation and enforcement. The IPO also committed to produce an annual report detailing its actions as the NCA for the UK. This document is the second of these reports, covering the period from 1 April 2017 to 31 March 2018.

Overview of Collective Rights Management in the UK

The collective rights management landscape in the UK is well-established and well-functioning, covering various sectors of the creative industries, including music, literature, art and film. There are 13 CMOs in the UK which collectively manage the rights of over 500,000 right holders. In total, they distributed around £1bn of royalties to right holders over the last year.
Priorities for 2017-18

As per the Collective Rights Management Review, 2016/17, the IPO had four priorities for its second year of operation as the NCA for the Directive. These, and progress against them are described below:

1. New e-system for case management:

The IPO aims to develop a bespoke system to allow customers to provide it with information about potential non-compliance using an online form. This is intended to improve the quality of information received and enable the IPO to respond to customers more quickly. This is a work in progress with options being considered in conjunction with the IPO’s IT department.

2. Revised guidance:

The IPO has worked with the Institute of Chartered Accountants for England and Wales (ICAEW) to publish guidance to help CMOs produce their Annual Transparency Reports (ATR), as per Regulation 21 of The Collective Management of Copyright (EU Directive) Regulations 2016. The updated guidance was published on 6 November 2017 and includes ‘agreed upon procedures’ that auditors should use in their work on transparency reports, and a template for their report to the CMO.

3. Awareness raising

The IPO has been working hard to raise awareness of the Collective Rights Management Regulations and of the IPO’s role in monitoring and enforcement.

We have reached out through stakeholders’ digital channels, social media campaigns and in printed articles over the past year, with encouraging results.

We have been able to measure the impact of our social campaigns, which shows an increase of 20% in the number of people accessing the Guidance Procedure for the Regulations on the www.gov.uk website. Our Twitter campaign has reached out to over 100,000 people and we have had over 700 impressions from our LinkedIn campaign.

4. Regulatory Reform

The IPO has been working closely with regulatory and legal experts in the Department for Business, Enterprise, and Industrial Strategy (BEIS) to better understand, develop, and implement best practice in regulatory governance, transparency and investigation processes. The IPO will continue to do so; this includes approaching other regulators in the UK / EU to discuss common practices.
Compliance, Monitoring and Enforcement

The Regulations require the Secretary of State to monitor compliance by regulated parties. In practice, this is carried out by officials at the IPO on behalf of the Secretary of State. The IPO’s monitoring role can be divided into three main strands of activity:

1. Reactive

This area describes the IPO’s role in responding to information we receive about potential non-compliance with the Regulations.

Since the Collective Rights Management Review, 2016/17, The IPO has received 79 complaints or queries regarding CMOs and other licensing bodies. These include correspondence sent to Ministers, correspondence forwarded to the NCA team via the IPO’s Information Centre, and direct complaints made to the NCA team via our dedicated email account.

Predominantly, these cases concern licensing and come from users of copyright material who typically question the need for a licence. Whilst this matter is not directly in the scope of the Regulations, we have included this information in the annual review to give a broader context of the types of communication we receive.

The IPO has registered 6 cases within the last financial year which concerned potential non-compliance with the Regulations by a regulated body established in the UK. This is a relatively small number of registered cases when compared to the 500,000+ members the CMOs share collectively.

The cases registered by the IPO are often complex. We have found that complainants typically raise multiple issues relating to different parts of the Regulations, and will often continue to raise additional issues during the process. As such, many of the complaints received are multi-layered and we typically have a high level of contact with these complainants.

The complaints received during the 2017/2018 financial year covered a number of issues including:

- Membership requirements
- Membership representation in CMO decision-making processes
- Transparency around deductions and distributions policy
- Conditions attached to the withdrawal of members’ rights
None of the cases registered during this year have so far resulted in enforcement action, although some of these issues are still under consideration. Cases were closed for one or more of the following reasons:

- Complaint deemed to be out of scope of the Regulations (in some cases, such complaints have been passed to another regulatory body, such as the Competition & Markets Authority).
- Insufficient or no evidence of non-compliance with the Regulations
- Action taken by the CMO or IME on a voluntary basis to address issues raised.

2. Proactive

This section of the report considers the active monitoring of regulated parties by the IPO.

**Annual general meetings** – The IPO aims to attend all annual general meetings of CMOs as an observer. This allows us to monitor the involvement of the CMOs’ members in the decision-making processes of the CMOs, and to check that certain matters which are reserved for the AGM are dealt with in that forum.

**Monitoring of Annual Transparency Reports (ATRs)** – The Regulations require each CMO to produce an ATR, setting out detailed information about its activities in the previous financial year. The IPO analyses these reports in light of the requirements set out in regulation 21, thereafter providing feedback and guidance. In general, the IPO found that, for this reporting period, CMOs had made good efforts to comply with the complex requirements of the Regulations.

3. Collaborative

This area describes the work the IPO has undertaken in conjunction with regulated parties, to help achieve optimum compliance with the Regulations.

**Working groups**: The IPO hosts a series of working groups to discuss the implementation of the Regulations, and to provide a forum for affected parties to raise any issues around the Regulations. The working groups includes representatives of CMOs, IMEs, right holders, and licensees.

**Guidance**: We have developed guidance to assist CMOs in fulfilling their regulatory obligations. As stated earlier in this document, in November 2017, we developed and published updated guidance on audit procedures for CMOs. This guidance contains new agreed upon procedures for the audit of the ATRs compiled by CMOs.
Feedback

If you have any questions or comments about this report, the IPO’s role as NCA, or if you wish to provide us with information about potential non-compliance with the Regulations, please contact collectiverights@ipo.gov.uk.