



Draft Secondary Legislation to Regulate Collecting Societies

A response to the IPO consultation

7 October 2013

1. Introduction

- 1.1 NLA media access (formerly The Newspaper Licensing Agency), was formed in 1996 by the national newspaper publishers to license the copying of newspaper articles by organisations (including media monitoring companies, public relations agencies, businesses, educational establishments). NLA media access has non-exclusive mandates from 130 publishers, and its repertoire currently includes approximately 1400 national and regional newspapers, 760 magazines and 1,380 websites.
- 1.2 Over time, NLA media access has developed a range of licences to cover the copying needs of businesses, introducing new licences to meet the changing requirements of the market (e.g. to accommodate the move from paper to digital copying) aiming to provide an easy route to obtain a licence and provide a fair return to publishers. NLA media access earned £24m for publishers in 2012.
- 1.3 In providing a choice of licences on fixed and variable terms NLA media access, as a collective management organisation:
- provides an easy, efficient route for legal exploitation of copyright works;
 - to the extent possible provides a 'one-stop' shop for client businesses;
 - reduces transaction costs;
 - reduces administrative burden;
 - delivers a monthly stream of revenues to rights-holders;
 - operates standard licence terms across all licensees.
- 1.4 In addition to licensing the copying of newspaper articles, NLA media access operates a database of digital copies of published articles (print and web) which it uses to provide digital copies of articles to media monitoring businesses; enabling them to deliver a high quality service to their clients. NLA media access is engaged with UK and international media monitoring agencies to support their business with the provision of digital services.

2. CONSULTATION QUESTIONS

Q1: 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?

To ensure a level playing field the definition should capture all entities that operate as collective licensing bodies (including 'independent management entities').

It is unclear what is meant by 'members' – e.g. shareholders in the company or rightholders represented by the CMO – but in any event both should be captured in the definition, irrespective of whether or not they operate on a not-for-profit basis.

Q2: 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

No comment

Q3: 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.

28 days is too short a period to prepare and allow consultation (if necessary) on a code. A minimum of 2 months should be allowed.

Q4: 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.

No comment

Q5: What should be the principal features that determine whether a Code Reviewer and/or an Ombudsman is "suitably qualified" for their statutory roles?

No comment

Q6: 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.

Whilst views on policy are not being invited in this consultation, the fact that financial penalties are included in the draft regulations causes great concern. The imposition of any form of financial penalty is disproportionate.

CMOs are subject to the same statutory regulations as any other company under the Companies Act, competition law etc. No explanation has been given as to why sanctions are thought necessary / collecting societies have been singled out for additional penalties. It is difficult to envisage a circumstance where failure to adopt a code of practice / comply with an imposed code should merit such penalties without evidence of other malfeasance which would attract a penalty under existing laws.

Additionally, the Codes of Conduct which have been introduced by NLA media access and other CMOs are concerned with the conduct of transactions with licensees and rights holders (noting that all our licences are non-exclusive). The Copyright Tribunal already regulates the terms and conditions – and most importantly pricing – of copyright licences. The Tribunal does not levy fines, but does have considerable power to determine the terms and price at which rights are licensed – and therefore can exert appropriate economic control on CMOs.

Of particular concern is that the penalties are proposed to be against any 'Director, Manager or similar officer' without any definition or clarification of the levels of staff that may be caught by the provision. If such penalties are to be introduced for the failure to introduce a code / compliance, they should be against the senior officers of the company only.

Q7: 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.

No comment

*Q8: (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.*

No comment