

Regulatory Policy Committee		Opinion	
Impact Assessment (IA)		Collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market	
Lead Department/Agency		Department for Business, Innovation and Skills	
Stage		Consultation	
IA Number		BISIPO007	
Origin		European	
Expected date of implementation		By 10 April 2016 (SNR 11)	
Date submitted to RPC		20 October 2014	
RPC Opinion date and reference		01 December 2014	RPC14-BIS-2238
Overall Assessment		GREEN	
RPC comments			
The IA is fit for purpose.			
The IA explains the rationale for intervention and assesses two options; the first is to modify the existing, largely self-regulatory framework (in the form of a code of practice), and the second is for Directive 2014/26/EU on collective management of copyright to replace the existing framework. The Department's preferred option, at this stage, is option 2 because it would provide more clarity in terms of the requirements and would be less costly overall to implement.			
The Department should use the consultation to gather information to enable it to monetise the potential costs and benefits that have been identified in relation to the different stakeholders. The Department will need to identify clearly the direct and indirect costs resulting from the proposals and who will bear these costs, in order to estimate the costs to business at final stage.			
Background (extracts from IA)			
What is the problem under consideration? Why is government intervention necessary?			
<i>"The Directive addresses two, interlinked problems: (i) the functioning of collecting societies, particularly in relation to transparency, accountability and governance; and (ii) problems specific to the supply of multi-territorial licences for the online exploitation of musical works in an EU market that is territorially fragmented. The European Commission proposed intervention at EU level under the principle of subsidiarity (Article 5(3) TFEU) as both national legal frameworks and a Commission Recommendation from 2005 had proved insufficient to address the problems."</i>			
What are the policy objectives and the intended effects?			

"The Directive's policy aims are to:

- modernise and improve collecting societies' governance, financial management and transparency; in particular, ensuring rights holders have more say in the decision making process and receive royalty payments that are accurate and on time;*
- promote a level playing field across the EU for the multi-territorial licensing of online music;*
- create innovative and dynamic cross border licensing structures to encourage further provision and take up of legitimate online music services."*

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

The Department proposes to transpose the Directive 2014/26/EU into national law. It is one of a set of EU measures aimed at improving the licensing of rights and access to digital content. These are intended to facilitate the development of legal and cross-border offers of online products and services.

The IA explains that the Directive is in four parts:

- Title I covers the general provisions;
- Title II deals with the minimum standards of governance and transparency that all EU collective management organisations (CMOs) must comply with;
- Title III sets out the standards for those EU CMOs that choose to engage in multi-territorial licensing of online musical rights; and
- Title IV covers the requirements for enforcement of all the measures in the Directive.

A CMO is a body, typically a 'not for profit' organisation, established by copyright owners to license their rights and collect and distribute their royalties in return for an administrative fee. The Directive also applies, in part, to independent management entities (IMEs). IMEs collectively manage rights, but are commercial entities that are not owned, or controlled, by rights holders. Currently, IMEs are not in scope of the Regulations. The Department will, therefore, need to identify the extra costs likely to be incurred by IMEs, compared to the status quo.

The IA explains the rationale for intervention and that there are longstanding concerns about some CMO's transparency, governance and handling of revenues collected on behalf of rights holders. The Department is considering two options to address the problem.

The first option is to modify the existing, largely self-regulatory framework (in the form of a code of practice), and the second is for the Directive to replace the existing framework. Under this second option, existing protections will be retained in a code of practice that will sit alongside the legislation. At final stage, the Department should clarify the statutory basis of the existing and any future code of practice.

The Department explains that the first option carries a risk of infraction. This reflects

the self-regulatory aspect of the domestic framework, together with discretionary elements that could raise questions over whether the Directive has been properly implemented. As such, the preferred option, at this stage, is option 2 because it would provide more clarity in terms of the requirements and would be less costly overall to implement.

The IA explains that the Directive requires the establishment of a national competent authority (NCA). The Department's favoured option is to take advantage, where possible, of existing functions and expertise in order to minimise costs. The Department intends to use the consultation to identify the cost of establishing a NCA and test its preliminary estimate of overheads of £150,000-200,000, reflecting fixed costs and salary costs.

The Department also intends to use the consultation to identify costs to CMOs, such as revising compliance procedures, resulting from the proposal. The IA describes the anticipated benefits of the proposals. These include positive reputational effects and reduced costs of complaints handling. The Department should use the consultation to gather information to monetise the potential costs and benefits which have been identified in relation to the different stakeholders.

The IA explains there is a risk that CMOs and IMEs may pass on costs incurred through implementation of the Directive, in the form of increased licence fees. The Department will need to identify clearly the direct and indirect costs resulting from the proposals and who will bear these costs, in order to estimate the costs to business at the final stage.

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

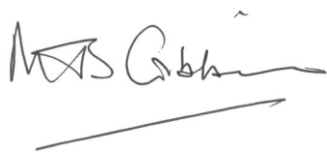
The proposal is of European origin and a SaMBA is, therefore, not applicable.

The Department explains that, unlike the domestic regulatory framework, there are no exemptions in the Directive for micro-businesses. As a result, at least one CMO will be caught by the Directive that had previously been exempt from the domestic Regulations and will therefore incur higher costs as a result.

Comments on the robustness of the OITO assessment.

The proposal is of European origin. There is no evidence that the increase in regulation would go beyond minimum requirements or that the Department is failing to take advantage of available derogations which would reduce the costs to business. At final stage, the Department should, however, confirm this assumption. On this basis, it is out of scope of 'One-in, Two-out', in accordance with the Better Regulation Framework Manual (paragraph 1.9.8.ii).

Signed



Michael Gibbons, Chairman