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## **Consultation on proposed Copyright (Regulation of relevant licensing bodies) Regulation, published September 2013**

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The International Association of Scientific, Technical and Medical Publishers (“STM”) is the leading trade association for academic and professional publishers. It has over 120 members in 21 countries who each year collectively publish nearly 66% of all journal articles and tens of thousands of monographs and reference works. STM members include learned societies, university presses, private companies, new starts and established players.

STM would like to respond to only the first question in the consultation, relating to the definition of “relevant licensing body.” This comment, below, is in principle the same as comments made by STM to the European Union member states in response to the draft Directive on Copyright Management Organisations (copy of joint submission by STM, the European Magazine Media Association, the European Newspaper Publishers Association and the European Publishers Council is attached for ease of reference), which comments were submitted after consultation within its Copyright and Legal Affairs Committee and in the terms of the functions and duties of that Committee.

STM notes the principle stated in the consultation document that the intention is “to capture ... the ‘traditional’ collecting society, which is usually owned and/or controlled by its members and has a not-for profit status.”

We caution, however, that the definition is too broad and that it may inadvertently capture some publishers and publishing activities. This will be all the more so if the definition is to be expanded to bring in “independent management agencies.”

We understand that the Regulation is not intended to hinder commercial agreements in the field of licensing. The definition should not be at the expense of e.g. private licensing joint ventures of publishers. Mere copyright licensing joint ventures, such as those of newspapers and magazines covering their own content, do not qualify as activities of a collecting society and should therefore be excluded from the definition. In order to avoid market distortion, it is indispensable that the Regulation clarifies that such activities that are excluded from the definition of “relevant licensing body” or become the subject of a monopoly for the benefit of collecting societies.

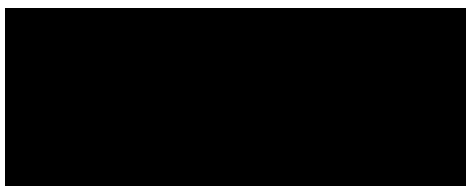
Many STM members are learned society publishers, which are owned by their members and conducted not for profit, and as part of the scope of their legitimate business activities, they license rights in the works that they publish. Such learned society publishers could therefore be inadvertently captured by this definition. In addition there are STM members which are publishers which publish works of learned societies.

On the basis that the scope of the Regulation is *not* to be extended to “independent management agencies”, we submit that the definition can be appropriately qualified by introducing a definition of “rightholder” which is the same as in the European draft Directive but which was not incorporated in this regulation. That definition, which would enable publishers to fall outside the scope of the Regulation on the basis that they are rightholders, adapted so as to be capable of being inserted in the Regulation, reads as follows:

‘rightholder’ means any natural person or legal entity other than a relevant licensing body that holds a copyright or related right or who under an agreement for the exploitation of rights is entitled to a share of the rights revenue from any of the rights managed by the relevant licensing body.”

If the Regulation were to be extended to “independent management agencies”, then it will be necessary to craft an exemption to make it clear that publishers are excluded from the scope of the Regulation.

Yours faithfully,



Michael Mabe  
Chief Executive Officer  
STM, International Association of Scientific, Technical and Medical Publishers

Annexure: Submission on draft European draft directive on collective rights management of copyright and related rights to European Union member states by STM, the European Magazine Media Association, the European Newspaper Publishers Association and the European Publishers Council Copyright dated 2 July 2013.

**To: Representatives from the EU Member States' Permanent Representations to the EU involved in discussions on the Proposal for a Directive on Collective Management of Copyright and related rights**

**RE: Proposed Directive on collective rights management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market.**

***Who are we?***

We, the undersigned organizations are the **European Magazine Media Association (EMMA)**, **European Newspaper Publishers Association (ENPA)**, **European Publishers Council (EPC)**, the International Association of **Scientific, Technical and Medical Publishers (STM)**

***What is our general position regarding the Commission proposal?***

We welcome the Commission objective of creating an appropriate framework for Collective Management organizations (CMOs) established within the European Union in line with internal market principles, both in the offline and the online environments. We believe that flexibility, transparency, accuracy, efficiency, accountability and right holders' choice should remain the cornerstones of this Directive.

We see the Commission proposal as an excellent basis for fostering trust among the different actors (CMOs, rightholders, users, etc.) and for providing legal certainty in the relevant sector.

***What are our specific concerns?***

Given the leading role the Council working party plays on this important initiative, we would like to draw your attention to the need to stay faithful to the three general principles that the Directive is based on, namely: the application of the Services Directive; the principle of rightholders' choice and the limitation of its scope of application to CMOs. These 3 items are further elaborated here below.

**a. The CMO Directive should remain consistent with EU Internal Market principles and, at the very least, remain without prejudice to the application of the Services Directive**

Directive 2006/123/EC on **services in the internal market** as adopted by the Council and the Parliament in 2006 principally safeguards the internal market for services for the benefit of not only rightholders but also users and consumers. While some recitals in the original proposal expressly call for the application of the Services Directive to CMO services, a number of proposed amendments go into the opposite direction and seek express exclusion of the principles of the Services Directive.

In the publishers' associations' joint view, the CMO services should retain intact the freedom to supply and receive services, one of the four fundamental freedoms of the EU market. At the same time, the Service Directive should be without prejudice to national mandatory collective licensing systems that are in keeping with EU law and international obligations.

However, in the absence of consensus in what way rightholders, users and CMOs should benefit from this freedom the supply of services and to what extent other factors need to be taken into account, the CMO Directive could stay neutral when it comes to the important freedom of supply of services and hence remain without prejudice to the Services Directive. Thus, in order to achieve consensus on the CMO directive, and its important goal of fostering greater freedom of choice by rightholders and users in selecting and mandating CMOs as supplier of CMO services, the undersigned organisations would agree to this CMO directive remaining silent on the applicability or non-applicability of the Service Directive, as long as the freedom of establishment and supply – one of the four fundamental freedoms of the EU's internal market is not understood as weakened.

- **We therefore respectfully urge you to keep references to the Services Directive in this proposal, notably in Recital 3 and 8 and to add that these do not affect mandatory national collective licensing systems that are in keeping with EU law and international obligations. In the event that explicit references are not be included due to a lack of consensus, it is important to safeguard rightholder choice (see further below) and reject any statement for inclusion that casts doubt on the applicability of the Services Directive or elements that undermine its basic principle: the supply of services as one of the four freedoms fundamental to the European Union and its internal market. At the very least, the CMO proposal should remain neutral on the topic.**

#### **b. Right holders' choice: aggregation of repertoire should be based on trust and flexibility**

Rightholders should be able to choose whether to entrust their rights to a CMO of their choice by way of **an exclusive or a non-exclusive mandate** and to grant (and terminate) such mandates in as granular a way as possible, including, where possible, **per works**.

**Flexible mandates** would allow rightholders who want to grant licenses directly whenever necessary (for example to license a specific business model that the collecting society is not yet ready to license) to do so without having to withdraw relevant rights from the Collective Management Organisation, thereby helping aggregation of repertoire. Flexible mandates would also provide incentives for CMOs to offer the best possible services to their members at all times. A choice between exclusive and non-exclusive mandates would on the other hand allow rightholders who wish to entrust their rights to CMOs on an exclusive basis, to continue to do so.

We are persuaded that good levels of transparency and governance coupled with rightholders choice will help aggregate repertoire. Locking in members via inflexible, exclusive membership agreements may well have the opposite effect. The Directive needs to maintain enough incentives for rightholders to continue to entrust their repertoire with CMOs. It is our view that flexibility generates trust.

- **We would therefore ask you support amendment 255 of the Legal Affairs Committee (JURI) of the European Parliament:**

2. Rightholders *may* authorise a collecting society of their choice to manage their rights, categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the Member State of residence or of establishment or the nationality of either the collecting society or the rightholder. ***Rightholders may authorise a collecting society to manage their rights on an exclusive or a nonexclusive basis.***

**c. The Directive should only regulate collective management organisations, in line with the Rapporteur's suggested amendment 27.**

We understand that the Commission's proposal is not intended to hinder commercial agreements in the field of licensing. Therefore we consider that the definition of 'collecting society' under Article 3 should be amended along the lines proposed by the Rapporteur in order to avoid potential market distortion.

The definition should not be at the expense of e.g. private licensing joint ventures of publishers. Mere copyright licensing joint ventures of newspapers and magazines covering their own content do not qualify as activities of a collecting society and should therefore be excluded from the definition. In order to avoid market distortion, it is indispensable that the directive clarifies that such activities that are excluded from a harmonized (restrictive) definition of collecting societies' should in no member state remain or become the subject of a monopoly for the benefit of collecting societies.

- **We welcome the proposed modification of the definition of CMOs by the JURI rapporteur (amendment 27 of JURI draft report) and would respectfully ask you to support it and refrain from extending the scope of application of this Directive entities other than CMOs:**

(a) 'collecting society' means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement, by more than one rightholder, to manage copyright or rights related to copyright as its sole or main purpose and which:

**(a)** is owned or controlled by its members,

or

**(b) is a non-profit-making body;**

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Brussels, 02 July 2013

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