



Regulation of Collecting Societies

DACS submission 2013

Regulation of Licensing Bodies

Executive Summary

DACS recommends:

- The definition of collecting societies under Article 3(2)(a) is amended to ensure that:
 - a) Our direct competitor, ACS, has to meet the same standards of transparency and best practice as DACS;
 - b) Government can achieve the Directive's objective of allowing rightsholders to compare societies on an equal basis.
- Government should ensure that any financial penalties imposed on collecting societies for failure to comply with a direction and/or information request should not be to the further detriment of rightsholders who may have already lost out due to the collecting societies failure to comply.

Introduction

DACS welcomes the opportunity to respond to the Government's consultation on the draft secondary legislation on the regulation of licensing bodies.

DACS is a member of the British Copyright Council and adheres to the 'Principles of Collective Management Organisations' Codes of Conduct' established by the members of the BCC. In addition, as a member of the International Confederation of Authors and Composers Societies (CISAC), DACS complies with their professional rules.

We strongly support the push for great transparency and accountability of licensing bodies who act on behalf of rightsholders.

Question 1

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.

Article 3(2)(a) excludes businesses with less than 10 employees and a turnover or balance sheet total of less than 2 million euros per annum. The explanatory notes should clarify where 'turnover' relates to 'turnover on costs' or 'turnover on balance sheet' as this will impact on whether or not an organisation falls within the definition of a 'micro-business'.

The definition as currently drafted means that whilst DACS will have to comply, our direct competitor, ACS, will not. While our competitor may be considered a 'micro-business' under the regulations, it is actually funded and supported by a substantially larger, multi-national commercial business.

This means the UK will not be in a position to showcase best practice in Europe ahead of the implementation of the Collective Right Management Directive. We will fail to achieve the Directive's objective of allowing rightsholders access to enough information about the collecting society to enable them to have an informed choice about who they want to join – to be able to compare societies on an equal basis.

In addition it puts DACS in a difficult situation – we will be required to be very transparent about our costs while our direct competitor will not have to be. This is anti-competitive.

DACS will be put in an awkward situation of on the one hand, being required to be transparent and comply with Government regulation, and on the other hand, wishing to retain some degree of privacy in order to protect our competitiveness.

Question 2

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.

Question 3

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.

This may not be a sufficient time period depending on whether the licensing body is required to consult its membership and Board of Directors. If this is the case, a three month time period may be more appropriate. We would also suggest that maintaining a default period whereby the Secretary of State has flexibility over the commencement date would be preferable.

Question 4

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.

Yes, but it isn't clear what happens following the imposition of a Code of Practice. In addition, we would suggest that a further step be added in Regulation 3, allowing the collecting society to say whether they agree with the proposed direction and giving them the opportunity to address the issues raised.

Question 5

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

It is important to distinguish in the Regulations between the Statutory Code Reviewer, the Statutory Licensing Ombudsman and the independent industry reviewer Ombudsman.

In relation to the Independent Code Reviewer, Regulation 24 suggests that an individual body would be responsible for making an appointment. However, the wording should leave open the option to appoint as a group.

Question 6

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.

It is not clear what the graduated scale is for financial penalties. What would constitute a penalty of £50,000 versus a penalty of, say £10,000? It does seem appropriate to limit penalties imposed under paragraph (1)(b).

A penalty placed on a collecting society for failure to comply or for a breach of the rules will be paid by rightsholders' funds, as collecting societies are almost always entirely funded by rightsholders funds. It seems illogical to penalise rightsholders in circumstances where they may have already lost out due to the collecting societies failure to comply.

Furthermore, it is not clear what the funds collected through penalties will be used for.

Question 7

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.

Yes.

Question 8

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?

We do not believe the standard rules of procedure need to be supplemented.