

10th November 2015

CRM Directive review,
Copyright and Enforcement Directorate,
IPO,
First Floor, 4 Abbey Orchard Street
London SW1P 2HT.

By e-mail to: copyrightconsultation@ipo.gov.uk

Dear Sir,

**Collective right management in the Digital Single Market
Implementation of the EU Directive on the collective management of
copyright and multi-territorial licensing of online music rights in the
internal market: technical review of draft Regulations**

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the creative and cultural industries. Our members also include collecting societies which represent right holders and which enable access to works of creativity. The BCC's membership list can be found at <http://www.britishcopyright.org/bcc-members/member-list>

Introduction

The British Copyright Council (BCC) welcomes the way in which the draft Regulations have been issued for technical review.

In responding to proposals for the form of the Regulations, the BCC expressed support for the provisions of the Directive being repeated as closely as possible within UK transposition provisions (Option 2 within the Consultation).

In addition, the BCC argued that:-

- Consideration must be given to the time needed by CMOs to implement the Regulations.
- There must be an obligation on users to provide data which is accurate and proportionate with respect to the type of user and the way in which they use the licensed works.
- The costs of the National Competent Authority should be borne by IPO as part of its contribution towards providing the UK with a suitable IP framework.
- CMOs should be able to refer matters to the Copyright Tribunal as part of implementing the Government's dispute resolution obligations under Article 35 of the Directive.
- Government must provide simple, clear and concise guidance notes on how the new legislation will work.

The BCC therefore welcomes how these points are now reflected in publication of the draft Regulations.

However, because the Regulations are drafted to retain some provisions that link back to the 2014 Licensing Bodies Regulations, there is a concern that the origins of individual provisions should be clear. In particular it is important that that published Guidance shows how these properly link to reasonable and proportionate interpretation when the provisions have evolved for the voluntary code provisions originally advocated by the BCC in publishing the BCC Principles of Good Practice for Collective Management Organisations in 2012.

Following previous comments, the BBC would make two points in response to the questions raised linked the technical review:-

Questions

1. Do the draft Regulations correctly implement the Directive?

It is helpful that many of the provisions within the draft Regulations repeat the wording of the CRM Directive.

However, because the draft Regulations also address a number of issues that have their origins in the way in which the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 were implemented within the UK, it is not always easy to see the elements of the Regulations that flow purely from the Directive and those which flow from current UK practice.

If these two sources within the Regulations could be highlighted clearly within any Guidance issued, this would be helpful.

The distinction in terms of the origin of a specific Regulation is believed to be particularly important when addressing the relevance of compliance

notices and sanctions which should properly be related only to provisions originating from the CRM Directive itself and limited to such provisions.

13. Do you have any concerns about the proposal to allow CMOs to make their own arrangements in relation to Alternative Dispute Resolution?

The voluntary background behind the preparation and publication of most of the UK CMOs Codes of Practice should not be forgotten.

Whilst founded upon common principles the different sizes and styles of CMOs are important when considering the practical application of good conduct models.

In this context, the ability for CMOs to set up and apply appropriate and proportionate ADR procedures to different circumstances (taking into account reasonable cost provisions) will be important going forwards.

BCC believes that draft Regulation 32 (1) acknowledges that whilst the option for submission of disputes to independent and impartial disputes resolution procedures can be recognised, this should not be to the exclusion of use of alternative internal or other legal dispute resolution processes being applied and used in line with agreed costs allocation rules.

I hope the above response is helpful. Please do not hesitate to contact me should you require any further information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Janet Ibbotson', with a stylized flourish at the end.

Janet Ibbotson
Chief Executive Officer