

Copyright and Enforcement Directorate IPO  
First Floor  
4 Abbey Orchard Street  
  
London SW1P 2HT

9th November 2015

Dear Sir/Madam,

[copyrightconsultation@ipo.gov.uk](mailto:copyrightconsultation@ipo.gov.uk)

**Collective rights management in the digital single market  
Response to the consultation on the implementation of the EU Directive on the  
collective management of copyright and multi-territorial licensing of online music  
rights in the internal market**

The British Institute of Professional Photography represents those who create, hold interests in and manage rights in photographic works. Our members include professional photographer right holders who include many individual freelancers, sole traders and SMEs as well as larger corporations and bodies.

The BIPP welcomes Government's recognition of the role which UK CMOs play in supporting the creative industries. The BIPP also acknowledges the high standards of governance and transparency that UK CMOs set worldwide.

The BIPP supports the responses made to this consultation by the BCC British Copyright Council and by the CRA Creative Rights Alliance, of which we are members of both.

The BIPP is not a CMO and does not directly represent CMOs although some of its members may act in that capacity running their own image libraries and which may also include the works of other rights holders. The BIPP does feel that it is appropriate that it should comment on points relating to the first of the Directive's policy aims, that is:

*"Modernise and improve standards of governance, financial management and transparency of all EU CMOs, thereby ensuring, amongst other things, that rightsholders have more say in the decision making process and receive accurate and timely royalty payments."*

Our members voice concerns over the actions of CMOs where or if they feel that unfair terms are being implemented, that the amounts of royalties are not fairly distributed or that the amount being deducted from royalties by the CMOs are unfair. We therefore feel strongly that all deductions made by CMO's must be deemed as 'reasonable'. Currently these appear to be between 5%-18% - we would like to see a standard established or evidence that the amount of deduction is entirely based on the level of costs incurred.

In addition, the BIPP would like to make the following points to the questions raised in the consultation:

- We support implementation through Option 2 (1) and agree with the IPO initial analysis that option 1 may be problematic.
- We agree with the argument that the 2014 Regulations (2) are not the most suitable vehicle for transposition.
- Consideration is needed to the time required (3) for implementing the regulations by CMOs
- Users must taken on the obligation to provide data that is accurate and proportionate with respect to the type of user and the way in which they use the licensed works.
- Additional “relevant information” is needed for accurately reporting licensing but feels that this should largely be sector-specific
- The IPO should bear the costs of the National Competent Authority as its contribution towards providing the UK with a suitable IP framework as costs cannot be borne by CMOs without diluting the amount of royalties available to rights holders
- The Copyright Tribunal should be available for CMOs who wish to refer matters as part of implementing the Government’s dispute resolution obligations under Article 35 of the Directive
- Simple, clear and concise guidance notes on how the new legislation will work are essential. It is hoped this will be addressed
- The BIPP believes that in order to provide rights holders with greater royalties, the costs of implementation should not be carried by CMOs who have no income in order to be able to do so without passing those costs to rights holders. Similarly, that CMOs should only make minimal deductions to cover their own admin costs before passing on those royalties, so welcomes the move for greater transparency and reporting (chap 5).
- For the benefits of an ECL Licensing scheme to work, the onus of providing sufficient information should fall on the user so that timely, accurate and transparent reporting can be effected thus enabling CMOs to process royalty payments accurately and fairly
- Non-commercial works (10) is a very broad term which carries no actual definition Having defined commercial uses for the purpose of the orphan works guidance, the IPO will be aware that in the photographic industry, the term “commercial” refers to promotional uses, whether direct or indirect. Basically, the question should be asked “who benefits from using this image”
- A Fair and Balanced representation (14) should ensure that all types of rights holders are afforded the same rights to participate in the governance of a CMO should they choose to do so.
- UK photographers, libraries and agencies licence significant volumes of content that is used elsewhere in the EU (16). We feel strongly that those who are UK based

should not be disadvantaged from exploiting or indeed protecting their rights in other EU territories just because they are not members of a local CMO. Under the recently introduced ECL regulations, we note that right holders from any global location can have their work included in the UK licence extension, further strengthening the argument that non-members should be afforded equal protection.

- A key implementation for the Directive is Article 17, as a fair and transparent system could be created if it were used and enforced rigorously. Reliable data is essential as we believe that without it, proper protection for rights holders can not exist. We encourage the IPO to provide guidance to CMOs on this part of the Directive to enable them to help acquire the relevant information from rights holders. We believe that relevant information will be sector-specific but in photography, the technology already exists to assist with its identification and collection so should not prove too onerous, so its use should be encouraged.
- Reasonable deductions (24) should reflect the level of admin costs incurred by the CMO whilst their costs should be accurately recorded annually to show transparency and reassure rights holders of fairness.
- Most appropriate complaints procedure (28) would, in our opinion, be the use of an ombudsman providing that guidelines are issued with clear details on who to contact in the event of grievance.
- BIPP would support the IPO as an NCA (39) due to proven impartiality in mediation and a willingness to comprehend the complexities of this industry which we would hope would be continued.

We hope that these comments are useful. We are happy to discuss further any questions that may be raised.

Denise Swanson

on behalf of the British Institute of Professional Photography

BIPP SUBMISSION