

Directive 2014/26/EU of the European Parliament and of the Council
of 26 February 2014 on collective management of copyright and
related rights and multi-territorial licensing of rights in musical works
for online use in the internal market (Text with EEA relevance)

TITLE II

COLLECTIVE MANAGEMENT ORGANISATIONS

CHAPTER 1

***Representation of rightholders and membership and
organisation of collective management organisations***

Article 4

General principles

Member States shall ensure that collective management organisations act in the best interests of the rightholders whose rights they represent and that they do not impose on them any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights.

Article 5

Rights of rightholders

1 Member States shall ensure that rightholders have the rights laid down in paragraphs 2 to 8 and that those rights are set out in the statute or membership terms of the collective management organisation.

2 Rightholders shall have the right to authorise a collective management organisation of their choice to manage the rights, categories of rights or types of works and other subject-matter of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the collective management organisation or the rightholder. Unless the collective management organisation has objectively justified reasons to refuse management, it shall be obliged to manage such rights, categories of rights or types of works and other subject-matter, provided that their management falls within the scope of its activity.

3 Rightholders shall have the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject-matter that they may choose.

4 Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject-matter granted by them to a collective management organisation or to withdraw from a collective management organisation any of the rights, categories of rights or types of works and other subject-matter of their choice, as determined pursuant to paragraph 2, for the territories of their choice, upon serving reasonable

notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal is to take effect only at the end of the financial year.

5 If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under Articles 12, 13, 18, 20, 28 and 33.

6 A collective management organisation shall not restrict the exercise of rights provided for under paragraphs 4 and 5 by requiring, as a condition for the exercise of those rights, that the management of rights or categories of rights or types of works and other subject-matter which are subject to the termination or the withdrawal be entrusted to another collective management organisation.

7 In cases where a rightholder authorises a collective management organisation to manage his rights, he shall give consent specifically for each right or category of rights or type of works and other subject-matter which he authorises the collective management organisation to manage. Any such consent shall be evidenced in documentary form.

8 A collective management organisation shall inform rightholders of their rights under paragraphs 1 to 7, as well as of any conditions attached to the right set out in paragraph 3, before obtaining their consent to its managing any right or category of rights or type of works and other subject-matter.

A collective management organisation shall inform those rightholders who have already authorised it of their rights under paragraphs 1 to 7, as well as of any conditions attached to the right set out in paragraph 3, by 10 October 2016.

Article 6

Membership rules of collective management organisations

1 Member States shall ensure that collective management organisations comply with the rules laid down in paragraphs 2 to 5.

2 A collective management organisation shall accept rightholders and entities representing rightholders, including other collective management organisations and associations of rightholders, as members if they fulfil the membership requirements, which shall be based on objective, transparent and non-discriminatory criteria. Those membership requirements shall be included in the statute or membership terms of the collective management organisation and shall be made publicly available. In cases where a collective management organisation refuses to accept a request for membership, it shall provide the rightholder with a clear explanation of the reasons for its decision.

3 The statute of a collective management organisation shall provide for appropriate and effective mechanisms for the participation of its members in the organisation's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.

4 A collective management organisation shall allow its members to communicate with it by electronic means, including for the purposes of exercising members' rights.

5 A collective management organisation shall keep records of its members and shall regularly update those records.

Article 7

Rights of rightholders who are not members of the collective management organisation

1 Member States shall ensure that collective management organisations comply with the rules laid down in Article 6(4), Article 20, Article 29(2) and Article 33 in respect of rightholders who have a direct legal relationship by law or by way of assignment, licence or any other contractual arrangement with them but are not their members.

2 Member States may apply other provisions of this Directive to the rightholders referred to in paragraph 1.

Article 8

General assembly of members of the collective management organisation

1 Member States shall ensure that the general assembly of members is organised in accordance with the rules laid down in paragraphs 2 to 10.

2 A general assembly of members shall be convened at least once a year.

3 The general assembly of members shall decide on any amendments to the statute and to the membership terms of the collective management organisation, where those terms are not regulated by the statute.

4 The general assembly of members shall decide on the appointment or dismissal of the directors, review their general performance and approve their remuneration and other benefits such as monetary and non-monetary benefits, pension awards and entitlements, rights to other awards and rights to severance pay.

In a collective management organisation with a dual board system, the general assembly of members shall not decide on the appointment or dismissal of members of the management board or approve their remuneration and other benefits where the power to take such decisions is delegated to the supervisory board.

5 In accordance with the provisions laid down in Chapter 2 of Title II, the general assembly of members shall decide at least on the following issues:

- a the general policy on the distribution of amounts due to rightholders;
- b the general policy on the use of non-distributable amounts;
- c the general investment policy with regard to rights revenue and to any income arising from the investment of rights revenue;
- d the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;
- e the use of non-distributable amounts;
- f the risk management policy;
- g the approval of any acquisition, sale or hypothecation of immovable property;
- h the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;
- i the approval of taking out loans, granting loans or providing security for loans.

6 The general assembly of members may delegate the powers listed in points (f), (g), (h) and (i) of paragraph 5, by a resolution or by a provision in the statute, to the body exercising the supervisory function.

7 For the purposes of points (a) to (d) of paragraph 5, Member States may require the general assembly of members to determine more detailed conditions for the use of the rights revenue and the income arising from the investment of rights revenue.

8 The general assembly of members shall control the activities of the collective management organisation by, at least, deciding on the appointment and removal of the auditor and approving the annual transparency report referred to in Article 22.

Member States may allow alternative systems or modalities for the appointment and removal of the auditor, provided that those systems or modalities are designed to ensure the independence of the auditor from the persons who manage the business of the collective management organisation.

9 All members of the collective management organisation shall have the right to participate in, and the right to vote at, the general assembly of members. However, Member States may allow for restrictions on the right of the members of the collective management organisation to participate in, and to exercise voting rights at, the general assembly of members, on the basis of one or both of the following criteria:

- a duration of membership;
- b amounts received or due to a member,

provided that such criteria are determined and applied in a manner that is fair and proportionate.

The criteria laid down in points (a) and (b) of the first subparagraph shall be included in the statute or the membership terms of the collective management organisation and shall be made publicly available in accordance with Articles 19 and 21.

10 Every member of a collective management organisation shall have the right to appoint any other person or entity as a proxy holder to participate in, and vote at, the general assembly of members on his behalf, provided that such appointment does not result in a conflict of interest which might occur, for example, where the appointing member and the proxy holder belong to different categories of rightholders within the collective management organisation.

However, Member States may provide for restrictions concerning the appointment of proxy holders and the exercise of the voting rights of the members they represent if such restrictions do not prejudice the appropriate and effective participation of members in the decision-making process of a collective management organisation.

Each proxy shall be valid for a single general assembly of members. The proxy holder shall enjoy the same rights in the general assembly of members as those to which the appointing member would be entitled. The proxy holder shall cast votes in accordance with the instructions issued by the appointing member.

11 Member States may decide that the powers of the general assembly of members may be exercised by an assembly of delegates elected at least every four years by the members of the collective management organisation, provided that:

- a appropriate and effective participation of members in the collective management organisation's decision-making process is ensured; and
- b the representation of the different categories of members in the assembly of delegates is fair and balanced.

The rules laid down in paragraphs 2 to 10 shall apply to the assembly of delegates *mutatis mutandis*.

12 Member States may decide that where a collective management organisation, by reason of its legal form, does not have a general assembly of members, the powers of that assembly are to be exercised by the body exercising the supervisory function. The rules laid down in paragraphs 2 to 5, 7 and 8 shall apply *mutatis mutandis* to such body exercising the supervisory function.

13 Member States may decide that where a collective management organisation has members who are entities representing rightholders, all or some of the powers of the general assembly of members are to be exercised by an assembly of those rightholders. The rules laid down in paragraphs 2 to 10 shall apply *mutatis mutandis* to the assembly of rightholders.

Article 9

Supervisory function

1 Member States shall ensure that each collective management organisation has in place a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation.

2 There shall be fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function.

3 Each person exercising the supervisory function shall make an annual individual statement on conflicts of interest, containing the information referred to in the second subparagraph of Article 10(2), to the general assembly of members.

4 The body exercising the supervisory function shall meet regularly and shall have at least the following powers:

- a to exercise the powers delegated to it by the general assembly of members, including under Article 8(4) and (6);
- b to monitor the activities and the performance of the duties of the persons referred to in Article 10, including the implementation of the decisions of the general assembly of members and, in particular, of the general policies listed in points (a) to (d) of Article 8(5).

5 The body exercising the supervisory function shall report on the exercise of its powers to the general assembly of members at least once a year.

Article 10

Obligations of the persons who manage the business of the collective management organisation

1 Member States shall ensure that each collective management organisation takes all necessary measures so that the persons who manage its business do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

2 Member States shall ensure that collective management organisations put in place and apply procedures to avoid conflicts of interest, and where such conflicts cannot be avoided, to identify, manage, monitor and disclose actual or potential conflicts of interest in such a way as

to prevent them from adversely affecting the collective interests of the rightholders whom the organisation represents.

The procedures referred to in the first subparagraph shall include an annual individual statement by each of the persons referred to in paragraph 1 to the general assembly of members, containing the following information:

- a any interests in the collective management organisation;
- b any remuneration received in the preceding financial year from the collective management organisation, including in the form of pension schemes, benefits in kind and other types of benefits;
- c any amounts received in the preceding financial year as a rightholder from the collective management organisation;
- d a declaration concerning any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations owed to the collective management organisation and any duty owed to any other natural or legal person.

CHAPTER 2

Management of rights revenue

Article 11

Collection and use of rights revenue

1 Member States shall ensure that collective management organisations comply with the rules laid down in paragraphs 2 to 5.

2 A collective management organisation shall be diligent in the collection and management of rights revenue.

3 A collective management organisation shall keep separate in its accounts:

- a rights revenue and any income arising from the investment of rights revenue; and
- b any own assets it may have and income arising from such assets, from management fees or from other activities.

4 A collective management organisation shall not be permitted to use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rightholders, except where it is allowed to deduct or offset its management fees in compliance with a decision taken in accordance with point (d) of Article 8(5) or to use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with Article 8(5).

5 Where a collective management organisation invests rights revenue or any income arising from the investment of rights revenue, it shall do so in the best interests of the rightholders whose rights it represents, in accordance with the general investment and risk management policy referred to in points (c) and (f) of Article 8(5) and having regard to the following rules:

- a where there is any potential conflict of interest, the collective management organisation shall ensure that the investment is made in the sole interest of those rightholders;
- b the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;

- c the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.

Article 12

Deductions

1 Member States shall ensure that where a rightholder authorises a collective management organisation to manage his rights, the collective management organisation is required to provide the rightholder with information on management fees and other deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his consent to its managing his rights.

2 Deductions shall be reasonable in relation to the services provided by the collective management organisation to rightholders, including, where appropriate, the services referred to in paragraph 4, and shall be established on the basis of objective criteria.

3 Management fees shall not exceed the justified and documented costs incurred by the collective management organisation in managing copyright and related rights.

Member States shall ensure that the requirements applicable to the use and the transparency of the use of amounts deducted or offset in respect of management fees apply to any other deductions made in order to cover the costs of managing copyright and related rights.

4 Where a collective management organisation provides social, cultural or educational services funded through deductions from rights revenue or from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria, in particular as regards access to, and the extent of, those services.

Article 13

Distribution of amounts due to rightholders

1 Without prejudice to Article 15(3) and Article 28, Member States shall ensure that each collective management organisation regularly, diligently and accurately distributes and pays amounts due to rightholders in accordance with the general policy on distribution referred to in point (a) of Article 8(5).

Member States shall also ensure that collective management organisations or their members who are entities representing rightholders distribute and pay those amounts to rightholders as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation or, where applicable, its members from meeting that deadline.

2 Where the amounts due to rightholders cannot be distributed within the deadline set in paragraph 1 because the relevant rightholders cannot be identified or located and the exception to that deadline does not apply, those amounts shall be kept separate in the accounts of the collective management organisation.

3 The collective management organisation shall take all necessary measures, consistent with paragraph 1, to identify and locate the rightholders. In particular, at the latest three months after the expiry of the deadline set in paragraph 1, the collective management organisation shall make available information on works and other subject-matter for which one or more rightholders have not been identified or located to:

- a the rightholders that it represents or the entities representing rightholders, where such entities are members of the collective management organisation; and
- b all collective management organisations with which it has concluded representation agreements.

The information referred to in the first subparagraph shall include, where available, the following:

- a the title of the work or other subject-matter;
- b the name of the rightholder;
- c the name of the relevant publisher or producer; and
- d any other relevant information available which could assist in identifying the rightholder.

The collective management organisation shall also verify the records referred to in Article 6(5) and other readily available records. If the abovementioned measures fail to produce results, the collective management organisation shall make that information available to the public at the latest one year after the expiry of the three-month period.

4 Where the amounts due to rightholders cannot be distributed after three years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collective management organisation has taken all necessary measures to identify and locate the rightholders referred to in paragraph 3, those amounts shall be deemed non-distributable.

5 The general assembly of members of a collective management organisation shall decide on the use of the non-distributable amounts in accordance with point (b) of Article 8(5), without prejudice to the right of rightholders to claim such amounts from the collective management organisation in accordance with the laws of the Member States on the statute of limitations of claims.

6 Member States may limit or determine the permitted uses of non-distributable amounts, inter alia, by ensuring that such amounts are used in a separate and independent way in order to fund social, cultural and educational activities for the benefit of rightholders.

CHAPTER 3

Management of rights on behalf of other collective management organisations

Article 14

Rights managed under representation agreements

Member States shall ensure that a collective management organisation does not discriminate against any rightholder whose rights it manages under a representation agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of amounts due to rightholders.

Article 15

Deductions and payments in representation agreements

1 Member States shall ensure that a collective management organisation does not make deductions, other than in respect of management fees, from the rights revenue derived from the rights it manages on the basis of a representation agreement, or from any income arising from the investment of that rights revenue, unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.

2 The collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to other collective management organisations.

3 The collective management organisation shall carry out such distribution and payments to the other collective management organisation as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation from meeting that deadline.

The other collective management organisation, or, where it has as members entities representing rightholders, those members, shall distribute and pay the amounts due to rightholders as soon as possible but no later than six months from receipt of those amounts, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation or, where applicable, its members from meeting that deadline.

CHAPTER 4

Relations with users

Article 16

Licensing

1 Member States shall ensure that collective management organisations and users conduct negotiations for the licensing of rights in good faith. Collective management organisations and users shall provide each other with all necessary information.

2 Licensing terms shall be based on objective and non-discriminatory criteria. When licensing rights, collective management organisations shall not be required to use, as a precedent for other online services, licensing terms agreed with a user where the user is providing a new type of online service which has been available to the public in the Union for less than three years.

Rightholders shall receive appropriate remuneration for the use of their rights. Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade, taking into account the nature and scope of the use of the work and other subject-matter, as well as in relation to the economic value of the service provided by the collective management organisation.

Collective management organisations shall inform the user concerned of the criteria used for the setting of those tariffs.

3 Collective management organisations shall reply without undue delay to requests from users, indicating, inter alia, the information needed in order for the collective management organisation to offer a licence.

Upon receipt of all relevant information, the collective management organisation shall, without undue delay, either offer a licence or provide the user with a reasoned statement explaining why it does not intend to license a particular service.

4 A collective management organisation shall allow users to communicate with it by electronic means, including, where appropriate, for the purpose of reporting on the use of the licence.

Article 17

Users' obligations

Member States shall adopt provisions to ensure that users provide a collective management organisation, within an agreed or pre-established time and in an agreed or pre-established format, with such relevant information at their disposal on the use of the rights represented by the collective management organisation as is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightholders. When deciding on the format for the provision of such information, collective management organisations and users shall take into account, as far as possible, voluntary industry standards.

CHAPTER 5

Transparency and reporting

Article 18

Information provided to rightholders on the management of their rights

1 Without prejudice to paragraph 2 of this Article and Article 19 and Article 28(2), Member States shall ensure that a collective management organisation makes available, not less than once a year, to each rightholder to whom it has attributed rights revenue or made payments in the period to which the information relates, at least the following information:

- a any contact details which the rightholder has authorised the collective management organisation to use in order to identify and locate the rightholder;
- b the rights revenue attributed to the rightholder;
- c the amounts paid by the collective management organisation to the rightholder per category of rights managed and per type of use;
- d the period during which the use took place for which amounts were attributed and paid to the rightholder, unless objective reasons relating to reporting by users prevent the collective management organisation from providing this information;
- e deductions made in respect of management fees;

- f deductions made for any purpose other than in respect of management fees, including those that may be required by national law for the provision of any social, cultural or educational services;
- g any rights revenue attributed to the rightholder which is outstanding for any period.

2 Where a collective management organisation attributes rights revenue and has as members entities which are responsible for the distribution of rights revenue to rightholders, the collective management organisation shall provide the information listed in paragraph 1 to those entities, provided that they do not have that information in their possession. Member States shall ensure that the entities make at least the information listed in paragraph 1 available, not less than once a year, to each rightholder to whom they have attributed rights revenue or made payments in the period to which the information relates.

Article 19

Information provided to other collective management organisations on the management of rights under representation agreements

Member States shall ensure that a collective management organisation makes at least the following information available, not less than once a year and by electronic means, to collective management organisations on whose behalf it manages rights under a representation agreement, for the period to which the information relates:

- (a) the rights revenue attributed, the amounts paid by the collective management organisation per category of rights managed, and per type of use, for the rights it manages under the representation agreement, and any rights revenue attributed which is outstanding for any period;
- (b) deductions made in respect of management fees;
- (c) deductions made for any purpose other than in respect of management fees as referred to in Article 15;
- (d) information on any licences granted or refused with regard to works and other subject-matter covered by the representation agreement;
- (e) resolutions adopted by the general assembly of members in so far as those resolutions are relevant to the management of the rights under the representation agreement.

Article 20

Information provided to rightholders, other collective management organisations and users on request

Without prejudice to Article 25, Member States shall ensure that, in response to a duly justified request, a collective management organisation makes at least the following information available by electronic means and without undue delay to any collective management organisation on whose behalf it manages rights under a representation agreement or to any rightholder or to any user:

- (a) the works or other subject-matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or

- (b) where, due to the scope of activity of the collective management organisation, such works or other subject-matter cannot be determined, the types of works or of other subject-matter it represents, the rights it manages and the territories covered.

Article 21

Disclosure of information to the public

1 Member States shall ensure that a collective management organisation makes public at least the following information:

- a its statute;
- b its membership terms and the terms of termination of authorisation to manage rights, if these are not included in the statute;
- c standard licensing contracts and standard applicable tariffs, including discounts;
- d the list of the persons referred to in Article 10;
- e its general policy on distribution of amounts due to rightholders;
- f its general policy on management fees;
- g its general policy on deductions, other than in respect of management fees, from rights revenue and from any income arising from the investment of rights revenue, including deductions for the purposes of social, cultural and educational services;
- h a list of the representation agreements it has entered into, and the names of the collective management organisations with which those representation agreements have been concluded;
- i the general policy on the use of non-distributable amounts;
- j the complaint handling and dispute resolution procedures available in accordance with Articles 33, 34 and 35.

2 The collective management organisation shall publish, and keep up to date, on its public website the information referred to in paragraph 1.

Article 22

Annual transparency report

1 Member States shall ensure that a collective management organisation, irrespective of its legal form under national law, draws up and makes public an annual transparency report, including the special report referred to in paragraph 3, for each financial year no later than eight months following the end of that financial year.

The collective management organisation shall publish on its website the annual transparency report, which shall remain available to the public on that website for at least five years.

2 The annual transparency report shall contain at least the information set out in the Annex.

3 A special report shall address the use of the amounts deducted for the purposes of social, cultural and educational services and shall contain at least the information set out in point 3 of the Annex.

4 The accounting information included in the annual transparency report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council⁽¹⁾.

The audit report, including any qualifications thereto, shall be reproduced in full in the annual transparency report.

For the purposes of this paragraph, accounting information shall comprise the financial statements referred to in point 1(a) of the Annex and any financial information referred to in points (g) and (h) of point 1 and in point 2 of the Annex.

Status: This is the original version (as it was originally adopted).

- (1) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated account, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC ([OJ L 157, 9.6.2006, p. 87](#)).