STATUTORY INSTRUMENTS

2016 No. 221

COPYRIGHT

The Collective Management of Copyright (EU Directive) Regulations 2016

Made - - - -	*24th February 2016*
Laid before Parliament	*25th February 2016*
Coming into force - -	*10th April 2016*

The Secretary of State, as a Minister designated [M1] for the purposes of section 2(2) of the European Communities Act 1972 [M2] in relation to matters relating to copyright and rights in performances, makes these Regulations in exercise of the powers contained in section 2(2) of that Act.

Marginal Citations

M1 S.I. 1992/707 and S.I. 1993/595.

M2 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Collective Management of Copyright (EU Directive) Regulations 2016 and come into force on 10th April 2016.

Interpretation and application

2.—(1) In these Regulations—

"collective management organisation" means an organisation which—

(a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than

one right holder, for the collective benefit of those right holders, as its sole or main purpose; and

(b) is either owned or controlled by its members or is organised on a not for profit basis, or both;

"general assembly of members" means the body in the collective management organisation through which members participate and exercise their voting rights;

"independent management entity" means an organisation which—

(a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose;

(b) is neither owned nor controlled, directly or indirectly, wholly or in part, by right holders; and

(c) is organised on a for profit basis;

"management fees" means the amounts charged, deducted or offset by a collective management organisation from rights revenue or from any income arising from the investment of rights revenue in order to cover the costs of its management of copyright or related rights;

"member" means a right holder or an entity representing right holders, including other collective management organisations and associations of right holders, fulfilling the membership requirements of the collective management organisation and admitted by it;

"multi-territorial licence" means a licence which covers the territory of **[**[F1]the United Kingdom and at least one member State**]**;

"non-distributable", in relation to amounts due to right holders, is construed in accordance with regulation 12(9);

"online rights in musical works" means any of the rights of an author in a musical work provided for under articles 2 and 3 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 [M3] which are required for the provision of an online service;

"online service provider" means a user who is an online service provider referred to in Part 3 of these Regulations;

"repertoire" means the works in respect of which a collective management organisation manages rights;

"representation agreement" means an agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to manage the rights it represents, including an agreement concluded under regulation 28 (agreements between collective management organisations) and 29 (representation of other collective management organisations);

"right holder" means any person, other than a collective management organisation, that—

(a) holds a copyright or related right; or

(b) under an agreement for the exploitation of rights or by law is entitled to a share of the rights revenue;

"rights revenue" means income collected by a collective management organisation on behalf of right holders, whether deriving from an exclusive right, a right to remuneration or a right to compensation;

"statute" means the memorandum and articles of association, the statute, the rules or documents of constitution of a collective management organisation;

"user" means a person who—

(a) is carrying out acts subject to the authorisation of right holders, remuneration of right holders or payment of compensation to right holders; and

(b) is not acting in the capacity of a consumer.

(2) The obligations of a collective management organisation in Part 2 and 4 of these Regulations apply to a collective management organisation established in the United Kingdom.

(3) The obligations of a collective management organisation in Part 3 of these Regulations apply to a collective management organisation in accordance with regulation 22.

(4) Where an entity which is directly or indirectly owned or controlled, wholly or in part, by a collective management organisation carries on an activity which, if carried on by the collective management organisation, would be subject to the provisions of these Regulations then those provisions apply to that entity.

(5) The following provisions of these Regulations apply to an independent management entity established in the United Kingdom—

(a) paragraph (1) of regulation 15 (licensing);

(b) regulation 17 (information to be provided to right holders);

(c) paragraph (1)(b) of regulation 19 (information to be provided on request);

(d) paragraph (2) of regulation 20 (disclosure of information to the public); and

(e) paragraph 1(f) of regulation 36 (power to request information).

Textual Amendments

F1 Words in reg. 2(1) substituted (31.12.2020) by The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/605), regs. 1(2), **32(2)** (with reg. 38) (as amended by S.I. 2020/1050, regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M3 OJ No. L167, 22.6.2001, p.10.

PART 2

Collective Management Organisations

General obligations of collective management organisations in relation to right holders

3. A collective management organisation—

(a) must act in the best interests of right holders whose rights it represents; and

(b) must not impose on such right holders any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights.

Particular obligations of collective management organisations in relation to right holders

4. A collective management organisation must ensure that—

(a) right holders have the right to authorise a collective management organisation of their choice to manage—

(i) the rights,

(ii) categories of rights,

(iii) types of works, and

(iv) other subject matter,

of their choice, for the territory of their choice irrespective of the **[**[F2]country**]** of nationality, residence or establishment of either the collective management organisation or the right holder;

(b) it manages the matters referred to in paragraph (a)(i) to (iv) provided that the management of these matters falls within the scope of its activity or unless it has objectively justified reasons to refuse management;

(c) right holders have the right to grant licences for non-commercial uses of any of the matters referred to in paragraph (a)(i) to (iv) that they may choose;

(d) right holders have the right—

(i) to terminate the authorisation to manage the matters referred to in paragraph (a)(i) to (iv) granted by them to a collective management organisation, or

(ii) to withdraw from a collective management organisation the matters of their choice referred to in paragraph (a)(i) to (iv) for the territory of their choice,

upon serving reasonable notice not exceeding six months unless the collective management organisation decides that such termination or withdrawal is to take place at the end of its financial year;

(e) if there are amounts due to a right holder for acts of exploitation which occurred, or under a licence granted, before the time when termination or withdrawal under paragraph (d) took effect, the right holder retains the rights under regulation 11 (deductions), 12 (distributions), 17 (information), 19 (information on request), 27 (payment) and 31 (complaints);

(f) it does not restrict the exercise of rights referred to in paragraphs (d) and (e) by requiring, as a condition for the exercise of those rights, that the management of the matters referred to in paragraph (a)(i) to (iv) which are subject to the termination or the withdrawal are entrusted to another collective management organisation;

(g) where a right holder authorises a collective management organisation to manage that right holder's rights—

(i) the right holder gives consent specifically for each of the matters referred to in paragraph (a)(i) to (iv) which the right holder authorises the collective management organisation to manage; and

(ii) that consent is evidenced in documentary form;

(h) it informs a right holder of their rights under paragraphs (a) to (g) and any conditions attached to the right in paragraph (c) before obtaining the right holder's consent to its managing the matters set out in paragraph (a)(i) to (iv);

(i) by 10th October 2016 it informs right holders who have authorised it by 9th April 2016 of their rights under paragraph (a) to (g) as well as of any conditions attached to the right set out in paragraph (c); and

(j) the rights under paragraphs (a) to (i) are set out in the statute or membership terms of the collective management organisation.

Textual Amendments

F2 Word in reg. 4(a) substituted (31.12.2020) by The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/605), regs. 1(2), **32(3)** (with reg. 38) (as amended by S.I. 2020/1050, regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)

Membership rules of collective management organisations

5.—(1) A collective management organisation must—

(a) accept as members—

(i) right holders, and

(ii) entities representing right holders, including other collective managements organisations and associations of right holders,

if they fulfil the membership requirements (see paragraph (2)); and

(b) in cases where it refuses to accept a request for membership, provide the right holder with a clear explanation of the reasons for its decision.

(2) A collective management organisation must ensure that its membership requirements—

(a) are based on objective, transparent and non-discriminatory criteria;

(b) are included in its statute or membership terms; and

(c) are made publicly available.

Collective management organisations and their members

6. A collective management organisation must—

(a) ensure that its statute provides for appropriate and effective mechanisms for the participation of its members in the decision-making process of that organisation;

(b) ensure that the representation of the different categories of members in the decision-making process is fair and balanced;

(c) allow—

(i) its members, and

(ii) right holders who are not members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,

to communicate with it by electronic means including, in the case of its members, for the purposes of exercising members' rights; and

(d) keep records of its members and regularly update those records.

General assembly of members of collective management organisations

7.—(1) A collective management organisation must ensure that—

(a) the general assembly of members is convened at least once a year;

(b) the general assembly of members decides on amendments to the statute and the membership terms of the collective management organisation, where those terms are not regulated by the statute;

(c) the general assembly of members decides on the appointment and dismissal of the directors, reviews their general performance and approves their remuneration and other benefits such as—

(i) monetary and non-monetary benefits;

(ii) pension awards and entitlements;

(iii) rights to other awards; and

(iv) rights to severance pay;

(but see paragraph (12));

(d) in accordance with regulation 10 (rights revenue), 11 (deductions) and 12 (distribution) and subject to paragraph (2) the general assembly of members decides on at least—

(i) the general policy on the distribution of amounts due to right holders;

(ii) the general policy on the use of non-distributable amounts;

(iii) the general investment policy with regards to rights revenue and to any income arising from the investment of rights revenue;

(iv) the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;

(v) the use of non-distributable amounts;

(vi) the risk management policy;

(vii) the approval of any acquisition, sale or hypothecation of immovable property;

(viii) the approval of—

(aa) mergers and alliances;

(bb) the setting-up of subsidiaries;

(cc) the acquisition of other entities or shares or rights in other entities;

and;

(ix) the approval of taking out loans, granting loans or providing security for loans;

(e) the general assembly of members controls the activities of the collective management organisation by at least—

(i) deciding on the appointment and removal of the auditor (but see paragraph (3)); and

(ii) approving the annual transparency report referred to in regulation 21 (annual transparency report);

(f) all members of the collective management organisation have the right to participate in, and the right to vote at, the general assembly of members (but see paragraph (4));

(g) every member of a collective management organisation has a right to appoint another person as a proxy to participate in, and vote at, the general assembly of members on the member's behalf provided that the appointment does not result in a conflict of interest; and

(h) in relation to the right in sub-paragraph (g)—

(i) each proxy is valid for a single general assembly of members;

(ii) the proxy holder enjoys the same rights in the general assembly of members as those to which the appointing member would be entitled;

(iii) the proxy holder casts votes in accordance with the instructions issued by the appointing member.

(2) The requirement in paragraph (1)(d)(vi) to (ix) may be satisfied where the general assembly of members delegates to the body exercising the supervisory function referred in regulation 8 (supervisory function) the functions referred to in those sub-paragraphs by a resolution or by a provision in the statute.

(3) The requirement in paragraph (1)(e)(i) may be satisfied where an auditor is appointed under Chapter 2 of Part 16 of the Companies Act 2006 [M4].

(4) The requirement in paragraph (1)(f) may be satisfied—

(a) where a collective management organisation restricts the rights of members referred to in that sub-paragraph on the basis or either or both the following criteria—

(i) duration of membership, or

(ii) amounts received or due to a member;

and;

(b) where these criteria—

(i) are determined and applied in a manner which is fair and proportionate; and

(ii) are included in the statute or the membership terms of the collective management organisation and are made publicly available in accordance with regulation 20 (disclosure of information to the public).

(5) This paragraph applies where a collective management organisation by reason of its legal form does not have a general assembly of members.

(6) Where paragraph (5) applies—

(a) the collective management organisation must ensure that the functions of the general assembly of members referred to in paragraph (1)(b) to (e) are exercised by the body exercising the supervisory function referred to in regulation 8 (collective management organisation: supervisory function); and

(b) this regulation applies with the following modifications—

(i) in paragraph (1), sub-paragraphs (a), (b), (c), (d) and (e) apply as if the references to "general assembly of members" were references to "body exercising the supervisory function referred to in regulation 8";

(ii) in paragraph (1), subparagraphs (f), (g) and (h) do not apply; and

(iii) paragraphs (2) and (4) do not apply.

(7) This paragraph applies where—

(a) a collective management organisation decides that the functions of the general assembly of members referred to in paragraph (1)(b) to (e) are to be exercised by an assembly of delegates elected at least every four years by the members of the collective management organisation;

(b) appropriate and effective participation of members in the collective management organisation's decision-making process is ensured; and

(c) the representation of the different categories of members in the assembly of delegates is fair and balanced.

(8) Where paragraph (7) applies this regulation applies with the following modifications—

(a) in paragraph (1), sub-paragraphs (a), (b), (c), (d) and (e) apply as if the references to "general assembly of members" were references to " assembly of delegates";

(b) in paragraph (1), sub-paragraph (f) applies as if it read "all delegates elected to the assembly of delegates have the right to participate in, and vote at, the assembly of delegates;";

(c) in paragraph (1), sub-paragraph (g) applies as if the reference to—

(i) "member of a collective management organisation" read "delegate elected to the assembly of delegates";

(ii) "general assembly of members" read "assembly of delegates"; and

(iii) "member's behalf" read "delegate's behalf";

(d) in paragraph (1), sub-paragraph (h) applies as if—

(aa) both references to "general assembly of members" were references to "assembly of delegates"; and

(bb) both references to "appointing member" were to "appointing delegate";

(e) paragraph (2) applies as if the reference to "general assembly of members" were a reference to "assembly of delegates"; and

(f) paragraph (4) does not apply.

(9) This paragraph applies where—

(a) a collective management organisation only has members who represent right holders; and

(b) the collective management organisation decides that one or more of the functions of the general assembly of members referred to in paragraph (1)(b) to (e) are to be exercised by an assembly of those right holders.

(10) Where paragraph (9) applies and the collective management organisation has decided that all the functions of the general assembly of members are to be exercised by an assembly of right holders then this regulation applies with the following modifications—

(a) in paragraph (1), sub-paragraphs (a), (b), (c), (d) and (e) apply as if references to "general assembly of members" were references to "assembly of right holders";

(b) in paragraph (1), sub-paragraph (f) applies as if it read "all right holders who are represented by members have the right to participate in, and the right to vote at, the assembly of right holders;";

(c) in paragraph (1), sub-paragraph (g) applies as if the reference to—

(i) "member of a collective management organisation" read "right holder who is represented by a member"; and

(ii) "general assembly of members on the member's behalf" read "assembly of right holders on the right holder's behalf";

(d) in paragraph (1), sub-paragraph (h) applies as if—

(i) both references to "general assembly of members" were references to "assembly of right holders"; and

(ii) both references to "appointing member" were to "appointing right holder"

(e) paragraph (2) applies as if the reference to "general assembly of members" were a reference to "assembly of right holders"; and

(f) paragraph (4) does not apply.

(11) Where paragraph (9) applies and the collective management organisation has decided that some of the functions of the general assembly of members are to be exercised by an assembly of right holders then this regulation applies with the following modifications—

(a) in paragraph (1), sub-paragraph (a) applies as if after the words "general assembly of members" there were added " and the assembly of right holders ";

(b) a reference in paragraph (1) (b), (c), (d) and (e) to the general assembly of members is to be read as a reference to an assembly of right holders so far as that reference relates to a function that the collective management organisation has decided is to be exercised by an assembly of right holders;

(c) in paragraph (1), sub paragraph (f) applies as if after "(but see paragraph (4)" there were added " and all right holders who are represented by members have the right to participate in, and vote at, the assembly of right holders ";

(d) in paragraph (1), sub-paragraph (g) applies as if after "general assembly of members on the member's behalf" there were added " and every right holder who is represented by a member has a right to appoint another person as a proxy to participate in, and vote at, the assembly of right holders on the right holder's behalf ";

(e) in paragraph (1), sub-paragraph (h) applies as if—

(i) at the end of sub-paragraph (i) there were added " or for a single assembly of right holders ";

(ii) in sub-paragraph (ii)—

(aa) after the reference to "the general assembly of members" there were added " or the assembly of right holders "; and

(bb) after the reference to "appointing member" there were added " or appointing right holder ";

and;

(iii) in sub-paragraph (iii) after the reference to "appointing member" there were added " or the appointing right holder ";

(f) paragraph (2) applies as if after the reference to the "general assembly of members" there were added " or the assembly of right holders "; and

(g) paragraph (4) applies only in relation to the requirement in paragraph (1)(f) concerning the rights of members in relation to the general assembly of members.

(12) Where the statute of a collective management organisation provides for a dual board the collective management organisation must ensure that the general assembly of members does not—

(a) decide on the appointment and dismissal of members of the management board, or

(b) approve their remuneration and other benefits,

to the extent those powers are delegated to the supervisory board.

(13) In paragraph (1)(c) "director" means—

(a) any member of the administrative board of the collective management organisation; or

(b) where the statute of the collective management organisation provides for a dual board, any member of the management board or supervisory board.

Marginal Citations

M4 2006 c.46.

Collective management organisations: supervisory function

8.—(1) A collective management organisation must ensure that it 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 which satisfies the requirements of this regulation.

(2) The requirements of this regulation are—

(a) there is a fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function;

(b) each person exercising the supervisory function makes an annual individual statement to the general assembly of members on conflicts of interest, containing the information referred in paragraph (3) of regulation 9 (management);

(c) the body exercising the supervisory function meets regularly and has at least the following powers—

(i) to exercise the powers delegated to it by the general assembly of members, including the delegation of functions referred to in paragraph (2) of regulation 7 (general assembly of members); and

(ii) to monitor the activities and the performance of the duties of persons referred to in regulation 9, including the implementation of the decisions of the general assembly of members and, in particular, of the general policies referred to in paragraph (1)(d)(i) to (iv) of regulation 7 (general assembly of members);

and;

(d) the body exercising the supervisory function reports on the exercise of its powers to the general assembly of members at least once a year.

Collective management organisations: management

9.—(1) A collective management organisation must ensure that 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) A collective management organisation must put in place and apply procedures (see paragraph (3))—

(a) to avoid conflicts of interest; and

(b) 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 right holders whom the organisation represents.

(3) The procedures referred to in paragraph (2) 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 amount received in the preceding financial year as a right holder from the collective management organisation; and

(d) a declaration concerning any actual or potential conflict between—

(i) any personal interests and those of the collective management organisation; and

(ii) any obligations owed to the collective management organisation and any duty owed to any other person.

(4) A collective management organisation must ensure that its staff training procedures for employees, agents and representatives include appropriate training about conduct that complies with its obligations under these Regulations (but see paragraph (5)).

(5) Paragraph (4) does not apply where the collective management organisation is a **[**[F3]company that qualifies as a micro-entity under section 384A of the Companies Act 2006.**]**

Textual Amendments

F3 Words in reg. 9(5) substituted (1.1.2024) by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 (S.I. 2023/1285), regs. 1(2), **7(1)**

Collection and use of rights revenue

10. A collective management organisation must ensure—

(a) that it is diligent in the collection and management of rights revenue;

(b) that it keeps separate in its accounts—

(i) rights revenue and any income arising from the investment of rights revenue; and

(ii) any own assets it may have and income arising from such assets, from management fees or from other activities;

(c) that it does not use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to right holders, except where it is allowed—

(i) to deduct or offset its management fees in compliance with a decision taken in accordance with paragraph (1)(d)(iv) of regulation 7 (general assembly of members); or

(ii) to use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with regulation 7(1)(d);

and;

(d) that where it invests rights revenue, or any income arising from the investment of rights revenue, it does so—

(i) in the best interests of the right holders whose rights it represents;

(ii) in accordance with the general investment and risk management policy referred to in paragraph (1)(d)(iii) and (vi) of regulation 7 (general assembly of members); and

(iii) having regard to the following—

(aa) where there is any potential conflict of interest, the collective management organisation must ensure that the investment is made in the sole interest of those right holders;

(bb) the assets are invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole; and

(cc) the assets are properly diversified in order to avoid excessive reliance on any particular asset and accumulation of risks in the portfolio as a whole.

Deductions

11.—(1) A collective management organisation must ensure that where a right holder authorises it to manage that right holder's rights, the collective management organisation provides the right holder with information on—

(a) management fees (see paragraph (3)), and

(b) other deductions from the rights revenue and from any income arising from the investment of the rights revenue (see paragraph (2)),

before obtaining the right holder's consent to manage the right holder's rights.

(2) A collective management organisation must ensure that deductions—

(a) are reasonable in relation to the services provided by the collective management organisation to right holders (including, where appropriate, the services referred to in paragraph (5)); and

(b) are established on the basis of objective criteria.

(3) A collective management organisation must ensure that management fees do not exceed the justified and documented costs incurred by the collective management organisation in managing copyright and related rights.

(4) A collective management organisation must ensure that the requirements in these Regulations relating 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.

(5) A collective management organisation must ensure that where it 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 are provided on the basis of fair criteria, in particular in relation to access to, and the extent of, those services.

Distributions of amounts to right holders

12.—(1) A collective management organisation must regularly, diligently and accurately distribute and pay amounts due to right holders in accordance with the general policy on distribution referred to in paragraph (1)(d)(i) of regulation 7 (general assembly of members) subject to paragraph (3) of regulation 14 (deductions and payments) and regulation 27 (payment).

(2) A collective management organisation or, a member of it which is an entity representing right holders, must distribute and pay the amounts referred to in paragraph (1) to right holders as soon as possible but in any event no later than the beginning of the period which starts 9 months from the end of the financial year in which the rights revenue was collected unless paragraph (3) applies.

(3) This paragraph applies where there are objective reasons which prevent the collective management organisation or its member referred to in paragraph (2) from distributing or paying the amounts within the time specified in that paragraph.

(4) The objective reasons referred to in paragraph (3) may relate in particular to—

(a) reporting by users;

(b) identification of rights or right holders; or

(c) matching of information on works and other subject matter with right holders.

(5) A collective management organisation must ensure that amounts due to right holders are kept separate in the accounts of the collective management organisation where—

(a) those amounts cannot be distributed within the time specified in paragraph (2) because the relevant right holders cannot be identified or located; and

(b) paragraph (3) does not apply.

(6) A collective management organisation must take all necessary measures to identify and locate right holders consistent with the requirements of paragraph (1) (see paragraph 7).

(7) The measures referred to in paragraph (6) include in particular—

(a) the collective management organisation making available, at the latest 3 months after the beginning of the period specified in paragraph (2), information on works and other subject matter (see paragraph (8)) for which a right holder has not been identified or located to—

(i) the right holders that the collective management organisation represents or entities which are its members and which represent right holders; and

(ii) the collective management organisations with which it has concluded representation agreements.

(b) the collective management organisation—

(i) verifying the records referred in in paragraph (d) of regulation 6 (collective management organisation and its members) and other readily available records; and

(ii) where right holders remain unidentified or not located, making the information referred to in sub-paragraph (a) available to the public no later than one year after the end of the 3 month period referred to in that sub-paragraph.

(8) The information referred to in paragraph (7) includes, where available—

(a) the title of the work or other subject matter;

(b) the name of the right holder;

(c) the name of the relevant publisher or producer; and

(d) any other relevant information available which could assist in identifying the right holder.

(9) Amounts due to right holders are non-distributable for the purposes of these Regulations where—

(a) they cannot be distributed before the end of the period of 3 years from the end of the financial year in which collection of the rights revenue occurred; and

(b) the collective management organisation has taken all necessary measures to identify and locate the right holders referred to in paragraph (6).

(10) The decision on the use of non-distributable amounts referred to in regulation 7(1)(d) is without prejudice to the right of a right holder to claim such amounts from the copyright management organisation in accordance with the law providing for a limitation period applicable to the bringing of proceedings.

Rights managed under representation agreements

13. A collective management organisation must not discriminate against any right holder whose rights it manages under a representation agreement in particular with respect to—

(a) applicable tariffs;

(b) management fees; and

(c) the conditions for—

(i) the collection of rights revenue; and

(ii) distribution of amounts due to right holders.

Deductions and payments in representation agreements

14.—(1) A collective management organisation must not make deductions (other than in respect of management fees)—

(a) from the rights revenue derived from the rights it manages on the basis of a representation agreement, or

(b) 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) A collective management organisation must regularly, diligently and accurately distribute and pay amounts due to other collective management organisations.

(3) A collective management organisation must carry out the distribution and payments referred to in paragraph (2) as soon as possible but in any event no later than the beginning of the period which starts 9 months from the end of the financial year in which the rights revenue was collected unless paragraph (4) applies.

(4) This paragraph applies where there are objective reasons which prevent the collective management organisation from distributing or paying the amounts within the time specified in paragraph (3).

(5) The objective reasons referred to in paragraph (4) may, in particular, relate to—

(a) reporting by users;

(b) identification of rights or right holders; or

(c) matching of information on works and other subject matter with right holders.

(6) The other collective management organisation referred to in paragraph (1) or, where it has a member which is an entity representing right holders, that member must ensure that it distributes and pays the amounts due to right holders as soon as possible but in any event no later than the beginning of the period which starts 6 months from the receipt of those amounts unless paragraph (7) applies.

(7) This paragraph applies where there are objective reasons which prevent the collective management organisation or its member referred to in paragraph (6) from distributing and paying the amounts within the time specified in paragraph (6).

(8) The objective reasons referred to in paragraph (6) may, in particular, relate to—

(a) reporting by users;

(b) identification of rights or right holders; or

(c) matching of information on works and other subject matter with right holders.

Licensing

15.—(1) A collective management organisation and a user and an independent management entity and a user must—

(a) conduct negotiations for the licensing of rights in good faith; and

(b) provide each other with all necessary information.

(2) A collective management organisation must ensure that licensing terms are based on objective and non-discriminatory criteria (but see paragraph (3)).

(3) Paragraph (2) does not require a collective management organisation 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 **[**[F4]the United Kingdom**]** for less than 3 years.

(4) A collective management organisation must ensure that—

(a) right holders receive appropriate remuneration for the use of their rights;

(b) tariffs it determines for exclusive rights and rights to remuneration are reasonable in relation to matters such as—

(i) 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; and

(ii) the economic value of the service provided by the collective management organisation;

and;

(c) it informs the user concerned of the criteria used for the setting of those tariffs.

(5) A collective management organisation must—

(a) reply without undue delay to requests from users indicating, amongst other things, the information needed in order for the collective management organisation to offer a licence;

(b) upon receipt of all relevant information without undue delay either—

(i) offer a licence; or

(ii) provide the user with a reasoned statement explaining why it does not intend to license a particular service;

(c) allow users to communicate with it by electronic means, including, where appropriate, for the purpose of reporting on the use of the licence; and

(d) after giving a user a licence, treat that user in good faith (but see paragraph (6)).

(6) Paragraph 5(d) does not apply where the collective management organisation is a **[**[F5]company that qualifies as a micro-entity under section 384A of the Companies Act 2006.**]**

Textual Amendments

F4 Words in reg. 15(3) substituted (31.12.2020) by The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/605), regs. 1(2), **32(4)** (with reg. 38) (as amended by S.I. 2020/1050, regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)

F5 Words in reg. 15(6) substituted (1.1.2024) by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 (S.I. 2023/1285), regs. 1(2), **7(2)**

Users' obligations

16.—(1) A user must 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 its disposal on the use of the rights represented by the collective management organisation as is necessary for—

(a) the collection of rights revenue; and

(b) the distribution and payment of amounts due to right holders.

(2) A collective management organisation and a user must ensure that they take into account, as far as possible, voluntary industry standards in deciding on the format for the information referred to in paragraph (1).

Information provided to right holders

17.—(1) A collective management organisation and an independent management entity must make available not less than once a year to each right holder to whom—

(a) it has attributed rights revenue, or

(b) made payments,

in the period to which the information relates, at least the information specified in paragraph (2).

(2) The information specified in this paragraph is—

(a) contact details which the right holder has authorised the collective management organisation or the independent management entity to use in order to identify and locate the right holder;

(b) the rights revenue attributed to the right holder;

(c) the amount paid by the collective management organisation or the independent management entity to the right holder for each category of right managed and for each type of use;

(d) the period during which the use took place for which amounts were attributed and paid to the right holder unless objective reasons relating to reporting by users prevent the collective management organisation or the independent management entity from providing this information;

(e) deductions made in respect of management fees;

(f) deductions made for any other purpose other than in respect of management fees, including those that may be legally required for the provision of social, cultural or educational services; and

(g) rights revenue attributed to the right holder which is outstanding for a period.

(3) A collective management organisation and an independent management entity must provide the information specified in paragraph (2) to the person referred to in sub-paragraph (b) where—

(a) it attributes rights revenue to right holders;

(b) it has a member an entity which is responsible for the distribution of rights revenue to right holders; and

(c) that member does not have that information in their possession.

(4) The member to whom information is supplied under paragraph (3) must make available not less than once a year the information specified in paragraph (2) to each right holder to whom the member has attributed rights revenue or made payments in the period to which the information relates.

Information provided to other collective management organisations

18.—(1) A collective management organisation must make available at least the information specified in paragraph (2) by electronic means no less than once a year to collective management organisations on whose behalf it manages rights under a representation agreement for the period to which the information relates.

(2) The information specified in this paragraph is—

(a) the rights revenue attributed for the rights it manages under the representation agreement;

(b) the amounts paid by the collective management organisation—

(i) for each category of rights managed, and

(ii) for each type of use,

for the rights it manages under the representation agreement;

(c) rights revenue attributed which is outstanding for any period;

(d) deductions made in respect of management fees;

(e) deductions made for a purpose other than in respect of management fees referred to in regulation 14 (deductions and payments);

(f) information on any licences grated or refused with regard to works and other subject matter covered by the representation agreement; and

(g) 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.

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

19.—(1) Subject to regulation 24 (transparency of multi-territorial repertoire information)—

(a) a collective management organisation must make the information specified in paragraph (2) or, where it applies, paragraph (4) available by electronic means and without undue delay, in response to a duly justified request, to—

(i) a collective management organisation on whose behalf it manages rights under a representation agreement;

(ii) a right holder; or

(iii) a user;

and;

(b) an independent management entity must make the information specified in paragraph (2) or, where it applies, paragraph (4) available by electronic means and without undue delay, in response to a duly justified request, to—

(i) a right holder; or

(ii) a user.

(2) The information specified in this paragraph is—

(a) the works or other subject matter the collective management organisation or the independent management entity represents;

(b) the rights the collective management organisation or the independent management entity manages directly or the collective management organisation manages under representation agreements; and

(c) the territories covered.

(3) Paragraph (4) applies where, due to the scope of the activity of the collective management organisation or the independent management entity, the work or other subject matter which it represents cannot be determined.

(4) The information specified in this paragraph is—

(a) the types of works of other subject matter the collective management organisation or the independent management entity represents;

(b) the rights the collective management organisation or the independent management entity manages; and

(c) the territories covered.

Disclosure of information to the public

20.—(1) A collective management organisation must—

(a) make public the information specified in paragraph (3); and

(b) publish and keep up to date on its public website the information specified in that paragraph.

(2) An independent management entity must make public the information specified in paragraph (3)(a), (b), (c), (e), (f) and (g).

(3) The information specified in this paragraph is—

(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 persons referred to in regulation 9(1) (management);

(e) its general policy on distribution of amounts due to right holders;

(f) its general policy on management fees;

(g) its general policy on deductions, other than in respect of management fees, from—

(i) rights revenue; and

(ii) income arising from the investment of rights revenue including deductions for the purposes of social, cultural and educational services;

(h) a list of—

(i) the representation agreements it has entered into; and

(ii) 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; and

(j) the complaint handling and dispute resolution procedures available in accordance with regulations 31 (complaints procedure) and 32 (alternative dispute resolution procedure) and under Part 1, Chapter 7 of the Copyright, Designs and Patents Act 1988 [M5].

Marginal Citations

M5 1988 c.48.

Annual transparency report

21.—(1) A collective management organisation must—

(a) draw up and make public an annual transparency report, including the special report referred to in paragraph (3), for each financial year no later than 8 months following the end of that financial year;

(b) publish on its website the annual transparency report; and

(c) ensure that the annual transparency report remains available on its website for at least 5 years.

(2) The annual transparency report referred to in paragraph (1) must—

(a) contain at least the information specified in paragraph (4);

[[F6](b) be audited by a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006 in respect of the accounting information referred to in paragraph (4)(a), (g), (h), (i), (j) and (k) included in the report (but see paragraph (6));**]** and

[[F7](c) reproduce in full the audit report including any qualifications to that report (but see paragraph (6)).**]**

(3) The special report referred to in paragraph (1)(a) must address the use of the amounts deducted for the purposes of social, cultural and educational services and must contain at least the information specified in paragraph (5).

(4) The information specified in this paragraph is—

(a) financial statements comprising a balance sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash flow statement;

(b) a report on the activities in the financial year;

(c) information on refusals to grant a licence in accordance with paragraph (5)(b)(ii) of regulation 15 (licensing);

(d) a description of the legal and governance structure of the collective management organisation;

(e) information on entities directly or indirectly owned or controlled, wholly or in part, by the collective management organisation;

(f) information on the total amount of remuneration paid to the persons referred to in paragraph (2)(b) of regulation 8 (supervisory function) and regulation 9 (management) in the previous year and on other benefits granted to them;

(g) a special report on the use of any amounts deducted for the purpose of social, cultural and educational services referred to in paragraph (5);

(h) financial information on rights revenue for each category of rights managed and for each type of use (for example broadcasting, online and public performance), including information on—

(i) the income arising from the investment of rights revenue; and

(ii) use of such income (whether it is distributed to right holders or other collective management organisations or otherwise used);

(i) financial information on the cost of rights management and other services provided by the collective management organisation to right holders with a comprehensive description of at least the following—

(i) all operating and financial costs, with a breakdown for each category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;

(ii) operating and financial costs with a breakdown for each category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs, only with regard to the management of rights, including management fees deducted from or offset against—

(aa) rights revenue, or

(bb) income arising from the investment of rights revenue in accordance with paragraph (c) of regulation 10 (collection and use of rights revenue) and paragraphs (1) to (3) of regulation 11 (deductions);

(iii) operating and financial costs with regard to services other than the management of rights but including social, cultural and educational services;

(iv) resources used to cover costs;

(v) deductions made from rights revenue with a breakdown for each category of rights managed and for each type of use and the purpose of the deduction (such as costs relating to the management of rights or to social, cultural or educational services);

(vi) the percentages that the cost of the rights management and other services provided by the collective management organisation to right holders represents compared to the rights revenue in the relevant financial year for each category of rights managed; and

(vii) where the costs in sub-paragraph (vi) are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;

(j) financial information on amounts due to right holders with a comprehensive description of at least the following—

(i) the total amount attributed to right holders with a breakdown for each category of rights managed and type of use;

(ii) the total amount paid to right holders, with a breakdown for each category of rights managed and type of use;

(iii) the frequency of payments with a breakdown for each category of rights managed and type of use;

(iv) the total amount collected but not yet attributed to right holders with a breakdown for each category of rights managed and type of use and indicating the financial year in which those amounts were collected;

(v) the total amount attributed to, but not yet distributed to, right holders with a breakdown for each category of rights managed and type of use and indicating the financial year in which those amounts were collected;

(vi) where a collective management organisation has not carried out the distribution and payments within the period provided for in paragraph (2) in regulation 12 (distribution), the reason for the delay; and

(vii) the total non-distributable amounts along with an explanation of the use to which those amounts have been put;

and;

(k) information on relationships with other collective management organisations, with a description of at least the following—

(i) amounts received from and paid to other collective management organisations with a breakdown for each category of rights, for each type of use and for each organisation;

(ii) management fees and other deductions from the rights revenue due to other collective management organisations with a breakdown for each category of rights, for each type of use and for each organisation;

(iii) management fees and other deductions from the amounts paid by other collective management organisations with a breakdown for each category of rights and for each organisation; and

(iv) amounts distributed directly to right holders originating from other collective management organisations with a breakdown for each category of rights and for each organisation.

(5) The information specified in this paragraph is—

(a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown for each type of purpose and, for each type of purpose, with a breakdown for each category of rights managed and for each type of use; and

(b) an explanation of the use of those amounts with a breakdown for each type of purpose including costs of managing amounts deducted to fund social, cultural and educational services and of the separate amounts used for social, cultural and educational services.

[[F8](6) Paragraph (2)(b) and (c) do not apply to the annual transparency report for a financial year in relation to which the collective management organisation was a company that qualified as small under section 382(1) to (6) of the Companies Act 2006.**]**

Textual Amendments

F6 Reg. 21(2)(b) substituted (1.1.2024) by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 (S.I. 2023/1285), regs. 1(2), **8(2)(a)**

F7 Reg. 21(2)(c) substituted (1.1.2024) by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 (S.I. 2023/1285), regs. 1(2), **8(2)(b)**

F8 Reg. 21(6) inserted (1.1.2024) by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 (S.I. 2023/1285), regs. 1(2), **8(3)**

PART 3

Multi-territorial Licensing and Collective Management Organisations

Application

22.—(1) The obligations of a collective management organisation in this Part apply to a collective management organisation established in the United Kingdom managing authors' rights in musical works for online use on a multi-territorial basis (but see paragraphs (2) and (3)).

(2) The obligations of a collective management organisation in this Part do not apply to a collective management organisation when it grants, on the basis of the voluntary aggregation of the required rights, in compliance with the competition rules under **[**[F9]Part I of the Competition Act 1998**]** a multi-territorial licence for—

(a) the online rights in musical works required by a broadcaster to communicate or make available to the public its radio or television programmes simultaneously with or after their initial broadcast; and

(b) any online material, including previews, produced by or for the broadcaster which is ancillary to the initial broadcast of its radio or television programmes.

(3) Regulation 30 (access to multi-territorial licensing) applies in accordance with paragraph (1) of that regulation.

Textual Amendments

F9 Words in reg. 22(2) substituted (31.12.2020) by The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/605), regs. 1(2), **32(5)** (with reg. 38) (as amended by S.I. 2020/1050, regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)

Capacity to process multi-territorial licences

23.—(1) A collective management organisation which grants multi-territorial licences for online rights in musical works must ensure that it has sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of a multi-territorial licence for online rights in musical works.

(2) For the purposes of paragraph (1) "sufficient capacity" includes sufficient capacity for the purposes of—

(a) identifying the repertoire and monitoring its use;

(b) invoicing users;

(c) collecting rights revenue; and

(d) distributing amounts due to right holders.

(3) For the purposes of paragraph (1) a collective management organisation must—

(a) have the ability to identify accurately the musical works, wholly or in part, which the collective management organisation is authorised to represent;

(b) have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding right holders for each musical work, or share in such work, which the collective management organisation is authorised to represent;

(c) make use of unique identifiers in order to identify right holders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international level or at the level of the European Union; and

(d) make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

Transparency of multi-territorial repertoire information

24.—(1) In response to a duly justified request a collective management organisation which grants multi-territorial licences for online rights in musical works must provide, by electronic means, to—

(a) online service providers,

(b) right holders whose rights it represents, and

(c) other collective management organisations,

up-to-date information allowing the identification of the online music repertoire it represents (but see paragraph (3)).

(2) The information referred to in paragraph (1) includes—

(a) the musical works represented;

(b) the rights represented wholly or in part; and

(c) the territories covered.

(3) In complying with paragraph (1) a collective management organisation may take reasonable measures, where necessary, to—

(a) protect the accuracy and integrity of the data;

(b) control their reuse; and

(c) protect commercially sensitive information.

Accuracy of multi-territorial repertoire information

25.—(1) A collective management organisation which grants multi-territorial licences for online rights in musical works must have in place arrangements to enable—

(a) a right holder,

(b) another collective management organisation, and

(c) an online service provider,

to request a correction of the data referred to in paragraph (3) of regulation 23 (capacity to process) or the information referred to in paragraph (1) of regulation 24 (transparency) where a person referred to in sub-paragraphs (a) to (c) believes on the basis of reasonable evidence that the information or data is inaccurate in respect of their online rights in musical works.

(2) Where a claim under paragraph (1) is sufficiently substantiated the collective management organisation must correct the information without undue delay.

(3) A collective management organisation must provide—

(a) right holders whose musical works are included in its own music repertoire, and

(b) right holders who have entrusted the management of their online rights in musical works to it in accordance with regulation 30 (access to multi-territorial licensing),

with the means of submitting to it in electronic form information concerning their musical works, their rights in those works and the territories in respect of which the right holders authorise the organisation.

(4) When information is submitted in accordance with paragraph (3), the collective management organisation and the right holder must take into account, as far as possible, voluntary industry

standards or practices regarding the exchange of data developed at international level or at the level of the European Union allowing right holders to specify—

(a) the musical work, wholly or in part;

(b) the online rights, wholly or in part; and

(c) the territories in respect of which they authorise the organisation.

(5) A collective management organisation which has been mandated by another collective management organisation ("the mandating collective management organisation") to grant multi-territorial licences for online rights in musical works under—

(a) regulation 28 (agreements between collective management organisations), or

(b) regulation 29 (representation of collective management organisations),

must comply with paragraph (3) with respect to the right holders whose musical works are included in the repertoire of the mandating collective management organisation unless the collective management organisations agree otherwise.

Reporting and invoicing

26.—(1) A collective management organisation must monitor the use of online rights in musical works which it represents, wholly or in part, by online service providers to which it has granted a multi-territorial licence for those rights.

(2) A collective management organisation must offer online service providers the possibility of reporting by electronic means the actual use of online rights in musical works.

(3) A collective management organisation must offer the use of at least one method of reporting the matters referred to in paragraph (2) which takes account of voluntary industry standards or practices developed at international level or at the level of the European Union for the electronic exchange of such data.

(4) A collective management organisation may refuse to accept reporting by the online service provider in a proprietary format if the organisation allows for reporting using an industry standard for the electronic exchange of data.

(5) An online service provider must accurately report the use of the works referred to in paragraph (2).

(6) A collective management organisation must invoice the online service provider by electronic means in accordance with paragraph (7) and (8).

(7) The collective management organisation must offer the use of at least one format which takes into account voluntary industry standards or practices developed at international level or at the level of the European Union.

(8) The invoice must identify—

(a) the works and rights which are licensed, wholly or in part, on the basis of the data referred to in paragraph (3) of regulation 23 (capacity to process); and

(b) the corresponding actual uses, to the extent this is possible on the basis of the information provided by the online service provider and the format used to provide that information.

(9) The online service provider may not refuse to accept the invoice because of its format if the collective management organisation is using an industry standard.

(10) The collective management organisation must invoice the online service provider accurately and without delay after the actual use of the online rights in that musical work is reported except where this is not possible for reasons attributable to the online service provider.

(11) The collective management organisation must have in place adequate arrangements enabling the online service provider to challenge the accuracy of the invoice including when the online service

provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

Payment to right holders

27.—(1) A collective management organisation which grants multi-territorial licences for online rights in musical works must distribute amounts due to a right holder accruing from multi-territorial licences for online rights in musical works accurately and without delay after the actual use of the work is reported unless this is not possible for reasons attributable to the online service provider (but see paragraph (3)).

(2) A collective management organisation must provide at least the following information to a right holder together with each payment it makes under paragraph (1) (but see paragraph (3))—

(a) the period during which the uses took place for which amounts are due to the right holder and the territories in which the uses took place;

(b) the amounts collected, deductions made and amounts distributed by the collective management organisation for each online right in any musical work which the right holder has authorised the collective management organisation to represent wholly or in part; and

(c) the amounts collected for the right holder, deductions made and amounts distributed by the collective management organisation in respect of each online service provider.

(3) Where a collective management organisation ("the mandating collective management organisation") mandates another collective management organisation ("the mandated collective management organisation") to grant multi-territorial licences for online rights in musical works under regulations 28 (agreements between collective management organisations) and 29 (representation of other collective management organisations) then—

(a) the mandated collective management organisation must—

(i) distribute the amounts referred to in paragraph (1) accurately and without delay to the mandating collective management organisation; and

(ii) provide the information referred to in paragraph (2) to the mandating collective management organisation;

and;

(b) the mandating collective management organisation has responsibility for—

(i) the subsequent distribution of the amounts referred to in sub-paragraph (a)(i) to right holders, and

(ii) the subsequent provision of the information referred to in sub-paragraph (a)(ii) to right holders,

unless the mandating and mandated collective management organisations agree otherwise.

Agreements between collective management organisations for multi-territorial licensing

28.—(1) A collective management organisation ("the mandating collective management organisation") must—

(a) ensure that a representation agreement under which the organisation mandates another collective management organisation ("the mandated collective management organisation") to grant multi-territorial licences for the online rights in musical works in its musical repertoire is of a non-exclusive nature; and

(b) inform—

(i) its members, and

(ii) right holders who are not its members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,

of the main terms of that agreement including its duration and the costs of the services provided by the mandated collective management organisation.

(2) The mandated collective management organisation must—

(a) manage the online rights referred to in paragraph (1) on a non-discriminatory basis; and

(b) inform the mandating collective management organisation of the main terms according to which the mandating collective management organisation's online rights are to be licensed including—

(i) the nature of the exploitation;

(ii) all provisions which relate to or affect the licence fee;

(iii) the duration of the licence;

(iv) the accounting periods; and

(v) the territories covered.

Representation of other collective management organisations in relation to multi-territorial licensing

29.—(1) This regulation applies where a collective management organisation ("the requesting collective management organisation")—

(a) does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire; and

(b) requests another collective management organisation ("the requested collective management organisation") to enter into a representation agreement to represent the rights referred to in subparagraph (a).

(2) Where this regulation applies—

(a) the requested collective management organisation must agree to the request referred to in paragraph (1)(b) if that organisation is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations;

(b) the requested collective management organisation must respond to the requesting collective management organisation in writing without undue delay;

(c) the requested collective management organisation must manage the represented repertoire of the requesting collective management organisation on the same conditions as those which it applies to the management of its own repertoire (but see sub-paragraphs (e) and (f);

(d) the requested collective management organisation must include the represented repertoire of the requesting collective management organisation in all offers it addresses to online service providers;

(e) the requested collective management organisation must ensure that the management fee for the service provided by the requested management organisation to the requesting management organisation does not exceed the costs reasonably incurred by the requested collective management organisation; and

(f) the requesting collective management organisation must make available to the requested collective management organisation information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works.

(3) Where the information provided under paragraph (2)(f) is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Part, paragraph (2) does not prevent the requested collective management organisation from—

(a) charging for the costs reasonably incurred in meeting the requirements of this Part; or

(b) excluding the online rights in musical works for which information made available under paragraph (2)(f) is insufficient or cannot be used.

Access to multi-territorial licensing

30.—(1) This regulation applies to a collective management organisation established in the United Kingdom which by 10th April 2017—

(a) does not grant or offer to grant multi-territorial licences for online rights in musical works; or

(b) does not allow another collective management organisation to represent those rights for such purpose.

(2) A collective management organisation to which this regulation applies must ensure that a right holder who has authorised that collective management organisation to represent their online rights in musical works can withdraw from that collective management organisation the online rights in musical works under the conditions provided in paragraph (3).

(3) The conditions provided in this paragraph are—

(a) the withdrawal referred to in paragraph (2) is for the purpose of multi-territorial licensing in respect of all territories in order to—

(i) grant multi-territorial licenses for the right holder's online rights in musical works by that right holder; or

(ii) grant multi-territorial licences for those works through any other person the right holder authorises or through any collective management organisation complying with the provisions of this Part;

and;

(b) the withdrawal does not require withdrawal of online rights in musical works for the purposes of mono-territorial licensing.

PART 4

Dispute Resolution and Enforcement

Complaints procedure

31.—(1) A collective management organisation must make available to—

(a) its members,

(b) right holders who are not its members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,

(c) collective management organisations on whose behalf it manages rights under representation agreement, and

(d) users,

effective and timely procedures for dealing with complaints.

(2) The matters covered by the procedures for dealing with complaints referred to in paragraph (1) relate in particular to—

(a) authorisation to manage rights;

(b) termination or withdrawal of rights;

(c) membership terms;

(d) the collection of amounts due to right holders;

(e) deductions and distributions; and

(f) the service provided.

(3) A collective management organisation must—

(a) respond in writing to complaints; and

(b) give reasons where it rejects a complaint.

(4) Paragraph (1)(d) does not apply where the collective management organisation is a **[**[F10]company that qualifies as a micro-entity under section 384A of the Companies Act 2006.**]**

Textual Amendments

F10 Words in reg. 31(4) substituted (1.1.2024) by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 (S.I. 2023/1285), regs. 1(2), **7(3)**

Alternative dispute resolution procedures

32.—(1) A collective management organisation must ensure that disputes to which—

(a) paragraph (2) applies, or

(b) paragraph (3) applies,

can be submitted to an independent and impartial alternative dispute resolution procedure.

(2) This paragraph applies to disputes between a collective management organisation and one of its members, a right holder, a user or another collective management organisation concerning compliance with these Regulations other than—

(a) a dispute to which paragraph (3) applies; or

(b) a dispute concerning paragraph (4)(b) of regulation 15 (tariffs).

(3) This paragraph applies to disputes between a collective management organisation to which Part 3 of these Regulations applies which grants or offers to grant multi-territorial licences for online rights in musical works with—

(a) an actual or potential online service provider regarding compliance with regulation 15 (licensing), 24 (transparency), 25 (accuracy of multi-territorial repertoire information) and 26 (reporting and invoicing);

(b) a right holder regarding compliance with regulation 24, 25, 26, 27 (payment to right holders), 28 (agreements between collective management organisations), 29 (representation of other collective management organisations) and 30 (access to multi-territorial licensing); and

(c) another collective management organisation regarding compliance with regulation 24, 25, 26, 27, 28 and 29.

(4) Paragraph (1)(a) does not apply where the collective management organisation is a **[**[F11]company that qualifies as a micro-entity under section 384A of the Companies Act 2006.**]**

Textual Amendments

F11 Words in reg. 32(4) substituted (1.1.2024) by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 (S.I. 2023/1285), regs. 1(2), **7(4)**

Right of right holders in relation to a breach of regulation 4

33.—(1) The obligation of a collective management organisation to comply with regulation 4 (particular obligations of collective management organisations to right holders) is a duty owed to any right holder who may be affected by the contravention of that regulation.

(2) Where a duty is owed by virtue of paragraph (1) to a right holder, a breach of that duty which causes that right holder to sustain loss or damage shall be actionable by the right holder.

Monitoring of compliance

34. The Secretary of State must monitor compliance with these Regulations.

Evidence of non-compliance

35. The Secretary of State must have regard to evidence which is notified to the Secretary of State of activities or circumstances which may constitute a breach of these Regulations.

Power to request information

36.—(1) The Secretary of State may give notice to—

(a) a collective management organisation,

(b) a member,

(c) a right holder or a body representing the interests of right holders,

(d) a user or a body representing the interests of users,

(e) an entity to which a provision of these Regulations applies under paragraph (4) of regulation 2 (interpretation and application), or

(f) an independent management entity,

requiring it to supply to the Secretary of State such information or document as may be specified or described in the notice for the purpose of ascertaining whether these Regulations have been complied with.

(2) The notice may require the person to whom it is given to supply the information or document referred to in paragraph (1) at a time and a place and in a form and manner which is specified.

(3) The person to whom the notice is given shall supply to the Secretary of State the information or document which is specified or described in the notice under paragraph (1) in accordance with what is specified under paragraph (2).

(4) The Secretary of State may, for the purpose described in paragraph (1), copy any document or information provided.

(5) Nothing in this regulation gives the Secretary of State any power to require a person to supply any information or document which the person would be entitled to refuse to supply in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(6) In paragraph (5) "communications" means—

(a) communications between a professional legal adviser and the adviser's client; or

(b) communications made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

(7) Nothing in this regulation shall be construed as requiring a person to provide information if to do so might incriminate that person.

(8) A reference in this regulation to the supply of a document is a reference to the supply of a legible and intelligible copy of information recorded otherwise than in legible form.

Compliance notice

37.—(1) Where the Secretary of State thinks that—

(a) a collective management organisation,

(b) a member,

(c) a right holder or a body representing the interests of right holders,

(d) a user or a body representing the interests of users,

(e) an entity to which a provision of these Regulations applies under paragraph (4) of regulation 2, or

(f) an independent management entity,

has failed to comply with its obligations under Part 2 or 3 of these Regulations or under regulation 31 (complaints procedure), 32 (alternative dispute resolution procedures) or 36 (information) the Secretary of State may give a notice ("a compliance notice") to that person.

(2) A compliance notice must be in writing and must—

(a) state that the Secretary of State thinks that the person has not complied with a provision of these Regulations;

(b) specify the provision in question and state the acts or omissions which the Secretary of State thinks contravene that provision;

(c) request the person, where non-compliance with the provision is continuing,—

(i) to end the non-compliance within such time as the notice may specify;

(ii) to provide such evidence within that period to the satisfaction of the Secretary of State that the non-compliance has ended;

(d) if the Secretary of State thinks fit, request the person to provide a written undertaking in a form which is satisfactory to the Secretary of State, that non-compliance with the provision will not be repeated; and

(e) warn the person that if—

(i) the person does not comply with the compliance notice, or

(ii) the person fails to comply with a written undertaking provided in respect of the compliance notice,

further action may be taken under these Regulations.

(3) The Secretary of State may rescind a compliance notice given to a person under paragraph (1) and where doing so must give the person notice of the rescission.

(4) Where a compliance notice has been given in relation to a failure to comply with these Regulations no action to impose a penalty under regulation 38 (financial penalties) may be taken in relation to that failure unless the person to whom it has been given has failed—

(a) to comply with the compliance notice; or

(b) to comply with a written undertaking provided in respect of a compliance notice.

Financial penalties for non-compliance

38.—(1) The Secretary of State may impose a financial penalty on—

(a) a collective management organisation,

(b) a member,

(c) a right holder or a body representing the interests of right holders,

(d) a user or a body representing the interests of users,

(e) an entity to which a provision of these Regulations applies under paragraph (4) of regulation 2, or

(f) an independent management entity,

if the Secretary of State is satisfied that the person referred to in paragraph (1)(a) to (f) has failed to comply with its obligations under Part 2 or 3 of these Regulations or regulation 31, 32 or 36.

(2) If the Secretary of State may impose a financial penalty on a collective management organisation under paragraph (1) the Secretary of State may instead impose a financial penalty on a director, manager or similar officer of that collective management organisation or, where the organisation's affairs are managed by its members, a member.

(3) The amount of the financial penalty must be such amount as the Secretary of State considers appropriate.

(4) In deciding what amount is appropriate the Secretary of State must have regard to the nature of the failure of compliance.

(5) A financial penalty may comprise of either—

(a) a sum not exceeding £50,000; or

(b) a sum not exceeding £5,000 together with a sum not exceeding £500 for each day that the person referred to in paragraph (1) continues to fail to comply with its obligations under these Regulations not exceeding in total £50,000.

(6) A financial penalty is payable to the Secretary of State.

Financial penalties: procedure

39.—(1) As soon as practicable after imposing a financial penalty, the Secretary of State must give notice of the financial penalty to the person on whom it is imposed.

(2) The notice must state—

(a) that the Secretary of State has imposed a financial penalty;

(b) the amount of the financial penalty;

(c) the acts or omissions which the Secretary of State considers contravene the Regulations;

(d) the provisions of these Regulation which the Secretary of State considers are contravened;

(e) any other facts which the Secretary of State considers justify the imposition of a financial penalty;

(f) the period (not less than 28 days from the date the notice is received by the person) within which the financial penalty is to be paid.

(3) The Secretary of State may rescind a penalty which has been imposed on a person under regulation 37 (financial penalties) and where doing so must give the person notice of the rescission.

Appeals

40.—(1) If a person on whom a financial penalty is imposed is aggrieved by the imposition or the amount of a financial penalty, the person may appeal to the First-tier Tribunal.

(2) On an appeal under this regulation, the First-tier Tribunal may make such order as it considers appropriate.

(3) In this regulation "First-tier Tribunal" means the First-tier Tribunal established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 [M6].

Marginal Citations

M6 2007 c.15.

Recovery of a financial penalty

41.—(1) Where a financial penalty, or any portion of it, has not been paid by the time which it is required to be paid and paragraph (2) applies the Secretary of State may recover from the person on whom the penalty is imposed any of the penalty which has not been paid as a debt due to the Secretary of State.

(2) This paragraph applies where—

(a) no appeal relating to the penalty has been made under regulation 40; or

(b) an appeal has been made under that regulation and that appeal has been determined, withdrawn or otherwise dealt with.

Notices

42.—(1) Where a notice is to be given under these Regulations, it may be given—

(a) by being delivered personally to a person;

(b) by being sent to the proper address of the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 [M7]); or

(ii) by a postal service which provides for the delivery of the document to be recorded

(c) by being sent to the person using electronic communications to that person's last known electronic address.

(2) For the purpose of paragraph (1)(b) the proper address of a person is—

(a) in the case of a body corporate, the address of the registered office or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of that person.

(3) Where a notice has been given as mentioned in paragraph (1)(b) or (c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

Marginal Citations

M7 2000 c.26.

Computation of time

43.—(1) If the time specified in these Regulations for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(2) In this regulation "working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom under section 1 of the Banking and Financial Dealings Act 1971 [M8].

Marginal Citations
M8 1971 c.80.

PART 5

Amendments and Transitional Provision

Amendments

44. In subsection (2) of section 116 (licensing schemes and licensing bodies) of the Copyright, Designs and Patents Act 1988 [M9]—

(a) the words after "a "licensing body" means" become paragraph (a); and

(b) after that paragraph insert—

", or,

(b) any other organisation which is a collective management organisation as defined by regulation 2 of the Collective Management of Copyright (EU Directive) Regulations 2016.".

Marginal Citations
M9 1998 c.48.

45. The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 [M10] are revoked.

Marginal Citations
M10 S.I. 2014/898.

46.—(1) The Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 [M11] are amended as follows.

(2) In regulation 2 (interpretation)—

(a) omit the definitions of "code of practice", "Codes Regulations" and "specified criteria";

(b) in the definition of "relevant licensing body" for "section 116(2)" substitute " section 116(2)(a) ".

(3) In regulation 4 (authorisation to operate an Extended Collective Licensing Scheme)—

(a) in paragraph (3)(b) for "its code of practice" substitute " the Collective Management of Copyright (EU Directive) Regulations 2016 "; and

(b) omit paragraph (4)(c).

(4) In regulation 5 (application for authorisation), in paragraph (1)—

(a) omit sub-paragraphs (m) and (n);

(b) in sub-paragraph (o) for "with the terms of its code of practice" substitute " with the Collective Management of Copyright (EU Directive) Regulations 2016 ".

(5) In regulation 10 (application for the renewal of an authorisation), in paragraph (2)—

(i) in sub-paragraph (b) omit "(m),";

(ii) omit sub-paragraph (g);

(iii) in sub-paragraph (h) for "the terms of its code of practice" substitute " the Collective Management of Copyright (EU Directive) Regulations 2016 ".

(6) In regulation 11 (review of Extended Collective Licensing Scheme), in paragraph (1)—

(i) omit sub-paragraph (c);

(ii) in sub-paragraph (d) for "the terms of its code of practice" substitute " the Collective Management of Copyright (EU Directive) Regulations 2016 ";

(iii) in sub-paragraph (h) omit "(m),".

(7) In regulation 14 (revocation on an authorisation), in paragraph (2)(c) for "specified criteria" substitute " the Collective Management of Copyright (EU Directive) Regulations 2016 ".

(8) In regulation 16 (opt out from an extended collective licensing scheme), in paragraph (3)—

(i) in sub-paragraph (a) insert at the end " and ";

(ii) omit sub-paragraph (c) and the "and" which precedes it.

(9) In regulation 17 (licensing of works) omit paragraphs (3), (4) and (5).

(10) In regulation 18 (licence fee) in paragraph (5) before "right holder" insert " non-member ".

Marginal Citations

M11 S.I. 2014/2588.

Transitional provisions

47. Despite the repeal by these Regulations of the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014—

(a) regulation 2 (interpretation) shall continue to apply for the purposes of the regulations referred to in paragraphs (b) to (g);

(b) regulation 6 (code reviewer) shall continue to apply in relation to a review and report on a code of practice in respect of a period before the date on which these Regulations come into force;

(c) regulation 7 (licensing code ombudsman) shall continue to apply in relation to a dispute concerning compliance with a code of practice before the date on which these Regulations come into force;

(d) regulation 8 (recovery of fees) shall continue to apply in relation to the cost of administering the operation of those Regulations;

(e) regulation 9 (power to request information) shall continue to apply in relation to information relating to licensing activities before the date on which these Regulations come into force;

(f) regulation 10 (financial penalties) shall continue to apply in relation to a failure to comply with the obligations specified under that regulation; and

(g) regulation 11 (imposition of penalty) and 12 (appeals) shall continue to apply in relation to a financial penalty imposed under regulation 10.

48. Despite the omission by these Regulations of the definitions "code of practice", "Codes Regulations" and "specified criteria" in regulation 2 of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 those definitions shall continue to apply for the purposes of regulation 10(2)(g), 11(1)(c) and 14(2)(c) of those Regulations.

49. Despite the revocation by these Regulations of regulation 10(2)(g) and 11(1)(c) of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014, those sub-paragraphs shall continue to have effect in relation to a report to which they apply which has been produced.

50. Despite the revocation by these Regulations of regulation 14(2)(c) of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 that sub-paragraph shall continue to apply in relation to a failure to comply which occurred before the date on which these Regulations come into force.

Review

51.—(1) The Secretary of State must from time to time—

(a) carry out of review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

[F12](2) . . . . . .

(3) The report must in particular—

(a) set out the objectives to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which this regulation comes into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Textual Amendments

F12 Reg. 51(2) omitted (31.12.2020) by virtue of The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/605), regs. 1(2), **32(6)** (with reg. 38) (as amended by S.I. 2020/1050, regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)

Baroness Neville-Rolfe
Parliamentary Under Secretary of State and
Minister for Intellectual Property

Department for Business Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)
These Regulations implement Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 (OJNo. L.84, 20.3.2014, p.72).
Part 2 imposes certain requirements on collective management organisations, independent management entities, members and users. The requirements relate to matters such as the internal organisation of collective management organisations, matters which they must make public, their conduct in relation to right holders and users and other collective management organisations and negotiations between them and users.
Part 3 imposes requirements on collective management organisations in relation to the multi-territorial licensing of online rights in musical works. The obligations relate to matters such as collective management organisations' capacity, information which must be given by them and their conduct.
Part 4 contains requirements as to the dispute resolution procedures that collective management organisations must make available as well as provisions relating to how compliance with the regulations is monitored and enforced.
Part 5 revokes the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 (S.I. 2014/898) which are superseded by these Regulations and makes certain other amendments which result from that revocation and other provisions of these Regulations.
A transposition note and an impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector can be obtained from the Intellectual Property Office, Concept House, Cardiff Road, Newport NP10 8QQ and are available with the explanatory memorandum alongside this instrument on the Legislation UK website at www.legislation.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.

Changes to legislation:
There are currently no known outstanding effects for the The Collective Management of Copyright (EU Directive) Regulations 2016.