

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

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PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles
50(1) and 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) The Union Directives which have been adopted in the area of copyright and related rights already provide a high level of protection for rightholders and thereby a framework wherein the exploitation of content protected by those rights can take place. Those Directives contribute to the development and maintenance of creativity. In an internal market where competition is not distorted, protecting innovation and intellectual creation also encourages investment in innovative services and products.
- (2) The dissemination of content which is protected by copyright and related rights, including books, audiovisual productions and recorded music, and services linked thereto, requires the licensing of rights by different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the rightholder to choose between the individual or collective management of his rights, unless Member States provide otherwise, in compliance with Union law and the international obligations of the Union and its Member States. Management of copyright and related rights includes granting of licences to users, auditing of users, monitoring of the use of rights, enforcement of copyright and related rights, collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collective management organisations enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets.

- (3) Article 167 of the Treaty on the Functioning of the European Union (TFEU) requires the Union to take cultural diversity into account in its action and to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. Collective management organisations play, and should continue to play, an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their rightholders and the public.
- (4) When established in the Union, collective management organisations should be able to enjoy the freedoms provided by the Treaties when representing rightholders who are resident or established in other Member States or granting licences to users who are resident or established in other Member States.
- (5) There are significant differences in the national rules governing the functioning of collective management organisations, in particular as regards their transparency and accountability to their members and rightholders. This has led in a number of instances to difficulties, in particular for non-domestic rightholders when they seek to exercise their rights, and to poor financial management of the revenues collected. Problems with the functioning of collective management organisations lead to inefficiencies in the exploitation of copyright and related rights across the internal market, to the detriment of the members of collective management organisations, rightholders and users.
- (6) The need to improve the functioning of collective management organisations has already been identified in Commission Recommendation 2005/737/EC⁽³⁾. That Recommendation set out a number of principles, such as the freedom of rightholders to choose their collective management organisations, equal treatment of categories of rightholders and equitable distribution of royalties. It called on collective management organisations to provide users with sufficient information on tariffs and repertoire in advance of negotiations between them. It also contained recommendations on accountability, rightholder representation in the decision-making bodies of collective management organisations and dispute resolution. However, the Recommendation has been unevenly followed.
- (7) The protection of the interests of the members of collective management organisations, rightholders and third parties requires that the laws of the Member States relating to copyright management and multi-territorial licensing of online rights in musical works should be coordinated with a view to having equivalent safeguards throughout the Union. Therefore, this Directive should have as a legal base Article 50(1) TFEU.
- (8) The aim of this Directive is to provide for coordination of national rules concerning access to the activity of managing copyright and related rights by collective management organisations, the modalities for their governance, and their supervisory framework, and it should therefore also have as a legal base Article 53(1) TFEU. In addition, since it is concerned with a sector offering services across the Union, this Directive should have as a legal base Article 62 TFEU.

- (9) The aim of this Directive is to lay down requirements applicable to collective management organisations, in order to ensure a high standard of governance, financial management, transparency and reporting. This should not, however, prevent Member States from maintaining or imposing, in relation to collective management organisations established in their territories, more stringent standards than those laid down in Title II of this Directive, provided that such more stringent standards are compatible with Union law.
- (10) Nothing in this Directive should preclude a Member State from applying the same or similar provisions to collective management organisations which are established outside the Union but which operate in that Member State.
- (11) Nothing in this Directive should preclude collective management organisations from concluding representation agreements with other collective management organisations — in compliance with the competition rules laid down by Articles 101 and 102 TFEU — in the area of rights management in order to facilitate, improve and simplify the procedures for granting licences to users, including for the purposes of single invoicing, under equal, non-discriminatory and transparent conditions, and to offer multi-territorial licences also in areas other than those referred to in Title III of this Directive.
- (12) This Directive, while applying to all collective management organisations, with the exception of Title III, which applies only to collective management organisations managing authors' rights in musical works for online use on a multi-territorial basis, does not interfere with arrangements concerning the management of rights in the Member States such as individual management, the extended effect of an agreement between a representative collective management organisation and a user, i.e. extended collective licensing, mandatory collective management, legal presumptions of representation and transfer of rights to collective management organisations.
- (13) This Directive does not affect the possibility for Member States to determine by law, by regulation or by any other specific mechanism to that effect, rightholders' fair compensation for exceptions or limitations to the reproduction right provided for in Directive 2001/29/EC of the European Parliament and of the Council⁽⁴⁾ and rightholders' remuneration for derogations from the exclusive right in respect of public lending provided for in Directive 2006/115/EC of the European Parliament and of the Council⁽⁵⁾ applicable in their territory as well as the conditions applicable for their collection.
- (14) This Directive does not require collective management organisations to adopt a specific legal form. In practice, those organisations operate in various legal forms such as associations, cooperatives or limited liability companies, which are controlled or owned by holders of copyright and related rights or by entities representing such rightholders. In some exceptional cases, however, due to the legal form of a collective management organisation, the element of ownership or control is not present. This is, for example, the case for foundations, which do not have members. None the less, the provisions of this Directive should also apply to those organisations. Similarly, Member States should take appropriate measures to prevent the circumvention of the obligations under

this Directive through the choice of legal form. It should be noted that entities which represent rightholders, and which are members of collective management organisations, may be other collective management organisations, associations of rightholders, unions or other organisations.

- (15) Rightholders should be free to entrust the management of their rights to independent management entities. Such independent management entities are commercial entities which differ from collective management organisations, inter alia, because they are not owned or controlled by rightholders. However, to the extent that such independent management entities carry out the same activities as collective management organisations, they should be obliged to provide certain information to the rightholders they represent, collective management organisations, users and the public.
- (16) Audiovisual producers, record producers and broadcasters license their own rights, in certain cases alongside rights that have been transferred to them by, for instance, performers, on the basis of individually negotiated agreements, and act in their own interest. Book, music or newspaper publishers license rights that have been transferred to them on the basis of individually negotiated agreements and act in their own interest. Therefore audiovisual producers, record producers, broadcasters and publishers should not be regarded as 'independent management entities'. Furthermore, authors' and performers' managers and agents acting as intermediaries and representing rightholders in their relations with collective management organisations should not be regarded as 'independent management entities' since they do not manage rights in the sense of setting tariffs, granting licences or collecting money from users.
- (17) Collective management organisations should be free to choose to have certain of their activities, such as the invoicing of users or the distribution of amounts due to rightholders, carried out by subsidiaries or by other entities that they control. In such cases, those provisions of this Directive that would be applicable if the relevant activity were carried out directly by a collective management organisation should be applicable to the activities of the subsidiaries or other entities.
- (18) In order to ensure that holders of copyright and related rights can benefit fully from the internal market when their rights are being managed collectively and that their freedom to exercise their rights is not unduly affected, it is necessary to provide for the inclusion of appropriate safeguards in the statute of collective management organisations. Moreover, a collective management organisation should not, when providing its management services, discriminate directly or indirectly between rightholders on the basis of their nationality, place of residence or place of establishment.
- (19) Having regard to the freedoms established in the TFEU, collective management of copyright and related rights should entail a rightholder being able freely to choose a collective management organisation for the management of his rights, whether those rights be rights of communication to the public or reproduction rights, or categories of rights related to forms of exploitation such as broadcasting, theatrical exhibition or reproduction for online distribution, provided that the collective management organisation that the rightholder wishes to choose already manages such rights or categories of rights.

The rights, categories of rights or types of works and other subject-matter managed by the collective management organisation should be determined by the general assembly of members of that organisation if they are not already determined in its statute or prescribed by law. It is important that the rights and categories of rights be determined in a manner that maintains a balance between the freedom of rightholders to dispose of their works and other subject-matter and the ability of the organisation to manage the rights effectively, taking into account in particular the category of rights managed by the organisation and the creative sector in which it operates. Taking due account of that balance, rightholders should be able easily to withdraw such rights or categories of rights from a collective management organisation and to manage those rights individually or to entrust or transfer the management of all or part of them to another collective management organisation or another entity, irrespective of the Member State of nationality, residence or establishment of the collective management organisation, the other entity or the rightholder. Where a Member State, in compliance with Union law and the international obligations of the Union and its Member States, provides for mandatory collective management of rights, rightholders' choice would be limited to other collective management organisations.

Collective management organisations managing different types of works and other subject-matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject-matter. As far as non-commercial uses are concerned, Member States should provide that collective management organisations take the necessary steps to ensure that their rightholders can exercise the right to grant licences for such uses. Such steps should include, inter alia, a decision by the collective management organisation on the conditions attached to the exercise of that right as well as the provision to their members of information on those conditions. Collective management organisations should inform rightholders of their choices and allow them to exercise the rights related to those choices as easily as possible. Rightholders who have already authorised the collective management organisation may be informed via the website of the organisation. A requirement for the consent of rightholders in the authorisation to the management of each right, category of rights or type of works and other subject-matter should not prevent the rightholders from accepting proposed subsequent amendments to that authorisation by tacit agreement in accordance with the conditions set out in national law. Neither contractual arrangements according to which a termination or withdrawal by rightholders has an immediate effect on licences granted prior to such termination or withdrawal, nor contractual arrangements according to which such licences remain unaffected for a certain period of time after such termination or withdrawal, are, as such, precluded by this Directive. Such arrangements should not, however, create an obstacle to the full application of this Directive. This Directive should not prejudice the possibility for rightholders to manage their rights individually, including for non-commercial uses.

- (20) Membership of collective management organisations should be based on objective, transparent and non-discriminatory criteria, including as regards publishers who by virtue of an agreement on the exploitation of rights are entitled to a share of the income from the rights managed by collective management organisations and to collect such

income from the collective management organisations. Those criteria should not oblige collective management organisations to accept members the management of whose rights, categories of rights or types of works or other subject-matter falls outside their scope of activity. The records kept by a collective management organisation should allow for the identification and location of its members and rightholders whose rights the organisation represents on the basis of authorisations given by those rightholders.

- (21) In order to protect those rightholders whose rights are directly represented by the collective management organisation but who do not fulfil its membership requirements, it is appropriate to require that certain provisions of this Directive relating to members be also applied to such rightholders. Member States should be able also to provide such rightholders with rights to participate in the decision-making process of the collective management organisation.
- (22) Collective management organisations should act in the best collective interests of the rightholders they represent. It is therefore important to provide for systems which enable the members of a collective management organisation to exercise their membership rights by participating in the organisation's decision-making process. Some collective management organisations have different categories of members, which may represent different types of rightholders, such as producers and performers. The representation in the decision-making process of those different categories of members should be fair and balanced. The effectiveness of the rules on the general assembly of members of collective management organisations would be undermined if there were no provisions on how the general assembly should be run. Thus, it is necessary to ensure that the general assembly is convened regularly, and at least annually, and that the most important decisions in the collective management organisation are taken by the general assembly.
- (23) All members of collective management organisations should be allowed to participate and vote in the general assembly of members. The exercise of those rights should be subject only to fair and proportionate restrictions. In some exceptional cases, collective management organisations are established in the legal form of a foundation, and thus have no members. In such cases, the powers of the general assembly of members should be exercised by the body entrusted with the supervisory function. Where collective management organisations have entities representing rightholders as their members, as may be the case where a collective management organisation is a limited liability company and its members are associations of rightholders, Member States should be able to provide that some or all powers of the general assembly of members are to be exercised by an assembly of those rightholders. The general assembly of members should, at least, have the power to set the framework of the activities of the management, in particular with respect to the use of rights revenue by the collective management organisation. This should, however, be without prejudice to the possibility for Member States to provide for more stringent rules on, for example, investments, mergers or taking out loans, including a prohibition on any such transactions. Collective management organisations should encourage the active participation of their members in the general assembly. The exercise of voting rights should be facilitated for members who attend the general assembly and also for those who do not. In addition to being able

to exercise their rights by electronic means, members should be allowed to participate and vote in the general assembly of members through a proxy. Proxy voting should be restricted in cases of conflicts of interest. At the same time, Member States should provide for restrictions as regards proxies only if this does not prejudice the appropriate and effective participation of members in the decision-making process. In particular, the appointment of proxy-holders contributes to the appropriate and effective participation of members in the decision-making process and allows rightholders to have a true opportunity to opt for a collective management organisation of their choice, irrespective of the Member State of establishment of the organisation.

- (24) Members should be allowed to participate in the continuous monitoring of the management of collective management organisations. To that end, those organisations should have a supervisory function appropriate to their organisational structure and should allow members to be represented in the body that exercises that function. Depending on the organisational structure of the collective management organisation, the supervisory function may be exercised by a separate body, such as a supervisory board, or by some or all of the directors in the administrative board who do not manage the business of the collective management organisation. The requirement of fair and balanced representation of members should not prevent the collective management organisation from appointing third parties to exercise the supervisory function, including persons with relevant professional expertise and rightholders who do not fulfil the membership requirements or who are represented by the organisation not directly but via an entity which is a member of the collective management organisation.
- (25) For reasons of sound management, the management of a collective management organisation must be independent. Managers, whether elected as directors or hired or employed by the organisation on the basis of a contract, should be required to declare, prior to taking up their position and thereafter on a yearly basis, whether there are conflicts between their interests and those of the rightholders that are represented by the collective management organisation. Such annual statements should be also made by persons exercising the supervisory function. Member States should be free to require collective management organisations to make such statements public or to submit them to public authorities.
- (26) Collective management organisations collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. That revenue is ultimately due to rightholders, who may have a direct legal relationship with the organisation, or may be represented via an entity which is a member of the collective management organisation or via a representation agreement. It is therefore important that a collective management organisation exercise the utmost diligence in collecting, managing and distributing that revenue. Accurate distribution is only possible where the collective management organisation maintains proper records of membership, licences and use of works and other subject-matter. Relevant data that are required for the efficient collective management of rights should also be provided by rightholders and users and verified by the collective management organisation.

- (27) Amounts collected and due to rightholders should be kept separately in the accounts from any own assets the organisation may have. Without prejudice to the possibility for Member States to provide for more stringent rules on investment, including a prohibition of investment of the rights revenue, where such amounts are invested, this should be carried out in accordance with the general investment and risk management policy of the collective management organisation. In order to maintain a high level of protection of the rights of rightholders and to ensure that any income that may arise from the exploitation of such rights accrues to their benefit, the investments made and held by the collective management organisation should be managed in accordance with criteria which would oblige the organisation to act prudently, while allowing it to decide on the most secure and efficient investment policy. This should allow the collective management organisation to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and does not unduly prejudice any rights revenue owed to rightholders.
- (28) Since rightholders are entitled to be remunerated for the exploitation of their rights, it is important that management fees do not exceed justified costs of the management of the rights and that any deduction other than in respect of management fees, for example a deduction for social, cultural or educational purposes, should be decided by the members of the collective management organisation. The collective management organisations should be transparent towards rightholders regarding the rules governing such deductions. The same requirements should apply to any decision to use the rights revenue for collective distribution, such as scholarships. Rightholders should have access, on a non-discriminatory basis, to any social, cultural or educational service funded through such deductions. This Directive should not affect deductions under national law, such as deductions for the provision of social services by collective management organisations to rightholders, as regards any aspects that are not regulated by this Directive, provided that such deductions are in compliance with Union law.
- (29) The distribution and payment of amounts due to individual rightholders or, as the case may be, to categories of rightholders, should be carried out in a timely manner and in accordance with the general policy on distribution of the collective management organisation concerned, including when they are performed via another entity representing the rightholders. Only objective reasons beyond the control of a collective management organisation can justify delay in the distribution and payment of amounts due to rightholders. Therefore, circumstances such as the rights revenue having been invested subject to a maturity date should not qualify as valid reasons for such a delay. It is appropriate to leave it to Member States to decide on rules ensuring timely distribution and the effective search for, and identification of, rightholders in cases where such objective reasons occur. In order to ensure that the amounts due to rightholders are appropriately and effectively distributed, without prejudice to the possibility for Member States to provide for more stringent rules, it is necessary to require collective management organisations to take reasonable and diligent measures, on the basis of good faith, to identify and locate the relevant rightholders. It is also appropriate that members of a collective management organisation, to the extent allowed for under national law, should decide on the use of any amounts that cannot

be distributed in situations where rightholders entitled to those amounts cannot be identified or located.

- (30) Collective management organisations should be able to manage rights and collect revenue from their exploitation under representation agreements with other organisations. To protect the rights of the members of the other collective management organisation, a collective management organisation should not distinguish between the rights it manages under representation agreements and those it manages directly for its rightholders. Nor should the collective management organisation be allowed to apply deductions to the rights revenue collected on behalf of another collective management organisation, other than deductions in respect of management fees, without the express consent of the other organisation. It is also appropriate to require collective management organisations to distribute and make payments to other organisations on the basis of such representation agreements no later than when they distribute and make payments to their own members and to non-member rightholders whom they represent. Furthermore, the recipient organisation should in turn be required to distribute the amounts due to the rightholders it represents without delay.
- (31) Fair and non-discriminatory commercial terms in licensing are particularly important to ensure that users can obtain licences for works and other subject-matter in respect of which a collective management organisation represents rights, and to ensure the appropriate remuneration of rightholders. Collective management organisations and users should therefore conduct licensing negotiations in good faith and apply tariffs which should be determined on the basis of objective and non-discriminatory criteria. It is appropriate to require that the licence fee or remuneration determined by collective management organisations be reasonable in relation to, inter alia, the economic value of the use of the rights in a particular context. Finally, collective management organisations should respond without undue delay to users' requests for licences.
- (32) In the digital environment, collective management organisations are regularly required to license their repertoire for totally new forms of exploitation and business models. In such cases, and in order to foster an environment conducive to the development of such licences, without prejudice to the application of competition law rules, collective management organisations should have the flexibility required to provide, as swiftly as possible, individualised licences for innovative online services, without the risk that the terms of those licences could be used as a precedent for determining the terms for other licences.
- (33) In order to ensure that collective management organisations can comply with the obligations set out in this Directive, users should provide those organisations with relevant information on the use of the rights represented by the collective management organisations. This obligation should not apply to natural persons acting for purposes outside their trade, business, craft or profession, who therefore fall outside the definition of user as laid down in this Directive. Moreover, the information required by collective management organisations should be limited to what is reasonable, necessary and at the users' disposal in order to enable such organisations to perform their functions, taking into account the specific situation of small and medium-sized enterprises.

That obligation could be included in an agreement between a collective management organisation and a user; this does not preclude national statutory rights to information. The deadlines applicable to the provision of information by users should be such as to allow collective management organisations to meet the deadlines set for the distribution of amounts due to rightholders. This Directive should be without prejudice to the possibility for Member States to require collective management organisations established in their territory to issue joint invoices.

- (34) In order to enhance the trust of rightholders, users and other collective management organisations in the management of rights by collective management organisations, each collective management organisation should comply with specific transparency requirements. Each collective management organisation or its member being an entity responsible for attribution or payment of amounts due to rightholders should therefore be required to provide certain information to individual rightholders at least once a year, such as the amounts attributed or paid to them and the deductions made. Collective management organisations should also be required to provide sufficient information, including financial information, to the other collective management organisations whose rights they manage under representation agreements.
- (35) In order to ensure that rightholders, other collective management organisations and users have access to information on the scope of activity of the organisation and the works or other subject-matter that it represents, a collective management organisation should provide information on those issues in response to a duly justified request. The question whether, and to what extent, reasonable fees can be charged for providing this service should be left to national law. Each collective management organisation should also make public information on its structure and on the way in which it carries out its activities, including in particular its statutes and general policies on management fees, deductions and tariffs.
- (36) In order to ensure that rightholders are in a position to monitor and compare the respective performances of collective management organisations, such organisations should make public an annual transparency report comprising comparable audited financial information specific to their activities. Collective management organisations should also make public an annual special report, forming part of the annual transparency report, on the use of amounts dedicated to social, cultural and educational services. This Directive should not prevent a collective management organisation from publishing the information required by the annual transparency report in a single document, for example as part of its annual financial statements, or in separate reports.
- (37) Providers of online services which make use of musical works, such as music services that allow consumers to download music or to listen to it in streaming mode, as well as other services providing access to films or games where music is an important element, must first obtain the right to use such works. Directive 2001/29/EC requires that a licence be obtained for each of the rights in the online exploitation of musical works. In respect of authors, those rights are the exclusive right of reproduction and the exclusive right of communication to the public of musical works, which includes the right of making available. Those rights may be managed

by the individual rightholders themselves, such as authors or music publishers, or by collective management organisations that provide collective management services to rightholders. Different collective management organisations may manage authors' rights of reproduction and communication to the public. Furthermore, there are cases where several rightholders have rights in the same work and may have authorised different organisations to license their respective shares of rights in the work. Any user wishing to provide an online service offering a wide choice of musical works to consumers needs to aggregate rights in works from different rightholders and collective management organisations.

- (38) While the internet knows no borders, the online market for music services in the Union is still fragmented, and a digital single market has not yet been fully achieved. The complexity and difficulty associated with the collective management of rights in Europe has, in a number of cases, exacerbated the fragmentation of the European digital market for online music services. This situation is in stark contrast to the rapidly growing demand on the part of consumers for access to digital content and associated innovative services, including across national borders.
- (39) Commission Recommendation 2005/737/EC promoted a new regulatory environment better suited to the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that, in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online environment and is multi-territorial. However, the Recommendation has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works or to address the specific demands of multi-territorial licensing.
- (40) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by collective management organisations in an increasingly cross-border context. It is therefore appropriate to provide a set of rules prescribing basic conditions for the provision by collective management organisations of multi-territorial collective licensing of authors' rights in musical works for online use, including lyrics. The same rules should apply to such licensing for all musical works, including musical works incorporated in audiovisual works. However, online services solely providing access to musical works in sheet music form should not be covered. The provisions of this Directive should ensure the necessary minimum quality of cross-border services provided by collective management organisations, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and rights, thus reducing the number of licences a user needs to operate a multi-territory, multi-repertoire service. Those provisions should enable a collective management organisation to request another organisation to represent its repertoire on a multi-territorial basis where it cannot or does not wish to fulfil the requirements itself. There should be an obligation on the requested organisation, provided that it already aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting organisation.

The development of legal online music services across the Union should also contribute to the fight against online infringements of copyright.

- (41) The availability of accurate and comprehensive information on musical works, rightholders and the rights that each collective management organisation is authorised to represent in a given territory is of particular importance for an effective and transparent licensing process, for the subsequent processing of the users' reports and the related invoicing of service providers, and for the distribution of amounts due. For that reason, collective management organisations granting multi-territorial licences for musical works should be able to process such detailed data quickly and accurately. This requires the use of databases on ownership of rights that are licensed on a multi-territorial basis, containing data that allow for the identification of works, rights and rightholders that a collective management organisation is authorised to represent and of the territories covered by the authorisation. Any changes to that information should be taken into account without undue delay and the databases should be continually updated. Those databases should also help to match information on works with information on phonograms or any other fixation in which the work has been incorporated. It is also important to ensure that prospective users and rightholders, as well as collective management organisations, have access to the information they need in order to identify the repertoire that those organisations are representing. Collective management organisations should be able to take measures to protect the accuracy and integrity of the data, to control their reuse or to protect commercially sensitive information.
- (42) In order to ensure that the data on the music repertoire they process are as accurate as possible, collective management organisations granting multi-territorial licences in musical works should be required to update their databases continuously and without delay as necessary. They should establish easily accessible procedures to enable online service providers, as well as rightholders and other collective management organisations, to inform them of any inaccuracy that the organisations' databases may contain in respect of works they own or control, including rights — in whole or in part — and territories for which they have mandated the relevant collective management organisation to act, without however jeopardising the veracity and integrity of the data held by the collective management organisation. Since Directive 95/46/EC of the European Parliament and of the Council⁽⁶⁾ grants to every data subject the right to obtain rectification, erasure or blocking of inaccurate or incomplete data, this Directive should also ensure that inaccurate information regarding rightholders or other collective management organisations in the case of multi-territorial licences is to be corrected without undue delay. Collective management organisations should also have the capacity to process electronically the registration of works and authorisations to manage rights. Given the importance of information automation for the fast and effective processing of data, collective management organisations should provide for the use of electronic means for the structured communication of that information by rightholders. Collective management organisations should, as far as possible, ensure that such electronic means take into account the relevant voluntary industry standards or practices developed at international or Union level.

- (43) Industry standards for music use, sales reporting and invoicing are instrumental in improving efficiency in the exchange of data between collective management organisations and users. Monitoring the use of licences should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data. In order to ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, collective management organisations should be required to invoice service providers and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that users provide collective management organisations with accurate and timely reports on the use of works. Collective management organisations should not be required to accept users' reports in proprietary formats when widely used industry standards are available. Collective management organisations should not be prevented from outsourcing services relating to the granting of multi-territorial licences for online rights in musical works. Sharing or consolidation of back-office capabilities should help the organisations to improve management services and rationalise investments in data management tools.
- (44) Aggregating different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer services. This aggregation of repertoires should facilitate the development of new online services, and should also result in a reduction of transaction costs being passed on to consumers. Therefore, collective management organisations that are not willing or not able to grant multi-territorial licences directly in their own music repertoire should be encouraged on a voluntary basis to mandate other collective management organisations to manage their repertoire on a non-discriminatory basis. Exclusivity in agreements on multi-territorial licences would restrict the choices available to users seeking multi-territorial licences and also restrict the choices available to collective management organisations seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between collective management organisations providing for multi-territorial licensing should be concluded on a non-exclusive basis.
- (45) The transparency of the conditions under which collective management organisations manage online rights is of particular importance to members of collective management organisations. Collective management organisations should therefore provide sufficient information to their members on the main terms of any agreement mandating any other collective management organisation to represent those members' online music rights for the purposes of multi-territorial licensing.
- (46) It is also important to require any collective management organisations that offer or grant multi-territorial licences to agree to represent the repertoire of any collective management organisations that decide not to do so directly. To ensure that this requirement is not disproportionate and does not go beyond what is necessary, the requested collective management organisation should only be required to accept the representation if the request is limited to the online right or categories of online rights

that it represents itself. Moreover, this requirement should only apply to collective management organisations which aggregate repertoire and should not extend to collective management organisations which provide multi-territorial licences for their own repertoire only. Nor should it apply to collective management organisations which merely aggregate rights in the same works for the purpose of being able to license jointly both the right of reproduction and the right of communication to the public in respect of such works. To protect the interests of the rightholders of the mandating collective management organisation and to ensure that small and less well-known repertoires in Member States can access the internal market on equal terms, it is important that the repertoire of the mandating collective management organisation be managed on the same conditions as the repertoire of the mandated collective management organisation and that it is included in offers addressed by the mandated collective management organisation to online service providers. The management fee charged by the mandated collective management organisation should allow that organisation to recoup the necessary and reasonable investments incurred. Any agreement whereby a collective management organisation mandates another organisation or organisations to grant multi-territorial licences in its own music repertoire for online use should not prevent the first-mentioned collective management organisation from continuing to grant licences limited to the territory of the Member State where that organisation is established, in its own repertoire and in any other repertoire it may be authorised to represent in that territory.

- (47) The objectives and effectiveness of the rules on multi-territorial licensing by collective management organisations would be significantly jeopardised if rightholders were not able to exercise such rights in respect of multi-territorial licences when the collective management organisation to which they have granted their rights did not grant or offer multi-territorial licences and furthermore did not want to mandate another collective management organisation to do so. For this reason, it would be important in such circumstances to enable rightholders to exercise the right to grant the multi-territorial licences required by online service providers themselves or through another party or parties, by withdrawing from their original collective management organisation their rights to the extent necessary for multi-territorial licensing for online uses, and to leave the same rights with their original organisation for the purposes of mono-territorial licensing.
- (48) Broadcasting organisations generally rely on a licence from a local collective management organisation for their own broadcasts of television and radio programmes which include musical works. That licence is often limited to broadcasting activities. A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online rights in musical works for the purposes of simultaneous and delayed transmission online of television and radio broadcasts, it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of online rights in musical works. Such a derogation should be limited to what is necessary in order to allow access to television or radio programmes online and to material having a clear and subordinate relationship to the original broadcast produced

for purposes such as supplementing, previewing or reviewing the television or radio programme concerned. That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, nor lead to restrictive practices, such as market or customer sharing, which would be in breach of Article 101 or 102 TFEU.

- (49) It is necessary to ensure the effective enforcement of the provisions of national law adopted pursuant to this Directive. Collective management organisations should offer their members specific procedures for handling complaints. Those procedures should also be made available to other rightholders directly represented by the organisation and to other collective management organisations on whose behalf it manages rights under a representation agreement. Furthermore, Member States should be able to provide that disputes between collective management organisations, their members, rightholders or users as to the application of this Directive can be submitted to a rapid, independent and impartial alternative dispute resolution procedure. In particular, the effectiveness of the rules on multi-territorial licensing of online rights in musical works could be undermined if disputes between collective management organisations and other parties were not resolved quickly and efficiently. As a result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for the possibility of easily accessible, efficient and impartial out-of-court procedures, such as mediation or arbitration, for resolving conflicts between, on the one hand, collective management organisations granting multi-territorial licences and, on the other, online service providers, rightholders or other collective management organisations. This Directive neither prescribes a specific manner in which such alternative dispute resolution should be organised, nor determines which body should carry it out, provided that its independence, impartiality and efficiency are guaranteed. Finally, it is also appropriate to require that Member States have independent, impartial and effective dispute resolution procedures, via bodies possessing expertise in intellectual property law or via courts, suitable for settling commercial disputes between collective management organisations and users on existing or proposed licensing conditions or on a breach of contract.
- (50) Member States should establish appropriate procedures by means of which it will be possible to monitor compliance by collective management organisations with this Directive. While it is not appropriate for this Directive to restrict the choice of Member States as to competent authorities, nor as regards the *ex-ante* or *ex-post* nature of the control over collective management organisations, it should be ensured that such authorities are capable of addressing in an effective and timely manner any concern that may arise in the application of this Directive. Member States should not be obliged to set up new competent authorities. Moreover, it should also be possible for members of a collective management organisation, rightholders, users, collective management organisations and other interested parties to notify a competent authority in respect of activities or circumstances which, in their opinion, constitute a breach of law by collective management organisations and, where relevant, users. Member States should ensure that competent authorities have the power to impose sanctions or measures where provisions of national law implementing this Directive are not complied with.

This Directive does not provide for specific types of sanctions or measures, provided that they are effective, proportionate and dissuasive. Such sanctions or measures may include orders to dismiss directors who have acted negligently, inspections at the premises of a collective management organisation or, in cases where an authorisation is issued for an organisation to operate, the withdrawal of such authorisation. This Directive should remain neutral as regards the prior authorisation and supervision regimes in the Member States, including a requirement for the representativeness of the collective management organisation, in so far as those regimes are compatible with Union law and do not create an obstacle to the full application of this Directive.

- (51) In order to ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the Commission should cooperate with each other to that end. Member States should provide each other with mutual assistance by way of exchange of information between their competent authorities in order to facilitate the monitoring of collective management organisations.
- (52) It is important for collective management organisations to respect the rights to private life and personal data protection of any rightholder, member, user and other individual whose personal data they process. Directive 95/46/EC governs the processing of personal data carried out in the Member States in the context of that Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States. Rightholders should be given appropriate information about the processing of their data, the recipients of those data, time limits for the retention of such data in any database, and the way in which rightholders can exercise their rights to access, correct or delete their personal data concerning them in accordance with Directive 95/46/EC. In particular, unique identifiers which allow for the indirect identification of a person should be treated as personal data within the meaning of that Directive.
- (53) Provisions on enforcement measures should be without prejudice to the competencies of national independent public authorities established by the Member States pursuant to Directive 95/46/EC to monitor compliance with national provisions adopted in implementation of that Directive.
- (54) This Directive respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union ('the Charter'). Provisions in this Directive relating to dispute resolution should not prevent parties from exercising their right of access to a tribunal as guaranteed in the Charter.
- (55) Since the objectives of this Directive, namely to improve the ability of their members to exercise control over the activities of collective management organisations, to guarantee sufficient transparency by collective management organisations and to improve the multi-territorial licensing of authors' rights in musical works for online use, cannot be sufficiently achieved by Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European

Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (56) The provisions of this Directive are without prejudice to the application of rules on competition, and any other relevant law in other areas including confidentiality, trade secrets, privacy, access to documents, the law of contract and private international law relating to the conflict of laws and the jurisdiction of courts, and workers' and employers' freedom of association and their right to organise.
- (57) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁽⁷⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (58) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽⁸⁾ and delivered an opinion on 9 October 2012,

HAVE ADOPTED THIS DIRECTIVE:

- (1) [OJ C 44, 15.2.2013, p. 104.](#)
- (2) Position of the European Parliament of 4 February 2014 (not yet published in the Official Journal) and decision of the Council of 20 February 2014.
- (3) Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services ([OJ L 276, 21.10.2005, p. 54.](#))
- (4) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ([OJ L 167, 22.6.2001, p. 10.](#))
- (5) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property ([OJ L 376, 27.12.2006, p. 28.](#))
- (6) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995, p. 31.](#))
- (7) [OJ C 369, 17.12.2011, p. 14.](#)
- (8) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([OJ L 8, 12.1.2001, p. 1.](#))