

<b>Title: Codes of Conduct</b>  <b>IA No: BIS0313</b>  <b>Lead department or agency: IPO</b>  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>	
	<b>Date:</b> 21/05/12 revised/updated 25/10/13	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Secondary legislation	
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<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> GREEN

<b>Cost of Preferred (or more likely) Option</b>			
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Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of Two-In, One-Out?	Measure qualifies as
£-3.9m	£-3.9m	£0.4m	Yes	IN

**What is the problem under consideration? Why is government intervention necessary?**

Collecting societies in the UK are privately-run commercial entities. They are an economically significant sector, collecting around £1 billion per annum in total on behalf of their members (creators and rights holders). They tend to be monopoly suppliers in the sectors they represent so neither members nor licensees are able to go elsewhere if dissatisfied, as has been the case in some sectors. In response to the Hargreaves Review of IP and Growth, the Government consulted extensively with stakeholders on proposals to regulate collecting societies, before introducing legislation through the Enterprise and Reform Act 2013 (ERR Act). The Act introduces a number of measures to tackle previously identified shortfalls in the way collecting societies operate, and behaviours that reduce consumer welfare. This Impact Assessment specifically considers provisions in the ERR Act for collecting societies to self-regulate by adhering to codes of practice that comply with Government minimum standards of governance, fairness and transparency, which are designed to offer protections to users and members of collecting societies.. The ERR Act introduces a reserve power allowing the Government to impose a statutory code (and sanctions, where necessary) if a collecting society fails to self-regulate effectively. The reserve powers will be enforced through the Copyright [Regulation of relevant licensing bodies] Regulations 2014, which are the subject of this impact assessment.

**What are the policy objectives and the intended effects?**

To improve the efficiency, governance and accountability of collecting societies to benefit members, licensees and potential licensees, and collecting societies themselves. Also, to enable the introduction of extended collective licensing (see associated IA). Self-regulation remains the Government's preferred approach and the Government welcomes progress the industry has made to date on the introduction of self-regulatory codes. The concept of enforceable minimum standards is aimed at ensuring collecting societies operate in a manner that promotes open and efficient markets and that their users and members have protections, especially where they do not have a choice to shop elsewhere.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- Option 0 - Do not implement statutory legislation (i.e. rely on self regulation alone)
- Option 1 - Implement statutory legislation through Regulations, introducing provision for the Secretary of State to impose statutory codes and/or sanctions/penalties on collecting societies that fail to put in place effective codes within a set timescale, or fail to adhere to such a code.

Option 1 is the preferred option as the regulations, which include provisions for sanctions and enforcement, are needed to ensure compliance.

**Will the policy be reviewed?** Effectiveness of codes will be reviewed. **If applicable, set review date:** 04/2016

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> n/a	<b>Non-traded:</b> n/a	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:

..... Younger of Leckie ..... Date: ..... 4 February 2014 .....

# Summary: Analysis & Evidence

# Policy Option 1

Description: Self regulation with a backstop power to regulate

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -4.3	High: -3.5	Best Estimate: -3.9

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.3	1	£0.4	3.5
High	£0.4		£0.5	4.3
Best Estimate	£0.4		£0.4	3.9

### Description and scale of key monetised costs by 'main affected groups'

In putting in place a self-regulatory framework some collecting societies have incurred set up costs for developing codes of practice, membership of an Ombudsman scheme and the appointment of an independent code reviewer. A number of collecting societies (representing 89.7% of total revenues of UK collecting societies) have provided actual cost figures covering these set up costs. We have estimated that set up costs represent approximately 0.04% of their total collections, and, annual running costs are estimated at 0.03% of total collections.

Using these assumptions, a central estimate for set up costs for the 13 collecting societies [that fall within the scope of the statutory framework] is stated at £0.37 million. In addition, a central estimate of the annual running costs [including staff training, Ombudsman membership fees and contribution to code reviewer salary] is stated as £0.375m. To take into account uncertainty in these figures, 10% sensitivity has been calculated on these estimates.

### Other key non-monetised costs by 'main affected groups'

- (i) A collecting society found to be in breach of the regulations risks incurring additional costs over and above those incurred within the self regulatory framework, including potential financial penalties.
  - (ii) The Government will incur costs related to sanctions and enforcement, which would depend on the level of compliance. Costs relating to enforcement will be capped at cost and passed on to the relevant collecting society. Early indications are that compliance with the self regulatory framework is likely to be high and therefore the potential costs of enforcing the regulations should be low.
  - (iii) Costs encountered by collecting societies could be passed on to licensees, in whole or in part.
- It is not possible to quantify these costs, the levels of which would depend on the extent of compliance in the future.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	0	0
High	0		0	0
Best Estimate	0		0	0

### Description and scale of key monetised benefits by 'main affected groups'

Collecting societies: potential for improved efficiency through improved governance, including improved complaints procedures (meaning fewer resources required); improved understanding of business model yielding potentially better returns;

Licensee and Members: improved transparency (particularly around tariffs and terms and conditions) with the regularisation of reporting and information.

Government/public: Savings achieved through not incurring upfront levies

It is too early to quantify these benefits as insufficient data exists at present. The review process should release data that will enable quantification.

**Other key non-monetised benefits by 'main affected groups'**

Collecting societies: Reputational (brand enhancement) benefits with UK acting as a role model of 'best practice' within the EU; codes are easily modified so collecting societies can keep pace with market developments

Licensees and Members: Enhanced transparency and improved access to independent dispute resolution mechanisms

Government:

Consumers: Empowered and confident consumers

Key assumptions/sensitivities/risks

**Discount rate (%)**

3.5%

Government has assumed that the data on setup and running costs provided by the collecting societies are accurate and are sufficiently representative to allow it to make assumptions concerning those collecting societies in scope. A 10% sensitivity analysis has been carried out on the figures. The Government assumes that levels of compliance with self-regulatory codes of conduct are likely to be good, and that collecting societies will bear any costs of penalties imposed in the event of non-compliance with a statutory code.

**BUSINESS ASSESSMENT (Option 1)**

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.4	Benefits: 0	Net: -0.4	Yes	IN

# Evidence Base (for summary sheets)

## Background

Collecting societies are a type of “licensing body”. A licensing body is defined in the Copyright Designs and Patents Act 1988 (CDPA) as a “society or other organisation which has as its object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.” Thus, a collecting society is a body that licenses a range of copyright works on behalf of its members the copyright owners. It collects and distributes royalties to them in exchange for an administrative fee.

Collecting societies in the UK are privately run commercial entities that license a range of copyright works on behalf of their members, the copyright owners. Collections in the UK amount to around £1 billion<sup>i</sup> per annum across the various sectors. Whereas individual collecting societies can vary in size and scale – (those operating in the UK include small and micro businesses), they tend to be monopoly suppliers of licences for their respective sectors. This appears to be market efficient: it enables many-to-many licensing which significantly reduces transaction costs for licensees and rights-holders by allowing them to manage their rights or use of rights through a single organisation.

## The problem under consideration

Efficient licensing benefits both collecting society members and their licensees. Whereas the collections themselves are supported in law, there has not been any specific regulation governing collecting society functions until now. The Government’s policy intention, on which it has consulted extensively, is to strengthen confidence in the operation of collecting societies in support of these benefits and to provide minimum standards of governance and transparency for members and users of collecting societies.. As such, it took a power in the Enterprise and Regulatory Reform Act that requires collecting societies to self-regulate in the first instance. The power also allows the Government to make secondary legislation to remedy and, where warranted, penalise gaps in self-regulation. The draft secondary legislation, to be known as The Copyright (Regulation of relevant licensing bodies) Regulations 2014, is the subject of this impact assessment.

This assessment takes into account two specific concerns about the current system that were identified in the Hargreaves Review:

- (i) that individual collecting societies appear to be the cause of some avoidable deadweight losses and inefficiencies.
- (ii) The potential negative impacts of unregulated monopoly suppliers, particularly on small and medium sized enterprises.

## Deadweight losses and inefficiencies

The table below illustrates the wide range of cost margins and director remuneration (in some cases over £500,000 per annum)<sup>ii</sup> which would suggest there is scope for greater efficiency. These can be compared with typical expenditure on administrative costs by UK charities (also not for profit) of 5-13% of income [source: CharityFacts <sup>iii</sup>].

Society	Total annual collections (millions)	Annual payment to members (millions)	Cost-income ratio (estimates based on published figures)
NLA <sup>iv</sup>	£26.7	£20.9	21.7%
DACS <sup>v</sup>	£9.4	£7.6	19.1%
PPL <sup>vi</sup>	£111.4	£91.5	17.9%
ACS <sup>vii</sup>	-	£0.4	15.0%
CLA <sup>viii</sup>	£71.0	£61.0	14.1%
PRS-MCPS <sup>ix</sup>	£646.0	£574.0	11.1%
BECS <sup>x</sup>	£8.4	£7.7	8.3%
Directors UK <sup>xi</sup>	£8.4	£7.8	7.1%
ERA <sup>xii</sup>	£7.7	£7.2	6.5%
ALCS <sup>xiii</sup>	£25.2	£24.0	4.8%
PLS <sup>xiv</sup>	£27.1	£26.1	3.7%
<b>Total</b>	<b>£941.3</b>	<b>£828.2</b>	<b>11.8%</b>

The Hargreaves review raised a number of concerns in this regard<sup>xv</sup>:

- Lack of transparency, including opaque financial reporting, creates uncertainty for members and licensees about how collecting societies operate and makes it difficult for government to have a clear overview of economically significant activity.
- The presence of unregulated monopoly suppliers can have harmful effects in some sectors, especially on small and micro firms.

In response, some collecting societies have argued that they are not monopoly suppliers, but voluntary mechanisms acting in response to choices made by rights holders and licensees. They have said that they operate in competitive markets and that there are alternative licensing solutions available to users.

Countering this argument, some licensees have commented that the repertoire licensed by the majority of collecting societies contains many of the works which they wish to use, often with only one collecting society per right, so licensees have little choice. However, as these are business to business transactions, licensees do not enjoy the same protections as consumers when transacting with other monopolies such as utility companies.

A number of collecting societies also challenged the underlying assumptions of this approach arguing that a wide range of cost margins does not in itself prove that some collecting societies are less efficient than others. Rather it may be attributed to a number of factors, such as the variation in type of roles collecting societies play in the licensing process, with different methods of operation and associated costs

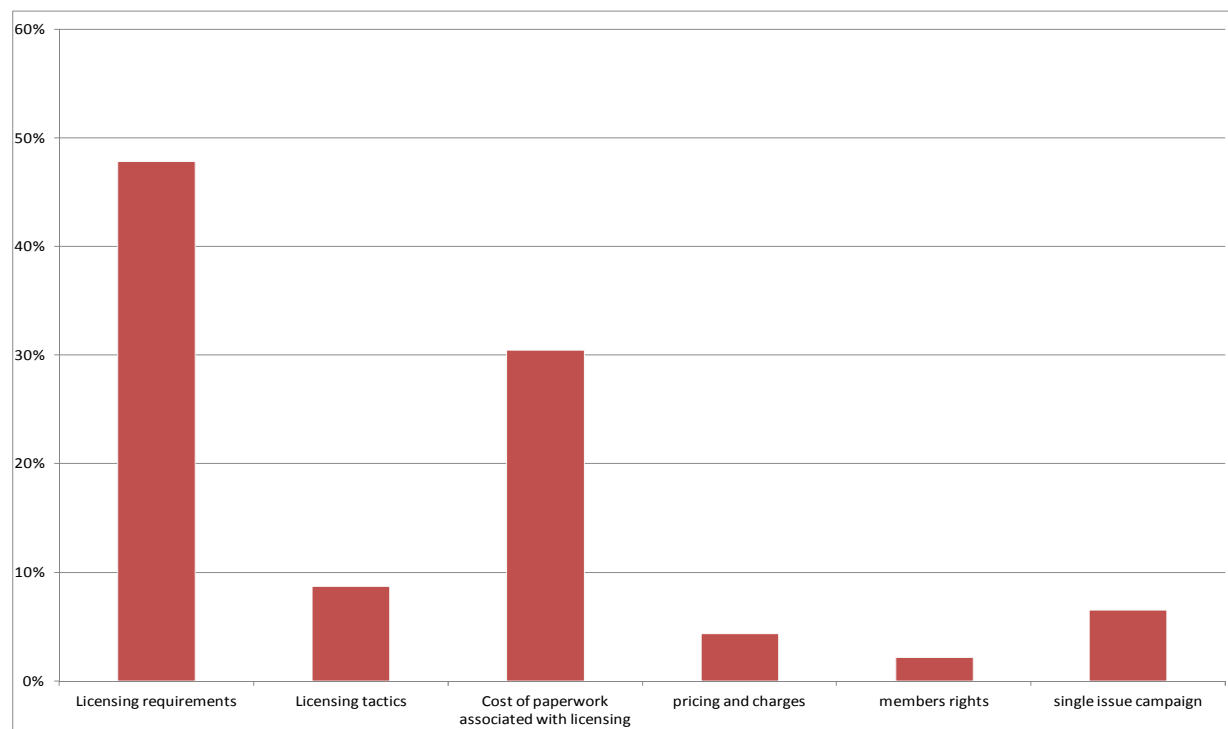
### **Complaints about the conduct and operation of collecting societies**

Historically, not all licensees, potential licensees, and members had access to an independent dispute resolution process to resolve complaints. One indicator of dissatisfaction with collecting society conduct was the level of complaints received by government ministers.

Between October 2010 and December 2011 the Minister for Intellectual Property received over 100 complaints from MPs about their constituents' dissatisfaction with the conduct and/or operation of collecting societies. Between January 2012 and December 2012 (when a number of collecting societies were developing and adopting codes of practice), the number of complaints received was just over 40. This downward trend in the level of complaints continues

with fifteen fewer complaints received in the first three months of 2013 compared with the same period in 2012. This represents a 40 per cent reduction. These were mostly from small and micro business and sole trader constituents. The overall downward trend would seem to suggest that the adoption of codes of conduct has started to have the positive impacts that the policy was designed to have. The Charts below illustrate the type of issues typically raised.

**Chart 1 – Comparison of the issues raised in ministerial correspondence received between January 2012 and December 2012**



The most common theme relates to the licensing requirements of collecting societies. Comparison of the year-on-year data shows that the most common themes remain licensing requirements and the associated costs of the paperwork. SMEs in particular complain about what they consider to be collecting societies' lack of consideration of the administrative burdens associated with multiple licences. On the other hand, collecting societies maintain that without accurate data about usage, they are unable to accurately distribute income amongst their members.

Although the volume of complaints about heavy handed tactics has fallen by ten per cent, the Government continues to receive complaints of this nature. Moreover, where licensees believe that a collecting society is a government agency or acting with government sanction, there is a risk that they may buy a licence which they do not necessarily need. The Government has twice had to ask a particular collecting society to withdraw its marketing literature, as it gave the false impression that its processes were government-sanctioned. Nonetheless, the Government has continued to receive complaints – including in 2013 – about this collecting society, giving the impression that it is a government agency.

Pricing, which is dealt with by the Copyright Tribunal, is not a significant theme in either dataset (five per cent and four per cent of complaints analysed in 2010/11 and 2011/12 respectively). However, it has been argued that licences may be overpriced, as demonstrated, for example, by the Copyright Tribunal 2009 ruling when PPL was ordered to significantly reduce its charges for playing background music in pubs, bars, restaurants and hotels<sup>xvi</sup>, with subsequent estimated savings (in the form of refunds) of around £20 million<sup>xvii</sup>. While the price of the licences offered by collecting societies is outside the scope of the proposed regulations governing codes of practice, the anticipated improved transparency should improve clarity around the pricing of

licences and how royalties are determined – an issue highlighted in a joint submission to the original consultation process by a number of representative bodies<sup>xviii</sup>.

Concerns have also been expressed by some collecting society members about governance arrangements, with some feeling they have little input into how a collecting society conducts its operations. This is one of the issues that is intended to be addressed by this intervention.

## **Rationale for Intervention through an SI**

Prior to the enactment of the Enterprise and Regulatory Reform (ERR) Act 2013 the Government had no specific regulatory powers to regulate the conduct of a collecting society or its collection methods. It had to rely on encouraging collecting societies to address problems that had been brought to the attention of Government. This yielded some positive changes but at a slow pace. For example, when the original impact assessment was published, two collecting societies had introduced voluntary “codes of conduct”: PRS in 2009 and PPL in January 2012. While this was a step in the right direction, with some concomitant reduction in complaints, the Government’s view was that these voluntary codes were more akin to service level agreements than fully fledged codes of conduct.

Since then, and in anticipation of regulation, collecting societies have made tremendous progress in adopting codes of practice. These codes are self-regulatory in the first instance and based on minimum standards, developed in conjunction with collecting societies and licensees, but set by the Government. The majority of collecting societies have adopted codes of -practice as part of the work done by their trade body, the British Copyright Council.

These codes do not, by virtue of being self-regulatory, include provisions for sanctions should the codes be breached. Moreover, the industry is not empowered to act against collecting societies who choose not to comply with the minimum standards, although such bodies risk damaging the industry’s reputation as a whole. The backstop power being introduced to support self-regulations and is to be used only in case of failures in self-regulation. Thus, whilst the Government’s preferred option is for self-regulation in the first instance, it has acted to bring forward this backstop package to offer a guaranteed set of protections for members, licensees, and potential licensees of collecting societies who may not have a choice to go elsewhere if they are dissatisfied.

In addition, the establishment of extended collective licensing, introduced through the ERR Act, would, when implemented, have the effect of increasing the scope and scale of the activities of some collecting societies by allowing them to license on behalf of certain rights holders from whom they do not have a direct mandate (“non-members”). If implemented without regulations reforming the collecting society framework, the Government will be unable to offer the safeguards non-members require that will protect absent rights holders represented by an extended collective licensing scheme.

**The Government would be unwilling to introduce extended collective licensing without these protections. This would mean that all the benefits of extended collective licensing (see separate IA BIS1054) would be lost.**

## **Policy objective**

The overarching objective for Government intervention is to enhance governance and transparency in an economically significant sector. This is to ensure that there are protections in place for both licensees, potential licensees and members of collecting societies. The Government anticipates a knock-on effect on costs by reducing the resources required for businesses to transact with the relevant collecting society, for example by improving relations between both parties. Enhanced governance and transparency should help collecting societies focus on their obligations to their members as well as to licensees, potentially improving



efficiency and revenue streams for right holders. The policy also means the Government will have a better overview of how collecting societies work.

These regulations are being introduced against the backdrop of the proposed Collective Rights Management Directive ('CRM Directive'), currently being negotiated in Europe.<sup>1</sup> The Directive, which is part of the European Commission's "Digital Agenda for Europe" and "Europe 2020 Strategy" has two main objectives:

- To introduce better standards for the operation of all EU collecting societies.
- To create a more efficient framework for the cross-border licensing of online music.

The UK's approach, i.e. self regulation supported by a backstop power, is an opportunity for UK collecting societies to showcase best practice in Europe and thereby help to influence EU policy outcomes to enable them to benefit from cross border licensing.

### **Description of options considered (including do nothing);**

#### **Option 0 – Do not implement statutory regulation (i.e. rely on self-regulation alone)**

The Government has decided not to rely solely on self regulation alone as this would mean there would be limited opportunity to for businesses to seek redress from collecting societies if they failed to implement or comply with their codes of practice. This would have meant that there would not have been a level playing field in the sector.

In the absence of a statutory package to underpin self-regulation, the Government would be unwilling to proceed with extended collective licensing (ECL), as there would not be adequate protection for the rights of absent rights holders. This would mean that the benefits of ECL would be lost (see separate Impact Assessment.)

### **Costs and benefits of preferred option (including administrative burden);**

#### **Chosen Option: Self regulation with a backstop power to regulate.**

This is the Government's preferred option. The majority of the industry, working through a BCC Working Group, has made significant progress in developing codes that align closely with the Government's minimum standards. The new Schedule A1 of the Copyright Designs and Patents Act (Schedule A1, Copyright Designs and Patents Act 1988 (CDPA), introduced through Schedule 22 of the Enterprise and Regulatory Reform Act 2013 enables the Government to introduce a backstop power through regulations, which it intends to introduce in April 2014. The power allows the Government to address failures in self-regulation by putting in place statutory codes of practice and impose sanctions in certain cases.

The regulations, by introducing a backstop power, should help encourage collecting societies self regulate in the first instance, thereby avoiding unnecessary costs and regulatory burdens on them as businesses. It creates consistent standards across the sector, allowing collecting societies to operate on a level playing field. Importantly, it secures a minimum level of protections for members and users of collecting societies. Likewise, it safeguards the interests of non-members of collecting societies where they operate extended collective licensing schemes.

## **Collecting Societies**

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<sup>1</sup> Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, (the "CRM Directive") published in July 2012.

**Costs:** Collecting Societies are responsible for the initial costs of self-regulation and for compliance with the Government's minimum standards as reflected in their codes of conduct.). As many collecting societies have now implemented self regulatory codes of practice, the Government is better placed to comment on the costs of implementing these codes.

This data is summarised in the table below.

Society <sup>2</sup>	Estimated Set-up costs (millions)	Estimated Running costs p.a. (millions)	Collecting Society Total collections (millions) <sup>3</sup>	Set-up costs as a % of total collections	Running costs as a % of total collections
<b>PRS</b>	£0.275	£0.307	£646.0	0.04%	0.05%
<b>PPL</b>	£0.015	N/K <sup>4</sup>	£1111.4	0.01%	N/K
<b>CLA</b>	£0.034	£0.005	£71	0.05%	0.01%
<b>BECS</b>	£0.003	£0.002	£8.4	0.04%	0.02%
<b>ERA</b>	£0.004	£0.002	£7.7	0.05%	0.03%
<b>Total</b>	<b><u>£0.331</u></b>	<b><u>£0.316</u></b>	<b><u>£844.5</u></b>	<b>0.04% (average)</b>	<b>0.03% (average<sup>5</sup>)</b>

The data collected demonstrates that the estimated set-up costs represent approximately 0.04% of the total collections for each collecting society, whereas, the estimated running costs represent 0.03% of the total collections. Using these assumptions, we can estimate the initial costs of self regulation and compliance with the Government's minimum standards for the remaining collecting societies:

Society	Total collections (millions)	Estimated Set-up costs (millions)	Estimated Running costs p.a. (millions)
NLA <sup>xix</sup>	£26.7	£0.011	£0.008
DACS <sup>xx</sup>	£9.4	£0.004	£0.003
ACS <sup>xxi</sup>	-	N/A	N/A
Directors UK <sup>xxii</sup>	£8.4	£0.003	£0.003
ALCS <sup>xxiii</sup>	£25.2	£0.010	£0.008
PLS <sup>xxiv</sup>	£27.1	£0.011	£0.008
PPL <sup>6</sup>	-	-	£0.03
<b>Total</b>	<b><u>£96.8</u></b>	<b><u>£0.039</u></b>	<b><u>£0.059</u></b>

<sup>2</sup> Data submitted by collecting societies in response to a Government request

<sup>3</sup> Data taken from table on page5

<sup>4</sup> PPL expects there to be an element of specific ongoing costs, such as the annual renewal of the Ombudsman Services, the costs of future Independent Code Reviews, but a figure has not been estimated at this stage.

<sup>5</sup> PPL has been ignored in this calculation as the running costs are unknown. The average was created by dividing by four collecting societies.

<sup>6</sup> Where PPL running costs are not known, these have been estimated using the 0.03% of total collections.

When totalling the estimated set-up costs and estimated running costs from both tables we can provide estimates of the total costs to collecting societies:

**Estimated Total Set Up Costs: £0.37 million**

**Estimated Total Running Costs Per Annum: £0.375 million<sup>7</sup>**

To take uncertainty into account, 10% sensitivity will be calculated either side of the above central estimates:

**Estimated Total Set Up Costs:**

Best Estimate: £0.37 million

Low Estimate: £0.333 million

High Estimate: £0.407 million

**Estimated Running Costs:**

Best Estimate: £0.375 million

Low Estimate: £0.338 million

High Estimate: £0.413 million

**Benefits:**

For the reasons outlined above, the Government believes that costs incurred could be, over time, at least partially offset by efficiencies arising through the introduction of codes. For example, improved transparency and governance should help reduce deadweight losses and inefficiencies within the system, leading to increased revenues and opportunities for growth as rights-holders and licensees become more willing to deal with particular societies, including those that are authorised to operate Extended Collective Licensing schemes.

As outlined in the policy objectives above, the Government anticipates that adherence to Government minimum standards through codes, should benefit UK collecting societies with reciprocal arrangements with other European societies. For example, proposals in the CRM Directive for increased transparency around distribution of monies would help collecting societies understand how their members' income is calculated and returned to them. In addition, insofar as UK collecting societies are seen as efficient and transparent, they should be in a strong position to benefit from cross-border licensing at an EU level, particularly when the CRM Directive is implemented likely to be in 2016.

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<sup>7</sup> Despite the estimated set-up costs representing a larger percentage of total collections than that of the estimated running costs, the table shows that the total estimated set-up costs are actually lower than the total estimated running costs. This has occurred because of the estimate made for the running costs of PPL. The reported set up costs from PPL were 0.01% of total collections, whereas, the estimate used for running costs - taken from the average - is 0.03%. Due to PPL representing a large proportion (£111.4m) of total collections for all collecting societies (£941.3m), it has led to the running costs exceeding the set-up costs.

## Collecting Society Members and Licensees:

**Costs:** In their responses to the initial consultation, some collecting societies argued that any increase in costs in relation to the adoption of codes and ongoing costs would likely be reflected in reduced royalty payments for members. Users have expressed concern that associated costs could result in an increase in licence fees. These concerns were expressed particularly in relation to the possible use of financial penalties in the event of non-compliance with a statutory code.

**Benefits:** Many collecting society members, licensees and potential licensees are small and micro-businesses. Both groups should benefit from improved information regarding their dealings with collecting societies, and be able to enter into contracts and negotiations on the basis of this improved knowledge. This should help them, for example to identify quickly the rights managed by collecting societies and to purchase the licences most appropriate to their needs. In response to the initial consultation, licensees welcomed improved transparency around the processes used by collecting societies to determine the cost of a licence and about the rights that are included in the costs. As stated above, the Government's expectation is that the introduction of codes, backed by statutory regulation, should help reduce the volume of complaints as services improve. Where problems arise, it will be easier for users to challenge the collecting society in question through reference to the code, with the option to refer a complaint to the ombudsman if the collecting society fails to resolve the issue.

The BOP research cited above did not find evidence that the introduction of a code of conduct led to a reduction in complaints. This finding related to self-regulatory codes not backed by statutory regulation. The research nonetheless identified a number of improvements in collecting society behaviour that benefit members and licensees:

- trying conscientiously to respond to requests from members and licensees
- improved explanations of distribution policy; and
- improved explanation and publication of their functions.

The report was clear that a *statutory* code is “more likely to achieve the aims of improving transparency, accountability, governance and dispute resolution” an assertion supported by views expressed by many respondents in previous consultations that that they would benefit from improved complaints procedures as there would be a clear route to air their concerns, and escalate complaints through a defined system if required. These are qualitative benefits that are difficult to quantify in the absence of reliable data (that will only be available once transparency measures are fully implemented and have been in place for some time).

## Government

**Costs:** Government may need to bear costs related to enforcement. It is not possible to quantify these costs at present as these will depend on the level of compliance. The main costs of enforcement would occur if for example the Independent Code Reviewer found a collecting society to be in breach of its the society in question were made subject to a statutory code of practice. The costs associated with this process would include:

- the staff costs associated with providing advice to the Secretary of State regarding whether to accept or reject the Code Reviewer's recommendation, and /or whether to impose penalties in the event of a breach of a statutory code.
- potential additional costs should the collecting society challenge the decision to impose a statutory code or a penalty through the appeals process set out in the regulations.

If there is a high level of compliance with self-regulatory codes of practice, the associated costs will be low as there will be few or no occasions where the statutory code would need to be activated. If the level of compliance is low the costs to Government would consequently increase. Given that collecting societies have indicated during the consultation both that a) they support the principles of a self-regulatory code of practice, and that, b) they wish to avoid

statutory regulation and the threat of penalties, the Government expects a high level of compliance with the self-regulatory framework.

**Benefits:** In the initial consultation, the expectation was that the volume of complaints received by Government would subsequently reduce. This assumption was based on existing trends since 2009, following cultural and organisational changes by collecting societies, including a significant amount of staff training. If similar reductions occurred across the collective rights management sector, Government would expect to benefit from a reduction in Civil Service resources required to respond to such complaints (with similar benefits at a local level, e.g. for Trading Standards offices and other bodies who may receive complaints).

**Exemption for micro-businesses:** The Government proposes, in line with the current Government moratorium on new domestic regulation for micro-businesses and start-ups, that any collecting society that meets the definition of a micro-business (taking into account any relationships with partner enterprises including other collecting societies) should be **exempted** from the scope of the regulations outlined. The costs listed above assume that all collecting societies adopt comparable procedures.

The Government is using the definition of a micro-business contained in Commission Recommendation (2003/361/EC)<sup>8</sup> which states, *“Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.”*

The decision to do so has been made in light of the impact and reach of collecting societies. For example, a collecting society may be “small” in terms of its number of employees, but its licensing requirements may have an impact on a large number of businesses, many of them small, medium and micro-enterprises.

#### **Implementation plan for preferred option:**

##### Self regulation with a backstop power to regulate

The regulations that are the subject of this impact assessment have been consulted on and are in the process of being finalised. It is intended that these regulations will be in place by April 2014.

#### **Risks and assumptions**

The Government assumes that the data on setup and running costs provided by the collecting societies are accurate and that the sample is sufficiently representative to enable the data to be extrapolated across all collecting societies. A 10% sensitivity analysis has been carried out on the figures. The Government also assumes that there is a low risk of extensive non-compliance with codes of practice for the reasons outlined above: they support the principle of codes and they wish to avoid any potential penalties associated with statutory codes. In the event of extensive non-compliance, any associated costs to Government would consequently increase (and some of the benefits associated with codes would be lost in the short-term until statutory codes were imposed).

In the event that a statutory code were to be put in place for a collecting society, there is a risk that the society in question would seek to pass on any potential financial penalties for non-compliance to its members or licensees.

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<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:EN:PDF>

## Direct costs and benefits to business calculations (following OITO methodology)

By introducing statutory minimum standards to collecting societies' operations, new regulation is clearly being imposed upon business; therefore this is defined as an IN. However, it should be noted both that:

- a) The preferred option is in the first instance self-regulatory; the proposed statutory mechanism would only be used in the event that self-regulation had not resulted in the adoption of adequate minimum standards.
- b) Collecting societies who are members of the British Copyright Council have adopted self-regulatory codes. The Government is optimistic that, in the context of a statutory backstop, industry will reach a successful outcome via self-regulation.

Although it is not currently feasible or proportionate to seek to monetise fully the costs and benefits of introducing the preferred option, the Government believes, based on the evidence outlined above, that the benefits of introducing a code with a statutory backstop outweigh the costs and so should be seen as a positive measure.

## Evaluation

A full evaluation strategy and Post Implementation Review is being developed and will most likely take place in 2016 when (if agreed) the transposition of the CRM Directive into UK law will be undertaken.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the copyright reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

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<sup>i</sup> Source Hargreaves, I, Digital Opportunity: A Review of Intellectual Property and Growth Supporting document EE p.19

<sup>ii</sup> Source: Intellectual Property Office, "Supporting Document EE: Economic Impact of Recommendations", p.19, accessed 24/10/13 at <http://www.ipo.gov.uk/ipreview-doc-ee.pdf>

<sup>iii</sup> [http://www.charityfacts.org/charity\\_facts/charity\\_costs/index.html](http://www.charityfacts.org/charity_facts/charity_costs/index.html)

<sup>iv</sup> Sourced from accounts, company number 3003569

<sup>v</sup> Sourced from report, company: [http://www.dacs.org.uk/pdfs/K214\\_DACS\\_FinReport2009.pdf](http://www.dacs.org.uk/pdfs/K214_DACS_FinReport2009.pdf), p.6

<sup>vi</sup> Source report, company <http://www.ppluk.com/en/About-Us/Annual-reports/> and <http://content.yudu.com/Library/A1o1ey/PPLStatutoryAccounts/resources/index.htm?referrerUrl=>, PPL were ordered to repay some licensees by the Copyright tribunal for over-charging, and put £18.1m aside in its accounts, with the note that "You will only be entitled to a refund if you make a claim to PPL for repayment" see <http://www.ppluk.com/en/music-users/copyright-tribunal-refunds/>. If this is excluded, they collected £111m and had a cost/income ratio of 16.2 per cent. We could not reconcile the PPL figure with the 14.6% cost to income ratio cited in the annual accounts for 2009. Counting revenue after the public performance refund (£111.4m) and distributable income (£91.5m) gives a cost-income ratio of 17.9%. And the ratio was 15.4% when counting the distributed income and refund (£91.5m + £18.1m = £109.6m) as a percentage of total collections (£129.6m).

PPL notes in its account that it excludes the pension costs from its cost-to-income ratio, but as this income is not repaid to artists but rather a cost of running PPL we consider it non-distributed income, just as other collecting societies do.

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- vii Source accounts, company number 5856314. Calculated on the basis of ACS's income in 2008-09, based on the 15 per cent fee that ACS charges, as the amount collected is not disclosed in the annual accounts.
- viii Source report, company: [http://www.cla.co.uk/data/corporate\\_material/annual\\_review.pdf](http://www.cla.co.uk/data/corporate_material/annual_review.pdf), p.13
- ix Source, accounts, company number 00134396 & 00199120
- x Source report, company: [http://www.equitycollecting.org.uk/downloads/newsitems/BECS\\_AnnualReport\\_2010.pdf](http://www.equitycollecting.org.uk/downloads/newsitems/BECS_AnnualReport_2010.pdf), p.1 & p.15, the total is based on distributing £7.76m and earning £700,000 for administrative functions.
- xi Source accounts, company number: 2685120
- xii Source accounts, company number: 2423219
- xiii Source report, company: <http://www.alcs.co.uk/CMSPages/GetFile.aspx?nodeguid=3a1b2df3-3602-4514-b2e3-59554bd512c8>, p.11
- xiv Source report, company: [http://www.pls.org.uk/about/plsnewsletters/Pages/PLS%20Annual%20Report%202010\\_web.pdf](http://www.pls.org.uk/about/plsnewsletters/Pages/PLS%20Annual%20Report%202010_web.pdf), p.8
- xv Source: Intellectual Property Office, "Supporting document EE: Economic Impact of Recommendations", p. 18, accessed 05/10/11 at <http://www.ipo.gov.uk/ipreview-doc-ee.pdf>
- xvi CT 91/05, 92/05, 93/05, 9 November 2009; <http://www.ipo.gov.uk/minuteoforder-2009-11-09.pdf>
- xvii Source: The British Beer & Pub Association, Association of Licensed Multiple Retailers, British Beer & Pub Association, British Hospitality Association, NOCTIS; joint written evidence to the Parliamentary Select Committee for Business, Innovation and Skills, accessed at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbis/writev/1498/m11.htm>
- xviii Source: The Association of Licensed Multiple Retailers, the British Beer and Pub Association, the British Hospitality Association, the Bar, Entertainment and Dance Association, British Holiday and Home Parks Association and the Scottish Licensed Trade Association submission to the copyright consultation p. 3-4
- xix Sourced from accounts, company number 3003569
- xx Sourced from report, company: [http://www.dacs.org.uk/pdfs/K214\\_DACS\\_FinReport2009.pdf](http://www.dacs.org.uk/pdfs/K214_DACS_FinReport2009.pdf), p.6
- xxi Source accounts, company number 5856314. Calculated on the basis of ACS's income in 2008-09, based on the 15 per cent fee that ACS charges, as the amount collected is not disclosed in the annual accounts.
- xxii Source accounts, company number: 2685120
- xxiii Source report, company: <http://www.alcs.co.uk/CMSPages/GetFile.aspx?nodeguid=3a1b2df3-3602-4514-b2e3-59554bd512c8>, p.11
- xxiv Source report, company: [http://www.pls.org.uk/about/plsnewsletters/Pages/PLS%20Annual%20Report%202010\\_web.pdf](http://www.pls.org.uk/about/plsnewsletters/Pages/PLS%20Annual%20Report%202010_web.pdf), p.8