

# **Collective Rights Management**

## **How to make it work**

Thursday, 16 May from 9h30 to 13h00, AIG3

**Improving the licensing of artistic works in Europe**

**Providing the view of small and medium  
German music publishers and record companies**

# Titel I General Provisions

## Article 3

### Definition of „Collective Management Organisation“

#### Text proposed by the Commission

(a) 'collecting society' means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement, by more than one rightholder, to manage copyright or rights related to copyright as its sole or main purpose and which is owned or controlled by its members;

#### Amendment

'collective management organisation' means any organisation authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders as its sole or one of its main purposes, and which is:

(i) owned or controlled by **all of** its members, or

(ii) organised as a not for profit **partnership or association.**

# Titel II Chapter 5 Transparency and Reporting

Article 16 Information provided to rightholders on the management of their rights

Article 17 Information provided to other collecting societies on the management of rights under representation agreements

“Member States shall ensure that a collecting society makes available at least once a year, by electronic means, the following information to each rightholder it represents:

[...]

(c) the amounts due to the rightholder **per work**, category of rights managed and type of use, paid by the collecting society to the rightholder in the period concerned;” (Article 16)

“Member States shall ensure that a collecting society makes the following information available, at least once a year by electronic means, to the collecting society on whose behalf it manages rights under a representation agreement for a particular period:

[...]

(c) information on the licenses and rights revenue pertaining to works included in the repertoire covered by the representation agreement;” (Article 17)

## **Amendment 1:**

Information on category of rights managed, type of use, payment should be carried out on a per track/work basis, but with two reservations

## **Exceptions:**

1. If the precise information on the category of rights managed and type of use on per track/work basis is technically not possible and therefore the information on the amount due to the rightholder per track cannot be delivered, CROs are allowed to make available the information on the payment either by category of rights and/or by type of usage
2. If the costs to deliver information on category of rights managed and type of use on per track/work basis to the rightholder exceed xx% of the expected net income for that category of rights or type of use, CROs are allowed to make available the information on the payment by category of rights and/or by type of usage

# Titel III Multi Territorial Licensing of Online Rights in Musical Works by Collective Rights Organisations

## Article 22 1&2, 29 3, page 37+43 English version

Capacity to process multi-territorial licences + Obligation to represent another collecting society for multi-territorial licensing

“The requesting collecting society shall make available to the requested collecting society the information on its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested collecting society to meet the requirements of this Title, the requested collecting society shall be entitled to charge for the reasonable costs incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.” (Article 29, 3)

### **Comment:**

The condition in Article 29, 3 is too weak to grant Article 22 1&2. The directive has to reflect on the complexity of the system, the capability of technological resources and the capacity of the financial and human resources of Collective Rights Organisations as well as on the willingness and capacity of users to deliver information to reach its goal to facilitate multi territorial licensing.

It might well be that the technologies needed to fulfill Article 22-26 aren't yet existing, so the Collective Rights Organisations will have to invest in the development and implementation of those technologies.

### **Amendment 1:**

Collective Rights Organisations are obliged to develop and implement a common and binding industry data exchange standard for each value chain (e.g. music, word, audiovisual) within a reasonable time (2020?). Users of such licenses are obliged to deliver usage information in this standard. The format should stand under an open licence and should neither be controlled by CROs nor by users.

For the meantime we suggest the additional amendment.

### **Amendment 2:**

Until the forementioned binding industry standard is implemented, a multi territorial licence mandate can only be adopted by a Collective Rights Organisation, if both, the mandating organization and the organisation which grants multi territorial licences to users for both organizations, use the same electronic standards and practices. Users have to build their system of delivery of usage information on the standard of the CROs

**Question:** CROs are obliged to keep their fees small and to settle all licence income with the rightsowners. Where should they get the monies from to invest in such technologies?

# Titel III+IV Multi Territorial Licensing + Enforcement Measures

Article 22-26, 35, page 31-33 and 37

**Comment:** The directive imposes CROs on heavy obligations concerning „capacity to process multi-territorial licences“ (Article 22), „Transparency of multi-territorial repertoire information“ (Article 23), „Accuracy of multi-territorial repertoire information“ (Article 24), „Accurate and timely reporting and invoicing“ (Article 25) and Accurate and timely payment to rightholders“ (Article 26).

Conditio sine qua non for the ability of the CROs to fulfill Article 22-26 is the capacity and willingness of the user to report usage data transparent and accurate, and to pay accurate and timely.

## **Amendment 1:**

Article 22-26:

„Users are obliged to the same rules of accuracy and transparency as CROs to grant accurate and transparent data and payment to the members of CROs.“

## **Amendment 2:**

Article 35

If users do not provide the information according to Article 22-26, measures should be adopted.

e.g. If a user is not capable of providing service according to Article 22-26, CROs should be able to pause the service.