**Title:**
Collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

**IA No:** BISIPO007

**Lead department or agency:**
Intellectual Property Office

**Other departments or agencies:**

# Impact Assessment (IA)

**Date:** 20/10/2015

**Stage:** Final

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**
hamza.elahi@ipo.gov.uk

## Summary: Intervention and Options

**RPC Opinion: Green**

| Cost of Preferred (or more likely) Option | | | | |
|---|---|---|---|---|
| **Total Net Present Value** | **Business Net Present Value** | **Net cost to business per year** (EANCB on 2014 prices) | **In scope of One-In, Two-Out?** | **Measure qualifies as** |
| £-4.02m | £-3.30m | £0.38m | No | N/A |

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

The Directive addresses two, interlinked problems: (i) the functioning of EU collective management organisations (CMOs), particularly in relation to transparency, accountability and governance; and (ii) problems specific to the supply of multi-territorial licences for the online exploitation of musical works in an EU market that is territorially fragmented. The European Commission proposed intervention at EU level under the principle of subsidiarity (Article 5(3) TFEU) as both national legal frameworks and a Commission Recommendation from 2005 had proved insufficient to address these problems.
The UK is required to transpose the Directive into domestic law by 10 April 2016.

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

The Directive's policy aims are to:

• To modernise and improve CMOs' governance, financial management and transparency by setting minimum standards for EU CMOs. In particular, it aims to give rightholders greater say in the decision making process and ensure that they receive accurate and timely royalty payments.
• Promote a level playing field among EU CMOs.
• Create innovative and dynamic cross border licensing structures to encourage further provision and take up of legitimate online music services.

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

Option 0: Do nothing.
Option 1: The governance and transparency measures in the Directive (Title II) are implemented through extensive modification of existing regulatory framework for UK collecting societies. The multi-territorial measures (Title III) are copied out as there are no existing provisions in UK law.
Option 2: Directive replaces existing framework and is implemented entirely through copy out. Some existing protections in the domestic regulatory framework to be retained. Maintaining these protections is justified on the basis that CMOs are generally already providing them (and therefore additional cost is not incurred) and because stakeholders were strongly in favour of keeping them.
Following consultation, option 2 is the preferred option as it introduces legal certainty, ensures rightholders are able to directly enforce their legal rights, and minimises the risk of infraction.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date: 04/2021**

| | |
|---|---|
| Does implementation go beyond minimum EU requirements? | Yes |

| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | **Micro** Yes | **< 20** Yes | **Small** Yes | **Medium** Yes | **Large** Yes |
|---|---|---|---|---|---|
| What is the $CO_2$ equivalent change in greenhouse gas emissions? (Million tonnes $CO_2$ equivalent) | | | **Traded:** n/a | **Non-traded:** n/a | |

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: Baroness Neville-Rolfe Date: 30th January 2016

# Summary: Analysis & Evidence

Policy Option 1

**Description:** Adapt the existing self-regulatory framework to comply with the Directive's requirements

**FULL ECONOMIC ASSESSMENT**

| Price Base Year 2015 | PV Base Year 2015 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|---|---|---|---|---|---|
| | | | **Low:** -4.43 | **High:** -3.62 | **Best Estimate:** -4.02 |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---|---|---|---|---|
| **Low** | 2.1 | 10 | 0.2 | 3.6 |
| **High** | 2.5 | | 0.2 | 4.4 |
| **Best Estimate** | 2.3 | | 0.2 | **4.0** |

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

CMOs will face relatively modest implementation costs in adapting to these changes relative to the size of their total collections (just over £2million which is less than 0.5 per cent of total collections), with very minimal ongoing compliance costs (we estimate based on consultation data £99,000 per annum shared amongst the 12 CMOs). The total ongoing compliance costs per annum for 6 Independent Management Entities (IMEs) are £16, 000 which represent a very minimal cost compared to their total collections (0.023 per cent). We estimate that there will be a cost to Government in setting up the body responsible for monitoring compliance with the Directive of approximately £84,000 for staff costs.

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

A CMO, IME or licensee found to be in breach of requirements in the Directive risks incurring additional costs, including potential financial penalties. Licensees and rightholders of CMOs may face extra costs as a result of rightholders being able to more easily withdraw their rights, categories of rights, or types of work, from CMOs. The Government potentially faces costs related to the legal risk of infraction from implementing using Option1. Any lack of clarity may also increase costs (including legal) to affected groups.

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---|---|---|---|---|
| **Low** | 0 | 10 | 0 | **0** |
| **High** | 0 | | 0 | **0** |
| **Best Estimate** | 0 | | 0 | **0** |

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

It has not been possible to monetise the benefits to UK based businesses and affected parties due to a lack of available data from those beneficiaries based in the UK.

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

Rightholders will benefit from increased transparency, flexibility, and participation in decision making in CMOs. This should help them to maximise the value of their rights. UK CMOs may benefit from attracting repertoire from competitors, improved data receipts from and negotiations with licensees, higher collections from representation agreements, and there may be opportunities related to multi-territorial licensing. Licensees should benefit from improved negotiations with CMOs, and from the opportunities related to multi-territorial licensing. The UK Government will also benefit in having well run, compliant CMOs.

**Key assumptions/sensitivities/risks**

The Government has assumed that the data and set up costs provided by the CMOs and IMEs are accurate and are sufficiently representative to allow it to make assumptions concerning those CMOs and IMEs in scope. We have also scaled costs for those CMOs which were not able to provide us with estimates, based on the industry average in order to reach an industry cost figure. A 10% sensitivity analysis has been carried out on the figures.

Discount rate: 3.5%

**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 | No | N/A |

# Summary: Analysis & Evidence

Policy Option 2

**Description:** Replace existing domestic codes framework with new statutory Regulations

**FULL ECONOMIC ASSESSMENT**

| Price Base Year 2015 | PV Base Year 2015 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|---|---|---|---|---|---|
| | | | **Low:** -4.43 | **High:** -3.62 | **Best Estimate:** -4.02 |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---|---|---|---|---|
| **Low** | 2.1 | | 0.2 | 3.6 |
| **High** | 2.5 | 10 | 0.2 | 4.4 |
| **Best Estimate** | 2.3 | | 0.2 | **4.0** |

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

Same as Option 1. Although CMOs, rightsholders and licensees all believe that Option 2 would minimise compliance costs through providing more legal certainty, we were not able to quantify by how much costs would reduce relative to Option 1.

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

Same as Option 1.

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---|---|---|---|---|
| **Low** | 0 | | 0 | **0** |
| **High** | 0 | 10 | 0 | **0** |
| **Best Estimate** | 0 | | 0 | **0** |

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

It has not been possible to monetise the benefits to UK based businesses and affected parties due to a lack of available data from those beneficiaries based in the UK.

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

Same as Option 1. In addition, implementing using option 2 minimises the risk to the Government of infraction, which would carry considerable financial and reputational consequences. The potential reduced compliance costs from legal clarity for CMOs should in turn be passed on to rightholders in the form of higher royalties.

**Key assumptions/sensitivities/risks** **Discount rate (%)** 3.5

The Government has assumed that the data and set up costs provided by the CMOs and IMEs are accurate and are sufficiently representative to allow it to make assumptions concerning those CMOs and IMEs in scope. We have also scaled costs for those CMOs which were not able to provide us with estimates, based on the industry average in order to reach an industry cost figure. A 10% sensitivity analysis has been carried out on the figures.

**BUSINESS ASSESSMENT (Option 2)**

| Direct impact on business (Equivalent Annual) £m: | | | In scope of OITO? | Measure qualifies as |
|---|---|---|---|---|
| **Costs:** 0.4 | **Benefits:** 0 | **Net:** -0.4 | No | N/A |

# Evidence Base (for summary sheets)

## 1. Background

The Directive 2014/26/EU of the European Parliament and the Council on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ('the Directive') entered into force on 10 April 2014. Member States must transpose it into national law by 10 April 2016.

The policy is part of the European Commission's 'Digital Agenda for Europe' and the 'Europe 2020 Strategy for smart, sustainable and inclusive growth.' It is one of a set of measures aimed at improving the licensing of rights and the access to digital content. Collectively these measures are intended to facilitate the development of legal and cross-border offers of online products and services, thereby strengthening the Digital Single Market**.**

Copyright and related rights are the rights granted to authors (copyright) and to performers, producers and broadcasters (related rights) to ensure that those who have created or invested in the creation of content such as music, literature or films, can determine how their creations can be used and receive remuneration for it. These rights should act as an incentive to create and invest in creative activities and to disseminate creative matter to the public.

Permission to use these rights can be obtained directly from the copyright owner, but more usually it is in the form of a licence from a collective management organisation (CMO). A CMO is a body that is mandated by its members, the copyright owners, to license rights and collect and distribute royalties in return for an administrative fee. The CMO may also license on behalf of other rights holders, for example on behalf of a CMO in another territory whose repertoire it has agreed to license, based on a so-called representation agreement.

The Directive is in four parts. Title I covers the general provisions while Title II deals with the minimum standards of governance and transparency that all EU CMOs must comply with. Title III sets out the standards for those EU CMOs that choose to engage in multi-territorial licensing of online musical rights. Title IV covers the requirements for enforcement of all the measures in the Directive.

The Directive's provisions for improved transparency and governance broadly complement UK domestic legislation for the regulation of domestic CMOs. The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 (the "2014 Regulations") require UK CMOs to adhere to codes of practice that comply with minimum standards of governance and transparency set by the Government following consultation. These include requirements for regular, independent reviews of compliance by a Code Reviewer, and access to an Ombudsman who acts as the final arbiter in disputes with a CMO. UK CMOs self-regulate in the first instance, but Government has a reserve power to remedy any problems in self-regulation and to impose sanctions where appropriate.

The scope of the Regulations does not currently extend to those organisations that also collectively manage rights but which are constituted differently to CMOs. The Directive calls these organisations "independent management entities" (IMEs). Most UK CMOs are constituted as companies limited by guarantee, (a form usually adopted by most incorporated charities, public benefit bodies, clubs, and membership organisations). They are typically described as "not for profit" organisations and are owned and controlled by their members, the rightholders. IMEs, by contrast, are for-profit commercial entities that are not owned or controlled by rightholders. Where these IMEs collectively manage copyright or related rights as their sole or main business purpose, the Directive applies in part to them: it requires them to provide information to the rightholders they represent, collective management organisations, licensees and the public.

There is no specific provision in UK law for the regulation of the multi-territorial licensing of online musical works. The Directive introduces new provisions in Title III to ensure the necessary minimum quality of cross border services provided by CMOs, particularly in relation to transparency of repertoire represented and accuracy of financial flows related to the use of the rights. The Directive also sets out a framework for facilitating the voluntary aggregation of music repertoire and rights, so as to reduce the number of licences required to operate a multi-territory, multi-repertoire service. It is the UK Government's intention to copy out these provisions as far as possible.

## 2. Problem under consideration

There are longstanding concerns about some EU CMOs' transparency, governance and handling of revenues. Many rightholders have complained about being unable to access information and exercise control over the management of their CMO, including decisions around licensing and the distribution of their royalties.

Historically CMOs have been established on a national basis. However, they often enter into representation agreements with their counterparts, in which they agree to license each others' repertoire in their respective territories. This has sometimes proved to be problematic for rightholders who have little insight into the decision making and distribution practices of CMOs acting on behalf of their national CMO. In some instances rightholders have found that their works had not been properly licensed, meaning loss of remuneration for them and fewer legal offers for consumers.

The EU market for the licensing of online music is complex, demanding and usually territorially fragmented. This means that service providers and developers often need multiple licences from the national CMOs of different member states, which can make the licensing process expensive and time consuming. Not all CMOs have been able to meet the challenges of online licensing.

## 3. Rationale for intervention

The Commission initially adopted a "soft law" approach to the problem. On 18 October 2005, it published a non-binding Recommendation on the collective cross-border management of copyright and related rights for legitimate online music services. This Recommendation invited Member States to promote a regulatory environment suited to the management of copyright for the provision of legitimate online music services and to improve the governance and transparency standards of CMOs.

Following a public hearing in 2010 and further consultation, the Commission concluded that the market was still not working as it should. It concluded that further action would be needed (a) to improve the standards of governance and transparency of CMOs so that rightholders could make informed choices and exercise more effective control over the licensing of their works and the collection and distribution of their royalty income; and (b) to create a framework for standardising, improving, and facilitating the online licensing of musical works. Given the trans-national nature of the problem, the Commission believed that only action taken at EU level under the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union, would be effective.

This Directive is a further measure to harmonise certain aspects of copyright and create a level playing field for the transparent and effective management of copyright across borders. Nevertheless the Directive leaves open to Member States the option to maintain or impose more stringent standards if appropriate.

## 4. Policy objectives

The Directive's main objective is to ensure that CMOs act in the best interests of the rightholders they represent. Its overarching policy aims are to:

- Modernise and improve standards of governance, financial management and transparency of all EU CMOs; ensuring rightholders have more say in the decision making process and receive accurate and timely royalty payments.
- Promote a level playing field for the multi-territorial licensing of online music.
- Create innovative and dynamic cross border licensing structures to encourage further provision and take up of legitimate online music services.

The Directive's objectives align well with the UK Government's wider policy agenda for collective rights management specifically and copyright reform more generally, including in the context of the European Commission's Digital Single Market package. The UK supports efforts to develop a modern, efficient framework for licensing copyright works.

## 5. Description of options considered for implementation

Option 0: Do nothing

EU directives lay down certain end results that must be achieved in every Member State. Failure to do so would result in infraction proceedings being issued against the UK. UK rightholders and businesses would also suffer owing to the lack of a level playing field with their counterparts in other EU member states. Therefore the do-nothing option is not under consideration.

Option 1: Adapt the existing self regulatory framework to comply with the Directive's requirements

The Government has decided not to pursue this option because evidence suggests that it would lead to a lack of clarity, simplicity and transparency for all affected groups. Licensees, rightholders and CMOs strongly favoured pursuing option 2. Specifically some of the CMOs have drawn the Government's attention to potential increased compliance costs and risks should option 1 be pursued at the expense of Option 2. These compliance costs would in turn be passed on to rightholders.

One of the issues raised by CMOs was the possibility of uncertainty should Option 1 be pursued. For example, there is provision in the domestic Regulations for a collecting society to "offer membership to all relevant rightholders in the sector managed." The Directive goes into considerably more detail, requiring the CMO not just to "accept rightholders, entities representing rightholders, including other collective management organisations and associations of rightholders...if they fulfil the membership requirements which shall be based on objective, transparent and non-discriminatory criteria." It also requires a CMO to provide "a clear explanation" of the reasons for refusing membership.

If the Government were to pursue Option 1, one way in which it could do so would be to keep the wording in the domestic Regulations and append the additional, more detailed requirements of the Directive. However, this might not be without its dangers. For example, there could be a danger of legislative overlap (another issue CMOs pointed out in their consultation responses). Using the example of membership, if the Government appended the additional requirements in the Directive, the term "sector" referred to in the domestic Regulations might include a wider constituency than the "rightholders, entities representing rightholders, including other collective management organisations and associations of rightholders" referred to in the Directive. The corollary might be that CMOs were unclear about who they could offer membership to, and rightholders unclear about whether they might qualify for membership. CMOs have identified the possibility of such legislative imprecision across the Directive's requirements as creating extra cost.

On the other hand, if the Government chose to omit the more detailed wording in the Directive, it is possible that the term "sector" might not adequately convey the types of rightholder explicitly referred to in the Directive. This in turn could lead to a perception that the UK had under-implemented the Directive – another danger that CMO respondents cited. Such a perception might, for example, encourage rightholders to think that the UK had fewer, or more diluted, protections than CMOs in other EU member states, and in turn disincentivise them from transferring their rights to UK CMOs. In addition, any uncertainties flowing from choosing Option 1 could increase costs to the Government because, for example, those uncertainties might prompt additional or superfluous complaints to the National Competent Authority (NCA).

Rightholders and licensees offered very similar reasons for preferring Option 2, citing clarity and simplicity in particular. Of the 29 consultation responses, only one respondent preferred Option 1.

Adapting the self-regulatory framework also carries a significant risk of infraction because, in giving the Secretary of State a wide discretion whether or not to act, rightholders might not be said to be in a position to enforce their rights directly from day one. This, in turn, opens up the possibility of infringement proceedings in the Court of Justice of the EU and fines and liability for damages in relation to the failure to implement the Directive. There is also a reputational risk that the UK is perceived as not having implemented the Directive satisfactorily.

The direct requirements of the Directive on the UK will be the same regardless of whether Option 1 or 2 is followed – therefore the cost and benefit analysis set out below for Option 2 applies equally to Option 1. However, as set out above, Option 1 would require the acceptance of a number of uncertainties which do not apply to Option 2.

Option 2: Replace existing self-regulatory framework with new Regulations which copy out the Directive as far as possible

In this scenario, the legislation governing the existing domestic framework would be repealed. All the provisions in the Directive (including those that relate to multi-territorial licensing) would be incorporated into new secondary legislation (the "Directive Regulations"). Some elements of the domestic provisions that are not within the scope of the Directive (such as a complaints procedure for users) will be re-created within the Directive Regulations. This is on the basis that UK CMOs are already complying with these protections, and they appear to provide a clear benefit to businesses. This was evidenced by consultation responses which clearly supported their retention. However, there are some other provisions in the 2014 Regulations which will not be retained in the Directive Regulations, both because the Government wants to keep any gold-plating to a minimum, and because consultation respondents did not pinpoint these provisions as deserving retention.

In the Directive Regulations and accompanying guidance, the Government will set out the statutory framework and the processes which the enforcement body, the NCA, would follow in the event of an alleged breach.

## 6. Costs and benefits of preferred option

### Government Compliance costs

The Government explored three options for the creation of a national competent authority: (a) creating a new entity; (b) persuading an existing regulatory body to take on the role, and (c) having a dedicated team within the Intellectual Property Office (IPO). Following the consultation process, the Government intends to have a dedicated team within the IPO to fulfil the functions of the national competent authority. This reflects views from consultees that this option would be the most cost-effective and would allow the NCA to benefit from existing expertise within the IPO. Although the IPO is not primarily a regulatory body, the 2014 Regulations have vested some regulatory powers with the Secretary of State, including the ability to impose a code of practice, and the ability to impose a financial penalty on a CMO or an individual within it following continued breach of a code. It would therefore appear reasonable to take advantage of synergies with the IPO's existing functions and expertise in collective rights management.

The Directive describes a number of specific tasks and responsibilities that will fall to the NCA. These include putting in place reporting mechanisms for members, rightholders, licensees, CMOs and other interested parties with concerns about compliance with the Directive; and having the powers to impose sanctions or other measures as and when required. In addition, the NCA would be obliged to fulfil several notification and reporting requirements to the Commission and participate in expert groups as and when the Commission requires. The NCA must also ensure it makes specific provision for monitoring implementation of the requirements for multi-territorial licensing, including having mechanisms for co-operating with NCAs in other Member States.

In the consultation stage IA, our preliminary estimate of the likely size and scale of the NCA was three or four additional full time employees (FTEs), with estimated overheads of £150,000 - £200,000 (fixed costs and salary costs).

We believe that existing complaints procedures and ADR processes will sweep up the vast majority of disputes between CMOs, licensees and rightholders, without the need to engage the NCA. This is on the basis that under the current framework the Ombudsman Services (the independent Ombudsman of choice for all CMOs under the self-regulatory framework) have received an extremely low number of complaints which have not been resolved by CMOs' internal complaints process. The Government has taken the decision to retain equivalent processes under the Directive Regulations.

However, whilst there is evidence that complaints procedures and ADR processes are currently working well, it is possible that the very detailed provisions in the Directive could create greater demands on those processes. If they fail to cope, or do not work to the satisfaction of those who use it, increased referrals to the NCA are possible. There are also some issues which are more likely to require NCA intervention, such as a complaint by a UK CMO about a foreign counterpart, or vice versa (the Directive requires NCAs in each Member State to respond to requests from counterparts to investigate complaints about CMOs operating in their territory). We have a little evidence about the likely demands on the NCA in this regard, or with regard to general complaints about the practices of parties in scope of the Directive which do not relate to an individual member or user.

A large proportion of consultation responses argued that the initial staffing assumption was too high, and that 1-2 staff would be more appropriate. Following further consideration and reflection, Government now considers that resource equivalent to two FTEs with estimated overheads at between £50k and £100k will be necessary. Our best estimate, based on average salaries of the staff we think are required, is £84,000. This level of resource will be kept under review, and the IPO will consider processes to allow additional resource to be drawn in from elsewhere in the organisation, mitigating some of these costs.

In the consultation stage IA, the Government suggested that the NCA set-up costs and ongoing resourcing might represent the cost of compliance by CMOs, and that accordingly those costs might need to be passed on to them. However, the Government is cognisant that by passing costs on to CMOs it will effectively be penalising rightholders, because the costs would be taken from revenue that could otherwise be distributed to them. Perversely, this scenario could incentivise less effective implementation of the Directive, because rightholders might be reluctant to make complaints about CMOs if costs are passed back to them. We will not take an explicit power in the he Directive Regulations to recover costs, but will consider mechanisms to do so if the NCA's costs significantly exceed current estimates.

**Government Compliance benefits**

Under this option there are likely to be some intangible benefits to the UK Government in having well run, compliant CMOs. For example, the UK could become a more attractive destination for rightholders in other EU member states to manage their rights In addition, further demonstrating and embedding the UK's commitment to a well-functioning licensing system that protects rightholders could encourage the production and exploitation of more creative works.

**Collective Management Organisation (CMOs) costs**

Unlike the domestic regulatory framework, there are no exemptions from the bulk of the Directive for micro-businesses, although the UK has opted to exclude micro-businesses from some additional provisions in the Directive Regulations (reflecting their position under the 2014 Regulations). We are aware of one CMO that will be caught by the Directive that was previously exempt from the 2014 Regulations and may therefore incur higher costs as a result, dependent on the extent of their current compliance. Several CMOs provided evidence of their expected implementation and ongoing compliance costs during the course of the consultation, which have been used to produce the estimates below. To protect requests for confidentiality from some CMOs, these figures have been aggregated.

| CMO | Estimated implementation costs (£ millions) | Estimated ongoing compliance costs per annum (£ millions) | CMO total collections (£ millions)[1] | Implementation costs as a percentage of total collections (%) | Ongoing compliance costs as a percentage of total collections (%) |
|---|---|---|---|---|---|
| **Total** | 2.0505 | 0.06625 | 1032.7 | 0.48 (average)[2] | 0.061 (average) |

[1] These figures come from each CMO's 2014/15 accounts or 2014/15 annual review

[2] This figure is the average of all the implementation costs as a percentage of total collections. Individual CMOs will experience relatively higher or lower costs based on their own circumstances.

The data collected demonstrates that the estimated implementation costs represent on average 0.48% of the total collections for each CMO, whereas, the estimated running costs represent on average 0.0 61% of the total collections. Using these assumptions, we can estimate the initial cost of implementation and ongoing compliance for the remaining CMOs.

| CMO | CMO total collections (£ millions)[3] | Estimated implementation costs (£ millions) | Estimated ongoing compliance costs pa (£ millions) |
|---|---|---|---|
| **Total** | 54.03 | 0.26 | 0.0332 |

When totalling the estimated implementation costs and estimated ongoing compliance costs from both tables we can provide estimates of the total costs to CMOs, based on an anticipated population of 12 CMOs with the scope of the Directive Regulations[4]:

**Estimated total implementation costs:** £2.30 million
**Estimated total ongoing compliance costs per annum:** £0.099 million

These costs would not be shared evenly between CMOs – they depend to a large extent on the organisations' size, and the extent to which its existing practices and processes are compatible with those required by the Directive. To take uncertainty into account, and to legislate for the fact that some CMOs have only given lower end estimates, a 10% sensitivity has been calculated either side of the above central estimates:

**Estimated total implementation costs:**

Best estimate: £2.30 million
High estimate: £2.54million
Low estimate: £2.078 million

**Estimated total ongoing compliance costs:**

Best estimate: £0.099 million
High estimate: £0.109 million
Low estimate: £0.089 million

In their consultation responses, CMOs provided a number of reasons for the implementation and ongoing compliance costs. Implementation costs included changes to distribution systems in order to comply with the distribution timeframes set by the Directive; legal costs (for example, redrafting Articles of Association and member agreements); operating costs (for the running of general meetings, for example); governance costs (adapting existing codes of conduct, for example); professional and legal costs; systems and business changes to deliver the annual transparency report. Ongoing compliance costs included complying with reporting requirements in the Annual Transparency Report; and further analysis / auditing of accounts reflecting additional requirements in the Annual Transparency Report.

**Collective Management Organisation (CMO) benefits**

***Repertoire***

As rightholders have the right to authorise a CMO of their choice to manage their rights, irrespective of which Member State in which they or the CMO belongs, UK CMOs have the potential to benefit from their generally positive reputation for high standards. At the moment, foreign direct membership accounts for approximately 10% of the membership of CMOs across Europe[5]. Evidence from the

[3] These figures come from each CMO's 2014/15 accounts or 2014/15 annual review, which are publicly available

[4] The CMO population of 12 is based largely on a consultation question asking whether respondents self-identified as a "collective management organisation" under the Directive. The IPO is in ongoing discussion with several bodies about whether or not they are in scope and will provide a final list of CMOs to the Commission as part of its implementation of the Directive.

[5] European Commission Impact Assessment, July 2012, p.15

consultation suggests that in many cases rightholders are satisfied with the efficiency and effectiveness with which UK CMOs run their operations. This suggests UK CMOs could be well-placed to compete to attract repertoire from other Member States, especially in the light of some evidence suggesting lower levels of satisfaction with CMO practices in other EU member states[6]. In addition, CMOs should benefit from reduced costs of complaints handling and rectifying errors as higher standards are met.

### *Representation agreements*

CMOs should benefit from improved collections from representation agreements. There are provisions in the Directive stipulating that CMOs cannot discriminate against rightsholders whose rights they manage under representation agreements. Some consultation responses suggested that this would curb or reduce the incidence of CMOs in certain territories making larger deductions from foreign rightholders than from rightholders in their own territories, or automatically allocating rights revenue to domestic social or cultural funds (a practice which UK rightholders do not benefit from). Given that UK CMOs collected some £1086.7 million in total in 2014, and that on average EU CMOs collect around 8% of their collections from other EU CMOs[7], we would estimate that £86.9 million was received by UK CMOs from CMOs across the EU in 2014. In fact, the figure appears likely to be significantly larger – one UK CMO collected £114.6m from European CMOs during the period[8]. With greater transparency on how and where deductions are applied, we can expect this figure for returns to UK CMOs to rise.

Consultees also suggested that UK rightholders and CMOs would benefit from the provision in the Directive requiring CMOs to regularly, diligently, and accurately distribute rights revenue to CMOs with whom they have representation agreements. CMOs that provided evidence to the Commission said that between 27% to 45% of collections are distributed in the year of collection (the Directive requires CMOs to distribute within nine months of the end of the financial year in which the rights revenue was collected, unless objective reasons prevent this happening). However, between 5 and 10% of collections are not distributed to rightholders for as long as three years after which they were collected[9]. If the total collections for CMOs in Europe for 2014 were £4870 million[10], and if on average EU CMOs collect 8% of their revenues from other EU CMOs, we can estimate that £389.6 million is due to rightholders in other EU CMOs. If between 5% and 10% of these payments are late, we can estimate that between £19.48 million and £38.96 million of these late payments are due to rightholders in other EU CMOs.

In calculating the potential share of this late payment owed to UK rightholders, we use a conservative figure suggesting that UK CMOs collected £86.9 million from EU CMOs – this is 22.3% of total collections due to rightholders in other EU CMOs ((86.9 / 389.6) x 100). On this basis, we can assume that the share of late payments owed to UK rightholders from CMOs in other member states is between £4.3m and £8.7m in 2014.

£19.48 million x 0.223 = £4.3 million
£38.96 million x 0.223 = £8.7 million

The Directive requires CMOs to distribute rights revenue within nine months of the end of the financial year in which that rights revenue was collected, unless there are objective reasons to prevent this happening. We can therefore expect the incidence of late payments to UK CMOs to reduce when the Directive is in force – this should in turn enable them to make more timely distributions to rightholders.

### *Licensing*

CMOs should benefit from provisions in the Directive which deal with their relationship with licensees. A requirement for CMOs and licensees to negotiate in "good faith" and provide one another with all "necessary information" when negotiating licences should enable a smoother, more cost effective process. In guidance that will accompany the implementing Regulations, the Government will set out

[6] For a summary of rightholder views, and areas in which they'd like to see improvement, see European Commission Impact Assessment, July 2012, p. 60

[7] European Commission Impact Assessment, p.31

[8] http://www.prsformusic.com/SiteCollectionDocuments/About%20MCPS-PRS/financial-results/prs-for-music-financial-review-2014.pdf

[9] European Commission Impact Assessment, p.19.

[10] http://www.creativebarcode.com/images/news/119_CB006_Report_FINAL.pdf, p.10

some general principles around negotiating in "good faith" and the provision of all "necessary information". These principles will be informed by working groups that the IPO will conduct with CMOs and licensees.

Some CMOs have made representations to Government about negotiating practices designed to defer or avoid the cost of paying for a new or changed licence. In this situation, CMOs argue they could be forced to go through expensive litigation proceedings against the licensee for copyright infringement as their only means of collecting revenue. Such litigation proceedings can cost in excess of £1 million for a big case, especially if this includes a reference to the European Court. The provision of guidance that articulates "good faith" principles (backed with the possibility of enforcement action by the NCA where there is a general public interest in doing so) could reduce the incidence of copyright infringement proceedings, and support successful commercial negotiations between CMOs and licensees.

CMOs should also benefit from provisions in the Directive that require licensees to provide CMOs with "relevant information" for the collection and distribution of rights revenue to rightholders. In their consultation responses, CMOs repeatedly cited problems with data returns that were incomplete or in an incorrect format. Most of the CMOs who gave figures quantified the costs of bad data to be above £100k per annum, and one said that their operating costs were 20% higher because of bad data. One CMO has told us that in some instances, the data produced by a licensee is so poor that the usual automated matching of user data to rightholder has to be replaced by manual matching by a member of staff, which in turn can entail significant costs. That CMO also told us that a reduction of 10% in the number of incidences where data had to be manually matched would result in a reduction in operating costs equivalent to 0.0011% of total collections. This equates to in excess of £100k p.a.

Whilst the Government will be retaining the ability to take enforcement measures against licensees who fail to provide CMOs with "relevant information", it expects to do so only in very particular circumstances, where there is a general public interest in doing so. This is because contracts between CMOs and licensees should already contain provisions about information (and these should be enforceable through the courts in the event of a breach). Nonetheless, the Government believes the data obligation in the Directive Regulations, coupled with guidance and stakeholder engagement to encourage joint work on use/development of industry standards, should support improved data provision. The CMO which provided evidence on this point suggested that any intervention by Government should result in savings. While we have not attempted to quantify this saving (because it is not possible at this stage to make accurate estimates of the effect of any interventions) it is clear that there is an opportunity here to reduce costs for CMOs.

### *Multi-territorial licensing*

Title III of the Directive imposes obligations on CMOs wishing to grant multi-territorial licences for online rights in musical works. These obligations fall in several areas, including transparency of repertoire represented and accuracy of financial flows in relation to the use of rights. PRS for Music – the only UK CMO which can currently manage online rights in musical works – has indicated that it is already largely compliant with the requirements in Title III. The IPO has heard anecdotally from a number of industry experts, including stakeholders across Europe, that PRS is perhaps only one of two or three CMOs across the EU who have the infrastructure to grant multi-territorial licences for online rights in music works. The Commission's impact assessment indicates that PRS for Music currently has amongst the highest number of rightholder members of the major CMOs offering management of rights in musical works[11], the joint lowest administration costs (of 11%), and collected quite considerably more from other EU countries in royalties than any other competitor[12]. Given the demand for multi-territorial licences, which were clearly articulated in consultation responses, we can assume that PRS for Music will stand to gain from the aggregation of repertoire envisaged by the Directive.

## Costs to Independent Management Entities (IMEs)

The Directive obliges IMEs to negotiate with licensees in "good faith". We have no significant evidence to suggest that UK IMEs are failing to comply with this requirement at the moment (although they are not covered by the same obligations to consult and negotiate on licences that apply to CMOs under the

[11] European Commission Impact Assessment, July 2012, p.85

[12] Ibid p. 94

current domestic regulations). We do not anticipate that the "good faith" requirement will result in any extra costs to IMEs, as we have no evidence to suggest such practices are not already in place.

In the consultation stage IA, it was suggested that most UK IMEs would be likely to already be meeting the limited reporting and transparency requirements in the Directive to which they are subject, as meeting those requirements would represent good business practice. The consultation evidence we have received from two IMEs, who stated that they had no implementation costs, supports this view. Indeed, when one IME was asked to provide an estimate of the systems cost of compliance, their reply was that it was difficult to estimate those costs, on the basis that those systems were there from day one.

One response from an IME estimated ongoing compliance costs of between £1k-5k per annum. These costs were identified as possible legal costs or costs associated with the presentation of information. To protect requests for confidentiality from one of the two IMEs who provided evidence, these figures have been aggregated.

| IME | Estimated ongoing compliance costs per annum (£ millions) | IME total collections (£ millions)[13] | Ongoing compliance costs as a percentage of total collections (%) |
|---|---|---|---|
| **Total** | 0.003 (mid-point) | 7.13 | 0.024 (average) |

The data collected demonstrates that the estimated ongoing compliance costs represent on average 0.024% of the total collections for each IME. Using this assumption, we can estimate the ongoing compliance for the remaining four known IMEs.

| IME | IME collections (£ millions)[14] | Estimated ongoing compliance costs pa (£ millions) |
|---|---|---|
| **Total** | 54.51 | 0.013 |

**Estimated total ongoing compliance costs per annum:**

As with the calculation for the CMOs above, the ongoing compliance costs would not be shared evenly between IMEs, but we do expect them to be very low relative to the size of the organisation. To take uncertainty into account, a 10% sensitivity has been calculated either side of the above central estimates:

Best estimate: £0.016 million
High estimate: £0.0176 million
Low estimate: £0.0144 million

**Benefits to Independent Management Entities (IMEs)**

Because we have made assumptions that IMEs are already doing what the Directive requires of them, being Directive compliant is likely to only have reputational benefits. We have anecdotal evidence from some CMOs that being said to be compliant with their code of practice is something that can hold them in good stead in their relations with rightholders and licensees – which can have tangential benefits for future business opportunities. We can assume the same benefits for IMEs which demonstrate

[13] These figures come from each IME's 2014/15 accounts

[14] These figures come from each IME's 2014/15 accounts

compliance with their Directive requirements. These IMEs may also benefit from similar opportunities to develop their repertoire as those accruing to well-run CMOs.

**Costs to rightholders**

In our consultation stage Impact Assessment, we said that we intended to ask CMOs how they planned to handle compliance costs. In their responses to the consultation, CMOs made it clear that the costs of implementing the Directive, as well as ongoing compliance costs, would be passed on to rightholders through administrative deductions from distributed revenue. The ability of CMOs to pass through ongoing compliance costs unchallenged should in theory be reduced because of the Directive's requirements for CMOs to improve transparency and rightholder representation. However, because some implementation costs will precede transposition of the Directive, the ability of members to challenge those costs may be curtailed. Ongoing costs to rightholders may depend on (a) their ability to exercise decision-making power over a CMO (or to move their repertoire if they are unhappy with the level of deductions), and (b) the extent to which the compliance costs to CMOs are countered by benefits.

There is a possibility that the ability of a rightholder to more easily withdraw their rights, categories of rights, or types of work from a CMO's repertoire, might lead to depletion of some CMOs' repertoire, and in turn lead to a reduction returns to rightholders as the value of the licence decreases. In addition, a reduction in the numbers of rightholders in a CMO's repertoire could well lead to higher administration fee for the remaining rightholders, because there would be reduced economies of scale.

**Benefits to rightholders**

Overall, rightholders should benefit from a collective management framework that is transparent, has strong governance measures in place, and gives them greater participation in the CMO's decision making about the collection, distribution, and handling of their royalties. Rightholders will benefit from access to a wider range of information including cost/income ratios, proportion of royalties remaining undistributed and time taken to distribute royalties. Much of the key information that rightholders need to make informed choices will be covered in the Annual Transparency Report, a requirement for CMOs under the Directive. Also, the obligatory audit of the CMO's annual accounts should help create a higher level of trust amongst rightholders that they have a true and fair view of their CMO's assets, liabilities and financial position. Heightened transparency means that rightholders should be able to compare and contrast operating costs and deductions from their royalties, including cross border royalty flows, between the CMO which manages their rights and CMOs in other EU member states.

Underpinning the new governance and transparency arrangements is the entrenchment of rightholders' ability to quickly and easily move rights, categories of rights, or types of work, to a CMO of their choice within the UK. This principle of rightholder choice, and the fact that it isn't always available from CMOs (or at least is difficult to exercise) is something which has been highlighted by consultation responses and by rightholders across the EU[15] as a key benefit, allowing rightholders to exert genuine influence over CMOs and maximise the value of their rights in the marketplace.

In their consultation responses, CMOs said that there would be costs associated with withdrawing rights – for example, the cost of having to maintain exclusions on a licence-by-licence basis, or other systems costs. They further argued that if these costs weren't borne by the rightholder they would have to be subsidised by other rightholders (who could incur relatively higher administration fees as a result of reduced revenue collection where a CMO loses repertoire). Nonetheless, the improved transparency requirements in the Directive should enable rightholders to make fully reasoned judgements on the cost of withdrawing rights from one CMO when set against the benefits being offered by another. We can assume that rightholders will not exercise their rights unless they perceive there is a benefit to doing so.

All of the benefits outlined in the section above on "Benefits to CMOs", and some of those under "Benefits to Licensees" below, will be felt by, or passed down to, rightholders. For example, savings from improved negotiations between licensees and CMOs and improvements in data provision from licensees, will be passed on to rightholders because CMOs will have reduced running costs.

[15] European Commission Impact Assessment, July 2012, p. 17

Whilst the costs of implementation of the Directive, and the ongoing costs of compliance, may be passed on to rightholders, we believe that these will largely be offset by the above benefits. This is line with the Directive's stated aim of supporting rightholders.

**Costs to licensees**

The Government believes that obligations on licensees to negotiate in "good faith" and provide all "necessary information" to CMOs will come at no extra cost to them, because licensees and their representatives should already be doing this as good business practice and through their contractual obligations with CMOs. Licensees and representatives have told us they make all reasonable efforts to negotiate with CMOs and to provide information on the use of works under a licence.

The Government will be providing guidance on the kind of information that might be required of licensees in both these scenarios. It should also be noted that when putting together its guidance the Government will need to be cognisant of provisions that require licensees to only provide information that is "reasonable, necessary and at the licensees' disposal" and taking into account "the specific situation of small and medium-sized enterprises."

It is possible that, in some cases, licensees who fail to negotiate in good faith or provide necessary information could face costs from enforcement action from the NCA. However, this would only be used in exceptional circumstances where there was a general public interest in doing so. Such licensees already face legal risk insofar as their failure to provide information breaches their contract with the CMO.

The possibility of rightholders being able to more easily withdraw their rights, categories of rights, or types of work, may impact on licensees by creating greater administration costs, because they may need to more regularly check what is in any licence's repertoire (so that they do not inadvertently use withdrawn works), or potentially pay for additional licences. In their consultation responses, both licensees and CMOs highlighted these concerns. However, in their consultation responses licensees said that the withdrawal of works could trigger re-negotiation of the licence fee, creating the chance to offset these costs. It is also the case that CMOs can choose not to give effect to the withdrawal of rights until the end of the financial year in which the rights were withdrawn. This affords much greater certainty to licensees who purchase licences on an annual basis. CMOs will also be required to make information on what is covered by their licence available.

**Benefits to licensees**

***Negotiations***

Consultation respondents highlighted ongoing issues around difficulties in getting information on a CMO's repertoire, the rights CMOs' control, and proposed licensing terms and tariffs. The Government has received evidence from one licensee on potential cost savings arising from better provision of information from CMOs.

The Government has also heard evidence from one licensee on how negotiations with a collecting society - following a long and expensive Copyright Tribunal case on the terms and conditions of a previous licence - are now much more structured, with clear timetables, and more open sharing of information. The Government believes that the 'good faith' provisions in the Directive Regulations, coupled with guidance and support from the NCA, will support such good practice in licensing negotiations. This could drive down costs for licensees, for example by reducing legal fees.

***Multi-territorial licensing***

In their response to the consultation, a trade body whose members are licensees in the music digital services market, said that better provision multi-territorial licences would be of clear benefit to its members. This is because at the moment their members may be required to negotiate a separate licence for each EU member state. However, whilst they acknowledge the benefits of a one stop shop, they also felt that their members would benefit from being able to licence from more than one place in order to facilitate competition between the licensing hubs. According to the Commission's Impact Assessment, UK online revenues for use of musical works in 2011 were £20.7 million. However, the Commission estimates the UK market to be worth £44.9 million. With the greater availability of multi-

territorial licences, we can expect a greater number of UK online service providers and the gap between the actual and potential online markets to close, year on year, to the benefit of both those service providers and UK rightholders[16].

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

The EACNB of option 2 is £0.38m. In addition to implementing the Directive, the Government intends that the new Regulations retain some aspects of the 2014 Regulations which are outside the Directive's scope. These provisions primarily cover the conduct of CMOs towards licensees and are highly valued by stakeholders. We do not believe that retaining these provisions will result in any extra cost for business, as UK CMOs are already complying with them under the current domestic framework.

Part of the current system obliges CMOs to maintain an independent dispute resolution system to deal with complaints that cannot be resolved by internal processes. The Government intends to maintain this requirement. Article 34 of the Directive allows Member States to introduce such requirements on a permissive basis. The Government believes this limited element of gold-plating is justified because:

- the current complaints resolution requirement is valued by stakeholders and appears to have been successful. Since CMOs introduced their codes of practice, complaints to Government about their conduct have reduced significantly;
- consultation respondents tended to support the retention of these provisions in some form; there was particular support from organisations representing licensees. Several responses from CMOs indicated that they would retain their codes of practice (which include equivalent requirements) regardless of the Government's approach;
- no additional cost to business should be incurred, because CMOs are already meeting these costs under the domestic framework;
- removing a complaints resolution procedure would be likely to result in an increase in complaints to the NCA and consequent increased use of public enforcement mechanisms. We do not believe this is a proportionate approach to regulation, and could make it harder to resolve disputes quickly;
- we have taken the opportunity to give increased flexibility to CMOs by allowing them to select an appropriate ADR system in each case, provided that this meets the requirement for independence and impartiality;
- maintaining the current complaints resolution procedure and ADR requirements is necessary for the effective enforcement of the Directive.

We have sought evidence from CMOs on the current cost of this provision. Of the 3 CMOs that provided evidence, one said that the total cost for ADR was the cost of the annual subscription to an ADR provider. Another said that its total cost was the annual subscription to an ADR provider plus the cost of dealing with each complaint which reached the ADR provider (which it costed at £400 per complaint). The third said that its total cost was the cost of an annual subscription plus the cost of various internal processes associated with ADR (including the cost of updates to its code of practice), making a total ADR cost of £5,000.

Evidence from the 3 CMOs suggests that the current annual cost of subscription to an ADR provider is between 0.00053% and 0.00094% of total collections. Taking the higher figure of 0.00094% and applying it to the remaining 8 CMOs (the CMO currently outside the 2014 Regulations, which is a micro-business, will be exempted from the need to have ADR), gives a total figure of £8499.

We know from Ombudsman Services – the ADR provider used by all CMOs under the 2014 Regulations – that they had to deal with a total of 4 complaints in 2013[17] and a total of 2 in 2014, giving an average of 3 complaints per annum in the period 2013-15. Whilst we think it likely that the number of complaints going to ADR will rise under the Directive (because it includes more prescriptive provisions and covers new areas of CMO activity), a figure of 3 can serve as a baseline.

[16] European Commission Impact Assessment, July 2012, p.24

[17] This figure comes from the Independent Code Review conducted by the Independent Code Reviewer (p.43): http://www.independentcodereview.org.uk/files/9714/0171/5251/ICR_Report_2014.pdf

By adding the total subscription fee and the average number of complaints going to the Ombudsman Services (assuming a cost of £400 per complaint), we can come to an estimated current direct cost of ADR provision of £9690, shared between CMOs in scope. This may be augmented by any costs accrued by CMOs in relation to internal processes associated with ADR (here we have received one estimate of £4,925, and two estimates of £0 – we have not attempted to extrapolate from these figures given uncertainty around which costs directly relate to ADR). An increase in the volume of complaints requiring ADR would further increase this figure by around £400 per case.

While therefore there would be some small potential cost savings if CMOs were given the option of abandoning ADR processes, we think that the retention of ADR remains justified for the reasons provided above. We understand from consultation responses that, even if the requirements around ADR were removed, a substantial proportion of CMOs would opt to retain the provision on a voluntary basis.

### 8. Wider impacts

To the extent that CMOs in other member states are complying with the Directive's provisions as a result of the efforts of the NCAs in those jurisdictions, UK rights holders stand to benefit where their works have been used abroad. This is especially so in the case of music, where the UK is one of only two net exporters of music in the EU. Considered in isolation, this should increase the incentives for UK creators to produce work.

Improvements in the efficiency of collective licensing throughout the EU should strengthen confidence in the operation of all CMOs, helping them deliver benefits for their members, rightholders and licensees. It should promote cross-border licensing in a way that is consistent with the further development of efficient, open markets. It may also be the case that UK rightholders will benefit from provisions in the Directive requiring CMOs abroad to pay rights revenue to CMOs with whom it has representation agreements, regularly, accurately, and diligently.

The provisions are intended to make the licensing process simpler and more cost effective, making it easier for service providers to launch new services. These measures should benefit consumers by widening the availability of legal content and benefit rightholders who as a result should receive additional remuneration. The Directive is intended to be an important step towards the completion of the Digital Single Market, a priority for the UK, and we will be transposing with this objective in mind.

With the envisaged aggregation of repertoire in the online music sector, more EU consumers are likely to benefit from access to a greater number of services, a faster roll out of those services, and the cultural diversity gains that come from access to a wider range of music.

## Impact on Justice

The National Competent Authority will have the ability to impose financial penalties on persons who have breached their obligations under the implementing Regulations. A party which is sanctioned will have the right to appeal to the First Tier Tribunal. This appeal right re-creates an existing appeal right in relation to the 2014 Regulations, and we do not anticipate any increase in the number of cases reaching the courts (the appeal mechanism has not been used since the 2014 Regulations came into effect). A Justice Impact Assessment has been completed and cleared in relation to the Directive Regulations.

## Small and Micro-business assessment

The Directive does not contain any derogation for small or micro-businesses, so the UK does not have an option to mitigate any new burdens for such firms. In practice, we believe such impacts (which are described elsewhere in this IA) would impact:

- Any UK CMOs which are micro-businesses (and hence were exempted from the 2014 Regulations – we believe one CMO may meet this description)
- Any UK IMEs which are small or micro-businesses (the existing domestic regulations do not apply to IMEs).

Some parts of the Directive apply more widely – for example, the requirement to provide necessary information to CMOs set out in article16 of the Directive Regulations will apply to all licensees. However, such requirements already routinely form part of the licensing agreement (and are enforceable through contract law). In addition, the UK has indicated that it will use guidance to ensure that information requirements placed on SMEs as a result of this article are proportionate and reasonable.

In relation to the regulation of CMOs, the UK intends to maintain equivalent protections from the 2014 Regulations which are outside the scope of the Directive (for example, requirements on CMOs to provide staff training on compliant conduct, and to operate a complaints process open to licensees which meets certain requirements). In order to maintain consistency with the approach taken in the 2014 Regulations, micro-businesses will be exempted from these additional requirements.

## 9. Risks and assumptions

We have assumed that the setup and running costs provided by CMOs and IMEs are accurate and are a suitable representation to allow us to extrapolate across all such bodies. A 10% sensitivity analysis has been carried out on the figures. We also assume that there is a low risk of extensive non-compliance with the Directive Regulations on the basis of good compliance to date with the 2014 Regulations, and the incentive for affected parties to avoid sanctions.

## 10. Summary and preferred options

The adoption of the CRM Directive fulfils several of the UK's policy objectives for collective rights management specifically and for copyright more generally. Parts of the Directive, in particular the transparency and governance provisions, broadly complement UK domestic Regulations governing the behaviour of CMOs.

The preferred option reflects near unanimity in consultation responses for implementation through Option 2, which involves copying out the Directive as far as possible into new UK Regulations, and revoking the 2014 Regulations. Respondents preferred this option as the clearest method of ensuring that the Directive's requirements were incorporated into UK law. In addition to transposing the Directive, the Government intends that the new Regulations will maintain some aspects of the 2014 Regulations which provide important protection for businesses. Option 2 will create costs for CMOs, IMEs, licensees and Government, which are set out in the analysis above. Some costs will be passed onto rightholders. CMOs, IMEs, rightholders and licensees will see benefits as result of the implementation of Option 2.

The Government intends that the new rules will come into force to meet the Commission's deadline of 10 April 2016. From this date, the Directive's provisions will apply to UK CMOs, IMEs and users. The Secretary of State for Business, Innovation and Skills will be formally designated as the National Competent Authority in the UK. In practice, the NCA's monitoring functions will be carried out by staff at the Intellectual Property Office.