
STATUTORY INSTRUMENTS

2016 No. 221

**The Collective Management of Copyright
(EU Directive) Regulations 2016**

PART 3

Multi-territorial Licensing and Collective Management Organisations

Application

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

(2) The obligations of a collective management organisation in this Part do not apply to a collective management organisation when it grants, on the basis of the voluntary aggregation of the required rights, in compliance with the competition rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union⁽¹⁾ a multi-territorial licence for—

- (a) the online rights in musical works required by a broadcaster to communicate or make available to the public its radio or television programmes simultaneously with or after their initial broadcast; and
- (b) any online material, including previews, produced by or for the broadcaster which is ancillary to the initial broadcast of its radio or television programmes.

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

Capacity to process multi-territorial licences

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

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

- (a) identifying the repertoire and monitoring its use;
- (b) invoicing users;
- (c) collecting rights revenue; and
- (d) distributing amounts due to right holders.

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

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

(1) OJ No C83, 30.3.2010, p.47.

- (b) have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding right holders for each musical work, or share in such work, which the collective management organisation is authorised to represent;
- (c) make use of unique identifiers in order to identify right holders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international level or at the level of the European Union; and
- (d) make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

Transparency of multi-territorial repertoire information

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

- (a) online service providers,
- (b) right holders whose rights it represents, and
- (c) other collective management organisations,

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

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

- (a) the musical works represented;
- (b) the rights represented wholly or in part; and
- (c) the territories covered.

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

- (a) protect the accuracy and integrity of the data;
- (b) control their reuse; and
- (c) protect commercially sensitive information.

Accuracy of multi-territorial repertoire information

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

- (a) a right holder,
- (b) another collective management organisation, and
- (c) an online service provider,

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

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

(3) A collective management organisation must provide—

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

(b) right holders who have entrusted the management of their online rights in musical works to it in accordance with regulation 30 (access to multi-territorial licensing), with the means of submitting to it in electronic form information concerning their musical works, their rights in those works and the territories in respect of which the right holders authorise the organisation.

(4) When information is submitted in accordance with paragraph (3), the collective management organisation and the right holder must take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data developed at international level or at the level of the European Union allowing right holders to specify—

- (a) the musical work, wholly or in part;
- (b) the online rights, wholly or in part; and
- (c) the territories in respect of which they authorise the organisation.

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

- (a) regulation 28 (agreements between collective management organisations), or
- (b) regulation 29 (representation of collective management organisations),

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

Reporting and invoicing

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

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

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

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

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

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

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

(8) The invoice must identify—

- (a) the works and rights which are licensed, wholly or in part, on the basis of the data referred to in paragraph (3) of regulation 23 (capacity to process); and
- (b) the corresponding actual uses, to the extent this is possible on the basis of the information provided by the online service provider and the format used to provide that information.

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

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

(11) The collective management organisation must have in place adequate arrangements enabling the online service provider to challenge the accuracy of the invoice including when the online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

Payment to right holders

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

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

- (a) the period during which the uses took place for which amounts are due to the right holder and the territories in which the uses took place;
- (b) the amounts collected, deductions made and amounts distributed by the collective management organisation for each online right in any musical work which the right holder has authorised the collective management organisation to represent wholly or in part; and
- (c) the amounts collected for the right holder, deductions made and amounts distributed by the collective management organisation in respect of each online service provider.

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

- (a) the mandated collective management organisation must—
 - (i) distribute the amounts referred to in paragraph (1) accurately and without delay to the mandating collective management organisation; and
 - (ii) provide the information referred to in paragraph (2) to the mandating collective management organisation;

and

- (b) the mandating collective management organisation has responsibility for—
 - (i) the subsequent distribution of the amounts referred to in sub-paragraph (a)(i) to right holders, and
 - (ii) the subsequent provision of the information referred to in sub-paragraph (a)(ii) to right holders,

unless the mandating and mandated collective management organisations agree otherwise.

Agreements between collective management organisations for multi-territorial licensing

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

- (a) ensure that a representation agreement under which the organisation mandates another collective management organisation (“the mandated collective management organisation”) to grant multi-territorial licences for the online rights in musical works in its musical repertoire is of a non-exclusive nature; and
 - (b) inform—
 - (i) its members, and
 - (ii) right holders who are not its members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,of the main terms of that agreement including its duration and the costs of the services provided by the mandated collective management organisation.
- (2) The mandated collective management organisation must—
- (a) manage the online rights referred to in paragraph (1) on a non-discriminatory basis; and
 - (b) inform the mandating collective management organisation of the main terms according to which the mandating collective management organisation’s online rights are to be licensed including—
 - (i) the nature of the exploitation;
 - (ii) all provisions which relate to or affect the licence fee;
 - (iii) the duration of the licence;
 - (iv) the accounting periods; and
 - (v) the territories covered.

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

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

- (a) does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire; and
 - (b) requests another collective management organisation (“the requested collective management organisation”) to enter into a representation agreement to represent the rights referred to in sub-paragraph (a).
- (2) Where this regulation applies—
- (a) the requested collective management organisation must agree to the request referred to in paragraph (1)(b) if that organisation is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations;
 - (b) the requested collective management organisation must respond to the requesting collective management organisation in writing without undue delay;
 - (c) the requested collective management organisation must manage the represented repertoire of the requesting collective management organisation on the same conditions as those which it applies to the management of its own repertoire (but see sub-paragraphs (e) and (f));
 - (d) the requested collective management organisation must include the represented repertoire of the requesting collective management organisation in all offers it addresses to online service providers;

- (e) the requested collective management organisation must ensure that the management fee for the service provided by the requested management organisation to the requesting management organisation does not exceed the costs reasonably incurred by the requested collective management organisation; and
 - (f) the requesting collective management organisation must make available to the requested collective management organisation information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works.
- (3) Where the information provided under paragraph (2)(f) is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Part, paragraph (2) does not prevent the requested collective management organisation from—
- (a) charging for the costs reasonably incurred in meeting the requirements of this Part; or
 - (b) excluding the online rights in musical works for which information made available under paragraph (2)(f) is insufficient or cannot be used.

Access to multi-territorial licensing

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

- (a) does not grant or offer to grant multi-territorial licences for online rights in musical works; or
- (b) does not allow another collective management organisation to represent those rights for such purpose.

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

(3) The conditions provided in this paragraph are—

- (a) the withdrawal referred to in paragraph (2) is for the purpose of multi-territorial licensing in respect of all territories in order to—
 - (i) grant multi-territorial licenses for the right holder’s online rights in musical works by that right holder; or
 - (ii) grant multi-territorial licences for those works through any other person the right holder authorises or through any collective management organisation complying with the provisions of this Part;
- and
- (b) the withdrawal does not require withdrawal of online rights in musical works for the purposes of mono-territorial licensing.