EU Directive addresses multi-territorial music rights licensing


The Directive, which also seeks to set out the requirements for multi-territorial licensing by collective management organisations (‘CMOs’) of authors’ rights in musical works for use online, will enter into force 20 days after publication in the EU Official Journal; Member States will then have up to two years to transpose it into national law.

Objective
The new legislation was originally proposed by the Commission due to concerns about the functioning of CMOs with respect to their transparency, governance and the handling of revenues collected on behalf of rights holders. There is also concern that many CMOs are not prepared for the new business models and licensing requirements of online service providers, especially with respect to authors’ rights (the rights of those that compose music and write lyrics). The result is fewer music services being available to consumers across the EU, a slower uptake of innovative services, and a poor allocation to rights holders. To attempt to address these concerns, the specific objectives of the Directive, according to the EC, are to: (i) improve the way CMOs are managed by establishing common governance, transparency and financial management standards; (ii) set common standards for the multi-territorial licensing by authors’ CMOs of rights in musical works for the provision of online services; and (iii) create conditions that can expand the legal offer of online music.

Content – CMOs
Choice
There are a number of key measures designed to improve the governance of CMOs. Rights holders will have the right to choose a CMO to manage their rights (or categories of rights or types of works) regardless of the territory of establishment of the CMO or the territory of the rights holder’s residence. Rights holders will also be free to terminate the authorisation they have granted to CMOs for the management of their rights or withdraw any of the rights, categories of rights, types of works and other subject matter of their choice for the territories of their choice.

Transparency
There will now be increased transparency for rights holders so that they receive sufficient information from the management of CMOs to enable them to exercise their rights effectively. Member States shall ensure that CMOs make available to rights holders, not less than once a year, certain minimum information. This information includes the revenue attributed to the rights holder (broken down for each category of rights and types of use), any deductions made in respect of management fees, any outstanding revenue attributed to the rights holder for any period, and information relating to the repertoire the CMO represents. CMOs will also be obliged to make public certain information on their website relating to their structure and financial management (including an annual transparency report).

Relations with the user
CMOs and users will be required to conduct negotiations for the licensing of rights in good faith, with both sides providing each other with all the necessary information for such negotiations to take place. The terms of such licences shall be based on objective and non-discriminatory criteria. Tariffs for exclusive rights shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade and the economic value of the service provided by the CMO.

Multi-territorial licensing
Title III of the Directive sets out the quality standards that rights holders’ CMOs must meet when granting multi-territorial licences (‘MTLs’) of authors’ rights in musical works for online use. These licences will be required by providers of online services that use musical works in numerous Member States. These providers would include services that allow consumers to download or stream music or other services providing access to films or games in which music plays a key role. In order to grant MTLs, CMOs must be able to ‘process electronically, in an efficient and transparent manner, data needed for the administration of such licences. This includes accurately identifying to service providers the repertoire it licenses and monitoring its use. Additionally, CMOs must offer rights holders, online service providers, and other CMOs the ability to request a correction of
the data relating to repertoires. CMOs must provide accurate and timely reporting to online service providers as well as accurate and timely payment to rights holders.

Due to the level of these obligations on CMOs, there is a possibility that a number of CMOs will either not be able to or will choose not to invest in the necessary equipment and data processing systems to be able to comply with the Directive. This may lead to CMOs with smaller repertoires and/or in smaller territories struggling to compete with CMOs with larger repertoires. CMOs will be able, however, to aggregate their repertoire with the repertoire of other CMOs that do comply with the quality standards and which license repertoires other than their own. In the event that a CMO does not grant or offer to grant MTLs by 10 April 2017, rights holders will be able to withdraw their online rights from such CMO in respect of MTLs without having to withdraw their rights for the purposes of moni-
territorial licensing.

**Enforcement**

Title IV of the Directive covers enforcement measures to improve the accountability of CMOs and the service they provide to rights holders. Member States shall ensure that CMOs have ‘effective and timely procedures for dealing with complaints’ and may also provide that disputes between CMOs, members of CMOs, rights holders or users in connection with the national rules implementing the Directive are subject to alternative dispute resolution procedures. Alternative dispute resolution measures must, however, be in place for certain disputes with online service providers, rights holders or other CMOs in connection with the multi-territorial aspects of the Directive.

**Non-commercial licences**

Many members of the European Parliament have praised the fact that the Directive recognises that rights holders should retain their right to grant licences for non-commercial purposes and that CMOs have to open up for alternative licencing models. For young artists, using non-commercial licences can be beneficial as they are then able to create other avenues through which they can gain publicity and recognition of their work.

**Impact and further challenges**

The intention is that rights holders, service providers and consumers all benefit from the Directive. UK CMOs have welcomed the changes as they should help to build increased confidence in collective management, with PRS for Music commenting that ‘The Directive will help CMOs and their members play their role in a more integrated, efficient and valuable single market for licensing music and audio-visual services in Europe. High standards of transparency are important not just for digital online markets but for national licensing.’

Although online service providers may in the future find it easier to obtain licences necessary to launch their music services across the EU, differences of substantive copyright law among Member States still constitute an obstacle to the establishment of an internal market for works; the Max Planck Institute has suggested the EC’s attempts to regulate cross-border licensing would require further harmonisation of substantive copyright law. Additionally, the Directive only addresses part of the story as online service providers will still need to obtain licences from record labels with respect to any recordings in which the music is embodied. Neither does the Directive interfere with the way in which music publishers administer their rights and the majority of major publishers and a number of independents have withdrawn the rights to certain repertoire for licensing on a multi-territorial basis. This is perceived by some as a step towards the creation of a new form of fragmentation based on repertoire, rather than territory. As music ownership often involves multiple publishers, online digital services that want to provide an all-encompassing offering still need to sign numerous licensing deals with a number of third parties.

The Directive is a clear step in the right direction and the EC’s intention to address the area of online music services is highly commendable. There are a number of challenges remaining and it will be interesting to observe how the Directive assists in enabling the online music industry to realise its full potential.

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