

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

EEA EFTA Comment on the Commission proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, (COM (2012) 372)

1. GENERAL REMARKS

1.1 Goals of the directive and terminology

1. The EEA EFTA States, Iceland, Liechtenstein and Norway, hereby submit their observations concerning the proposal COM (2012)372 for a directive on collective management of rights and multi-territorial licensing of rights in musical works for online uses in the internal market.
2. The EEA EFTA States support the goals of the Commission, namely to secure transparency, accountability and good governance, which should be core values for rights management organisations. In this respect, the EEA EFTA States stress the importance of securing the influence of the rightholders themselves in the operations of the organisations which manage their rights. The EEA EFTA States also support the goal of making it easier to clear rights for works in music for the whole or large parts of the internal digital market.
3. The EEA EFTA States suggest that the term “Collective Management Organisations” (CMOs) is used, rather than “collective societies”, in order to underline the fact that the main focus should be on the management (including negotiations), and not only on the collection of remuneration.

1.2 Relation to the Services Directive

4. The EEA EFTA States disagree that the CMOs’ activities must comply with the regulations of Directive 2006/123/EF on services in the internal market (the Services Directive), as set out in recital 3 of the proposal. The EEA EFTA States uphold that this is

not the case; copyright is exempted from the scope of that Directive and consequently, the management of rights by not-for-profit-CMOs must be exempted as well.

1.3 “Less detailed”

5. It is important that the provisions of the management of CMOs should not be overly detailed as it creates unnecessary administrative burdens for both rightholders and users, as well as generating unnecessary administrative costs.

1.4 The Directive should be without prejudice to existing schemes such as Extended Collective Agreement Licenses

6. The Directive, as it now reads, i.a. Article 5(6), will make it impossible to maintain well functioning schemes for the collective management of rights supported by legislation, such as Extended Collective Agreement Licenses. This will be especially harmful in the text- and image-based sector, i.a. for agreements on copying (in both analogue and digital formats) in the education sector and in businesses. Therefore, a provision should be incorporated in the Directive to make it clear that such schemes can continue to exist and be developed, and make it clear that even if the main rule might be individual mandates and individual distribution of remuneration, this is without prejudice to such existing schemes. The EEA EFTA States refer in this respect to the text found in the Orphan Works Directive (Directive 2012/28 recital 24 of the preamble, reflected in Article 1 (5)).

2. REMARKS CONCERNING GENERAL PROVISIONS

2.1 Different types of CMOs

7. The Directive should make clearer that different types of CMOs exist, i.e. those which manage the rights of individual rightholders and those which manage specific rights that fall under several other CMOs and whose membership then consists mainly of other CMOs. This is partly reflected in the definition of “member” in Article 3(c). However, the use of the term “rightholder” and “member” should be made clearer in relation to this reality and be better reflected in, for example, Articles 11, 12 and 16.

2.2 Distribution of remuneration (Art. 12)

8. The general part of the Directive must allow rightholders themselves to decide on principles and practicalities concerning the distribution of remuneration, i.a. to find non-discriminatory solutions based on sampling or collective distribution in the form of scholarships. Detailed regulation demanding individuality in all cases will, in this sector, result not only in the destruction of existing successful schemes, but also in administrative burdens on users and organisations.

2.3 Tasks of the General Assembly of a CMO – Supervisory Function

9. Concerning the general regulations to be followed by all CMOs, the EEA EFTA States are of the opinion that the main focus of Title II, Chapter 1, especially Articles 7 and 8, should be on securing fair and adequate representation of rightholders in the decision-making of the organisations and, if this is secured, leave it to the organisations’ General Assemblies to decide on the operations, including decisions on if and eventually how to

set up a supervisory function. In this respect, some of the terminology should be made clearer (i.a. the term “director” as defined in Article 3(e) seems to cover too many different functions to be used as a single term). The general assembly of a CMO must also be able to decide on the membership criteria.

2.4 Tariff setting

10. The EEA EFTA States suggest that the regulation of tariff setting in Article 15 is deleted and left to the parties. This will give the CMOs the flexibility they need when negotiating terms for use which have no pre-determined economic value.

2.5 Transparency – Annual report

11. The EEA EFTA States agree that there should be general rules concerning transparency, and find the elements contained in Annex I satisfactory, but find that the aim could be satisfied in one annual report.

2.6 Mediation

12. The EEA EFTA States have noted and support the inclusion of rules, cfr. Title IV, for mediation in conflict situations. However, the opportunity to seek mediation should be open to both rightholders and users. It should also be made clear that such mediation could not lead to compulsory licensing.

3. RIGHTS IN MUSIC

13. The EEA EFTA States support that it should be easier to obtain pan-European rights to works in music for use online in the internal market, and also that CMOs providing multi-territorial licenses should comply with strict regulations. However, the possibilities for the management of rights for regional use, based on cooperation between CMOs in that region, must be left intact.
 14. The EEA EFTA States support that the clearing of rights for public broadcasters' operations are exempt from the scope of the Directive.
 15. The EEA EFTA States strongly urge the Commission to broaden the legal basis for the Directive, so as to enable the Directive to also have effect on organisations not established by European rightholders, but operating in Europe. This will secure a level playing field for all organisations operating in the market.
 16. The Directive will, when its purpose is reached, most probably result in a few “hubs”, where rights can be cleared for pan-European use. It will be important that the CMOs operating these hubs are followed closely, not only to ensure that they do not misuse their bargaining power, but also that they operate the repertoires from other CMOs which they represent, in a correct and loyal fashion.
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