

## **IFRRO position on EU Presidency's compromise proposal for a European Parliament and Council Directive on Collective Rights Management (CRM)**

1. The Presidency's compromise proposal is a clear improvement on the original proposal
2. **We are pleased that IFRRO suggestions have been taken into account and note**
  - a. the replacement of "collecting society" by "collective management organisations" (CMO) throughout the document, which more precisely describes the role and functioning of the collectives
  - b. that more decisions are now left to be decided by the Member States; this ensures better the principles of subsidiarity
3. **We welcome**
  - a. new Recital (2a), which emphasises the cultural role of CMOs
  - b. new Recital (7c), which states that the Directive is without prejudice to the different models of operation under which RROs operate, such as Extended Collective Licensing, Compulsory Collective Management and Legal Presumption. The wording of the Recital should be modified to include recognition also of collective management on the basis of a legal licence or remuneration right. It is also preferable that the wording of the Recital is moved from being a Recital to becoming an Article and reflected in relevant other articles, or is supported by an Article with a similar wording to recognise the different models of operation
  - c. Recitals (7d) and (15) specifying that members of CMOs may include rightholders' associations and other CMOs; this is often the case with RROs
  - d. Recital (16) explicitly recognising
    - i. the right of rightholders to individually opt for collective distribution of collected fees;
    - ii. that deductions may be made for social, cultural and educational purposes when this is imposed by legislation or made with the consent of the members of the CMO and, according to Recital (17), the express consent of any CMOs it represents;
  - e. Recital (18a) and Article 15(a) obliging users to provide the necessary usage data for the CMO to carry out its obligations
  - f. Recital (20) expressly recognising the right of CMOs to choose whether to present the different information and reports in one or more documents
  - g. Recital (36) and Article 35 which now specify that dispute resolution mechanisms may also be used by CMOs as well as the issues that may be subject for dispute resolution; the CMO's refusal of granting a license is not listed among those issues
  - h. that the definition of rightholder in Article 3(b) clearly includes both authors ("person") and publishers ("legal entity"), also in cases where the legal entity receives a share of the remuneration by law
  - i. changed wording in Article 5, and, in particular, the clarification resulting from this in Article 5(6)
  - j. Article 7(8) which allows for increased flexibility in respect of voting by proxy, and also allows a wider scope for the Member States to decide on rules governing such voting
  - k. changed wording of Articles 12, 16 and 18 regarding distribution of collected fees and information to rightholders and other CMOs, resulting in helpful clarifications

#### **4. Changes are required in**

- a. Recital (3) where the reference to the Service Directive should be deleted; there are conflicting views, also among EU Members States, as to whether the Service Directives applies to CMOs, and there is no need for this issue to be addressed in the CRM Directive
- b. Recital 7(c), or alternatively the inclusion of a new Article or Recital to explicitly recognise that the Directive is without prejudice to collective management on the basis of a legal licence or remuneration right.
- c. Recital (10), Clarifying that revenues collected by a CMO may be distributed to both authors and publishers
- d. Recital (18) and Article 15: the criteria for tariff setting are ambiguous and impossible to document; the last sentence of Recital (18) and the second paragraph of Recital 15 should therefore be deleted
- e. Article 7.5, to recognise that the General Assembly may delegate the power to establish distribution rules to other bodies within the CMO
- f. Article 14(3) second paragraph: The article must
  - i. recognise the importance and right of a CMO to hold on account fees pending for emergent CMOs. CMOs may collect fees for foreign rightholders, for instance under a statutory licence, lawful mandate or acting *bona fides* without a mandate but in the interest of the beneficiary. Such fees may be transferred at a later stage, for instance pending the establishment of a CMO;
  - ii. extend to 12 months the period of the payment to rightholders of fees received from other CMOs; it is necessary to take account of the need for the receiving CMO's to work on the data before payment can be made
- g. Article 12 or new Recital to clarify that it is compatible with the Directive that fees may be collected or distributed on the basis of statistical surveying or sampling, when this is the appropriate mechanism for the collection and distribution of revenues for the use of the works

#### **5. Further clarification is required in**

- a. Article 3, which needs to define “manager”; this is also a consequence of Recital 14, which explicitly mentions “manager” as a specific category involved in the running and/or governing of a CMO
- b. Article 7.1(a) on the relationship between the Assembly of delegates and the Board

#### **6. We have no objections to**

- a. new Recital (10a), which establishes certain rights for non-members of/non-mandating rightholders administered by the CMO
- b. the CMO's obligations under Art 5.2 to, under certain conditions, manage certain rights, categories of rights or types of works that fall within its scope of activities
- c. the changes in Article 11 regarding deductions from collected fees

**7. Further analysis is required with respect to**

- a. Recital (9), which specifies that the CMO, to a certain extent, can further determine the categories of rights or types of works to be managed by the CMO
- b. Article 3(a), and the scope of the Directive resulting from the wording of this Article. This includes ensuring fair competition between CMOs and other agencies and aggregators offering similar or identical services to those of CMOs, and that publishers and ordinary publishing activities and the authorisation of re-use of works, including by way of licensing and permission, are not comprised by the definition of a CMO.
- c. Article 7(4) and its corresponding Recital (13), whether it reflects appropriately the various governance structures
- d. Article 12(3), whether it reflects appropriately the collective management of remuneration rights
- e. whether the Directive addresses adequately the right of rightholders to establish distribution rules and plans, including the split of the revenue between authors and publishers, within the framework of the national CMO and limits set by national legislation

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