

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

2012/0180(COD) - 11/07/2012 - Legislative proposal

PURPOSE : to protect the interests of the members, rightholders and users and to set minimum quality standards for the exercise by collecting societies of their freedom to provide multi-territorial licensing services for online uses of musical works in the internal market.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: the dissemination of content which is protected by copyright and related rights and the linked services, including books, audiovisual productions and recorded music require the licensing of rights by different holders of copyright and related rights, such as authors, performers, producers and publishers. Such services may be provided offline, such as showing a film in a cinema or playing music in a concert hall, but also increasingly online.

In some sectors, licences are most often granted directly by individual rightholders (e.g. film producers). In other sectors, the collective management of rights plays a very important role, in particular of authors' rights in musical works.

Collecting societies enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets. Moreover, they have an important social and cultural role as promoters of the diversity of cultural expressions by enabling the smallest and less popular repertoires to access the market.

The Commission recommends action in two areas.

- Firstly, there are significant differences in the national rules governing the functioning of collecting societies, in particular as regards their transparency and accountability towards their members and rightholders. Collective rights' management in all sectors needs to adapt in terms of the service provided to members and users as regards efficiency, accuracy, transparency and accountability.
- Secondly, in the licensing of the rights of authors in musical works, online music service providers face difficulties in acquiring licences with an aggregated repertoire for the territory of more than one Member State. This situation leads to fragmentation of the EU market for these services, thereby limiting the provision of online music services by online service providers.

This proposal is presented in the context of the [Digital Agenda for Europe](#) and the Europe 2020 Strategy. In its "[Single Market Act](#)" the Commission underlined that, in the internet age, collective management must be able to evolve towards more transnational, possibly EU-wide models of licensing. In its Communication "[A Single Market for Intellectual Property Rights](#)" the Commission announced that it would be proposing a legal framework for the collective management of copyright and related rights. The importance of this legislative proposal was also highlighted in the Commission's "[European Consumer Agenda](#)".

IMPACT ASSESSMENT : the impact assessment examines two groups of options to deal with:

(1) options pertaining to governance and transparency standards in collecting societies are as follows:

- *retaining the status quo (A1);*
- *better enforcement (A2) of existing EU law;*
- *the codification of existing principles (A3)* reflecting in legislation the principles that have emerged from the case-law of the Court of Justice, the Commission's antitrust decisions and Recommendation 2005/737/EC;
- *a governance and transparency framework (A4)* which would codify the existing principles and provide a more elaborate framework of rules on governance and transparency, increasing the possibilities of control over collecting societies.

(2) The following policy options were examined to address the complexities of the collective licensing of authors' rights in musical works for online uses:

- *retaining the status quo (B1);*
- *the European Licensing Passport (B2):* this would foster the voluntary repertoire aggregation for online uses of musical works at EU level and the licensing of rights through multi-territorial licensing infrastructures. It would lay down common rules for all collective licensors throughout the EU and would create competitive pressure on societies to develop more efficient licensing practices;
- *parallel direct licensing (B3);*
- *extended collective licensing and country of origin principle (B4);*
- *a centralised portal (B5).*

After carefully weighing up the advantages and disadvantages of each of the approaches, options **A4 (governance and transparency framework)** and **B2 (European Licensing Passport)** were retained.

LEGAL BASIS: Articles 50(2)(g), 53 and 62 of the Treaty on the Functioning of the European Union.

CONTENT: the proposal for a directive aims to put in place an appropriate legal framework for the collective management of rights that are administered by collecting societies on behalf of rightholders. It aims to:

- improve the standards of governance and transparency of collecting societies so that rightholders can exercise more effective control over them and help improve their management efficiency;
- facilitate the multi-territorial licensing by collecting societies of authors' rights in musical works for the provision of online services.

(1) Collecting societies: the proposal establishes organisational and transparency rules which apply to all types of collecting societies. It provides, inter alia:

- rules governing the membership organisation of collecting societies;
- rules on collecting societies' financial management: a collecting society must: (i) specify the applicable deductions in its agreements with rightholders; (ii) assure members and rightholders fair access to any social, cultural or educational services, if funded by deductions; (iii) pay the amounts due to rightholders accurately and without undue delay and make efforts to identify rightholders.
- rules on levels of disclosure: (i) information to rightholders on amounts collected and paid, management fees charged and other deductions made; (ii) information to other collecting societies on the management of rights under representation agreements; (iii) information to rightholders, other societies and users on request; (iv) annual publication of a transparency report.

(2) Multi-territorial licensing by authors' collecting societies of online rights in musical works: the proposal establishes the conditions that an authors' collecting society must respect when providing multi-territorial licensing services for online rights in musical works, namely:

- being able to process efficiently and transparently the data needed for the exploitation of such licences by using a time-sensitive, authoritative database containing the necessary data;
- being transparent as regards the online music repertoire it represents;
- offering rightholders and other societies the possibility to correct the relevant data and to ensure their accuracy;
- monitoring the actual usage of the works covered by the licences, being capable of processing usage reports and invoicing;
- paying rightholders and other collecting societies without delay and provide them with information on works used and financial data related to their rights (e.g. amounts collected, deductions made).

In order to ensure that repertoires can be easily aggregated for the benefit of music service providers who want to offer a service as complete as possible across Europe and for the benefit of cultural diversity and consumers at large, **specific safeguards will apply to ensure that the repertoire of all societies have access to multi-territorial licensing.**

The proposal also ensures that collecting societies put in place **complaint handling and dispute resolution** procedures so that these are available for members and rightholders.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.