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) - 04/10/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Marielle GALLO (EPP, FR) on the 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.

The committee recommended that Parliament's position adopted in first reading, following the ordinary legislative procedure, should amend the Commission proposal as follows:

Subject matter: the amended text stipulated that this Directive lays down requirements necessary to ensure the proper functioning of the management of copyright and related rights by **collective management organisations**. It also lays down requirements for multi-territorial licensing by collective management organisations of authors' rights in musical works for online use.

Scope: the scope of this proposal has been clarified. It should be possible for Member States to decide that Titles II and IV, with the exception of Articles 35(1a) and 40, are to apply to collective management organisations which, although established outside of the Union, are engaged in activities in their territory. Collective management organisations may also be able to choose to have certain of their activities carried out by subsidiaries or other entities that they own or control.

This Directive is without prejudice to arrangements in the Member States concerning the management of rights, such as extended collective licensing or legal presumptions of representation or transfer, provided that the arrangements in question are compatible with Union law and with the international obligations of the Union and of the Member States.

Title III shall not apply to collective management organisations when they grant, on the basis of the voluntary aggregation of the required rights, a multi-territorial licence for 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 as well as any online material, including previews, produced by or for the broadcaster.

Collection and use of rights revenue: rights revenue and any income derived from its investment, including interest, may only be used for the deduction of management fees by a decision of the general meeting of members. The collective management organisation shall not be allowed to use rights revenue or any income derived from its investment, including interest, for its own account.

Deductions: the amended text stipulated that the collective management organisation shall, upon receiving a request for membership from a rightholder, communicate to that rightholder its rules on deductions from rights revenue and any income derived from its investment. Deductions should be **reasonable** in relation to the services provided by the collective management organisation to rightholders.

Licensing and conditions on the use of rights: licensing terms shall be based on objective and **non-discriminatory** criteria. Collective management organisations providing licences for rights shall not be required to use as a precedent for other types of services, particularly online services, licensing terms agreed with a user, when the user is providing a new type of service which has been available to the public for less than three years. Rightholders shall receive appropriate remuneration for the use of the rights. Tariffs shall be calculated on the basis of objective criteria which reflect, inter alia, the nature and extent of the economic value of the use of the rights in trade.

Collective management organisations shall reply without delay to requests from users, indicating inter alia the information needed for the collective management organisation to provide a proposal for a licence. Upon receipt of that information, the collective management organisation shall promptly notify the user that it has received all the relevant information or specify what additional information it needs in order to provide a proposal for a licence. A collective management organisation shall either propose a license or give a reasoned statement of why it does not intend to licence a particular service within 90 days of receiving a request for a licence together with all the relevant information.

Obligations of users: a new Article has been included stipulating that Member States shall ensure that users comply with the **deadlines and schedules** set for payments.

Representation agreements between collective management organisations: collective management organisations shall have the right to conclude representation agreements with other collective management organisations in the area of rights management in order to facilitate, improve and simplify the procedures for licensing users, including for the purposes of single invoicing, under equal, non-discriminatory and transparent conditions, and to offer multi-territorial licenses.

Disclosure of information to the public: Member States shall ensure that a collecting society makes public the following information, inter alia: (i) a list of the persons who manage the business of the organisation; (ii) general policy regarding distribution of the amounts due to rightholders; (iii) rules on management fees and withdrawals against income from the investment thereof; (iv) rules on deductions from rights revenue; (v) standard licensing contracts and applicable tariffs; (vi) any information on works for which one or more rightholders have not been identified including, where available, the title of the work, the name of the author, the name of the publisher and any other relevant information available which could be necessary in order to identify the rightholders.

Transparency of multi-territorial repertoire information: a new Article stipulated that a collective management organisation which grants multi-territorial licences for online rights in musical works shall provide to online music service providers, members and other collective management organisations, by **electronic means**, up-to-date information allowing the identification of the online music repertoire it represents. This shall include the musical works represented,including the **names of the artists and the title of the recording**.

Accurate and timely reporting and invoicing: the Commission may lay down, by means of an implementing act, standard forms for providing relevent information and **standard formats for the invoices.** Those implementing acts shall be adopted in accordance with the **examination procedure**.

Dispute resolution: the amended text stipulated that Member States shall ensure that disputes between collective management organisations and users concerning, inter alia, existing or proposed licensing conditions, tariffs, the calculation of tariffs or any refusal to grant or renew a licence can be submitted to a court or to an **independent and impartial dispute resolution body** with expertise in intellectual property law. Member States shall provide in their specific dispute resolution legislation that the users are to **deposit an interim tariff in an escrow account until the final and irrevocable decision** is taken by a court or dispute resolution body in relation to the disputed tariff.

Compliance with this Directive: Member States shall ensure that procedures are set up enabling members of a collective management organisation, rightholders, collective management organisations covered by this Directive, users and other interested parties to submit complaints to the competent authorities with regard to the activities of collective management organisations which are covered by this Directive. Member States shall provide that their respective competent authorities impose **appropriate administrative sanctions** and take appropriate measures where national provisions adopted in implementation of this Directive have not been complied with, and shall ensure that they are applied.

Reporting: by 5 years after the end of the transposition period, the Commission shall assess the application of this Directive including its impact on the development of cross-border services and on cultural diversity. This report shall be used to assess the **financial impact** of implementing this Directive and the possibility of introducing related funding for collective management organisations, if necessary.