**March 2013**

**Position Paper**

**Proposal for a Directive on Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online Uses in the Internal Market ("CRM Directive")**

***PRS for Music* supports the principles and objectives of the CRM Directive. The proposal for high standards of transparency and accountability, together with a voluntary framework for the aggregation of repertoire for online multi-territory licensing, also backed by European standards, is welcome. The Directive will help collective management organisations ('CMOs') and their members play their role in a more integrated, efficient and valuable single market for licensing music and audiovisual services in Europe. High standards of transparency are important not just for digital online markets but for national licensing.**

## 1. Introduction

- *PRS for Music* is a collective rights management society for music rights, based in the UK, managing performing and mechanical rights of composers, songwriters and publishers. *PRS for Music* has 95,000 direct songwriter, composer and music publisher members.
- Total licensing income collected for distribution to our direct members and the members of other societies in 2011 was €731 million. Costs were €88 million, i.e. a cost: revenue ratio of 11.4% for all licensing and administration processes.
- *PRS for Music* has a voluntary code of conduct for members and licensees, setting standards of transparency and accountability and a complaints process overseen by an independent ombudsman in.
- *PRS for Music* has direct members but, like every society in Europe, in its national licensing it is licensing and administering the rights of many hundreds of thousands of composers and songwriters, through a mandate from other societies. Last year EU music rights societies exchanged and distributed **€333M**[1] to each other, as part of the network of hundreds of representation agreements. National regulation of collective management systematically fails to address the relations between CMOs for the cross-border exchange of royalties, which is why EU standards are so welcome.
- *PRS for Music* has agencies in Cyprus and Malta where it licenses a global repertoire on behalf of associated collecting societies and has a direct membership of local members.
- Up to 80% of composers', songwriters' and publishers' total income comes from collectively managed rights, as opposed to other direct licensing and income sources. This highlights where there may be different priorities compared to the collective management of secondary usage rights for text and book publishing.

*PRS for Music* is a member of GESAC and supports the GESAC Position Paper on the CRM Directive.

## 2, Comments on overarching policy issues in the Directive

### 2.1 Collective management of music rights has a strong cross-border dimension and will benefit from EU standards of transparency and information disclosure.

Songwriters and publishers are reliant on the efficiency and effectiveness of their own CMO and of every CMO that has a role in licensing their rights. They will generally mandate one society to represent their rights worldwide and will have a role in the governance and decision-making in that CMO. But, to license

[1] *PRS for Music* calculation 2013, based on own data and data from Commission Impact Assessment

outside the national market, CMOs mandate other European CMOs to act because in many cases it continues to be more efficient and cheaper to allow the local society to do so. Each member therefore depends on the standards of licensing and the distribution policies of all CMOs throughout Europe. We therefore support increased information disclosure provisions and consistent, coherent and comparable reporting by CMOs of their royalty collections, distributions, policies, costs, commission rates and any other deductions from rights revenue. We support the proposal that every CMO should publish an Annual Transparency Report in addition to their annual accounts. It is not enough to rely on national regulation of CMOs to deliver the same outcome. National reporting would not deliver the same level of visibility or of the consistency and comparability of reporting on key performance indicators.

**2.2 Data is essential for the good functioning of collective management**:

The core activity of the collecting society for its members is to:

- Register works and songwriter/publisher agreements in order to build a comprehensive database of repertoire information
- Issue licences to users
- Process music usage reports and sales data and match that to repertoire information
- Make royalty payments quickly and efficiently to the creators and publishers whose works were used.

A CMO needs good data inputs from members (works and agreements registration) and from licensees (music reporting and usage reports using standard formats) in order to process music usage and distribute accurately and quickly and, as far as possible, by reference to the music actually used. Good data ensures that members know the distribution policy is fair, and users know that the licence fees they pay will reach the right creator. The CRM Directive should introduce obligations on licensees to provide good quality data to CMOs.

**2.3 The CRM Directive will promote and benefit cultural diversity**:

Title II of the Directive (increasing transparency) and Title III (facilitating aggregation and multi-territory online licensing) will ensure that all music repertoires can share in the economic value of licensing and get access to all EU markets. By imposing quality and process standards, the Directive will ensure that all repertoires are registered and licensed, and that all rightsholders are paid accurately for the exploitation of their works. Hubs, where repertoire is aggregated, will promote cultural diversity because they will make it easier for licensees to secure access to smaller repertoires at the same time as the larger repertoires that licensees currently negotiate with first in the market. When consumers can access more of Europe's music then it is likely that a larger range of composers and songwriters will be paid – opening up the long tail of cultural diversity.

The Directive does not interfere with the freedom of CMOs to set up cultural foundations to promote new music, funded with the consent of members and other CMOs**.**

## 3. Comments on specific Articles in the Directive:

### Collecting Societies – Title II

### Membership and Organisation of Collecting Societies

- **Rights of Rightsholders**: Article 5(2) of the Directive can be read as opening up new flexibility for mandates, even if this is not what the Commission intended. If every member had an individual choice to choose the scope of their own opt-in and withdrawal of rights, there would be a negative impact on collective systems and licences, adding considerable additional cost and leading to a lack of clarity and consistency for licensees. It would increase the potential for further fragmentation of

music rights. The CRM Directive should be amended to ensure that the definition of categories of rights that can be granted or withdrawn from a CMO must be agreed by the members collectively in general meeting and not individually.

- Generally, the **governance provisions** in Article 6 to 9 are detailed and constrain the freedom of the members to determine how they govern their collecting society.

**Management of Rights Revenue**

- **Rules on collection of revenue - Article 10(2):** The presumed objective of the Commission is to ensure there is clear and separate accounting for costs and income, and this should be made clearer. As drafted it literally means that costs and income should be separated physically into different bank accounts which is practically difficult for CMOs to do since CMOs deduct all the costs of licensing and administration at the end of the management process, just prior to distribution.

- **Restrictions on use of collected revenue - Article 10(3):** We suggest that it should be clear that royalties, investment income or interest on royalties can be used to invest in capital projects and modernisation of systems, in line with a policy approved by the general meeting, and provided there is an obligation of transparency to report such usage to members and to other CMOs.
- **Distribution of revenue Article 12(2):** The purpose of this clause is to ensure there are clear rules about how undistributable income is dealt with. Sometimes it is difficult to identify rightsholder because the incoming data is poor or non-existent and for this reason we recommend an obligation on licensees to provide data (see Article 15 below). We think that the period before a decision is taken should be reduced from 5 years to 3 years to represent common practice. The ultimate distribution of the monies should also be in a way that benefits all the rightsholders represented by the CMO, meaning both direct members and members of a mandating CMO.

**Management of rights on behalf of other collecting societies**

- These provisions on the relations between societies are important, since they complement the contractual framework for cross border rights flow and royalty distribution.

**Relations with Users**

- We do not support the inclusion of criteria for tariff-setting in Article 15: The Commission conducted no market assessment of the grounds for or impact of harmonising the criteria. The inclusion of the criteria goes beyond the proposed objectives of the CRM Directive to improve the functioning of collective management. But even more importantly, the test proposed by the Commission is not only confusing but will also constrain the freedom of those who are negotiating the terms of a licence to take into account the many different factors which contribute to whether the price of a licence is fair and just. This in turn will ultimately lead to more slow and expensive referrals to the CJEU at a time when it is the dynamic and rapidly changing features of the market which should set the context for agreeing tariffs. The tariffs set by CMOs are already subject to national control and to rules on competition: to add yet another layer of control is unnecessary, excessively bureaucratic and introduces an unwarranted element of inflexibility.
- There should be positive obligations on licensees to provide comprehensive timely data to CMOs to enable them to carry out accurate matching and distribution of repertoire and to reduce the level of undistributable royalties (see Article 12(2)).

**Multi-territory licensing of online rights in music – Title III**

- *PRS for Music* supports the option chosen by the Commission for facilitating multi-territory licensing and to encourage the re-aggregation of rights. Sometimes known as the passport model, it is a voluntary framework to encourage licensing across the single market. It sets core operating, systems and data capability standards for societies or Hubs who do license on a multi-territory basis. It sets out tag-on obligations for societies meeting the standards and tag-on opportunities for societies who do not. Our view is that it will promote cultural diversity because it will increase the range of music repertoires licensed and available to consumers and it will increase the number of authors and rightsholders receiving royalties from these services.

- The context for the proposal is that the market assessment in the run up to the Directive identified certain problems in the multi-territory licensing market. This emerged directly from the transition from mono-territory blanket licensing of a global repertoire to multi-territory transactional licensing of a specific repertoire (split copyrights). Not all societies had a multi-territory data ownership picture for repertoire or the systems to generate invoices that excluded repertoire they no longer controlled. Inevitably licensees withheld payments from societies and this meant rightsholders were not receiving online royalties. Major digital service providers and a group of societies, including PRS for Music, GEMA and SACEM, developed a reconciliation process to resolve conflicting claims and to standardise processes and timing for invoicing. Title III puts enforceable standards in place for many of these industry standards. As a framework it is realistic and acknowledges that the consequences of fragmentation of repertoire for multi-territory licensing of musical works can be improved, but that fragmentation cannot be reversed.

- Safeguards for smaller and medium-sized repertoires are important. An enhancement of the tag-on obligation in Article 29 may need to focus on ensuring that representation is on non-discriminatory terms, that the recoupment of costs and capital investment is reasonable and that repertoires mandated into a Hub are offered for licence.
- **Derogation for broadcaster catch up services – Article 33:** We hear that there are pressures from broadcasters to remove their activities from Title III completely. We do not understand the logic of that. Where broadcasters sell on demand audiovisual content they are in competition with commercial online audiovisual services companies. CMOs have to treat them equally for competition law reasons. To have differential regulatory framework of standards would be confusing.

**Enforcement – Title IV**

- **Consistent enforcement of standards is essential**: The Commission has chosen to rely on national enforcement of standards set in the Directive. There are some uncertainties as to the applicable laws and how the process will lead to consistent application of standards throughout Europe. This needs to be resolved to ensure there is legal certainty for CMOs and all stakeholders.

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