

May 20, 2014

Practice Group(s):
Telecom, Media and
Technology

European Council adopts directive on the collective management of copyright and multi-territorial licensing of online music

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On February 20, 2014, the European Council adopted a directive on the collective management of copyright and multi-territorial licensing of online music (the "Directive"). The two principal aims of the Directive are:

- harmonizing governance and transparency rules for collective management organizations
- facilitating multi-territorial licensing of online music within the European Union

Member states have to integrate the provisions of the Directive into their national law by early 2016 (the exact date depending on the Directive's publication in the Official Journal). It is important to note that the Directive provides for a minimum level of protection; i.e., member states are not precluded from establishing stricter rules than those laid down in the Directive.

Efficiency and transparency of collective copyright organizations

Regarding the functioning of collective copyright organizations, the Directive aims to ensure a high standard of governance, financial management, transparency and reporting. Therefore, the Directive contains provisions regarding, among other things, the following topics:

- Rights holders' right to authorize a collective management organization of their choice to manage the rights of their choice for the territories of their choice, irrespective of their nationality
- Rights holders' right to grant licenses for noncommercial uses of any rights, types of works and other subject matter that they may choose (forcing collective management organizations to open up for alternative licenses, such as Creative Commons)
- Rights holders' right to terminate the authorization to manage rights in full or regarding certain categories of rights and/or territories upon reasonable notice, but not exceeding six months
- Rights of the general assembly of members and the proper participation of members and other rights holders in the decision-making process
- Transparent collection and use of rights revenues as well as distribution of amounts due to rights holders (e.g., distribution to rights holders as soon as possible, but no later than nine months from the end of the financial year in which the rights revenue was collected)

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Cross-border licensing

In response to the problems that online music services are currently facing, the Directive furthermore aims at facilitating the multi-territorial licensing of online music rights. Therefore, the Directive addresses, among other things, the following topics:

- The capacity of collective management organizations to process multi-territorial licenses (including, for example, the capacity to identify musical works which it is authorized to represent)
- Transparency of multi-territorial repertoire information; e.g., information regarding the musical works represented, the rights represented wholly or in part and the territories covered
- Accurate and timely reporting and invoicing
- Accurate and timely payment to rights holders

Directive subject to severe criticism

Although the European Parliament passed the Directive on February 4, 2014 with a great majority of 640 of 680 votes, the Directive is subject to severe criticism:

- Critics claim that the Directive will not simplify multi-territorial licensing, as it lacks incentives for major repertoire rights holders (Universal, EMI, Warner and Sony/ATV), as well as other publishers (e.g., Kobalt), to refrain from removing repertoire from collection societies. As a consequence of this fragmentation of the music rights market, an online music service is currently required to negotiate license agreements with one or more collection societies and at least seven independent management entities representing the repertoire of a specific publisher (e.g., CELAS, PAECOL and ARESA).
- With the exception of certain provisions regarding information duties and data protection, the Directive does not apply to the aforementioned independent management entities. However, these entities represent approximately two-thirds of the online music rights market.
- Finally, the whole European copyright reform project, of which the Directive is only a small part, is criticized for its slow pace as well as its lack of structure.

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