STATUTORY INSTRUMENTS

2016 No. 221

COPYRIGHT

The Collective Management of Copyright (EU Directive) Regulations 2016

Made - - - -	*24th February 2016*
Laid before Parliament	*25th February 2016*
Coming into force - -	*10th April 2016*

The Secretary of State, as a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to matters relating to copyright and rights in performances, makes these Regulations in exercise of the powers contained in section 2(2) of that Act.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Collective Management of Copyright (EU Directive) Regulations 2016 and come into force on 10th April 2016.

Interpretation and application

2.—(1) In these Regulations—

"collective management organisation" means an organisation which—

(a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose; and

(b) is either owned or controlled by its members or is organised on a not for profit basis, or both;

(**1**) S.I. 1992/707 and S.I. 1993/595.
(**2**) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

"general assembly of members" means the body in the collective management organisation through which members participate and exercise their voting rights;

"independent management entity" means an organisation which—

(a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose;

(b) is neither owned nor controlled, directly or indirectly, wholly or in part, by right holders; and

(c) is organised on a for profit basis;

"management fees" means the amounts charged, deducted or offset by a collective management organisation from rights revenue or from any income arising from the investment of rights revenue in order to cover the costs of its management of copyright or related rights;

"member" means a right holder or an entity representing right holders, including other collective management organisations and associations of right holders, fulfilling the membership requirements of the collective management organisation and admitted by it;

"multi-territorial licence" means a licence which covers the territory of more than one member State(**3**);

"non-distributable", in relation to amounts due to right holders, is construed in accordance with regulation 12(9);

"online rights in musical works" means any of the rights of an author in a musical work provided for under articles 2 and 3 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001(**4**) which are required for the provision of an online service;

"online service provider" means a user who is an online service provider referred to in Part 3 of these Regulations;

"repertoire" means the works in respect of which a collective management organisation manages rights;

"representation agreement" means an agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to manage the rights it represents, including an agreement concluded under regulations 28 (agreements between collective management organisations) and 29 (representation of other collective management organisations);

"right holder" means any person, other than a collective management organisation, that—

(a) holds a copyright or related right; or

(b) under an agreement for the exploitation of rights or by law is entitled to a share of the rights revenue;

"rights revenue" means income collected by a collective management organisation on behalf of right holders, whether deriving from an exclusive right, a right to remuneration or a right to compensation;

"statute" means the memorandum and articles of association, the statute, the rules or documents of constitution of a collective management organisation;

"user" means a person who—

(a) is carrying out acts subject to the authorisation of right holders, remuneration of right holders or payment of compensation to right holders; and

(**3**) "member State" is defined in Part 2 of Schedule 1 to the European Communities Act 1972.
(**4**) OJ No. L167, 22.6.2001, p.10.

(b) is not acting in the capacity of a consumer.

(2) The obligations of a collective management organisation in Parts 2 and 4 of these Regulations apply to a collective management organisation established in the United Kingdom.

(3) The obligations of a collective management organisation in Part 3 of these Regulations apply to a collective management organisation in accordance with regulation 22.

(4) Where an entity which is directly or indirectly owned or controlled, wholly or in part, by a collective management organisation carries on an activity which, if carried on by the collective management organisation, would be subject to the provisions of these Regulations then those provisions apply to that entity.

(5) The following provisions of these Regulations apply to an independent management entity established in the United Kingdom—

(a) paragraph (1) of regulation 15 (licensing);

(b) regulation 17 (information to be provided to right holders);

(c) paragraph (1)(b) of regulation 19 (information to be provided on request);

(d) paragraph (2) of regulation 20 (disclosure of information to the public); and

(e) paragraph 1(f) of regulation 36 (power to request information).

PART 2

Collective Management Organisations

General obligations of collective management organisations in relation to right holders

3. A collective management organisation—

(a) must act in the best interests of right holders whose rights it represents; and

(b) must not impose on such right holders any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights.

Particular obligations of collective management organisations in relation to right holders

4. A collective management organisation must ensure that—

(a) right holders have the right to authorise a collective management organisation of their choice to manage—

(i) the rights,

(ii) categories of rights,

(iii) types of works, and

(iv) other subject matter,

of their choice, for the territory of their choice irrespective of the member State of nationality, residence or establishment of either the collective management organisation or the right holder;

(b) it manages the matters referred to in paragraph (a)(i) to (iv) provided that the management of these matters falls within the scope of its activity or unless it has objectively justified reasons to refuse management;

(c) right holders have the right to grant licences for non-commercial uses of any of the matters referred to in paragraph (a)(i) to (iv) that they may choose;

(d) right holders have the right—

(i) to terminate the authorisation to manage the matters referred to in paragraph (a)(i) to (iv) granted by them to a collective management organisation, or

(ii) to withdraw from a collective management organisation the matters of their choice referred to in paragraph (a)(i) to (iv) for the territory of their choice,

upon serving reasonable notice not exceeding six months unless the collective management organisation decides that such termination or withdrawal is to take place at the end of its financial year;

(e) if there are amounts due to a right holder for acts of exploitation which occurred, or under a licence granted, before the time when termination or withdrawal under paragraph (d) took effect, the right holder retains the rights under regulations 11 (deductions), 12 (distributions), 17 (information), 19 (information on request), 27 (payment) and 31 (complaints);

(f) it does not restrict the exercise of rights referred to in paragraphs (d) and (e) by requiring, as a condition for the exercise of those rights, that the management of the matters referred to in paragraph (a)(i) to (iv) which are subject to the termination or the withdrawal are entrusted to another collective management organisation;

(g) where a right holder authorises a collective management organisation to manage that right holder's rights—

(i) the right holder gives consent specifically for each of the matters referred to in paragraph (a)(i) to (iv) which the right holder authorises the collective management organisation to manage; and

(ii) that consent is evidenced in documentary form;

(h) it informs a right holder of their rights under paragraphs (a) to (g) and any conditions attached to the right in paragraph (c) before obtaining the right holder's consent to its managing the matters set out in paragraph (a)(i) to (iv);

(i) by 10th October 2016 it informs right holders who have authorised it by 9th April 2016 of their rights under paragraphs (a) to (g) as well as of any conditions attached to the right set out in paragraph (c); and

(j) the rights under paragraphs (a) to (i) are set out in the statute or membership terms of the collective management organisation.

Membership rules of collective management organisations

5.—(1) A collective management organisation must—

(a) accept as members—

(i) right holders, and

(ii) entities representing right holders, including other collective managements organisations and associations of right holders,

if they fulfil the membership requirements (see paragraph (2)); and

(b) in cases where it refuses to accept a request for membership, provide the right holder with a clear explanation of the reasons for its decision.

(2) A collective management organisation must ensure that its membership requirements—

(a) are based on objective, transparent and non-discriminatory criteria;

(b) are included in its statute or membership terms; and

(c) are made publicly available.

Collective management organisations and their members

6. A collective management organisation must—

(a) ensure that its statute provides for appropriate and effective mechanisms for the participation of its members in the decision-making process of that organisation;

(b) ensure that the representation of the different categories of members in the decision-making process is fair and balanced;

(c) allow—

(i) its members, and

(ii) right holders who are not members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,

to communicate with it by electronic means including, in the case of its members, for the purposes of exercising members' rights; and

(d) keep records of its members and regularly update those records.

General assembly of members of collective management organisations

7.—(1) A collective management organisation must ensure that—

(a) the general assembly of members is convened at least once a year;

(b) the general assembly of members decides on amendments to the statute and the membership terms of the collective management organisation, where those terms are not regulated by the statute;

(c) the general assembly of members decides on the appointment and dismissal of the directors, reviews their general performance and approves their remuneration and other benefits such as—

(i) monetary and non-monetary benefits;

(ii) pension awards and entitlements;

(iii) rights to other awards; and

(iv) rights to severance pay;

(but see paragraph (12));

(d) in accordance with regulations 10 (rights revenue), 11 (deductions) and 12 (distribution) and subject to paragraph (2) the general assembly of members decides on at least—

(i) the general policy on the distribution of amounts due to right holders;

(ii) the general policy on the use of non-distributable amounts;

(iii) the general investment policy with regards to rights revenue and to any income arising from the investment of rights revenue;

(iv) the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;

(v) the use of non-distributable amounts;

(vi) the risk management policy;

(vii) the approval of any acquisition, sale or hypothecation of immovable property;

(viii) the approval of—