

**SUBSIDIARY LEGISLATION 415.01**

**CONTROL OF THE ESTABLISHMENT AND  
OPERATION OF SOCIETIES FOR THE  
COLLECTIVE ADMINISTRATION OF COPYRIGHT  
REGULATIONS**

24th June, 2016

*LEGAL NOTICE 239 of 2016.*

1. (1) The title of these regulations is the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations. Citation and scope.

(2) These regulations transpose Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

Title I

General Provisions

2. (1) In these regulations, unless the context otherwise requires - Interpretation.

"the Act" means the Copyright Act; Cap. 415.

"Board" means the Copyright Board established under article 45 of the Act;

"collective management organisation" means any organisation which 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 rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria:

- (a) it is owned or controlled by its members;
- (b) it is organised on a not-for-profit basis;

"director" means:

- (a) where national law or the statute of the collective management organisation provides for a unitary board, any member of the administrative board;
- (b) where national law or the statute of the collective management organisation provides for a dual board, any member of the management board or the supervisory board;

"general assembly of members" means the body in the collective management organisation wherein members participate and exercise their voting rights, regardless of the legal form of the

organisation;

"independent management entity" means any organisation which 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 rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which is:

- (a) neither owned nor controlled, directly or indirectly, wholly or in part, by rightholders; and
- (b) 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 rightholder or an entity representing rightholders, including other collective management organisations and associations of rightholders, 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;

"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 which are required for the provision of an online service;

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

"representation agreement" means any 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 36 and 37;

"rightholder" means any person or entity, other than a collective management organisation, that holds a copyright or related right or, 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 rightholders, 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 any person or entity that is carrying out acts subject to the authorisation of rightholders, remuneration of rightholders or payment of compensation to rightholders and is not acting in the

capacity of a consumer;

(2) All other words, terms and expressions used shall have the same meaning as is given to them in the Act.

3. (1) These regulations lay down the necessary requirements 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.

Subject matter and scope.

(2) These regulations apply as follows:

- (a) Titles I, II, IV and V with the exception of regulation 41(2) apply to all collective management organisations established in Malta;
- (b) Title III and regulation 41(2) apply to collective management organisations established in Malta managing authors' rights in musical works for online use on a multi-territorial basis;
- (c) the relevant provisions of these regulations apply to entities directly or indirectly owned or controlled, wholly or in part, by a collective management organisation, provided that such entities carry out an activity which, if carried out by the collective management organisation, would be subject to the provisions of these regulations;
- (d) regulation 20(1), regulations 26. and 38, paragraphs (a), (b), (c), (e), (f) and (g) of regulation 29(1) and regulation 43 apply to all independent management entities established in Malta.

## Title II

### Collective Management Organisations

#### Chapter 1

##### Representation of rightholders and membership and organisation of collective management organisations

4. (1) The economic rights related to copyright and neighbouring rights shall be administered by the owners of the rights, by collective management organisations as authorised by the right holders, or by mandatories representing the right holders.

Administration of rights.

(2) Collective management organisations shall act in the best interests of the rightholders whose rights they represent and shall not impose on them any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights.

5. (1) Rightholders have the following rights which shall be set out in the statute or membership terms of the collective management organisation:

Rights of rightholders.

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- (a) the right to authorise a collective management organisation of their choice to manage the rights, categories of rights or types of works and other subject-matter of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the collective management organisation or the rightholder; in accordance with the statute of the collective management organisation. Unless the collective management organisation has objectively justified reasons to refuse management, it shall be obliged to manage such rights, categories of rights or types of works and other subject-matter, provided that their management falls within the scope of its activity;
- (b) the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject-matter that they may choose;
- (c) the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject-matter granted by them to a collective management organisation or to withdraw from a collective management organisation any of the rights, categories of rights or types of works and other subject-matter of their choice, as determined pursuant to paragraph (a), for the territories of their choice, upon serving reasonable notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal is to take effect only at the end of the financial year;

Provided that if there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under regulations 16,17, 26, 28, 35 and 40.

(2) A collective management organisation shall not restrict the exercise of rights provided for under sub-regulation (1)(b) and (c), by requiring, as a condition for the exercise of those rights, that the management of rights or categories of rights or types of works and other subject-matter which are subject to the termination or the withdrawal be entrusted to another collective management organisation.

(3) In cases where a rightholder authorises a collective management organisation to manage his rights, he shall give consent specifically for each right or category of rights or type of works and other subject-matter which he authorises the collective management organisation to manage. Any such consent shall be evidenced in documentary form.

(4) A collective management organisation shall inform rightholders of their rights under sub-regulations (1) to (3), as well

as of any conditions attached to the right set out in sub-regulation (1)(b), before obtaining their consent to its managing any right or category of rights or type of works and other subject-matter.

(5) A collective management organisation shall inform those rightholders who have already authorised it of their rights under sub-regulations (1) to (3), as well as of any conditions attached to the right set out in sub-regulation (1)(b), by 10 October 2016.

**6.** Collective management organisations shall comply with the following rules:

Membership rules of collective management organisations.

- (a) a collective management organisation shall accept rightholders and entities representing rightholders, including other collective management organisations and associations of rightholders, as members if they fulfil the membership requirements, which shall be based on objective, transparent and non-discriminatory criteria. Those membership requirements shall be included in the statute or membership terms of the collective management organisation and shall be made publicly available. In cases where a collective management organisation refuses to accept a request for membership, it shall provide the rightholder with a clear explanation of the reasons for its decision;
- (b) the statute of a collective management organisation shall provide for appropriate and effective mechanisms for the participation of its members in the organisation's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced;
- (c) a collective management organisation shall allow its members to communicate with it by electronic means, including for the purposes of exercising members' rights;
- (d) a collective management organisation shall keep records of its members and shall regularly update those records.

**7.** Collective management organisations shall comply with the rules laid down in regulations 6(c), 28, 36(2) and 40 in respect of rightholders who have a direct legal relationship by law or by way of assignment, licence or any other contractual arrangement with them but are not their members.

Rights of rightholders who are not members of the collective management organisation.

**8.** (1) A collective management organisation shall not operate in Malta unless it submits a request to the Board to operate as a collective management organisation and is approved as a collecting society in accordance with the provisions of the Act.

Approval of collective management organisations.

(2) A request for approval of a collective management organisation, which may also be submitted to the Board by electronic means, shall include:

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- (a) a copy of the statutes of the collective management organisation;
  - (b) the regulations of the collective management organisation concerning the system of collection and distribution of fees and equitable remuneration;
  - (c) a proposed tariff of all royalties to be collected by the collective management organisation;
  - (d) a declaration stating the number of persons who have entrusted or undertaken to entrust the collective management organisation with the administration of their economic rights at the time of the said declaration;
  - (e) a list of contracts with other foreign or local collective management organisations regarding the administration of rights;
  - (f) the contact details, including a postal address, fax number or e-mail address, telephone number and the legal address if this is not the same as the postal address, for the purpose of receiving complaints or requests for information; and
  - (g) the prescribed fee for a request for approval of a collective management organisation.
- (3) The Board shall approve the collective management organisation unless:
- (a) the statutes or regulations mentioned in sub-regulation (2) do not conform to the relevant provisions of the Act, these regulations or of any other law;
  - (b) there is factual evidence indicating that a physical person who may lawfully represent the collective management organisation under the statutes of the organisation does not possess the abilities or reliability necessary for the exercise of such activity;
  - (c) there is factual evidence indicating that the collective management organisation is not able to fulfil its functions for any reason including the absence of economic and technical means, or of appropriate staff;
  - (d) another collective management organisation has already been approved in the same field of administration, provided that the Board is satisfied that the existence of more than one organisation in that particular field of administration would not be beneficial to the interests of the authors and other owners of copyright and of neighbouring rights and the users;
  - (e) it considers that the proposed tariffs are unacceptable, provided that if the collective management organisation has different sets of tariffs, it may still be allowed to operate in those areas for which the Board

has approved the tariffs.

(4) In determining whether a collective management organisation has the economic and technical means to fulfil its functions as specified in sub-regulation (3)(c), the Board may consider the following:

- (a) the number of authors who have undertaken to entrust the collective management organisation with the administration of their economic rights, as well as any plan or strategy by means of which the collective management organisation intends to increase this number;
- (b) any bilateral or multilateral contracts concerning the administration of rights of foreign authors and other foreign owners of copyright and of neighbouring rights, as well as any such contracts or agreements which the collective management organisation is in the process of implementing;
- (c) the extent of the exploitation of works which fall under the administration of that collective management organisation or the volume of potential users of such works;
- (d) the capability of the collective management organisation to administer the rights of its members in other countries; and
- (e) the ways and means whereby the collective management organisation proposes to achieve its aims:

Provided that for the purpose of carrying out its functions under this sub-regulation the Board may request from a collective management organisation any related or incidental information as it deems appropriate.

(5) The basis for calculating the tariffs shall normally be the monetary advantages obtained from exploitation of the protected work, as well as the proportion of the utilisation of the work in the total exploitation.

(6) Other considerations to be made when calculating the prospective tariffs should include the category and nature of the user involved, including the type of business in the case of a commercial venture, as well as any religious, cultural and social elements involved.

**9.** (1) As soon as practicable after the receipt of a request for the approval of a collective management organisation, the Board shall:

Publication of request.

- (a) issue an acknowledgement of receipt of the request to the applicant indicating therein a reasonable time period for the processing of the application:

Provided that such period shall apply if all the required documentation has been submitted and

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no written objection is received following the publication of the request and the tariffs;

- (b) in the event that the required documentation or information is not submitted with the application, the Board shall issue a notification to the applicant requesting the submission of the missing documentation and information. The Board shall inform the applicant that the time period communicated in the acknowledgement issued in terms of the preceding paragraph will have to be reviewed and that the new time period will be notified to the applicant upon receipt of the missing documentation;
- (c) in the event that the missing documentation is received by the Board, which documentation is to be submitted with the prescribed fee, the Board shall issue an acknowledgement to the applicant indicating therein a reasonable time period for the continued consideration of the application subject to there not being any written objections following the publication of the request and the tariffs;
- (d) following the receipt of all the required documentation, as soon as practicable, the Board shall publish the request together with the proposed tariffs in the Gazette and shall give notice that, within sixty days after publication, prospective users or their representatives may file written objections, to the request or the tariffs, with the Board. These objections shall be accompanied by the prescribed fee and shall be submitted on the basis of the provisions of regulation 9(3);
- (e) the Board shall publish a notice in two local newspapers thereby referring to the publication of the request and tariffs in the Gazette; and
- (f) all publication costs in the Gazette and the local newspapers shall be borne by the applicant.

(2) Following the lapse of sixty days as specified in sub-regulation (1):

- (a) in the event that no objections to the request and tariffs are made, the Board shall approve or refuse the request for operation of a collective management organisation within the time period indicated in the acknowledgement issued by the Board in accordance with sub-regulation (1)(a) and (c) as the case may be and taking into consideration regulation 4(3), (4) and (5); and
- (b) in the event that objections to the request and tariffs are made, the Board shall approve or refuse the request



for operation of a collective management organisation within a reasonable time period, taking into consideration regulation 4(3), (4) and (5) and the grounds of the objections received.

(3) In considering any request for operation of a collective management organisation, the Board may call upon the collective management organisation and any person who has made an objection under sub-regulation (1)(d) for further representations, and shall provide the collective management organisation with the opportunity to amend its request as deemed necessary.

(4) In considering any request for the operation of a collective management organisation the Board may, after granting the applicant a right to be heard, impose such proportionate conditions upon said approval as it may deem appropriate.

(5) On taking its decision, the Board shall as soon as practicable:

- (a) send a copy of its decision to the collective management organisation that filed the request and to any person who filed an objection; and
- (b) publish its decision in the Gazette.

(6) If the decision is taken to approve the request for the operation of a collective management organisation, the Board shall also:

- (a) send a copy of the approved tariffs, together with the reasons for the Board's decision, to the collective management organisation that filed the tariff and to any person who filed an objection; and
- (b) publish the approved set of tariffs in the Gazette.

**10.** (1) An approved tariff shall be effective until such time as a new tariff is approved. Validity of tariffs.

(2) Not less than six months and not more than eight months before the lapse of the period of two calendar years from the date when it was published in the Gazette, the collective management organisation shall submit the tariffs for the next two years to the Board, which will consider them according to the following conditions:

- (a) if the proposed tariff is identical to the previous tariff, it will be approved by the Board:  
Provided that if any objections to the tariff have been filed with the Board in the preceding two years, the Board shall permit the collective management organisation to reply to the objections, and after due consideration of the objections and relevant replies, the Board shall as soon as practicable approve or refuse the proposed tariff;
- (b) if the proposed tariff includes revisions to the previous tariff, the Board shall treat it according to the

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provisions of regulations 5(1) to (3) relating to tariffs.

Functions of  
collective  
management  
organisations.

**11.** (1) A collective management organisation, on behalf of, and on the basis of the authorisation by, the authors and other owners of copyright and of neighbouring rights that are its members or that it otherwise represents on the basis of agreements with local or foreign collective management organisations may fulfil the following tasks:

- (a) to give authorisation to third parties to carry out acts covered by the exclusive economic rights administered;
- (b) to collect fees for authorisation mentioned in paragraph (a) and to collect equitable remuneration where the law provides for such remuneration;
- (c) to distribute the fees and equitable remuneration thus collected among the authors and other owners of copyright and of neighbouring rights concerned;
- (d) to take any legal action necessary for the enforcement of the rights administered by it;
- (e) to carry out any other acts authorised, in keeping with article 24 of the Act, by the authors and other owners of copyright and of neighbouring rights, or by the bodies representing them, whose exclusive economic rights or rights to equitable remuneration are administered.

(2) Companies, business concerns or other organisations which do not conform to the provisions specified in the Act or in these regulations for the operation of a collective management organisation shall have no right to:

- (a) grant licenses, collect royalties, or in any way administer economic rights arising from the ownership of copyright or neighbouring rights; or
- (b) commence any action for the infringement of the rights or the recovery of royalties; or
- (c) otherwise perform any of the functions of a collective management organisation according to the provisions of the Act or these regulations:

Provided that, without prejudice to the provisions of sub-regulation (3), nothing in this sub-regulation shall affect the right of authors and other owners of copyright or neighbouring rights to appoint a direct legal representative to manage or administer their economic rights:

Provided further that said legal representative only collects fees on behalf of his client and passes said fees directly to his clients and not in the form of a redistribution scheme as normally operated by collective management organisations.

(3) Companies, business concerns or other organisations which perform the functions of collective management organisations

according to the provisions of the Act and these regulations, shall be considered collective management organisations for the purposes of the Act and these regulations and shall be subject to the relevant provisions thereof.

**12.** (1) A collective management organisation shall ensure that a general assembly of members shall be convened at least once a year.

General assembly  
of members of the  
collective  
management  
organisation

(2) The general assembly of members shall decide on any amendments to the statute and to the membership terms of the collective management organisation, where those terms are not regulated by the statute.

(3) The general assembly of members shall decide on the appointment or dismissal of the directors, review their general performance and approve their remuneration and other benefits such as monetary and non-monetary benefits, pension awards and entitlements, rights to other awards and rights to severance pay:

Provided that, in a collective management organisation with a dual board system, the general assembly of members shall not decide on the appointment or dismissal of members of the management board or approve their remuneration and other benefits where the power to take such decisions is delegated to the supervisory board.

(4) In accordance with the provisions laid down in Chapter 2 of Title II, the general assembly of members shall decide at least on the following issues:

- (a) the general policy on the distribution of amounts due to rightholders;
- (b) the general policy on the use of non-distributable amounts;
- (c) the general investment policy with regard to rights revenue and to any income arising from the investment of rights revenue;
- (d) the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;
- (e) the use of non-distributable amounts;
- (f) the risk management policy;
- (g) the approval of any acquisition, sale or hypothecation of immovable property;
- (h) the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;
- (i) the approval of taking out loans, granting loans or providing security for loans.

(5) The general assembly of members may delegate the powers listed in sub-regulation (4)(f), (g), (h) and (i), by a resolution or by a provision in the statute, to the body exercising the supervisory

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function.

(6) The general assembly of members shall control the activities of the collective management organisation by, at least, deciding on the appointment and removal of the auditor and approving the annual transparency report referred to in regulation 31:

Provided that any alternative systems or modalities for the appointment and removal of the auditor, shall ensure the independence of the auditor from the persons who manage the business of the collective management organisation.

(7) All members of the collective management organisation shall have the right to participate in, and the right to vote at, the general assembly of members.

(8) (a) Every member of a collective management organisation shall have the right to appoint any other person or entity as a proxy holder to participate in, and vote at, the general assembly of members on his behalf, provided that such appointment does not result in a conflict of interest which might occur, for example, where the appointing member and the proxy holder belong to different categories of rightholders within the collective management organisation.

(b) Each proxy shall be valid for a single general assembly of members. The proxy holder shall enjoy the same rights in the general assembly of members as those to which the appointing member would be entitled. The proxy holder shall cast votes in accordance with the instructions issued by the appointing member.

(9) Where a collective management organisation, by reason of its legal form, does not have a general assembly of members, the powers of that assembly are to be exercised by the body exercising the supervisory function. The rules laid down in sub-regulations (1) to (4) and (6) shall apply *mutatis mutandis* to such body exercising the supervisory function.

Supervisory  
function.

**13.** (1) A collective management organisation shall have in place a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation.

(2) The body exercising the supervisory function shall be composed of the different categories of the members of the collective management organisation in a fair and balanced manner.

(3) Each person exercising the supervisory function shall make an annual individual statement on conflicts of interest, containing the information referred to in regulation 14(2)(b) to the general assembly of members.

(4) The body exercising the supervisory function shall meet regularly and shall have at least the following powers:

- (a) to exercise the powers delegated to it by the general assembly of members, including under regulation 12(3) and (5);
- (b) to monitor the activities and the performance of the duties of the persons referred to in regulation 10, including the implementation of the decisions of the general assembly of members and, in particular, of the general policies listed in regulation 12(4)(a) to (d).

(5) The body exercising the supervisory function shall report on the exercise of its powers to the general assembly of members at least once a year.

**14.** (1) A collective management organisation shall take all necessary measures so that the persons who manage its business do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

Obligations of the persons who manage the business of the collective management organisation.

- (2) (a) A collective management organisation shall put in place and apply procedures to avoid conflicts of interest, and where such conflicts cannot be avoided, to identify, manage, monitor and disclose actual or potential conflicts of interest in such a way as to prevent them from adversely affecting the collective interests of the rightholders whom the organisation represents.
- (b) The procedures referred to in the paragraph (a) shall include an annual individual statement by each of the persons referred to in sub-regulation (1) to the general assembly of members, containing the following information:
  - (i) any interests in the collective management organisation;
  - (ii) any remuneration received in the preceding financial year from the collective management organisation, including in the form of pension schemes, benefits in kind and other types of benefits;
  - (iii) any amounts received in the preceding financial year as a rightholder from the collective management organisation;
  - (iv) a declaration concerning any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations owed to the collective management organisation and any duty owed to any other natural or legal person.

Chapter 2

Management of Rights Revenue

**15.** (1) Collective management organisations shall comply

Collection and use of rights revenue.

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with the rules laid down in sub-regulations (2) to (5).

(2) A collective management organisation shall be diligent in the collection and management of rights revenue.

(3) A collective management organisation shall keep separate in its accounts:

- (a) rights revenue and any income arising from the investment of rights revenue; and
- (b) any own assets it may have and income arising from such assets, from management fees or from other activities.

(4) A collective management organisation shall not be permitted to use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rightholders, except where it is allowed to deduct or offset its management fees in compliance with a decision taken in accordance with paragraph of regulation 12(4)(d) or to use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with regulation 12(4).

(5) Where a collective management organisation invests rights revenue or any income arising from the investment of rights revenue, it shall do so in the best interests of the rightholders whose rights it represents, in accordance with the general investment and risk management policy referred to in regulation 12(4)(c) and (f) and having regard to the following rules:

- (a) where there is any potential conflict of interest, the collective management organisation shall ensure that the investment is made in the sole interest of those rightholders;
- (b) the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- (c) the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.

Deductions.

**16.** (1) Where a rightholder authorises a collective management organisation to manage his rights, the collective management organisation is required to provide the rightholder with information on management fees and other deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his consent to its managing his rights.

(2) Deductions shall be reasonable in relation to the services provided by the collective management organisation to rightholders, including, where appropriate, the services referred to in sub-regulation (4), and shall be established on the basis of objective criteria.

- (3) (a) Management fees shall not exceed the justified and documented costs incurred by the collective management organisation in managing copyright and related rights.
- (b) Moreover, the requirements applicable to the use and the transparency of the use of amounts deducted or offset in respect of management fees shall also apply to any other deductions made in order to cover the costs of managing copyright and related rights.

(4) Where a collective management organisation provides social, cultural or educational services funded through deductions from rights revenue or from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria, in particular as regards access to, and the extent of, those services.

17. (1) Without prejudice to regulation 19(3) and regulation 35, a collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to rightholders in accordance with the general policy on distribution referred to in regulation 12(4)(a).

Distribution of  
amounts to  
rightholders.

(2) Collective management organisations or their members who are entities representing rightholders shall distribute and pay those amounts to rightholders as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation or, where applicable, its members from meeting that deadline.

(3) Where the amounts due to rightholders cannot be distributed within the deadline set in sub-regulation (2) because the relevant rightholders cannot be identified or located and the exception to that deadline does not apply, those amounts shall be kept separate in the accounts of the collective management organisation.

- (4) (a) The collective management organisation shall take all necessary measures, consistent with sub-regulations (1) and (2), to identify and locate the rightholders. In particular, at the latest three months after the expiry of the deadline set in sub-regulation (2), the collective management organisation shall make available information on works and other subject-matter for which one or more rightholders have not been identified or located to:
- (i) the rightholders that it represents or the entities representing rightholders, where such entities are members of the collective management organisation; and

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- (ii) all collective management organisations with which it has concluded representation agreements.
- (b) The information referred to in the paragraph (a) shall include, where available, the following:
  - (i) the title of the work or other subject-matter;
  - (ii) the name of the rightholder;
  - (iii) the name of the relevant publisher or producer; and
  - (iv) any other relevant information available which could assist in identifying the rightholder.
- (c) The collective management organisation shall also verify the records referred to in regulation 6(d) and other readily available records. If the above-mentioned measures fail to produce results, the collective management organisation shall make that information available to the public at the latest one year after the expiry of the three-month period.

(5) Where the amounts due to rightholders cannot be distributed after three years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collective management organisation has taken all necessary measures to identify and locate the rightholders referred to in sub-regulation (4), those amounts shall be deemed non-distributable.

(6) The general assembly of members of a collective management organisation shall decide on the use of the non-distributable amounts in accordance with regulation 12(4)(b), without prejudice to the right of rightholders to claim such amounts from the collective management organisation in accordance with the Civil Code on the statute of limitations of claims.

(7) Collective management organisations may limit or determine the permitted uses of non-distributable amounts, *inter alia*, by ensuring that such amounts are used in a separate and independent way in order to fund social, cultural and educational activities for the benefit of rightholders.

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Chapter 3

Management of rights on behalf of other collective management organisations

Rights managed under representation agreements.

**18.** A collective management organisation shall not discriminate against any rightholder whose rights it manages under a representation agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of amounts due to rightholders.

Deductions and payments in representation agreements.

**19.** (1) A collective management organisation shall not make deductions, other than in respect of management fees, from the rights revenue derived from the rights it manages on the basis of a representation agreement, or from any income arising from the



investment of that rights revenue, unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.

(2) The collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to other collective management organisations.

(3) The collective management organisation shall carry out such distribution and payments to the other collective management organisation as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation from meeting that deadline.

(4) The other collective management organisation, or, where it has as members entities representing rightholders, those members, shall distribute and pay the amounts due to rightholders as soon as possible but no later than six months from receipt of those amounts, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation or, where applicable, its members from meeting that deadline.

#### Chapter 4

##### Relations with users

**20.** (1) Collective management organisations and users shall conduct negotiations for the licensing of rights in good faith. Collective management organisations and users shall provide each other with all necessary information. Licensing.

(2) Licensing terms shall be based on objective and non-discriminatory criteria. When licensing rights, collective management organisations shall not be required to use, as a precedent for other online services, licensing terms agreed with a user where the user is providing a new type of online service which has been available to the public in the European Union for less than three years.

(3) Rightholders shall receive appropriate remuneration for the use of their rights. Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade, taking into account the nature and scope of the use of the work and other subject-matter, as well as in relation to the economic value of the service provided by the collective management organisation. Collective management organisations shall inform the user concerned of the criteria used for the setting of those tariffs.

(4) Collective management organisations shall reply without undue delay to requests from users, indicating, inter alia, the information needed in order for the collective management

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organisation to offer a licence.

(5) Upon receipt of all relevant information, the collective management organisation shall, without undue delay, either offer a licence or provide the user with a reasoned statement explaining why it does not intend to license a particular service.

(6) A collective management organisation shall allow users to communicate with it by electronic means, including, where appropriate, for the purpose of reporting on the use of the licence.

Information on  
collective  
management  
organisation.

**21.** (1) The authors and other owners of copyright and of neighbouring rights whose rights are administered shall have the right to obtain full and detailed information about all the activities of the collective management organisation that concern the exercise of their rights.

(2) Any collective management organisation shall answer within a reasonable time all reasonable requests from the public for information about -

- (a) its repertoire of works, performer's performances or sound recordings;
- (b) its system of collection and distribution of fees and equitable remuneration; and
- (c) its tariff of all royalties to be collected by the collective management organisation that are in current use.

(3) A request for information made in terms of sub-regulations (1) and (2) shall be made either to the collective management organisation directly or together with the payment of the prescribed fee to the competent authority falling within the Ministry responsible for intellectual property. The competent authority will inform the Board of the request. The Board shall consider the request and if found reasonable in terms of sub-regulation (2), the Board shall:

- (a) provide access to the information required if this has already been made available to the Board by the collective management organisation; or
- (b) request such information from the collective management organisation and forward the information obtained to the person requesting it.

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(4) The competent authority shall cooperate with the designated entity in accordance with article 10(3) of the Services (Internal Market) Act to ensure that general information on the requirements applicable in other Member States relating to access to, and exercise of collective management organisation and the means or redress available in the case of a dispute concerning a recipient of the services of a collective management organisation, is easily accessible to providers and recipients.

National treatment.

**22.** Authors and other owners of copyright and of neighbouring rights who or which are not nationals of, or have their habitual

residence or their headquarters outside Malta and whose rights are administered by a collective management organisation in Malta, shall enjoy, in respect of the administration of their rights, the same treatment as those authors and other owners of copyright and of neighbouring rights who or which are members of, or are otherwise represented by, the collective management organisation and who or which are nationals of, or have their habitual residence or their headquarters in, Malta.

**23.** (1) Any collective management organisation shall immediately furnish the Board with a copy of: Duty to provide documents.

- (a) any amendment to its statutes or regulations mentioned in regulation 8(2);
- (b) any new or additional bilateral or multilateral contract concerning the administration of rights of foreign authors and other foreign owners of copyright and of neighbouring rights and any amendments thereto;
- (c) any new or additional contract with another local collective management organisation;
- (d) the yearly balance sheet, annual report and auditor's report concerning the operation of the collective management organisation.

(2) Any collective management organisation shall immediately inform the Board of any change concerning the physical persons who may lawfully represent it.

(3) Upon the request of the Board, a collective management organisation shall furnish any further information that is necessary to determine whether or not the operation of the collective management organisation conforms to the statutes of the organisation and to the provisions of the Act and these regulations and whether or not the appropriate fulfilment of the functions of the collective management organisation is ensured. In requesting such information the Board shall fix a reasonable time limit as it deems appropriate for the collective management organisation to comply with its request.

**24.** The Board shall revoke the authorisation of companies, business concerns or other organisations to act as a collective management organisation if any ground for which the approval of the collective management organisation would have been denied as specified in regulation 9(3) and (4) arises, unless the circumstances giving rise to such grounds are remedied within a reasonable period fixed by the Board, or, if, despite a warning by the Board, the collective management organisation repeatedly violates its statutes, its regulations mentioned in regulation 8(2) or the provisions of the Act or of these regulations. Revocation of authorisation.

**25.** (1) Users shall provide a collective management organisation, within an agreed or pre-established time and in an agreed or pre-established format, with such relevant information at their disposal on the use of the rights represented by the collective User's obligations.

management organisation as is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightholders. When deciding on the format for the provision of such information, collective management organisations and users shall take into account, as far as possible, voluntary industry standards.

(2) Users who carry out acts authorised by a collective management organisation or acts for which, although authorisation is not needed, equitable remuneration is to be paid to a collective management organisation, shall:

- (a) facilitate the monitoring, by the representatives of the collective management organisation, of the acts authorised or for which equitable remuneration is to be paid;
- (b) if required, give the collective management organisation all information available to them concerning the acts performed in respect of the works concerned.

## Chapter 5

### Transparency and Reporting

Information provided to rightholders on the management of their rights.

**26.** (1) Without prejudice to sub-regulation (2) of this regulation and regulations 27 and 35(2), a collective management organisation shall make available, not less than once a year, to each rightholder to whom it has attributed rights revenue or made payments in the period to which the information relates, at least the following information:

- (a) any contact details which the rightholder has authorised the collective management organisation to use in order to identify and locate the rightholder;
- (b) the rights revenue attributed to the rightholder;
- (c) the amounts paid by the collective management organisation to the rightholder per category of rights managed and per type of use;
- (d) the period during which the use took place for which amounts were attributed and paid to the rightholder, unless objective reasons relating to reporting by users prevent the collective management organisation from providing this information;
- (e) deductions made in respect of management fees;
- (f) deductions made for any purpose other than in respect of management fees, including those that may be required by national law for the provision of any social, cultural or educational services;
- (g) any rights revenue attributed to the rightholder which is outstanding for any period.

(2) Where a collective management organisation attributes rights revenue and has as members entities which are responsible for the distribution of rights revenue to rightholders, the collective

management organisation shall provide the information listed in sub-regulation (1) to those entities, provided that they do not have that information in their possession. The entities shall make at least the information listed in paragraph 1 available, not less than once a year, to each rightholder to whom they have attributed rights revenue or made payments in the period to which the information relates.

**27.** A collective management organisation shall make at least the following information available, not less than once a year and by electronic means, to collective management organisations on whose behalf it manages rights under a representation agreement, for the period to which the information relates:

Information provided to other collective management organisations on the management of rights under representation agreements.

- (a) the rights revenue attributed, the amounts paid by the collective management organisation per category of rights managed, and per type of use, for the rights it manages under the representation agreement, and any rights revenue attributed which is outstanding for any period;
- (b) deductions made in respect of management fees;
- (c) deductions made for any purpose other than in respect of management fees as referred to in regulation 19;
- (d) information on any licences granted or refused with regard to works and other subject-matter covered by the representation agreement;
- (e) resolutions adopted by the general assembly of members in so far as those resolutions are relevant to the management of the rights under the representation agreement.

**28.** Without prejudice to the provisions of regulation 32, in response to a duly justified request, a collective management organisation shall make at least the following information available by electronic means and without undue delay to any collective management organisation on whose behalf it manages rights under a representation agreement or to any rightholder or to any user:

Information provided to rightholders, other collective management organisations and users on request.

- (a) the works or other subject-matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or
- (b) where, due to the scope of activity of the collective management organisation, such works or other subject-matter cannot be determined, the types of works or of other subject-matter it represents, the rights it manages and the territories covered.

**29.** (1) A collective management organisation shall make public at least the following information:

Disclosure of information to the public.

- (a) its statute;
- (b) its membership terms and the terms of termination of authorisation to manage rights, if these are not

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included in the statute;

- (c) standard licensing contracts and standard applicable tariffs, including discounts;
- (d) the list of the persons referred to in regulation 14;
- (e) its general policy on distribution of amounts due to rightholders;
- (f) its general policy on management fees;
- (g) its general policy on deductions, other than in respect of management fees, from rights revenue and from any income arising from the investment of rights revenue, including deductions for the purposes of social, cultural and educational services;
- (h) a list of the representation agreements it has entered into, and the names of the collective management organisations with which those representation agreements have been concluded;
- (i) the general policy on the use of non-distributable amounts;
- (j) the complaint handling and dispute resolution procedures available in accordance with regulations 40, 41 and 42.

(2) The collective management organisation shall publish, and keep up to date, on its public website the information referred to in sub-regulation (1).

Annual  
transparency  
report.

**30.(1)(a)** A collective management organisation, irrespective of its legal form under national law, shall draw up and make public an annual transparency report, including the special report referred to in sub-regulation (3), for each financial year no later than eight months following the end of that financial year.

(b) The collective management organisation shall publish on its website the annual transparency report, which shall remain available to the public on that website for at least five years.

(2) The annual transparency report shall contain at least the information set out in the First Schedule.

(3) A special report shall address the use of the amounts deducted for the purposes of social, cultural and educational services and shall contain at least the information set out in paragraph 3 of the First Schedule.

(4) (a) The accounting information included in the annual transparency report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council.

(b) The audit report, including any qualifications thereto,

shall be reproduced in full in the annual transparency report.

- (c) For the purposes of this sub-regulation, accounting information shall comprise the financial statements referred to in paragraph 1(a) of the First Schedule and any financial information referred to in paragraphs 1(g) and (h) and 2 of the First Schedule.

### Title III

#### Multi-Territorial Licensing of Online Rights in Musical Works by Collective Management Organisations

**31.** (1) A collective management organisation, which is established in Malta, which grants multi-territorial licences for online rights in musical works, shall have sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of such licences, including for the purposes of identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.

Capacity to process multi-territorial licences.

(2) For the purposes of sub-regulation (1), a collective management organisation shall comply, at least, with the following conditions:

- (a) to have the ability to identify accurately the musical works, wholly or in part, which the collective management organisation is authorised to represent;
- (b) to have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding rightholders for each musical work or share therein which the collective management organisation is authorised to represent;
- (c) to make use of unique identifiers in order to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or European Union level;
- (d) to make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

**32.** (1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall provide to online service providers, to rightholders whose rights it represents and to other collective management organisations, by electronic means, in response to a duly justified request, up-to-date information allowing the identification of the online music repertoire it represents. This shall include:

Transparency of multi-territorial repertoire information.

- (a) the musical works represented;

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- (b) the rights represented wholly or in part; and
- (c) the territories covered.

(2) A collective management organisation may take reasonable measures, where necessary, to protect the accuracy and integrity of the data, to control their reuse and to protect commercially sensitive information.

Accuracy of multi-territorial repertoire information.

**33.** (1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall have in place arrangements to enable rightholders, other collective management organisations and online service providers to request a correction of the data referred to in the list of conditions under regulation 31(2) or the information provided under regulation 32, where such rightholders, collective management organisations and online service providers, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the collective management organisation shall ensure that the data or the information are corrected without undue delay.

(2) A collective management organisation shall provide rightholders whose musical works are included in its own music repertoire and rightholders who have entrusted the management of their online rights in musical works to it in accordance with regulation 38 with the means of submitting to it in electronic form information concerning their musical works, their rights in those works and the territories in respect of which the rightholders authorise the organisation. When doing so, a collective management organisation and the rightholders shall take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data developed at international or Union level, allowing rightholders to specify the musical work, wholly or in part, the online rights, wholly or in part, and the territories in respect of which they authorise the organisation.

(3) Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under regulations 36 and 37, the mandated collective management organisation shall also apply sub-regulation (2) of this regulation with respect to the rightholders whose musical works are included in the repertoire of the mandating collective management organisation, unless the collective management organisations agree otherwise.

Accurate and timely reporting and invoicing.

**34.** (1) A collective management organisation shall monitor the use of online rights in musical works which it represents, wholly or in part, by online service providers to which it has granted a multi-territorial licence for those rights.

(2) A collective management organisation shall offer online service providers the possibility of reporting by electronic means the actual use of online rights in musical works and online service



providers shall accurately report the actual use of those works. A collective management organisation shall offer the use of at least one method of reporting which takes into account voluntary industry standards or practices developed at international or European Union level for the electronic exchange of such data. A collective management organisation may refuse to accept reporting by the online service provider in a proprietary format if the organisation allows for reporting using an industry standard for the electronic exchange of data.

(3) A collective management organisation shall invoice the online service provider by electronic means. A collective management organisation shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or European Union level. The invoice shall identify the works and rights which are licensed, wholly or in part, on the basis of the data referred to in the list of conditions under regulation 31(2), and the corresponding actual uses, to the extent that this is possible on the basis of the information provided by the online service provider and the format used to provide that information. The online service provider may not refuse to accept the invoice because of its format if the collective management organisation is using an industry standard.

(4) A collective management organisation shall invoice the online service provider accurately and without delay after the actual use of the online rights in that musical work is reported, except where this is not possible for reasons attributable to the online service provider.

(5) A collective management organisation shall have in place adequate arrangements enabling the online service provider to challenge the accuracy of the invoice, including when the online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

**35.** (1) Without prejudice to the provisions of sub-regulation (3), a collective management organisation which grants multi-territorial licences for online rights in musical works shall distribute amounts due to rightholders accruing from such licences accurately and without delay after the actual use of the work is reported, except where this is not possible for reasons attributable to the online service provider.

Accurate and timely payment to rightholders.

(2) Without prejudice to the provisions of sub-regulation (3), a collective management organisation shall provide at least the following information to rightholders together with each payment it makes under sub-regulation (1):

- (a) the period during which the uses took place for which amounts are due to rightholders and the territories in which the uses took place;
- (b) the amounts collected, deductions made and amounts distributed by the collective management organisation for each online right in any musical work which

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rightholders have authorised the collective management organisation, wholly or in part, to represent;

- (c) the amounts collected for rightholders, deductions made, and amounts distributed by the collective management organisation in respect of each online service provider.

(3) Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under regulations 36 and 37, the mandated collective management organisation shall distribute the amounts referred to in sub-regulation (1) accurately and without delay, and shall provide the information referred to in sub-regulation (2) to the mandating collective management organisation. The mandating collective management organisation shall be responsible for the subsequent distribution of such amounts and the provision of such information to rightholders, unless the collective management organisations agree otherwise.

Agreements between collective management organisations for multi-territorial licensing.

**36.** (1) Any representation agreement between collective management organisations whereby a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works in its own music repertoire shall be of a non-exclusive nature. The mandated collective management organisation shall manage those online rights on a non-discriminatory basis.

(2) The mandating collective management organisation shall inform its members of the main terms of the agreement, including its duration and the costs of the services provided by the mandated collective management organisation.

(3) The mandated collective management organisation shall inform the mandating collective management organisation of the main terms according to which the latter's online rights are to be licensed, including the nature of the exploitation, all provisions which relate to or affect the licence fee, the duration of the licence, the accounting periods and the territories covered.

Obligation to represent another collective management organisation for multi-territorial licensing.

**37.** (1) Where a collective management organisation which does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire requests another collective management organisation to enter into a representation agreement to represent those rights, the requested collective management organisation shall be required to agree to such a request if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations.

(2) The requested collective management organisation shall respond to the requesting collective management organisation in writing and without undue delay.

(3) Without prejudice to sub-regulations (5) and (6), the requested collective management organisation shall manage the represented repertoire of the requesting collective management organisation on the same conditions as those which it applies to the management of its own repertoire.

(4) The requested collective management organisation shall include the represented repertoire of the requesting collective management organisation in all offers it addresses to online service providers.

(5) The management fee for the service provided by the requested collective management organisation to the requesting organisation shall not exceed the costs reasonably incurred by the requested collective management organisation.

(6) The requesting collective management organisation shall make available to the requested collective management organisation information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Title, the requested collective management organisation shall be entitled to charge for the costs reasonably incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

**38.** Where a collective management organisation does not grant or offer to grant multi-territorial licences for online rights in musical works or does not allow another collective management organisation to represent those rights for such purpose by 10 April 2017, rightholders who have authorised that collective management organisation to represent their online rights in musical works can withdraw from that collective management organisation the online rights in musical works for the purposes of multi-territorial licensing in respect of all territories without having to withdraw the online rights in musical works for the purposes of mono-territorial licensing, so as to grant multi-territorial licences for their online rights in musical works themselves or through any other party they authorise or through any collective management organisation complying with the requirements under this Title.

Access to multi-territorial licensing.

**39.** The requirements under this Title shall not apply to collective management organisations when they grant, on the basis of the voluntary aggregation of the required rights, in compliance with the competition rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union, 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 which is ancillary to the initial broadcast of its radio or television programme.

Derogation for online music rights required for radio and television programmes.

Title IV

Enforcement Measures

Complaints  
procedures.

**40.** (1) Collective management organisations shall make available to their members, and to collective management organisations on whose behalf they manage rights under a representation agreement, effective and timely procedures for dealing with complaints, particularly in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.

(2) Collective management organisations shall respond in writing to complaints by members or by collective management organisations on whose behalf they manage rights under a representation agreement. Where the collective management organisation rejects a complaint, it shall give reasons.

Alternative dispute  
resolution  
procedures.

**41.** (1) Disputes between collective management organisations, members of collective management organisations, rightholders or users may be submitted to either mediation or arbitration, as agreed to by the parties to the dispute.

(2) For the purposes of Title III, the following disputes relating to a collective management organisation established in Malta which grants or offers to grant multi-territorial licences for online rights in musical works can be submitted to either mediation or arbitration, as agreed to by the parties to the dispute:

- (a) disputes with an actual or potential online service provider regarding the application of regulations 20, 32, 33 and 34;
- (b) disputes with one or more rightholders regarding the application of regulations 32, 33, 34, 35, 36, 37 and 38;
- (c) disputes with another collective management organisation regarding the application of regulations 32, 33, 34, 35, 36 and 37.

Dispute resolution.

**42.** (1) Disputes between collective management organisations and users concerning, in particular, existing and proposed licensing conditions or a breach of contract shall be submitted to the First Hall, Civil Court.

(2) Regulations 40 and 41 and sub-regulation (1) of this regulation shall be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.

Compliance.

**43.** (1) Compliance by collective management organisations established in Malta with the provisions of national law shall be monitored by the Copyright Board.

(2) Members of a collective management organisation, rightholders, users, collective management organisations and other interested parties shall notify the Copyright Board of activities or

circumstances which, in their opinion, constitute a breach of the provisions herein.

(3) A notification as per sub-regulation (2) shall clearly outline the activities or circumstances being claimed as being in breach of the provisions of these regulations. As soon as possible upon receiving such a notification, the Copyright Board shall -

- (a) forward a copy of this notification to the party allegedly carrying out a breach of the provisions;
- (b) inform the party of the penalty of being found in breach of such provisions;
- (c) request the party receiving this notification to file its reaction within sixty days from the date of service of the notification.

(4) The reply to the Copyright Board shall include:

- (a) a clear indication of whether or not the party who is allegedly in breach of these provisions is in agreement with the notification;
- (b) if the party allegedly in breach of the provisions of this legislation is not in agreement with the notification, detailed grounds upon which the party is basing its disagreement.

(5) Non-observance of the deadline given by the Copyright Board or the above requirements shall render the reply inadmissible. As considered appropriate and where a breach is considered to have taken place, the Copyright Board may serve a compliance notice on that collective management organisation.

(6) A compliance notice -

- (a) shall state that the Board considers that the collective management organisation has not complied with a requirement imposed by the Act or its regulations;
- (b) shall specify the provision imposing the requirement and the nature of the non-compliance;
- (c) may request the collective management organisation, where the non-compliance is continuing, to end it within a specific period of time;
- (d) for the purpose of ensuring compliance by the collective management organisation with the requirement, may request the collective management organisation to do, or refrain from doing, anything specified in the notice;
- (e) may request the collective management organisation to give to the Board a written undertaking that non-compliance with the requirement will not be repeated; and
- (f) shall inform the collective management organisation that failing to comply may result in an revocation notice as per sub-regulation (7) or a penalty as per sub-

regulation (8).

(7) If the Board is satisfied that a collective management organisation has failed to comply with a request included in a compliance notice under sub-regulation (6)(c) or (d), or with an undertaking given in compliance with a request so included under sub-regulation (6)(e), the Board may serve an revocation notice on the collective management organisation or else impose a penalty.

(8) In deciding whether to serve a revocation notice or penalty notice the Board must have regard to the nature of the failure of compliance.

(9) A penalty may comprise of either -

- (a) a sum not exceeding five thousand euro (€5,000); or
- (b) a sum not exceeding five hundred euro (€500) together with a sum not exceeding fifty euro (€50) for each day that the collective management organisation continues to fail to comply with its obligations under these regulations, not exceeding in total five thousand euro (€5,000).

(10) A revocation notice or penalty notice shall be in writing and shall -

- (a) state the grounds on which the Board has deemed that the collective management organisation has failed to comply with the request or undertaking referred to in the compliance notice;
- (b) inform the collective management organisation that the board will be revoking the authorisation to act as a collective management organisation or that the board will be imposing a penalty within thirty working days from the date of service of the notice unless an appeal is brought as per sub-regulation (9).

(11) The collective management organisation may, within thirty days from the date of service of the revocation notice or penalty notice, appeal against the revocation or penalty to the Court of Appeal.

(12) If the collective management organisation brings an appeal which is unsuccessful, when the appeal is finally determined, the revocation shall take effect or the penalty shall be imposed as the case may be.

Exchange of  
information  
between competent  
authorities.

**44.** (1) A request for information received from a competent authority of another Member State, designated for that purpose, concerning matters relevant to the application of these regulations, in particular with regard to the activities of collective management organisations established in Malta, is responded to without undue delay by the Copyright Board, provided that the request is duly justified.

(2) Where the Copyright Board considers that a collective management organisation established in another Member State but

acting in Malta may not be complying with the provisions of the national law of the Member State in which that collective management organisation is established, it may transmit all relevant information to the competent authority of the Member State in which the collective management organisation is established, accompanied where appropriate by a request to that authority that it take appropriate action within its competence. The requested competent authority shall provide a reasoned reply within three months.

(3) Matters as referred to in sub-regulation (2) may also be referred by the Copyright Board making such a request to the expert group established in accordance with Article 41 of Directive 2014/26/EU.

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First Schedule

1. Information to be provided in the annual transparency report referred to in Regulation 30(2):

- (a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash-flow statement;
- (b) a report on the activities in the financial year;
- (c) information on refusals to grant a licence pursuant to regulation 20(3);
- (d) a description of the legal and governance structure of the collective management organisation;
- (e) information on any entities directly or indirectly owned or controlled, wholly or in part, by the collective management organisation;
- (f) information on the total amount of remuneration paid to the persons referred in regulations 13(3) and 14 in the previous year, and on other benefits granted to them;
- (g) the financial information referred to in paragraph 2 of this Schedule;
- (h) a special report on the use of any amounts deducted for the purposes of social, cultural and educational services, containing the information referred to in paragraph 3 of this Schedule.

2. Financial information to be provided in the annual transparency report:

- (a) financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance), including information on the income arising from the investment of rights revenue and the use of such income (whether

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- it is distributed to rightholders or other collective management organisations, or otherwise used);
- (b) financial information on the cost of rights management and other services provided by the collective management organisation to rightholders, with a comprehensive description of at least the following items:
- (i) all operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;
  - (ii) operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs, only with regard to the management of rights, including management fees deducted from or offset against rights revenue or any income arising from the investment of rights revenue in accordance with regulations 15(4) and 16(1), (2) and (3);
  - (iii) operating and financial costs with regard to services other than the management of rights, but including social, cultural and educational services;
  - (iv) resources used to cover costs;
  - (v) deductions made from rights revenues, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs relating to the management of rights or to social, cultural or educational services;
  - (vi) the percentages that the cost of the rights management and other services provided by the collective management organisation to rightholders represents compared to the rights revenue in the relevant financial year, per category of rights managed, and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;
- (c) financial information on amounts due to rightholders, with a comprehensive description of at least the following items:
- (i) the total amount attributed to rightholders, with a breakdown per category of rights managed and type of use;



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- (ii) the total amount paid to rightholders, with a breakdown per category of rights managed and type of use;
  - (iii) the frequency of payments, with a breakdown per category of rights managed and per type of use;
  - (iv) the total amount collected but not yet attributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;
  - (v) the total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;
  - (vi) where a collective management organisation has not carried out the distribution and payments within the deadline set in regulation 17(1), the reasons for the delay;
  - (vii) the total non-distributable amounts, along with an explanation of the use to which those amounts have been put;
- (d) information on relationships with other collective management organisations, with a description of at least the following items:
- (i) amounts received from other collective management organisations and amounts paid to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;
  - (ii) management fees and other deductions from the rights revenue due to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;
  - (iii) management fees and other deductions from the amounts paid by other collective management organisations, with a breakdown per category of rights and per organisation;
  - (iv) amounts distributed directly to rightholders originating from other collective management organisations, with a breakdown per category of rights and per organisation.
3. Information to be provided in the special report referred to in regulation 30(3):
- (a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown per type of purpose and, for each type of purpose, with a breakdown per category of

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- rights managed and per type of use;
- (b) an explanation of the use of those amounts, with a breakdown per type of purpose including the costs of managing amounts deducted to fund social, cultural and educational services and of the separate amounts used for social, cultural and educational services.

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Second Schedule

Schedule of Fees

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| i. Fee for a request for approval of a collective management organisation (Regulation 8) | €400 |
| ii. Fee for submission of objection to the request for the tariffs (Regulation 9(1)(d))  | €100 |
| iii. Fee for submission of missing documentation (Regulation 9(1)(c))                    | €50  |
| iv. Fee for submission of a new set of tariffs (Regulation 10)                           | €200 |
| v. Fee for request for information (Regulation 21(3))                                    | €50  |