

Guidance Notes on European Union (Collective Rights Management Regulations) (Directive 2016/26/EU) Regulations 2016

S. I. No. 156 of 2016

Purpose of Regulations

The Minister for Jobs, Enterprise and Innovation signed into law statutory instrument number 156 of 2016, which is the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016¹. These Regulations transpose into Irish law the EU Directive on the collective management of copyright and related rights, and multi-territorial licensing of rights in musical works for online use in the internal market. The Regulations came into force on 10th April 2016.

The Regulations aim to ensure that rightholders have stronger protection in the management of their rights and envisages a better functioning of collective management organisations as a result of EU-wide standards (through transposition of the Directive by all Member States). The Regulations will also facilitate the multi-territorial licensing by collecting societies of authors' rights in musical works for the provision of online services.

Background to collective rights management

Rightholders entrust their rights to a collecting society² which manages rights on their behalf. They also provide services to rightholders and users which include granting licences to users, administering the rights revenue, payments due to rightholders and enforcing the rights. Collecting societies play a very important role, in particular where negotiations with individual creators would be impractical and entail prohibitive transaction costs. They also play a key role in the protection and promotion of the diversity of cultural expressions by enabling the smaller and less popular repertoires to access the market.

A licence is required from the relevant holder of any copyright or related right where any service is provided which includes the exploitation of the protected work of an author e.g. song or musical composition or other protected subject matter, such as a phonogram or performance. Such services may be provided offline, such as showing a film in a cinema or playing music in a concert hall, but also increasingly online. A licence is required from all the different rightholders (authors, performers, producers). In some sectors, licences are most often granted by individual rightholders (e.g. film producers), in other sectors, the collective management of rights plays a very important role, in particular of authors' rights in musical works. Certain forms of exploitation also rely particularly on collective management e.g. the performers and record producers' remuneration rights for the broadcasting and public performance of phonograms.

As of June 2016, there are more than 250 collecting societies in the EU that manage revenues of around €6 billion annually. The use of rights in the music sector accounts for about 80% of the total

¹ <http://www.irishstatutebook.ie/eli/2016/si/156/made/en/print>

² "Collecting societies" are often also known as "Collective Management Organisations"

revenue collected by collecting societies. The Controller of Patents, Trademarks and Industrial Designs maintains a register of all Licensing Bodies which can operate in Ireland, under the conditions laid out in the Copyright and Related Rights Act 2000 (CRRA). In June 2016, there were ten collecting societies established in Ireland and a further five collecting societies which are established in other European countries are also registered to operate as licensing bodies in Ireland.

Who must comply with the Regulations?

The Regulations impose a number of requirements on collective management organisations (CMOs) as well as some requirements on Rightholders, Members of CMOs and Users. In general, CMOs operating in Ireland already adhere to many of these regulations, but should ensure that their existing terms and conditions and their relationships with members and users are in compliance with the detailed requirements laid out in the Regulations.

These Regulations transpose the EU Directive into Irish law. All other EU Member States must transpose the Directive into national law also. All CMOs that are established within the EU must comply with the Directive. However, it is the Member State in which each CMO is established (i.e. where its headquarters is situated) that dictates which national legislation applies, and the Competent Authority in that Member State that oversees the compliance and sanctions regime.

There are mechanisms to allow for transfer of information and cooperation in relation to complaints between Competent Authorities where CMOs operate in more than one Member State. Hence, a CMO established in Ireland but also operating in France, for example, would generally deal with the Controller of Patents as the Irish Competent Authority. A CMO established in the UK but also operating in Ireland would generally deal with the UK Secretary of State, as the UK competent authority – however the UK CMO would need to continue to comply with the requirements under the Copyright and Related Rights Act 2000 (as amended) (CRRA) for registration as a licensing body in Ireland and so would continue to have an ongoing relationship with the Controller of Patents in that regard.

In legal matters in Ireland, the word “**person**” is defined under Section 18(c) of the Interpretation Act 2005 as including a natural person and a body corporate (whether a corporation aggregate or a corporation sole) as well as an unincorporated body of persons. This use is commonly used across a wide range of legislation in Ireland, including matters related to Company Law and commercial operations in general. This is the meaning that is attributed to “person” throughout the Regulations, i.e. that a “person” may be an individual, a CMO (whether operating as a company or another legal form), or it may mean some other person or group of persons acting together in the context of each individual aspect of the Regulations. This could arise if there is a subsidiary entity established by the CMO which may fall within the remit of these Regulations or any independent management entities which may operate in Ireland.

What are the requirements for CMOs?

Rights of Rightholders

Rightholders whose rights are managed by a CMO have a number of rights afforded to them through these Regulations in relation to the management of their copyrights and related rights, whether they are a Member of the CMO or not. These rights are clearly laid out in the Regulations and are aimed at allowing Rightholders to decide how they want their rights managed, ensuring that they can easily communicate with the CMO, regulating the terms and conditions around distribution of remuneration for the use of their rights, and ensuring transparency in how the CMO deals with rightholders as well as Members.

Terms of membership

The Regulations lay out the requirements that the CMO must put in place to govern their organisation and facilitate its relationship with its Members. It also lays out the areas where the Members have decision-making powers and the areas where the CMO must be transparent in providing information to its Members in relation to its operations. Overall, these are aimed at facilitating a transparent relationship between the CMO and its Members, treating all Members in a fair and non-discriminatory way, ensuring that there are objective reasons for why the CMO deals with issues related to the rights it manages on behalf of the Members and other rightholders, and that those objective reasons are known by those Members and rightholders.

Governance of CMOs

The Regulations lay down clear requirements for CMOs in relation to governance. These are in line with the requirements under the new Companies Act 2014, which recently came into force in Ireland. They are aimed at ensuring good governance for CMOs across Europe in a standardised way. Most of the CMOs operating in Ireland already have good governance practices in place, although there may be a need to change some details of these existing practices slightly to bring the CMOs into line with these new requirements.

General Assembly and Decisions

In line with normal practice amongst CMOs in Ireland, there is now a requirement that each CMO will hold a General Assembly of Members on an annual basis. This is similar to an Annual General Meeting of a Company, in that it provides the Members (rather than shareholders) with information, including financial information, on the operation of the CMO in the previous year and allows the Members the opportunity to make decisions on the future running of the CMO and to elect Board Members. In effect, as both the General Assembly and Annual General Meeting will generally involve similar groups of people in attendance, it is possible for both meetings to be held concurrently to reduce the burdens on CMOs, as long as all the relevant requirements for both meetings are met.

Supervisory Body³

³ The Department of Jobs, Enterprise and Innovation is currently examining the Regulations on this aspect having regard to a potential overlap between these Regulations and the Companies Act 2014.

The Regulations require CMOs established in the EU to have a supervisory body to oversee the persons managing the business and ensure that the CMO is operating in the best interests of the Members and rightholders it represents on an ongoing basis. The Supervisory Body will report to Members of the CMO at the General Assembly on an annual basis to ensure oversight and transparency in its supervision of the operations of the CMO.

Persons Managing the Business

Part of the Regulations are aimed at ensuring good governance, including good financial practices and administrative practices, are upheld by the “persons managing the business” of the CMO, effectively the managers within the CMO. This includes introducing common standards of transparency in their activities, to the Members at the General Assembly and to the public through the publication of the Transparency Report, for all such persons managing the business of CMOs across the EU.

Collection of Rights Revenue and Deductions from that Revenue

The Directive under which these Regulations have been made standardise rules concerning how CMOs across the EU collect, record and safeguard monies for the use of copyrights and related rights. This includes laying out how CMOs account for and manage such monies and the policies that they must follow in deciding on the investment and use of monies collected. CMOs are obliged to act in the best interests of the rightholders whose rights it represents. This includes seeking appropriate remuneration for those rightholders through negotiations with users on rates and the setting of tariffs for the licensing of those rights which reflects the aspects outlined in Regulation 14, including the economic value being licensed for use.

The CMOs are entitled to make deductions for the cost of managing the rights, on the basis of justified and documented costs which are incurred by the CMO. Rightholders and members must be informed about the management fees before those deductions are made. If the CMO funds social, cultural or educational activities as part of its operation, and they are funded by deductions from rights revenue or deductions from income earned through the investment of rights revenue (including from non-distributable income), those activities must be provided on the basis of fair criteria, in particular as regards access to, and the extent of, those activities.

Non-distributable amounts

There are procedures laid out that the CMO must follow to ensure that money it collects for the use of rights is distributed to the owners of those rights. Where a CMO cannot identify the owners of certain rights, they must account for those monies separately and take all practical measures to identify and locate the relevant rightholders. If no rightholder can be identified three years after the end of the financial year in which the monies were collected, the funds may be deemed non-distributable and the CMO may use those monies in accordance with the decisions of the general assembly.

Article 13(5) of the Directive states that such use of the non-distributable amounts is without prejudice to the right of rightholders to claim such amounts from the CMO in accordance with the laws of the Member States on the statute of limitations of claims. In Ireland, the statute of

limitations for civil cases on breach of contract is 6 years, as laid out in the Statute of Limitations Act 1957.

The General Assembly has an obligation to decide on two elements in relation to non-distributable amounts:

- Firstly, it must agree on a general policy on how any non-distributable amounts should be used. This could be a stated intention of the ways in which any such funds could be used.
- Secondly, it must agree on the specific use of any non-distributable amounts. This would involve informing the general assembly of the amount of money which was deemed “non-distributable” in the previous financial year, and obtaining the agreement of the general assembly for its use on specific expenditure (which should be in line with the general policy already in place).

Distribution to Rightholders, Members and other CMOs in a representation Agreement

CMOs in Ireland are generally considered to operate responsibly in relation to distribution, and some already make payments more frequently than is required by the Regulations. However, the overall intention is to ensure that all CMOs across the EU operate to a standard baseline in relation to rightholders (both members and other rightholders on whose behalf they manage rights) and also with other CMOs with which they have representation agreements. This includes both reporting on the use that was made of those rights, and paying the rightholders or the CMO representing those rightholders for such use of those rights in a timely way. Specific timelines are laid out in the Regulations in relation to the different people to whom the CMO is making the distribution (directly to rightholders or to another CMO). The Regulations do not interfere with situations where CMOs already, on a voluntary basis, provide the necessary information and/or make payments on a more frequent basis, and the Department would encourage them to continue to do so.

Management of Rights on behalf of other CMOs

Many CMOs enter into representation agreements with other CMOs in order to promote the use of their members rights across wider territories. Often, these are reciprocal agreements that allow both CMOs to collect within their own territory in respect of each of their repertoires, and distribute the payments to their rightholders. There are some specific additional Regulations to govern these relationships that are aimed at ensuring both CMOs in such agreements have the same measures regarding transparency and communications between themselves as Members and rightholders directly represented by a CMO would have. There are also some measures to allow for longer reporting and payment timelines in this relationship, to take account of the fact that such distributions must go through the administration systems of 2 CMOs once users have reported. However, as with distribution directly to Members and rightholders represented by a CMO, the Regulations do not affect voluntary situations where CMOs that are party to representation agreements already undertake reporting and/or payment of distributions on a more frequent basis than that mandated by the Regulations.

Providing information to others and Complaints to the CMO

There is a range of information specified in the Regulations that CMOs must provide in response to requests made to them and which they must also publish and keep up to date on their websites. This includes information on:

- their statute (which is the same as the “Constitution” under the Companies Act 2014, which was formerly the “Memorandum and Articles of Association”)
- information on membership terms and terms of termination of authorisation to manage rights (if not included in the statute)
- standard licensing contracts and standard applicable tariffs, including discounts
- a list of the
 - persons who manage the business
 - representation agreements it has entered into, and the names of the CMOs with which those representation agreements have been concluded
- the general policies on
 - distribution of amounts to rightholders,
 - management fees
 - deductions other than management fees from rights revenue or income arising from investment of rights revenue, including for social, cultural and educational uses
 - use of non-distributable amounts
- complaint handling and dispute resolution procedures

This information must be freely accessible on the website of the CMO (i.e. in public areas of the website and not contained in, for example, “member only” areas or behind a paywall), and easily located on the website by anyone seeking that information.

Each CMO is required to have an internal process in place to deal with complaints related to these Regulations, from rightholders, members or other CMOs on whose behalf it manages rights. The CMO must respond to such complaints in writing.

Compliance

The Directive requires each Member State to oversee compliance by CMOs established in that Member State. This will be achieved in Ireland by each CMO submitting a Compliance Statement, along with any necessary accompanying evidence to support the declarations made in that Compliance Statement, as part of the documentation provided on an annual basis to the Controller of Patents, Trademarks and Industrial Design. This will take place when the CMOs apply to renew their Registration on the relevant Register of Licensing Bodies. This reduces the administrative burden on both the CMOs and the Controller in Ireland, and it is similar in process to declarations which many corporate bodies already make to regulators, e.g. those that companies make to the Companies Registration Office.

More detailed information on the format of and content to be included in the compliance statement is at Appendix 1.

Interaction with Controller of Patents, Trademarks and Designs

The Controller of Patents, Trademarks and Designs has been designated as the Competent Authority in Ireland for these Regulations. Licensing Bodies already deal with the Controller in relation to their annual Registration as Licensing Bodies and other issues related to the tariffs which they set for users and certain types of disputes between licensing bodies and users. There is no change to that interaction as a result of these Regulations.

Acting as the Competent Authority for the CRM Regulations, the Controller will continue to perform his existing role, and he will also oversee the implementation of these Regulations in Ireland, including monitoring the compliance of CMOs established in Ireland with the requirements in the Regulations. The Controller has not acquired any additional role in dispute resolution as a result of these Regulations.

In addition to his role in relation to the Regulations in Ireland, the Controller will also be the point of contact for persons in Ireland who have concerns about CMOs established in other Member States which are operating in Ireland. He will also input to reports on the implementation of the Regulations to the European Commission's Expert Group established under the Directive.

What are the requirements for Members and Rightholders?

In general, there are a number of requirements on Members and also some requirements on rightholders which are not members of the CMO but whose rights are represented and managed by that CMO.

Members and rightholders and/or their representatives must sign individual agreements with a CMO representing each different type of rights to be represented, in relation to each work or type of works.

Members and rightholders must also keep their contact details etc up to date, in order to facilitate contact from the CMO and to facilitate distribution and payment of royalties etc.

Members and rightholders still retain the right to issue non-commercial licences for their works, even where they have assigned their rights to a CMO to manage. CMOs may set conditions in relation to the granting of such licenses, but the CMO must inform rightholders and members of the conditions applicable to the granting of such licences before obtaining their consent to manage their rights.

Members have the right to attend and vote at the annual meeting of the General Assembly, or to nominate a proxy to do so on their behalf. At the General Assembly, Members must approve the annual transparency report, decide on the appointment of any new Directors and on any new policies or changes to existing policies. Members must approve the appointment of the auditor.

What are the requirements for Users?

Users and CMOs are required to negotiate in good faith when seeking licences or other commercial arrangements in relation to use of rights represented by the CMO. They must provide each side with the necessary information in relation to seeking and offering licences for the use of rights.

The Regulations standardise the time frame within which users are required to report on their use of rights to CMOs, and to make the necessary payment for the use of those rights to the CMOs. This is to allow the CMOs to record that use and make the necessary reports and payments (distribution) to the rightholders in question – either directly or through other CMOs with which they have representation agreements. Such reporting by users to CMOs is now a requirement of the legislation, across all categories of copyrights and related rights.

In relation to reporting, the users must provide the necessary information on their use of rights represented by the CMO within an agreed or pre-established time frame and in an agreed or pre-established format. As far as possible, that reporting should take into account voluntary industry standards that may be agreed.

Multi-territorial licensing of online rights in musical works

The Regulations lay out the procedures that must be followed if any CMO, established in Ireland and representing rights in musical work, wishes to undertake multi-territorial licensing for online rights in musical works. The Regulations also lay down how multi-territorial licensing must operate in Ireland, the time frames within which users must report to CMOs and that CMOs must, in turn, report and distribute to the Members whose rights have been used. These rules are standardised across the EU.

There is also a requirement that, where a CMO established in Ireland does not undertake multi-territorial licensing, they must either facilitate their members through entering representation agreements with other CMOs that offer multi-territorial licensing or, alternatively, allow their members to withdraw their online rights in musical works for the purposes of multi-territorial licensing by 10 April 2017 and assign those rights to another CMO which does provide such licensing. Members may retain their rights with the original CMO for the purposes of mono-territorial licensing.

What can you do if things go wrong?

Complaints procedures

Each CMO is required to operate a complaints system in relation to matters contained in the Regulations for rightholders who are represented by the CMO, members of the CMO and other CMOs which have a representation agreement with that CMO. Each complaint must be responded to in writing by the CMO to which the complaint is made.

Complaints in relation to compliance by CMOs with these Regulations, particularly in relation to non-compliance with requirements of the Regulations by CMOs, can be made to the Controller as the competent authority for these regulations in Ireland.

The Controller can deal directly with complaints about CMOs established in Ireland. If the complaint relates to a CMO established in another EU Member State, the Controller may contact the competent authority in that Member State, and that competent authority is obliged to deal with the complaint. The Controller can also inform the Expert Group, which is to be set up by the European Commission to oversee the implementation of the Directive, of any complaints.

It should be noted that the Controller cannot become involved in contractual negotiations between CMOs and users, members or rightholders or between a CMO and another CMO on whose behalf it manages or proposes to manage rights under a representation agreement.

There is no change to the existing system in relation to disputes regarding the terms of licensing schemes or proposed licensing schemes, which may continue to be referred to the Controller under the relevant provisions of the Copyright and Related Rights Act 2000 and the Copyright and Related Rights (Proceedings before the Controller) Rules 2009.

Complaints against CMOs in the EU which are not established in Ireland

There are some CMOs which are licensed to operate in Ireland but which are established outside of Ireland. In relation to these Regulations, those CMOs are governed by the competent authority in the country in which they are established. Initially, any complaints that such CMOs are not complying with these Regulations should be made directly to the CMO itself, through its own internal complaints procedures. Those internal procedures must be made public by the CMO under these Regulations.

Once a person with a complaint has exhausted the CMO's own internal complaints procedures, if they are not satisfied with the response, they have 2 other options which they may pursue:

1. A person can make a complaint directly to the competent authority of the Member State in which the CMO is established.
2. Alternatively, a person may make the complaint to the Irish competent authority (the Controller), who will, in turn, submit it to the relevant competent authority in the Member State that the CMO is established in. That competent authority must provide a reasoned reply to the Controller within 3 months.

Alternative Dispute Resolution

Disputes under this Regulation may be suitable for resolution by arbitration, an alternative dispute resolution process which is entered into by agreement between the parties to that dispute. The Arbitration Act 2010 sets out the legal basis for arbitration, including bringing the UNCITRAL Model Law into effect in Ireland, and lays out a number of provisions which apply unless otherwise agreed by the parties.

Courts

These Regulations do not limit the ability of a person to bring or defend proceedings to Court.

Entry into force and deadlines for action to be taken

These Regulations came into force on 10th April 2016.

The requirement for transparency reports comes into effect immediately, but the financial reporting aspect is only necessary for the General Assembly meeting which follows the end of the first financial year after the regulations come into effect, i.e. after 10th April 2017. Thus, for year 1, a CMO will need to prepare a transparency report but is not required to include the financial information in this. However, in year 2 and every year thereafter, the transparency report must contain all of the information in the annex, including the financial information.

The requirement for compliance reports comes into effect immediately, where any CMO renewing its registration as a licencing body or applying for registration for the first time to the Controller of Patents, Trademarks and Designs, after 10th April 2016, must include information regarding its current compliance as part of the application process.

If a CMO does not offer multi-territorial licences for online rights in musical works, or does not enters into representation agreements with another CMO which does facilitate such multi-territorial licensing, by 10th April 2017, the members have a right to remove their repertoire from that CMO and place them with another CMO which does facilitate multi-territorial licensing (either directly themselves or through representation agreements). The rightholders/members may continue to assign their rights with the original CMO for mono-territorial licencing if they so wish.

Role of the Controller of Patents, Trade Marks and Designs

Monitoring compliance

In Ireland, a collective management organisation must register with the Controller of Patents, Trademarks and Designs as a licensing body, before it may operate as such a body. As part of these Regulations, a new requirement is being introduced that any CMO which is established in Ireland must include an annual Compliance Statement as part of the annual registration process. That Statement will require each CMO submitting it to confirm that they are in compliance with all aspects of the Regulations that apply to CMOs.

Implement enforcement measures

The Controller shall enforce these Regulations. Where the Controller finds that a CMO is not in compliance with requirements under these Regulations, he shall issue a Warning Notice. Where the CMO does not take the necessary steps outlined in the Notice to rectify the non-compliance, the Controller can move to remove the CMO from the relevant Register of Licensing Bodies (for copyright and related rights, or for performers' property rights). If a CMO is removed from the relevant Register, they may no longer operate as a CMO. If they do continue to act as a CMO, they are liable for prosecution under section 181 of the CRRA and may be liable to a fine or imprisonment if convicted.

Complaints procedure

The Controller, as the Irish Competent Authority, will deal with competent authorities in other Member States in relation to these Regulations and the overall implementation of the Directive across the EU. To do this, the Controller must respond, within three months, to requests from other competent authorities for information or to consider allegations of non-compliance by any CMO which is established in Ireland and operating in that other Member State.

The Controller also has the power to seek information or compliance through the competent authorities of another Member State where a CMO established in that Member State and operating in Ireland appears to not be acting in compliance with the requirements of the Directive as implemented in that Member State.

Interaction with EU Commission and other Member States

The EU Commission intends to establish an Expert Group in relation to the Directive to oversee the implementation of the Directive across Europe and review its operation periodically. The Department will service this Group as necessary.

As the Controller is the designated Competent Authority in Ireland, he will liaise with Competent Authorities in other EU Member States as necessary, in relation to exchange of information across the Member States and dealing with cross-border complaints, etc

Disclaimer

These Guidance Notes are separate to the Regulations and are intended purely for information purposes in relation to the main aspects of the Regulations. The Department of Jobs, Enterprise and Innovation does not take responsibility for any errors contained in these notes as all parties must use the Statutory Instrument⁴ as the legal basis for implementation of Directive 2014/26/EU. In addition, these Guidance Notes do not constitute legal advice - any party with a legal query should acquire their own legal advice from suitably qualified professionals.

⁴ European Union (Collective Rights Management Regulations) (Directive 2016/26/EU) Regulations 2016 S. I. No. 156 of 2016, <http://www.irishstatutebook.ie/eli/2016/si/156/made/en/print>

THE ANNUAL COMPLIANCE STATEMENT

Format and content

The requirement for the submission of compliance statements comes into effect immediately and obliges any CMO renewing its registration as a licencing body or applying for registration for the first time to include information regarding its current compliance as part of the application/renewal process. Thereafter, compliance statements are required to be furnished annually together with the documentation required to renew a registration.

The requirement to submit a compliance statement is set out in Regulation 35. Templates have been drafted to assist CMOs to identify what needs to be included in the compliance statement and these are set out in Annex I and Annex II.

Compliance statements and accompanying documentation should be in electronic form (ideally in PDF) and unless otherwise agreed with the Controller, should be submitted electronically by e.mail to the following email address: **regadmin@patentsoffice.ie**

When drafting a compliance statement in accordance with Regulation 34, CMOs should combine a short overarching narrative compliance statement in the format set out in Annex 1, with a more detailed statement which references the relevant sections of the regulation in a tabular format as set out in Annex II. This method will allow CMOs to demonstrate clearly whether there is compliance with every specific regulation and how this is achieved, or provide an explanation as to why not. It is intended to facilitate a disciplined and uniform approach to completing the compliance statement.

Where a company is in compliance with a particular requirement of the regulations, in addition to indicating “yes” it may be necessary to provide details, stating why the company believes it is in compliance.

Where it is believed that a particular question does not apply to the company, the words “not applicable” (N/A) should be entered in the ‘compliance status’ column, and the reason why the particular provision in the regulation does not apply to the CMO should be stated in the ‘comments’ column.

Where a CMO is not in compliance with a particular provision of the regulations or only partially compliant, it is important to give a full explanation of the reasons for non-compliance or partial compliance in the 'comments' column. A CMO that is not in compliance with a particular provision of the regulations may wish to state what steps it is taking to ensure future or full compliance. As CMOs can vary, and there can be many different reasons for non-compliance or partial compliance, each compliance statement will be specific to the CMO completing it. Accordingly, no standard wording is proposed for inclusion in the 'comments' section.

Publication of the Annual Compliance Statement

The Controller intends to publish in the register(s) of copyright licensing bodies, the short overarching narrative compliance statement in the format set out in Annex 1. However, where a compliance statement contains reports of material non-compliance (or partial compliance) in respect of which the Controller subsequently takes enforcement action, publication of such non-compliance may be required in the public interest, as part of that enforcement action.

Materiality

The Controller is responsible for determining (in the first instance) whether a deviation from the requirements of the Regulation is material. Whether a deviation or deficiency is material or not will depend upon the facts of each case. If the Controller considers that the deviation or deficiency is such as to constitute non-compliance he will issue a notice requiring the CMO to address matter within a specified time.

Combining Annual Compliance Statements with existing registration and renewal of registration requirements

The requirement under the Regulation to provide the Annual Compliance Statement to the Controller operates in addition to the existing registration and renewal of registration requirements and therefore the compliance statements should be submitted together with the information required under Section 175 of the CRR. Where the same information or documentation required to establish compliance is supplied as part of the registration or renewal of registration process it is not necessary to supply it again with the compliance statement. However, it should be indicated in the detailed compliance statement that the information has been furnished as part of the registration renewal process.

Extension of Time

It should be noted that the provision (1A) which has been inserted by the Regulations into Section 179 of the CRRRA provides for the granting of an extension of time of 28 days from the date on which the period of validity of the certificate of registration expires. An application for an extension of time must be made before period of validity of the certificate of registration expires and must be accompanied by an explanation which will satisfy the Controller that an extension is warranted. The extension of time is to allow a CMO/licensing body which has encountered genuine difficulties in compiling its statement more time to submit a complete and appropriately detailed statement of compliance. There is only provision for a single application for an extension of time annually and no further applications will be considered.

The extension of time provision only applies to documentation in relation to the compliance statement and does not apply to the application for registration as a licensing body.

Compliance Notice

Where no extension of time has been sought and where no compliance statement (or an incomplete compliance statement) has been submitted by the date on which the period of validity of the certificate of registration expires, the Controller may issue a written compliance notice. That notice will require the CMO/licensing body to provide a complete statement of compliance or appropriate supporting evidence within a specified period.

If and when the Controller is satisfied that the notice has not been complied with, he may then exercise the power afforded to him under section 179(1) of the CRRRA and either refuse an application for renewal of a registration or cancel the registration.

Retention of supporting documentation

A CMO's compliance with certain elements of the Regulations is required to be supported or to some extent demonstrated by the existence and/or content of certain documents. Where extracts from documents are provided or where a document is summarised in order to demonstrate or provide evidence of compliance, the original documents should be retained by the CMO so that they can be made available to the Controller if required.

Statement of compliance

Name of CMO:

Reporting Period:

Pursuant to the obligation set out in Regulation 34 of the European Union (Collective Rights management) (Directive 2014/26/EU) Regulations 2016 and Section 175(7A) of the CRRA, I confirm that I have been duly authorised by the abovementioned Collective Management organisation (CMO)/copyright licensing body to submit a statement of compliance in respect of that body and in that capacity, I do hereby confirm that to the best of my knowledge:

(i) [insert name of the CMO/licensing body] has materially complied/is complying with all of its obligations and requirements (including any requirement to provide appropriate supporting evidence or documentation) under the Regulations and as set out in the detailed report annexed to this statement; or

(ii) [insert name of the CMO/licensing body] has failed to materially comply with specific obligations and requirements of the Regulations in the instance(s) identified in the detailed report annexed to this statement. Where instances of non compliance have been disclosed, the detailed report sets out in each instance, the explanation for such non-compliance, and/or the steps being taken to ensure future or full compliance.

[Delete (i) or (ii) as appropriate]

SIGNED:

Indicate position or role in CMO/copyright licensing body

Detailed Compliance Report

(1) Reg:	(2) Matter for Compliance	(3) Has the matter been complied with? <i>Insert Yes, No, Partial or N/A as appropriate.</i>	(4) Comments/Explanation <i>Information and explanation on compliance, partial compliance or non-compliance</i>	(5) Document(s) to be provided <i>Where a CMOs compliance with certain elements of the Regulations are required to be supported by evidence or to some extent demonstrated by the existence and/or content of certain documents, the document is listed in this column opposite the relevant regulation. The fact that a particular document is not specified does not preclude its inclusion with the compliance statement if it assists in evidencing compliance.</i>
4	Confirmation that the rights of rightholders outlined in Regulation 4(2) to 4(9) inclusive are laid out in statute, constitution or membership terms of the CMO.			Copy of the statute, rules or constitution or terms of membership or other document specifying the relevant sections which: (a) clearly sets out the rights of rightholders as outlined in Regulation 4(2) to 4(7) inclusive and (b) sets out information as to how a CMO has informed rightholders of their rights as required by 4(8) and 4(9)
5	Confirmation that the membership rules for the CMO are publicly available.			
6	Confirmation that an annual general assembly of members is or has been convened.			

6(9)	Confirmation that if the CMO exercises its option to restrict the rights of members to participate in, and to exercise voting rights at, the general assembly on the basis of one or both criteria (a) and (b) below, that those criteria are determined and applied in a manner that is fair and proportionate (a) Duration of membership (b) Amounts received or due to a member		If restrictions are applied, provide an explanation justifying the criteria used, and report on how they are determined and applied.	
6(10)	Confirmation that if the CMO restricts the right of members to participate in, and to exercise voting rights at, the general assembly, the fair and proportionate criteria on which this is done are included in the statute or membership terms <u>and</u> made publicly available in accordance with regulations 18 and 20		If such restrictions are used, indicate where those restrictions are made available for members <u>and</u> publicly available	Extract from or reference to statute or membership terms document which deals with the restrictions referred to in Regulation 6(10)
6(11)	Confirmation that the CMO has procedures in place to allow every member to appoint another person or entity as their proxy holder to participate in, and vote at, the General Assembly; and that these procedures take account of the need to ensure that such an appointment does not result in a conflict of interest between the rightholder and the proxy holder.			Copy of the procedures
7	Confirmation that the CMO has put in place an appropriate supervisory function for continuously monitoring the performance of persons managing the business of the organisation as required by Regulation 7.			A document summarising how the supervisory function is being discharged. This should address the obligations and requirements set out in 7(2) to 7(5).

8	Confirmation that the provisions of Regulation 8 regarding the use of sound administrative and accounting procedures and have in place procedures to avoid conflicts of interest.			A document summarising the administrative and accounting procedures which have been put in place by the CMO.
9	Confirmation that the CMO is in compliance with the rules laid down in regulations 9(2) to 9(5) inclusive in relation to collection and use of rights revenue			
10	Confirmation that where a rightholder authorises a CMO to manage his rights, the CMO has provided/ is providing 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			A copy of the document setting out the information provided to rightholders which should include a copy of the CMOs distribution policy that includes the basis for calculating remuneration and the frequency of payments together with clear information about deductions and what they are for.
11	Confirmation that the CMO is distributing amounts to rightholders in accordance Regulation 11 and with the general policy on distribution referred to in Regulation (6)(6)(a) and (b) and within the timeframe referred to in Regulation 11.			
12&13	Confirmation that the requirements of Regulation 12 and 13 are being complied with where a CMO is managing rights under a representation agreement.			<i>[A copy of the Representation Agreement should be included.]</i> OR <i>[A document laying out the provisions of the Representation Agreement should be submitted.]</i>

14	Confirmation that the requirements of Regulation 14 regarding licensing terms are being adhered to and that users have been advised of the criteria used for the setting of tariffs in respect of the licencing schemes operated by the CMO.			<p>A document setting out the used for the setting of tariffs together with copies of all licensing schemes including charges and scales of charges operated by the CMO.</p> <p>(Where information comprising copies of licensing schemes and scales of charges is provided as part of the registration /renewal process required by Section 175 of the CRRA, it is not necessary to duplicate this information for the purposes of the compliance statement. It will be sufficient to reference the documentation provided in accordance with S175.</p>
15	Confirmation that relevant information has been identified for all users to supply, and agreed/pre-established timeframes and formats are in place, including indication of whether these are voluntary industry standards.			
16	Confirmation that the CMO has on an annual basis, made the information on the management of their rights, required by Regulation 16 (a) to (g) inclusive, available to each rightholder to whom it has attributed rights revenue or made distributions.			
17	Confirmation that the CMO has on an annual basis, made the information required in Regulation 17(a) to (f) inclusive, available to other collective management organisations on the management of rights under representation agreements.			

18	Confirmation that information has been provided to rightholders, other collective management organisations or users on request			
19	Confirmation that the CMO has made public the information set out at 19(a) to (j)			Provide a link or links (URLs) to where this information is published on the CMOs website
20	Confirmation that the CMO has produced and published the annual transparency report as required by Regulation 20.			Provide a link or links (URLs) to where this information is published on the CMOs website. (Note that the EU Commission has indicated that accounting and financial information to be included in the transparency report need only be provided in the first instance for the General Assembly meeting which follows the end of the first financial year after the regulations come into effect, i.e. after 10 th April 2017).
29	Confirmation that where a CMO does not grant or offer to grant MTLs for online rights in musical works or does not allow another CMO to represent those rights for such a purpose by 10 April 2017, the CMO has informed rightholders of the options set out in Regulation 29.		If a CMO is not offering or otherwise facilitating MTL by 10 April 2017, include a statement that its rightholders have been informed of the position of the CMO and its implications and that appropriate and suitable procedures are in place to facilitate access to multi-territorial licensing.	
31	Confirmation that the CMO makes available to its members and to CMOs on whose behalf it manages rights under a representation agreement, effectively and timely procedures for dealing with complaints.			A document setting out the complaints procedures which the CMO has put in place.
31	Derogation for online music rights required for radio and television programmes		Statement of position of the CMO in relation to the derogation (indication of	

			offering MTL, availing of the derogation, or how it will otherwise comply with MTL requirements in this aspect)	
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