Study on emerging issues on collective licensing practices in the digital environment

Final Report

Written by Ecorys, IViR and Erasmus University Rotterdam.
Internal identification

Contract number: LC-01339957
SMART number: SMART 2018/0069

EUROPEAN COMMISSION
Directorate-General for Communications Networks, Content and Technology
Directorate I — Media Policy
Unit I.2 — Copyright

Contact: cnect-i2@ec.europa.eu

European Commission
B-1049 Brussels

PROJECT TEAM

Oleksandr Bulayenko  IViR
Stef van Gompel  IViR
Christian Handke  Erasmus University Rotterdam
Roel Peeters  Ecorys
Joost Poort  IViR
João Pedro Quintais  IViR
David Regeczi  Ecorys
Study on emerging issues on collective licensing practices in the digital environment

Final Report
# TABLE OF CONTENTS

**EXECUTIVE SUMMARY** ........................................................................................................... 7
  Multi-territorial licensing of online rights in musical works .............................................. 7
  Collective licensing with an extended effect ......................................................................... 10

**RÉSUMÉ EXÉCUTIF** .................................................................................................................. 13
  L’octroi de licences multiterritoriales de droits sur des œuvres musicales en vue de leur utilisation en ligne ..................................................................................................................... 13
  L’octroi de licences collectives ayant un effet étendu .......................................................... 16

**ZUSAMMENFASSUNG** ............................................................................................................ 19
  Mehrgebietslizenzen von Online-Rechten an Musikwerken ............................................... 19
  Sammellizenzerung mit erweiterter Wirkung .................................................................... 22

**INTRODUCTION** ....................................................................................................................... 26

1. **MULTI-TERRITORIAL LICENSING OF ONLINE RIGHTS IN MUSICAL WORKS** .................. 29
   a Mapping of multi-territorial licensing ............................................................................. 29
   b Application of the CRM Directive’s Title III and the verification of licensing entities’ compliance by national competent authorities (NCAs) ........................................ 79
   c Notifications of non-compliance with Title III of the CRM Directive ......................... 92
   d Rightsholders’ withdrawal rights ..................................................................................... 95
   e Alternative dispute resolution procedures (ADRPs) ......................................................... 103
   f Market conditions and trends ........................................................................................ 107
   g Specific and overall effects of the CRM Directive ........................................................... 120
   h The potential of new technologies: blockchain and new technologies ......................... 128

2. **COLLECTIVE LICENSING WITH AN EXTENDED EFFECT** .................................................. 131
   a Introduction ......................................................................................................................... 131
   b Typology of mechanisms of CLEE .................................................................................. 132
   c Mapping of national mechanisms of CLEE and mandatory collective management .... 136
   d Practical functioning and application of mechanisms of CLEE .................................. 172

3. **CONCLUSIONS ON BOTH STUDY PARTS** ......................................................................... 243
   a Main findings on multi-territorial licensing of online rights in musical works ......... 243
   b Main findings on collective licensing with an extended effect ...................................... 249

**LIST OF NATIONAL EXPERTS** ............................................................................................... 253

**LIST OF ABBREVIATIONS** ....................................................................................................... 256

**LIST OF MENTIONED EU LAW AND CASES** ....................................................................... 259

**LIST OF MENTIONED CMOS** ................................................................................................ 261

ANNEX 1: RETRANSMISSION OF BROADCASTS ......................................................................... 262

ANNEX 2: ANNUAL SUPPLEMENTARY REMUNERATION OF PERFORMERS ....................... 271

ANNEX 3: REMUNERATION FOR BROADCASTING AND COMMUNICATION TO THE PUBLIC OF PHONOGRAMS .................................................................................................................. 276

ANNEX 4: BROADCASTING AND COMMUNICATION TO THE PUBLIC ................................... 284

ANNEX 5: REPEATED BROADCASTING AND/OR COMMUNICATION TO THE PUBLIC OF WORKS STORED IN BROADCASTERS’ ARCHIVES ................................................................. 297
Executive summary

Collective management of copyright and related rights is an important element of the copyright system. First and foremost, it can ensure that rightholders reap greater rewards. By exploiting economies of scale and network effects, collective management can also make markets for copyright licences more efficient, to benefit users and other stakeholders. This study examines two central aspects of collective management of copyright and related rights in Europe.

Part I documents the development of multi-territorial licensing of online rights in musical works in the European Economic Area (EEA) under Title III of Directive 2014/26/EU on Collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (CRM Directive). It highlights the consequences of legal and regulatory reform, based on pervasive quantitative and qualitative data – produced in surveys, interviews and a workshop with stakeholders – and collected among collective management organisations (CMOs), rightholders, online music service providers, and national competent authorities.

Part II examines national mechanisms of collective licensing with an extended effect and their main elements in EEA Member States. It is based on extensive input by a comprehensive network of national experts, complemented by surveys of CMOs, as well as interviews with national competent authorities.

The present study provides a legal and economic analysis that can serve as input for the European Commission to draft the reports required by Article 40 of the CRM Directive and Article 12(6) of the Directive 2019/790/EU on copyright and related rights in the Digital Single Market (DSM Directive).

Multi-territorial licensing of online rights in musical works

Multi-territorial licensing (MTL) has become the predominant method for licensing online rights in musical works in the EEA, accompanying the development of cross-border online music services. Multi-territorial licensing has the potential to lower the number of licences required for online music services, and can help by making copyrighted works and related services more accessible to consumers in the EEA and beyond.

Virtually all repertoires of EEA-based CMOs, other licensing entities, and music publishers are currently available for multi-territorial licensing in the EEA, either through direct grants by licensing entities or through representation agreements between such entities for the purpose of multi-territorial licensing. Many of these repertoires are available for multi-territorial licensing in large bundles through multi-repertoire and multi-territorial licences.

The market for licences of online rights in musical works in the EEA consists of a complex nexus of separate licences. Online music service providers offering their services in many EEA Member States operate under about 30 separate copyright licences, about half of which are multi-territorial licences granted by CMOs or subsidiaries of CMOs. The full potential of multi-territorial licensing to reduce the need for multiple licences has not been fully exploited. For instance, online music service providers still acquire mono-territorial licences with CMOs in combination with multi-territorial licences. Some aspects of multi-territorial licences are quite uniform (standardised). In general, existing multi-territorial licences cover all of the EEA, and both mechanical (reproduction) as well as performing (communication to the public) rights. At the same time, terms and conditions of many multi-territorial licences are adapted to the types of uses undertaken by licensees. There also
seems to be little standardisation with regard to the prices and terms of multi-territorial licences. For instance, tariff structures of the same licence sometimes vary between different Member States covered. In particular, some online music service providers expressed concerns with non-transparent pricing and terms, and with the protracted and costly negotiations to establish some licences. Furthermore, it is not desirable that online music service providers compete in their abilities to effectively negotiate for favourable multi-territorial licence terms, rather than on the qualities of the services they supply to consumers.

Rightholders were reasonably and increasingly satisfied with the MTL services which they received. This holds, even though what licensing entities charge on the rightholder side – in terms of management fees, typically charged as deductions from licensing fees collected among online music services – have not decreased over recent years. MTL services have not become cheaper for rightholders, but the quality of MTL services delivered by licensing entities seems to have increased in the perception of many rightholders.

At present, a number of different licensing entities grant multi-territorial licences in the EEA and compete to a limited extent for attracting rightholders and repertoires. Licensing entities are predominantly satisfied with recent developments in multi-territorial licensing. They mostly report that the CRM Directive has made it easier for them to offer multi-territorial licences, even though it has been costly for licensing entities to comply with novel requirements. However, many EEA-based CMOs reported that their competitiveness has deteriorated relative to other licensing entities, who face different and sometimes less stringent regulation. Nevertheless, CMOs continue to play a central role in the market. Furthermore, many licensing entities of any type operate representation agreements, which reduces the number of separate multi-territorial licences required for online music services. Many CMOs have joined forces in operating subsidiaries, so-called licensing hubs, who take care of specific services required for copyright licensing for several participating CMOs. The formation of licensing hubs along with the continued use of representation agreements between CMOs can be seen as means to increase the efficiency of multi-territorial services by exploiting advantages of scale and scope. The CRM Directive facilitates these practices. It is probable that licensing entities will continue to integrate, which may establish a narrow oligopoly of suppliers of such services throughout the EEA.

In this context, online music service providers gave rather mixed evaluations of the impact of Title III of the CRM Directive on licensing entities’ conduct. Many of these services believe that their full economic costs of licensing have increased. There seem to be several reasons behind this assessment. On the one hand, some online music services complain about an increasing number of novel licensing entities operating in the EEA, and the varied performance of smaller licensing entities in their perception. On the other hand, several online music services are wary of cooperation and joint market power among larger licensing entities, especially regarding novel licensing hubs established by CMOs. It may take some time before the market for online rights to musical work stabilises.

Different rules are applicable to licensing entities granting multi-territorial licences in the EEA. Some Member States also apply a part of the provisions transposing Title III to independent management entities and licensing entities established outside the EEA. However, subject to national law and regulation, fewer aspects of Title III apply to CMOs’ subsidiaries, independent management entities and non-EEA-based licensing entities than to EEA-based CMOs. Several CMOs are concerned about divergent regulation affecting them and their potential competitors. Nevertheless, it depends on the specific national regulation as to which types of licensing entities enjoy favourable regulatory conditions. While EEA-based CMOs may provide their services across the EEA if they comply with the national regulations transposing Title III, some EEA Member States restrict the operations of independent management entities and non-EEA-based licensing entities. Moreover,
there are some uncertainties regarding the application of provisions of some national laws transposing Title III of the CRM Directive to CMOs’ subsidiaries. Overall, the situation hardly resembles a level playing field, in which licensing entities granting multi-territorial licences could compete solely on price and quality. Considering the current market conditions, it could make sense that CMOs are regulated more extensively than other licensing entities. CMOs have long operated as national (quasi-)monopolies and continue to hold some sway over markets for copyright licences, including multi-territorial licences of online rights in musical works. Regulating CMOs more heavily may therefore facilitate newcomers’ market entry, promote innovation and make the market for multi-territorial licensing services more contestable. However, in the longer term, it is essential that all major competitors in the market fall under consistent regulations, so that the most efficient and sustainable licensing entities prevail, rather than the least stringently regulated.

Across the EEA, there are substantial variations in the regulations and procedures by which national competent authorities control licensing entities compliance with Title III of the CRM Directive. Stakeholders reported different experiences as to whether national authorities effectively ensure that CMOs fully comply with requirements of Title III. According to several large online music service providers, some (smaller) CMOs have insufficient capacity to process multi-territorial licences, and do not fully satisfy their expectations regarding invoicing quality. CMOs on the other hand reported that some of the issues with the quality of invoicing was caused by the quality of usage reports submitted by online music service providers. Beyond the remits of Title III, several online music service providers complained that some CMOs do not publish standard applicable tariffs for multi-territorial licences. Nevertheless, notification procedures regarding alleged non-compliant behaviour of CMOs and alternative dispute resolution procedures are seldom used in practice. This also applies in Member States where such procedures have already been in place for several years. The two procedures receive lukewarm evaluations by stakeholders, and there is little indication that either of them has had much effect on the ground yet. For the coming years, however, most national competent authorities expect that notifications between the authorities will become increasingly important to ensure compliance with Title III.

Effective rightholders’ withdrawal rights seem to promote competition for rightholders between licensing entities. Many withdrawals of large repertoires occurred prior to the transposition of the CRM Directive. Increasing multi-territorial licensing fees charged among online music service providers could be an effect of greater competition among licensing entities for rightholders. There have been drawbacks, however: withdrawal of rights seems to increase the complexity and full economic costs of copyright licensing incurred by online music service providers, as some repertoires move from one licensing entity to another. We find no evidence that licensing costs would have undermined the variety of works supplied via online music services, nor the proportion of ‘small European repertoires’ featured on these services. An efficient, comprehensive and continuously updated matching infrastructure of works and rightholders is one tool that could decrease the transaction costs of multi-territorial licensing.

Finally, smaller rightholders have limited knowledge of multi-territorial licensing, of their rights and how to exercise them effectively. Few rightholders exercise their withdrawal rights. Notification procedures or alternative dispute resolution mechanisms are rarely invoked, even where rightholders have grievances. In this context, first policies which equip rightholders with the means to individually look after their own interests may have limited effects by themselves. Any self-help mechanisms available to rightholders may have to be complemented by proactive regulation. Second, many smaller rightholders could lose out if competition for multi-territorial licensing services from other licensing entities were to undermine the function of CMOs to bargain collectively on behalf of rightholders with online music service providers. Third, any licensing entities should be regulated so as to fulfil their
functions in a reasonably equitable manner regarding all of the rightholders and online music service providers concerned. On the rightholders’ side, regulations of CMOs regarding speedy processing of licensing revenues, transparency, and reporting on online uses of works point in the right direction. Such regulations could be extended to all licensing entities with the aim to approximate a reasonably equitable and efficient distribution of multi-territorial licensing revenues amongst all rightholders.

Collective licensing with an extended effect

The study focuses on the elements of collective licensing with an extended effect (CLEE). CLEE is a collective licensing mechanism whereby the law extends the scope of collective licences or the mandate of a CMO to also include ‘rightholders non-members’ (rightholders who have not explicitly authorised a CMO to exercise their rights directly or indirectly via a representation agreement). Key examples include national mechanisms of extended collective licensing, statutory mandate of representation and legal presumption of representation. Mandatory collective management of rights also falls within the scope of this study, provided that it has an extended effect, i.e. allowing the relevant CMO to exercise the rights of all rightholders in a given field.

The domains (types of rights, works, users and rightholders) concerned by CLEE, as well as their number and scope, vary between the Member States. In Member States where these mechanisms exist, CLEE is often applied to manage remuneration rights or exceptions/limitations, and sometimes as well exclusive rights, in specific domains, such as broadcasting and private copying, lending, reprography and resale rights. In some Member States, the domains with CLEE exhaustively listed in legislative acts are complemented with general clauses, enabling CLEE in other domains defined by a competent authority or the parties to a collective licensing agreement.

The nature of the legal mechanism, through which an extended effect is achieved within the same domain, differs between the Member States. Sometimes different mechanisms are used for attaining an extended effect in different domains within the same Member State. The most commonly used mechanisms for establishing an extended effect are extended collective licensing mechanisms, statutory mandate of representation and legal presumption of representation, as outlined above. These mechanisms are occasionally combined with other mechanisms, such as mandatory collective management of rights and/or legal monopoly of the competent CMO. Mandatory collective management is most often used to exercise rightholders’ statutory rights to remuneration, including compensation due under certain exceptions and limitations to copyright and related rights. In some Member States, by virtue of the law and/or jurisprudence, CMOs benefit from a procedural presumption to represent rightholders non-members in court proceedings. However, as such procedural presumption does not provide CMOs with a right to license rights of rightholders non-members, it does not qualify as a mechanism of CLEE for the purpose of this study.

The scope of an extended effect commonly covers all rightholders, works and/or rights within a defined domain of the Member State’s legislation that provides for CLEE. In a limited number of cases, the extended effect covers only an exhaustive number of rightholders, works and/or rights, often listed in a publicly accessible registry. In general, an extended effect is not limited by the nationality of rightholders and works and therefore also covers foreign rightholders and works. In all studied Member States, an extended effect is limited to the Member State’s territory whose legislation enables it. The DSM Directive so far only enables CLEE with a reach beyond the national territory for the use of out-of-commerce works. This study points to a number of elements to be taken into account when
considering the possibility of allowing CLEE with cross-border effect to be introduced in other domains. This includes: the domains where CLEE with cross-border effect can be introduced (including most common domains already present in national law of different Member States), the territorial scope of the licensing mechanism, and the safeguards to be applied (in particular the representativeness of CMOs, equal treatment, right to opt-out and publicity measures). Depending on these issues and what the legislator wants to achieve, different policy options for establishing CLEE with cross-border effect can be examined.

In the vast majority of Member States where these mechanisms are applied, collective licences with an extended effect can only be granted by CMOs authorised by a national competent authority or designated by a legislative act. In some of these Member States, the authorised CMOs are also granted a legal monopoly in the domains of their operations. In Member States where more than one CMO is authorised to grant collective licences with an extended effect, the law sometimes provides for a mechanism facilitating cooperation between CMOs for joint licensing.

National competent authorities usually authorise CMOs on the basis of a number of qualitative and quantitative criteria. The representativeness of a CMO is often assessed by the type and number of rightholders, rights, works and users that the CMO represents as well as other factors demonstrating the CMO’s capacity to effectively represent the interests of all the rightholders concerned. National rules commonly leave some room for interpretation of the most appropriate ways for demonstrating and establishing representativeness. In general, qualitative factors take a significant weight in establishing a CMO’s representativeness, in particular because exact numbers enabling comparative assessment (e.g., comparison with the number of works and/or rightholders in a given domain) are not always available.

In the majority of Member States, equal treatment of rightholders members and non-members by CMOs is an explicit (or sometimes implicit) legal requirement. A large majority of CMOs responding to the survey executed for this study confirm that they treat equally all rightholders whom they represent, members and non-members.

In many mechanisms of CLEE, the right of rightholders non-members to opt-out (i.e. to exclude their works or other subject-matters from collective licensing) is an essential safeguard to protect their interests. A right to opt-out typically does not exist in areas with mandatory collective management. In comparison to the total number of rightholders and works or other subject-matter represented by surveyed CMOs by virtue of explicit authorisations from rightholders, the reported number of opt-outs is very low. Overall, responding CMOs reported that opt-outs had zero or very low impact on their business.

Publicity measures of CMOs aim at informing rightholders about CLEE and safeguards available to rightholders. Only in a couple of studied Member States, the law requires CMOs to undertake publicity measures beyond the CRM Directive’s transparency obligations. It has been established that, at least in some Member States, CMOs carry out publicity measures without an explicit legislative requirement to do so.

In general terms, particularly from a social welfare perspective, CLEE reinforces the impact of collective management of copyright and related rights. CLEE strengthens the market power of CMOs, as a consequence of more complete market coverage, and could also lead to the increase of licence fees. CLEE amplifies the cost-saving rationale of collective management of copyright, resulting from a reduction in the number of transactions, standardisation of terms, economies of scale in the enforcement of rights and reduced search costs. Where non-membership is rarely a rightholder’s active choice, but rather results from transaction costs of registration or a lack of awareness, CLEE with a right to
opt-out appears to be more efficient from a social welfare perspective than collective licensing relying only on explicit authorisations from rightholders.
Résumé exécutif

La gestion collective du droit d'auteur et des droits voisins est un élément important du système du droit d'auteur. Avant tout, elle permet aux titulaires de droits d’être mieux rémunérés. En exploitant les économies d'échelle et les effets de réseau, la gestion collective peut également rendre les marchés des licences de droit d'auteur plus efficaces dans l'intérêt des utilisateurs et des autres parties intéressées. Cette étude examine deux aspects centraux de la gestion collective du droit d'auteur et des droits voisins en Europe.

La partie I documente le développement de l'octroi de licences multiterritoriales de droits en ligne sur des œuvres musicales dans l'Espace économique européen (EEE) en vertu du titre III de la directive 2014/26/UE sur la gestion collective du droit d'auteur et des droits voisins et l'octroi de licences multiterritoriales de droits sur des œuvres musicales pour une utilisation en ligne dans le marché intérieur de l'UE. La partie I met en évidence les conséquences des réformes juridiques et réglementaires. L'analyse des conséquences de ces réformes est basée sur de multiples données quantitatives et qualitatives produites dans le cadre d'enquêtes, d'entretiens et d'un atelier avec les parties prenantes. Ces données ont été recueillies auprès des organismes de gestion collective (OGC), des titulaires de droits, des fournisseurs de services de musique en ligne et des autorités nationales compétentes.

La partie II examine les mécanismes nationaux d'octroi de licences collectives ayant un effet étendu et leurs principaux éléments dans les États membres de l'EEE. Elle s'appuie sur les contributions d'un vaste réseau d'experts nationaux, complétées par des enquêtes auprès des OGC, ainsi que par des entretiens avec les autorités nationales compétentes.

La présente étude fournit une analyse juridique et économique qui peut servir d’appui à la Commission européenne pour rédiger les rapports requis par l'article 40 de la directive sur la gestion collective du droit d'auteur et l'article 12(6) de la directive 2019/790/UE sur le droit d'auteur et les droits voisins dans le marché unique numérique.

L’octroi de licences multiterritoriales de droits sur des œuvres musicales en vue de leur utilisation en ligne

L’octroi de licences multiterritoriales est devenu la méthode prédominante d’octroi de licences pour les droits en ligne sur les œuvres musicales dans l'EEE. Cette méthode accompagne le développement de services de musique en ligne transfrontaliers. Cet octroi a le potentiel de réduire le nombre de licences requises pour les services de musique en ligne et peut contribuer à rendre les œuvres protégées par le droit d'auteur et les services associés plus accessibles aux consommateurs de l'EEE et au-delà.

Pratiquement tous les répertoires des OGC, des autres entités d'octroi de licences et des éditeurs de musique basés dans l'EEE sont disponibles pour l’octroi de licences multiterritoriales dans l’EEE. Cet octroi se fait soit par le biais d’octrois directs par les entités d’octroi de licences, soit par le biais d'accords de représentation entre ces différentes entités pour l'octroi de licences multiterritoriales. Un grand nombre de ces répertoires sont disponibles sous forme de gros lots par le biais de licences multirépertoires et multiterritoriales.

Le marché des licences de droits en ligne sur les œuvres musicales dans l'EEE consiste en un ensemble complexe de licences distinctes. Les fournisseurs de services de musique en ligne qui proposent leurs services dans plusieurs États membres de l'EEE opèrent sous une trentaine de licences de droit d'auteur, dont environ la moitié sont des licences
multiterritoriales octroyées par des OGC ou des filiales d'OGC. Le potentiel de l'utilisation de licences multiterritoriales pour réduire le nombre de licences nécessaires n'a pas encore été pleinement exploité. Par exemple, les fournisseurs de services de musique en ligne continuent d'acquérir des licences monoterritoriales auprès des OGC en combinaison avec des licences multiterritoriales. Certains aspects des licences multiterritoriales sont relativement standardisés. En général, les licences multiterritoriales en vigueur couvrent l'ensemble de l'EEE, ainsi que les droits mécaniques (reproduction) et les droits d'exécution (communication au public). De plus, les conditions générales de nombreuses licences multiterritoriales sont adaptées aux types d'utilisation entrepris par les titulaires de licences. Cependant, il semble y avoir peu de normalisation en ce qui concerne les prix et les conditions des licences multiterritoriales. Par exemple, les structures tarifaires d'une même licence peuvent varier entre les différents États membres couverts. En particulier, certains fournisseurs de services de musique en ligne ont exprimé leurs inquiétudes quant au manque de transparence des prix et des conditions ainsi que par rapport aux négociations longues et coûteuses nécessaires pour conclure certaines licences. En outre, il n'est pas souhaitable que les fournisseurs de services de musique en ligne se fassent concurrence sur leur capacité à négocier efficacement des conditions de licence multiterritoriales favorables, plutôt que sur la qualité des services qu'ils fournissent aux consommateurs.

Les titulaires de droits ont signalé une satisfaction raisonnable et grandissante à l’égard des services d’octroi de licences multiterritoriales qu'ils ont reçus. Cela est vrai, même si ce que les entités d’octroi de licences facturent du côté des titulaires de droits — en termes de frais de gestion, généralement déduits des droits de licence perçus des services de musique en ligne — n’a pas diminué ces dernières années. Les services d’octroi de licences multiterritoriales ne sont pas devenus moins chers pour les titulaires de droits, mais la qualité fournie par les entités d’octroi de licences semble s’être améliorée selon de nombreux titulaires de droits.

À l'heure actuelle, un certain nombre entités d’octroi de licences accordent des licences multiterritoriales dans l’EEE et se font concurrence pour attirer les titulaires de droits et les répertoires. Les entités d’octroi de licences sont majoritairement satisfaites des développements récents en matière de licences multiterritoriales. La plupart indiquent que la directive sur la gestion collective du droit d'auteur a facilité l'offre de licences multiterritoriales, même s'il a été coûteux pour elles de se conformer aux nouvelles exigences requises. Toutefois, de nombreux organismes de gestion collective établis au sein de l’EEE ont indiqué une détérioration de leur compétitivité par rapport à d'autres entités chargées de l'octroi de licences basées en dehors de l’EEE, qui sont confrontées à des réglementations différentes et parfois moins strictes. Néanmoins, les OGC continuent de jouer un rôle central sur le marché. En outre, de nombreuses entités d’octroi de licences, de tout type, font usage d’accords de représentation, ce qui permet de réduire le nombre de licences multiterritoriales distinctes requises pour les services de musique en ligne. Un grand nombre d’OGC ont uni leurs forces pour mettre en place des filiales, appelées centres d’octroi de licences, qui prennent en charge les services spécifiques requis pour l'octroi de licences de droits d'auteur par les OGC participants. La mise en place de centres d’octroi de licences et l’utilisation continue d’accords de représentation entre les OGC pourraient permettre d’accroître l’efficacité des services multiterritoriaux en exploitant les avantages d'échelle et de portée. La directive sur la gestion collective du droit d’auteur facilite ces pratiques. Il est probable que les entités d’octroi de licences continuent à s’allier, ce qui pourrait créer un oligopole étroit de fournisseurs de ces services dans l'ensemble de l’EEE.

Dans ce contexte, les fournisseurs de services de musique en ligne ont donné des évaluations plutôt mitigées de l’impact du titre III de la directive sur la gestion collective du droit d’auteur sur le comportement des entités d’octroi de licences. Plusieurs fournisseurs estiment que leurs coûts économiques totaux liés à l'octroi de licences ont augmenté. Il semble y avoir plusieurs raisons derrière cette évaluation. D’une part, certains services de
musique en ligne s’inquiètent du nombre croissant de nouvelles entités d’octroi de licences opérant dans l’EEE et des performances variées des petites entités d’octroi de licences, selon leur perception. D’autre part, plusieurs services de musique en ligne se méfient de la coopération et du pouvoir de marché conjoint entre les grandes entités d’octroi de licences, en particulier en ce qui concerne les nouveaux centres d’octroi de licences établis par les OGC. Il faudra peut-être un certain temps avant que le marché des droits en ligne sur les œuvres musicales ne se stabilise.

Différentes règles sont applicables aux entités d’octroi de licences octroyant des licences multiterritoriales dans l’EEE. Certains États membres appliquent également une partie des dispositions transposant le titre III aux entités de gestion indépendantes et aux entités d’octroi de licences établies en dehors de l’EEE. Toutefois, sous réserve de la législation et des réglementations nationales, les filiales des OGC, les entités de gestion indépendantes et les entités de délivrance de licences établies hors de l’EEE sont soumises à moins de dispositions du titre III qu’aux OGC établis dans l’EEE. Plusieurs OGC s’inquiètent des réglementations divergentes qui les concernent ainsi que leurs concurrents potentiels. Néanmoins, c’est la réglementation nationale spécifique qui détermine quels types d’entités d’octroi de licence bénéficient de conditions réglementaires favorables. Alors que les OGC basés dans l’EEE peuvent fournir leurs services dans l’ensemble de l’EEE s’ils se conforment aux réglementations nationales transposant le titre III, certains États membres de l’EEE restreignent les opérations des entités de gestion indépendantes et des entités de licence non basées dans l’EEE. En outre, il existe des incertitudes quant à l’application des dispositions de certaines lois nationales transposant le titre III de la directive sur la gestion collective du droit d’auteur aux filiales des OGC. Dans l’ensemble, la situation ne semble pas être conforme à des conditions de concurrence équitables dans laquelle les entités octroyant des licences multiterritoriales peuvent se faire concurrence uniquement sur le prix et la qualité de leurs services. Compte tenu des conditions actuelles du marché, il pourrait être logique que les OGC soient soumises à des réglementations plus élaborées que les autres entités octroyant des licences. Les OGC ont longtemps fonctionné comme des (quasi) monopoles nationaux et continuent à exercer une certaine influence sur les marchés des licences de droit d’auteur, y compris les licences multiterritoriales de droits en ligne sur les œuvres musicales. Une réglementation plus stricte des OGC peut donc faciliter l’entrée sur le marché de nouveaux venus, promouvoir l’innovation et rendre le marché des services de licences multiterritoriales plus contestable. Toutefois, à plus long terme, il est essentiel que les concurrents principaux sur le marché soient soumis à des réglementations cohérentes, de sorte que les entités d’octroi de licences les plus efficaces et les plus viables l’emportent, plutôt que les moins réglementées.

Au sein de l’EEE, il existe des variations substantielles dans les réglementations et les procédures par lesquelles les autorités nationales compétentes contrôlent la conformité des entités d’octroi de licences avec le titre III de la directive sur la gestion collective du droit d’auteur. Les parties prenantes ont fait part d’expériences divergentes quant à la question de savoir si les autorités nationales veillent effectivement à ce que les OGC respectent pleinement les exigences du titre III. Selon plusieurs grands fournisseurs de services de musique en ligne, certains (plus petits) OGC ne sont pas en capacité de traiter les licences multiterritoriales et ne répondent pas pleinement aux exigences en matière de qualité de facturation. D’autre part, les OGC ont indiqué que certains des problèmes liés à la qualité de la facturation étaient dus à la qualité des rapports d’utilisation soumis par les fournisseurs de services de musique en ligne. Au-delà des attributions du titre III, plusieurs fournisseurs de services de musique en ligne rapportent que certains OGC ne publient pas de tarifs standards applicables aux licences multiterritoriales.

Néanmoins, les procédures de notification concernant le comportement présumé non conforme des OGC et les procédures de règlement extrajudiciaire des litiges sont rarement utilisées dans la pratique. Cela est également le cas dans les États membres où ces
procédures sont déjà en place depuis plusieurs années. Les deux procédures font l'objet d'évaluations mitigées de la part des parties prenantes, et rien n'indique que l'une ou l'autre ait encore eu beaucoup d'effet en pratique. Cependant pour les années à venir la plupart des autorités nationales compétentes s'attendent à ce que les notifications entre les autorités deviennent de plus en plus importantes pour assurer le respect du titre III.

L’application de droits de retrait des titulaires de droits semble favoriser la concurrence entre les entités d'octroi de licences. De nombreux retraits de grands répertoires ont eu lieu avant la transposition de la directive sur la gestion collective du droit d'auteur. L'augmentation des redevances des licences multiterritoriales facturées aux fournisseurs de services de musique en ligne pourrait être un effet de la concurrence accrue entre les entités d'octroi de licences pour des titulaires de droits. Il y a toutefois des inconvénients : le retrait des droits semble accroître la complexité et les coûts économiques totaux de l'octroi de licences de droits d'auteur pour les fournisseurs de services de musique en ligne, car certains répertoires passent d'une entité d'octroi de licences à une autre. Nous ne trouvons aucune preuve que les coûts d'octroi de licences auraient nui à la variété des œuvres fournies par les services de musique en ligne, ni à la proportion de « petits répertoires européens » figurant sur ces services. Une infrastructure efficace, complète et continuellement mise à jour pour la mise en correspondance des œuvres avec les titulaires de droits est un outil qui pourrait réduire les coûts de transaction d'octroi de licences multiterritoriales.

Enfin, les petits titulaires de droits ont une connaissance limitée, sur l'octroi de licences multiterritoriales, de leurs droits et de la manière de les exercer efficacement. Peu de titulaires de droits exercent leurs droits de retrait. Les procédures de notification ou les mécanismes de règlement extrajudiciaire des litiges sont rarement invoqués, même lorsque les titulaires de droits ont des griefs. Dans ce contexte, les premières politiques qui donnent aux titulaires de droits les moyens de veiller individuellement à leurs propres intérêts peuvent avoir des effets limités si elles sont appliquées toutes seules. Tout mécanisme d'auto-assistance disponible pour les titulaires de droits devra peut-être être complété par une réglementation proactive. Deuxièmement, de nombreux petits titulaires de droits pourraient être perdants si la concurrence d'autres entités d'octroi de licences pour des services d'octroi de licences multiterritoriales devait limiter la fonction des OGC consistant à négocier collectivement, au nom des titulaires de droits avec les fournisseurs de services de musique en ligne. Troisièmement, toute entité d'octroi de licences devrait être réglementée de manière à remplir ses fonctions d'une manière raisonnablement équitable à l'égard de l'ensemble des titulaires de droits et des fournisseurs de services de musique en ligne concernés. Du côté des titulaires de droits, les réglementations des OGC concernant le traitement rapide des revenus de licences, la transparence et les rapports sur les utilisations en ligne des œuvres vont dans le bon sens. Ces réglementations pourraient être étendues à toutes les entités d'octroi de licences, afin de parvenir à une répartition raisonnablement équitable et efficace des revenus des licences multiterritoriales entre tous les titulaires de droits.

**L'octroi de licences collectives ayant un effet étendu**

L'étude se concentre sur les éléments de l'octroi de licence collective ayant un effet étendu (LCEE). La LCEE est un mécanisme d'octroi de licences collectives par lequel la loi étend le champ d'application des licences collectives ou le mandat d'un OGC pour inclure également les « titulaires de droits non membres » (titulaires de droits qui n'ont pas explicitement autorisé un OGC à exercer leurs droits directement ou indirectement via un accord de représentation). Les principaux exemples sont les mécanismes nationaux d'octroi de licences collectives étendues, le mandat légal de représentation et la
 présomption légale de représentation. La gestion collective obligatoire du droit d'auteur entre également dans le champ de cette étude, pour autant qu'elle ait un effet étendu.

Les domaines concernés par la LCEE (types de droits, œuvres, utilisateurs et titulaires de droits), ainsi que leur nombre et leur portée varient entre les États membres. Dans les États membres où ces mécanismes existent, la LCEE est souvent appliquée pour gérer les droits de rémunération ou les exceptions/limitations, et parfois aussi les droits exclusifs dans des domaines spécifiques tels que la radiodiffusion et la copie privée, les droits de prêt, de reprographie et le droit de suite. Dans certains États membres, les domaines avec la LCEE énumérés de manière exhaustive dans les actes législatifs sont complétés par des clauses générales, permettant l’application de la LCEE dans d’autres domaines définis par une autorité compétente ou les parties d’un accord de licence collective.

La nature du mécanisme juridique permettant d'obtenir un effet étendu dans un même domaine diffère selon les États membres. Parfois, différents mécanismes sont utilisés pour obtenir un effet étendu dans différents domaines au sein d'un même État membre. Les mécanismes les plus couramment utilisés pour établir un effet étendu sont les mécanismes de licence collective étendue, le mandat légal de représentation et la présomption légale de représentation, comme indiqué ci-dessus. Ces mécanismes sont parfois combinés à d'autres mécanismes, tels que la gestion collective obligatoire du droit d'auteur et/ou le monopole légal de l'OGC compétent. La gestion collective obligatoire est le plus souvent utilisée pour exercer les droits statutaires des titulaires de droits à la rémunération, y compris en vertu des exceptions et limitations du droit d'auteur et des droits voisins. Dans certains États membres, en vertu de la loi et/ou de la jurisprudence, les OGC bénéficient d'une présomption procédurale pour représenter les titulaires de droits non membres dans les procédures judiciaires. Toutefois, étant donné que cette présomption procédurale ne confère pas aux OGC le droit de concéder des licences des droits des titulaires de droits non membres, elle n'est pas considérée comme un mécanisme de LCEE aux fins de la présente étude.

La portée de l'effet étendu couvre généralement tous les titulaires de droits, œuvres et/ou droits dans un domaine défini de la législation de l'État membre qui prévoit la LCEE. Dans un nombre limité de cas, l'effet étendu ne couvre qu'un nombre exhaustif de titulaires de droits, d'œuvres et/ou de droits, souvent répertoriés dans un registre accessible au public.

En général, l’effet étendu n’est pas limité par la nationalité des titulaires de droits et des œuvres et couvre donc également les titulaires de droits et les œuvres étrangers. Dans tous les États membres étudiés, l’effet étendu est limité au territoire de l’État membre dont la législation permet son application. Jusqu’à présent, la directive sur le droit d'auteur et les droits voisins dans le marché unique numérique ne rend possible les LCEE ayant un effet étendu au-delà du territoire national que pour l'utilisation d’œuvres indisponibles dans le commerce. Cette étude met en évidence un certain nombre d’éléments à prendre en compte pour envisager la possibilité d'autoriser l'introduction de LCEE ayant un effet transfrontalier dans d’autres domaines. Il s'agit notamment des domaines dans lesquels la LCEE ayant un effet transfrontalier peut être introduite (y compris les domaines les plus courants déjà présents dans le droit national des différents États membres), de la portée territoriale du mécanisme de licence et des garanties à appliquer (en particulier la représentativité des OGC, l'égalité de traitement, le droit de retrait et les mesures de publicité). En fonction de ces questions et de ce que le législateur veut réaliser, différentes options politiques pour établir des LCEE ayant un effet transfrontalier peuvent être examinées.

Dans la grande majorité des États membres où ces mécanismes sont appliqués, les licences collectives ayant effet étendu ne peuvent être octroyées que par des OCG autorisés par une autorité nationale compétente ou désignés par un acte législatif. Dans certains de ces États membres, les OGC autorisés bénéficient également d'un monopole
légal dans leurs domaines d’activité. Dans les États membres où plus d’un OGC est autorisé à octroyer des licences collectives ayant effet étendu, la loi prévoit parfois un mécanisme facilitant la coopération entre les OGC pour l’octroi conjoint de licences.

Les autorités nationales compétentes autorisent généralement les OGC sur la base d’un certain nombre de critères qualitatifs et quantitatifs. La représentativité d’un OGC est souvent évaluée en fonction du type et du nombre de titulaires de droits, de droits, d’œuvres et d’utilisateurs que l’OGC représente, ainsi que d’autres facteurs démontrant la capacité de l’OGC à représenter efficacement les intérêts de tous les titulaires de droits concernés. Les règles nationales laissent généralement une marge d’interprétation quant aux moyens les plus appropriés pour démontrer et définir la représentativité. En général, les facteurs qualitatifs ont un poids important dans la définition de la représentativité d’un OGC, notamment parce que les chiffres exacts permettant une évaluation comparative (par exemple, la comparaison avec le nombre d’œuvres et/ou de titulaires de droits dans un domaine donné) ne sont pas toujours disponibles.

Dans la majorité des États membres, l’égalité de traitement des titulaires de droits membres et non membres par les OGC est une exigence légale explicite (ou parfois implicite). Une grande majorité des OGC ayant répondu à l’enquête réalisée dans le cadre de cette étude confirment qu’elles traitent de manière égale tous les titulaires de droits qu’elles représentent, qu’ils soient membres ou non.

Dans de nombreux mécanismes de la LCEE, le droit de retrait des titulaires de droits non membres (c’est-à-dire d’exclure leurs œuvres ou d’autres objets de l’octroi de licences collectives) est une garantie essentielle pour protéger leurs intérêts. Le droit de retrait n’existe généralement pas dans les domaines où la gestion collective est obligatoire. Le nombre déclaré de retraits est très faible en comparaison avec le nombre total de titulaires de droits et d’œuvres ou d’autres objets représentés par les OGC interrogés en vertu d’autorisations explicites des titulaires de droits. Dans l’ensemble, les OGC ayant répondu à l’enquête ont déclaré que l’impact des retraits sur leurs activités était nul ou très faible.

Les mesures de publicité des OGC visent à informer les titulaires de droits sur la LCEE et les mesures de protection dont ils disposent. Ce n’est que dans quelques États membres étudiés que la loi exige des OGC qu’ils prennent des mesures de publicité au-delà des obligations de transparence de la directive sur la gestion collective du droit d’auteur. Il a été établi que, au moins dans quelques États membres, les OGC entreprennent des mesures de publicité explicites sans qu’une obligation législative explicite ne les y oblige.

D’une manière générale, notamment du point de vue du bien-être social, la LCEE renforce l’impact de la gestion collective du droit d’auteur et des droits voisins. La LCEE renforce le pouvoir de marché des OGC, en raison d’une couverture plus complète du marché et pourrait également entraîner une augmentation des redevances de licence. La LCEE amplifie la logique de réduction des coûts de la gestion collective du droit d’auteur, résultant d’une réduction du nombre de transactions, de la standardisation des conditions, des économies d’échelle dans l’application des droits et de la réduction des coûts de recherche. Dans les cas où d’être non membre est rarement un choix actif du titulaire de droits, mais résulte plutôt des coûts de transaction liés à l’adhérence ou d’un manque de sensibilisation, la LCEE avec un droit de retrait semble être plus efficace du point de vue du bien-être social que l’octroi de licences collectives reposant uniquement sur les autorisations explicites des titulaires de droits.
Zusammenfassung


Mehrgeniebslizenzen von Online-Rechten an Musikwerken

Mehrgeniebslizenzen (MGL) sind zur vorherrschenden Methode der Lizenzierung von Online-Rechten an Musikwerken in der EWR geworden, und diese Entwicklung geht einher mit der Verbreitung grenzüberschreitend operierender Online-Musikdienste. Mehrgeniebslizenzen können die Anzahl der für Online-Musikdienste erforderlichen Lizenzen verringern, so dass urheberrechtlich geschützte Werke und ähnliche Dienstleistungen für Verbraucher im EWR (und darüber hinaus), leichter zugänglich gemacht werden können.


Der Markt für Lizenzen von Online-Rechten an Musikwerken im EWR besteht aus einem komplexen Geflecht separater Lizenzen. Online-Musikdienstleister, die Ihre Dienste in vielen EWR-Staaten anbieten, arbeiten unter etwa 30 verschiedenen


In diesem Kontext bewerten Anbieter von Online-Musikdiensten die Auswirkungen von Titel III der CRM-Richtlinie auf das Verhalten von Lizenzgebern eher gemischt. Viele dieser


Trotz gelegentlicher Schwierigkeiten werden Benachrichtigungsverfahren über mutmaßliche Verfahrensverstöße von VG sowie Verfahren zur alternativen Streitbeilegung...


**Sammellizenzierung mit erweiterter Wirkung**

Die Studie konzentriert sich auf die Bestandteile der kollektive Lizenzvergabe mit erweiterter Wirkung (KLEW). KLEW ist ein kollektiver Lizenzierungsmechanismus, bei dem das Gesetz den Geltungsbereich vom Sammellizenzierungen oder das Mandat einer VG auch auf „Rechteinhaber ohne Mitgliedschaft“ erweitert (d.h. Rechteinhaber, die nicht explizit eine VG beauftragt haben, ihre Rechte direkt oder indirekt über eine Vertretungsvereinbarung auszuüben).
Zu den wichtigsten Beispielen zählen hierbei die nationalen Mechanismen der erweiterten Sammellizenzerziehung, die gesetzliche Vertretungsauftrag und die gesetzliche Vertretungsvermutung. Auch die obligatorische Sammelverwaltung von Rechten fällt in den Anwendungsbereich dieser Studie, sofern diese eine erweiterte Wirkung hat, d.h. sobald es der jeweiligen VG erlaubt ist, die Rechte aller Rechteinhaber in einem gewissen Bereich auszuüben.


In den allermeisten Mitgliedsstaaten, in denen diese Mechanismen Anwendung finden, können KLEW nur von VG erteilt werden, die von einer zuständigen Behörde zugelassen oder durch einen Rechtsakt hierfür bestimmt worden sind. In einigen Mitgliedsstaaten wird den zugelassenen VG ein rechtliches Monopol in ihren Tätigkeitsbereichen eingeräumt. In Mitgliedsstaaten, in denen mehr als eine VG berechtigt ist, KLEW zu erteilen, sieht das Gesetz manchmal einen Mechanismus vor, der die Zusammenarbeit zwischen den VG bei der gemeinsamen Lizenzierung erleichtert.


Im Großteil der Mitgliedsstaaten ist die Gleichbehandlung von Rechteinhabern im Bereich einer VG eine ausdrückliche (oder manchmal implizite) gesetzliche Anforderung, unabhängig davon, ob ein Rechteinhaber Mitglied ist oder nicht. Die große Mehrheit der VG, die an unserer Umfrage teilgenommen haben, bestätigt, dass alle Rechteinhaber, die von ihnen vertreten werden, unabhängig vom Mitgliedsstatus gleich behandelt werden.


bei der Durchsetzung von Rechten ergibt. Möglicherweise entscheiden sich viele
Rechteinhaber nicht aktiv gegen eine Beteiligung an kollektiver Rechteverwaltung, sondern
bleiben aufgrund des zur Registrierung nötigen Aufwands oder aus Unwissenheit außen
vor. Wenn dies so ist, scheint KLEW – mit einem Opt-out für Rechteinhaber – aus
wohlfahrtsökonomischer Sicht effizienter zu sein, als eine kollektive Rechteverwaltung, die
sich nur auf die Werke tatsächlicher Mitglieder der entsprechenden VG erstreckt.
Introduction

Collective management of copyright and related rights is an integral part of the copyright system in Europe. The collective licensing of rights in works and other subject-matter facilitates the access to cultural content to economic and cultural actors, as well as consumers in the European Economic Area (EEA). The present study is focused on two areas of collective licensing:

- Multi-territorial licensing of online rights in musical works, and
- collective licensing with an extended effect.

Part 1 of the study presents the current situation, describes practices and analyses the impact of the development of multi-territorial licensing of online rights in musical works under Title III of the Collective Management Directive (CRM Directive)1. This part is structured as follows:

- Section 1.a maps the availability of online rights in repertoires of collective management organisations (CMOs) and other licensing entities for multi-territorial licensing in the EEA. The mapping identifies licensing entities granting multi-territorial licences (MTLs) and describes some of the key characteristics of these licences. A detailed overview of cooperation arrangements among licensing entities is combined with a study of CMOs’ collaboration motives as well as the assessment of respective provisions of Title III of the CRM Directive. The research elaborates on the complex nexus between the offer of MTLs by licensing entities and the offer of online music services to EEA consumers.

- Section 1.b explores the application of the CRM Directive’s Title III and the verification of licensing entities’ compliance by the national competent authorities through the prism of variations in national verification procedures, differences in private stakeholders’ experiences and regulatory approaches to licensing entities granting MTLs.

- Section 1.c explores the use of notification procedures enabling private stakeholders to inform competent authorities about alleged issues as well as for Member States to notify respective authorities in other Member States.

- Section 1.d explores the impact of rightholders’ withdrawal rights.

- Section 1.e explores the use of alternative dispute resolution procedures, through the experiences of rightholders, licensing entities and online music service providers.

- Section 1.f analyses market conditions and trends by looking into offer conditions, including tariffs, demand conditions, as well as other (transaction) costs affecting online music services.

- Section 1.g evaluates the specific and overall effects of the CRM Directive’s Title III through the study of the regulation’s impact on licensing entities, including costs for meeting the requirements for engaging in multi-territorial licensing, as well as on online music service providers, with attention to their ability to make small European repertoires available.

---

Part 2 of the study maps national provisions on collective licensing with an extended effect (CLEE) of 31 EEA Member States and their main elements of the EEA mechanisms. CLEE gained prominence in the EU law with the adoption of the Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive), which has introduced provisions on CLEE to facilitate licensing of out-of-commerce works (Articles 8 to 11) and a framework provision on CLEE (Article 12). Member States may but are not obliged to introduce measures facilitating collective licensing foreseen by Article 12 of the DSM Directive. This part is structured as follows:

- Section 2.a provides an introduction.
- Section 2.b provides a typology of mechanism of CLEE, including mandatory collective management.
- Section 2.c provides a mapping that aims at exhaustively identifying all the domains (defined through types of rights, works, uses and/or rightholders) where rights are subject to CLEE in each of the 31 EEA Member States. Apart from domain-specific CLEE clauses, this mapping also examines general CLEE clauses, where specific domains are not exhaustively defined by law (Section 2.c.a). National mechanisms of CLEE also provide for various limitations as to the scope of an extended effect. These limitations are analysed at the level of the works, rightholders, users, exclusivity and territorial reach of the licensing mechanisms (Section 2.c.b).
- Section 2.d examines the practical functioning and application of CLEE mechanisms. For this purpose, it scrutinises the criterion of representativeness of CMOs by looking at national approaches to representativeness, including practices of competent authorities, legal monopoly rules and norms facilitating the achievement of representativeness where there is more than one CMO per domain (Section 2.d.a). For the assessment of the safeguards provided to rightholders non-members, particular attention was paid to the requirement of equal treatment of rights holders, the right of rightholders non-members to opt-out and publicity measures, as essential elements of safeguarding rightholders’ interests (Section 2.d.b). The section concludes with an analysis of CLEE from a social welfare perspective (Section 2.d.c).

For a detailed review of tasks under tender specifications of the study, see Annex 28. A full methodology for both parts of the study can be found in Annex 25.

The main authors of Part 1 are Oleksandr Bulayenko and Christian Handke, who also conducted the analysis on MTL. Stef van Gompel and João Pedro Quintais contributed to developing and drafting the survey and interview questionnaire and conducted the interviews jointly with Oleksandr Bulayenko.

The main authors of Part 2 are Oleksandr Bulayenko and Stef van Gompel, who also performed the key analysis on CLEE. Together with João Pedro Quintais, they also developed and drafted the guidance document for national experts and maintained all contact and follow-up with these experts. Joost Poort concluded the analysis of CLEE from a social welfare perspective.

---

Roel Peeters and David Regeczi managed the projects. This included organisational assistance, coordinating and performing primary data collection activities (including surveys and interviews), offering administrative support throughout the research, and assisting to the reporting of the final report.
1. Multi-territorial licensing of online rights in musical works

a. Mapping of multi-territorial licensing

1.1a.a Background and key questions

The last two decades have been transformational for the music industry, with the bulk of sales of recorded music moving online. Today a large number of online music services are available to consumers in the EEA. According to the website pro-music.org, over 30 different online music services operate in larger EEA Member States such as Germany and France. In smaller or less affluent Member States, a smaller number of online music service providers (OMSPs) offer their services. Nonetheless, even in these countries residents still have the choice between a number of services. For example, in Cyprus and Slovenia, the countries with the lowest number of service providers according to pro-music.org, residents still have the choice between eight different providers.

In 2019, revenues collected by collective management organisations (CMOs) from managing rights for musical works reached €755 million in Europe (16.7% of the total €4,519 million collected by CMOs for all uses of musical works, and not just managing rights). In the same year, digital revenues generated €583 million in the Canada-USA region (29.2% of the total collections of €2,451 million) and €444 million in the Asia-Pacific region (30.2% of the total collections of €1,471 millions). Europe is the region with the highest digital revenue and total collections from all uses of musical works. At the same time, in Europe the share of digital revenues in total collections remains lower than in the two other regions.

The licensing of online rights is driving the collections of EEA-based CMOs that manage rights in musical works. Digital collections grew by 29.2% in 2019 and 34.9% in 2018, while the total collections for the use of musical works grew by only 6.5% in 2019. Over the five-year period (2014-2018) digital collections nearly doubled, growing by 179%. Furthermore, the COVID-19 pandemic will reinforce the importance of online licensing in the overall revenue streams, as live performances and background music collections saw a significant decline in 2020.

---

3 In its widely cited accounts of the global music industry's revenues, the International Federation of the Phonographic Industry (IFPI 2020) records digital downloads and streaming since 2005, when globally these two digital categories had a combined share of 2%. By 2013, the two digital music categories combined accounted for US$ 5.7 billion (46%), and by 2015, digital revenues of the global music industry exceeded physical sales of for instance, CDs, vinyl or cassettes. According to the latest figures for 2019, digital accounted US$ 12.9 billion (75%), with the lion’s share of US$ 11.4 billion coming from streaming.


5 CISAC Global Collections Report 2020, pp. 30-32 (the notion of ‘Europe’ in the report is geographically broader than the EEA + UK (p. 70). The statistics is limited to the CMOs member of CISAC and omits data for SGAE (Spanish CMO), excluded from CISAC in 2019).

6 This is also explained by robust offline collections in Europe.


8 CISAC Global Collections Report 2019, p. 35 (the notion of ‘Europe’ in the report is geographically broader than the EEA + UK (p. 70). The statistics is limited to the CMOs member of CISAC).
Title III of the CRM Directive seeks to promote the efficient use of multi-territorial licences (MTLs), while establishing reasonable quality standards on CMOs. An efficient infrastructure for MTL can promote the development of a Digital Single Market for music, facilitate innovation and technological change. According to Article 3(m) of the CRM Directive, ‘multi-territorial licence’ means a licence which covers the territory of more than one Member State. This is a particular challenge because online music services catering for residents of multiple EEA Member States must establish licences with many collective management organisations and other licensing entities. Efficiency thus concerns the reduction of transaction costs in the Internal Market for copyright licences. Efficiency also concerns market competition and incentives to provide sustainable and efficient services among all suppliers, including rightholders, licensing entities and online music services that require licences.

This section maps out the current state of MTLs in the EEA. Key questions are:

- What proportion of repertoires is available for MTL in the EEA?
- Do licensing entities engaging in MTL comply with the CRM Directive’s Title III and national laws transposing it?
- What are the characteristics of MTLs supplied in the EEA?
- To what extent do licensing entities make use of representation agreements, and are ‘must-carry’ obligations used in practice?
- To what extent do licensing entities make use of subsidiaries (joint ventures / licensing hubs)?

1.a.b Availability of online rights in musical works for multi-territorial licensing

This section establishes the availability of repertoires of CMOs and large publishers for multi-territorial licensing.

Availability of CMOs’ repertoires for multi-territorial licensing

The vast majority (if not all) of repertoires of EEA-based CMOs are available for multi-territorial licensing, as can be seen in Figure 1.1 and Figure 1.2.
The estimations of the proportion of repertoires of EEA-based CMOs available for MTL relies on:

- Our estimation of the total number of EEA-based CMOs managing online rights in musical works (26 CMOs, see Annex 26);
- on publicly available information (e.g., annual transparency reports, websites of CMOs and their subsidiaries) about the granting or offers to grant MTLs;
- where no information on the actual granting or offers to grant MTLs is available, we rely on publicly available official assertions of granting or offers to grant MTLs (e.g., statutes of CMOs and their subsidiaries).
For some countries and CMOs it was not possible to establish whether repertoires are made available for multi-territorial licensing. Such repertoire is referred to as 'unknown' in the table below. According to additional written input provided during the consultation process, the repertoire of two CMOs, each established in a different Member State marked in the mapping as 'unknown' was going to be made available for MTL through a mandate to another licensing entity(ies) granting MTLs in 2021.

Table 1.1 below presents the manner in which repertoires of EEA-based CMOs are made available for multi-territorial licensing.

Table 1.1 Method of making available repertoires for multi-territorial licensing per EEA-based CMO

<table>
<thead>
<tr>
<th>CMO</th>
<th>EEA Member State of establishment</th>
<th>CMO’s repertoire is made available through Direct licensing</th>
<th>Mandate (number)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 AUME/AKM</td>
<td>Austria</td>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>2 SABAM</td>
<td>Belgium</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>3 MUSICAUTOR</td>
<td>Bulgaria</td>
<td>unknown</td>
<td></td>
</tr>
<tr>
<td>4 HDS ZAMP</td>
<td>Croatia</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>5 OSA</td>
<td>Czech Republic</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>6 KODA</td>
<td>Denmark</td>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>7 EAÜ</td>
<td>Estonia</td>
<td>unknown</td>
<td></td>
</tr>
<tr>
<td>8 TEOSTO</td>
<td>Finland</td>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>9 SACEM</td>
<td>France</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>10 GEMA</td>
<td>Germany</td>
<td>No</td>
<td>1</td>
</tr>
<tr>
<td>11 AUTODIA</td>
<td>Greece</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>12 ARTISJUS</td>
<td>Hungary</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 STEF</td>
<td>Iceland</td>
<td>unknown</td>
<td>1</td>
</tr>
<tr>
<td>14 IMRO</td>
<td>Ireland</td>
<td>No</td>
<td>1</td>
</tr>
<tr>
<td>15 SIAE</td>
<td>Italy</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>16 AKKA-LAA</td>
<td>Latvia</td>
<td>unknown</td>
<td></td>
</tr>
<tr>
<td>17 LATGA</td>
<td>Lithuania</td>
<td>unknown</td>
<td></td>
</tr>
<tr>
<td>18 BUMA/STEMRA</td>
<td>Netherlands</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>19 TONO</td>
<td>Norway</td>
<td>unknown</td>
<td>1</td>
</tr>
<tr>
<td>20 ZAIKS</td>
<td>Poland</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>21 SPA</td>
<td>Portugal</td>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>22 UCMR-ADA</td>
<td>Romania</td>
<td>No</td>
<td>1</td>
</tr>
<tr>
<td>23 SOZA</td>
<td>Slovakia</td>
<td>No</td>
<td>1</td>
</tr>
<tr>
<td>24 SAZAS</td>
<td>Slovenia</td>
<td>unknown</td>
<td></td>
</tr>
<tr>
<td>25 SGAE</td>
<td>Spain</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>26 STIM</td>
<td>Sweden</td>
<td>No</td>
<td>1</td>
</tr>
</tbody>
</table>

Where a CMO grants or offers to grant MTLs itself and also mandated another licensing entity to grant MTLs covering its repertoire, such a situation does not necessarily mean that the same repertoire for the same territory(ies) is made available to OMSPs from different licensors. The mandate to another licensing entity to grant MTLs may, for example, concern only licensing by some OMSPs defined through their size (e.g., a value threshold). See also Section 1.a,g on the impact of the requirement of the non-exclusive nature of representation agreements for MTL (Article 29(1) of the CRM Directive).
Availability of some large publishers’ repertoires for multi-territorial licensing

Some music publishers (so-called ‘Option 3 publishers’9) withdrew their online mechanical rights to the Anglo-American repertoire10 from CMOs’ repertoires to license them on a multi-territorial basis with higher level of direct control and lower CMOs’ involvement in licensing decisions. All these publishers are large international publishers, including the three major publishers (Sony/ATV, UMPG and WCM).11 Rights of these publishers are not included in CMOs’ repertoires available for multi-territorial licensing as they license these themselves. Multi-territorial licensing of all these repertoires involves to various extent provision of some rights management services by CMOs and/or their subsidiaries. Even where CMOs and their subsidiaries are not making a final licensing decision, they could provide important rights management services, such as the processing of usage reports submitted by OMSPs, matching, royalty calculation and invoicing. The collaboration between such publishers and CMOs also facilitates joint licensing of online mechanical rights withdrawn by the publishers, together with some matching online performing rights controlled by CMOs.

Table 1.2 Multi-territorial licensing of online rights of some large international music publishers

<table>
<thead>
<tr>
<th>Publishers</th>
<th>Licensing entities granting or facilitating granting of MTLs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Sony/ATV</td>
<td>SOLAR Music Rights Management (Sony/ATV repertoire)</td>
</tr>
<tr>
<td></td>
<td>SGAE (Sony/ATV &amp; EMI Latin repertoire)</td>
</tr>
<tr>
<td>2 UMPG</td>
<td>SACEM (UMPG non-BIEM12 repertoire)</td>
</tr>
<tr>
<td>3 WCM</td>
<td>SACEM (WCM Anglo-American repertoire)</td>
</tr>
<tr>
<td></td>
<td>Mint (SUISA Digital Licensing / SESAC Digital Licensing) (WCM Anglo-American repertoire)</td>
</tr>
<tr>
<td></td>
<td>STIM (WCM Anglo-American repertoire)</td>
</tr>
<tr>
<td></td>
<td>ICE (WCM Anglo-American repertoire)</td>
</tr>
<tr>
<td>4 Kobalt</td>
<td>AMRA</td>
</tr>
<tr>
<td>5 BMG</td>
<td>ARESA (BMG Anglo-American repertoire)</td>
</tr>
</tbody>
</table>


10 For more on repertoire definitions, see CISAC Licensing Rules Repertoire Definition, CIS14-0091R34, document of 16 September 2020.

11 For the estimated EEA online music publishing rights market shares of Sony/ATV, UMPG, WCM, BMG, Kobalt, Concord and Peer in 2015-2017, see European Commission, Decision of 26 October 2018 non-opposition to a notified concentration (Case M.8989 — Sony/EMI Music Publishing) C(2018)7293 final, para. 63. See also European Commission, Decision of 19 April 2012 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 (Case No. COMP/M.6459 – Sony/Mubadala/EMI Music Publishing) C(2012) 2745, paras. 65, 72, 167 (providing approximations of market shares of Sony/ATV, UMPG and WCM in the EEA in 2010, including with a breakdown for mechanical and performing offline and online rights); and European Commission, Decision of 21 September 2012 declaring a concentration to be compatible with the internal market and the EEA agreement (Case No COMP/M.6458 – Universal Music Group / EMI Music) C(2012) 6459 final, para. 22.

12 Bureau International des Sociétés gérant le droit d’enregistrement et de reproduction mécanique (BIEM).
1.a.c  Do CMOs and other licensing entities offer to grant MTLs?
CMOs as well as other licensing entities (CMOs’ subsidiaries and IMEs) grant MTLs in the EEA. This section provides a snapshot of the present situation in the market.

For the purpose of the present mapping, ‘CMOs granting MTLs’ are CMOs that themselves directly grant MTLs to OMSPs. CMOs mandating other CMOs or CMOs’ subsidiaries to grant MTLs to their repertoire are not considered ‘CMOs granting MTLs’.13 This notion as well as the opposite notion of ‘CMOs not granting MTLs” are essential for determining CMOs’ rights and obligations under Title III of the CRM Directive.

**CMOs granting MTLs**

**EEA-based CMOs granting MTLs**

All EEA-based CMOs granting or offering to grant MTLs should meet the requirements of national legislation of the Member State of their establishment transposing Title III of the CRM Directive.14 Articles 24-28 of the CRM Directive provide for a number of requirements to CMOs granting MTLs regarding their capacity to process MTLs, transparency and accuracy of multi-territorial repertoire information, reporting and invoicing, and payments to rightholders. Title III of the Collective Management Directive establishes a regulatory framework, but it is for CMOs to decide whether to engage in multi-territorial licensing of online rights in musical works. CMOs that do not meet the requirements and/or do not wish to grant MTLs themselves may mandate other licensing entities to grant MTLs to their repertoire.

According to the information available, the following 14 EEA-based CMOs15 grant or offer to grant MTLs, of which three are aggregating CMOs (i.e., their MTLs include repertoires of mandating CMOs):

<table>
<thead>
<tr>
<th>CMO</th>
<th>EEA Member State of establishment</th>
<th>Own direct member repertoire (mono-repertoire MTLs)</th>
<th>Also direct member repertoire of other CMO(s) (multi-repertoire MTLs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 AUME/AKM</td>
<td>Austria</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>2 SABAM</td>
<td>Belgium</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

---

13 This understanding is also supported by most of the consulted stakeholders. Some stakeholders expressed some uncertainty as to whether CMOs that created and mandated subsidiaries for the purpose of MTL are to be considered as not granting MTLs.

14 Article 23 of the CRM Directive.

15 For the purpose of simplicity, two CMOs established in the same Member State (one for management of reproduction rights in musical works and another for communication to the public rights in musical works) and jointly granting MTLs are counted as a single CMO.
## Table 1.3 EEA-based CMOs granting MTLs

<table>
<thead>
<tr>
<th>CMO</th>
<th>EEA Member State of establishment</th>
<th>Own direct member repertoire (mono-repertoire MTLs)</th>
<th>Also direct member repertoire of other CMO(s) (multi-repertoire MTLs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 HDS ZAMP</td>
<td>Croatia</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>4 OSA</td>
<td>Czech Republic</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>5 KODA</td>
<td>Denmark</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>6 TEOSTO</td>
<td>Finland</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>7 SACEM</td>
<td>France</td>
<td>Yes</td>
<td>SOCAN (Canada) KOMCA (South Korea)</td>
</tr>
<tr>
<td>8 AUTODIA</td>
<td>Greece</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9 ARTISJUS</td>
<td>Hungary</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>10 SIAE</td>
<td>Italy</td>
<td>Yes</td>
<td>UCMR-ADA</td>
</tr>
<tr>
<td>11 BUMA/STEMRA</td>
<td>Netherlands</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>12 ZAiKS</td>
<td>Poland</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 SPA</td>
<td>Portugal</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14 SGAE</td>
<td>Spain</td>
<td>Yes</td>
<td>SPA</td>
</tr>
</tbody>
</table>

### Figure 1.3 EEA-based CMOs granting MTLs

The 14 CMOs granting MTLs listed in Table 1.3 above represent 54% of the total of 26 CMOs established in the EEA and managing online rights in musical works. Of these three, in France, Italy and Spain, provide multi-repertoire MTLs (see also Figure 1.3). These CMOs are established in the largest EEA Member States in which CMOs grant MTLs (thereby excluding Germany). The CMOs in Italy and Spain represent the repertoire of one other EEA-based CMO, i.e. the CMO from Romania (UCMR-ADA) respectively Portugal.
The largest of these CMOs, established in France, represents the repertoires of two non-EEA-based CMOs (from Canada and South Korea).16

**Non-EEA-based CMOs granting MTLs**

Repertoires of third country CMOs are available in the EEA mostly through traditional mono-territorial reciprocal representation agreements or through agreements mandating EEA-based CMOs to grant MTLs. However, the following two CMOs17 established outside the EEA grant MTLs in the Internal Market, AMRA (USA) and SOKOJ (Serbia).

AMRA was acquired in 2014 by Kobalt Music Group, and thus also licences Kobalt’s rights on a multi-territorial basis in the EEA (see subsection on the availability of some large publishers’ repertoires in Section 1.a,b). SOKOJ grants or offers to grant multi-repertoire MTLs, as it concluded representation agreements with three CMOs established in three Western Balkan countries. These CMOs are AMUS (Bosnia-Herzegovina), PAM CG (Montenegro) and ZAMP Macedonia (North Macedonia).

**EEA-based licensing entities, other than CMOs, granting MTLs**

According to Recital 17 of the Collective Management Directive, CMOs are free to choose to have certain of their activities carried out by subsidiaries or by other entities that they control. Such activities, include, among others, the invoicing of users or the distribution of amounts due to rightholders. In such cases, those provisions of the Directive that would be applicable if the relevant activity were carried out directly by a CMO should be applicable to the activities of the subsidiaries or other entities. Recital 43 of the Directive further states that CMOs should not be prevented from outsourcing services relating to the granting of MTLs for online rights in musical works. Several organisations (subsidiaries, joint ventures, economic groupings, etc.) were created in recent years for undertaking different operations (front and/or back office) of multi-territorial licensing of online rights to musical works. The CRM Directive also introduced the notion of ‘independent management entity’ (Article 3(b) of the CRM Directive). A couple of independent management entities (IMEs) grant MTLs.

Table 1.4 EEA-based licensing entities (other than CMOs) granting MTLs

<table>
<thead>
<tr>
<th>Licensing entity</th>
<th>Type</th>
<th>Member State of establishment</th>
<th>Repertoire(s) included</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ICE</td>
<td>CMOs’ subsidiary</td>
<td>GEMA (CMO; Germany)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Germany/Sweden18</td>
<td>STIM (CMO; Sweden)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>IMRO (CMO; Ireland)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>PRSfM (CMO; UK)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>BMI (CMO; USA)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Concord</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Peer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Downtown</td>
</tr>
</tbody>
</table>

16 In the course of the consultations with stakeholders, some CMOs reported to be in the process of negotiating mandates for MTL from third country CMOs.

17 These two organisations are members of CISAC. They are referred here as ‘CMOs’ without prejudice to their exact qualification under Article 3 of the Collective Management Directive.

18 The third related entity is established in the UK.
CMOs’ subsidiaries were created and are owned by different CMOs:

- ICE’s shareholders are: GEMA, STIM and PRSfM;
- Polaris Hub’s shareholders are: KODA, TEOSTO and TONO;
- ARESA’s shareholder is GEMA;
- SOLAR’s shareholders are GEMA and PRSfM;
- SUISA Digital Licensing shareholder is SUISA
- SESAC Digital Licensing shareholder is SESAC.

SUISA Digital Licensing and SESAC Digital Licensing were created by non-EEA based CMOs, SUISA (Switzerland) and SESAC (USA), respectively. ICE and SOLAR were created with a participation of PRSfM, which with the exit of the UK from the EU, became a non-EEA based CMO.

ICE was created in 2010 by PRS and STIM, as a joint copyright database project. In 2012, GEMA joined the initiative. After a merger clearance in 2015, ICE extended its operations to multi-territorial licensing and other services related to the processing of online licences.20 Publishers Concord, Peer and Downtown became ICE’s direct clients in 2018, IMRO in 2019 and BMI in 2020. ICE’s ‘Core Licence’ includes repertoires of CMOs (GEMA, STIM, IMRO, PRSfM and BMI) and publishers (Concord, Peer, Downtown). ICE also provides third parties, other than the aforementioned core clients, with services related to MTL. ICE copyright data services are offered to Polaris Nordic, SABAM and BUMA/STEMRA. ICE also provides online processing services to ARESA, SOLAR, Sony/ATV and Warner Chappell (processing of usage reports, matching, invoicing, etc.). CMOs and other third

---

19 The second related entity is established in the UK.

parties can use copyright data services and licence processing services without using the full licensing services.

Polaris Hub has the authority to grant MTLs to online repertoires of KODA, TEOSTO and TONO. Its MTLs may also include the repertoire of STEF. Polaris Hub grants MTLs since 2019.

ARESA is representing BMG’s Anglo-American repertoire for MTL since 2012.

SOLAR was launched in 2014, following the 2012 acquisition of EMI led by Sony,\footnote{European Commission, Decision of 19 April 2012 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 (Case No. COMP/M.6459 – Sony/Mubadala/EMI Music Publishing) C(2012) 2745.} for multi-territorial licensing of the merged Anglo-American catalogue. SOLAR effectively replaced CELAS and PAECOL. CELAS was a German subsidiary of PRS and GEMA created in 2007 for multi-territorial licensing of EMI’s Anglo-American repertoire. PAECOL was created by GEMA in 2008 for multi-territorial licensing of Sony/ATV’s Anglo-American repertoire.

Several CMOs (AKM, ARTISJUS, SABAM, SACEM, SGAE, SIAE, SPA and SUISA) cooperate for the purpose of MTL in the framework of Armonia. Armonia is an economic interest grouping of CMOs. It does not grant MTLs but could facilitate multi-territorial licensing negotiations for repertoires of a plurality of CMOs. Armonia was created in 2013 by SACEM, SGAE and SIAE. In the same year, SABAM and ARTISJUS joined the grouping, followed by SUISA (in 2014), SPA (in 2015) and AKM (in 2016).

Mint is a joint multi-territorial licensing project of SUISA and SESAC, implemented through two distinct subsidiaries granting MTLs of each CMO: SUISA Digital Licensing and SESAC Digital Licensing. Mint was created in 2016 and started its activities in 2017. SUISA Digital Licensing was mandated for the purpose of granting MTLs by Soundreef in 2018, by SOZA in 2019, and by ACUM in 2020. At least two more CMOs mandated SUISA Digital Licensing for MTL.

It can be observed that some CMOs participate in more than one MTL initiative. SUISA created the Mint project and is also a member of Armonia. SABAM is a client of ICE and a member of Armonia. At least one more CMO is participating in two MTL initiatives. This demonstrates that at least some forms of participation in different MTL initiatives are not mutually exclusive.

**Specific insights from consultations with stakeholders (surveys and interviews)**

**CMOs and their subsidiaries**

Any CMO established in an EEA Member State may grant MTLs for online use of musical works, provided that it complies with the requirements of Title III of the CRM Directive (Article 23). The CRM Directive does not oblige CMOs to (offer to) grant MTLs, but not offering or granting MTLs may give rightholders specific withdrawal rights according to Article 31. Our results suggest that virtually all CMOs appear to have taken on this activity over recent years.
Out of 15 CMOs responding to our survey, 11 (73%) confirmed that they themselves currently offer to grant MTLs of online rights in musical works in the EEA. Of the 11 CMOs offering to grant MTLs themselves, the first had started doing so in 2004 and the last three had started offering MTLs in 2019. On average, these CMOs offered MTLs in the EEA for about six years. Seven out of these 11 CMOs (64%) had started granting MTLs before 10 April 2016, the deadline for EU Member States for transposing the CRM Directive (Article 43).

The other three responding CMOs did not offer MTLs themselves. None of these currently planned to start offering MTLs by themselves, either. But they did mandate others to do so on their behalf. We asked the three CMOs, who reported that they did not offer MTLs themselves, why they did not do so:

- None selected any of four pre-determined response options. (‘Too difficult to meet the regulatory requirements’, ‘The necessary technical and organisational measures are too costly’, ‘No commercial incentive to do this’, and ‘Lack of demand from cross-border online music services’);
- Instead, all three selected the ‘Other’ option and provided more detail in an open-text follow-up:
  - One CMO reported that it had founded a subsidiary (joint venture) with other CMOs from various countries, which was mandated to conduct MTL on its behalf;
  - One CMO had mandated a different CMO from the same country to conduct MTL on its behalf;
  - Another CMO from a small EEA Member State reported that ‘all major providers are abroad’, which we find hard to interpret.

Thus, out of 15 responding CMOs, at least 14 (93%) made MTLs to their repertoire available directly (by granting MTLs themselves) or indirectly (by mandating other licensing entities to grant MTLs).

The research team interviewed representatives of six CMOs and three CMOs’ subsidiaries. Three of the interviewed CMOs grant MTLs, and three other interviewed CMOs mandated other CMOs or licensing entities to grant MTLs to their repertoires. Hence, repertoires of all six interviewed CMOs are available for MTL. Interviewed CMOs, asked whether they were aware of CMOs not granting or offering to grant MTLs, reported to have no such knowledge.

Interviewed stakeholders attributed the beginning of the development of multi-territorial licensing and the abandonment of the system enabling blanket mono-territorial licences in the EEA to the adoption of a European Commission Recommendation of 2005.24 The stakeholders do not attribute any particular impact on the number of MTLs to Title III of the

---

22 About surveys, see Methodology Annex 25. The number of responses per survey item varies, as there were some filter questions and some respondents did not complete later parts of the survey or skipped open question, which tend to be more laborious to deal with for respondents.

23 About interviews, see Methodology 25.

CRM Directive, stating that the Directive affirmed the process that began before. Multiple interviewed CMOs reported that they granted MTLs before the adoption and/or transposition of the CRM Directive.

As to the number of MTLs granted, a significant difference was observed between different licensing entities (CMOs and/or their subsidiaries) granting MTLs. Two of the largest licensing entities granting MTLs reported during interviews to have granted over 50 MTLs each. At the same time, publicly available information and consultations with CMOs (survey and interviews) permitted to identify at least four CMOs that granted fewer than five MTLs. These CMOs, of different size, are located in all geographical areas of the EEA (West/East, North/South). One of them reported that ‘there are not many DSPs asking for MTLs, and that all those that ask are big foreign users’. Another of these CMOs decided to make its repertoire available for multi-territorial licensing by mandating it to another licensing entity granting multi-repertoire MTLs. Another of these CMOs reported that it is in the process of undertaking large investments in its IT infrastructure that should facilitate the licensing of online rights.

The commercial value and the size of repertoires seem to be an important factor in the number of MTLs granted. The two licensing entities that granted significant numbers of MTLs both represent significant bundles of repertoires, by virtue of mandates from other licensing entities, and these bundles were described by OMSPs as being among the most important. The number of such multi-repertoire MTLs concluded with the same licensing entity could be an indicator of the repertoire’s attractiveness as well as of the market power of licensing entities offering it.

Non availability of some CMOs’ repertoires via MTL does not necessarily mean that these repertoires are not available to EEA consumers via online music services. Their repertoires could also be sometimes made available via mono-territorial licences. Repertoires of some third country CMOs are also available via mono-territorial licences with EEA-based CMOs.

Some interviewed OMSPs offering their services only in several Member States reported that they do not offer consumers comprehensive access to all repertoires. For developing commercially viable music services aimed at specific audiences they need only MTLs of the licensing entities offering the commercially most valuable repertoires (including Anglo-American repertoires) and licences of CMOs established in the Member States where the service providers offer their services (if not covered by the former). All consulted OMSPs offering their services to EEA consumers in all or some Member States operate under a combination of mono- and multi-territorial licences.

The research team asked interviewed OMSPs about their knowledge about EEA-based CMOs whose repertoire is not available for MTL. Two providers, whose online music services are offered across the EEA, stated that, according to their most recent search experience, there were CMOs neither granting MTLs nor mandating other licensing entities granting MTLs. One of these providers named two such CMOs. However, we established with certainty that by now repertoires of these CMOs are indeed available for MTL. Another OMSP, who offers its services in many but not all Member States, stated that another CMO would neither grant MTLs nor mandate another licensing entity to do so. Nevertheless, according to the publicly available statutes of this CMO, it offers to grant MTLs. On the basis

---

25 One of them reported to have granted over 70 MTLs.

26 DSP stands for Digital Service Provider, and has a similar meaning as online music service provider (OMSP) in the framework of this study.
of this publicly available CMO’s official statement, its repertoire was indicated as available for MTL in the above mapping (see subsection on the availability of CMOs’ repertoires for multi-territorial licensing in Section 1.a.b). Other interviewed OMSPs, whose services are offered only in several Western European EEA Member States, did not have knowledge of a CMO whose repertoire is not available for MTL.

**IMEs**

The two IMEs responding to the survey both also confirmed that they offered to grant MTLs for online rights in musical works in the EEA, one since 2017 and the other since 2020.

1.a.d Since when do the licensing entities meet the requirements of Title III of the CRM Directive?

The CRM Directive was adopted on 26 February 2014. Article 43 of the Directive established 10 April 2016 as the deadline for EU Member States to transpose the Directive’s provisions into national legislation. Non-EU EEA Member States had to transpose the Directive by the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017.27 However, there can be delays in transpositions of Directives into national law, and law has to be implemented by effective regulation, including monitoring and potentially enforcement measures. Based on survey results, this section focuses on the question since when licensing entities complied to all requirements imposed on them by the CRM Directive and its transposition into national law.

**CMOs**

Figure 1.4 Shares of responding CMOs meeting the requirements of the CRM Directive per year (in %)

We asked all 11 responding CMOs, who offered to grant MTLs themselves, since which year they met the requirements of Title III of the CRM Directive – and of the respective national legislation transposing the Directive – while alerting respondents to the fact that

---

this year may be before the Directive was passed or implemented into national law. All the responding CMOs are based in the Member States, which had to comply with the 2016 transposition deadline. Ten CMOs provided a valid response. Out of the 10 valid responses, only one CMO reported it had met the requirements prior to the year 2014, in which the CRM Directive was passed. Another three CMOs reported that they met the requirements since 2014 (all of which are established in large EU Member States). By 2016, when the CRM Directive had to be transposed into national law of the EU Member States, eight out of the 10 responding CMOs met the requirements, and by 2019, all responding CMOs did. (see Figure 1.4 for an overview) Finally, the remaining two CMOs in our sample reported that ‘it is difficult to give a precise date’.

Overall, it appears that the CRM Directive did help initiate changes in the operations of most CMOs, in particular in smaller and mid-sized EEA Member States.

IMEs
Both IMEs in our sample reported that they met the requirements to IMEs granting MTLs under the national legislation of the Member States transposing Title III of the CRM Directive. Although Title III of the CRM Directive does not create obligations for IMEs (see Article 2(4) of the CRM Directive), EEA Member States may at a national level decide to adopt legislation applying some requirements of Title III also to IMEs.

1.a.e Inclusion of rightholders’ works in MTL
Out of 56 rightholders responding to the survey, 39 (70%) confirmed that their ‘online rights in musical works’ were ‘licensed on a multi-territorial basis in the EEA’. Eight (14%) reported this was not the case, and 12 (21%) selected the ‘do not know’ response option.28

The survey included an open follow-up question addressed at all rightholders, who reported they ‘do not know’ whether their works were included in MTL. (One motivation behind that early follow-up was signalling to respondents to take care when answering survey items.) Out of 12 relevant respondents exposed to this follow-up, seven entered free text responses. These responses confirmed that the respective rightholders had little knowledge – not only of the specifics regarding the management of their own works but also of MTL more generally. A typical answer was ‘I just don’t understand all these’.29

It is normally for the rightholder to choose between the individual or collective management of his rights. Out of the 39 rightholders, who had confirmed that their online rights in musical works were managed under an MTL in the EEA, 37 responded to the question whether this occurred via a ‘collective management organisation, independent management entity or other licensing entity’. 34 (92%) confirmed. Two (5%) disconfirmed, but one of these stated in a follow-up question that the MTL was administered by a subsidiary of several CMOs (a so-called licensing hub). One respondent did not know.

28 Instructions with information on the EEA and its Member States were provided. Among these 11 rightholders ‘do not know’, just 1 was a publisher.

29 Out of 4 surveys addressed to different groups of stakeholders, the one addressed to rightholders was intentionally the shortest and simplest in terms of its content and jargon used.
1.a.f  Characteristics of MTLs  

Specific characteristics of recent MTLs granted

There are many potential variations in MTLs. For instance, MTLs can cover various combinations of territories (some or all EEA Member States) or cover the repertoires of any number of CMOs and rightholders. In principle, bundling via MTLs can reduce the number of licences required for multi-territorial online music services. MTL can also develop standard licensing terms, reducing contracting costs and increasing transparency, at least where information on licensing terms, including tariffs, is publicly available. From an economic perspective, this relates to an important trade-off. On the one hand, standardised and comprehensive MTL terms – as well as the bundling of multiple CMO repertoires into single MTLs – have the potential to reduce transaction costs. On the other hand, tailored MTL terms might better enable more specialised online music services, if licensees can acquire MTLs with a narrower scope for a lower price. Our survey of CMOs included a battery of questions to illuminate, to what extent MTLs are used, as well as the characteristics of MTL terms and procedures.

CMOs and a subsidiary

To better understand the characteristics of MTLs, in the survey we asked all 12 CMOs, who had reported that they offered to grant MTLs themselves, a number of questions regarding the specifics of MTLs. In particular, we asked about up to five of the 'most recent multi-territorial licences for online rights in musical works to providers of online music services' that any of these CMOs had granted. In total, the 12 CMOs provided information on 46 MTLs30 granted by 11 of these CMOs and one subsidiary (see Figure 1.5 and Table 1.5 for an overview). Five CMOs and a subsidiary had five MTLs or more, and the other six reported on fewer MTLs (between four and two).

As illustrated in Figure 1.5, the oldest MTLs had been granted in 2013 and most MTLs were granted in recent years. The CRM Directive was adopted in 2014. The deadline for its transposition was April 2016 in the EU. Thus, CMOs that granted MTLs before 2016 did not necessarily have to comply with the Directive at the time.31 Furthermore, many MTLs were granted quite recently. This may suggest that many online music services have started up of late, or that there is more willingness to negotiate and conclude licensing agreements. Interviews helped to clarify that OMSPs that used to offer their services under mono-territorial licences transitioned, at least partially, to MTL because of the fragmentation of mono-territorial licensing offers caused by withdrawals of some online rights and the development of MTL offers.

---

30 One CMO explicitly mentioned that for the purpose of the survey it only reported on MTLs covering more than two Member States, because it routinely grants MTLs covering territories of two Member States.

31 Depending on the date of the implementation in its Member State of establishment.
Figure 1.5 Years in which the MTLs granted by CMOs and a subsidiary and covered in the survey were established (n=46)

Table 1.5 Characteristics of the recent MTLs granted by CMOs in our sample (up to five MTLs per CMO, who grants MTLs itself)

<table>
<thead>
<tr>
<th>Repertoires</th>
<th>Population of CMO’s Member State of establishment</th>
<th>Sum (Valid N = 46)</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&gt;30 million(1)</td>
<td>&lt;30 million(2)</td>
<td></td>
</tr>
<tr>
<td>CMO’s own repertoire</td>
<td>15</td>
<td>31</td>
<td>All MTLs cover the CMOs’ own repertoire.</td>
</tr>
<tr>
<td>No</td>
<td>--</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>Repertoire(s) of (an)other CMO(s)</td>
<td>10</td>
<td>7</td>
<td>Most MTLs (63%) do not cover other CMOs’ repertoires. However, most MTLs granted by CMOs established in large EEA Member States (67%) do so.</td>
</tr>
<tr>
<td>Yes</td>
<td>10</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>5</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Repertoires other than direct member repertoires of CMOs</td>
<td>10</td>
<td>--</td>
<td>Most MTLs (78%) do not cover repertoires other than direct member repertoires of CMOs. However, most MTLs from CMOs established in large EEA Member States (67%) do so.</td>
</tr>
<tr>
<td>Yes</td>
<td>10</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>5</td>
<td>31</td>
<td></td>
</tr>
<tr>
<td>Possibility to offer broader repertoire at the request of the licensee</td>
<td>--</td>
<td>8</td>
<td>Most MTLs (83%) cover the entire repertoire the CMO can license. Some MTLs granted by CMOs from smaller EEA Member States (26%) do not include the entire repertoire.</td>
</tr>
<tr>
<td>Yes</td>
<td>--</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>15</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>Territories</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

32 Table 1.5 also contains responses from one of CMOs’ subsidiaries created for MTL. For simplifying analysis and keeping subsidiary’s identify confidential, the subsidiary is assimilated to a CMO established in a large Member State.
### Population of CMO’s

<table>
<thead>
<tr>
<th>Population of CMO’s</th>
<th>Member State of establishment</th>
<th>Sum (Valid N = 46)</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&gt;30 million</td>
<td>&lt;30 million</td>
<td></td>
</tr>
<tr>
<td>All EEA Member States covered</td>
<td>Yes</td>
<td>14</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>1 (3)</td>
<td>1</td>
</tr>
<tr>
<td>Possibility to cover more countries at the request of the licensee</td>
<td>Yes</td>
<td>15</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>--</td>
<td>3</td>
</tr>
</tbody>
</table>

### Rights and uses

<table>
<thead>
<tr>
<th>Rights</th>
<th>Only mechanical rights</th>
<th>Only performing rights</th>
<th>Mechanical rights AND performing rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>All digital</td>
<td>0</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>All digital, except VoD</td>
<td>--</td>
<td>18</td>
<td>7</td>
</tr>
<tr>
<td>Music streaming service</td>
<td>7</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Music downloading service</td>
<td>2</td>
<td>--</td>
<td>4</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>4 (5)</td>
<td>--</td>
<td></td>
</tr>
</tbody>
</table>

### OMSPs

<table>
<thead>
<tr>
<th>OMSPs</th>
<th>All digital</th>
<th>All digital, except VoD</th>
<th>Music streaming service</th>
<th>Music downloading service</th>
<th>Other (please specify)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All digital</td>
<td>2</td>
<td>5</td>
<td>7</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>All digital, except VoD</td>
<td>--</td>
<td>18</td>
<td>18</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Music streaming service</td>
<td>7</td>
<td>8</td>
<td>15</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Music downloading service</td>
<td>2</td>
<td>--</td>
<td>2</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>4 (5)</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

### Possibility to cover more rights and uses at the request of the licensee

<table>
<thead>
<tr>
<th>Possibility to cover more rights and uses at the request of the licensee</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>No</td>
<td>19</td>
<td>12</td>
</tr>
</tbody>
</table>

**NOTES:**

(1) The data on Member States with a population of 30 million inhabitants or more is collected from four CMOs reporting on 15 MTLs.
(2) The data on Member States with a population of less than 30 million inhabitants is collected from eight CMOs reporting on 31 MTLs.
(3) This MTL covered seven specific West European Member States.
(4) All these MTLs were granted by a single CMO.
(5) One responding CMO used the ‘Other’ option three times, reporting twice ‘UGC [user-generated content] platform’ and once ‘Music streaming and downloading’. Another responding CMO used the ‘Other’ option once, reporting ‘Music Streaming Subscription, Service, Music Downloading Service (karaoke)’.

Regarding the repertoires covered, there was substantial variation:

- All 46 MTLs covered the organisation’s ‘own repertoire (rights of its members)’;
- 29 MTLs (63%) covered only CMO’s ‘own repertoire (rights of its members)’. They were mono-repertoire MTLs;
- 17 MTLs (37%) additionally covered ‘repertoire(s) of (an)other CMO(s)’. They were multi-repertoire MTLs. The four CMOs from large EEA Member States mostly MTLs supplied multi-repertoire MTLs (67% in this subset). For any multi-repertoire MTLs, the other CMOs specified by any respondent were always the same, which implies that there are stable cooperation arrangements between CMOs in this respect;
• 10 multi-repertoire MTLs (22% of all MTLs) also covered other repertoires than CMOs’ direct member repertoires (for example, repertoire mandated by a publisher for the MTL). Only CMOs established in larger EEA Member States granted these broader multi-repertoire MTLs. For any of this type of multi-repertoire MTLs, the rightholders (publishers) specified by the responding CMOs were always the same, which implies that there are stable cooperation arrangements in this respect, too;

• For each MTL, we also asked: ‘if the provider of the online music service so requested, would it be possible for you to offer a broader repertoire?’ For 38 MTLs (83%), the responding CMOs disconfirmed, implying that the MTL exhaustively covered the entire repertoire represented by the CMO. Eight MTLs (17%) did not include the entire repertoire the CMO could have made available, and all of these were granted by CMOs from smaller EEA Member States.

Regarding the territories covered, comprehensive coverage is a predominant practice:

• Out of 46 MTLs, 45 (98%) covered the entire EEA;

• Just one MTL covered only part of the EEA, reporting on seven specific West European EEA Member States;

• Nevertheless, for 43 MTLs (93%), the CMOs confirmed that ‘if the provider of the online music service so requested’, it would be possible for the CMO ‘to cover more countries’ in the MTL. There seems to be much unexploited scope for CMOs established in the EEA to offer MTLs that cover non-EEA territories.

Regarding the types of rights covered, comprehensive coverage was the rule. All but one licensing entity, accounting for 41 MTLs (89%) covered, included both mechanical (reproduction) rights and performing (communication to the public, including making available to the public) rights, which are commonly required for the provision of an online music service. Only one CMO in our sample reported on MTLs exclusively covering performing rights.

Regarding the general types of uses covered by the MTLs, there was more variety:

• For 18 MTLs the responding CMOs selected the response option ‘all digital, except for VoD (video on demand)’. The option ‘all digital’ was selected seven times. The option ‘music streaming service’ was selected 15 times, and ‘music downloading service’ two times;

• In addition, four MTLs were classified as ‘Other’ and described in an open-question follow-up as: ‘music streaming subscription service, music downloading service (karaoke)’; ‘music streaming and downloading’; and two times as ‘UGC platform’, regarding user-generated content;

• Finally, for each MTL we also asked: ‘if the provider of the online music service so requested, would it be possible for you to cover more rights and uses?’ For 14 MTLs (30%), the responding CMOs disconfirmed, implying that the MTL exhaustively covered all rights and uses covered by the CMO. Thirty-two MTLs (70%) did not include the entire range of rights and uses the CMO could have licensed.

Overall, there are several, virtually universal features and standards of MTLs: they predominantly cover all of the EEA, and both mechanical as well as performing rights. At the same time, especially larger CMOs often bundle various repertoires into MTLs. What is more, there is some variety regarding the types of uses covered in MTLs. Our results suggest that many MTLs are adapted to specific activities and needs of licensees.

Still, there clearly is a complex nexus of MTLs. MTL of large bundles of works itself is a means to reduce aggregate transaction costs in the market. Standardisation of prices and
terms can increase transparency and reduce bargaining costs. On the other hand, it can be beneficial to adapt MTL prices and terms according to the interests of different types of market participants. In this section, we document that in many respects, MTLs are fairly similar to each other. At the same time, there are indications that CMOs do not adopt needlessly simplistic solutions, for instance by only offering ‘all-or-nothing’ terms to all online music services. It is not possible to assert whether the current compromise struck between standardisation and flexibility is reasonably efficient.33

IMEs
Two IMEs completed our survey, each reporting on the five most recent MTLs they had granted. Both IMEs were established in an EEA Member State with a population greater than 30 million. One of the IMEs reported on four MTLs granted in 2017 and one MTL granted in 2020. The other IME reported on five MTLs granted in 2020. Based on this limited number of respondents, it is hard to draw general conclusions on MTL by this sub-set of licensing entities, who license repertoires of multiple rightholders, but who are not operating as CMOs, in the sense of being owned or controlled by their members, and/or organised on a not-for-profit basis (Article 3(a) of the CRM Directive).

Regarding the repertoires covered in the 10 most recent MTLs granted by the IMEs in our sample, all covered the IMEs’ ‘own repertoire’. One IME did not include additional repertoires in any MTL. The other included ‘the repertoire(s) of (an)other CMO(s)’ in all five MTLs. No IME included any additional ‘repertoire from any individual rightholders or other organisations (except CMOs)’. One IME confirmed for all five MTLs that ‘if the provider of the online music service so requested, it would have been possible for [the IME] to offer a broader repertoire’. The other IME disconfirmed for all its MTLs.

Regarding the territories covered, both IMEs reported that all 10 relevant MTLs covered ‘all of the EEA’. One IME confirmed for four MTLs that ‘if the provider of the online music service so requested, it would have been possible for [the IME] to cover more countries?’, and disconfirmed for one MTL. The other IME disconfirmed for all the MTLs it reported on.

Regarding the rights covered by MTLs, the two IMEs reported for all 10 MTLs that these covered mechanical and performing rights. Regarding the uses covered, the two IMEs reported for all MTLs that these covered ‘all digital’ uses. In this respect, the IMEs’ licences were all comprehensive. One IME confirmed for all its five MTLs ‘if the provider of the online music service so requested, it would have been possible for [the IME] to cover more rights and uses?’. The other IME disconfirmed for all five MTLs.

Overall, both IMEs gave quite consistent answers for the five MTLs they each reported on (perfectly consistent in terms of repertoires and rights and uses covered). Answers differed between the two IMEs, however. It remains to be seen whether IMEs increase the diversity of MTLs available for online music services in the EEA. This could come about if IMEs were to offer MTLs under consistent terms, which differ from the terms already available from other licensing entities. It could also come about if IMEs were to customise or personalise MTLs to the needs and preferences of specific rightholders and online music services. Our results are more consistent with the former point. However, based on our results regarding two IMEs, we cannot draw any reasonably certain general conclusions on MTL-practices of IMEs in the EEA.

33 An important point of interest in further investigations is pricing variations between MTLs subject to different other features of the licence and the licensees.
Terms of MTL

During interviews, the research team inquired about a typical period for which MTLs are concluded. A majority of licensing entities granting MTLs and OMSPs estimated an average term of their MTLs to be two years. A large OMSP affirmed that an average term of its MTLs is three years, and a large licensing entity stated that its MTLs are concluded for ‘2-3 years typically’.

As to the minimum and maximum duration, a large OMSP stated that a licence term of its MTLs could be as short as six months and stretch to three years. A smaller OMSP reported about MTLs of one year, as an exception to the general practice. A large CMO shared that the term of its MTLs could range from one to three years, adding that ‘more than 3 years is very uncommon, because the online field is too dynamically changing. In downloading, licence’s conditions last much longer because there are fewer changes in the services and consumption, the terms being extended every year under similar conditions.’ Another licensing entity reported that ‘for a very new or experimental services, it can be a trial version of shorter duration, while [for] very stable services it might be longer’. One CMO that concluded fewer than five MTLs reported that its MTLs are not limited in their duration.

A licensing entity reported that while it commonly concludes MTLs for a two-year period, its MTLs could sometimes apply retroactively (i.e., a period preceding the conclusion of the MTL). It also stated that once, when experiencing a stalemate in negotiations with one of the largest OMSPs on the market, it let the MTL to expire in order to regain a negotiating position. An OMSP reported that ‘the negotiation process with CMOs can take so long that the parties are already a few months into the new period when a new deal is concluded’. Some of the largest licensing entities and OMSPs described the MTL and renewal process as an ongoing process of bargaining and adjusting existing deals. One of such OMSPs offered an example of having to negotiate a seventh amendment to the same MTL in 12 months.

Overall, MTLs are concluded for an average term of two years and may also cover a retroactive period. Term of MTLs seems to be adapted to circumstances according to the types of use (e.g., streaming and download) and services (e.g., well-established and experimental). Given the reported terms of MTLs and that licensing negotiations often begin sometime before the expiration of existing MTLs, multi-territorial licensing could be described as a continuous process. And this process implies that with a higher frequency of substantial revisions parties face higher transaction costs, in terms of time and effort.

Joint licensing of performing and mechanical rights

Most OMSPs need to license two categories of online rights in musical works: rights of communication to the public, including making available, and rights of reproduction. In the industry jargon, these rights are commonly referred as performing and mechanical rights, respectively.

In general, a majority of interviewed licensing entities and OMSPs reported that MTL of performing and mechanical rights in musical works is carried out by the same licensing entity and/or by different licensing entities jointly. Separate licensing of these categories of online rights in musical works was described to be an exception. One licensing entity that granted multiple MTLs reported that there is uncertainty in some Member States as to whether both, mechanical and performing, rights are necessary for some types of online uses.
Multiple interviewed stakeholders pointed out to a particular role played by one CMO with regard to licensing matching performing rights together with mechanical rights to the commercially valuable Anglo-American repertoire. Some OMSPs expressed their concerns about confidentiality of MTL deals they conclude with entities that have agreements in place with this CMO.

Interviewed OMSPs expressed their appreciation of the European practice of joint licensing of the two categories of rights. Licensing entities reported that it is sometimes complicated to license matching performing and mechanical rights. An OMSP offering its services in the USA as well as in the EEA pointed out that the practice of joint licensing of performing and mechanical rights ‘makes licensing in the EEA less complex than in the USA, where it is still completely separated’. Another OMSP offering its services in different countries around the world as well as in the EEA stated that it has to clear performing and mechanical rights separately in Brazil and that it prefers the European practice of obtaining both categories of rights through a single transaction.

Interviews, surveys and desk research of publicly available resources also demonstrated that some licensing entities offer MTLs including other rights than performing and mechanical (e.g., right necessary for online karaoke music services).

Overall, joint MTL of performing and mechanical rights is a common practice in the EEA. OMSPs are satisfied with it, as it simplifies the licensing of the necessary rights. Licensing entities granting MTLs uphold the practice although reporting about some difficulties of licensing matching performing and mechanical rights. Multiple stakeholders expressed their concerns about a role played by one CMO in licensing of matching performing rights with mechanical rights to the commercially valuable Anglo-American repertoire.

1.a.g Cooperation between licensing entities for the purpose of MTL

Initial overview

CMOs wishing to make their repertoire available for multi-territorial licensing have the following basic options:

- To offer to grant MTLs to licensees themselves;
- To mandate another licensing entity to grant MTLs to their repertoires.

Mandated licensing entities could be:
- other CMOs;
- other licensing entities, including subsidiaries of CMOs. Such subsidiaries could be created with or without participation of the mandating CMO.

---

34 During the interviews, one large licensing entity, who had received a mandate from a CMO, reported that the reasons for choosing it included linguistic and geographic proximity with the mandating CMO, facilitating development of business relations. Many mandating arrangements in the EEA between licensing entities do indeed coincide with linguistic and geographical proximity. (see subsection on “Availability of CMOs’ repertoires for multi-territorial licensing” in Section 1.a.b) Possible exceptions are the mandates from UCMR-ADA (Romania) to SIAE (Italy), and from SOZA (Slovakia) to SUISA Digital Licensing (Liechtenstein).
CMOs may also combine these options. For example, the mandating CMO may rely on the non-exclusive nature of the mandate to grant MTLs itself, or mandate licensing for some Member States/OMSPs and grant MTLs for others.

This section first maps out the existing network of cooperations between CMOs, including CMOs’ subsidiaries, based on secondary data. It then reports on primary survey results, reported by licensing entities. Finally, it presents underlying reasons for various cooperation arrangements, as discussed with stakeholders during semi-structured interviews.

**Mapping of cooperation between licensing entities for the purpose of MTL**

**EEA-based CMOs mandating other CMOs or CMOs’ subsidiaries to grant MTLs**

According to the information available, the 11 EEA-based CMOs (42% of the EEA-based CMOs managing online rights in musical works) listed in Table 1.6 mandated other CMOs or CMOs’ subsidiaries to grant MTLs covering their repertoire. The mandates are of at least EEA-wide territorial scope.

### Table 1.6 EEA-based CMOs mandating other CMOs or CMOs’ subsidiaries to grant MTLs

<table>
<thead>
<tr>
<th>Mandating CMO</th>
<th>EEA Member State of establishment of mandating CMO</th>
<th>Mandated licensing entity</th>
<th>Member States of establishment of mandated licensing entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 AUME/AKM</td>
<td>Austria</td>
<td>[CMO]</td>
<td>[Country]</td>
</tr>
<tr>
<td>2 KODA</td>
<td>Denmark</td>
<td>Polaris Hub</td>
<td>Sweden</td>
</tr>
<tr>
<td>3 TEOSTO</td>
<td>Finland</td>
<td>Polaris Hub</td>
<td>Sweden</td>
</tr>
<tr>
<td>4 GEMA</td>
<td>Germany</td>
<td>ICE</td>
<td>Germany/Sweden</td>
</tr>
<tr>
<td>5 STEF</td>
<td>Iceland</td>
<td>Polaris Hub</td>
<td>Sweden</td>
</tr>
<tr>
<td>6 IMRO</td>
<td>Ireland</td>
<td>ICE</td>
<td>Germany/Sweden</td>
</tr>
<tr>
<td>7 TONO</td>
<td>Norway</td>
<td>Polaris Hub</td>
<td>Sweden</td>
</tr>
<tr>
<td>8 SPA</td>
<td>Portugal</td>
<td>SGAE</td>
<td>Spain</td>
</tr>
<tr>
<td>9 UCMR-ADA</td>
<td>Romania</td>
<td>SIAE</td>
<td>Italy</td>
</tr>
<tr>
<td>10 SOZA</td>
<td>Slovakia</td>
<td>SUISA Digital Licensing</td>
<td>Liechtenstein</td>
</tr>
<tr>
<td>11 STIM</td>
<td>Sweden</td>
<td>ICE</td>
<td>Germany/Sweden</td>
</tr>
</tbody>
</table>

35 The mandates are of at least EEA-wide territorial scope.

36 One of ICE entities is established in the UK.
Available information permits us to observe that some CMOs mandated grant of MTLs to their repertoires to licensing entities other than CMOs, see Table 1.6. More specifically, eight CMOs (31% of the EEA-based CMOs managing online rights in musical works) mandated CMOs’ subsidiaries: Polaris Hub, ICE and SUISA Digital Licensing.

CMOs of all sizes and located in all parts of the EEA mandated other CMOs or CMOs’ subsidiaries to grant MTLs to their repertoires.

Non-EEA based CMOs mandating EEA-based licensing entities to grant MTLs

According to the information available, eight non-EEA-based CMOs37 listed in Table 1.7 mandated licensing entities in the EEA to grant MTLs to their repertoires. The mandates are of at least EEA-wide territorial scope. At least two of the mandates also cover some countries bordering the EEA.

37 Non-EEA-based organisations are designated as ‘CMOs’ without prejudice to a different qualification under Article 3 of the CRM Directive.
STUDY ON EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES IN THE DIGITAL ENVIRONMENT

Table 1.7 Non-EEA-based CMOs mandating EEA-based licensing entities to grant MTLs

<table>
<thead>
<tr>
<th>Mandating CMO</th>
<th>Country of establishment of mandating CMO</th>
<th>EEA mandated licensing entity</th>
<th>Member State of establishment of the mandated licensing entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRSfM</td>
<td>UK</td>
<td>ICE</td>
<td>Germany/Sweden</td>
</tr>
<tr>
<td>BMI</td>
<td>USA</td>
<td>ICE</td>
<td>Germany/Sweden</td>
</tr>
<tr>
<td>SOCAN</td>
<td>Canada</td>
<td>SACEM</td>
<td>France</td>
</tr>
<tr>
<td>KOMCA</td>
<td>South Korea</td>
<td>SACEM</td>
<td>France</td>
</tr>
<tr>
<td>IMPEL</td>
<td>UK</td>
<td>SACEM</td>
<td>France</td>
</tr>
<tr>
<td>SUISA</td>
<td>Switzerland</td>
<td>SUISA Digital Licensing</td>
<td>Liechtenstein</td>
</tr>
<tr>
<td>ACUM</td>
<td>Israel</td>
<td>SUISA Digital Licensing</td>
<td>Liechtenstein</td>
</tr>
<tr>
<td>HFA</td>
<td>USA</td>
<td>SUISA Digital Licensing / SESAC Digital Licensing</td>
<td>Liechtenstein</td>
</tr>
</tbody>
</table>

Survey insights on cooperation between licensing entities

*Representation agreements between individual CMOs for the purpose of multi-territorial licensing of online rights in musical works in the EEA (Article 29 of the CRM Directive)*

According to the CRM Directive, a CMO may mandate another CMO to grant MTLs for the online rights in musical works of the former CMO’s repertoire (Article 29 of the CRM Directive) in compliance with the competition rules laid down by Articles 101 and 102 of the TFEU (Recital 11 of the CRM Directive). As regards non-EU EEA based CMOs, the same applies (Articles 53 and 54 of the EEA Agreement).

During the survey, we asked all 12 CMOs, who themselves offered to grant MTLs, whether they had received a request from another CMO established in the EEA ‘to represent [the latter organisation’s] repertoire for the purpose of multi-territorial licensing of online rights to musical works in the EEA’ over the last five years. Three CMOs confirmed (25%), two of which were established in large EEA Member States (population greater 30 million). The latter two respondents had each received two such requests over the last five years, and all four were accepted. The remaining CMO – from a small EEA Member State – had received one request, which did not come to fruition.

We also asked all 14 responding CMOs whether – over the last five years – they had requested ‘another CMO established in the EEA to represent [the responding organisation’s] repertoire for the purpose of multi-territorial licensing of online rights in musical works’. 10 (71%) disconfirmed. Four (29%) confirmed, all of which were from smaller EEA Member States. Of the latter four CMOs, one had issued such a request twice, and the other three CMOs had each issued one such request during the last five years. Out of these five requests, one was accepted (20%), and according to our respondent, four were ‘refused’.

Overall, the (admittedly limited) data raises doubts as to whether CMOs were under effective ‘must-carry’-obligations (see also Section 1.a.g on the impact of the ‘must-carry’ rule of Article 30(1) of the CRM Directive). Whether refusals to agree to represent another CMO for multi-territorial licensing are due to inconclusive bargaining between both sides

---

38 One of ICE entities is established in the UK.
regarding the exact terms of representation, or whether some CMOs effectively refuse to represent other CMOs’ repertoires, should be researched further. The two responding IMEs reported to have neither received nor requested any representation agreement from a CMO over the last five years.

**Participation in subsidiaries (joint ventures) of several licensing entities for the purpose of multi-territorial licensing of online rights in musical works in the EEA**

According to Recital 17 of the CRM Directive, CMOs may operate some of their activities – such as operating directories of works, invoicing of OMSPs, or payments to rightholders – via subsidiaries or other entities that they control. Pursuant to Article 2(3), the relevant provisions of the Directive apply to entities directly or indirectly owned or controlled, wholly or in part, by a CMO, provided that such entities carry out an activity which, if carried out by the CMO, would be subject to the provisions of the CRM Directive. Recital 43 of the CRM Directive further states that CMOs should not be prevented from ‘outsourcing’ services relating to the granting of MTLs for online rights in musical works in this manner.

From an economic perspective, many of the services that CMOs supply are information services. Information services often exhibit a ‘natural monopoly’ cost structure, where high setting-up costs and fixed operating costs coincide with low and non-increasing marginal costs of managing additional repertoires or licences. There may also be substantial indirect network effects, where the value of MTL services for any user increases in the number of participating rightholders/repertoires, and vice versa. In either case, larger CMOs offering more comprehensive MTLs would be more productive and competitive. In the extreme, large CMOs would take shape and there would be little competition between them. There is thus a potential trade-off in the provision of MTL services between productive efficiency (minimising average costs) and allocative efficiency (competition between suppliers based on diverse services, where no supplier enjoys market power and excessive centralised control over the entire market). ‘Must-carry’-obligation (discussed below in this section) is one means to strike a reasonable compromise between productive and allocative efficiency. Another option is limited integration of CMOs regarding some aspects of production – where economies of scale and network effects are particularly rife. CMOs may become more productive if they pool some of their resources, whereas some of the benefits of competition can be sustained if CMOs operate independently in other respects.

In practice, CMOs have created separate entities – subsidiaries (joint ventures, economic groupings and the like) – for conducting all or some aspects of multi-territorial licensing for several CMOs. Besides exploiting economies of scale and network effects, this also has reduced and has the potential to further reduce the number of licences required for online music services in the EEA and the associated costs for all types of stakeholders.

Furthermore, we addressed this practice in several survey questions. 15 licensing entities provided valid answers, 13 CMOs and two IMEs.

---

39 E.g., due to the costs charged by the mandated CMO (in accordance with Article 30(6) of the CRM Directive) for making the rights information provided by the requesting CMO to meet the standards of Title III of the CRM Directive.
Of the 13 CMOs responding to our survey, eight (62%) participated in such separate ‘joint venture’ entities, who are used to conduct multi-territorial licensing services on behalf of several distinct licensing entities. Of these eight CMOs, three participated in just one joint venture of this type, one participated in two joint ventures and one participated in five joint ventures (the others provided no response). CMOs established in large EEA Member States, with a population greater than 30 million, were relatively more likely to participate in a joint venture: four out of five responding CMOs (80%) from large Member States did, whereas among CMOs from smaller Member States four out of eight did (50%).

The five specific joint ventures, in which respondents in our sample reported to participate were ARMONIA, MINT/SUISA Digital Licensing, ICE and Polaris Hub AB. Four out of eight CMOs participating in a joint venture reported that they had ‘co-created this entity’. Two reported they had ‘joined this entity, which had been created by others’, one reported that it ‘only use(s) certain services of this entity’, and one respondent from a smaller EEA Member State provided no answer.

Out of seven CMOs, who responded to the relevant questionnaire items, two reported they had ‘joined, created or started using services of this entity’ before the passing of the CRM Directive (in 2005 and 2013 respectively). Two reported they had done so in 2015. The remaining three had ‘joined, created or started using services’ of the ‘joint venture’ after the CRM Directive’s EU transposition deadline (2016, 2018 or 2019 respectively).

Furthermore, we asked all CMOs, who participated in a joint venture, what types of services the venture provided. Out of seven responding CMOs, all seven (100%) reported the ‘joint venture’ provided ‘multi-territorial licensing’ services, and three (43%) reported they also received ‘back-office processing’ from the joint venture of CMOs.

Finally, none of the CMOs, who did not participate in a joint venture, reported that it had any specific plans to do so.

Overall, the majority of the responding licensing entities use joint ventures. Interestingly, CMOs established in large EEA Member States are even more likely to participate than those CMOs from smaller Member States (even though larger CMOs should be able to better exploit economies of scale and network effects by themselves). In any case, some further monitoring may be required to establish whether these joint ventures (or the enterprises controlling them) do not develop excessive market power, and that their operations also adequately reflect the interests of small licensing entities. For such potential competition-related issues, see European Commission, Decision of 16 June 2015 declaring a concentration to be compatible with the internal market and the EEA agreement (Case M.6800 – PRSIM / STIM / GEMA / JV) C(2015) 4061 final.

40 The term ‘joint venture’ is used here as a shorthand, without implying any particular legal form of the entity. The survey question asked respondents about ‘subsidiaries, joint ventures, economic groupings and the like’.

41 One responding CMO seems to have misunderstood the question, reporting its own name.

42 One respondent referred to ‘APOLLON’ as a joint venture which provides services in the area of ‘collective management of musicians’ broadcast and public performance rights in sound recordings’. These rights and thus report are irrelevant for our survey. We excluded it from the responses.

43 Title III of the CRM Directive explicitly refers only to CMOs. The application of national law transposing
the Directive to CMOs’ subsidiaries or entities co-created by them, which could compete with other providers of MTL services in the EEA, is not always certain.

Of the two responding IMEs, one participated in one joint venture. In 2018, the IME had joined ‘this entity, which had been created by others’. The IME received ‘multi-territorial licensing’ services, as well as ‘back-office processing’ services. The other IME did not participate in any such joint venture, nor did it have any current plans to start doing so.

**Interview insights regarding cooperation between licensing entities**

During interviews with several licensing entities and some OMSPs, we discussed reasons for CMOs to mandate or not other CMOs or licensing entities to conduct MTL on their behalf. This section presents and groups interviewees responses regarding such reasons.

**Why CMOs mandate other CMOs and licensing entities to grant MTLs**

The interviewees reported three types of reasons (benefits) for cooperating:

- **Cost reduction**: Market participants reported cost reductions by exploiting economies of scale in the production of MTL services, in particular by avoiding the duplication of development costs for technical infrastructure. A typical statement by a larger licensing entity, which supplies MTLs itself, is:
  
  ‘there is a relation between the necessary investments in the up-to-date rights management infrastructure and the size (market value) of the repertoire managed which means that small CMOs would have to spend a big part of their royalty collections on achieving the technical sophistication of […] level, which is not justified by the collections of small CMOs (as these sums would ultimately have to be recouped from their members). It could be considered that such significant infrastructure expenses by small CMOs are not in the best interests of their members.’

A large online music service was under the impression that some smaller CMOs ‘struggle to get a deal with DSPs independently’:

- **Stronger bargaining position**: market participants reported stronger bargaining positions for suppliers of larger and more valuable repertoires for MTL, and thus better licensing terms for larger bundles of repertoires. All interviewed online music services reported that suppliers of larger and more valuable repertoires for MTL enjoyed substantially stronger bargaining position. A large online music service was under the impression that some smaller CMOs ‘struggle to get a deal with DSPs independently’.

A large licensing entity, who grants several MTL licences to multiple repertoires, also reported that it could establish more advantageous prices and terms for the participating CMOs, than they would be able to establish when conducting direct MTL by themselves. Here a typical statement by a large licensing entity, who itself grants many MTL licences to multiple repertoires:

‘DSPs [digital service providers, i.e. OMSPs] conclude licences with CMOs in the chronological order of repertoires’ importance, going from the top to the bottom of the list. When launching a new service or entering the EEA market, DSPs go and first talk to the majors and a few other entities. […] When DSPs reach a half of their negotiations list, some of the deals concluded at the beginning might be already up for renewal/renegotiation.'
DSPs might not reach the bottom of the list or do it years after deals with the biggest players. Small CMOs also have a weaker bargaining position vis-à-vis DSPs.’

- Legal certainty for non-EEA-based CMOs: it was reported that several non-EEA-based CMOs created and/or mandated EEA-based licensing entities for reasons of legal certainty, among others, if any. One of such considerations was reported as follows: ‘the CRM Directive was thought to give easier access to other EEA territories and made it easier to establish MTL throughout the EEA’. This could be explained that the fact that EEA-based entities should enjoy the freedoms provided by the EU Treaties (Recital 4 of the CRM Directive) and the EEA Agreement. That is, CMOs established within the EEA need to comply with all provisions of Title III of the CRM Directive and should then be able to grant MTLs across the EEA without regulatory obstacles (see subsection on “Possible obstacles for licensing entities established in an EEA Member State to supply MTL services in other Member States” in Section 1.a.h).

According to publicly available information, SACEM received mandates for granting MTLs from two non-EEA-based CMOs, SOCAN (Canada) and KOMCA (South Korea). SUISA Digital Licensing, the EEA-based subsidiary of SUISA (Switzerland), received a mandate for MTL from a non-EEA-based CMO, ACUM (Israel), in addition to managing rights of SUISA. Two EEA-based CMOs each reported to be in the process of finalising mandates for MTL from one non-EEA-based CMO.

Why CMOs do not mandate other CMOs and licensing entities to grant MTLs

Obviously, mandating another licensing entity entails costs. Interviewees reported various types of reasons for not mandating another licensing entity to conduct MTL in the EEA on their behalf:

- Confidence to have the necessary capacity to engage in multi-territorial licensing on their own: Two relatively small CMOs were of the opinion that they are sufficiently capable and have the necessary capacity for processing MTLs on their own without mandating another licensing entity for granting MTLs to their repertoire. One of these CMOs reported that it received mandates from rightholders that withdrew their rights from some other CMOs. At the same time, an OMSP considered that the other of the two CMOs was not up to the task of MTL due to the lack of the necessary technical capacity to process MTLs (this CMOs granted fewer than five MTLs). The OMSP had concluded a mono-territorial licence with this CMO. The licensee’s input highlights the complexity of the issue of the necessary capacity for granting MTLs and that CMOs offering MTLs may have different capabilities;

- Concern about small repertoires ‘getting lost’ in large multi-repertoire and multi-territorial licensing offers: CMOs granting MTLs to repertoires that have a relatively small market share in the EEA market overall said that their decisions not to mandate another licensing entity was motivated by the concern that their ‘repertoire might get lost in the hub’s entire repertoire’. Both of these CMOs ran tests to see how well all their works (not only the most popular) could be identified by the so-called ‘hubs’, and they were not fully satisfied. They believe that the value of their works is in the ‘long tail’. One of these CMOs, notably, referred to the importance of the diaspora of persons from its Member State of establishment. With regard to the results of any such tests, they depend, among other things, on the quality of usage reports, matching capacity and rights management data. On the need and costs of data quality, see below;

- Issue of status: a large licensing entity, which received a mandate from at least one licensing entity, reported that for smaller licensing entities granting MTLs on their own the direct grant of MTLs is often a matter of status. Interviews with stakeholders
also permitted to observe that such a decision of a CMO to mandate another licensing entity to grant MTLs on its behalf was not necessarily the reason for stakeholders’ perception of CMO’s relevance. One CMO, which directly granted fewer than 5 MTLs and decided not to mandate another licensing entity for granting MTLs, considers itself large and experienced. According to a couple of OMSPs of different size, this CMO is relatively small on the EEA market (also considering its repertoire’s market share) and it is already today perceived as less important market actor by these OMSPs. One of these two OMSPs concluded a mono-territorial licence with this latter CMO, and another decided that this CMO’s repertoire is not necessary for the success of its services provided in other Member States. The issue of status is a matter of perception by the organisation concerned and by other market actors. The interviews highlighted that there is a considerable gap in how some relatively small CMOs (in terms of online revenues) perceive themselves and how they are seen by other market actors (licensees and licensors).

- Costs of mandating another licensing entity: Such costs are associated with management fees and data adjustment costs.

Mandated licensing entities charge a management fee for their services. According to Recital 46 of the CRM Directive: ‘The management fee charged by the mandated collective management organisation should allow that organisation to recoup the necessary and reasonable investments incurred.’ These management fees could be prohibitively high according to some respondents: one interviewed EEA-based CMO reported that after a trial period with mandating other licensing entities ‘the cost effectiveness of the process […] in most of the trials turned out to be poor’. A larger OMSP was also under the impression that many CMOs interested in mandating another licensing entity found the requested management fees too high.

A large licensing entity, who has had experience with being mandated by other CMOs, alerted us during an interviews of substantial data adjustment costs for licensing entities, who mandate MTL to another licensing entities. This regards costs associated with the adjustment of rights management data to the standards permitting the mandated CMO to meet the requirements of Title III of the CRM Directive. Article 30(6) of the CRM Directive provides: ‘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.’ (emphasis added). According to this mandated licensing entity, there had been substantial costs in ‘cleaning’ its data and it cannot just formalistically accept mandates from other CMOs without any investment on their side into their data. The same licensing entity also stated that together with other partners it was currently working on reducing the costs for accepting data from other CMOs and publishers:

- (Perceived) loss of control: Licensing entities were concerned with loss of control over MTL of their repertoire when mandating other licensing entities to conduct MTL on their behalf. According to three licensing entities, who received mandates from other CMOs, mandating CMOs do not ‘sit at the table’, when mandated licensing

44 The ‘costs reasonably incurred’ by the requested CMO is the upper limit of the management fees for the MTL services provided to the requesting CMO (Article 30(5) of the CRM Directive), complimented by the requirement of the costs being justified and documented (Article 12(3) of the CRM Directive).
entities settle the details of MTLs with OMSPs – which stems from the mandate itself. Apparently, this concerned licensing entities mandating MTL services or considering to do so. However, all three of the larger licensing entities emphasised that mandated repertoires can be licensed under better terms by virtue of the stronger bargaining power of large MTL licensors with larger repertoires that can be offered:

- Principal-agent problem: Furthermore, two large licensing entities, who had experience with conducting MTL on behalf of other licensing entities, reported that managers responsible for online licensing at smaller licensing entities are also those who are involved in the decision-making process regarding mandating another organisation. There is a conflict of interests that these people may experience, as their job and position within their CMOs is related to them conducting online licensing. On a personal level, these people might not be interested in MTLs being granted by another organisation.

**Indirect mandates**

As large licensing entities confirmed during interviews, on rare occasions, more complex licensing chains have been employed, of the shape: Licensing entity 1 -> Licensing entity 2 -> Licensing entity 3 -> Licensees. In such arrangement, the licensing entity mandated by the licensing entity at one end of the chain is not granting MTLs but is in turn mandating another licensing entity to do so.

A widely known case in point was the arrangement between the Irish CMO IMRO with PRSfM, which in turn mandated its subsidiary ICE to conduct MTL. Thus, the specific licensing chain was IMRO -> PRSfM -> ICE -> Licensees. This arrangement was discontinued in 2019, when IMRO instead directly mandated its repertoire to ICE in 2019. The argument for a more direct mandate was this ‘will expedite the payment of digital royalties to IMRO members, at the most competitive rates possible, thus shortening and simplifying the digital royalty chain’ (emphasis added).

However, indirect mandates (i.e., mandates for MTL to a licensing entity that mandates another licensing entity to grant MTLs) have not been entirely abandoned. During the interviews, another existing indirect mandate was mentioned between two EEA-based CMOs, one such mandate is being negotiated and two such arrangements are being contemplated by another CMO.

Mandating CMO is found in such ‘chain’ of licensors either if it mandates a CMO that already mandates another licensing entity or if the mandated CMO, which used to grant MTLs directly, mandates another licensing entity.

During the interviews, licensing entities provided the following reasons for conclusion of such indirect mandates:

- Licensing entities granting MTLs encounter costs associated with receiving mandates and integrating new repertories (with all the related data) into their MTL processes. Two large licensing entities reported that due to these costs, licensing entities granting MTLs were unwilling to accept direct mandates from small CMOs, who are expected to generate insufficient revenues. Currently, these licensing entities granting MTLs seek to reduce the costs associated with direct mandates

---

IMRO, IMRO Choose ICE: [https://www.imro.ie/industry-news/imro-choose-ice/](https://www.imro.ie/industry-news/imro-choose-ice/).
from smaller CMOs, which could do away with the need for more complex licensing chains;

- A mandated CMO reported that, where a choice is between a direct mandate to a licensing entity that is not a CMO and an indirect mandate to a CMO, there is legal certainty with regard to the application of CRM Directive’s requirements to mandated CMOs to treat online rights in musical works of the mandating CMOs as their own. Article 29(1) of the CRM Directive provides that the mandated CMO ‘shall manage those online rights on a non-discriminatory basis’. This obligation is reinforced by more general obligations of CMOs regarding management of rights on behalf of other CMOs: Article 14 ‘Rights managed under representation agreements’ and Article 15 ‘Deductions and payments in representation agreements’.

**Impact of the requirement of the non-exclusive nature of representation agreements for multi-territorial licensing (Article 29(1))**

Pursuant to Article 29(1) of the CRM Directive, Member States shall ensure that any representation agreement between CMOs whereby a CMO mandates another CMO to grant multi-territorial licences for the online rights in musical works in its own music repertoire is of a non-exclusive nature. This legal requirement regarding mandates for multi-territorial licensing offers two non-mutually exclusive possibilities to the mandating CMO:

- to make its repertoire available for multi-territorial licensing also through a mandate to another licensing entity granting or offering to grant MTLs;
- to make its repertoire available for multi-territorial licensing also by granting MTLs directly.

In principle, implementation of such possibilities could create a plurality of access points for licensing the same repertoire (i.e., create ‘choices available to users’). Recital 44 explains that ‘[e]xclusivity in agreements on multi-territorial licences would restrict the choices available to users seeking multi-territorial licences and also restrict the choices available to collective management organisations seeking administration services for their repertoire on a multi-territorial basis.’

During interviews, the research team asked OMSPs of different size, operating in some or all Member States, whether in their experience with multi-territorial licensing of online right in musical works in the EEA, the same repertoire is available for MTL for the same Member State through several sources. All OMSPs replied that it is not possible to obtain the same repertoire from more than one source (i.e., ‘no competing offers’ answer).

It was reported that the same remains true in the case of a CMO that participates in two multi-territorial licensing hubs. MTLs covering the repertoire of this CMO are available to different OMSPs through different hubs.

---

46 Recital 46 of the CRM Directive elaborates on the reason for this provision: ‘To protect the interests of the rightholders of the mandating collective management organisation and to ensure that small and less well-known repertoires in Member States can access the internal market on equal terms, it is important that the repertoire of the mandating collective management organisation be managed on the same conditions as the repertoire of the mandated collective management organisation and that it is included in offers addressed by the mandated collective management organisation to online service providers.’ (emphasis added).
There was also a situation in which a CMO first mandated a licensing entity to grant MTLs to its repertoire and later mandated another licensing entity to grant MTLs to its repertoire. In this situation, there was also no simultaneous offer of the CMO’s repertoire from two different sources. Today, the repertoire of this CMO is available for multi-territorial licensing through a single source only – the latter licensing entity to which it granted a mandate.

One OMSP reported that for an exceptional ‘relatively short’ transition period of integration of CMO’s repertoire into that of its subsidiary, it was possible to obtain this repertoire through the subsidiary or through the CMO. Now, the repertoire of the CMO is available for multi-territorial licensing only through the subsidiary.

The absence of availability of more than one access point for multi-territorial licensing of the same repertoire does not necessarily mean that parties concluding representation agreements for the purpose of multi-territorial licensing did not comply with the requirements of Article 29(1) of the CRM Directive, prescribing such agreement to be of non-exclusive nature. The CRM Directive does not require CMOs mandating their repertoires to a licensing entity to also make them available for multi-territorial licensing through direct licences and/or mandates to other licensing entities. The present study only permits to affirm the non-availability of offers of the same repertoires from different sources.

**Impact of the ‘must-carry’ rule (Article 30(1))**

Article 30(1) of the CRM Directive establishes an obligation for some CMOs to accept a request to represent for multi-territorial licensing the repertoire of a CMO not granting or offering to grant MTLs. This obligation is sometimes for shorthand referred as ‘must-carry’ or ‘tag on’. Only requested CMOs that satisfy the following cumulative criteria is subject to the must-carry obligation:

- it grants or offers to grant MTLs;
- it already accepted a mandate for the purpose of granting MTLs from at least one CMO.

Since the CRM Directive only applies to CMOs established in the EEA Member States, it means that non-EEA-based CMOs not granting or offering to grant MTLs cannot benefit from the must-carry rule. Therefore, EEA-based CMOs granting MTLs and aggregating repertories for the purpose of multi-territorial licensing are not obliged to represent non-EEA-based mandating CMOs.

In principle, such a provision may allow that smaller CMOs’ repertoires are also widely available for licensing, even though the CMO does not itself have the means to comply with the requirements of Title III of the CRM Directive to efficiently manage MTLs.

Neither research work with publicly available information nor consultations with stakeholders (through surveys and interviews) permitted to identify a situation uniting the conditions for the application of Article 30(1) of the CRM Directive. If the must-carry rule is

---

47 Recital 46 of the CRM Directive clarifies that ‘this requirement should only apply to collective management organisations which aggregate repertoire and should not extend to collective management organisations which provide multi-territorial licences for their own repertoire only’.

48 This interpretation might also mean that the must-carry rule is not triggered if a CMO not granting MTLs requests the CMO that grants MTLs but which previously accepted only mandates from third country CMOs.
applicable only to EEA-based mandated CMOs, then this provision has had a very limited, if any, impact on the development of multi-territorial licensing in the EEA.

The role of this provision in the regulatory framework for multi-territorial licensing could depend on the interpretation given to its scope. Some uncertainty was expressed regarding the application of Article 30(1) to CMO’s subsidiaries. As the impact of the provision depends on the interpretation given to its scope, the research team inquired about its application to CMOs’ subsidiaries.

Subsidiaries granting MTLs to repertoires of CMOs: Interviewed licensing entities considered it a question not easy to answer. A couple of licensing entities were of the opinion that Article 30(1) of the CRM Directive is not applicable to the subsidiary itself, but is applicable to the CMO(s) that conduct their multi-territorial licensing activities via a subsidiary. If this interpretation is correct, then the must-carry rule is applicable not only to CMOs (directly) granting or offering to grant MTLs to their own repertoires and repertoires of other CMO, but also to CMOs that do so (indirectly) via their subsidiaries. This interpretation increases a potential future role of the must-carry rule and increases the probability of it being used with regard to one of the licensing hubs organised as CMOs’ subsidiaries.

1.a.h Mapping of a complex nexus between availability of MTLs, development of online music services and their offer to consumers in the EEA

Territorial scope of the studied MTLs

The below analysis relies on the information collected about territorial scope of 93 MTLs. The information about territorial scope of 46 MTLs (described above under Section 1.a.f on Characteristics of MTL) was collected through the survey addressed to licensing entities. The information about the 47 other MTLs was collected through publicly available sources, including notably the Licensing Rules Repertoire Definition, CIS14-0091R34, document of 16 September 2020 produced by the Technical Online Working Group Europe (TOWGE) of the International Confederation of Societies of Authors and Composers (CISAC)49. Some information was confirmed or clarified through interviews. Information collected from publicly available sources and through surveys was matched to avoid double-counting of MTLs. Where more than one MTL was concluded between the same licensor and licensee, only the territorial scope of the latest version was taken into account.50

These 93 MTLs were concluded by the following licensing entities: AKM (Austria), AMRA (USA), BUMA/STEMRA (Netherlands), ICE (Germany/Sweden/UK), HDS ZAIKS (Croatia), KODA (Denmark), OSA (Czech Republic), Polaris Hub (Sweden), SABAM (Belgium), SACEM (France), SIAE (Italy), SOKOJ (Serbia), TEOSTO (Finland), UNISON (Spain) and

49 Only information with sufficient level of detail and about MTLs’ territorial scope was used from the CISAC document. Any conflicts between the document and survey responses were interpreted in favour of survey responses.

50 E.g., the research team is aware that two EEA-wide MTLs concluded between an EU-based CMO and two different OMSPs in 2018 replaced two MTLs limited to Belgium, France, Germany, Hungary and the UK (of 2015) and to Belgium, Denmark, France, Italy, Norway, Spain, Sweden and the UK (of 2018). These former MTLs of partial EEA coverage are not reflected in the present count.
ZAIKS (Poland). At least in the case of four CMOs, all their MTLs are covered by the present analysis. Two of the CMOs are based outside the EEA (AMRA and SOKOJ).

Names of all the licensees (and/or their online music services) that concluded studied MTLs are not known to the research team. Only the names of online music services offered through MTLs, and their information about which was collected through publicly available sources, are mentioned below. Services covered are of different size, providing different kind of online music services, including music streaming, downloading and online content-sharing services (OCSS). Table 1.8 provides an overview.

Table 1.8 Overview of online music services offered through some of the studied MTLs

| 7Digital | Flipagram | Napster/Rhapsody |
| Amazon Cloud | Google Play | Nintendo |
| Amazon Download | iTunes | Qobuz |
| Amazon Music Unlimited | iTunes Cloud | Recsio |
| Amazon Music | iTunes Download | SoundCloud |
| Amazon Prime | iTunes Ringtone | Soundtrack Your Brand |
| Apple Music | Magic Works | Spotify |
| Beatport | Melody VR | Tidal |
| Aupeo | Microsoft | TikTok |
| Deezer | Mixcloud | VEVO |
| Facebook | Napster | YouTube |

Figure 1.7 Licensees of some of the studied MTLs

Some of the unknown licensees and/or their services may be among the known licensees and/or their services mentioned in the present analysis.
Figure 1.8 shows that the 93 studied MTLs were concluded and/or entered into force during an 8-year period (2013-2020).52

MTLs do not need to be EEA-wide in scope, and parties to MTLs are free to determine the territorial scope of licences within the limit of rights held by the licensors. 87 of 93 studied MTLs (94%) cover territories of all EEA Member States and the UK53. Hence, the vast majority of the studied MTLs are EEA-wide in their territorial scope, as is displayed in Figure 1.9.

52 Croatia joined the EU in 2013.

53 The UK left the EU on 31 January 2020, when the withdrawal agreement entered into force. During the transitional period due to last until 31 December 2020, the UK continues to apply EU law and be a part of the Internal Market. The UK is covered by the analysis because it was EU Member State when the vast majority of studied MTLs were negotiated and concluded.
Some differences can be observed in the territorial coverage of the Member States by the remaining 8% of non-EEA wide MTLs (covering only a selection of EEA Member States). Only the territories of Austria and Germany are covered by all these MTLs. The most densely covered territories after them are France and the UK, followed by Italy, the Netherlands and Spain. The least densely covered territories are Cyprus, Estonia, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Portugal and Slovakia. The smallest in terms of territorial coverage MTLs included three countries and the largest of non-EEA-wide MTLs covered 18 countries. The average number of countries covered by non-EEA-wide MTLs was 9.

Figure 1.10 Numbers of MTLs by EEA Member State
Possible obstacles for licensing entities established in an EEA Member State to supply MTL services in other Member States

According to Recital 4 of the CRM Directive, CMOs established in an EEA Member State should be able to enjoy the freedoms provided by the EU Treaties (and the EEA Agreement) when representing rightholders, who are resident or established in other Member States or granting licences to OMSPs who are resident or established in other Member States. That is, CMOs established within the EEA need to comply with all provisions of Title III, according to their domestic law, and should then be able to provide MTL services throughout the EEA without additional control and regulations in other Member States and their NCAs. This section inquires about the perception and practices of NCAs and the licensing entities to answer the following question: do licensing entities established in an EEA Member State still face any regulatory obstacles for supplying MTL services in other Member States?

In the survey addressed to NCAs, 12 out of 21 respondents (57%) reported that there were no regulatory obstacles for licensing entities established in other EEA Member States to grant MTLs for online rights in musical works covering ‘their’ territory. A total of 8 (38%) reported that only CMOs are entitled to license online rights in musical works. Furthermore, 2 national authorities reported other restrictions, which in one case was just an obligation to notify the national authority ‘in writing and without undue delay’. No national authority selected the response option ‘only one organisation can grant licences in one field, including licensing online rights to musical works’. Thus, several EEA Member States restrict the activities of IMEs as regards MTL. At least where CMOs established within the EEA are concerned, there appear to be few regulatory obstacles for competition to provide MTL services.

By and large, survey responses by licensing entities confirm these results. We asked 12 CMOs and two IMEs, who themselves offered to grant MTLs: ‘At present, are there national regulations on copyright licensing in any of the EEA countries that affect your organisation’s ability to grant multi-territorial licences covering territories of these countries?’:

- Nine licensing entities (64%) – including eight CMOs and one IME – reported that no such restrictive regulations existed;
None of the responding licensing entities chose the specific response option indicating that in specific EEA Member States ‘only one organisation can grant licences in one field, including the licensing of online rights in musical works’;

Two licensing entities (14%) reported that ‘an organisation licensing online rights in musical works needs to be a CMO’. One of these respondents was an IME and identified Italy as the Member State in question. The other was a CMO and identified ‘SK’ (the acronym for Slovakia);

Three CMOs (21%) chose the response option that in some EEA Member States ‘another regulatory obstacle exists’. In an open-text follow-up, they specified somewhat limited restrictions:

- ‘Norway. According to our back-office partner a special tax is due for usage there. We are investigating whether this is correct;’
- ‘Germany - Local ministry of culture requests us to notify them, when we provide multiterritorial license that includes Germany;’
- ‘Finland. Strictly interpreted competition law.’

In comparison to the survey results, two more interviewed licensing entities confirmed to face no regulatory restrictions in any of the Member States when granting MTLs covering the EEA. The same CMO as in the survey reported during an interview that it faces only ‘few issues’ when granting MTLs. It notably referred to the fact that in Norway and Sweden, it is requested to pay a ‘cultural tax deduction’ after an MTL deal is confirmed. This CMO granting MTLs is the only MTL licensing entity that reported this issue.

One interviewed CMO, which did not reply to the survey, reported that prior to the adoption of the CRM Directive, it had faced legal monopoly rules when trying to grant MTLs covering Romania. The issue was reported to be solved with the adoption of the CRM Directive. Two interviewed CMOs gave rather positive evaluation of CRM Directive’s impact on ensuring that pan-EEA MTLs could be granted without regulatory obstacles:

- ‘In the EEA, there weren’t many issues before the adoption of Title III [of the CRM Directive]. Yet, Title III undoubtedly reconfirmed and reinforced the freedom to provide rights management services across borders;’
- ‘The CRM Directive has probably been a positive influence in the EEA in this regard [absence of regulatory restrictions to grant pan-EEA MTLs].’

EEA-based licensing entities of all kinds (CMOs, their subsidiaries and IMEs) granting MTLs reported to face difficulties when extending the territorial scope of MTLs beyond the EEA, to also cover third countries. Some of such third countries have national rules restricting activities of foreign CMOs (e.g., legal monopoly rules in the domain of collective licensing of online rights in musical works). Provided examples of such territories are Latin America, Canada, USA and some Asian countries.

Overall, according to the controllers (NCAs) and the regulated licensing entities (CMOs and/or IMEs), there seem to be relatively few regulatory obstacles for EEA-based licensing entities to provide MTL services in other EEA Member States. One condition for competition between EEA-based suppliers of MTL services seems to hold.
Determination of MTLs’ territorial scope

Overall, interviews with licensing entities and OMSPs permitted to establish that conclusion of MTLs of all kinds of territorial scope is sometimes driven by OMSPs’ demands, sometimes by licensors’ offers, and sometimes both. In some instances, licensing entities offer OMSPs operating in multiple Member States to cover additional Member States through an enlarged MTL (a new or amended existing licence). In other instances, OMSPs approach licensing entities because they want to extend the geographical reach of their services. Some MTLs were concluded as MTLs, while others began as mono-territorial licences whose scope was gradually extended, most commonly, during renewal negotiations. Some CMOs’ subsidiaries reported granting only MTLs (i.e., no mono-territorial licences).

A variety of experiences was reported regarding negotiating the territorial scope of licences.

According to an OMSP offering its services across the EEA, the majority of its MTLs started as mono-territorial licences. The same service provider reported that ‘when the renewal period comes, CMOs often push for an MTL’, many of which the OMSP had to push back due to some CMOs’ alleged lack of capacity to process MTLs. According to OMSPs of different sizes, offering their services in several or many Member States, licensing entities do not insist on necessarily concluding pan-EEA MTLs, and these OMSPs had no issues concluding MTLs covering only several Member States.

A large CMO that granted many MTLs reported that it currently experiences two types of territorial licensing demands from OMSPs: (1) pan-EEA (or even world-wide, to an extent possible) MTLs or (2) mono-territorial licences. A CMO that concluded fewer than five MTLs reported that no OMSP requested it to conclude an MTL, and that all the MTLs that it concluded were signed on its own initiative. An IME reported that some OMSPs refused to conclude an MTL and required a mono-territorial licence on the basis that IME’s repertoire ‘is not extensive enough’.

Many MTL licensing entities reported a general trend of gradual territorial expansion of the scope of their MTLs, now also covering territories outside the EEA. For example, one of the interviewees referred to some of its MTLs covering regions additional to the EEA, including Middle East and North Africa (MENA), Central and Eastern Europe (CEE), Commonwealth of Independent States (CIS) and India; as well as mentioning ongoing negotiating for extensions to Asia-Pacific (APAC) region. Some interviewees mentioned that they concluded MTLs covering 120+ countries. It was reported that sometimes rightholders, being satisfied with the online licensing operations of their EEA-based MTL licensor, wish that MTLs cover territories without CMOs or with underperforming CMOs.

Number of MTLs under which online music services are provided in the EEA

The survey addressed to OMSPs also inquired about the number of separate licences under which each of them operated its services. The sheer number of different copyright licences required for OMSPs to operate their services is – in all probability – a major factor determining their costs. Each licence is associated with transaction costs for identifying licence partners, for negotiating mutually acceptable terms, and monitoring and enforcing compliance with the licence. MTLs and bundling of repertoires into a single multi-territorial and multi-repertoire licence are a means to reduce the number of licences required by OMSPs offering their services on a multi-territorial basis, and thus limit the aggregate transaction costs in the market for copyright licences.
We used several questions to establish the total number of separate copyright licences under which online music services operate, as well as the extent of MTL and bundling of CMO repertoires (see Table 1.9 for an overview of survey results).

We first asked: ‘In total and considering all EEA countries in which your organisation operates its online music service, under how many separate licences for online rights in musical works does your organisation currently provide its service?’ All five respondents reported relatively similar numbers, ranging between 25 and 30 separate licences. In any case, these are substantial numbers, considering that at least three respondents did not even supply their service in all EEA Member States. Furthermore, during interviews, OMSP offering its services in all EEA Member States reported to operate under approximately 30 licences to online rights in musical works, and a service provider offering its services in five Member States concluded 12 such licences. For most OMSPs, there were more licences than EEA Member States served. The aggregate costs of establishing and occasionally renewing that many licences may be quite high, especially if renewals require renegotiation of some important terms and conditions, such as tariffs.

We also asked two questions regarding repertoires covered by MTLs. The five OMSPs each operated under:

- 12-15 MTLs in total;
- Eight to 10 MTLs of the total number covering the repertoire of a single CMO;
- Three to five MTLs of the total number covering repertoires of several CMOs. Follow-up interviews with some of the respondents permitted to clarify that these MTLs were granted by CMOs and/or CMOs’ subsidiaries.

During interviews with OMSPs not covered by the survey, a service provider offering its services in all EEA Member States reported to operate under around 10 MTLs with CMOs and around 10 MTLs with publishers ‘all of which license in one way or another in partnership with CMOs or their subsidiaries’. A service provider offering its services in five Member States operates under five to six MTLs covering repertoires of several CMOs. Another OMSP offering its services only in several Member States reported to operate under five MTLs with the major publishers, as well as CMOs and/or their subsidiaries.

54 To limit the effort for respondents, we instructed them: ‘A reasonable estimate is sufficient if precise numbers are hard to obtain.’
All four responding OMSPs report that MTLs cover the bulk of all online rights that the online music services have licensed, between 75 and 99%. It is important to note that the surveyed service providers do not offer identical music libraries. During a follow-up interview, the survey respondent that did not indicate the share of all online rights in musical works covered by MTLs explained that it aims at obtaining licences to 100% of online rights in musical works. They also noted that they obtain a ‘major part’ of them through MTLs with four CMOs and/or their subsidiaries, as well as with three major publishers.

Interestingly, the online music services, which operated in fewer EEA Member States did not report that they operated under fewer copyright licences. There is no clear positive association between (a) the number of Member States, in which the online music services are supplied and (b) the number of separate licences of any type under which they operate. For new online music services, which start out in a couple of Member States, the apparent need to establish multiple licences may be quite costly.

**Evolution in the number of copyright licences under which online music services operate in the EEA: In the past and now**

We also addressed how the number of separate licences, under which OMSPs in the EEA operate, has evolved over time:

- Four respondents evaluated ‘how the typical number of separate licences required to provide online music services’ had changed over the last five years, holding the size of the music library and the range of EEA Member States constant. On a five-point evaluation scale, two respondents selected ‘increased somewhat’, one selected ‘remained stable’, and one ‘decreased somewhat’;

- In an open-response question, we asked: ‘Over the last five years and according to your judgement, what specific factors have most affected the number of licences required to provide online music services with the same size libraries and in the same EEA countries?’. The responses were:
  - ‘Withdrawal of rights to directly license repertoire, the appearance of new licensing entities, particularly entities with smaller repertoires, and in some cases the consolidation of repertoire by moving it to licensing hubs such as ICE, MINT or Polaris [Hub].’ (The OMSP had reported that the number of separate licences required for online music services had increased over the last five years);
  - ‘Withdrawal of rights from local societies and more entities seeking to licence on a pan-European basis’;
  - (The OMSP had reported that the number of separate licences required for online music services had increased over the last five years);
  - ‘Movement of repertoire from one collective licensing entity to another for publishing rights. Sound recording rights have remained largely stable.’ (The OMSP had reported that the number of separate licences required for online music services had remained stable over the last five years);
  - ‘Processing costs of streams usage report (especially on multi-territorial basis) drive small CMOs to include their repertoire in larger CMOs for them to claim on their behalf - Mutualisation of repertoires drive CMOs to negotiate higher tariffs’ (The OMSP had reported that the number of separate licences required for online music services had decreased over the last five years).
Thus, regarding factors driving up the number of separate licences, out of four respondents:

- Three OMSPs mentioned the related phenomena of copyrights withdrawal from CMOs, direct licensing by rightholders, or movements to other CMOs as driving up the number of separate licences;
- Two respondents also mentioned that additional licensing entities have formed.

Regarding factors reducing the number of separate licences:

- Two respondents mentioned the formation of larger bundles of works for MTLs, through representation agreements or ‘joint ventures’ of CMOs.

Two interviewed OMSPs other than those that responded to the survey made the following statements. An OMSP offering its services in five Member States under 12 licences, including MTLs, reported that if it could clear online rights in musical works through mon-territorial licences covering 100% of national rights, it would have to conclude fewer licences than currently occurs. According to another OMSP also offering its services only in several Member States, it used to be simpler to develop multi-territorial online music services when it could do ‘country-by-country national licensing deals with CMOs, covering 100% of online rights in musical works’.

**Evolution in the number of licences to online rights in musical works an OMSP has to conclude: A case**

An OMSP aiming at obtaining licences to 100% of all online rights and offering its services in all EEA Member States stated that at the beginning of the development of MTL, after the withdrawal of Anglo-American mechanical online rights by the major publishers following the European Commission’s Recommendation of 2005, it only had to conclude an average five licences per Member State (one licence from a local CMO and four MTLs from the major publishers). Today, the company offers its services across the EEA under 21 licences with CMOs and five licences with publishers. Twelve licences with CMOs are MTLs, of which eight are mono-repertoire (i.e., offering access to the repertoire of a single CMO) and four are multi-repertoire (i.e., offering access to the repertoires of more than one CMO). In the present situation, the service provider is concerned about the number of licences covering its operations in a Member State: around 13 licences (one licence from a local CMO, five to six MTLs with CMOs and/or their subsidiaries, and four to five MTLs with large international publishers, including the majors).

Several interviewed OMSPs, including one that did not respond to the survey, reported that the increase of the number of licences they have to conclude to obtain access to 100% of online repertoires is also explained by the emergence of new licensing entities, like IMEs. All these service providers had to deal with the same two IMEs. According to the experience of one of these OMSPs, IMEs lack the technical capacity and experiences for handing MTLs, and it preferred that they mandate their repertories to well-performing CMOs and/or their subsidiaries.

Overall, MTLs and bundling of repertoires of multiple CMOs – beyond the bundling of individual rightholders’ repertoires, which is a point of any CMO – is common practice. Still, there is a complex nexus of various types of licences to online rights in musical works, including mono-territorial and multi-territorial licenses, some of which are mono-repertoire while others multi-repertoire. The combinations are subject to change, notably due to withdrawals, changing representation agreements between CMOs and creation of new licensing entities. Each online music service operates under many separate copyright
licences in the EEA, and there is no evidence that the number of licences would have decreased over the last five years.

Flexibility and the resulting complexity of MTL can have ambiguous consequences. On the one hand, the diversity of licences and licensing entities may improve the fit between specific stakeholders' needs and licensing terms, as well as foster competition. On the other hand, it can be costly to operate flexible and complex systems. It seems that the MTL market is fragmented among many different licensing entities, some of which were created relatively recently. OMSPs apparently need to acquire many and diverse licences to approximate the adequate size and type of music libraries. The associated transaction costs may inhibit market entry by online music services and limit competition between OMSPs. This entails the risk of curtailing innovation and the formation of an Internal Market.

**Availability of online music services to EEA consumers**

During interviews, the research team inquired about the chronology, speed and reasons of territorial expansion (roll-out) of online music services.

An OMSP that offers its services in all EEA Member States reported that it gradually expanded the territorial reach of its services over the course of 12 years from one Member State to all. A couple of Member States that were added at the end of this process were relatively small Eastern European Member States, in terms of population size. Another OMSP that offers its services in all EEA Member States reported that it gradually introduced its latest service, commencing with the largest, major music market Member States: France, Germany, and the UK. The total roll-out took around 18 months. The gradual market entry, by batches of Member States, was driven by business development decisions, and considerations regarding licensing were not an integral part of this decision. The OMSP wanted to make sure that everything works in a group of Member States before rolling out the service in the next batch.

Another OMSP reported that it took it around three years to expand the territorial reach of its online music services to 26 EEA Member States. It introduced its service first in the UK, then in Germany, then in France, Italy and Spain, and then in 21 other Member States. According to this OMSP, `the main issue was scalability of the service, which affected the rate of expansion. Otherwise, there was no other strategic reason for the rate of expanding services in Europe'.

Another OMSP reported that it took it around three years to expand the territorial reach of its online music services to 26 EEA Member States. It introduced its service first in the UK, then in Germany, then in France, Italy and Spain, and then in 21 other Member States. According to this OMSP, `the main issue was scalability of the service, which affected the rate of expansion. Otherwise, there was no other strategic reason for the rate of expanding services in Europe'.

An OMSP that reported to provide its services only in several EEA Member States, organised the territorial roll-out of its services as follows. First, it launched its services in the UK, then in France, Italy and Spain (a year after the UK), followed by Germany (a year after), and later in Poland and Netherlands.

An OMSP offering its services only in Western European Member States stated that the demand for its services and the purchasing capacity of consumers in Eastern Member States is lower. This service provider also added that the costs of providing services in multiple languages (e.g., interfaces, customer support) in the EEA complicates matters. Another OMSP offering its services only in Western European Member States reported that the CRM Directive had no impact on its ability to obtain licences to ‘repertoires of relatively small European CMO’, ‘because the company does not clear rights for such small repertoires due to a lack of commercial demand’. Overall, OMSPs that offer their services

---

55 The service was introduced in the UK before it left the EU.

56 The service was introduced in the UK before it left the EU.
in some but not all Member States affirmed that if they feel that they could make profits in a Member State, they launch their services in that Member State. According to several service providers, online music services are not offered in all EEA Member States ‘for business reasons rather than rights clearance reasons’.

All OMSPs, including those offering their services in only some Member States, made them available in the UK. The UK was reported to be the territory where service providers commonly develop and test their products before gradually expanding into EEA Member States.

In general, the EEA is not treated as a single market unit by OMSPs. Some providers make their services available only in some EEA Member States. Services that are accessible in all EEA Member States rolled out their services gradually, over different periods of time.

A limited number of five OMSPs gave valid answers to our survey (but these five account for a large market share and a variety of business models of online music services in the EEA.). On average, the four respondents providing the relevant information had started supplying online music services in at least one EEA Member State 12 years ago. All but one had started supplying their services in several EEA Member States within the first year they operated in the EEA.

In the spring of 2020, online music services of all four responding service providers in our sample were available in multiple EEA Member States. Online music services of each of the respondents were available in a different number of Member States (in all 31, in 30, in 27 and in 12 Member States, respectively). Table 1.10 provides an overview.

Three of the interviewed OMSPs that did not respond to the survey were able to provide information on the territorial reach of their services. They covered 31, seven and six Member States).

**Table 1.10 The EEA Member States in which the online music services of the responding service providers were supplied in spring 2020**

<table>
<thead>
<tr>
<th>Member State count (31 in total)</th>
<th>Member States</th>
<th>No. of OMSPs57 (out of our sample of 7)</th>
<th>% of OMSPs available in Member State</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>France, Germany, Italy, Spain, United Kingdom</td>
<td>7</td>
<td>100</td>
</tr>
<tr>
<td>2</td>
<td>Ireland, Netherlands</td>
<td>6</td>
<td>86</td>
</tr>
<tr>
<td>6</td>
<td>Austria, Finland, Greece, Luxembourg, Poland, Sweden</td>
<td>5</td>
<td>71</td>
</tr>
<tr>
<td>14</td>
<td>Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Portugal, Slovakia</td>
<td>4</td>
<td>57</td>
</tr>
<tr>
<td>3</td>
<td>Liechtenstein, Romania, Slovenia</td>
<td>3</td>
<td>43</td>
</tr>
<tr>
<td>1</td>
<td>Croatia</td>
<td>2</td>
<td>14</td>
</tr>
</tbody>
</table>

57 Some of the OMSPs offered more than one service.
On average, there were services of 4.6 of the seven OMSPs available per Member State, and each provider catered for customers in 21 of the 31 EEA Member States covered. All online music services were available in the largest five EEA Member States by population size. Smaller Member States and East-Central European Member States tend not to be served by all OMSPs in our sample.

Non-availability of online music services to EEA consumers in all Member States covered by MTLs

MTLs are authorisations for use of musical works in multiple Member States and the MTLs do not require OMSPs to provide their services. There are situations when OMSPs have concluded MTLs, but the licensed music services are not offered to consumers in all the Member States covered by the MTLs.

We asked all five survey respondents whether there are EEA Member States where the OMSP ‘has obtained all relevant copyright licences to provide its online music service, but where it does not actually offer this service at present?’ Three respondents disconfirmed and two confirmed.

The latter two respondents specified in an open-question follow-up:

- ‘For example, if we are launching a batch of 10 markets we may obtain licences with certain CMO’s and then the launch is delayed due to not yet having licences in neighbouring countries. The business case for a launch must be met and we must be sufficiently staffed to launch in a market. There are times we may conclude a licence in advance of the former points being met’;
- ‘Lack of commercial viability.’

There are other reasons than the costs of acquiring licences to online rights in musical works that can inhibit or delay the roll-out of online music services across the EEA.

Interviewed OMSPs offering their services in all EEA Member States explained that it is common that they had needed to clear a certain number of licences for online rights in musical works, as well as ensure that all aspects (technical, linguistic, etc.) of the product are fully ready before rolling out their services in new Member States. For this reason, there are commonly periods of time before conclusion of an MTL and the effective offer of services to consumer. One CMO reported that it concluded an MTL with an OMSP. However, subsequently, the provider did not launch its music service, and the CMO terminated the MTL. Such situations seem to be a usual part of business development and do not specifically pertain to MTL.

A couple of OMSPs offering their services only in several Member States (with one exception all are located in Western Europe) reported that they limit the territorial offer of their services due to two reasons. One of these reasons is the fact that MTL tariffs are not only composed of rates (% of revenues) but also of ‘minimum per play’ (minimum amount due per instance of use). The other reason related to a general economic environment. One

58 This result matches with the most densely covered Member States by the studied 93 MTLs.
of these service providers reported that the ‘minimum per play’ was one of the factors why it stopped offering its services in two Member States (including one in Eastern Europe). Here is how this OMSP explained this MTL-specific factor for non-offer of services in the Member States covered by MTLs:

‘The minimum per play guarantee has been a major frustration across the board. Even in more viable […] markets, mostly [the OMSP] ends up paying the minimum guarantee per play and never on the basis of tariffs referring to the revenues in a given territory. The minimum per plate guarantee is higher than feasible in many of the EEA Member States. For this licensing reason, we need to carefully look into monetisation before entering into any new territory rights to which have been cleared through an MTL.’

Minimum guarantees and non-provision of online music services in some Member States covered by MTLs: A case
An OMSP reported that the MTLs it concluded cover more Member States than the territories of Member States where its services are available. It stated that its services are available in the UK and some other Member States, but not in Germany. Although this large Member State is covered by the concluded MTLs, the DSP does not provide its services there yet ‘in order not to trigger the MG [minimum guarantee] payment’. The same is true with regard to some other Member States with a lower income per capita.

Variations of content offered to EEA consumers
The same online music services provided in different Member States sometimes offer different content in terms of their music libraries made available to consumers.

Four OMSPs respond to the question: ‘Is the musical library that your organisation currently offers its users identical across [all] countries’, in which the online music service was supplied. One OMSP selected the response option ‘Yes, completely’ and 3 responded ‘Yes, to a large extent’. No respondent reported on more substantial variations between the music libraries made available in EEA Member States.

Regarding the Member States with the smallest and the largest repertoires made available, no consistent pattern emerges from survey response, and one respondent made an apparent mistake, specified below:

- We asked the three OMSPs, who had reported some variations in music libraries made available between Member States, ‘in which country/countries [the OMSP] currently offers the largest music library’ via its online music service. Two respondents provided logically consistent responses, and both identified Germany as the Member State, in which they offered the largest music library;

- We also asked the three OMSPs with any variation in music libraries made available in different Member States, ‘in which country/countries [the OMSP] currently offers the smallest music library’ via its online music service. Of the two respondents that submitted logically consistent responses, one identified Cyprus and one identified Finland as the Member State, in which the smallest music library was made available;
• Unfortunately, one respondent listed the very same 26 Member States in response to both questions (largest and smallest repertoire). This is an apparent mistake.59

In an open survey question, all three OMSPs, who reported any variation in the repertoires made available between different EEA Member States, were asked to comment on why these variations come about. The two informative responses were: (1) ‘Record label restrictions’, and (2) ‘Record labels and aggregators may make available certain tracks only in certain territories. We also focus our efforts on the larger territories.’ Thus, preferences of record labels were mentioned by two out of three respondents as the reason why some Member States were served a restricted music library.

**Variations of prices charged to EEA consumers**

The survey also addressed pricing variations across EEA Member States by online music services. Online music services are essentially information goods, meaning that OMSPs have low and non-increasing marginal costs of serving additional customers but non-negligible setting-up and fixed operating costs. (We disregard licensing fees as a cost for licensees here, which is not determined by the standard type of production function for information goods but the result of bargaining between licensors and licensees.) This has two implications: first, marginal cost pricing is no sustainable option for OMSPs; second, there is scope for price discrimination, as OMSPs can vary the mark-up on marginal costs that they charge different (types of) customers. It is contentious among economists, whether price discrimination for online services that make copyright works available fosters social welfare or whether it should be restricted by regulation.

To gather information on the related practices by OMSPs, we addressed whether and why they vary prices between different EEA Member States:

• We had five respondents to the question: ‘Are the prices your organisation charges customers for its online music service identical across the EEA?’, instructing them to ‘ignore minor variations due to currency exchange rates, e.g. between countries in and out of the Euro area’. All five respondents disconfirmed, signalling that for each of them, prices vary substantially between different EEA Member States;

• We then asked the four OMSPs to describe, why they varied prices across EEA Member States. The responses were as follows:
  - ‘Prices differences between different EEA countries are due to the local economic conditions, e.g. the purchasing power of customers, which differs significantly across Europe. Furthermore, price differences reflect differing royalties we have to pay for licenses across the EEA’;
  - ‘Pricing may differ by country for a variety of reasons including, the amount of compensation to local rights holders, currency fluctuations, taxes, and local market dynamics (e.g., competition, piracy, etc.)’;
  - ‘Depends on local purchasing power’;

59 Later on, when asked about the reasons for any differences in music libraries supplied in various countries, the same respondent wrote: ‘Question not applicable as the repertoire across the EEA/UK/CH is very similar.’
- ‘The prices are different for some of the smaller EEA countries (e.g. Portugal and Greece). We also may charge a different price depending on the terms of a distribution partnership’;
- ‘Due to different currencies/market dynamics/economic wealth/purchasing power.’

Thus, three respondents explicitly state that they deliberately vary prices in response to different ‘purchasing power’ of consumers (i.e., their customers) in different Member States – implying that they conduct price discrimination. For one respondent, this is the only reason for varying prices mentioned. Furthermore, three respondents mention differing costs of serving customers between some Member States, and two of these explicitly refer to different copyright fees between EEA Member States. Apparently, profit maximisation through price discrimination is part of the explanation for varying prices, but differing royalties affect consumer prices for online music services, too.

Follow-up interviews with some of the respondents permitted to clarify that they also offer ads-based online music services for which customers do not pay. Some of the online music services providers interviewed in addition to those that did not respond to the survey, also reported to provide ad-based services. Some of the interviewed service providers make their music offer available via business-to-business (B2B) services, where consumers do not directly subscribe to a services but access them via a bundled commercial offer of another service provider (e.g., a bundled offer of a telecom provider). An OMSP that did not respond to the survey explained during an interview that its services are available in all EEA Member States and that there are only ‘minor variations’ in prices.

**Impact of licensing of related rights on availability, variations of content and prices offered to EEA consumers**

OMSPs need to clear two large categories of rights indispensable for offering their services to consumers across the EEA: rights to phonograms (i.e., related rights to recordings of performances) and rights to the underlying musical works (i.e., copyright to compositions and lyrics). When assessing the impact of Title III of the CRM Directive on the development of online music services and their availability to EEA consumers, it is essential to understand the impact of licensing related rights.

**Licensing of related rights and availability of music libraries to EEA consumers**

An OMSP offering its services in all EEA Member States reported that the catalogues of its music libraries offered to consumers throughout the EEA are ‘similar’ and ‘don’t differ much per country’. As the service provider tries to obtain 100% of online rights in musical works, the offer of music libraries to EEA consumers mostly depends on global deals with phonogram producers. Such deals were said to be commonly international with limited variations between EEA Member States. Another OMSP offering its services in all EEA Member States referred to the licensing of related rights as the first reason for reported small differences between the content of music libraries offered to consumers in different Member States. An OMSP offering its services only in several Western European Member States explained the fragmentation of the EEA market into territories by the fact that ‘labels continue to separate the EEA into territories’, adding that ‘in business practice, a DSP [digital service provider] receives its music assets from the music labels. Publishing licencing follows after that. So if the EU wants to make small repertoires available to the market it should focus for this on the label side.

**Costs of licensing online rights in musical works and in phonograms**
All interviewed OMSPs asked about differences between costs of licensing rights in musical works and related rights stated that a larger share of their revenues goes to licensing of rights in phonograms. An OMSP offering its services in many but not all EEA Member States provided an estimation that of all payments made to holders of online rights in musical works and phonograms around 65-80% is made to holders of related rights. According to a CMO that granted multiple MTLs to online rights in musical works, phonogram producers receive around 60% of OMSPs’ revenues, while CMOs receive merely 12-15%. Another CMO that granted multiple MTLs reported that phonogram producers get five to six times the royalties paid to CMOs and publishers. A couple of OMSPs reported that phonogram producers also agree to forms of remuneration other than royalty payments (e.g., marketing), whereas CMO and publishers only offer the size of their repertoire against royalties. A couple of OMSPs recognising that a larger share of their revenues is paid to phonogram producers observed a trend of the share of their revenues paid to holders of online rights in musical works increasing. They explained this trend by the aggregation of repertories and increased bargaining of large licensing entities granting MTLs to online rights in musical works. Another service provider, offering its services in all EEA Member States, observed a raise of tariffs for use of musical works as well as for phonograms. During the consultation process, several CMOs managing online rights in musical works suggested that the major difference in the prices of rights is explained by the fact that the market for online related rights is unregulated, without transparency, non-discrimination and dispute resolution obligations and a full exercise of major labels market power.

Other differences in licensing online rights in musical works and in phonograms

Although licensing of related rights to phonograms is commonly more expensive than licensing of rights in musical works, a couple of OMSPs that confirmed this general fact reported that licensing of rights in musical works is more complex, notably due to the fragmentation of rights and their exercise. This fragmentation increases the transaction costs in terms of resources spent.

Repertoires of CMOs, offering collective licences to repertoires of many rightholders, were described by several OMSPs as ‘non-substitutable’. Several service providers explained that on the related rights side, only repertoires of the three major international phonogram producers are ‘non-substitutable’, and one service provider referred to ‘a certain critical number of Anglo-American repertoires [rights to phonograms], in particular of the two other major labels’ as indispensable. According to these service providers, they need to acquire rights to phonograms of the major phonogram producers to start a business and could acquire rights to other phonograms ‘in the long tail’. On the musical works side, OMSPs’ ability to substitute CMOs’ repertoires was said to be non-existent. The OMSPs stated that, CMOs and publishers often have a ‘take it or leave it approach’ in negotiations, knowing that service providers cannot do without their rights. A couple of these OMSPs highlighted that they could decide not to do business with some phonogram producers (other than the majors) for some business reasons. Yet, they stated not to be able to ‘walk away’ from negotiations with the major publishers and CMOs, ‘because that would impact so much of the repertoire – as one song could have so many rightholders involved and often represented by different organisations’. Another OMSP offered the following observation on the relation between licensing of rights in musical works and rights in phonograms: ‘as a DSP you can take out a label with 40% market share. You just remove all assets from your catalogue and you’re done. Removing a publishing catalogue however is almost not possible as it’s so difficult to identify all the assets of that publisher / CMO. Even in case you’ve successfully removed the entire repertoire you still get delivered on a daily basis new assets from the labels which might have repertoire of that publisher’. As such, the described ‘non-substitutability’ does not seem explain the significantly higher price paid for phonograms, but it offers an important insight into the difference of licensing of the two related categories of online rights, both indispensable for offering an online music service.
Another OMSP offering its services in many EEA Member States stated that there are corporate groups including both, entities licensing online rights in musical works and entities licensing online rights in phonograms. According to this service provider, such corporate groups could use their presence in both related domains to their advantage in negotiations.

A couple of OMSPs reported that they have to conclude a larger number of licences for online rights in phonograms than in musical works. One of these services providers offered an estimation of its related rights licences to be around 47560 and around 25 licences with CMOs and publishers for provision of its services in several EEA Member States.

Overall, licensing of online rights in phonograms, being generally more costly and necessary for offering online music services, has a significant impact on the availability of such services to EEA consumers, and their price and diversity of music libraries offered to the consumers.

1.a.i  Taking stock
Four years after the CRM Directive’s EU transposition deadline, virtually all repertoires of online rights in musical works managed by EEA-based CMOs, as well as withdrawn rights of so-called Option 3 publishers are available for MTL. There are a few exceptions in East-Central European Member States, where this cannot be established with great certainty. Furthermore, according to self-assessments of the licensing entities, who responded to our survey and interviews, they considered to comply with the requirements of the CRM Directive’s Title III.

Many CMOs making their repertoire available for MTL do so by directly granting MTLs. Over 10 CMOs established in EEA Member States of all sizes and in all geographic areas (West/East; North/South) mandated CMOs and/or their subsidiaries from other Member States to conduct MTL on their behalf through representation agreements. Several CMOs from smaller Member States mandated CMOs in larger Member States to grant MTLs to their repertoires. Many CMOs have created and mandated subsidiaries (joint ventures / licensing hubs), which provide MTL services for a number of CMOs. Such cooperation arrangements between licensing entities expand the number of repertoires covered by a single MTL. There are significant differences between the numbers of MTLs granted by the licensing entities offering the largest and most commercially valuable repertoires and at least some other CMOs also granting MTLs. The bundling of repertoires and licensing under relatively uniform terms chase the potential to reduce aggregate transaction costs and to increase productive efficiency by exploiting economic of scale and network effects.

MTL is a means to reduce the number of copyright licences required for online music services operating across the EEA. A large majority of MTLs investigated in this research cover the entire EEA.

As observed in Section 1.a.g, with regard to the impact of the requirement of Article 29(1) of the CRM Directive to the non-exclusive nature of representation agreements for multi-territorial licensing, the study established the non-availability of offers of the same repertoires from different sources. With regard to the impact of the ‘must-carry’ rule of Article 60 adding that the high number is due to the fact that some licences were concluded a long time ago before the establishment of Merlin. Merlin is an agency for licensing phonogram producers’ rights. With over 800 members representing tens of thousands of phonogram producers, it claims to offer ‘the most commercially significant set of rights outside the three major labels’, Merlin, What we do: http://www.merlinnetwork.org/what-we-do.
30(1) of the CRM Directive on the relations between CMOs, this provision has had a very limited, if any, impact on the development of multi-territorial licensing in the EEA.

Nevertheless, the network of MTLs in the EEA still resembles a complex nexus of contractual relations. Online music services tend to operate under about a dozen MTLs regarding CMOs’ repertoires and at least a dozen other copyright licences. Usually, online music services acquire a greater number of separate licences than the number of EEA Member States, in which they serve customers. Rights withdrawals from CMOs, fragmentation of repertoires offered by CMOs, the formation of some new licensing entities, the different value of different repertoires in different Member States and continuous availability of some repertoires through mono-territorial licences have all made it necessary for OMSPs to combine MTLs of different licensing entities with mono-territorial licences of CMOs.

Multi-territorial availability of online music services depends on general economic conditions and licensing of online rights in phonograms and the licensing of online rights in matching musical works. There is some indication that licensing entities adapt MTLs according to online music services’ needs, at least in one respect. They vary the specific types of uses covered in various licences (e.g. rights to offer streaming or rights to offer downloading). A substantial proportion of online music services are concerned with cumbersome negotiations and non-transparency of licensing prices and terms granted to other online music services. We investigate this and many other issues in the following sections.

### b Application of the CRM Directive’s Title III and the verification of licensing entities’ compliance by national competent authorities (NCAs)

#### 1.b.a Legal context and key questions

First and foremost, all licensing entities who supplied MTL services for music online in the EEA and responded to our survey and interviews reported that at the time of the survey (spring or summer 2020) and interviews (summer and autumn 2020), they complied with all relevant provisions of the CRM Directive (see Section 1.a.d). This section addresses two related issues, where the CRM Directive leaves scope for EEA Member States to develop varying types of regulation applied to different multi-territorial licensing entities: first, the monitoring and verification of licensing entities’ compliance with national legislation transposing national law corresponding to the CRM Directive’s Title III; second, the application of aspects of the CRM Directive to various types of licensing entities, other than domestic CMOs.

First, Article 23 of the CRM Directive stipulates that Member States shall ensure the compliance of CMOs established in their territory with the requirements of Title III, when these CMOs grant MTLs for online rights in musical works. According to Article 36(1), Member States shall further ensure that a national competent authority (NCA) monitors the compliance of CMOs and IMEs with the CRM Directive and the corresponding provisions of national law. This is not only a question of the transposition of Title III provisions into national law; it also concerns the application of the law by Member States. Sections 1.b.b and 1.b.c illuminate: to what extent and how is the compliance of CMOs and other licensing entities with the Directive verified in practice?

Another important set of questions regards the scope of licensing entities that fall under national law and regulation associated with Title III. Title III of the CRM Directive establishes a set of requirements to CMOs established in the EEA and granting MTLs to online rights in musical work. Member States may apply all or some provision of Title III to CMOs
established in third countries and/or IMEs. To disentangle a complex issue, let’s distinguish CMOs established in the EEA and any other licensing entities.

Regarding CMOs established in a Member State:

- National governments are obliged to apply the provisions of Title III;
- When representing rightholders who are resident or established in other Member States or granting licences to OMSPs who are resident or established in other Member States, CMOs established in the EEA should enjoy the freedoms provided by the EU Treaties (Recital 4 of the CRM Directive) and the EEA Agreement.

Regarding other licensing entities (OLEs) – who are either not traded collectives of rightholders (i.e. not CMOs) and/or not established within a Member State:

- Member States are not obliged to establish similar regulations as those required for EEA-based CMOs by Title III;
- Nothing in the Directive should preclude a Member State from applying some or all Title III provisions to CMOs (Recital 10 of the CRM Directive), which are established outside the Union but operate in that Member State and other licensing entities;
- Each Member State is thus free to impose different regulations on other licensing entities, including independent management entities and foreign licensing entities.

Subject to national law and regulation other licensing entities may thus have to comply with fewer Title III regulations than CMOs established within the EEA; but other licensing entities may be subject to regulation from different Member States.

Accordingly, Sections 1.b.d-1.b.f documents: to what extent have EEA Member States regulated OLEs according to the CRM Directive?

1.b.b Implementation of Articles 23 and 36(1) regarding verification of CMOs’ compliance with Title III

In our survey of NCAs, the majority (83%) of respondents confirmed that the respective NCA verified whether domestic CMOs and/or other licensing entities comply with Title III of the CRM Directive. According to our survey, this does not universally apply, however: four NCAs (17%) reported that they do not verify compliance, and three of these were not preparing for this type of actions, either. This included NCAs from larger EEA Member States (population >30 million).

These results suggest that Article 36(1) (and thus in all probability Article 23) regarding control of CMOs’ compliance with national law transposing Title III of the CRM Directive are adhered to in the majority of EEA Member States, but apparently not in all of them. To be sure, respondents could have misunderstood the relevant survey items or the control is undertaken by a different national authority. In addition, some NCAs in small Member States might commission national authorities from other EEA Member States to verify compliance on their behalf. (One national authority from a small EEA Member State, which did not participate in the survey, informed us that this was the case for them).

In any case, it is not entirely clear whether in all Member States NCAs effectively verify the compliance. This could become a concern from a perspective of Title III achieving set policy objectives. CMOs have a choice between making their repertoires available for MTL themselves – which requires them to develop in-house capacities for granting MTLs – or to mandate other licensing entities for conducting MTL on their behalf. A CMO not mandating other licensing entities but offering to grant MTLs without complying with the applicable
requirements exploits the lack of control and circumvents the regulation. Grant or offer to grant MTLs by a CMO triggers rights and obligations under Title III. For example, a situation where a CMO claimed to grant or offer to grant MTLs, while not complying with the requirements of Title III, could have prevented rightholders from using their withdrawal right under Article 31 of the CRM Directive.61

1.b.c Variations of verification procedures between EEA Member States
Existing verification procedures vary substantially between different national authorities, which is well documented in our survey results. Out of the 20 NCAs, who verified CMOs’ and OLEs’ compliance, 12 (60%) reported that they did so based on documents and information submitted by the licensing entities.62 Two NCAs reported that ‘a third party conducts an audit of the licensing organisations’ technical and organisational capacities’. None of the national authorities mostly relied on self-assessment declarations by licensing organisations to verify compliance, but one used this in addition to other verification procedures. In other words, licensing entities are obliged to provide information to national authorities, but as a rule, national authorities do not invite licensing entities to interpret this information. National authorities take charge of assessing compliance themselves.

Many responding NCAs (50% of those verifying compliance) provided further detail in the survey. These 10 respondents were prompted to provide further detail in an open follow-up question, to which seven national authorities responded. The responses further document the variation between verification procedures in EU Member States:

- One national authority described that its representatives are entitled to participate in the general assembly and several other decision-making bodies of the licensing entities. Where this does not apply, it could in the future become a useful tool for regulators to verify compliance;
- Two national authorities emphasised that they could take action (starting with requesting information from licensing entities) when it seemed required, for instance, because they received complaints by stakeholders;
- Two national authorities explicitly referred to national ministries as being in charge of compliance verification. In both these cases, multi-territorial licensing was restricted to a single enterprise operating as national ‘legal monopoly’; 63
- Four national authorities reported on national intellectual property offices or other specialised supervisory bodies as being in charge of compliance verification procedures;

---

61 For a rightholder to be able to rely on the withdrawal right under Article 31 of the CRM Directive, the CMO concerned should have not been granting or offering to grant MTLs and should have not mandated another CMO to do so by 10 April 2017. See Section 1.d on rightholders’ withdrawal rights.

62 The research did not access to what extent national authorities can verify whether the information provided to them by licensing entities is complete and correct.

63 In a follow-up question, the NCAs clarified that the national regulations do not prevent licensing entities established in other Member States grant MTLs covering the territory of the NCAs’ Member States.
One national authority reported that 'new compliance rules are under consideration', and that 'currently there is a mixture of the first option [self-declarations of the licensing entities] and second option [submission of documents to be evaluated by the national authority]';

Finally, one national authority indicated that verification of compliance was of no relevance in practice since no licensing entities providing MTLs were established within the Member State.

We also discussed challenges in regulating MTL with NCAs in interviews. All the interviewed and surveyed NCAs control CMO’s compliance with legislation transposing Title III of the CRM Directive mostly on the basis of periodic reports provided by CMOs. All the interviewed NCAs reported to sometimes ex officio request information from CMOs on their own initiative. Some NCAs also reported to have regular contacts with CMOs established in their Member States. All of the interviewed NCAs reported that they would make requests for information if they receive complaints from rightholders or OMSPs (ex-post control). The procedures providing CMOs, OMSPs and rightholders with the right to notify the NCA of alleged non-compliance are viewed as a part of the control system. An NCA stated that it finds it competent to attend a meeting of the CMO’s governing bodies granting MTLs as a direct way to follow the major discussion. Where this does not apply, it could in the future become a useful tool for regulators to verify compliance. An NCA reported that 'If there is an organisation [CMO] which works with copyrighted works EU-wide and has contracts with many major OMSP organisations, there is from a technical organisation perspective, not much need for the authority to check the requirements.'

Two main types of challenges could be identified on the basis of stakeholders’ input.

Firstly, some interviewed NCAs reported to lack some reliable information about MTL activities covering their Member States by CMOs or other licensing entities established in other Member States or outside the EEA. The research team could also establish a lack of knowledge of some NCAs on whether or how CMOs established in their Member States make repertoires available for MTL. A telling example is that a CMO established in one of the Member States reported through a survey that it granted several MTLs. Its first MTL was granted more than a year ago. Yet, the NCA of the same Member States reported (through a survey as well as through a follow-up interview conducted in October 2020) that the CMO established in its Member State and managing online rights in musical works did not grant an MTL. Another interviewed NCA was not aware of the fact that the CMO established in its Member State makes its repertoire available for MTL via a mandate to a larger CMO established in another Member State. One NCA reported relying on market actors to inform it about new entrants to the market.

Secondly, some licensing entities do not comply with minimum notification requirements. In several Member States, CMOs established in other Member States or third countries have to notify the NCA that they grant MTLs covering the territory of the NCA’s Member State. Such notification requirements were described as rather ‘soft’ provisions, serving information purposes, without significant consequences for non-compliance. Three of these interviewed NCAs, established in Member States of different size, reported to have not received any such notification. Some of these NCAs are aware that there are CMOs and other licensing entities established in other Member States granting MTLs covering their national territory without a notification. Representatives of some NCAs reported that they consider that their units are understaffed, given their respective missions (e.g., some stated on having two team members available for all the collective management-related tasks).

Overall, it is not certain whether all NCAs have the capacity to verify the compliance with Title III of CMOs’ established in their Member States. Also, our survey and interviews results indicate that there is a considerable variety regarding compliance verification throughout
the EEA. Regulatory variety is a recurrent theme across several aspects of this report. In short, regulatory variety can have two fundamental adverse consequences: first, it can be associated with high costs for licensing entities; second, it can distort the competition between licensing entities, who are subject to different regulation and/or verification measures.

1.b.d Private stakeholder’s experiences with CMOs’ compliance with Title III of the CRM Directive

Private stakeholders are not responsible for controlling the compliance of CMOs granting or offering to grant MTLs with Title III of the CRM Directive. Experiences of OMSPs offering their services on a multi-territorial basis, as well as of licensing entities granting MTLs are relevance for understanding some compliance issues. The fact that a CMO did not satisfy expectations of an OMSP does not necessarily mean that it does not comply with Title III. Interviewed private stakeholders were able to provide quantitative information offering useful insights on some compliance issues.

Overall capacity to process MTLs (Article 24)

OMSPs’ experiences on the capacity of different CMOs to process MTLs diverged.

An OMSP offering its services across the EEA reported that it does not observe a significant difference between CMOs of different size established in different Member States in terms of quality and compliance with Title III of the CRM Directive.64

According to another OMSP offering services across the EEA, some CMOs claiming to possess the necessary technical and organisational capacities to process MTLs cannot do it in reality. According to this service provider, ‘The requirements of Title III of the CRM Directive to CMOs that are granting or offering to grant MTLs are vague and the control mechanisms are not there to make sure that they comply with them. There should be more guidance/clarity in terms of rules for CMOs to become active on their own in MTL. It would be helpful if the Commission could provide for some.’ This service provider further stated that ‘many’ of the CMOs that do not have the necessary technical and organisational capacity to grant MTLs are established in Eastern European Member States, adding that it also had ‘unsatisfactory’ data processing experiences with CMOs established in the Southern European Member States. Another OMSP offering its services in many but not all Member States observed that smaller CMOs typically have less resources for licensing interactions and for processing all the data. According to its experience, the CMO established in one of the smallest Member States in terms of population does not have the necessary human resources (‘understaffed’) to carry out online licensing.

Testing technical capacity of CMOs to grant MTLs by an OMSP: A case

An OMSP reported that in its experience, many of the CMOs that claim to have the necessary technical and organisational capacity to carry out multi-territorial licensing are not up to the task. Some of CMOs process files with delays or simply cannot do it properly. Prior to engaging in multi-territorial licensing with a CMO, the OMSP proposes to carry out a test processing. It sends several files, which correspond to the usual number of files that other licensing entities granting MTLs to the OMSP have to process, to the CMO to test

64 Yet, the service provider decided not to sign MTLs with around 8 CMOs that grant or offer to grant MTLs.
whether it can process them properly and on time. Quality and speed of MTL processing and conclude a mono-territorial licence.

One of the CMOs that did not pass such testing with this OMSP was interviewed by the research team. This CMO concluded a few MTLs with other OMSPs and reported that it successfully ran some tests with one or more OMSP to verify its technical capacity to process the data. The CMO also reported that it is currently investing in upgrading its IT systems.

Reliance on OMSPs or other third parties with the necessary technical capacities and experiences to verify CMOs capacity to process MTLs could be an option to explore for NCAs lacking such capacities.

Data exchange standards (Articles 24(2)(c) and 27(2) and (3))
Recital 43 of the CRM Directive states that ‘industry standards for music use, sales reporting and invoicing are instrumental in improving efficiency in the exchange of data between collective management organisations and users’. To achieve this efficiency objective Title III of the CRM Directive establishes several obligations to CMOs granting MTLs. Most notably:

- Article 24(2)(c) of the CRM Directive requires CMOs granting MTLs ‘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 Union level’;

- Article 27(2) and (3) of the CRM Directive requires CMOs to offer to OMSPs:
  - ‘the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data’; and
  - ‘the use of a least one [invoicing] format which takes into account voluntary industry standards or practices developed at international or Union level’.

Interviews with licensing entities granting MTLs and OMSPs, as well as analysis of publicly available information on the use of copyright data management standards for MTL, provided a conclusion. It was noted that CMOs generally can access and rely on the voluntary industry standards and practices developed at international or EU level for the electronic exchange of rights management data. Such standards, notably, include standards for digital data exchanges (DDEX), Claim Confirmation and Invoicing Details (CCID) and Common Royalty Distribution (CRD) files. Furthermore, interviews permitted to establish that at least some EEA-based CMOs are also actively involved in the development of common data standards (e.g., through participation of their representatives in various working groups and standard setting organisations).

Overall, CMOs relied on such copyright management data standards before the adoption of the CRM Directive, and continue to do so. According to a large CMO, ‘the CRM Directive did not have much impact on the standardisation of rights management data’. Yet, all the interviewed market actors affirmed that MTL requires more intensive and fast data processing.

None of the CMOs granting MTLs referred to any issues with access to voluntary industry standards and practices to identify rightholders and musical works. An IME complained in an additional written submission to the survey that since almost 2 years, it has been denied access to certain rights management information systems. According to the IME, such systems are ‘used as standard by the industry’ and ‘are essential to participate competitively in the market’. The IME qualified such systems as ‘an essential facility’. As such, this
reported issue does not refer to CMOs’ non-compliance with Title III of the CRM Directive. However, it demonstrates a problem which a newcomer to the MTL market faces today, or that another organisation, including a CMO, may face in the future to comply with Title III if not having access to the aforementioned rights management information systems.

**Invoicing (Article 27(3)-(5))**

**Time of invoicing**

According to Article 27(4) of the CRM Directive, ‘the 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’. To comply with this obligation, CMOs need a capacity to process increasingly large files of usage reports associated with MTL, in order to invoice for the actually used works of the CMOs’ repertoire.

An OMSP offering its services in several Member States reported the following repeated issues with invoicing obligations of CMOs. The service provider stated that it submits “usage reports to CMOs on an ongoing basis, and then nothing happens for 12-18 months. Then, suddenly, the big licensing entities start processing in batches and often send multiple months’ worth of invoices at once, which is difficult to process and creates complications from a cashflow perspective. Licensors, in some cases, demand immediate payment at the threat of litigation. From a business perspective, we cannot litigate with critical licensors, and so we often pay to big licensors who present large, to some extent overlapping claims, at a different point in time. Such situations repeatedly occur in spite of contracts saying: ‘quarterly reporting by the licensee and quarterly invoicing by the licensor’.” Another OMSP offering its services in several Member States reported about a similar experience with repeated late invoicing, stating that ‘CMOs are often very slow to provide CCIDs in which to track market share – it’s not unusual for them to be over a year behind’. A large CMO granting MTLs expressed an opinion that some smaller CMOs ‘underperform’. According to this CMO, underinvestment in the capacity to process usage reports and invoice without delays impacts the operation of the entire MTL system, because OMSPs often wait until they receive all invoices before processing to distribution of royalties to all CMOs.

**Impact of delayed invoicing on renegotiation of MTLs: A case**

An OMSP offering its services under multiple MTLs referred to the following ongoing situation with delayed invoicing. It has an MTL with an EEA-based CMO. The service provider reported that while it was sending usage reports in time, according to the terms of the licence, it did not receive any CCID claim files from the CMO for the present year, as of the second week of October 2020 (when an interview was conducted). In general, it is important to receive invoices on time, also from a cash management perspective. In this specific situation, an additional complication was that the MTL was about to end, and it was necessary to begin discussions about a renewal. The invoices enable establishing the real market share (pro rata of the usage share) of CMO’s repertoire in the effectively used content of the online service. While under the MTL’s tariffs, the OMSP pays only for effectively used content, for example, the market share is also important for determining advances. The advances under the MTL that was about to end were negotiated on the basis of estimated [X]% market share of CMO’s repertoire. It was difficult at that time to know the real share. Receipt of invoices based on the real use enables establishing the real share and, if it decreases in comparison to the original one (e.g., [X-10]%), to renew the MTL with smaller advances on the basis of more accurate information.
Quality of invoicing

Several interviewed stakeholders, mostly OMSPs, reported issues with the quality of invoicing. Concern of one OMSP on the granularity of invoicing information aside, the reported quality-related issues with MTL invoicing could be grouped as those pertaining to overlapping claims and to so-called 'residuals'.

Overlapping claims

The CRM Directive require CMOs granting MTLs to ‘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’ as well as to ‘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.’ Data issues may result in overlapping claims of licensing entities to OMSPs. The occurrence of such a situation is commonly referred to as ‘double claims’.

According to an OMSP that offers its services in all Member States, the number of overlapping claims that it has to tackle has increased in recent years due to the following two reasons:

- the constantly increasing volume and complexity of the information that CMOs have to process combined with the fact that;
- more CMOs can grant licences covering the same Member State.

An OMSP that offers its services in several Member States pointed out the following main two reasons for the occurrence of overlapping claims:

- the lack of timely processing of usage reports with subsequent timely invoicing; and
- the constant movement of rightholders between different licensing entities (i.e., withdrawal of rights from one CMO, its subsidiary or IME and mandate to another one).

OMSPs of different size reported that it is very complex and difficult for them to know and/or to decide which of the overlapping claims from different licensing entities granting MTLs is right or wrong. According to an OMSP, licensing entities are persistent in their overlapping claims because they want to be able to claim in future instances and with other OMSPs as well. An OMSP reported that CMOs have concluded a ‘London Protocol’ for solving some of double claims-related issues, and yet when CMOs do not manage to resolve disputes among themselves, the service provider is left with the consequences.

A CMO granting MTLs told an interviewed national competent authority established in the same Member State that one of the reasons for double claims (overclaims) on the side of CMOs is the lack of knowledge how much an OMSP owns to other CMOs with which it concluded MTLs. According to this CMO, when OMSPs receive double claims they do not pay.

65 That OMSP stated that ‘overall, transparency of licensors vis-à-vis licensees was and remains poor in terms of claim data received by the licensee from its licensors. Granularity of information regarding rights is often not available’.

66 Articles 24(2)(d) and 27(5) of the CRM Directive.
‘Residuals’

Interviewed stakeholders used the term ‘residuals’ to refer to the amounts held by OMSP and associated with works whose ownership cannot be established by licensing entities, due to missing or incorrect data relating to ownership of the online rights in musical works. In principle, the works concerned by such data issues were used by OMSPs legally by virtue of licences with licensing entities.

In the past, when national CMO of each Member States were the main licensing entity in each of the national markets, all the ‘residuals’ regarding uses in a Member State were paid to that Member State’s CMO. The practice through which this information problem is currently being addressed in the EEA is that licensors (CMOs, their subsidiaries, IMEs and publishers) claim the amounts from OMSPs on the basis of estimated share of licensing entities’ repertoires in the national markets concerned (a pro-rata approach). For example, if the market share of a CMO in a Member State of use is 40%, the CMO claims 40% of the residuals associated with this Member State.

It was reported that OMSPs wait to receive claims from all the licensing entities before establishing what amounts are ‘residuals’. Hence, the moment when the ‘residuals’ of a CMO is determined could be dependent on the last licensor making its claim. A CMO argued that OMSPs do not provide all the information at their disposal for helping licensors to claim all the ‘residuals’ at OMSPs’ disposal. As a consequence, according to this CMO, due to ‘underclaiming’ by licensors, OMSPs get to keep some of the ‘residuals’ (i.e., the difference between the total amount of ‘residuals’ and in the amounts claimed by licensors). Another CMO reported that ‘[T]he repertoires of CMOs is more represented by many small rightholders than by a few big ones. Repertoires of big rightholders receive priority treatment by DSPs and could get better conditions as well as access to unclaimed revenues on the basis of their market share in the identified content, potentially leading to them receiving more than they should normally get.’

According to an OMSP, ‘[i]f CMOs do their job and properly manage all the rights data, they will be able to identify 100% of all their works, meaning that their share of residuals should be zero’. The OMSP believes that the ability to claim amounts to unidentified rights based on a market share does not create an incentive for CMOs to invest in the necessary technologies. The same OMSP also stated that ‘some licensors that manage to identify most of their rights (hence reducing the proportion of their rights in the ‘residuals’) later could still make claims to the remaining ‘residuals’ on the basis of the market share, resulting in a ‘double hit’ – even though their share of the residuals could be very low.’

Another OMSP reported that it itself had to develop solutions for distribution of amounts accumulated due to the lack of appropriate rights information, because ‘CMOs failed to agree among themselves on a common solution’. The service provider stated that it ‘does not want to sit on the [unclaimed] amounts forever’ and that it itself invested time and resources for developing solutions for distribution of such amounts.

Overall, private stakeholders, mostly OMSPs, reported different issues related to the time and quality of invoicing. According to several OMSPs, some CMOs granting MTLs invoiced them with significant delays, did not have all the necessary rights ownership information and/or that information was inaccurate leading to overlapping claims with other CMOs.

---

67 The term ‘residual rights’ is sometimes also used to refer to rights in the repertoires of national CMOs, in particular to performing rights of national authors member of these CMOs.
CMOs reported that some of the issues with the quality of invoicing was caused by the quality of usage reports submitted by OMSPs.

Publication of standard applicable tariffs (Article 21(1)(c) and (2))

According to Article 21(1)(c) and (2) of the CRM Directive, ‘the collective management organisation shall publish, and keep up to date, on its public website [standard licensing contracts and standard applicable tariffs, including discounts]’. This obligation is not limited to licensing of offline rights in musical works and also covers licensing of online rights in musical works under Title III of the CRM Directive.

The research team visited websites of EEA-based CMOs managing online rights in musical works and asked about publication of tariffs during interviews. An overall observation is that generally CMOs publish their licensing tariffs for online rights in musical works. Almost all interviewed CMOs reported that they publish tariffs on their websites. Some CMOs explicitly pointed out that they do so in accordance with the law transposing the CRM Directive. A CMO reported that it communicates about its tariffs also as a part of its marketing vis-à-vis rightholders members, as well as those that may consider becoming its members. According to this CMO, ‘rightholders are pressing for higher tariffs as compared to years ago’.

Yet, in many cases it is unclear whether the published tariffs for online rights in musical works are applicable for both mono-territorial licences and MTL, or only for mono-territorial licences. It was established that tariffs for MTL of online rights in musical works were not published on websites of a few CMOs, including some of the interviewed CMOs. One of the interviewed CMOs explained the current absence of published tariffs on its website by the temporary IT works on its website. The website of another interviewed CMO that reported to publish tariffs, invites prospective OMSPs to submit their business project first before obtaining an estimation of MTL tariffs. Tariffs for mono-territorial licensing of online rights in musical works of this CMO were published.

Interviewed OMSPs were also asked about publication of tariffs by licensing entities granting MTLs. An OMSP expressed its appreciation of the CRM Directive’s obligation on CMOs to publish tariffs. This service provider stated that ‘CMOs are quite transparent on their rates’ and gave one of the largest CMOs as a good example of transparency on the rates. Another OMSP stated that ‘not all’ CMOs and their subsidiaries publish tariffs. Another OMSP complained that the CRM Directive is not sufficiently clear or detailed on the requirement to make tariffs public. It notably expressed concerns that the Directive is not sufficiently clear on the application of this obligation to CMOs’ subsidiaries through which many of online rights in musical works flow nowadays. The service provider gave examples of two CMOs’ subsidiaries created for MTL that do not publish their MTL tariffs. According to the service provider, one of these subsidiaries used to follow the national regulatory regime of the Member State of its establishment and the tariff structure of the CMO established in that Member State. With the transposition of the CRM Directive, ‘[the subsidiary] does not follow the [Member State’s] national regime and does not publish its tariffs anymore’. By visiting websites of all identified CMOs’ subsidiaries created for MTL, 68 The rest of the website seemed operational before the interview.

69 The research team could confirm that the tariffs were not published on these subsidiaries’ websites in August and November 2020.
the research team could establish with certainty that only one of such organisations made its tariffs public in November 2020.

Some interviewed licensing entities and OMSPs pointed out some differences between the published standard applicable tariffs and the actual tariffs of concluded MTLs that have to be effectively applied. Several CMOs stated that the published tariffs serve as a (minimum) starting point for MTL negotiations. According to them, the published tariffs need to be combined with other factors to come to a final rate. Licensing entities explained the published tariffs are always being ‘a bit of a price list for a certain scope of usage’ indicating what is considered fair, adding that OMSPs may obtain some deductions to the tariffs. A CMO reported that it risks getting sued by its members if it does not meet the published tariffs in the deals concluded with OMSPs.

Interviewed licensing entities and OMSPs reported that conclusion of non-disclosure agreements (NDAs), as a part of MTL negotiations, is a normal business practice. According to some CMOs, OMSPs insist on signing NDAs from the very beginning of licensing negotiations. One of the CMOs reported that while it publishes its standard tariffs, experimental tariffs are not publicly disclosed. It also reported that it was required by an OMSP to sign an NDA guaranteeing non-disclosure of the experimental tariff. A licensing entity explained the insistence of OMSPs, in particular the largest ones, on signing NDAs by the fact that these service providers ‘know that they are way below appropriate rates and they want to be able to negotiate lower rates with some CMOs’. A CMO stated that some OMSP do not want the fact that they concluded an MTL to be publicly known. A licensing entity explained that competing CMOs do not share their real rates with each other, because one of the factors in their competition for rightholders is their ability to license rightholders’ rights at a higher rate to OMSPs. A CMO participating in one of the CMOs’ MTL hubs informed an interviewed NCA established in the same Member State that ‘it does not know how much a DSP has to pay other CMOs under MTLs’.

An OMSP stated that it ‘does not believe that there are any meaningful publicly available tariff rates. They are “back to the drawing board” in every negotiation. There is no visibility for a new entrant or outsider. Only if a DSP is experienced in rights clearance in the EEA, it knows what the rates are.’ According to another OMSP, in private negotiations licensing entities often claim that ‘X’ is the rate paid by the entire market, but publicly licensing entities announce that ‘all licences are different’ in order to justify the lack of a published tariff. The service provider asserted that both of those statements cannot be true at the same time. Another OMSP stated that all experienced licensing professional in the sector knows what the unpublished rates are. Another OMSP complained about the fact that it applied for several standard published tariffs of a CMO, but the CMO refused them arguing that the standard tariffs did not apply to their novel activities and without further substantiation of the decision.

Overall, CMOs publish their licensing tariffs for online rights in musical works. There is some uncertainty as to whether the published tariffs for online rights in musical works are applicable for both mono-territorial licences and MTL, or only for mono-territorial licences. CMOs’ subsidiaries created for MTL commonly do not publish their tariffs. There are some differences between the published standard applicable tariffs and the actual tariffs of concluded MTLs that have to be effectively applied. Conclusion of NDAs is a common practice in MTL negotiations. It was reported that different stakeholders are able to use some non-availability of published and/or effectively applied tariffs to their advantage.
1.b.e  Application of different rules to different types of licensing entities granting MTLs

Different types of licensing entities, CMOs, subsidiaries of CMOs and IMEs, were reported to be competing on the same market for MTLs.

Further to some relevant survey responses, some interviewed NCAs reported that legislative provisions applicable to CMOs granting MTLs are not applicable to IMEs or that IMEs are not subjected to the same reporting requirements in relation to MTL as CMOs. An NCA of the Member State that decided not to extend the application of national law transposing Title III of the CRM Directive to IMEs shared the following opinion and experiences: ‘the text of the Collective Management Directive is not sufficiently clear about IMEs. The national law transposed the Directive quite literally in part that concerns IMEs. There was a concern that IMEs would benefit from the fact that CMOs are more regulated’, adding that ‘but essentially CMOs are now better regulated than before, which is beneficial for all stakeholders involved’. Another NCA of the Member State where at least one CMOs’ subsidiary granting MTLs is established reported that some requirements of Title III could be applied to CMOs’ subsidiaries, depending on the subsidiaries’ activities (‘case-by-case’ assessment). The same authority is comfortable about the level of information it receives about subsidiaries and their activities.

A CMO granting MTLs expressed its dissatisfaction with the fact that the same rules do not apply to CMOs and other entities operating on the same market (‘other licensors (IME’s) do not have to obey to the same rules as CMOs’). Another CMO granting MTLs stated that ‘there is a risk of emergence of IMEs or other entities created by [the largest multinational OMSPs] for licensing of the most profitable online repertoire (e.g., for licensing of 10% of music with 90% of market value), leaving the least profitable and more costly offline uses to be managed by traditional CMOs’. The same CMO made the following statement in a separate written contribution to the survey: ‘There is also no reason why entities licensing on a multiterritorial basis are subject to the same obligations of Title III of the CRM Directive just because they are not CMOs.’ An interviewed OMSP complained about ambiguity regarding the application of the CRM Directive, including its Title III, to some CMOs’ subsidiaries and MTL cooperation arrangements between CMOs and the major publishers. The service provider referred to four such licensing entities and arrangements, reporting that one of the CMOs’ subsidiaries explicitly informed the OMSPs that the CRM Directive does not regulate it.

In general, the received input demonstrates that not all stakeholders are concerned about the application of different rules to different types of licensing entities granting MTLs: CMOs, CMOs’ subsidiaries and IMEs. Some private stakeholders, CMOs, and OMSPs have concerns about applying different rules to licensing entities competing on the same market for MTLs.

1.b.f  Are licensing entities established outside the EEA – but operating in the national authorities’ jurisdiction – required to comply with national law transposing Title III of the CRM Directive?

Non-EEA-based CMOs make their repertoires available in the EEA through traditional representation agreements for mono-territorial licensing with EEA-based CMOs, through mandates for MTL with EEA-based licensing entities or through granting MTLs directly (see the subsection on ‘Non-EEA-based CMOs granting MTLs’ in Section 1.a.c).

Out of 24 responding national authorities, 10 (42%) reported that licensing entities established outside the EEA were not required to comply with national law transposing Title
III of the CRM Directive when operating within their jurisdiction. The other 14 (58%) confirmed that compliance was required for non-EEA licensing entities, too. Of these 14, four reported this only applied ‘in some cases’.

In response to an open follow-up question directed at the latter four NCAs, one national authority stated that the requirements for EEA- and non-EEA-based CMOs are the same with exception to the so-called ‘must carry’-obligations and rightholders’ right to withdraw rights when CMOs do not engage in MTL, which do not apply to non-EEA CMOs. Another respondent specified that: ‘CMOs seated outside the EEA must not be active in [the Member State of the responding national authority]. Thus, they would be subject to supervision only when acting through a company seated in the EEA.’ One relevant NCA reported that the issue ‘has not been actual yet’. Another NCA reported that ‘Yes, only for copyright management. For related rights they need to comply with the legal provisions of country of origin.’. In this study, the focus is entirely on copyright (authors’ rights), and not on related rights.

The survey included an open question – addressed at the 14 national authorities, who reported that non-EEA licensing entities operating in the authority’s jurisdiction had to comply with Title III – asking national authorities to compare the requirements imposed on licensing entities established within and outside the EEA. The question elicited diverse responses from 13 respondents:

- Five national authorities reported that the rules for non-EEA entities were the same (or ‘basically the same’) as for licensing entities established within the EEA;
- Two national authorities reported that CMOs and OLEs, which are not established in the EEA, are not entitled to operate within the Member State in question;
- Two respondents simply reported that there were no such non-EEA licensing organisations operating in the Member State;
- One national authority stated that fewer requirements applied to non-EEA-based CMOs. The so-called ‘must carry’-obligations and the rightholders’ right to withdraw rights when CMOs do not engage in MTL do not apply to non-EEA CMOs. The other requirements are the same for EEA-based and non-EEA-based CMOs;
- One national authority reported that in a sense, non-EEA licensing entities had higher obligations to comply with: for licensing entities established in the EEA, it was sufficient that the requirements under the jurisdiction of the EEA Member State of establishment were met, whereas for licensing entities established outside the EEA, the local rules in the national authority’s jurisdiction had to be documented. However, in response to a later question, the national authority clarified that ‘only a representative CMO may provide licences for the online uses of musical works’ within the Member State in question;
- Two responses of the national authorities were not sufficiently clear to be categorized with certainty. One responding NCA only cited a national definition of CMO stating that “a collective management organisation is a non-profit association that collectively exercises copyrights or related rights. All CMO’s operating in [the country] must be a non-profit organisation.”. Another responding NCA reported that any MTL providers not based within the EEA must “have a footprint that covers both EEA and outside EEA areas” to be eligible to supply MTLs in the respective country.

Thus, in about half of EEA Member States (at least 11 out of 24 (46%)), non-EEA licensing entities are not subject to the full regulations of Title III of the CRM Directive. Less regulated licensing entities may enjoy competitive advantages. At the same time, according to our survey results, it seems that licensing entities established outside the EEA are barred from providing their services in some EEA Member States. Overall, there seems not to be a level
playing field between licensing entities established within and outside of the EEA. Whether licensing entities established in the EEA or in other countries enjoy advantages due to divergent regulations is subject to the situation in specific Member States.

1.b.g Taking stock
Overall, our assessment of the application of the CRM Directive’s Title III and the verification of licensing entities’ compliance by NCAs documents that national procedures to monitor and regulate MTL of online rights in music works (a) vary substantially across EEA Member States and (b), at least in some Member States, do not seem to be entirely effective. There is variation along three major dimensions: (1) between different EEA Member States; (2) between the regulation of CMOs on the one hand, and IMEs on the other; and (3) between suppliers of MTL services in the EEA, who are established in the EEA or abroad.

Firstly, across the Member States covered, national authorities have various scopes of activities. In the perception of some of our contact persons at NCAs, not all relevant provisions of the CRM Directive have been fully implemented into national law or regulatory practice of their EEA Member States. Specific oversight procedures, by which NCAs verify the compliance of licensing entities with national law corresponding to Title III, also vary.

Secondly, some Member States apply the provisions of Title III not only to CMOs (as provided for by the CRM Directive) but also – and to varying degrees – apply different aspects of Title III to IMEs granting MTLs.

Thirdly, some Member States apply the provisions of Title III not only to licensing entities established in the EEA but also – and to varying degrees – to licensing entities established outside of the EEA and providing services in their jurisdiction. The information and/or other capacities that some NCAs dispose for doing so are quite limited.

In practice, regarding IMEs and non-EEA-based licensing entities of any type, fewer aspects of Title III tend to apply than for EEA-based CMOs, subject to national law and regulation. However, whereas EEA-based CMOs may provide their services across the EEA if they comply with the regulations of their domestic regulators, IMEs and non-EEA-based entities are usually subject to scrutiny by each national regulator in the respective EEA Member States. What is more, some EEA Member States effectively restrict the operations of IMEs and non-EEA-based licensing entities.

All of this begets the question from an the economic perspective, whether the application of regulations and verification by national regulators fosters an efficient Internal Market for MTL services – and the related markets for recorded music and online music services – by promoting adequate levels of competition. One aspect of this question is whether the current state of regulation across EEA Member States and different types of licensing entities approximates a reasonably level playing field, where the most efficient licensing entities are not put at a disadvantage.

c Notifications of non-compliance with Title III of the CRM Directive
1.c.a Legal context and key questions
According to Articles 36(2) and 37(2) of the CRM Directive, EEA Member States shall ensure that specific notification procedures are in place regarding alleged non-compliance of licensing entities with the CRM Directive. In this section, we address two questions regarding notifications of non-compliance:
1.c.b Notifications by stakeholders to national authorities

Article 36(2) of the CRM Directive requires Member States to establish procedures enabling all stakeholders (CMOs as well as their individual members, other rightholders, users of copyright works, and other interested parties) to notify competent authorities of circumstances, which may constitute a breach of the provisions of the CRM Directive or corresponding national law. Our survey addressed, whether such notification procedures for stakeholders were in place in relation to Title III of the CRM Directive, how often they were used and how national authorities evaluated them.

Out of 22 NCAs responding to the survey, 15 (68%) confirmed that they had ‘specific procedures in place’ that ‘enable stakeholders to notify the respective national authority of alleged breaches of Title III’ of the CRM Directive in ‘their’ Member State. However, only two NCA reported that they had indeed received such notifications. One of these NCAs referred to ‘a few’ notifications without providing any additional information. The other NCA stated that it received two notifications, none of which helped to identify non-compliant conduct. Due to the low occurrence of notifications from stakeholders so far, the survey could not produce substantive information on whether these notifications are handled in an effective and efficient manner.

Seven (32%) NCAs responding to the survey reported that they had no specific stakeholder notification procedures in place, regarding Title III. None of these currently planned to introduce them, either.

Interviews yielded no additional insights regarding notifications to NCAs from (other) MTL stakeholders. Some NCAs reported that they had received formal complaints on other collective rights management issues, but not specifically on MTL. Two OMSPs, additional to those that replied to the survey, were asked about use of a notification procedure to bring to any national authority’s attention issues related to MTL, including alleged non-compliance by CMOs with respective national norms transposing Title III of the CRM Directive. They reported no use of such a notification procedure.

These responses raise some doubts on whether Article 36(2) has had much effect on stakeholders’ compliance with Title III. A majority of NCAs had stakeholder notification procedures in place, but according to our respondents, these procedures are not universally adopted in all EEA Member States. What is more, even where such notification procedures are in place, they are seldomly used, including by stakeholders alleging that some CMOs are not fully compliant with Title III.

1.c.c Notifications between national authorities of different Member States

Article 37(2) of the CRM Directive addresses notifications between NCAs of different Member States about alleged non-compliance of CMOs with the CRM Directive. If an NCA perceives there to be non-compliant conduct by a CMO operating in its territory but established in another EEA Member State the NCA can inform its counterpart in the Member State in which the CMO is established and request appropriate action. Any competent authority receiving such a request shall provide a reasoned reply within three months. Regarding in particular compliance of CMOs with Title III of the CRM Directive, our survey addressed how often such notification procedures between NCAs had occurred, and how NCAs evaluate the process.
The main result is that so far, notifications between NCAs are rarely used. Over the last five years, only two of 22 NCAs responding to the survey had notified their counterpart in another EEA Member State about possible non-compliance of licensing entities established in that Member State with national legislation implementing Title III of the CRM Directive.

Only one of the NCAs available for an interview reported that it had received and replied to a request for information from another NCA of an EEA Member State regarding MTL. However, most interviewed NCAs stated that they wish to have more cooperation with their counterparts in other Member States. Two NCAs considered that the meetings of the Expert Group, established under Article 41 of the CRM Directive, were not sufficiently frequent but useful. Another NCA expressed the following opinion: ‘there is no structured consultation and deliberation system between authorities – no EU overarching roof organisation (as exists in the area of data protection law), even though it could be useful regarding questions arising uniformly under the CRM Directive’. Some NCAs reported that they coordinated themselves with other NCAs on a sub-regional level: this type of exchange and cooperation occurs among NCAs in the Nordic Member States and among the German-speaking Member States.

Due to the low occurrence of such notifications, the survey and interviews could not produce substantive information on whether these notifications by other national authorities are handled in an effective and efficient manner. Our survey and interviews results suggest that Article 37(2) provisions had not resulted in an intense exchange between national authorities in terms of exchanges of formal notifications.

By contrast, out of 21 respondents, a substantial majority of 14 national authorities (67%) expected that it will be important for effective regulation that competent authorities of EEA Member States notify each other about possible non-compliance over the next five years. Thus, we can probably exclude that notifications between national authorities have hardly been used because they would not be needed to ensure compliant behaviour by licensing entities with multi-territorial operations.

1.c.d Taking stock
So far, notification procedures by which stakeholders or NCAs can report alleged non-compliance with provision of Title III to (other) NCAs have hardly been used. Concerning both Article 36(2) and 37(2) of the CRM Directive, further research is desirable with the NCAs on why notifications occur so rarely. Hypothetical explanations are that notifications procedures are:

- Not yet exploited because they are novel, or even not yet fully introduced in some Member States where they would be needed the most;
- Perceived as inefficient or ineffective;
- Sufficient as a deterrent against non-compliance, even if they are not invoked in practice; or
- Indication of an absence of issues reaching the degree of seriousness, to justify the initiation of a formal procedure.

70 The survey inquired about OLEs in order to cover instances of notifications regarding CMOs’ subsidiaries, for example.
Regarding Article 37(2) there may also be a reluctance of some NCAs to ‘make life difficult’ for their counterparts in other Member States and thus potentially for each other.

Overall, notification procedures to NCAs seem to have some potential – according to NCAs – but so far, they have been largely underused.

d Rightholders’ withdrawal rights

1.d.a Context and key questions

The CRM Directive stipulates that rightholders enjoy rights to withdraw some or all of their rights from CMOs. A general withdrawal right for rightholders is confirmed in Article 5(4) of the CRM Directive. Furthermore, Article 31 of the CRM Directive stipulates that rightholders, who have authorised a CMO to represent their online rights in musical works, enjoy specific withdrawal rights if, by 10 April 2017, the CMO in question does not grant or offer to grant MTLs itself and does not mandate another CMO to represent those rights for MTL. Rightholders may then withdraw from that CMO the online rights in musical works for the purposes of MTL in respect to all territories, without having to withdraw the online rights in musical works for the purposes of mono-territorial licensing. Rightholders may then grant MTLs themselves or mandate any other party, for instance another CMO, that complies with the provisions of Title III of the CRM Directive.

In general, withdrawal rights can promote competition between licensing entities and thus efficiency. The specific withdrawal rights according to Article 31 also create an incentive for CMOs to develop effective MTL. Withdrawal rights effectively unbundled the other services supplied by CMOs from services consisting of granting MTLs for online rights in musical works. Rightholders do not need to choose between enjoying the mono-territorial services of the CMO and enjoying effective MTL of their works. Where rightholders make use of withdrawal rights to mandate various licensing entities over time for MTL, the result may also be that it becomes difficult for licensees to track, which works are covered by the licences they have established, increasing complexity and costs. In this context, this section addresses three main questions:

- To what extent have withdrawal rights been used so far?
- What rightholders have used withdrawal rights so far?
- What have been the consequences of right withdrawals?

To answer these questions, we first report on survey results among main market participants: CMOs, rightholders and OMSPs. We then report interview results from CMOs and OMSPs.

1.d.b CMOs’ experiences with rightholders’ withdrawals rights

According to Article 31 of the CRM Directive, when the CMO does not grant or offer to grant MTLs (in accordance with the conditions of Articles 25-28) and does not allow another CMO to represent these rights (in accordance with the conditions of Article 25-28), a rightholder may withdraw only her/his online rights in musical works for the purpose of MTL, while the CMO, from which the online rights are withdrawn, continues to serve that rightholder for

---

71 Or, for non-EU EEA Member States, one year after the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017, according to Article 1 of the Decision of the EEA Joint Committee No 186/2017 of 22 September 2017 amending Annex XVII (Intellectual Property) to the EEA Agreement [2019/1074], OJ L 174/57.
mono-territorial licensing. It is hard to interpret the implications and effectiveness of Article 31 in isolation from the provision of Article 5(4) of the CRM Directive. In essence, Article 5(4) already establishes that rightholders are free to withdraw from a CMO any of the rights, categories of rights or types of works and other subject-matters of their choice, for the territories of their choice.

Among the CMOs interviewed, many had granted MTLs well before the adoption of the CRM Directive. Accordingly, most did not feel that Article 31 of the CRM Directive would have promoted their MTL activities. Only one of the interviewed CMOs – a CMO established in a smaller EEA Member State – felt that the CRM Directive and in particular Article 31 had been ‘to some degree a stimulus to engage’ in MTL.

In practice, withdrawals of online rights often occurred after the transposition of the CRM Directive based on general withdrawal rights confirmed in Article 5(4) of the CRM Directive. Withdrawal rights according to Article 31 were used less often.72 Several interviewed CMOs of different sizes reported that the most important withdrawals occurred following and as a consequence of the Recommendation of the European Commission of 200573 and before the adoption of the CRM Directive.74

It seems that almost all the CMOs responding to the survey avoided the conditions for withdrawal rights according to Article 31 by granting MTLs directly and/or mandating other licensing entities to do so. These survey results could also suggest that Article 31 contributed to bring about the virtually comprehensive availability of CMOs’ repertoires for MTL.

Withdrawal rights have not been put to use very frequently over recent years:

- In our survey, out of 14 responding CMOs, four (29%) CMOs had experienced any rightholders withdrawing online rights in musical works for the purpose of MTL over the last five years. Three of these four CMOs, who had rights withdrawn over the last five years, were from smaller EEA Member States. Considering that CMOs tend to cater for thousands of rightholders, it is a noteworthy result that many CMOs experienced no withdrawals for the purpose of MTL at all over an extended period of time;
- In all four cases of rights withdrawals, this concerned mechanical and performing rights;
- In three out of four cases (all regarding CMOs from small EEA Member States), the repertoire withdrawn consisted of works in high demand. The one CMO from a larger Member State (> 30 mln population) reported no consistent pattern among the types of works withdrawn;
- The three relevant CMOs from smaller Member States also provided consistent answers regarding the types of rightholders, who had withdrawn works: these were

72 As confirmed in interviews with CMOs, some withdrawals only concern online rights (according to Article 31) and CMOs continue to exercise rights of withdrawn rightholders for offline uses in the Member States of CMOs’ establishment.


74 For one of these CMOs the first withdrawal occurred in 2007.
large or large and mid-sized publishers. The one CMO from a larger Member State reported no consistent pattern in this respect, either;

- We asked all four CMOs who had experienced right withdrawals: ‘Taking into account all the withdrawals and new mandates from rightholders, what best describes the aggregate effect on the rights revenues of your organisation from multi-territorial licensing of online rights in musical works over the last 5 years?’ two CMOs from smaller Member States reported revenues ‘decreased somewhat’, and one reported ‘increased somewhat’. The CMO established in a larger Member State reported revenues ‘were unchanged’;

- The two responding IMEs reported no rights withdrawals.

Several interviewed licensing entities of different sizes observed that large independent publishers' withdrawals occur ‘relatively often’ and that ‘there is a lot of movement’ of large publishers holding rights to Anglo-American and other foreign repertoires. One large CMO reported that initially the major publishers exploited withdrawal rights, followed by some large independent publishers, and that now also some small publishers ‘make decisions to withdraw’.

A large CMO characterised the situation with withdrawals as ‘it is not a shopping around environment’, and that ‘the majority of rightholders remain stable members of their CMOs’. The same CMO provided the following elaborate input on the impact of withdrawals on competition between large publishers and CMOs, as well as on different types of repertoires: ‘Withdrawals from publishers often results in a rather unfair situation where — especially large publishers — operate with a direct licence towards the big multiterritorial DSPs but leave the rights for the small unattractive online-business with the societies. Also publishers try to achieve better terms and conditions with the DSPs in cases of withdrawal — often successfully. Both points lead to an unfair advantage for publishers over societies [CMOs] or for AA [Anglo-American]-Repertoire over European Repertoire.’

An interviewed CMO granting MTLs and that describes itself as not being a ‘victim of rightholders’ withdrawals’ reported that rightholders’ reasons for withdrawals related to the national tax law or a wish to be closer to their main national market (in the given examples that market was in the USA).

A smaller interviewed CMO reported that the withdrawal of the commercially attractive Anglo-American repertoires by the majors and other large publishers had an impact on the CMO’s negotiating position. Yet, the situation could become more problematic if the large US-based CMOs (ASCAP and BMI) decide to withdraw their online rights in musical works from the CMO.76 A large CMO reported that there is some competition among licensing entities for attracting mandates for MTL from the large US-based CMOs (ASCAP and BMI). Another US-based CMO, SESAC, is engaged with MTL in the EEA via its EEA-based

---

76 Some time after the interview, BMI announce that it mandated ICE to grant MTLs. ICE, BMI Announces Partnership with ICE, 15 December 2020: “While much of BMI’s award-winning repertoire has been available on a multi-territorial basis to pan-European digital music services for many years through initiatives to match these rights to multi-territorial mechanical rights, some works, commonly known in the European market as “reciprocal repertoire,” have still been licensed and administered on a territory-by-territory basis by local societies. This new partnership fills the gap by making the remaining musical works from BMI’s repertoire available to Pan-European digital service providers in one central hub through the ICE Core.”, available at: https://www.iceservices.com/bmi-announces-partnership-with-ice/
subsidiary in Liechtenstein (SESAC Digital Licensing). SESAC is carrying out MTL activities in the EEA in cooperation with SUISA in the framework of the Mint project.

Overall, withdrawal of rights may undermine the solidarity between rightholders whose rights are licensed collectively. In particular large rightholders, who enjoy some market power, may seek out opportunities to withdraw their online rights to negotiate for favourable terms regarding their own interests with various licensing entities (or directly with OMSPs), mandating or licensing the highest bidder. Our (admittedly limited) survey and interview results suggest that this may have been the case. Rightholders represented by CMOs could thus be split, weakening the bargaining position of the collectives with licensees and their ability to offer equally favourable terms to all rightholders, including smaller rightholders. Whether any cream-skimming by larger rightholders adversely affects the overall performance of CMOs requires further attention.

### 1.d.c Rightholders’ experience with rightholders’ withdrawal rights

Out of 33 responding rightholders, 22 (67%) confirmed that they were ‘aware of the right to withdraw [their] online rights in musical works from the collective management organisation’ they participated in otherwise according to Article 31. 11 (33%) were not aware of this. Many rightholders are not aware of the rights granted to them by the CRM Directive.

Out of the 22 rightholders aware of these withdrawal rights, 18 (82%) had not used a withdrawal right, and four (18%) confirmed that over the last five years they had ‘withdrawn all or part of [their] online rights to musical works from CMOs for the purpose of multi-territorial licensing’. Regarding all 33 rightholders exposed to this segment of the survey – and assuming that rightholders unaware of withdrawal rights do not use them – 12% of rightholders had withdrawn online rights for the purpose of multi-territorial licensing and 88% had not.

According to Article 31 of the CRM Directive, rightholders that withdrew their online rights in musical works for the purpose of multi-territorial licensing could grant MTLs themselves or through any other party they authorise or through any CMO complying with the provisions of Title III. Of the four rights withdrawals reported on in the rightholder survey, one concerned all the rightholder’s online rights in musical works (full withdrawal), and three concerned only a part of these rights. Three rightholders confirmed that they had ‘mandated the multi-territorial licensing of the withdrawn rights or part of them to another CMO, independent management entity or other licensing entity’; one rightholder did not.

The four rightholders with first-hand experiences provided very varied ratings of how easy it had been to withdraw rights. Responses were spread across the full range of evaluations, from the most positive to the most negative. On a five-point scale, one respondent each selected ‘very easy’, ‘easy’, ‘neutral’, and ‘very difficult’. On the basis of these responses, it seems that there may be some room for improvement in this respect. One respondent further observed that in their assessment, ‘there is no realistic alternative’ to MTL via the national CMO. The latter point should serve as a reminder that withdrawal rights are only useful if there are, in fact, meaningful alternatives (e.g. differences in the quality and prices of MTL services offered to rightholders by other MTL service providers or the ability of rightholders to conclude MTLs for their rights themselves).

Two rightholders, who had withdrawn online rights from a CMO, reported further details. One publisher had withdrawn rights in 2019, and one author had done so in 2020. The latter reported, it had since reverted that action. The reasons provided for rights withdrawals by these two rightholders were ‘direct payments from the overseas PRO [performing rights organisations]’ and intense dissatisfaction with the conduct of the CMO (‘The organisation
is patently guilty of high level and massive fraud in its distribution of rights and manipulation of statutes and voting rights’).

1.d.d Experiences of OMSPs with rightholders’ withdrawal rights
To illuminate the experiences of OMSPs with extended withdrawal rights due to the CRM Directive, we asked the five service providers responding to the survey several questions. We first asked: ‘Over the last five years, have […] withdrawals of online rights from CMOs had substantial consequences for your organisation’s online music service?’:

- One respondent selected the response option ‘No’ but specified in an open follow-up question that withdrawals had had substantial effects, when publishers withdrew their rights from CMOs earlier than five years ago;
- Four respondents selected the response option ‘Yes’.77

We asked the latter four OMSPs to rate, how withdrawals of copyright had affected them in several specific respects. Two different scales were required to make for clear survey items, see Tables 1.11 and 1.12 for an overview.

---

77 One respondent provided additional detail: ‘Yes, in instances where CMO’s have withdrawn repertoire from sister societies [CMOs] - this has greatly increased the number of reports we send to the CMO each month (e.g. 4 reports per month in 1 market becomes ~130 reports per month under a panEU deal). In turn this means the CMO must provide ~130 CCIDs, which they are often not sophisticated enough to do well (if at all). Further, they struggle to meet the industry ‘standard’ processing timeframes and reporting format requirements, meaning we receive CCID’s later than expected and in turn, CMO’s may not be paying their members timely, in accordance with the directive. Additionally, if an unsophisticated CMO is prone to having issues with their files / invoices - instead of being isolated to one market, this is now dispersed across all European markets in the case of a pan-EU licence - often creating many more disputes, delayed payments and the inability for us to quickly reconcile and close out markets from an accounting perspective.’
Table 1.11 Effects of rights withdrawals on online music services

<table>
<thead>
<tr>
<th>Effects of withdrawals on the music services regarding:</th>
<th>Decreased a lot (1)</th>
<th>Decreased somewhat (2)</th>
<th>No substantial change (3)</th>
<th>Increased somewhat (4)</th>
<th>Increased a lot (5)</th>
<th>N</th>
<th>Mean</th>
<th>Valid N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licence fees per instance of use</td>
<td>--</td>
<td>--</td>
<td>1</td>
<td>--</td>
<td>3</td>
<td>--</td>
<td>4.5</td>
<td>4</td>
</tr>
</tbody>
</table>

(See Table 2.12 on the conditions of licences other than price)

<table>
<thead>
<tr>
<th>Conditions and terms of copyright licences other than price</th>
<th>Much less favourable (1)</th>
<th>Somewhat less favourable (2)</th>
<th>Virtually unchanged (3)</th>
<th>Somewhat more favourable (4)</th>
<th>Much more favourable (5)</th>
<th>NA</th>
<th>Mean score</th>
<th>Valid N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions and terms of copyright licences other than price</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1.75</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 1.12 Effects of rights withdrawals on the conditions and terms of copyright licences other than price

Due to the low number of respondents, the results do not allow for detailed interpretations or very confident conclusions. In the perception of the responding OMSPs, withdrawal rights – and the way that they are implemented and used – tend to be associated with the following consequences:
Any ratings of issues related to the full economic costs of OMSPs indicate increasing costs:

- licence fees per instance of use increased very much;
- conditions and terms of copyright licences other than price became somewhat less favourable (see Table 1.12);
- the number of licences required to keep making the same size libraries available in the same Member States increased somewhat.

The sustainability/profitability of online music services deteriorated somewhat, which is probably a consequence of increasing costs;

There is no evidence of any substantial changes associated with these phenomena regarding the characteristics of the music libraries made available by the online music services:

- no respondent reported that the size of its music library would have changed;
- neither did any respondent report that the share of small European repertoires in the music library would have changed.

The interviewed OMSPs offering their services in all or some Member States reported that they must ensure that they always cover withdrawn rights in order to ensure the stability of their offer to consumers.

Any rights withdrawn by rightholders are usually relocated to another licensing entity. A typical statement by an online music service is: ‘The movement of rightholders from one licensor to another means that sometimes they obtain rights of the same rightholders through ICE, later through SACEM, and then through AMRA.’ Another online music service observed that withdrawn rights are mostly mandated to ‘one of the licensing hubs’. For instance, when most of the independent music publishers members of IMPEL – except for the publishers Concord, Peer and Downtown – withdrew their rights from PRSfM and mandated them to SACEM.78 Concord, Peer and Downtown subsequently became direct clients of ICE. An OMSP offering its services in several Member States observed that ‘there are continuous changes in catalogues of the licensing entities’.

While withdrawn rights generally remain within the system of identifiable licensing entities granting MTLs (CMOs and/or their subsidiaries), interviewed OMSPs reported on several issues impacting their operations:

- Increased efforts to renegotiate MTLs: Several OMSPs reported that when a licence is about to expire and some important withdrawals have occurred during the licence term, the service providers reassess the importance of the altered licensing entity’s repertoire in their services before they renegotiate MTL terms. One of the interviewed OMSPs mentioned that its licences contain clauses for adjusting MTL terms in the case of a rights withdrawals from the respective licensing entities;

- Application of different MTL terms for the same rights: Even if an OMSP had an MTL with both the licensing entity from which rights were withdrawn and the licensing entity to which withdrawn rights were later mandated, the OMSP must adapt rates, terms and conditions for the respective set of rights and works depending on the MTL through which it accesses the rights concerned;

---

78 Some of the 50 IMPEL publishers joined the new Core Collective initiative of PRS.
• Scope for errors:
  OMSPs reported that rights withdrawals often gave rise to ‘double claims’ and ‘residuals’;
• Legal uncertainty:
  OMSPs also felt that due to insufficient exchange of information in the process of rights withdrawals and relocation, they ran the risk to use rights unlawfully, even though they acted in good faith.

Impact of rightholders movement on the stability and legality of online music services: A case
An OMSP offering its services in several Member States offered the following example of the impact of market reorganisation related to rights withdrawals. Kobalt, music publisher, withdrew its online rights to Anglo-American repertoire from CMOs and mandated them to Kobalt STIM Aggregated Rights AB (KSTAR), a joint venture created by STIM and Kobalt for the purpose of multi-territorial licensing in 2012. In order to have Kobalt’s rights covered, the OMSP concluded an MTL with KSTAR, in addition to existing mono-territorial licences with national CMOs in the EEA Member States of its operations. Within two years after conclusion of the MTL, Kobalt moved the exercise of its rights to AMRA, and STIM engaged in the ICE project. In spite of having in good faith concluded licences that covered all its uses, the OMSP found itself in a situation where some of its content offered to consumers in several EEA Member States suddenly became unlicensed. Some years later, the OMSP learned from STIM that there was a 9-month period before it had moved its rights to ICE, but after KSTAR was disbanded, for which STIM’s repertoire was not licensed by the OMSP, which needed to be remedied retroactively.

1.d.e Taking stock
The expected benefits of withdrawal rights mostly transpire as they promote competition between licensing entities. In all probability, rightholders' withdrawal rights make licensing entities more responsive to rightholders' interests and are one of the reasons, why rightholders seem increasingly satisfied with the MTL services they receive (see Section 1.f.f). 79

Our results also suggest that there are corresponding costs of greater complexity in music licensing faced by licensees, as some repertoires move from one licensing entity to another. Withdrawal of rights seem to increase complexity and the full economic costs of copyright licensing incurred by OMSPs. Withdrawals and mandates of rights to other licensing entities seem to have contributed to the increase of licence fees. However, increasing licensing costs for online music services do not appear to undermine the variety of supply of works via online services nor the proportion of ‘small European repertoires’ featured on them (see Section 1.g.e).

It is important to monitor whether the exploitation of withdrawal rights generate excessive turbulence and uncertainty for online music services. The answers to the survey and interviews suggest that an even more efficient, comprehensive and continuously updated matching infrastructure of online rights, works, rightholders and related licencing entities is desirable.

79 However, actual rights withdrawals seem rare. As one large CMO stated in an interview: MTL is ‘not a shopping around environment’ and ‘the majority of rightholders remain stable members’.
e Alternative dispute resolution procedures (ADRPs)

1.e.a Legal context and key questions
According to Article 34(2) of the CRM Directive, Member States shall ensure that independent and impartial ADRPs are available to stakeholders regarding disputes with a CMO granting or offering to grant MTL. This could ensure that disputes (among CMOs, between CMO(s) and actual or potential OMSP(s), or between CMO(s) and any rightholder(s)) are resolved in a reasonably effective and efficient manner, where negotiations between stakeholders or court proceedings are not the most suitable options. In this project we assessed:

- Are ADRPs in place in Member States?
- Has the CRM Directive affected the operations of ADRPs?
- How often have ADRPs been used?
- How do stakeholders (NCAs, licensing entities, rightholders and OMSPs) evaluate ADRPs?

1.e.b National competent authorities’ (NCAs) experience with alternative dispute resolution procedures (ADRPs)
In our survey, out of 22 responding NCAs responding to the survey, a majority of 19 (86%) confirmed that there were ADRPs in place in their Member State for the resolution of disputes specified by Article 34(2) of the CRM Directive. Three of these NCAs reported that they were involved in conducting these procedures. Three national authorities stated that there were no such procedures in their Member States, but one of these respondents confirmed that they were currently preparing the introduction of ADRPs. One of the responding NCAs reported that it concluded in 2018 a Memorandum of Understanding (MoU) with the World Intellectual Property Organization (WIPO), on collaboration with the WIPO Arbitration and Mediation Center on ADRPs in the domain of copyright. The MoU facilitates referral of disputes to WIPO alternative dispute resolution procedures, notably by establishing a dedicated list of mediators and arbitrators based in the national authority’s Member State.

In the survey, we also asked the 19 NCAs from Member States with ADRPs to describe these procedures’ basic features. The 18 responses we received vary less than those regarding compliance verification (see Sections 1.b.b and 1.b.c). In 15 Member States, ADRPs are conducted by committees, which are not subject to detailed instructions from the national authority once they are set up. Only two national authorities indicated that ADRPs were conducted entirely by courts (i.e. the judiciary), and one other national authority named courts as one of several organisations in charge of ‘mediation’. Beyond these basic results, further details on how ADRP committees are set up and how they operate in practice would best be done by directly studying the committees. Such research was not part of this study.

Our survey results suggest that the CRM Directive has promoted the establishment of ADRPs. Among the 19 Member States with ADRPs, 12 (63%) had had these procedures in place before the adoption of the CRM Directive. The remaining seven (37%) national authorities reported that such procedures had been introduced thereafter. Furthermore, of the 12 Member States with longer established procedures, three reported that these were ‘greatly reformed with the [CRM] Directive’.

In practice, ADRPs are rarely used. Out of the 19 Member States with ADRPs, only three national authorities (19%) reported that any such procedures had actually been used since the implementation of the CRM Directive into national law. One national authority reported
one dispute, which had been resolved through ADRP, and this respondent evaluated the procedure as neither effective nor ineffective in terms of providing a swift resolution. Another reported 20 disputes submitted to ADRPs, 16 of which had been resolved, and evaluated the procedures as ‘very effective’.80

Eight interviewed NCAs had also participated in the survey. They confirmed their responses but did not provide additional insights, for instance on how to improve ADRPs from their perspective.

1.e.c Licensing entities’ experience with ADRPs

According to our survey results, ADRPs for resolution of disputes specified in Article 34(2) of the CRM Directive are not generally in place in EEA Member States:

- Out of 17 responding licensing entities, nine (53%; eight CMOs and one IME) confirmed that there are such ADRPs in their Member State of establishment, and eight (47%; seven CMOs and one IME) disconfirmed;
- Out of the nine respondents, who reported ADRPs in place in their Member State, only two CMOs reported that they had themselves been involved in an ADRP over the last five years.

Respondents evaluated ADRPs in their Member State of establishment as neither particularly effective nor ineffective:

- In terms of providing ‘swift resolutions’, out of nine responding licensing entities, two (22%) rated ADRPs in their Member State of establishment as ‘somewhat effective’. Three (50%) provided a ‘neutral’ evaluation. Three rated them as ‘somewhat ineffective’ (including one IME), and one CMO rated ADRPs as ‘very ineffective’;
- In terms of providing ‘adequate resolutions’, out of 10 responding licensing entities, two (20%) CMOs rated ADRPs in their Member States of establishment as ‘somewhat effective’. Five (50%) respondents provided a ‘neutral’ evaluation. One IME reported ‘somewhat ineffective’, and two CMOs evaluated ADRPs as ‘very ineffective’ in this respect;
- In terms of encouraging ‘stakeholders to develop mutually acceptable solutions before any ADRPs are initiated’, out of nine responding licensing entities, two CMOs (22%) rated the ADRPs in their Member States of establishment as ‘somewhat effective’. Five (56%) respondents rated them as ‘neutral’, and two respondents (22%) evaluated ADRPs as ‘very ineffective’ in this respect (one CMO and one IME).

Additional information received with regard to one of CMOs was that it is ‘considering initiating such procedure [ADRP] if [the] dispute cannot be resolved soon’.

Overall, from the perspective of licensing entities, there seems much scope to develop and improve on the existing ADRPs. In general, according to the input received during the

---

80 A third national authority reported 41 ADRP cases, stating that over 90% of them were challenged in courts. Additional open-text information provided by this national authority clarified that the above statistical information on ADRP cases referred to the time between 2005 and 2017. For this reason, the provided statistical information largely invalid for the purposes of the study: it does not account for the timeframe specified in the question (‘since the transposition of the CRM Directive into national law’). Only one of these cases was decided in the period 2016-2017.
consultation process by means other than survey, disputes involving CMOs were reported to be often resolved amicably.

1.e.d Rightholders’ experience with ADRPs

Out of 29 rightholders responding to the survey, seven (24%) confirmed that they were aware of ADRPs for resolution of disputes specified in Article 34(2) of the CRM Directive ‘in the country where the CMO managing your online rights for multiple territories is established’. A majority of 22 (76%) rightholders were not aware of ADRPs. All six responding publishers, who we expected to be relatively knowledgeable, were unaware of ADRPs.

Out of the seven rightholders, who knew about ADRPs, two (29%; 7% of all rightholders exposed to this part of the survey) confirmed they had used ADRPs. On a five-point evaluation scale, one of these reported it had been ‘unsatisfied’ with the ADRP, and the other reported it had been ‘satisfied’.

There is obviously much scope to raise awareness of ADRPs among rightholders. Furthermore, additional research is desirable on whether ADRPs indeed offer more efficient and effective solutions, also for small stakeholders, than other means to resolve conflicts.

1.e.e OMSPs’ experience with ADRPs

We asked all five OMSPs whether they were aware of ADRPs for resolution of disputes specified in Article 34(2) of the CRM Directive ‘in the EEA countries, where the CMO(s) with which [their] organisation has concluded licences are established?’. Two respondents selected ‘No’, and three selected ‘Yes’.81

In this context, one of the former two respondents explained that the reason it had not yet engaged with ADRPs was: ‘because there is little transparency regarding the relevant procedures and they can involve considerable expense, time and resources’.

Of the latter three respondents, two confirmed that over the last five years, they had ‘been involved in an [ADRP] with regard to copyright licensing for online music services’. Only one of these provided further detail: it had been involved in one ADRP, which it had not initiated itself, and which had not been resolved yet.

Based on that (limited) experience, the latter OMSP rated ADRPs as:

- ‘Somewhat ineffective’ in the sense that they result in swift resolutions;
- ‘Somewhat ineffective’ in the sense that they result in adequate resolutions for all parties.

Two respondents, who reported they were aware of ADRPs, provided open-ended responses on ‘specific amendments to [ADRPs were] required to make them work better’:

- ‘Procedures need to be timely and not prohibitively expensive. There should not be a risk of being sued for copyright infringement during these procedures’;

81 One respondent provided additional detail regarding his answer: ‘We are aware of certain possible forums e.g. UK Copyright Tribunal, German Board of Arbitration, but their ability to adjudicate on certain pan-European licence disputes is currently unclear.’ This precision also demonstrates that OMSPs’ understanding of what are ADRPs varies.
‘ADRPs tend to be costly and damage relationships.’

In the perspective of OMSPs, it seems that ADRPs hardly work in the sense that they would offer a cheaper and more efficient alternative to other means of resolving disputes, such as bilateral negotiations and judicial procedures. There seems to be ample scope for improvement of these procedures on the ground, at least in certain Member States.

Interviews with OMSPs allowed us to highlight the issue further, and largely exclude the first set of hypothetical explanations for limited use of ADRPs (five OMSPs were asked questions regarding ADRPs. Three of these service providers were different from those that responded to the survey). First of all, according to the interviewed OMSPs, there is no viable mechanism for challenging prices and terms of MTLs on a pan-EEA basis through national courts or quasi-judicial bodies. Several OMSPs reported that as far as they knew, MTLs prices and terms would have to be litigated in each Member State. None of the interviewed OMSPs reported that it had litigated on matters related to MTL in any of the Member States. Having to litigate in multiple Member States tariffs of the same MTL (i.e., country-by-country) was described as prohibitively expensive by OMSPs of all sizes as well as a threat to goodwill with licensing partners. One OMSP referred to a UK court case to illustrate the matter.82 A medium-sized OMSP speculated that larger OMSPs would not litigate, either, because they feared public backlash (e.g. press coverage of ‘multinationals taking from authors’). Another OMSP felt that without effective recourse to litigation, its bargaining position with licensing entities was weakened. OMSPs considered the present procedures for dispute resolutions as unsatisfactory, compared either to the legal certainty regarding mono-territorial licensing in the EEA or compared to their experiences in the USA.83

National litigation and multi-territorial tariffs: A case

An OMSP reported of the following experience: ‘In the UK, in 2007-2008, DSPs got together and challenged the existing rates before the Copyright Tribunal. As a result of the process, the Tribunal set the rate at 8%. This was around the Commission Study where the so-called Option 3 prevailed. So, rightholders, disregarding the Tribunal’s decision, moved the licensing from national to multi-territorial via [a CMO], at first, and then via [a MTL hub], raising the tariffs from 8% (set by the Tribunal for the UK only) to 15% (as a multi-territorial tariff including also the UK). Everybody spent lots of money and energy getting to the Tribunal’s Decision, which was completely disregarded, leaving DSPs very frustrated.’

When we referred to ADRPs during the interviews, none of the five OMSPs reported that it had made use of them in any of the EEA Member States.84 One OMSP complained about a common lack of clarity regarding ADRPs, concerning clear steps in the procedure and its timeline. It does not see the point to devote time and resources to procedures that yield non-binding results. Another OMSP reported having ‘agreed contractual processes’ in place for resolving disputes with licensors.

---

82 BBC Worldwide Ltd v. Mechanical-Copyright Protection Society Ltd and PRS; Sky Ltd and ITV Networks Ltd intervening [2018] EWHC 2931 (Ch) 6 November 2018.

83 One OMSP favoured the situation in the USA, where statutory rates are set and a single mechanism to challenge rates exist for a sizable market.

84 Three of the interviewed OMSPs had not responded to the survey, so that in total this applies to 8 OMSPs – all on which we collected data.
1.e.f Taking stock
Potentially, ADRPs provide stakeholders with an alternative independent and impartial mechanism for resolution of disputes regarding MTL. With the CRM Directive, ADRPs have been introduced or revised in most EEA Member States. While a submission of MTL dispute to national courts was reported to be associated with a risk of costly and lengthy country-by-country litigation regarding the same MTL under different procedural and material national laws, ADRPs may offer a solution for multi-territorial dispute resolution. However, so far these procedures have rarely been used. It is desired to monitor the limited use of ADRPs in Member States, and to further investigate the underlying reasons. According to the interviewed stakeholders and publicly available information, MTL is accompanied by different frictions and conflicts between stakeholders. Consultations with stakeholders point towards the following reasons for non-use of ADRPs: Lack of knowledge about ADRPs and of experience of using them. Disputes regarding MTL are solved through bilateral negotiations, sometimes involving periods of confrontation, without initiating formal procedures, or through contractual clauses foreseeing procedures when disputes occur.

f Market conditions and trends

1.f.a Context and key questions
This section illustrates how main types of stakeholders – licensing entities, rightholders and OMSPs – evaluate recent developments and the current state of the market for MTLs in the EEA. As illustrated in Section 1.a.b, the bulk of all repertoires from EEA-based licensing entities and rightholders is available via MTLs, but there is still a complex nexus of licences (Section 1.a.h). For instance, all online music services covered operate under several dozen MTLs and mono-territorial licences concluded with CMOs, CMOs’ subsidiaries, IMEs and publishers. Furthermore, stakeholders’ interests and the efficiency of the market at large are also determined by costs associated with establishing licences (transaction costs), as well as by the price and terms of MTLs.

In this section, we address the following questions regarding the general market conditions for MTLs of online rights in musical works in the EEA, based on various sources of data collected for this project:

- How has the diffusion of online music services affected:
  - the cross-border availability of online music services?
  - the prices and terms of MTLs?
- What are recent trends in the demand conditions of MTLs between licensing entities and OMSPs regarding:
  - the quantity of demand for MTLs?
  - prices of MTLs?
- Besides MTL prices, what other (transaction) costs do OMSPs face when acquiring MTLs? How satisfied are rightholders with the MTL services provided to them by licensing entities? Do the management fees of licensing entities charged among rightholder side:
  - vary between different types and set-ups of licensing entities?
  - fall over time with greater competition for rightholders or technological change?

Some of these market conditions will be co-determined by the CRM Directive, but other factors will play a role. The specific effects of the CRM Directive, as perceived by various stakeholders, are addressed in Section 1.g.
1.f.b CMOs’ evaluations of the cross-border availability of the music repertoires via online music services

Over the last years, the major development in music markets for recorded music is the increasing importance of online music services, such as Spotify, Deezer and YouTube, who offer consumers streaming, downloading, online content-sharing services to consumers. Online music services finance themselves in various ways, including by charging per instance of use, by selling subscriptions or providing services free of charge to consumers and selling advertising. Another source of income for online music services derives from the exploitation of OMSP data. Technically, such online music services are suitable to cater for customers, who enjoy Internet access, irrespective of national and geographical boundaries. However, to comply with copyright law and ensure sustainable levels of revenues for creators and other rightholders in the EEA, it has been necessary that online music services conclude copyright licensing agreements covering a reasonably comprehensive range of repertoires of works. The prices and terms of copyright licences, including MTLs, have been contentious.

In any case, in our survey CMOs mostly evaluated the cross-border availability of their repertoires in online music services as positive:

- Out of 13 CMOs, who provided relevant responses, 11 (85%) reported on a five-point evaluation scale that online music services had had a positive effect in terms of making repertoires available in many EEA Member States (of these eight rated as ‘very positive’ and three as ‘somewhat positive’). One CMO reported a neutral response. Only one CMO rated the effect as ‘somewhat negative’;
- Regarding the corresponding prices and other terms of MTLs, evaluations were more mixed. Seven CMOs (54%) saw online music services as having a positive effect in this respect from the perspective of CMOs (of these, one rated as ‘very positive’ and 6 rated as ‘somewhat positive’). four respondents (31%) saw a ‘somewhat negative’ effect. Furthermore, there were two neutral evaluations.

From an economic perspective, we interpret these evaluations as follows. Online music services are relatively efficient means to disseminate music to broad audiences and across multiple territories at the current state of technology. From the perspective of cultural diversity in the EEA, cross-border availability of repertoires seems to have had a positive effect according to the assessment of CMOs. However, the diffusion of online music services has not translated into more favourable prices and other terms of MTLs from the perspective of CMOs. This provides some indication that large OMSPs enjoy a relatively strong bargaining position with CMOs – either because the larger online music services enjoy market power or because the fall-back option for many consumers is unauthorised access rather than accessing music in other ways. The CRM Directive might have, given its objectives, probably weakened CMOs’ bargaining power, since it promotes competition among CMOs and other licensing entities regarding MTLs for OMSPs and for rightholders.

---

85 The 2 responding IMEs both started supplying MTLs after 2016, in the presence (and probably in response to) the diffusion of online music services. They may thus have a more limited ability to evaluate changes due to this development than CMOs, which operated for many decades already. We thus omit the responses from IMEs here. In terms of repertoires being available in many EEA Member States, both IMEs reported a ‘somewhat positive’ of online music services. Regarding prices and terms of multi-territorial licences, one IME reported ‘somewhat positive’ and the other reported ‘neutral’.
1.f.c  Demand conditions and prices for MTL
With the diffusion of online music services, demand conditions for MTLs should have improved. Our survey results from licensing entities support this notion:

- Out of 17 responding licensing entities (15 CMOs and two IMEs), 14 (82%) reported that over the last five years, the number of OMSPs, who seek to conclude an MTL, had increased (two CMOs responded ‘increased very much’ and 11 CMOs as well as one IME reported ‘increased somewhat’). Two CMOs observed ‘no clear pattern’ and one IME reported ‘no change’. No licensing entity reported a reduction in the number of OMSPs seeking an MTL;

- Regarding prices and other conditions of MTLs offered or accepted by OMSPs, results were also positive but more mixed. Seven licensing entities (41%) reported that from their perspective, prices and other conditions had improved over the last five years (one CMO reporting ‘improved very much’ and six responding CMOs as well as one IME reporting ‘improved somewhat’). Five CMOs reported ‘no change’ and four CMOs reported ‘no clear pattern’ (47% neutral evaluations). One IME reported ‘deteriorated somewhat’.

Overall, this indicates that from the perspective of licensing entities demand conditions for MTLs by licensing entities have mostly improved over recent years.

1.f.d  MTL tariffs
Title III of the CRM Directive does not regulate tariffs for MTL. The CRM Directive merely provides for a few general principles that shall guide licensing negotiations. MTL tariffs were reported to be one of the main concerns of licensing entities and OMSPs. MTL tariffs are an essential element for assessing the development of the MTL market.

In general, MTL tariffs are set in terms of a rate (%) and a minimum (€). The rate is commonly determined as a percentage of music-related revenue of an OMSP, and the minimum is set a minimum monetary amount due per instance of use (e.g., a stream) or other element of a service (e.g., per subscriber). It is common that the licensee is to pay whichever method (on the basis of a rate or on the basis of a minimum) leads to the higher amount. Licensing entities reported that both, the royalty rate and the minimum, are the integral parts of licensing negotiations because the two elements permit to account for different situations and business models of OMSPs.

An MTL rate is generally not applied to the aggregate revenues of OMSP from all the Member States in which its service is offered. The same rate is applied to Member State-specific revenues of an OMSP taking into account the share of the licensing entity’s repertoire in the total works used by the OMSP in that Member State. Therefore, in order to calculate the total amount due under an MTL rate it is necessary to establish the share of licensing entity’s repertoire in the total works used by the OMSP in each Member State concerned.

The minima were often reported to be set per Member State, taking into account economic differences in Member States. Therefore, in order to calculate the total amount due under an MTL minima, it is necessary to establish the number of units of use or other elements of the service in each Member State concerned and multiply them by the amount of the minima set in the respective Member States.
Rates reported by interviewed licensing entities granting MTLs and OMSPs are similar. Some stakeholders considered that tariffs of licensing entities granting MTLs tend ‘to be rather identical’ or ‘to converge’. With regard to smaller CMOs, the following observation was shared by an OMSP offering its service in many Member States: ‘smaller CMOs know the rates of larger licensing entities and demand similar rates, arguing that they are compensated by the lower amounts DSPs have to pay them due to their lower market share’. According to a CMO granting MTLs, ‘some small CMOs sometimes have had smaller fees due to their negotiating position, but their tariffs also tend to converge during renewals/renegotiations of licences’. According to an OMSP offering its services only in several Member States, it would be desired to standardise the rates in the EEA to facilitate market entry. The OMSP also expressed an opinion that ‘the market should be regulated with fixed tariffs. Otherwise the barriers to entry will become too high for new DSP and in the end the music industry will be dominated by just a few DSPs’. One of the largest licensing entities expressed a contrary view in its additional written submission to the survey by stating that: “interference of national regulations with CMOs' tariff setting within the framework of multiterritorial licensing would go against the aim of the CRM Directive as regards Title III and prove detrimental to all concerned. Allowing CMOs to negotiate on a pan-European basis helps to promote the availability of repertoire, to the benefit of right holders without any adverse effect on consumers.”

According to survey results of OMSPs, prices for MTLs have increased. Four OMSPs responded to the question: ‘Over the last five years, has your organisation experienced substantial changes in the pricing of copyright licences for online music services?’. One OMSP chose the response option ‘No’. The other three responses selected ‘Yes’ and provided further detail in an open-ended extension:

- ‘Significant increase of music streaming royalties’;
- ‘Pricing of publishing licences keep increasing but this is not reflected on consumer pricing’;
- ‘Publishing rights have increased significantly in the EU, from 12% of revenues to 15% of revenues, whilst the pricing for the products has remained the same.’

Thus, most OMSPs reported that the copyright royalties they have to pay for MTLs have increased. According to our respondents, this is not entirely due to increasing revenues of online services (as royalties due are to a large part charged as a proportion of OMSPs’ revenues). Half of the respondents also specify that any prices the OMSPs charge consumers or advertiser have not increased at the same rate as copyright royalties.

Interviewed OMSPs reported that licensing fees of MTL increased over the recent years. At the same time, OMSPs (including those of similar size and offering their services throughout the EEA) expressed opposite views on whether the development of MTL was a cause of the increase. A large OMSP offering its services in all Member States linked the increase of licensing rates to the aggregation of repertoires and increased bargaining power of licensing entities granting MTLs. An OMSP offering its services only in several Member States shared its experiences as follows. ‘[The OMSP] had standardised mono-territorial contracts with CMOs with reasonable rates, whilst now [MTLs’ rates are] less reasonable. All in all, [the OMSP] has experienced that the tariffs increased (nearly doubled) after the implementation of the CRM Directive, in comparison to the cost of obtaining a bunch of mono-territorial licences for the same territorial coverage. This is a result of three factors: the increase of the revenue share, the introduction of a minimum fee per play, as well as

---

86 Some of the interviewed stakeholders provided average rates or ranges of rates.
MGs [minimum guarantees] that have to be paid in advance.' This OMSP compared tariffs for the same use of a CMO's repertoire before and after the CMO mandated its repertoire for MTL to a subsidiary of CMOs. According to the service provider, it now has to pay higher rates for the same repertoire.

**Aggregation of repertoires for the purpose of MTL and tariffs: A case**

An OMSP offering its services in the EEA reported that from its entry into the European market (prior to the adoption of the CRM Directive) to now, the licensing rates for online rights in musical works increased from [...] to [...]%. The service provider attributed this increase to the aggregation of repertoires by a few licensing entities granting MTLs in the EEA. It referred that one of such licensing entities granting MTLs holds 50% share in some Member States, which is higher than that of any of the major publishers in the same territory. According to the OMSP, ‘[i]n essence, when you add one monopoly to another monopoly, you end up with an anticompetitive result. This logic is contrary to everything the EU law stands for in other sectors. The aggregation of repertoires shifts all power into these [licensing] hubs’ hands because DSPs inevitably need to conclude deals with them.’

The same OMSP said that it is easier for it to operate in the US market, where it has to deal only with four CMOs (ASCAP, BMI, SESAC and GMR), than in the EEA. Comparing the bargaining power, four CMOs in the US market with that of multiple licensing entities in the EEA, the service provider stated that the key difference in the USA is that there are statutory rates and a single mechanism through which the rates can be challenged. This OMSP’s view on the convenience of a low number of licensing entities and the existence of statutory rates in the USA was shared by another OMSP offering its services in the EEA and in the USA. These OMSPs did not respond to the survey.

Several OMSPs pointed out the complex relation between the respect of confidentiality of MTLs’ terms and conditions, obligation to publish tariffs and non-discrimination. An OMSP complained that when licensing entities evoke the ‘minimum rate’ for everybody referring to the principle of ‘non-discrimination’ it has no proofs that everybody is indeed paying this rate. According to this service provider, these two notions, in combination with the non-transparency, are used to increase the tariffs. Another OMSP stated that 'licensees do not have any insight into the amount of information exchanged between CMOs and other rights holders who have representation and/or reciprocal agreements in place. There is a high risk that confidential information could be easily shared, and licence fees increased as a result.' Another OMSP pointed out the issue of information exchanges between related licensing entities. Examples included CMOs and their subsidiaries granting MTLs to CMOs’ repertoires and a particular role played by one CMO in licensing of performing rights to Anglo-American repertoire. This service provider formulated the issue as follows: 'There are concerns about the Chinese walls that should be set-up within licensors for controlling sharing of confidential information. Especially, because it should be a competitive market. Yet, rates have converged, and all went up over the last years. This raises concerns about sharing of rates information among them, and especially regarding the entities that wear many hats.'

Licensing entities granting MTLs reported that MTL tariffs take into account the type of use of musical works and that tariffs for now conventional downloading and streaming services are becoming standardised to some extent, with minor differences. Overall, it was reported that it is easier to establish tariffs for today well-understood business models where consumers pay per-download or pay a monthly subscription fee for a streaming service, for example. Such payments are taken into consideration as a basis when establishing tariffs. The setting of tariffs was said to be more complex in the case of different new or hybrid business models and online content-sharing service providers (OCSSPs). Licensing entities stated that MTL tariffs with OCSSPs tend to be lower than with OMSPs offering other types of services. It was explained that in addition to OMSPs’ revenues, licensing entities could
also take into account the number of customers (consumers) using services and/or, in exceptional cases, capitalisation.

Some OMSPs drew attention to the different impact the same tariff structure (rate % combined with minima per use €) has on services with different business models. According to an OMSP, the increase of licensing tariffs on a ‘per use’ basis is particularly harmful for pure-play service providers (e.g., companies whose main business is the provision of online music services). It explained it by the competition between pure-play service providers and big tech conglomerates with lots of financial resources. According to this service provider, for the latter type of organisations, a music service is only a small element in the overall business operations. Such large multi-business companies can afford to offer their online music services as a losing operation thanks to profits in other sectors, to outcompete pure-play service providers by offering lower prices. The pure-play service provider was of the opinion that if CMOs negotiate higher rates with the big tech companies and then use them as ‘standard tariffs’, in the long-term this will endanger pure-play business model overall and its ability to invest in and grow the business to the long term benefit of authors. According to this service provider, some big OMSPs tend to offer some content to customers ‘for free’, because their earnings lie elsewhere (e.g., advertisements or providing additional value to their core service) and that the minimum payment per use plays a significant role in such situations.

Several of the interviewed OMSPs and licensing entities granting MTLs stated that advances and minimum guarantees (MGs) (i.e., minimum revenue guaranteed) are a common practice among licensing entities granting MTLs. An OMSP, after noting in general that ‘multi-territorial licensing is a nice tool that permits to expand more easily’, stated that minimum guarantees and minimum fee per play prevent OMSPs from providing their services in some Member States and, hence, ‘a full-scale EEA-wide roll-out of services’. According to this service provider, it once received a request for minimum guarantees calculated by a licensing entity on the basis of estimated revenues exceeding the expectations of the annual income in the Member State concerned. The same OMSP also reported that CMOs do not require advance payments in the USA. Another OMSP said that it had to pull out its services from a Western European Member State with a relatively high income per capita, where it was already operating, due to ‘excessive minimum guarantees (MGs)’. Another OMSP mentioned that some small CMOs asked for upfront payments to help cover some licence processing costs.

Overall, MTL tariffs are not set for the EEA as a single market. Relevant minima, music-related revenues of OMSPs and shares of licensing entities repertoires in the used works are calculated for each Member State covered by an MTL. MTL tariffs offered by different licensing entities for similar uses are similar. The tariffs have increased over the recent years. While there are different explanations, many OMSPs expressed concerns about the increased bargaining power of licensing entities due to the aggregation of repertoires for MTL. Several OMSPs pointed out the complex relation between the respect of confidentiality of MTLs' terms and conditions, obligation to publish tariffs and non-discrimination as an important factor in tariff negotiations. Tariffs are adapted to online music services of different type. Some OMSPs expressed concerns about the impact of minima, advances and minimum guarantees on their business models.
1.f.e Other (transaction) costs affecting online music services

Besides the prices of copyright licences, the full economic costs of licences for the OMSPs are also determined by the efforts required to establish licensing agreements in the first place and to comply with all entailed terms, say reporting duties regarding the use of works.

In order to assess any changes in these transaction costs in our survey, we asked all OMSPs: ‘Over the last five years – and besides pricing of licences – has your organisation experienced substantial changes in the effort required to strike and comply with copyright licences for online music services?’. Five OMSPs responded. One respondent selected ‘No’. The other four respondents selected ‘Yes’ and provided further detail:

- ‘CMOs are demanding data beyond what is required to fulfil their primary licensing obligations. Data requests now cover commercial reports regarding the performance of the service and the performance of the CMO’s works. In the past CMOs published tariffs, licences have now almost all become bespoke, leading to almost no transparency. Verifying repertoire coverage/identifying potential gaps has become more difficult. The increased number of licences needed to offer a service has increased the complexity’;
- ‘We now have to conclude more multiterritorial licences with licensors’;
- ‘Publishing licensors are adding requirements in relation to unmatched works - getting paid for works they don’t own, and also asking us to pay twice where there are duplicate claims on a single work’;
- ‘There has been a negative impact regarding the effort required to strike licences. In some instances, there is now an imbalance of power due to consolidation of repertoire/rights/cmo’s and subsequently increased leverage for rights holders (which impacts all DSPs), this has led to unreasonable and unsustainable licensing demands on DSPs (from an operating cost perspective), as well as a lack of transparency due to unpublished tariffs and the associated inability to challenge effectively theoretical tariffs, all of this resulting in an increased barrier to entry a) for established DSPs when launching new products and/or in new territories and b) for new entrants i.e. new DSPS to the market. We now also experience drawn out and less efficient negotiations, especially when e.g. a licensing vehicle is required to seek approval from multiple rights holder partners/customers to conclude a licence (often meaning the person a DSP is negotiating with becomes a conduit, which is not efficient).’

Thus, respondents mentioned quite different factors driving up the effort required for them regarding copyright licences.

- Three types of issues were mentioned twice:
  - increasing numbers of licences required;
  - difficulties in identifying any repertoire not covered by licences, or even that rightholders or their representatives allegedly take advantage of incomplete or faulty directories of works and matching, eliciting payments for ‘unmatched works’ or ‘duplicates’;
  - non-transparency of licensing terms and procedures associated with ‘bespoke’ pricing, rather than consistent standard terms and published ‘tariffs’.
- Other factors driving up efforts associated with copyright licences according to individual OMSPs were:
  - data reporting duties;
protracted negotiations with representatives of licensing entities, which only act as 'conduit' for the ultimate decision-makers.

1.1. f. **Rightholders’ satisfaction with MTL services provided by licensing entities**

Since rightholders enjoy withdrawal rights (e.g. according to Articles 5(4) and 31 of the CRM Directive), there is some scope for them to 'shop around' for the most attractive MTL service providers. This should foster competition between licensing entities, which could bring about lower prices (management fees) and/or better MTL services by licensing entities for rightholders.

**How satisfied are rightholders with their MTL service providers?**

In our survey of rightholders, 29 respondents provided information on how satisfied they were with various aspects of the MTL services they received from the CMO or other licensing entities they had mandated. The rating scale had five points from 'very satisfied' (=5) to 'very unsatisfied' (=1), including a 'neutral' assessment (=3). See Table 1.13 for an overview.

| **Table 1.13 Rightholder evaluations of the MTL service provider they currently mandate**87 |
|----------------------------------------------|-------|-------|-------|-------|-------|-------|-------|
| **Quality of management**                  | Very unsatisfied | Unsatisfied | Neutral | Satisfied | Very satisfied | NA | Mean | Valid N |
| Transparency regarding the management of rightholder's online rights | 1 | 2 | 11 | 6 | 7 | 2 | 3.6 | 29 |
| Amounts deducted to cover the costs of management of rightholder's online rights | 2 | 6 | 9 | 7 | 3 | 2 | 3.1 | 29 |
| Frequency of distribution of online rights revenues | 1 | 7 | 8 | 8 | 4 | 1 | 3.3 | 29 |
| Reporting on online uses of your works | 3 | 7 | 12 | 3 | 3 | 1 | 2.9 | 29 |

According to our survey results, rightholders tend to be moderately satisfied with the overall management of ‘their’ MTL service provider. Regarding more specific evaluation criteria, rightholders predominantly reported neutral assessment of MTL service providers they had mandated. There was no indication of particular problems regarding specific performance criteria of licensing entities. On average, all specific criteria covered in our survey received neutral evaluations from rightholders.

---

87 The 6 publishers, who provided any responses to these evaluation questions did not clearly differ much in their assessment. For any category, their mean average score ranged between 2.5 and 2.8, corresponding to a 'neutral assessment'. If anything, publishers were somewhat less satisfied than authors.
**Recent changes in the quality of MTL services according to rightholders**

We also investigated how the quality of MTL services had changed over time in the perception of rightholders. We asked all rightholders to rate how the quality of multi-territorial licensing services of the rightholder’s online rights by CMOs and other licensing entities had changed over the last five years. Out of 29 respondents, 18 (62%) selected a response option indicating an improvement (4 even selecting ‘much better’), six rightholders reported no change, four (14%) indicated a deterioration in the quality of MTL services (two even selecting ‘much worse’), and one reported that it was too difficult to assess. Across all responses, the mean average (3.7 on a five-point evaluation scale) and the mode indicate an improvement over the last five years.

In our rightholder survey, 13 respondents provided further information in response to an open question on ‘how the quality of management of [the rightholder’s] online rights has changed’. Positive developments identified by rightholders were the following:

- The vast majority of 10 rightholders mentioned – without prompting by response options or instructions – more or better information provided to them by the licensing entities or greater transparency. This is a notable result in spite of customary non-disclosure agreements in place between parties to licences;
- Five respondents noted improvements in coverage of OMSPs, collections or bargaining of copyright fees;
- Two rightholders mentioned more frequent pay-outs by the licensing entities to rightholders;
- Only one rightholder explicitly referred to effective use of digital ICT by a licensing entity.

A couple of respondents also identified adverse developments regarding the performance of the MTL service providers they mandated:

- Two rightholders complained about low copyright tariffs established for professional OMSPs of online rights in musical works;
- One was concerned about ineffective measures to inhibit unauthorised use.

Overall, rightholders were on average, somewhat satisfied with the MTL services they received from the CMO or other licensing entity they had mandated. There were no dramatic differences between the evaluations regarding specific aspects of the performance of MTL service providers. According to the rightholders’ judgement, no single area can be identified where there is clear scope for substantial and highly relevant improvements. Instead, it seems that there is scope for piecemeal improvements across all performance criteria assessed in this survey. Over the last five years, MTL services seemed at least to have improved in the perception of rightholders.

**1.f.g Licensing entities’ management fees charged among rightholders for online rights management**

Licensing entities typically finance themselves by charging a share in total revenues collected on behalf of rightholders from licensees, such as OMSPs. Article 3(i) of the CRM Directive defines ‘management fees’ as amounts charged, deducted or offset by a CMO from rights revenue or from any income arising from the investment of rights revenue in order to cover the costs of management of rights. Various measures of the CRM Directive aim at fostering competition between licensing entities that supply MTLs for online rights in musical works. Furthermore, technological innovation with the diffusion and improvements...
of digital ICT for the purpose of MTL should in our view sooner or later reduce licensing entities’ costs. In either case, there is the potential that MTL services would become cheaper over time.

In order to investigate to what extent this holds in practice, our survey assessed licensing entities’ MTL management fees in relation to the revenues collected on behalf of the rightholders they represent. We asked licensing entities to report the percentage share of the total rights revenues they used to cover their costs of online rights management for the three last completed calendar years (2017 to 2019). As stipulated in Point 2(b)(vi) of the Annex to the CRM Directive, CMO are required to include information about management costs into their annual transparency reports. Our question focused on deductions for online rights management, however, which is often not separately reported in annual transparency reports.

Out of 17 licensing entities in our sample, 16 licensing entities provided this information, of which 15 were CMOs and one was an IME. See Table 1.14 for an overview. Among the CMOs, the table also distinguishes between (a) CMOs established in large EEA Member States from CMOs established in smaller Member States, and (b) CMOs, who themselves offer MTLs from those who do not. Across all licensing entities, management fees varied between 1% and 20%. The mode was 10% for all years covered.

Table 1.14 Licensing entities’ management fees as a share of total licensing revenues deriving from online rights

<table>
<thead>
<tr>
<th>Type of licensing entity</th>
<th>Size of Member State of establishment</th>
<th>MTLs supplied by organisations itself</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMOs</td>
<td>Large (Population &gt;30 million)</td>
<td>No</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Average</td>
<td>11.8</td>
<td>11.8</td>
<td>11.8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Smaller (Population &lt;30 million)</td>
<td>Yes</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>10</td>
<td>11</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>6</td>
<td>10</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Average</td>
<td>11.9</td>
<td>12.5</td>
<td>12.0</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Average</td>
<td>11.8</td>
<td>12.3</td>
<td>11.9</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Average</td>
<td>5.5</td>
<td>6.0</td>
<td>6.0</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Average all CMOs</td>
<td>11.0</td>
<td>11.4</td>
<td>11.1</td>
<td></td>
</tr>
</tbody>
</table>

Where precise data was not available, respondents were requested to provide reasonable estimates.
STUDY ON EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES IN THE DIGITAL ENVIRONMENT

<table>
<thead>
<tr>
<th>Type of licensing entity</th>
<th>Size of Member State of establishment</th>
<th>MTLs supplied by organisations itself</th>
<th>Year</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>IME</td>
<td></td>
<td></td>
<td></td>
<td>19</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>Average all licensing entities</td>
<td></td>
<td></td>
<td></td>
<td>11.5</td>
<td>11.9</td>
<td>11.6</td>
</tr>
</tbody>
</table>

Note: All respondents reported whole numbers.

During follow-up interviews, some of the CMOs who responded to the survey provided some additional explanations on the management fees.

A CMO granting MTLs stated that although its management costs (15%) for online licensing are higher than of some other CMOs it offers superior services. Another CMO reported that thanks to the successful joint investment of several CMOs into the technical capacity of a subsidiary created for MTL, it was able to reduce management fees from 15% to 10%. A CMO referred to the management fees of ‘other CMOs’ being ‘normally 10%’. The CMO that indicated 8% in the survey added in a separate written submission that ‘it was not possible to give more than one figure [, and] the correct answer for all 3 years should have been: 8 – 10 %’.

A CMO whose repertoire is licensed on a multi-territorial basis by a joint subsidiary of several CMOs reported that there are practically no reasons for rightholders to switch between the CMOs whose rights are licensed by the same subsidiary. All these CMOs were said to have similar rates for a similar level of services. Although distribution rules of these CMOs differ to some extent, they are based on the number of streams.

One large CMO explained that it does not cross-subsidise collective management of other rights through fees deducted for collective management of online rights in musical works, in order to make sure that its online rights management fees are competitive.

Fairly standard applications of economic theory suggest that digitalisation and integration will reduce the costs of copyright management – especially online. Simultaneously, under some competitive pressure, licensing entities should pass on lower costs to their members or customers. We sought to establish to what extent several related expectations are consistent with our data:

- First, CMOs established in larger EEA Member States charge lower deductions, as they tend to cater for a larger market, so that they can better exploit economies of scale and network effects, and thus have lower costs;
  
  There is little evidence for this: at least along the binary classification reported on in Table 1.14, average management fees are virtually the same for CMOs established in larger EEA Member States and CMOs established in smaller Member States.

- Second, CMOs that supply MTLs themselves rather than mandating another party have higher costs and charge higher deductions than those, who do not. (In case of representation agreements between CMOs, for instance, two CMOs may charge some deductions);
  
  Our data is consistent with this expectation: the two CMOs, who do not offer to grant MTLs themselves, both charge deductions that are lower than the mean average for other CMOs (albeit with considerable variance).

- Third, CMOs participating in ‘joint ventures’ (see Section 1.a.g) have lower total costs and thus charge lower fees;
There is limited evidence for this in our data. The four CMOs in our sample, who did not participate in any ‘joint venture’ charged on average 14.8%. The nine CMOs, who did participate in a joint venture charged on average 11.5%.\(^89\) (We do not report these figures in Table 1.14) However, neither of the two CMOs who had started receiving services from a joint venture in 2018 or 2019 reported any reduction in its fees compared to the preceding year. Besides, we cannot be certain about accounting practices, e.g. whether CMOs report total deductions including any joint venture fees or not;

- Fourth, IMEs charge lower deductions than CMOs, as IMEs' business depends at least in part on attracting rightholders from CMOs;
- Based on (the limited evidence regarding) the fees reported by the single responding IME in our sample, there is no evidence that this IME would provide cheaper services;
- Last but not least, we sought to establish whether deductions decrease over time, as licensing entities can reduce the costs of many of their (information processing) services with advances in digital ICT.\(^90\)

According to our survey results, there is little evidence for increasing productivity of licensing entities within the 3-year period covered: the vast majority of the responding CMOs, as well as the IME reported no changes in the deductions they charge as managing fees over the three years covered. The mean averages were 11.5% for 2017 and 11.9% for 2018 and 11.6% in 2019. This seems to contradict (at least in the short term) the expectation that ongoing advances in ICT would reduce the costs of online rights management.\(^91\) However, the association between technical innovation and CMOs’ costs may be quite complex, for instance, because:

- CMOs may be slow to alter deduction (pricing) schemes due to inertia – protracted decision-making in large organisations and the potential for extensive bargaining between their members once established procedures come into question;
- The effects of ICT advances and adoptions may reduce the costs of supplying the same quality of services (process innovation) or they may increase the quality of services (product innovation). The latter would not necessarily be associated with falling CMO costs;
- An associated issue is the additional obligations for CMOs and any supplier of MTL services according to the CRM Directive. These are aimed to ensure high-quality

---

\(^89\) Excluding any deductions reported for years before the CMOs had started receiving services from the ‘joint venture’ reported on in our survey.

\(^90\) Another factor promoting licensing entities could be greater competition between licensing entities, for instance due to measures to facilitate competition in the CRM Directive, which have gradually taken effect over recent years.

\(^91\) We cannot exclude that this reflects a tendency among respondents to ‘satisfice’ and give consistent answers to reduce their effort in responding. However, the same respondents were willing to provide many – and many detailed – answers to other questionnaire items.
services for rightholders and OMSPs. They have also probably increased CMO operating costs (see Section 1.g.b).

The introduction of new technologies is often associated with substantial development costs at initial stages, so that total costs remain unchanged or even increase for a while. For instance, one CMO from a large EEA Member State (population >30 million) reported that it ‘invested heavily in modern and efficient tools and such investments total more than €30 million’, without specifying the time period. It may be a problem for non-profit enterprises such as CMOs to raise the up-front finance required for investments in innovation. They may have to build up reserves, for instance, by not immediately passing on any cost reductions to customers, to finance further innovation.

Digitalisation has been associated with a greater number of works supplied and so-called long-tail effects. Thus, the total (variable) costs of CMOs could be increasing.

The Commission should continue to monitor developments in ICT and the consequences for licensing entities’ efficiency. Important questions include the following: are CMOs capable of exploiting the innovation potential? Do they reliably pass on any cost reductions to their clients? How do the costs of meeting obligations stipulated in the CRM Directive relate to the benefits of improved conduct and performance of CMOs?

On all of these issues, the scope for empirical research is gradually but substantially increasing. Due to the more extensive reporting obligations introduced with the CRM Directive, annual transparency reports make better and more comprehensive data available to investigate such issues. Continued harmonisation of licensing entities’ (CMOs, their subsidiaries and IMEs) reporting obligations throughout the EEA will also facilitate comparisons and the identification of best practices in copyright management.

1.f.h Taking stock

Rightholders are reasonably and increasingly satisfied with the MTL services they receive. This holds, even though the prices that licensing entities charge on the rightholder side – in terms of management fees (in the shape of deductions from licensing fees collected from OMSPs) – have not decreased over recent years. MTL services have not become cheaper for rightholders, but the quality of MTL services delivered by licensing entities seems to have increased in the perception of many rightholders.

By and large, licensing entities see considerable benefits in the diffusion of online music services. In the evaluation of licensing entities, online music services help make large repertoires of works available to customers (consumers) in the EEA. As one might expect, the diffusion of online music services has increased the quantity of demand for MTLs in the EEA. However, from the perspective of licensing entities, prices and terms of MTLs have hardly improved much in the process. Competition between licensing entities may have increased the productivity of such organisations. It might also restrict their bargaining power in negotiations with OMSPs, some of which have large market shares in specific EEA Member States.

By contrast, most responding OMSPs reported increasing prices of MTLs. For a variety of other reasons, their full economic costs of licensing online rights in musical works seem to

---

have increased as well over recent years. Where MTL prices are concerned, this is not necessarily a problem. Higher prices for MTLs on the online music services side will benefit rightholders – assuming that licensing entities pass on much of the additional revenues to rightholders – and may come to foster the creation of new creative works. Where other aspects of the performance of licensing entities are concerned, our research suggests there are some potential areas of improvement, however:

- The fragmentation of repertoires into many separate licences means OMSPs must establish many MTLs, which drives up aggregate transaction costs;
- Non-transparency of licensing terms may provide scope for extensive and costly bargaining, discriminatory conduct, and market power;
- According to online music services, quite often, directories of copyright works appear to be incomplete or faulty.

The provisions of the CRM Directives’ Title III almost certainly play an important role in shaping the general market conditions for MTL in the EEA. In Section 1.g, we report on the specific effects of the CRM Directive’s Title III according to the main types of stakeholders.

### g Specific and overall effects of the CRM Directive

#### 1.g.a Legal background and key questions

First and foremost, Title III regulates CMOs managing musical works online. As a rule, effective regulation will restrict such licensing entities’ conduct, and compliance with regulation may increase licensing entities’ costs. Therefore, we assess: how costly is it for licensing entities to comply with requirements regarding multi-territorial licensing established in Title III of the CRM Directive?

Reasonably efficient regulation – that does not entail high costs of compliance – will improve licensing entities' performance in terms of providing cheap and valuable services on the rightholder side and on the side of online music services. Several measures of the CRM Directive’s Title III aim at promoting competition between licensing entities. At the same time, Title III seeks to establish minimum quality standards for MTL services. Efficient regulation of this type may promote the reliability and value-for-money of MTL services and promote innovation throughout the market for music online. We thus assess: has the CRM Directive promoted innovation?

As discussed in Section 1.a.d, the provisions of Title III do not universally apply to all licensing entities. On the one hand, subject to national law and regulation, IMEs and non-EEA-based licensing entities may operate with fewer restrictions than CMOs established in an EEA Member State. On the other hand, CMOs established in a Member State – and regulated by the respective NCAs – should be free to supply MTL services throughout the EEA, without coming under additional scrutiny of additional NCAs in other Member States. Accordingly, it is not clear whether and what licensing entities see their ability to offer MTLs and their competitiveness relative to other licensing entities improved. We thus assess:

- How has the CRM Directive affected specific licensing entities’ ability to offer MTLs?

---

93 In all probability, this will largely be about a greater proportion of online music services’ revenues that they need to pay for MTL royalties.
How has the CRM Directive affected the competitiveness of CMOs relative to other licensing entities?

The CRM Directive does not only promote competition between licensing entities for the market of MTL services. The Directive also establishes minimum standards for licensing entities, most of which concern costly services provided to rightholders. Furthermore, the licensing entities may form subsidiaries (‘joint ventures’ / licensing hubs), which may increase their productive efficiency and could also help them establish greater market power. The Directive also establishes extensive withdrawal rights for rightholders, to mandate licensing entities that provide the best MTL services for them, making licensing entities more responsive to rightholders’ preferences. Any of these measures may make licensing entities drive a harder bargain on the side of OMSPs. We thus investigate: how has the CRM Directive affected online music services’ full economic costs of copyright licensing?

Last but not least, one general objective in European cultural policy is cultural diversity. Article 167 of the Treaty on the Functioning of the European Union (TFEU) requires the EU to take cultural diversity into account in its activities and contribute to the flourishing of the Member States' cultures. Simultaneously, they must respect their national and regional diversity and at the same time bring the common cultural heritage to the fore. Recital 3 of the CRM Directive stresses that CMOs play an important role as promoters of the diversity of cultural expressions in the EEA – and should continue to do so – by enabling the smallest and less popular repertoires to access the market, among other things. To safeguard cultural diversity, it is desirable that works from smaller EEA Member States – and niche content of limited popular appeal – are equally available on online music services. That requires effective licensing. We thus investigate: how has the CRM Directive affected OMSPs' ability to make small European repertoires available?

1.g.b Licensing entities’ costs of meeting specific requirements for MTL – in terms of financial costs and time

Articles 24-28 of the CRM Directive establish requirements CMOs managing online rights in musical works must meet in order to grant MTLs in the EEA. We asked all licensing entities responding to the survey – CMOs and IMEs – to rate the costs associated with meeting specific requirements for supplying MTLs, whether they offered to grant MTLs themselves or not. This set of (sub-)questions was introduced with the instruction: ‘Please indicate how costly according to your estimates it is – in terms of financial costs and time – to comply with the requirements for multi-territorial licensing’, followed by a reference to a respective provision of Title III of the CRM Directive. To keep the associated workload with the reporting of costs feasible for respondents, we used a scale ranging between ‘1 = very low’ and ‘5 = very high’. This survey item thus produces a rank, rather than precise information on absolute costs.

Between 12 and 13 CMOs provided specific information on each of these rating questions, and the two IMEs both provided answers for all rating questions. See Table 1.15 for an overview, which separately presents responses by CMOs only, as well as the responses from all licensing entities in our sample.

Table 1.15 Licensing entities’ ratings of costs to comply with requirements of Title III of the CRM Directive for granting MTLs

---

94 In the case some Member States decided to apply the same requirements to IMEs as to CMOs granting MTLs.
We discuss the ratings by CMOs only in the following. Respondents reported the highest average cost ratings – 4.0 corresponding to ‘quite high’ – for requirements regarding the ‘reporting and invoicing’ (as specified in Article 27 of the CRM Directive). Requirements to do with the ‘capacity to process multi-territorial licences’ (Article 24) received an average rating of 3.8, and ‘accuracy of multi-territorial repertoire information’ (Article 26) received an average rating of 3.7; both corresponding to ‘quite high’ as well. The costs of meeting requirements for ‘transparency of multi-territorial repertoire information’ (Article 25) received an average rating of 3.2 (‘moderate’). The costs of meeting requirements regarding the processing of ‘payments to rightholders’ (Article 28) received the lowest average rating of 3.0 (also ‘moderate’). At the end of this set of questions, after respondents had been reminded of the various specific requirements, they evaluated the ‘overall costs of compliance’ with MTL regulations according to Title III for granting MTLs with an average score of 3.6, which corresponds to ‘quite high’.

Based on the data available, there was no apparent difference between the evaluations provided by CMOs, who offer to grant MTLs themselves and those, who do not. The responses by two CMOs from large EEA Member States (population >30 million) did not substantially differ from the general pattern, either.

Overall, this implies that all requirements of Title III for granting MTLs tend to be associated with substantial costs for CMOs. That holds even though CMOs can draw on resources and competencies required for other aspects of licensing they are already engaged with, when developing MTL services. One might suspect that for new licensing entities, the costs of meeting requirements stipulated by the CRM Directive would be even higher if applied to them. There are probably substantial setting up costs for organisations to supply MTL services that meet the legal requirements. However, the two IMEs responding to our

---

95 There were no dramatic differences in the cost ratings regarding specific aspects of Title III by CMOs only. Including responses by IMEs did not alter average scores much, either, and with just 2 IMEs in our sample, a detailed analysis of this sub-set of respondents is hardly adequate.
services – which started supplying MTLs quite recently – did not report noticeably higher cost ratings than the CMOs responding to this part of our survey.\textsuperscript{96} Of course, IMEs are not subject to the provisions of the CRM Directives’ Title III, but national legislation may apply some similar or equivalent regulation on IMEs.

All interviewed licensing entities reported that they heavily invested in developing better technical infrastructures from MTL. Some invested in their own capacities, while others focused on building up the capacities of subsidiaries (joint ventures/licensing hubs), which grant MTLs to their repertoires.

One large CMO, which grants MTLs and has been mandated by other CMOs to do so on their behalf, reported that it invested € tens of millions in its IT infrastructure for MTL. It is improbable that smaller CMOs can also do so, so that in all probability, they will end up performing worse or mandate other licensing entities to conduct MTL on their behalf.

Several OMSPs rated some of the largest licensing entities as performing relatively well already in terms of the quality of the technical copyright data processing associated with MTL. Online music services still complained about various aspects of the licensing hubs (see Section 1.g.d).

1.g.c Licensing entities’ overall evaluations of effects of the CRM Directive’s Title III
While adhering to detailed regulation eventually imposes costs, the licensing entities responding to our survey mostly evaluated the effects of the CRM Directive – and its implementation into national law – as positive.

Promoting innovation in the online market for music services

For instance, in terms of promoting innovation in the online market for music services in the EEA, out of 15 responding licensing entities, seven (47\%) saw a positive effect of the CRM Directive (two CMOs rating as ‘very positive’ on a five-point evaluation scale, and four CMOs as well as one IME rating as ‘somewhat positive’). There were eight neutral evaluations (53\%; seven by CMOs and one by an IME), and no negative assessments.

Licensing entities’ ability to offer MTLs

We also asked the two IMEs as well as all 12 CMOs, who themselves offered to grant MTLs (see Section 1.a.c), how the CRM Directive had affected the organisation’s ‘ability to offer MTLs’. The 12 valid responses received were:

- Two responding CMOs and one IME reported that the CRM Directive ‘removed major obstacles so that it became feasible for [the organisation] to conduct multi-territorial licensing’;
- Three CMOs and one IME chose the response option the Directive ‘made multi-territorial licensing easier for [the organisation], but some major obstacles remain’;
- Six CMOs observed that the CRM Directive ‘had no effect’ in this regard;

\textsuperscript{96} One of the IMEs, in an additional written contribution, referred to an issue of access to rights managements tools (systems and databases) created and used by CMOs managing online rights in musical works. The IME formulated the issue as access to an ‘essential facility’.
One CMO reported that the CRM Directive had adversely affected their ability to offer MTLs.

While there are many neutral responses, more licensing entities reported a positive rather than a negative effect of the CRM Directive in this respect.

**Effects on the competitiveness of licensing entities**

As discussed in Sections 1.b.e and 1.b.f, many aspects of national laws transposing the CRM Directive’s Title III only apply to CMOs. This has the potential to affect the competitiveness of licensing entities facing more or less restrictive regulation. In our survey of licensing entities, we used several questions to highlight the issue.

First, the vast majority of CMOs and all IMEs responding to our survey reported their competitiveness relative to (other) CMOs in the EEA had increased due to the CRM Directive:

- On the rightholder-side, out of 13 responding CMOs, nine (69%) reported their competitiveness relative to other CMOs had ‘improved somewhat’, three reported ‘no change’, and one reported ‘deteriorated somewhat’. 97 The two responding IMEs both reported their competitiveness relative to CMOs had ‘improved very much’ due to the CRM Directive;
- On the OMSP-side, out of 12 responding CMOs, six (50%) CMOs reported their competitiveness relative to other CMOs ‘improved somewhat’, four (33%) saw ‘no change’, two (17%) reported ‘deteriorated somewhat’. Among the two responding IMEs, one reported its competitiveness relative to CMOs had ‘improved very much’, and one reported ‘improved somewhat’ due to the CRM Directive.

By contrast, regarding the licensing entities’ competitiveness relative to licensing organisations that are not regulated by Title III of the CRM Directive (for instance IMEs and non-EEA-based CMOs), the effects of the Directive were more negative for EEA-based CMOs:

- On the rightholder-side, out of 11 CMOs providing a valid response, only one (9%) reported its ability to compete ‘improved somewhat’ due to the CRM Directive in this respect. Five (45%) saw ‘no change’, and another five (45%) reported their ability to compete ‘deteriorated somewhat’. Among the two responding IMEs, one reported ‘improved very much’ and one reported ‘no change’;
- On the OMSP-side, out of 11 CMOs providing a valid response, two (20%) reported their ability to compete ‘improved somewhat’ due to the CRM Directive in this respect. Five CMOs (50%) reported ‘no change’. Four CMOs (40%) reported their ability to compete had deteriorated (three ‘deteriorated somewhat’ and one

---

97 One CMO explained its “NA” answer in an additional written submission to the survey by stating that it “fundamentally disagrees with the underlying rationale that CMOs or any other licensing entity can compete vis-à-vis online music service providers or more generally any users of musical repertoires. Such users need access to all repertoires for their activity as these are complementary and not substitutable to each other. In this respect, it is important to emphasise that each musical work is unique and no work can be substituted to another: a Jacques Brel song cannot be substituted to a Charles Aznavour song nor to a Jean-Jacques Goldman song. If someone wants to listen to a Jacques Brel song, playing him/her a Charles Aznavour song simply will not do. And, as each song is unique, each repertoire is unique and non substitutable to another.”
‘deteriorated very much’). Only one IME provided a valid response and reported ‘improved somewhat’.

1.g.d Effects of the CRM Directive on OMSPs’ full economic costs of copyright licensing

In our survey, we asked each OMSP to rate on a five-point evaluation scale how the CRM Directive had affected ‘the overall cost and effort required [regarding] copyright licensing for its online music service?’. Out of five respondents, three (60%) reported that the CRM Directive had inflated their licensing costs (two ‘increased very much’ and one ‘increased somewhat’), and one reported ‘the effects were too diverse to identify any general pattern’. One last respondent selected ‘there was no effect’.

For the former four OMSPs, who indicated any effects of the CRM Directive on licensing costs, we used open-ended follow-up questions.

- We first asked for ‘important reasons why the [CRM] Directive […] and its implementation have made it more difficult for you to obtain copyright licences for multi-territorial online music services.’

The responses by the two OMSPs, who had reported their costs ‘increased very much’ were:

- ‘The Directive has led to the establishment of licensing hubs, such as […], which have a lot of bargaining power and negotiations with them require significant time and resources. Multi-territorial licensing has also led to a lack of tariffs. Furthermore, there is uncertainty regarding the jurisdiction for challenging CMOs’ multi-territorial licenses, e.g. on whether a CMO’s multi-territorial license can only be challenged in front of one review body. This makes legal recourse almost impossible’;

- ‘With societies pulling together or joining hubs, it has concentrated power and leverage to a few players making it harder to obtain equitable and sustainable commercial terms for DSPs.

On a per market basis, it has restricted our flexibility in operating and evolving the service to meet the needs of the consumer as we now have 11-12 CMO licences per market, meaning if we make changes to our business, we may be required to amend 11+ licences, which is much less efficient (i.e. 1 CMO per market has now become 11-12 CMO’s).

The CRM Directive has enabled CMO’s to withdraw their rights. This can occur without DSPs having any knowledge of when this is being done. Some societies will withdraw rights without telling a DSP, or will withdraw and not give sufficient time to conclude a multi-territorial licence - thus putting us at risk of being out of licence for a particular repertoire, this can on occasions be used to exert pressure on us to conclude licences on unviable terms under the threat of being out of licence. Additionally, CMO’s will happily withdraw their rights knowing that they do not have the operational/technical ability to handle a multi-territorial licence (in some instances, CMO’s can’t send back reports at all), thus leading not to efficiencies and faster royalty payments but to significant operational and financial problems for both the DSP (e.g. disputes due to claiming errors) and CMO’s (e.g. delayed royalty payments due to inability to handle processing sufficiently - contrary to the requirements set out in the directive).’
The respondent who reported that its costs ‘increased somewhat’ provided the following explanation:

‘Smaller societies/repertoires wish to license on a pan-European basis rather than as part of existing local society licences. However these smaller societies don’t have sufficient resources and capabilities, notwithstanding the requirements of the Directive, which can make both the licensing and the administration of the licenses more burdensome, and also can result in delays in payments to licensors and distributions to songwriters’

The respondent, who had selected the response option ‘The effects were too diverse to identify any general pattern’, reported:

‘No noticeable impact. It was already hard and it remains hard. I don’t attribute the price increases to the Directive, but if that is the case, then it surely made it harder.’

- We also asked for ‘important reasons why the [CRM] Directive […] and its implementation have made it easier for you to obtain copyright licences for multi-territorial online music services.’ Two OMSPs, who had reported their costs ‘increased very much’ responded:

  - ‘While the CRM Directive does provide important legal requirements, e.g. that licensing terms shall be based on objective and non-discriminatory criteria. Unfortunately, there is no evidence that these requirements have proven to be effective in practice. CMOs tend to point to non-discrimination where it favours their position, i.e. to claim that other users pay higher royalties. And CMOs increasingly claim not to have any standard rates/discounts anymore, which circumvents the Directive. Given the lack of tariffs, there is no means of verification for users to benchmark royalty requests’;

  - ‘In a very limited number of cases (4), it has reduced the number of licences we are required to obtain e.g. if multiple societies' repertoires fall under a ‘hub’, which is easier from a purely administrative perspective, though this has come at a cost as referenced elsewhere in this questionnaire.’

The other two relevant OMSPs both simply answered ‘None’.

Overall, a majority of the responding OMSPs were under the impression that for them, the CRM Directive had increased the overall effort required for copyright licensing. They each mention a variety of unique issues:

- protracted negotiations with large and powerful ‘licensing hubs’ (joint ventures of CMOs);
- the lack of ‘tariffs’ (publicly stated standard licence prices and terms);
- uncertainty about the legal proceedings available to challenge CMOs’ MTL practices – apparently regarding the question of whether ADRPs preclude other judicial processes; according to one respondent, this ‘makes legal recourse almost impossible’;
- fragmentation of repertoires and gaps in licence coverage due to withdrawals (which may even be exploited by licensors in negotiations with licensees);
- alleged incompetence of smaller licensors;
one respondent was unsure whether the CRM Directive had affected increasing prices for copyright licences. 

According to two out of four relevant respondents, the CRM Directive has had no countervailing effects, which would have alleviated their copyright licensing efforts. The other two identified some countervailing effects:

- One respondent acknowledged the potential of the Directive to promote principles of objectivity and non-discrimination in setting licensing terms. However, it accused CMOs to circumvent these principles by operating in a non-transparent manner, withholding relevant information on licensing terms offered to other parties;
- One respondent reported on a somewhat lower total number of licences due to licensing ‘hubs’.

From the perspective of OMSPs, there seems to be ample scope for:

- Monitoring the diverse effects the CRM Directive may have had on practices of stakeholders – in particular on CMOs and other licensing entities – and identifying unintended consequences;
- Improving on several aspects of the practical application of the regulation related to copyright licensing, such as:
  - the matching infrastructure of works and rightholders;
  - transparency of prices and terms of MTLs; and
  - standardisation of licensing terms.

1.g.e OMSPs’ ability to make small European repertoires available

To gather information on whether the CRM Directive has had any effect on the availability of small European repertoires (e.g., repertoires from small EEA Member States or from niche OMSPs), in our survey we asked the five responding OMSPs two related questions:

- We asked OMSPs to rate, how the CRM Directive had affected their ability to ‘make small European repertoires available via [their] oneline music service in EEA countries’. Four respondents chose the response option ‘There was no effect’. One respondent selected ‘The effects were too diverse to identify any general pattern’;
- The latter respondent, who had indicated at least some effects, reported that fragmentation of repertoires and incompetence of smaller licensing entities may be problematic (and perhaps promoted by the CRM Directive): ‘We have limited resources available to secure licenses, and we also find that the smaller societies are not always the most responsive’. Regarding any countervailing effects that would have improved the OMSP’s ability to make small European repertoires available, it responded: ‘None that I am aware of’.

Overall, none of the respondents saw any particular effects of the CRM Directive regarding their ability to make small European repertoires available. At least, our results do not suggest that the CRM Directive would have aggravated any problems with including repertoires from smaller EEA Member States and niche content into online music services, either.

1.g.f Taking stock

Throughout our research, there are clear indications that the market for MTLs of musical works online in the EEA has developed positively over recent years. Virtually all repertoire
is available on a MTL basis. Demand for MTLs have increased. This section documents that the CRM Directive has contributed to these developments, according to the assessment of primary stakeholders.

All consulted licensing entities consider that they comply with relevant aspects of the CRM Directive. First and foremost, Title III regulates CMOs managing online rights in musical works. Complying with the regulations set out in Title III is costly for licensing entities, but these costs seem to be reasonable.

Many aspects of Title III seek to foster competition between licensing entities. This may foster innovation and the efficiency of these organisations, but may also weaken their bargaining power towards OMSPs. The Directive also allows licensing entities to cooperate. Such cooperation takes the form of establishing subsidiaries (joint ventures), which could increase CMOs’ productive efficiency (by exploiting economies of scale and scope and network effects to a greater extent), but also help the licensing entities to collude and extend any market power.

In the experience of licensing entities, the CRM Directive has promoted innovation in the market for music online. Many licensing entities also report that the CRM Directive has made it easier for them to offer MTLs, and compete with other licensing entities, which fall under the same regulations. However, most CMOs established in the EEA report that their competitiveness relative to licensing entities, who face different and less regulation, has suffered.

By contrast, OMSPs provide rather mixed evaluations of the CRM Directive’s impact. Many online music services reckon their full economic costs of licensing have increased due to the Directive. Some OMSPs lament the lack of capacity and even incompetence of smaller licensing entities. Others are wary of what appears to be market power on the side of larger licensing entities and the licensing hubs these have created. In any case, there is no indication that the CRM Directive would have had any substantial effects on online music services ability to provide consumers with access to small European repertoires. Nevertheless, there seems to be sufficient room for improvement in developing an even more reliable matching infrastructure of works and rightholders, as well as in fostering greater transparency and standardisation of MTL terms, including tariffs. The latter could help avoid laborious negotiations between licensing entities and online music services. In addition, it could address the problem that divergent prices and terms for different OMSPs – who compete with each other – distort the market and inhibit competition between online music services based on the quality of the services they supply, rather than their capacity in negotiating with rightholders and licensing entities.

### The potential of new technologies: blockchain and new technologies

Given the emergence of online services and the necessary exchanges in a complex technological environment, CMOs and any other licensing entities are likely to use or implement new technologies. For instance, this could also help CMOs to comply with the requirements of Title III at lower operating costs. The research team, therefore, inquired about the potential of blockchain and other technologies for multi-territorial licensing.

The most ambitious of the known blockchain copyright data management projects is the joint initiative of three CMOs, namely SACEM (France), PRSfM (UK) and ASCAP (USA). This project aims to prototype a new shared system of managing authoritative music
According to the project description, such a shared system could enable the creation and adoption of a shared, decentralised database of musical work metadata with real-time update and tracking capabilities. The CMOs are cooperating to model a new system for managing the links between music recordings International Standard Recording Codes (ISRCs) and music work International Standard Work Codes (ISWCs). Establishing robust links between these two pieces of data offers a practical solution with great potential for improving the processes of royalty matching, which will in turn speed up licensing, reduce errors and limit costs. Under the initiative, data and technology teams from SACEM, ASCAP and PRSfM are working with IBM, leveraging the open source blockchain technology from the Linux Foundation, Hyperledger Fabric, to match, aggregate and qualify existing links between ISRCs and ISWCs in order to confirm correct ownership information and conflicts. The outcomes of the project will become a test case and a reference for future industry blockchain solutions.

During our interviews, one IME expressed a belief that ‘part of these problems [referring to the lack of transparency of information about the ownership and control of musical rights and works] may be addressed with the help of blockchain, which has the potential to solve this issue and ensure all data is constantly updated and synchronised’.

By contrast, one of the largest licensing hubs does not consider blockchain technologies to be relevant ‘at all’ to improve its services. It expressed the following reflections on the use of blockchain technologies:

‘Blockchain technologies could only create complete transparency in cases of conflicts, such as:

- Wrong information about a work in their standard operation procedure – this bad data has to be cleaned, but blockchain does not help here more than other systems in this regard (in most cases, a simple telephone call between the parties involved could suffice to solve the problem);

- Claiming by direct licensors could cause a second type of conflicts: one author reports to [one CMO] and the other to [another CMO], which could cause conflicts between different databases;

- Attribution to mechanical and performing rights can be different per territory. For instance, if [two CMOs] use different splits.

There are other ways to solve those conflicts, however. Currently, an alternative system that solves these conflicts automatically is under development (without relying on blockchain technologies).’

A CMO that has granted a handful of MTLs and that is in the process of investing in and upgrading its IT rights management infrastructure, also reported that it has not heard of a successful application of the blockchain technologies for collective rights management. This

---


99 For economic analysis of this project (also relying on stakeholders’ input through interviews) and on the potential of the blockchain technologies for copyright management, L. Bach, R. Guichardaz and E. Schenk, 2020. 'Technologie Blockchain et intermédiation dans l’industrie musicale', Working Papers of BETA 2020-16, Bureau d’Economie Théorique et Appliquée (BETA), Université de Strasbourg: https://ideas.repec.org/p/ulp/sbbeta/2020-16.html.
CMO said that it is, however, aware of the blockchain project that SACEM (France), PRSfM (UK) and ASCAP (USA) launched in 2017.

Another CMO that has granted several MTLs stated that it is sceptical about the potential of blockchain to help with copyright management due to the ‘scale and complexity of data’. Instead, it considers artificial intelligence (AI) to offer more potential.

Artificial intelligence is also applied in Cube, the new copyright infrastructure of the licensing hub ICE, which uses cloud computing and machine learning technologies to improve the speed and accuracy of MTL data processing activities. The system promises to have ‘transparency in its DNA’ and will “open the box” on how data is processed according to common data authority rules and will seamlessly integrate rightsholders into the resolution of data conflicts.‘100

Overall, based on the empirical evidence available in this project, it is impossible to assess the potential of blockchain- or artificial intelligence-applications to promote a more efficient system of MTL in the EEA.

100 See the website of ICE: https://www.iceservices.com/innovation/cube/.
2. Collective licensing with an extended effect
   
a. Introduction

The practice of collective licensing with an extended effect (CLEE) has increasingly become a more crucial element of EU copyright law. In broad terms, mechanisms of CLEE are understood to exist where collective licences have been given ‘extended effect’ by operation of the law. While legal techniques to give ‘extended effect’ to collective licences vary, these mechanisms have in common that they allow a representative CMO, subject to statutory conditions and safeguards, to conclude licences covering the rights not only of rightholders who have given this CMO an explicit authorisation to represent them (rightholders members), but also of rightholders who have not given the CMO any authorisation to exercise their rights (rightholders non-members).

In essence, CLEE can resolve a major problem. Much of the benefits of collective licensing originates from the upside that users do not have to identify and directly interact with every single relevant rightholder for every work they wish to use. Through CLEE, the law makes collective licences nearly all-encompassing. This facilitates licensing significantly and creates legal certainty for licensees, as they do not have to fear unexpected claims from rightholders who have not given the relevant CMO an explicit authorisation to represent them.

Until recently, CLEE was not a matter that featured prominently in substantive rules on EU copyright law, but it gained prominence with the adoption of the Directive on Copyright and Related Rights in the Digital Single Market (Directive 2019/790, hereinafter: DSM Directive), which has introduced provisions on CLEE to facilitate licensing of out-of-commerce works (Articles 8 to 11) and a general provision on CLEE (Article 12). Member States may but are not obliged to introduce measures facilitating collective licensing foreseen by Article 12 of the DSM Directive.

As CLEE becomes a more pronounced part of EU copyright law, the need for a better understanding of its existence, operation and functioning at Member State level becomes more important, especially with a view to understanding how the national regimes ensure the necessary balance between protecting the interests of rightholders members and non-members, on the one hand, and facilitating licensing in the interests of licensees and the general public, on the other hand.

This section provides the inputs for such an increased understanding of the current practice of various national models for CLEE in the EEA, through the following three tasks:

- Section 2.b provides a typology to differentiate between different mechanisms of CLEE and mandatory collective management of rights;
- This is followed by a comparative overview, mapping national mechanisms of CLEE and mandatory collective management in 30+1 EEA Member States, in Section 2.c 101;
Section 2.d discusses the practical functioning and application of mechanisms of CLEE, in particular, the practical functioning of the representative mechanisms and the practical application of safeguards. This chapter further analyses CLEE from a social welfare perspective.

The purpose of this section is to provide a mapping of the existing national mechanisms of CLEE and mandatory collective management, but not to assess their compliance with EU law.

**b Typology of mechanisms of CLEE**

It is fair to say that while, in theory, there are notable differences between different mechanisms of CLEE, in practice, the language and terms used in different Member States' legislation and jurisprudence to categorise the mechanisms in place do not always follow the same, clear delineations. For example, some Member States, for legal-historical reasons, label all types of collective licensing that by operation of the law also cover right holders non-members as mechanisms of “extended collective licensing”. Where such mechanism provides rightholders non-members with no possibility to exercise their rights individually, either through a right to opt-out or by permitting the individual exercise of their rights in parallel to the collective licensing, it would actually be more akin to mandatory collective management of rights. Equally, in other Member States, particularly those who have introduced a mechanism of CLEE more recently, the system in place is not always labelled as such, while containing strong characteristics of it.

At EU level, however, with the adoption of the DSM Directive, the term “collective licensing with an extended effect” has taken a specific legal meaning. Article 12 of the DSM Directive covers any legal mechanism by which the law permits a CMO to offer licences also covering rights of rightholders who have not explicitly authorised the CMO to conclude licences on their behalf in that specific domain. Article 12 of the DSM Directive permits Member States to have or to put in place a mechanism of CLEE in well-defined domains, subject to certain safeguards to protect the legitimate interests of rightholders non-members of CMOs. Some of these safeguards limit the application of the extended effect, such as the right of rightholders non-members to exclude their rights from the licensing mechanism (“right to opt-out”). Other safeguards are of an organisational nature, such as the condition that a CMO concluding collective licences with an extended effect must be sufficiently representative in the domain concerned. CMOs are also required to take appropriate publicly measures to ensure that rightholders non-members are informed about the intended uses of their works as well as about their rights under a regime of CLEE, in addition to the general requirements on good governance and transparency under the CRM Directive (Directive 2014/26/EU). CMOs granting collective licences with an extended effect are required to treat equally rightholders members and rightholders non-members whose rights are covered by these licences by virtue of the extended effect. These safeguards are the necessary minimum elements of any mechanism of CLEE within the meaning of Article 12 of the DSM Directive.

---

102 The term “collective management organisation” (CMO) is used without prejudice to a different qualification of respective organisations under Article 3(a) of the CRM Directive. In some instances, references are explicitly made to Member States and/or situations where CLEE is or could be undertaken by organisations other than “collective management organisations” in the sense of the CRM Directive.
Article 12(4) of the DSM Directive explicitly excludes from the Article’s scope mandatory collective management of rights, which, among other things, normally does not provide rightholders with a “right to opt-out” or a possibility to individually exercise their rights in parallel (i.e., the competent CMO exercises rightholders’ rights on an exclusive basis, thus precluding rightholders from granting non-exclusive licences in parallel to the CMO’s licences). Hence, a first clear delineation is made between mechanisms of CLEE regulated by Article 12 of the DSM Directive and mandatory collective management of rights.

2. b.a Collective licensing with an extended effect

As regards the licensing mechanisms regulated by Article 12, the DSM Directive prescribes no specific mechanism of CLEE. Instead, the Member States remain free to choose the licensing mechanism they want to put in place (if at all), in accordance with their legal traditions, practices or circumstances. Looking at current legal traditions and practices in the Member States, there are indeed different legal manners by which an extended effect of collective licensing can be achieved, as the following overview demonstrates.

One example of a mechanism by which such an extended effect can be achieved is extended collective licensing (ECL). Under the mechanism of ECL, provisions in the law permit a representative CMO in a particular field to conclude licensing agreements with users, which by operation of the law are given extended effect to also cover rights of rightholders non-members. The basis of ECL is a voluntary mandate from rightholders members, who have given the respective CMO an explicit authorisation to represent them (either directly or indirectly through (reciprocal) representation agreements with other CMOs). This mandate, in part, establishes the representativeness of the CMO (see Section 2.d.a on representativeness). The law then extends the collective licences concluded by this CMO to also encompass rights of rightholders who have not explicitly authorised that CMO by way of a (direct or indirect) contractual arrangement.

A different, though somewhat comparable, model is the mechanism of statutory mandate of representation, in which the law provides that a representative CMO has the legal mandate to conclude licensing agreements on behalf and for the benefit of rightholders non-members. The key difference is that, under this legal mechanism, the law does not give an extended effect to collective licensing agreements, but to the CMO’s mandate.

Another legal means by which an extended effect of collective licensing can be achieved is the mechanism of legal presumption of representation. Under this mechanism, a legal “fiction” establishes that a CMO is deemed to also represent the interests and rights of rightholders non-members, pursuant to the relevant provisions under national law. As a result of this legal presumption, the CMO is able to license the repertoire of its members, as well as of rightholders non-members, in the areas of application, to the extent and under the conditions allowed by the law. Basically, this is a softer version of the mechanism of statutory mandate of representation, because there is no direct legal mandate to represent rightholders non-members, but only a legal presumption, which implies that rights of rightholders non-members could be excluded from the legal mechanism and thus from the extended effect.

The mechanisms described above merely explain the legal manner by which the law ensures an extended effect of collective licensing, not whether collective licensing in their

103 On the notion of “implicit consent” see CJEU, Judgments in SPEDIDAM, C-484/18, ECLI:EU:C:2019:970, para. 40; in Soulier and Doke, C-301/15, ECLI:EU:C:2016:878, paras. 35, 37, 39, 42 and 43.
particular field of application is mandatory. To the extent that the above licensing mechanisms leave room for individual exercise of rights (e.g., through a “right to opt-out”, possibility of parallel individual exercise or otherwise), they are treated as mechanisms of “collective licensing with an extended effect”. If, on the other hand, these licensing mechanisms do not permit individual exercise of rights, but stipulate that rights can be exercised only collectively, they are considered here to be mechanisms of “mandatory collective management of rights”.

2.b.b Mandatory collective management of rights
Under the mechanism of mandatory collective management of rights, it is provided by law that rightholders can only exercise a specific right by way of collective rights management, which typically precludes the possibility that rightholders approach users with individual claims or prohibitions. In areas where mandatory collective management applies, the rights in question of all rightholders are exercised through a CMO. This means that any collective licence that the respective CMO concludes within a regime of mandatory collective management of rights is automatically granted on behalf and for the benefit of all rightholders in the particular domain, regardless of whether they are members of the respective CMO. Therefore, under this licensing mechanism, there is an extended effect by default. However, as explained below, a few Member States have in place a system of mandatory collective management without an extended effect.

Hence, “mandatory collective management of rights” refers to any licensing mechanism under which rights can be exercised only collectively, without a possibility for individual exercise of rights (e.g., through a “right to opt-out”, possibility of parallel individual exercise or otherwise), regardless of whether in the national law of a particular Member State the mechanism is labelled as a mechanism of mandatory collective management of rights, extended collective licensing, statutory mandate of representation, or any other licensing mechanism.

2.b.c Collective licensing mechanisms without an extended effect
There are also mechanisms by which CMOs are seemingly permitted to grant all-encompassing licences, but by which the law, in fact, does not provide for an extended effect.

One such mechanism is that of mandatory collective management of rights without an extended effect, which is in place in a few Member States. Under this mechanism, the national law prescribes that, in a particular domain, rights can only be exercised collectively through a CMO, meaning that rightholders cannot approach users with individual claims or prohibitions. This is identical to the mechanism of mandatory collective management of rights, as described above. However, in the case of mandatory collective management of rights without an extended effect, the relevant CMO does not, by operation of the law, exercise the rights of all rightholders in that given field. Pursuant to the law, the CMO can only manage rights of rightholders who have explicitly authorised the CMO to manage the rights on their behalf. Accordingly, the law neither gives an extended effect to the collective licences concluded by the relevant CMO, nor to its mandate to conclude such licences. This means that, legally speaking, a licence concluded under this mechanism is not all-encompassing, although, practically speaking, it may be treated as such by CMOs and users. After all, rightholders non-members, while technically remaining outside the collective licensing system until they have explicitly authorised the relevant CMO, cannot in the meantime individually exercise or enforce the particular rights against users.

A mechanism of mandatory collective management without an extended effect applies, e.g., in Austria, in respect of statutory remuneration rights that can be exercised only collectively (see

104 A mechanism of mandatory collective management without an extended effect applies, e.g., in Austria, in respect of statutory remuneration rights that can be exercised only collectively (see
Another example is the model of voluntary collective licensing, whereby a CMO nevertheless grants blanket licences (the so-called ‘blanket licensing’ model). Under this model, CMOs operate under a voluntary explicit authorisation by rightholders, but nevertheless grant licences covering the entire ‘world repertoire’. Based on the numerous authorisations received from rightholders directly and indirectly through (reciprocal) representation agreements concluded with other CMOs around the world, the CMOs use a concept of negotiorum gestio to offer legal security to users against possible claims of rightholders non-members. However, the blanket licences that these CMOs grant to users, even when containing indemnity clauses, are not based on any extended effect being given by operation of the law, but are granted solely on the basis of the voluntary authorisations received. Therefore, blanket licensing cannot give full legal certainty to users about the inclusiveness of the licensed rights, although the licences concluded do give legal protection against possible claims of rightholders non-members (but usually only for the amount specified in the indemnity clauses).

Some national laws also include features of collective licensing, which are sometimes confused with mechanisms of collective licensing with extended effect. In some Member States, provided that certain conditions are fulfilled, CMOs enjoy a presumption of representation of a procedural nature. In a court proceeding, CMOs are considered to represent all rightholders in the given field, unless the contrary is proven by the other party. Such a presumption, however, does not entitle CMOs to exercise rights of rightholders non-members and, hence, does not give an extended effect to the licences that these CMOs conclude. In the same vein, it must be added that the fact that a CMO has a statutory or legal monopoly in a particular domain does not mean that it also represents rightholders non-members. It merely signifies that it is the only CMO entitled to perform collective licensing activities in the given domain, without ruling out the possibility that rightholders in that domain can choose to exercise their rights individually. As such procedural presumptions and statutory or legal monopoly positions are not actual licensing mechanisms, but merely features of collective licensing systems, they are not included under “collective licensing mechanisms without an extended effect” in the typology below.

the ruling of the Supreme Court (OGH 4 Ob 107/04w) in Annex 23), and in Estonia, in 7 of the 8 domains where the law requires rights to be exercised collectively (while mandatory collective management of exclusive rights to cable retransmission of broadcasts in Estonia operates under an extended effect). In other countries, it is not always clear whether mandatory collective management has or has no extended effect. Due to the scope of the present study, the research method employed and interpretative difficulties, it is impossible to give a conclusive overview of the representation of rightholders non-members by CMOs operating under mandatory collective management schemes throughout Europe. Where it is clear or there is a reasonable suspicion that a country applies a mechanism of mandatory collective management without an extended effect, this will be indicated as such in the mapping overview in Section 2.c.

105 A non-exhaustive overview of such procedural presumptions of representation in different EEA Member States can be found in Annex 22.
2.b.d Schematic overview

Figure 2.12 Typology of mechanisms of CLEE

Collective licensing mechanisms with an extended effect

- Extended collective licensing
- Statutory mandate of representation
- Legal presumption of representation

(any licensing mechanism under which rightholders can also exercise their rights individually (e.g., through a “right to opt-out”, possibility of parallel individual exercise or otherwise))

Mandatory collective management of rights

(any licensing mechanism under which rights can be exercised only collectively without the possibility for individual exercise of rights (e.g., through a “right to opt-out”, possibility of parallel individual exercise or otherwise))

Collective licensing mechanisms without an extended effect

Mandatory collective management of rights without an extended effect

Collective licensing based on explicit authorisations of rightholders (e.g., ‘blanket licensing’)

c Mapping of national mechanisms of CLEE and mandatory collective management

The main purpose of this section is to map national approaches to CLEE and mandatory collective management in the 30 EEA Member States and the United Kingdom (UK).107 In order to perform a comparative analysis of collective management mechanism in 31 countries in all domains of copyright and related rights, the description of the scope and nature of collectively managed rights was knowingly limited to some main elements. The study covers collective management of exclusive rights, non-exclusive rights and statutory entitlements to compensation, without specifying whether entitlements to remuneration under national laws are rights to remuneration or entitlements to compensation (for caused harm) under exceptions and limitations allowed by international and EU law. This section uses the term “right to remuneration” merely for the purpose of simplicity, to cover any entitlements to remuneration or compensation without the possibility to control use of works.108

---

106 Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

107 The UK left the EU on 31 January 2020, when the withdrawal agreement entered into force. During the transitional period due to last until 31 December 2020, the UK continues to apply EU law.

108 Due to the necessary simplification, the study cannot reflect all the diversity and complexity of national provisions providing rightholders with entitlements to remuneration. For example,
In order to give a comparative overview of collective management mechanisms applied in different domains in so many countries, this section distinguishes roughly between “collective licensing with an extended effect” and “mandatory collective management”.109 Regardless of the terminology used in the national law or legal doctrine. The wording “collective licensing with an extended effect” and “mandatory collective management” used here essentially follows the explanation given in the typology of mechanisms of CLEE in Section 2.b. A further clarification is that the term “rightholders members” signifies rightholders who have explicitly authorised a CMO to exercise their rights, regardless of the exact arrangements linking rightholders and the CMO (which may not necessarily be a “membership” as such) and rightholders who, while not being members of the licensing CMO, are members of another CMO that has a representation agreement with the licensing CMO. Rightholders who have not explicitly – directly or indirectly – authorised a CMO to represent them by way of assignment, licence or any other contractual arrangement are referred to as “rightholders non-members”.

Accordingly, this section intends to give a comparative overview of the collective management mechanisms applied in the Member States studied, without necessarily reflecting the state of national doctrine in each of those Member States with all its richness and complexity.110 It therefore proceeds as follows: first, Section 2.c.a gives an overview of the domains in which mechanisms of CLEE and mandatory collective management are applied, distinguishing essentially between domain-specific regimes and general clauses on CLEE. This is followed by an overview of non-domain specific limitations in national legislation that restrict the scope of collective licences with an extended effect at various levels, including limitations concerning the works, rightholders and licensees affected by the extended effect (Section 2.c.b).

2.c.a Domains in which mechanisms of CLEE and mandatory collective management are applied

**Domain-specific regimes**

This section maps domain-specific legislative clauses on CLEE and mandatory collective management in the national law of Member States concerned. As the focus of the study is on national legislative provisions on these collective management mechanisms, the scope of collectively exercised rights is not discussed in detail. Some notable differences in the scope of rights are highlighted where it is considered appropriate, and the necessary information is available. The below classification of domains was artificially created for the sake of comparison, based on some common features of the collectively exercised rights. The exact scope of some rights under national law is different, and some domains, even sometimes references are made to “unwaivable”, “inalienable” or “equitable” features of remuneration rights. Yet, the study does not aim at an exhaustive description of remuneration rights. Absence of a reference to such features in the present text shall not imply their absence in the respective law.

109 Where it concerns mandatory collective management without an extended effect, this will be specifically mentioned.

110 For the purpose of simplicity and ease of comparison, national legislative acts on copyright and/or related rights and collective management are referred to as “Copyright Act”, “Related Rights Act”, “Copyright and Related Rights Act” and “Collective Management Act”. The reference used is without prejudice to the scope of the act, which could cover copyright and/or related rights. More complete titles are used for legislative acts also dealing with industrial property rights (e.g., trademarks and patents) or dealing with other specific subject-matters.
when they cover different rights, could overlap to a certain extent. If a national provision is omitted from the mapping of rights below, this does not necessarily mean that such right does not exist under national law or that such right is not, in practice, exercised by a CMO on a basis of explicit authorisations by rightholders only.

### Retransmission of broadcasts

All the Member States covered by the study provide either for mandatory collective management or for CLEE of rights to retransmission of TV and radio broadcasts. For details, see Annex 1.

**Scope of rights:** All the mechanisms cover retransmission by means of cable. Some Member States also extend the scope of the mechanisms to cover retransmission by other technical means (e.g. Austria, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Iceland, Latvia, Liechtenstein, Romania, Slovakia, Spain and Sweden). Legislation of some of the Member States limits the collective management mechanisms only to the exercise of broadcasts from other EU or EEA Member States (e.g., France, Liechtenstein and the UK).

**Nature of rights:** In Austria, Belgium, Finland, Ireland, Lithuania, Poland, Slovakia and Spain, in addition to exclusive retransmission rights, also rights to remuneration for cable retransmission are subject to mandatory collective management. These remuneration rights cover remuneration for use of audiovisual works and/or recordings (Austria, Belgium and Spain); phonograms (Ireland, Lithuania and Poland); phonograms and music recordings with images (Finland); or artistic performances, phonograms and audiovisual recordings which constitute original of audiovisual works (Slovakia). The scope of some of these remuneration rights overlaps with respective exclusive rights to retransmission, notably those concerned with retransmission of audiovisual works and/or recordings. At least in the majority of cases, the remuneration for retransmission of phonograms is collected by the same CMOs as those collecting remuneration for their broadcasting and communication to the public.

Rights to retransmission of broadcasts are subject to CLEE in the following five Member States: Denmark, Finland, Iceland, Slovakia and Sweden.

**Figure 2.13 CLEE of rights to retransmission of broadcasts**

---


112 See Annex 23 on case law.

113 The law refers to retransmission by “electronic communication networks”, which also include cable.

114 By satellite.

115 In the spirit of the minimum harmonization requirements of the Satellite and Cable Directive.
Of the five Member States subjecting retransmission rights to CLEE, in Denmark and Slovakia rightholder non-members have a right to opt-out of the mechanism. Slovakia has two collective management mechanisms for different technical means of retransmission of broadcasts: mandatory collective management for retransmission by means of cable and CLEE for retransmission by means other than cable. Similarly, Denmark has mechanisms of mandatory collective management for cable retransmission and CLEE for retransmissions over the internet. It was reported that there are conflicting interpretations among market actors on whether the provision on mandatory collective management of cable retransmission may also cover retransmission over the internet.

In Denmark, Finland, Iceland and Slovakia, CMOs shall be authorised by law or competent authorities to be able to grant collective licences with an extended effect. Sweden does not have such a mechanism.

The following 29 Member States provide for mandatory collective management of the right to retransmission of broadcasts: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the UK.

**Figure 2.14** Mandatory collective management of rights to retransmission of broadcasts
Austria provides for mandatory collective management of exclusive rights to cable retransmission (including retransmission over UMTS mobile radio networks) of broadcasts, and for mandatory collective management without an extended effect of remuneration rights of film authors (right of participation of film authors in the remuneration which the film producers achieves for the cable retransmission). Some level of uncertainty was reported as to whether mandatory collective management of cable retransmission rights in Malta extends to rights of rightholders non-members by virtue of an extended effect or not.

In the following Member States, CMO(s) shall be authorised by law or a competent authority in order to exercise retransmission rights under mandatory collective management: Austria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Liechtenstein, Norway, Poland, Romania, Slovakia and Slovenia.

Annual supplementary remuneration of performers (term extension)

The right of performers to an annual supplementary remuneration as well as its mandatory collective management was introduced in EU law by the Term Extension Directive of 2011.116 Following the adoption of this Directive, Austria, Hungary, Portugal and Slovakia were the first to introduce mandatory collective management of this right to remuneration in 2013.

18 Member States provide for mandatory collective management of the right of performers to an annual supplementary remuneration: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Iceland, Italy, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. Of these Member States, Austria and Estonia provide for mandatory collective management without an extended effect. In all these Member States, except for Estonia, Italy, Portugal, Spain and Sweden, CMOs shall be authorised by law or a competent authority to be able to exercise the remuneration right under mandatory collective management. For more details, see Annex 2.

Scope and nature of rights: This right to an annual supplementary remuneration refers to an annual supplementary remuneration due to performers, whose contract with phonogram producers provided them with a claim to a non-recurring remuneration, for every year following the 50th year after the publication of the phonogram.

Remuneration for broadcasting and communication to the public of phonograms

19 Member States provide for mandatory collective management of rights of performers and/or phonogram producers to remuneration for broadcasting and communication to the public of phonograms: Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovenia, Sweden and Spain. Of these Member States, Austria and Estonia provide for mandatory collective management without an extended effect. In all these Member States, except for Belgium, Estonia, Ireland, Portugal, Spain and Sweden, CMOs shall be authorised by law or a competent authority to exercise these rights under mandatory collective management. For more details, see Annex 3.
Scope and nature of rights: In most of the Member States, remuneration rights for broadcasting and communication to the public of phonograms cover traditional forms of communication to the public (e.g., broadcasting and communication to the public in establishments open to the public). In some Member States, these rights also cover linear online radio services (e.g., in Belgium, France, and Lithuania) or free of charge online and mobile services, without the possibility of downloading (in Romania). In Poland, mandatory collective management covers rights to remuneration for broadcasting only. In some of these Member States, only broadcasting and communication to the public of phonograms published for commercial purposes is subject to mandatory collective management (e.g., in Belgium, Czech Republic, Finland, France, the Netherlands, Romania, and Spain).

In most of the Member States, rights of performers and phonogram producers are subject to mandatory collective management. In the Czech Republic mandatory collective management covers only rights of phonogram producers, in Portugal only rights of performers.

**Broadcasting and communication to the public**

Scope and nature of rights: This broad category encompasses various rights of broadcasting and communication to the public. These rights are of different nature (i.e., exclusive rights and remuneration rights) and scope, covering works as well as subject-matter protected by related rights (other than rights to remuneration for broadcasting and communication to the public of phonograms grouped in the previous domain). For details, see Annex 4.
Collective licensing with an extended effect

In 14 Member States, rights to broadcasting and/or communication to the public are subject to CLEE: Austria, Croatia, Czech Republic, Denmark, Estonia, Finland, Hungary, Iceland, Norway, Poland, Portugal, Romania, Slovakia and Sweden.

Figure 2.17 CLEE of rights to broadcasting and communication to the public

Five of these Member States (Austria, Croatia, Hungary, Poland and Romania) also appear in the list of Member States with mandatory collective management of rights (below). The reason for this is that these Member States subject some rights to one collective management mechanism and others to the other. All the 14 Member States employ CLEE only for the exercise of exclusive rights to broadcasting and/or communication to the public. In several Member States, audiovisual works are excluded from CLEE of rights to broadcasting and/or communication to the public.

In several Member States, in addition to traditional terrestrial broadcasting, also rights to simultaneous communication by satellites is subject to CLEE (e.g. Austria, Finland, Hungary, Iceland, Norway, Poland, Romania, Slovakia and Sweden). In Estonia and Portugal, CLEE is limited only to the right of communication by satellite simultaneously to a terrestrial broadcast by the same broadcaster. In Denmark, the legislative provision is limited to making available of broadcasted works in connection with the broadcasting in terms of time. In Finland, the provision is aimed at enabling online recording services of TV programmes.

Making available on-demand is covered by CLEE in Croatia, Denmark, Finland, Poland and Sweden. In Denmark, Poland and Sweden, only broadcasters are authorised to obtain collective licences with an extended effect covering the right to making available musical and literary works.

All these Member States, except for Austria, provide rightholders with a right to opt-out. The Czech Republic has several legislative provisions providing for CLEE of different rights to broadcasting and communication to the public. Only in the domain of public performance of

117 Some level of uncertainty was reported as to whether the mechanism in the Czech Republic could be qualified as mandatory collective management.
broadcasting of works, performances, phonograms or videograms, the Czech Republic does not provide rightholders with a right to opt-out.

In all these Member States, except for Estonia, Portugal and Sweden, CMOs shall be authorised by law or competent authorities to be able to conclude collective licences with an extended effect.

Mandatory collective management

13 Member States provide for mandatory collective management of rights to broadcasting and/or other communication to the public: Austria, Belgium, Croatia, Hungary, Italy, Latvia, Liechtenstein, Lithuania, the Netherlands, Poland, Romania, Slovenia and Spain. Of these Member States, Austria and Italy provide for mandatory collective management without an extended effect of remuneration rights. Italy distinguishes between the right to remuneration for broadcasting and any communication to the public of a movie or an audiovisual work (including the performer’s artistic contribution), which is subject to mandatory collective management without an extended effect, and the right to remuneration for public performance in public establishments of broadcast works by means of sound radio receivers equipped with loudspeakers, which is subject to mandatory collective management with an extended effect.

Figure 2.18 Mandatory collective management of rights to broadcasting and communication to the public

In some Member States, only broadcasting rights are subject to mandatory collective management. This is the case in Belgium (only communication to the public by direct injection), Liechtenstein and Romania.

In other Member States, only public performance activities are subject to mandatory collective management. This is the case in Austria (public performance of films in accommodation establishments) and Latvia (public performance of works or subject matter, if it occurs in places of entertainment receiving public).

In three Member States only specific types of remuneration rights in the area of broadcasting and/or communication to the public are subject to mandatory collective management:

- Italy (public performance in public establishments of broadcast works by means of sound radio receivers equipped with loudspeakers; and broadcasting and any
communication to the public of movie or audiovisual work including the performer’s artistic contribution);

- Netherlands (unwaivable right to fair compensation of principal director, screenplay writer and leading performers of a film, who have assigned their rights to the film producer, for broadcasting or any communication to the public other than making available); and

- Spain (see Annex 4).

In Austria, the Netherlands and Poland, remuneration rights that are subject to mandatory collective management cover only uses of audiovisual works and/or recordings.

Some aspects of making available on-demand right are subject to mandatory collective management in Croatia, Poland (remuneration right of authors and performers for broadcasting, making available, screening in cinemas and presentation of audiovisual works) and Spain (see Annex 4).

In all the Member States mentioned in this section, with the exception of Belgium, the Netherlands and Spain, CMOs shall be authorised by law or competent authorities to manage rights to broadcasting and/or communication to the public under mandatory collective management.

**Repeated broadcasting and/or communication to the public of works stored in broadcasters’ archives**

The term “repeated broadcasting” is generally understood to mean reuse by broadcasters of works that they previously broadcasted and that are kept in their archives. The following seven Member States provide for CLEE of rights to repeated broadcasting and/or making available of works stored in broadcasters’ archives: Denmark, Finland, Hungary, Iceland, Norway\(^{118}\), Poland and Sweden.

---

\(^{118}\) In Norway the provision enabling collective licensing with an extended effect of rights to communication to the public also encompasses repeated broadcasting and/or communication to the public of works stored in broadcasters’ archives.
Scope and nature of rights: Of these seven Member States, only Hungary limits the scope of the right to repeated broadcasting. In other Member States, the right also covers other acts of communication to the public, such as making available on demand (e.g., Denmark, Iceland and Poland).

The laws of Denmark, Finland, Iceland, Poland and Sweden limit the reuse of works kept in broadcasters’ archived to works that were already previously broadcasted before a legally determined cut-off date.

Denmark, Finland, Iceland, Norway, Poland and Sweden subject only exclusive rights to repeated broadcasting and/or making available of works stored in broadcasters’ archives to CLEE. In all these Member States, except for Sweden, CMOs are or shall be authorised by law or a competent authority for being able to conclude collective licences with an extended effect.

Of the seven Member States, only Poland does not provide rightholders with a right to opt-out.

In Hungary, while exclusive rights to repeated broadcasting of works can be exercised through collective licences with an extended effect, the right to equitable remuneration of performers for repeated broadcasting of performances recorded for broadcasting or communication to the public is subject to mandatory collective management. CMOs have to be authorised by law or a competent authority for operating under mandatory collective management.

For details, see Annex 5.

Reproduction for broadcasting purposes

The laws of Finland and Norway provide for CLEE of rights to reproduction for broadcasting purposes.
**Scope and nature of rights**: In both Member States, only exclusive rights to reproduction for broadcasting purposes are covered by collective licences with an extended effect. In Finland, the provision is limited to an ephemeral recording by broadcasting, including by transmission via a satellite simultaneously to the terrestrial broadcast, and in Norway to the making of ancillary copies for communication to the public of audiovisual productions, including satellite simulcasting by the same broadcaster.

In both Member States, rightholders are provided with a right to opt-out and CMOs shall be authorised by competent authorities for being able to conclude collective licences with an extended effect.

In Liechtenstein, the right to remuneration for the reproduction of non-theatrical musical works available on the market for broadcasting purposes is subject to mandatory collective management and CMOs shall be authorised by law or competent authorities (see Section 2.d.a on the authorisation of foreign CMOs for mandatory collective management in Liechtenstein).

For details, see Annex 6.

**Resale right**

In Croatia and France, CLEE covers resale rights. In France, the licensing scheme has a rather particular scope, as it relates only to resale rights of unknown rightholders. Collective licensing of these rights is decided by a court, on a request of the Minister of Culture or the competent CMO. In both Member States, rightholders are provided with a right to opt-out and CMOs shall be authorised by competent authorities to be able to conclude collective licences with an extended effect.

In the following 16 Member States, resale rights are subject to mandatory collective management: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, Hungary, Iceland, Italy, Latvia, Romania, Slovakia, Slovenia, Spain, Sweden and the UK. Of these Member States, Austria and Estonia provide for mandatory collective management without an extended effect. In all these Member States, except for Estonia, Germany, Spain, Sweden and the UK, CMOs shall be authorised by law or competent authorities to exercise resale rights under mandatory collective management.

For details, see Annex 7.

---

119 This mechanism was put into the category of collective licensing with an extended effect, because the rule of collective management does not apply to all works in the domain of applied arts and rightholders retain the right to exclude their rights from collective management.
Private copying

In 24 Member States, remuneration rights for private copying are subject to mandatory collective management: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. Of these Member States, Austria, Estonia and Greece provide for mandatory collective management without an extended effect. For details, see Annex 8.

In comparison to other Member States, the scope of the private copying right in France is broader in some respects, as it also covers acts of reproduction through network personal video recorder (NPVR) services of broadcasters.
In all these Member States, except for Romania, Spain and Sweden, CMOs shall be authorised by law or competent authorities to collect private copying remuneration under mandatory collective management.

**Reprography**

In 18 Member States, the right to reprographic reproduction or to remuneration that is due for such reproduction is covered by CLEE or mandatory collective management. For details, see Annex 9.

**Scope and nature of rights:** Reprography commonly covers reprographic reproduction and reproduction by similar techniques. The rights covered by this Section “Reprography” overlap to some extent with the Section “Internal use by organisations”. In Denmark, Finland, France, Iceland and Lithuania, reprographic reproduction rights are exclusive rights. In the other 13 Member States, these rights are rights to remuneration.

In Denmark, Finland and Iceland reprographic reproduction rights can be exercised through CLEE. Only the law of Iceland provides rightholders non-members with a right to opt-out. In all three Member States, CMOs shall be authorised by competent authorities.

15 Member States subject reprographic reproduction rights to mandatory collective management: Austria, Belgium, Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia and Slovenia. Of these Member States, Austria and Estonia provide for mandatory collective management without an extended effect. In all these Member States, except for Lithuania and Portugal, CMOs shall be authorised by law or competent authorities to license reprography under mandatory collective management.

**Figure 2.22 Mandatory collective management of rights to reprographic reproduction**

![Diagram of European Member States showing mandatory collective management areas](image)

**Internal use by organisations**
Six Member States provide for CLEE or mandatory collective management of internal uses by organisations: Denmark, Finland, Iceland, Liechtenstein, Norway and Sweden. For details, see Annex 10.

**Scope and nature of rights:** The Section “Internal use by organisations” groups national provisions permitting reproduction and/or communication by public and private organisations for the purpose of their internal use. In Liechtenstein, these activities are covered by a right to remuneration, and in the other Member States by exclusive rights.

In Denmark, Finland, Iceland, Norway and Sweden, internal uses by organisations can be undertaken under CLEE. Rightholders are provided with a right to opt-out in Finland, Iceland and Sweden. CMOs shall be authorised by law or competent authorities in all these Member States, except for Sweden.

**Figure 2.23 CLEE of internal use by organisations**

Liechtenstein subjects the right to remuneration for internal use by organisations to mandatory collective management and requires that CMOs shall be authorised by law or competent authorities.

**Lending**

Only in the Czech Republic and Slovakia, legislative provisions provide for CLEE of exclusive rights to lending.120 Rightholders non-members are provided with a right to opt-out and CMOs shall be authorised by competent authorities to be able to conclude collective licences with an extended effect.

17 Member States subject lending rights to mandatory collective management: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania and Spain. The Czech Republic provides for CLEE for the exclusive lending right and mandatory collective management for the right to remuneration for public lending for distance loans by libraries. Of these Member

120 Some level of uncertainty was reported as to whether the mechanism in the Czech Republic could be qualified as mandatory collective management.
States, Austria and Estonia provide for mandatory collective management without an extended effect. In all these Member States, except for Lithuania, lending rights are remuneration rights. All 16 Member States, except Estonia, Italy, Lithuania, Romania and Spain, require that CMOs shall be authorised by law or competent authorities for exercising rights under mandatory collective management.

For details, see Annex 11.

**Figure 2.24 Mandatory collective management of lending rights**

---

**Rental**

In Slovakia, exclusive rights to rental can be exercised through CLEE. Rightholders non-members are provided with a right to opt-out and CMOs shall be authorised by competent authorities to conclude collective licences with an extended effect.

In nine Member States, rental rights are subject to mandatory collective management: Croatia, Czech Republic, Estonia, Germany, Hungary, Italy, Latvia, Poland and Spain.

**Figure 2.25 Mandatory collective management of rental rights**
Of these Member States, Estonia provides for mandatory collective management without an extended effect. In the Czech Republic, Germany, Hungary, Italy, Poland and Spain, only remuneration rights to rental are exercised through this mechanism; in Croatia, exclusive rights and remuneration rights to rental; and in Latvia, only exclusive rental rights are subject to mandatory collective management. In all these Member States, except for Estonia and Spain, CMOs shall be authorised by law or competent authorities to exercise rental rights under mandatory collective management. Italy requires CMOs to be authorised with regard to the performers’ right to remuneration for the rental of fixed copies of their performance, but not with regard to the unwaivable right to remuneration of authors who have assigned their rental rights to a producer of phonograms or audiovisual works. For details, see Annex 12.

**Educational and scientific use**

In nine Member States, rights to educational and/or scientific use could be exercised through CLEE: Austria, Croatia, Czech Republic, Denmark, Finland, Iceland, Ireland, Norway and Sweden. In all these Member States, except for Croatia, the rights concerned are exclusive rights. In five Member States (Croatia, Czech Republic, Finland, Iceland and Sweden), rightholders non-members are provided with a right to opt-out. In all nine Member States, except for Sweden, CMOs shall be authorised by law or competent authorities to be able to conclude collective licences with an extended effect.

**Figure 2.261 CLEE of rights to educational and scientific use**

Five Member States subject the right to remuneration for educational and/or scientific uses to mandatory collective management: Austria, Belgium, Germany, Liechtenstein and Spain. Of these Member States, Austria provides for mandatory collective management without an extended effect. Some level of uncertainty was reported as to whether the mechanism in the Czech Republic could be qualified as mandatory collective management.
extended effect. In all these Member States, CMOs shall be authorised by law or competent authorities to exercise rights under this mechanism.

**Figure 2.27 Mandatory collective management of rights to educational and scientific use**

**Scope of rights:** In some Member States, the scope of the provisions concerned does not explicitly cover educational and scientific uses but is limited to educational uses only (e.g., Liechtenstein, Norway and Sweden). For details, see Annex 13.

**Use for the benefit of persons with disabilities**

In Denmark and Iceland, exclusive rights to audio and audiovisual recording of broadcasted works and some other acts undertaken by governmental and non-commercial public interest organisations for use by persons with disabilities can be undertaken through CLEE. Rightholders non-members are not provided with a right to opt-out. Iceland also subjects rights to remuneration for reproduction and distribution of works for use by persons with disabilities to mandatory collective management, as does Austria and Liechtenstein. Of these Member States, Austria provides for mandatory collective management without an extended effect. It can be seen that in Iceland different types of rights are managed under different collective management mechanisms. In all four Member States, CMOs shall be authorised by competent authorities to be able to conclude collective licences with an extended effect. For details, see Annex 14.

**Use by cultural heritage institutions**

Legislation of six Member States provides for CLEE for uses by cultural heritage institutions: Czech Republic, Denmark, Finland, Iceland, Norway and Sweden.

---

122 Some level of uncertainty was reported as to whether the mechanism in the Czech Republic could be qualified as mandatory collective management.
The term “cultural heritage institutions” encompasses libraries, archives, museums and other organisations working on preservation and making available of cultural heritage. Uses by cultural heritage institutions covered by these provisions are not limited to the use of out-of-commerce works or orphan works. Related provisions dedicated specifically to uses of these categories of works are presented further below.

**Scope and nature of rights:** Rights that could be exercised through CLEE in these Member States are the exclusive rights of reproduction and different forms of communication to the public. Most laws permit the use by cultural heritage institutions of works kept in their own collections only (e.g., in Finland, Iceland, Norway and Sweden). For details, see Annex 15.

The laws of the Czech Republic, Finland and Sweden provide rightholders non-members with a right to opt-out. Of the six Member States, only Sweden does not require that CMOs shall be authorised by competent authorities to be able to conclude collective licences with an extended effect.

Austria provides for mandatory collective management without an extended effect of rights to remuneration for uses of image or sound carriers in public libraries and the relevant CMO shall be authorised by the competent authority.

**Use of out-of-commerce works**

The following five Member States provide for CLEE for uses of out-of-commerce works: Czech Republic, France, Germany, Poland and Slovakia. For details, see Annex 16.

---

123 Some level of uncertainty was reported as to whether the mechanism in the Czech Republic could be qualified as mandatory collective management.
The laws of all five Member States provide rightholders non-members with a right to opt-out and require that CMOs shall be authorised to be able to grant collective licences with an extended effect for the use of out-of-commerce works.

**Scope and nature of rights:** The rights concerned are exclusive rights of reproduction and making available of out-of-commerce works. This section refers only to provisions limited in their scope of CLEE of works defined as “out-of-commerce”. Some of the provisions mentioned in the sections above encompass out-of-commerce works without specifically referring to them.

The provision on collective licensing of digital rights to out-of-commerce works in France was adopted in 2012. No new works were added to the registry of out-of-commerce books since 2016, due to the decision of the CJEU Judgment in Soulier and Doke (C-301/15, EU:C:2016:878), establishing partial incompatibility of the French mechanism with the Information Society Directive.124

In Liechtenstein, exercise of rights to remuneration for use of out-of-commerce works is subject to mandatory collective management and the relevant CMOs shall be authorised by law or a competent authority.

**Use of orphan works**

In the Czech Republic and Romania, the exercise of remuneration rights for use of orphan works is subject to mandatory collective management. In the Czech Republic, the relevant CMO shall be authorised by a competent authority. For details, see Annex 17.

Rightholders have the right to put an end to the orphan work status of works in so far as their rights are concerned. Such action by rightholders leads to the change of legal status

---

of works, which will no longer be considered as “orphan” and, hence, will not fall under mandatory collective management.

Use of works of visual arts

The laws of Denmark, Finland, France and Hungary include collective licensing mechanisms specifically for uses of works of visual arts.

CLEE is applied in Denmark, Finland and Hungary. In Denmark, it enables reproduction of published works of art (use of works of art in generally informative presentations, e.g., in encyclopaedias, general art books, educational material and the like, and reproduction of works of art in critical and scientific representations for business purposes). In Finland, the mechanism covers use of works of art in catalogues and in information and pictorial representation of a building. In Hungary, collective licences with an extended effect can cover public exhibition of works of visual artists, applied artists, photographers and applied designers. The laws of all three Member States provide rightholders non-members with a right to opt-out and CMOs shall be authorised to be able to grant collective licences with an extended effect.

In France, reproduction and communication to the public of work of plastic, graphic or photographic art in the course of services of automatic image referencing is subject to mandatory collective management by an authorised CMO. In simple terms, the provision covers search engine services offering their users to see images associated with their search queries.

For details, see Annex 18.

Reproduction of musical works

A few Member States provide for collective licensing mechanisms facilitating reproduction of musical works on phonograms and/or videograms (i.e., audio- and/or video-recording). For details, see Annex 19.

In Croatia, Hungary and Slovenia, collective licensing mechanisms facilitate reproduction of musical works. These mechanisms cover the so-called mechanical reproduction of musical works for the purpose of music recording and/or distribution.

In Croatia, reproduction of musical works (audio recording) is subject to CLEE; rightholders non-members are provided with a right to opt-out and CMO shall be authorised to be able to grant collective licences with an extended effect.

In Hungary and Slovenia, these rights are subject to mandatory collective management by an authorised CMO.

Domaine public payant

The laws of Croatia and Hungary provide for mandatory collective management of the right to remuneration for use of works in the public domain (so-called systems of “domaine public payant”). In Croatia, the mechanism covers communication to the public of folk literary and
artistic creations; in Hungary for transfer of ownership of original works of fine art with the cooperation of an art dealer after expiration of the duration of copyright protection. In both Member States, relevant CMOs are authorised by competent authorities. For details, see Annex 20.

**General clauses on CLEE**

The laws of seven Member States contain clauses enabling CLEE in domains not exhaustively listed in a legislative act: Croatia, Denmark, Hungary, Iceland, Norway, Sweden and the UK. Such clauses are henceforth referred to as "general". In spite of being referred as "general", such clauses define in some terms the domains where collective licences with an extended effect could be concluded. Either the national laws stipulate that domains must be specifically defined by the parties, requiring CMOs to be representative in that specific domains, or the specific domain is defined by the authorisation granted by a national authority. General clauses enabling mandatory collective management in domains not specifically defined by law do not exist.

**Figure 2.30 General clauses enabling CLEE**

![Map of Europe showing EEA Member States and other studied EEA Member States.]

**Croatia**

In Croatia, Article 157(5) of the Copyright Act establishes a presumption that a CMO has powers of attorney for collective management of rights of all domestic and foreign holders in the domain (i.e., types of rights and categories of rightholders) in which it is authorised by the IPO (DZIV). The law does not indicate specific domains where a CMO may grant collective licences with an extended effect. Instead, the law refers to a “particular category of rights and a particular category of rightholders” for the management of which the CMO was authorised by the IPO. The IPO can grant authorisation to only one CMO for a particular category of rights and a particular category of rightholders. The IPO takes into account the representativeness of an organisation (see subsection on representativeness in Croatia in Section 2.d.a). Rightholders non-members have the right to opt-out by notifying the CMO explicitly in writing not to manage their rights. The interviewed national authority explained that the definition of domains is a matter of practice.
**Denmark**

In Denmark, Section 50(2) of the Copyright Act enables conclusion of collective licences with an extended effect in any specific domain by a CMO representing a substantial number of rightholders of a certain type of works which are used in Denmark within the specified domain. Hence, although the law does not exhaustively enumerate all the domains, it requires that the licences be limited to specific domains for which licensing CMOs are representative (subsection on representativeness in Denmark in Section 2.d.a). CMOs should be approved by the Minister of Culture to be able to enter into a collective licencing agreement with an extended effect within a specific domain. Rightholders non-members have a right to opt-out and to claim individual remuneration.

The provision of Section 50(2) of the Copyright Act was created in 2008 and is referred by the national legal doctrine as a “general” extended collective licence clause. It is being seen as a supplement to the existing domain-specific extended collective licences. It may thus be applied to new areas of use, or it may function as a supplement to the specific collective licences. According to the preparatory works, this general extended collective licence is envisaged to be used especially for clearing rights in connection with the digitalisation of the cultural heritage, including as regards the so-called orphan works.

By the end of 2014, 14 extended collective licences were concluded on the basis of Article 50(2) of the Copyright Act,125 e.g., on certain ancillary cable retransmission rights and on the use of literary works in a dictionary on Old Nordic Prose.126

Two Danish CMOs indicated in the survey to have granted collective licences under Section 50(2) of the Copyright Act.

**Hungary**

In Hungary, §§17-18 of the Collective Management Act establish that any collective licence granted by a CMO authorised by the IPO (HIPO) to collectively manage rights is a licence with an extended effect. The law does not exhaustively enumerate all the domains and leaves it to the IPO to determine whether an organisation fulfils all the requirements, including that it is representative in the domain in which it is authorised to operate (see subsection on representativeness in Hungary in Section 2.d.a) and that individual exercise of rights is not feasible. Rightholders non-members have a right to opt-out (see subsection on right to opt-out in Hungary in Section 2.d.b).

**Iceland**

---


In Iceland, since 2016, Article 26a(2) of the Copyright Act, provides for a possibility to conclude collective licences with an extended effect in domains other than those specifically indicated by law. Such licences should be a prerequisite for the practical implementation of the use and should cover a limited and clearly defined subject area. Licences should be in writing and expressly provide for an extended effect. The general conditions on the representativeness of licensing CMOs, as set out in law and applied to domain-specific extended collective licensing clauses, are applicable (see subsection on the representativeness requirement in Iceland in Section 2.d.a). Rightholders non-members have a right to opt-out by prohibiting a contracting party from using their works under the extended collective licence (Article 26a(3) of the Copyright Act).

Norway

In Norway, Section 63, second paragraph, of the Copyright Act, enables CMOs to conclude collective licences with an extended effect in a particularly specified domain not explicitly enumerated by the law. It is the licence concluded between the CMO and the user, not the law, that defines the exact scope of the licensed uses. The CMO has to be representative in the field covered by the licence (see subsection on the representativeness in Norway in Section 2.d.a). Such collective licences with an extended effect do not apply if rightholders non-members opt-out or there is otherwise a special reason to assume that they are opposed to such use.

The provision is referred to in Norwegian legal doctrine as “general” extended collective licence clause. It was introduced in 2015 on the background of the fact that such “general” clauses already existed in Denmark and Sweden. In the revised Copyright Act of 2018, the provision was continued without any amendments in Section 63, second paragraph.

As of February 2020, two organisations have permissions to act as CMOs under Section 63, second paragraph:

- BONO, CMO for visual artists, in order to enter into agreements with public and private undertakings and persons owning physical art collections regarding certain uses of the works comprised by the collection;
- Kopinor, reproduction rights CMO, in order to enter into agreements with the Norwegian Golf Organization for the digital publishing of the magazine “Norsk golf”.

Sweden

In Sweden, since 2013, Article 42h of the Copyright Act provides CMOs with a possibility to conclude collective licences with an extended effect in any domain other than those exhaustively enumerated by the law, provided that the domain is defined. In the legal doctrine, this provision is being referred to as “general” extended collective licensing clause. The licensing CMO should comply with all the general requirements for granting collective licences with an extended effect, including to be representative in the domain concerned (see subsection on the representativeness in Sweden in Section 2.d.a). Rightholders non-members have a right to opt-out.

Five Swedish CMOs indicated in the survey to have granted collective licences under Article 42h of the Copyright Act.
Table 2.16 Examples of uses licensed under Article 42h of the Copyright Act, as provided by Swedish CMOs in the survey

<table>
<thead>
<tr>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMO1</td>
</tr>
<tr>
<td>CMO2</td>
</tr>
<tr>
<td>CMO3</td>
</tr>
<tr>
<td>CMO4</td>
</tr>
</tbody>
</table>

**United Kingdom**

In the UK, since 2013, Section 116B of the Copyright Designs and Patents Act and the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 empower the Secretary of State to authorise a CMO to grant collective licences with an extended effect. The law does not determine specific domains, but the authorisation of the Secretary of State must specify the types of work to which the licence applies, and the acts restricted by copyright that the CMO is authorised to license. Rightholders are given a right to opt-out. In order to be authorised, the CMO must fulfil a number of requirements (see subsection on the representativeness in the UK in Section 2.d.a).

As of February 2020, no CMO was authorised to grant collective licences with an extended effect in the UK. The Copyright Licensing Agency (CLA) filed a first application, which was withdrawn in April 2018 in consultation with the IPO. A post on the CMO’s website explains that the application was withdrawn because of uncertainties relating to changes in the EU legal framework. The post reads as follows:

‘This withdrawal is a response to the evolving EU legal framework that may affect the regulation of national extended collective licensing systems. While this situation persists, CLA’s priority must be to continue to operate its existing and well understood licensing scheme for the benefit of both its licence-holders and the rights holders it represents.

An Extended Collective Licensing scheme would be the first of its kind in the UK and it is important that it is introduced at an appropriate time. CLA intends therefore to reapply when
the legislative position is clearer. The IPO fully respects and supports CLA’s position at this time.’127

Since then, the UK government has announced it will not implement the relevant legislation. No information has been published on the renewal of CLA’s application.

2.c.b Limitations to the scope of an extended effect
National provisions on CLEE are sometimes limited by means other than a mere definition of the specific domain to which the licensing mechanism applies. Such limitations can exist at the level of the works, rightholders or licensees covered by the extended effect. Limitations of the territorial scope of an extended effect are analysed, considering several elements essential for conceiving cross-border CLEE. Other than that, the possibility of parallel individual exercise of right can, in effect, also limit the scope of an extended effect. These five possible limitations will be discussed in separate sections below.

Limitations at the level of works covered

The present section deals with limitations to the scope of an extended effect at the subject-matter level. This includes an exhaustive definition of works that could be used under an extended effect, the exclusion of some types of works and the establishment of cut-off dates for the publication of works that can be used.

“Closed” extended effect

In some domains, works that can be used by virtue of the extended effect are exhaustively listed. Such extended effect could be characterised as “closed”. Notable examples are uses of out-of-commerce works and orphan works.

All five Member States providing for CLEE for uses of out-of-commerce works (Czech Republic, France, Germany, Poland and Slovakia) created registries exhaustively enumerating the works affected. Likewise, Article 10(1) of the DSM Directive requires an EU database of out-of-commerce works to be established.

Czech Republic: As of 8 October 2019, 76,554 out-of-commerce works were listed in the registry. No information about opt-outs (or how to do it) is publicly available on the registry’s website.128

France: As of 26 June 2020, 226,808 out-of-commerce books were listed in the Registry of out-of-commerce books (ReLIRE).129


128 Czech out-of-commerce works registry https://www.nkp.cz/digitalni- knihovna/dalsiodkazy/seznam-del-nedostupnych-na-trhu. The interviewed national authority reported that the system is not yet fully functional.

No new works were added since 2016 due to the decision of the CJEU with regard to this mechanism: CJEU Judgment in Soulier and Doke, C-301/15, EU:C:2016:878 (the Judgment established partial incompatibility of the French mechanism for collective licensing of digital rights to out-of-commerce books with the Information Society Directive).

| Number of books added to the database on 21 March in the period 2013-2015 |
|-----------------------------|-----------------|-----------------|-----------------|
| 2013 | 2014 | 2015 |
| 63,096 | 45,897 | 85,896 |

Germany: As of May 2020, the search function of the registry of out-of-commerce works hosted by the German Patent and Trade Mark Office (DPMA) referred to 29,450 entries (works) in the registry for works published between 01.01.1849 (nothing before) and 31.12.1965 (last relevant day according to § 51 of the Collective Management Act).130 The last annual report of the DPMA (2018) mentions 23,733 works in the registry at the end of 2018.

Poland: The number of out-of-commerce works from Poland is not reported because the system was not fully operational at the moment of the study.

Slovakia: According to the record of the Slovak National Library, there were 130,637 out-of-commerce works in February 2020.

CLEEE of orphan works in the Czech Republic and Romania is limited to the works defined and exhaustively listed as “orphan”. For example, the Czech CMO, DILIA, managing rights to literary, dramatic and audiovisual works, exercised rights to 1,043 orphan works.131 In the EU, orphan works are enumerated in the EU Orphan Works Database, established according to Article 3(6) of the Orphan Works Directive. By virtue of the mechanism of mutual recognition of orphan work status (Article 4), a work or phonogram that qualifies as an orphan work is considered an orphan work in all EU Member States. As of 10 May 2020, the EU Orphan Works Database contains 5,945 entries (covering 5,945 main works and 6,902 works embedded or incorporated in those works).

In France, since 2016, collective licences with an extended effect could cover resale rights of unknown rightholders (Article L123-7 of the Intellectual Property Code). Whether such collective licences apply is decided by the court on a request of the Minister of Culture or the authorised CMO. It seems that under this mechanism, the works concerned are exhaustively defined.


131 The list of orphan works where diligent search was undertaken and where the rights are managed by the CMO is available at: http://www.dilia.cz/component/k2/item/download/743_d5a0ae5d2bbd8f1fbd40cd430ab4f2c5 (the list was made available 1 April 2020).
It could be argued that legislative clauses enabling CLEE of works kept in collections of broadcasters or cultural heritage institutions are also of a “closed” nature, at least for as long as such works are exhaustively enumerated, e.g., through a library catalogue (see Section 2.c.a on the mapping of domain-specific CLEE).

**Exclusion of specific types of works from the collective licensing mechanisms**

Without the ambition of exhaustiveness, this section provides an overview of types of works excluded from CLEE in different domains.

**Computer programs and databases**

Computer programs and databases are commonly excluded from the scope of rights and/or collective management mechanisms with an extended effect.

**Cinematographic and/or audiovisual works**

Cinematographic and/or audiovisual works are excluded from the scope of CLEE of rights to broadcasting and/or communication to the public in the Czech Republic, Denmark, Estonia, Finland, Iceland, Poland, Romania and Sweden.

In Finland, cinematographic works are also excluded from the scope of the legislative provision enabling CLEE for ephemeral recording by broadcasting or by simultaneous transmission via satellite.

Cinematographic works are excluded from the scope of CLEE for reproduction by public or private organisations for their internal use in Iceland and for the internal use and other uses accompanying the notion of “organisations’ own activities” in Norway (permitting reproduction of some minor parts of works).

In the Czech Republic, audiovisual works are excluded from the scope of CLEE for the lending of works, phonograms and videograms.

**Dramatic and/or stage works**

Dramatic and/or stage works are excluded from the scope of CLEE for broadcasting and/or communication to the public by simultaneous transmission via satellite in Denmark, Finland, Iceland and Sweden.

In Finland, dramatic works are also excluded from the scope of the legislative provision enabling CLEE for ephemeral recording by broadcasting or by simultaneous transmission via satellite.

In Croatia, stage musical and literary works are excluded from CLEE for public performance and communication to the public, including making available.

**Governmental works**

---

132 According to the information received, some laws differentiate between cinematographic and other audiovisual works and some do not. In the Czech Republic, the exception of audiovisual works extends also to works “audiovisually utilized” (with the exception of musical works). A work “audiovisually utilized” is defined by Section 64 of the Copyright Act as “any work incorporated into an audiovisual work”. For the purpose of simplicity, the present text speaks of “cinematographic and/or audiovisual works”.
In the UK, the general clause enabling the grant of collective licences with an extended effect (Section 116B(6) of the Copyright Designs and Patents Act) excludes Crown copyright and Parliamentary copyright from the application of the provision.  

**Purpose**

**Purpose-specific works**

In France, the making of copies for the purpose of sale, rental, publicity and/or promotion is excluded from the scope of mandatory collective management with an extended effect of exclusive rights to reprographic reproduction and reproduction by similar techniques.

In Hungary, works ordered for advertisement are excluded from all forms of collective rights management.

**Works whose rightholders are likely to be opposed to the use**

In Norway, communication to the public of audiovisual productions, including simultaneous transmission via satellite by the same broadcaster, and the making of ancillary copies of such communications are excluded from CLEE if there is a special reason to assume that a rightholder is opposed to such use.

Likewise, in Sweden, broadcasting, including simultaneous transmission via satellite, and the making available of literary and musical works by broadcasters are excluded from the scope of CLEE if there are special reasons to assume that the rightholder objects to the exploitation.

**Cut-off dates applied under the collective licensing mechanisms**

The cut-off date is an important element determining the scope of the extension effect by defining, hence limiting, eligible works. The more recent the cut-off date is, the more works can be used under collective licences with an extended effect. In the long-term perspective, the more remote is a cut-off date from the grant of a licence, the fewer works are concerned by an extended effect, due to the limited duration of copyright and related rights.

**Cut-off dates for use of broadcasted works kept in broadcasters’ archives**

The laws of the following five Member States provide for a cut-off date, before which works must have been broadcasted to be eligible for use under collective licences with an extended effect enabling use of broadcasted works kept in broadcasters’ archives:

- Denmark: 1 January 2007;
- Finland: 1 January 2002;
- Iceland: 16 February 2016;
- Poland: 1 July 2003;
- Sweden: 1 July 2003.

**Cut-off date for use of works kept in publishers’ archives**

Finland applies a cut-off date to collective licences with an extended effect enabling the reproduction and communication to the public of works stored in archives of publishers.

---

133 The UK law provides for special copyright rules for government departments, other state entities and the national parliament.
Only works published before 1 January 1999 can be used under this extended collective licensing scheme.

Cut-off dates for use of out-of-commerce works
Article 8(5) of the DSM Directive allows Member States to set a cut-off date to determine whether works or other subject-matter can be eligible to be used under collective licences with an extended effect enabling the use of out-of-commerce works.

The laws of the following three Member States already provide for a cut-off date, before which works must have been published to be eligible for use under collective licences with an extended effect enabling the use of out-of-commerce works:

- France: 1 January 2001;
- Germany: 1 January 1966;

Cut-off date for use of broadcasters’ orphan works
The laws of the Czech Republic and Romania, enabling CLEE for the use of orphan works, stipulate that only cinematographic or audiovisual works and phonograms contained in archives of public-service broadcasters that were produced by said broadcasters up to or on 31 December 2002 may be considered “orphan works” following digital search. This cut-off date is derived from Article 1(2)(c) of the Orphan Works Directive.

Limitations at the level of rightholders affected
In general, an extended effect covers all holders of rights concerned by the collective licences concluded under legislative provisions on CLEE. A person that does not qualify as a rightholder is therefore not covered by the extended effect and cannot engage in licensing his/her rights on an individual basis. Yet, sometimes, some rightholders are exempted from the scope of an extended effect. The present subsection illustrates a few of such situations.

Broadcasters’ exceptions
Multiple Member States have legislative provisions enabling CLEE for broadcasting and related activities (e.g. repeated broadcasting and other uses of previously broadcasted works kept in broadcasters’ archives, reproduction for broadcasting, and broadcasters’ ancillary online services related to broadcasting). TV and radio broadcasters are licensees of such licences with an extended effect. However, broadcasters also have rights in respect of their own broadcasts. To ensure, inter alia, that broadcasters cannot use other broadcasters’ productions under collective licensing schemes with an extended effect, broadcasters’ rights in several Member States are explicitly exempted from an extended effect of specific licensing schemes. In the Czech Republic and Norway, broadcasters’ rights in respect of their own broadcasts are generally excluded from all collective licensing schemes with an extended effect.

Rights of broadcasters in respect of their own broadcasts are excluded from the mandatory collective management of cable retransmission rights in: Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia,
Spain, Sweden and the UK. This is likely a result of the harmonisation effect of Article 10 of the Satellite and Cable Directive. Where provisions on retransmission of broadcasts cover retransmission by means other than cable, said broadcasters’ rights are also exempted from such retransmission (see subsection on retransmission of broadcasts in Section 2.c.a).

Miscellaneous exceptions

In Slovenia, Article 10 of the Collective Management Act provides that some rightholders are exempted from the applicable mandatory collective management schemes. A rightholder can individually manage his right to communicate to the public non-theatrical musical and written works, if they are the main performer and also the copyright holder on such works. A rightholder can also individually manage the right of public broadcasting of non-theatrical musical works by phonograms, if they are the holder of all copyrights and related rights for such type of use. These exemptions apply in the same manner to rightholders members and rightholders non-members of CMOs (Article 20 of the Collective Management Act).

Nationality of rightholders and Member State of publication

In Italy, since 1941, Article 180(6) and (7) of the Copyright and Related Rights Act provides for mandatory collective management with an extended effect covering rights of Italian citizens or residents who have not individually received any proceeds from the use of their rights abroad for over a year. The provision seems to have never been applied, and no specific publicly available information can be retrieved.

With regard to the scope of the extended effect of collective licences in Slovakia, there is some uncertainty about whether the extended effect also covers the rights of foreign rightholders non-members. This uncertainty is based on the Slovak Copyright Act's territorial scope, which is unclear about whether the extended effect can also apply to the rights of foreign rightholders, who have neither directly authorised a Slovak CMO nor authorised a foreign CMO that has a representation agreement with its Slovak counterpart. This uncertainty is based on the reported personal scope (application) of the extended effect under the Copyright Act, which is only applicable to the author and his/her work, which was for the first time disclosed in the Slovak Republic or from its territory.

Limitations at the level of users concerned

National provisions on CLEE are sometimes limited not only to specific domains (areas of use), but also to specific types of users. Although Article 12(2) of the DSM Directive limits the application of CLEE mechanisms to well-defined areas of use (domains), without

---

134 In some countries, retransmission of broadcasts is governed by rules on so-called “must-carry” obligations of cable operators. For example, it was reported that in Ireland broadcasters do not have retransmission rights by way of copyright exception (Section of 20(1) of Copyright and Related Rights Act) and by way of “must-carry” obligations under Section 103 Copyright and Related Rights Act and Section 77 of the Broadcasting Act.
explicitly referring to users as beneficiaries, reference to specific users, in addition to domains, permits to further limit the scope of CLEE. An example is contained in Articles 8 to 11 of the DSM Directive, which introduce a CLEE mechanism to facilitate non-commercial use of out-of-commerce works (domain), but only for cultural heritage institutions (beneficiaries).

The most frequently mentioned users in national provisions on CLEE are broadcasters, cultural heritage institutions (libraries, archives and/or museums), and educational (schools and/or universities) and research organisations.

The highest level of specificity can be found in Denmark, where Sections 30a and 38 of the Copyright Act explicitly refer to Danish broadcasters DR, TV 2 and regional TV 2 stations as licensees licences with whom they could have an extended effect. Other broadcasters may be added, but so far this has not happened.

**Limitations to the territorial scope of an extended effect**

The territorial scope of an extended effect of any of the studied Member States is limited to the territory of the Member State in which the legislation provides for CLEE. This is also recognised in Recital 46 of the DSM Directive, which states that CLEE ‘should only have effect in the territory of the Member State concerned, unless otherwise provided for in Union law’.

To date, EU law only allows CLEE with a reach beyond the national territory for the use of out-of-commerce works. Article 9(1) of the DSM Directive explicitly provides that ‘Member States shall ensure that licences granted in accordance with Article 8 may allow the use of out-of-commerce works or other subject matter by cultural heritage institutions in any Member State’. Article 12(6) of the DSM Directive, however, solicits the European Commission to investigate the possibility of allowing CLEE with cross-border effect to be introduced in other domains (i.e., with regard to the same type(s) of rights, works, uses and/or rightholders).

These are important considerations to be taken into account when discussing such a possibility. Firstly, introducing CLEE with cross-border effect only makes sense in areas where there is an interest for multi-territorial licences. With regard to domains where such a mechanism could be implemented, the domains with cross-border use appear to be the most appropriate. Such domains are typically those concerned with some forms of communication to the public techniques, most notably today through online means. If not EU/EEA-wide, there could be a market for multi-territorial licencing. For instance, this could be in some domains with an extended effect in the Member States that are geographically and/or culturally connected (e.g. the Scandinavian or other neighbouring Member States), or that share a common language (e.g. the French- or German-speaking Member States). The test of Article 12(2) of the DSM Directive, according to which Member States shall apply a mechanism of CLEE only “within well-defined areas of use, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely, due to the nature of the use or of the types of works or other subject matter concerned, and shall ensure that such licensing mechanism safeguards the legitimate interests of rightholders”, can offer another guideline.
for the determination of the domain of a prospective EU clause on CLEE with cross-border effect.

In the spirit of the test of Article 12(2) of the DSM Directive, the regime of CLEE with cross-border effect in Article 9(1) of the DSM Directive is limited to out-of-commerce works, and characterised by the absence of a commercial market. This implies that the licensing regime does not compete with any (normal) exploitation of the works in question.

The present study maps domains where CLEE is in place in the different Member States. The existence of identical or similar domains could be interpreted as an indication of a seeming consensus among Member States about CLEE’s appropriateness with regard to the identified types of rights, works, uses and/or rightholders (see Section 2.c.a).

The territorial scope of a cross-border extended effect could cover the entire EU or more than one Member State. Depending on the legal mechanism used for achieving a cross-border extended effect, the territorial scope could be informed, among other factors, by the existence of mechanisms of CLEE in the same domains in different Member States and by the representativeness (relative to each Member State) of the CMO(s) concerned. A cross-border regime of CLEE cannot likely be established between Member States that apply different licensing regimes (e.g. individual licensing versus collective licensing) in the same domain. However, suppose the aim is to establish a EU-wide system of CLEE with cross-border effect in a specific domain. In that case, this is likely to be achieved only through further harmonisation, because, except for the right to retransmission of broadcasts originating from the other Member States, the existence of national mechanisms of CLEE and mandatory collective management of rights in same domains varies greatly between the Member States, as the mapping exercise in Section 2.c.a demonstrates.

Moreover, the CMOs that would operate CLEE with cross-border effect would arguably have to be representative in the multiple territories to which their licensing activities extend, unless a provision is introduced at EU level that otherwise defines the representativeness of CMOs in a cross-border context and/or links it to a country-of-origin type of rule. An example is Article 8(6) of the DSM Directive, which explicitly states that licences to use out-of-commerce works “are to be sought from a collective management organisation that is representative for the Member State where the cultural heritage institution is established.”

In the absence of such a provision, the representativeness of CMOs beyond their Member States of establishment arguably requires cooperation with foreign CMOs. This is a challenge where such cooperation relies on representation agreements, which commonly mandate contracting CMOs to represent foreign repertoires only in their Member States of establishment. In order for CMOs to become sufficiently representative beyond their Member States of establishment, therefore, the representation agreements shall mandate CMOs for multi-territorial licensing. Establishing representativeness of a CMO in more than one Member States could, for example, also be achieved through joint multi-territorial

---

136 Unlike Title III of the CRM Directive on multi-territorial licensing of online rights in musical works, Article 8(6) of the DSM Directive, which relates to the making available of out-of-commerce works in the EU, eliminates competition among CMOs in different Member States to grant licences to cultural heritage institutions for the use of out-of-commerce works.

137 Accordingly, because the representativeness of CMOs beyond their Member States relies on cooperation between CMOs in different Member States, introducing CLEE with cross-border effect seems to work only if there is consensus between CMOs in the particular domain to grant multi-territorial licences.
licensing by CMOs, each representative in its Member State, and/or the creation of a joint entity of such CMOs for multi-territorial licensing. In the past, there have been instances of voluntary cooperation between CMOs, some of which seemingly operated under CLEE in the area of online use of phonograms, most notably the IFPI agreements for simulcasting and webcasting. According to the IFPI Simulcasting Agreement, EEA-based simulcasters were able to obtain a non-exclusive multi-repertoire and multi-territorial licence (covering the EEA (except France and Spain) and represented non-EEA territories) from any of the EEA-based participating CMOs managing phonogram producers' rights of broadcasting and communication to the public of phonograms. Arrangements for CLEE with cross-border effect in specific domains could be developed along similar lines, provided that they comply with the EU/EEA competition rules. In this respect, the framework of rules and principles laid down by the Commission in the IFPI Simulcasting Decision could perhaps offer some legal guidance.

---

138 Some Member States provide for mechanism facilitating achievement of representativeness in the domains with more than one CMO.

139 Commission of the European Communities, Notice pursuant to Article 19(3) of Council Regulation No 17 concerning an application for negative clearance or exemption under Article 81(3) of the EC Treaty (Case COMP/C2/38.014 — IFPI "Simulcasting") [2001] OJ C 231/04, paras. 1, 6, 9 and 13, showing that 40 CMOs in Europe, Asia, Northern and Latin America, Australia, New Zealand and South Africa participated in the agreement originally notified on 16 November 2000.


142 E.g., Argentina, Hong Kong, India, Malaysia, Mexico, New Zealand, Peru, Singapore, Taiwan, Thailand and Uruguay.

143 In countries where participating CMOs managed phonogram producers’ as well as performers’ rights, they could grant licences or collect remuneration for both groups of rightholders. European Commission Decision IFPI Simulcasting 2002, para. 56.

144 European Commission Decision IFPI Simulcasting 2002, paras. 3 (this right of EEA simulcasters was introduced in the IFPI Simulcasting Agreement and notified to the European Commission on 21 June 2001), 28 (the relevant part of Article 3.1 of the IFPI Simulcasting Agreement reads as follows: “any broadcasting station whose signals originate in the EEA shall therefore be entitled to approach any Contracting Party [CMO] established in the EEA for its multi-territorial simulcast license”), 42 and 87. The original text notified to the European Commission on 16 November 2000 stated that simulcasters approach only CMOs in their respective member states. European Commission Notice IFPI Simulcasting 2001, para. 17.

145 Commission of the European Communities, Decision of 8 October 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No
The ability to introduce CLEE with a cross-border effect may furthermore depend on national regulations on the authorisation of CMOs to grant collective licences with an extended effect and related legal monopoly rules of the Member States concerned (see Section 2.d.a).

The safeguards, most notably the requirements of equal treatment, right to opt-out and publicity measures, shall play an important balancing role in safeguarding rightholders interests whose rights are exercised through CLEE with a cross-border effect. In addition to the reflections on the achievement of a cross-border effect, it is equally important to consider how to give effective cross-border dimension to the safeguards, especially in light of the existing variations in national laws and practices in this respect (see Section 2.d.b).

**Possibility of parallel individual exercise of rights**

The collected information demonstrates that in many Member States, the possibility of parallel individual exercise (i.e., the possibility for rightholders to grant non-exclusive licences in parallel to the licences with an extended effect granted by a CMO) is one of the elements that differentiates collective licensing with an extended effect from mandatory collective management (for details, see Annexes 1-21). This observation is also true when, under collective licensing with an extended effect, rightholders non-members do not have a right to opt-out.

In the majority of studied Member States, where rightholders non-members are subject to CLEE, they may nevertheless exercise their rights individually (although differences exist between Member States, as reported below). Individual exercise of rights is not possible in domains with mandatory collective management (with or without an extended effect). This has been confirmed by information received from all Member States.

Due to the research method employed and the interpretative difficulties, the below summary is not intended to be exhaustive. In some Member States, where the question of parallel individual exercise is not being explicitly dealt with by law and has not been discussed by courts and legal doctrine, there are uncertainties and possibilities for a different interpretation.

**Czech Republic**

Part of the Czech Republic's legal doctrine considers the individual exercise of rights that are otherwise subject to CLEE to be in conflict with the law. Those adhering to this doctrine claim that individually negotiated licensing agreements, which rightholders conclude with users without having opted-out from the collective licensing scheme with an extended effect, are null and void for conflicting with public order (Sections 580 and 588 of the Civil Code). Moreover, they consider the licensing fee to amount to unjust enrichment (Section 2991 et seq. of the Civil Code). This doctrinal opinion, however, has not yet been confirmed by any court decision. Another part of the doctrine regards collective licences with an extended effect as “non-exclusive”, which implies that rightholders may still grant individual licences.
if a user is willing to pay. Two Czech CMOs responding to the survey stated that they do not exercise rights of rightholders non-members on a non-exclusive basis.

In any case, in the Czech Republic, rightholders may always grant individual licences for non-commercial purposes. Any rightholder whose rights are subject to CLEE may grant a gratuitous licence for the use of individually specified protected subject-matter, including, e.g., a public licence such as Creative Commons. Rightholders may furthermore exclude the subject-matter concerned from CLEE by informing the CMO about the grant of such gratuitous licence (Section 97e(3) of the Copyright Act). This exclusion only takes effect vis-à-vis the specific user, which can also be the general public in the case of a public licence. Where it does not concern a public licence, other users who have not been granted this gratuitous licence still have to obtain a licence and pay for the use under the regime of CLEE.

**Denmark**

When CMOs conclude extended collective licences in Denmark, it is legally not possible for a rightholder non-member to conclude an individual agreement with a user (either with the user who has already concluded the extended collective licence or with another user). One of the Danish CMOs responding to the survey confirmed the above interpretation, adding the following comment: ‘We have no experience of this in practice, but it is fair to assume that the licence-taking user compare the two agreements in terms of conditions and price and use any differences as a leverage for less burdensome conditions and lower prices’. Two other CMOs stated that they always exercise rights of rightholders non-members on a non-exclusive basis.

**Hungary**

§ 4(3) of the Collective Management Act seems to render impossible the parallel individual exercise of rights that are subject to CLEE, which under Hungarian law is defined as collective management “prescribed by law”. According to § 4(3) of the Collective Management Act, such cases relate to types of uses, whereby, pursuant to the provisions of the Copyright Act, ‘the rightholder is only permitted to exercise his rights through a collective management organisation until the preliminary notice on withdrawal lawfully made in compliance with the requirements in Section 18 (1) takes effect’. Three Hungarian CMOs replying to the survey stated that they do not exercise rights of rightholders non-members on a non-exclusive basis.

**Iceland**

It is generally understood that, when an extended collective licensing agreement is concluded under the laws of Iceland, it must respect possible former agreements made for the use of the relevant right or works.

**Latvia**

According to Articles 3(4), 3(5) and 6 of the Collective Management Act, in the following domains, where rights are subject to mandatory collective management, rightholders may grant individual licences for the non-commercial use of their works or other subject-matter:

- a public performance, if it occurs in places of entertainment, cafes, shops, hotels, and other similar places;
- lease and rental;
- retransmission (except for the rights of broadcasters, irrespective of whether it is their own rights or those which holders of copyright or related rights have transferred to the broadcaster);
- use of phonograms published for commercial purposes.
Norway
In Norway, rightholders are free to enter into individual agreements with users, also in areas where extended collective licensing applies. If such individual agreements are concluded, they will have precedence over extended collective licences.

Romania
According to a ruling of the High Court of Cassation and Justice in Romania (ICCJ. Decision no. 4815/2013), rightholders may individually exercise rights that are subject to mandatory collective management (see Annex 23 on case law). Although other decisions similar to the ICCJ. Decision no. 4815/2013 have confirmed the possibility for “individual exercise”, some courts decline this “right”. This is possible because the Romanian Courts are not bound by previous rulings, but decide cases autonomously. Therefore, it is uncertain to what extent parallel individual exercise of rights is possible in Romania, as cases of individual exercise can always be contested by CMOs.

Slovenia
In Slovenia, there is an interesting court case about the possibility for rightholders to exercise their rights individually, despite the relevant domain being governed by mandatory collective management. In CMO IPF v users (judgements of Ljubljana Hight Court no. V Cpg 828/2017 and Slovenian Supreme Court no. III Ips 33/2014), the courts ruled that if no CMO has been authorised to administer rights which, pursuant to the law, have to be managed collectively, rightholders are permitted to manage and exercise their own rights individually. A different explanation would lead to a situation, where the rightholders could not, in any way, exercise their own rights, which would contradict the Constitution of the Republic of Slovenia.

Sweden
In Sweden, rightholders non-members retain the right to individually exercise their rights in parallel to extended collective licensing schemes, including the general extended collective licensing clause. Five Swedish CMOs responding to the survey stated that they always exercise rights of rightholders non-members on a non-exclusive basis. Two of these CMOs explained that an individual contract between a rightholder non-member and a user has a priority over an extended collective licence concluded between the CMO and the same user. According to these CMOs, the legal force of the collective licence with regard to rights of other rightholders members and non-members is not affected. Another CMOs explained the consequences of an individual parallel exercise as follows: ‘In the end it might be less remuneration for everyone’.

d Practical functioning and application of mechanisms of CLEE
This section provides an analytical overview of several key elements of the collective licensing mechanisms outlined in Section 2.c, in particular those elements that appear prominently in Article 12 of the DSM Directive as the necessary minimum elements of mechanisms of CLEE. This concerns, first of all, the requirement of representativeness of the CMO. Section 2.d.a describes the application and practical functioning of these representative mechanisms in different Member States. Other minimum elements of mechanisms of CLEE are the safeguards offered to rightholders non-members, such as provisions on equal treatment, the right to opt-out, publicity measures and the right to claim individual remuneration. Section 2.d.b discusses the practical application of these safeguards in different Member States. Lastly, Section 2.d.c provides an economic analysis of CLEE from a social welfare perspective.
2.d.a Practical functioning of the representative mechanisms

The requirement of representativeness of the eligible CMO is one of the basic and principal features of CLEE in most Member States and a necessary minimum element of mechanisms of CLEE under Article 12 of the DSM Directive. Representativeness is also required in the laws of some Member States for CMOs engaged in mandatory collective management. In light of this, it is important to get a better understanding of the representative mechanism in different Member States and how it is practically applied. To this end, this section first explains by which qualitative or quantitative criteria “representativeness” can be legally defined and how this notion of “representativeness” is described in the legal provisions of the Member States on CLEE and mandatory collective management. This is followed by an overview of information that CMOs provide to national authorities in order for them to make an assessment of the CMO’s representativeness. Next, this section discusses three specific cases. One is the situations where CMOs act as legal monopolies, for which representativeness is not always separately established. Another case is the situation where more than one CMO is active in a particular domain, for which the law may lay down specific measures to achieve (a joint) representativeness of the organisations concerned. Thirdly is the situation where CLEE is conducted by an organisation other than a national CMO, in which case it can be more challenging to establish the representativeness of that organisation.

Legal meaning of “representativeness” of CMOs

In several of the studied Member States, legislation explicitly requires CMOs to be representative without defining in detail the meaning of the requirement. Some national provisions refer to a qualified number of rightholders, such as a “substantive” number in Denmark and Sweden; “numerous” in Finland, and a “significant” number in Hungary, Iceland, Latvia and Norway. This seemingly implies that these Member States apply a quantitative assessment of representativeness. Other national provisions, e.g., in Poland, Romania and Slovakia, refer to CMOs representing “the largest number of rightholders”, implying a comparative aspect of the quantitative assessment of representativeness. Others Member States such as Croatia, the Czech Republic and Hungary refer (sometimes indirectly through requirements about information to be provided to decision-making authorities) to the number of rightholders and/or works that a CMO represents (including through representation agreements with other CMOs), without necessarily qualifying them numerically. Hungary’s law also refers to such specific quantitative considerations as the “majority of the affected rightholders” and “the licensing ratio of their works or other subject-matters protected and their share of royalties”.

In general, a quantitative assessment of representativeness does not necessarily amount to establishing the majority or a similar quantitative threshold. In Norway, for example, the “significant number” does not imply that a majority nor something close to a majority is required. This was corroborated by the Norwegian government in an action to correct the effects of a judicial decision. Relevant factors for accessing CMO’s representativeness in that Member State are: how well-established is the CMO in the relevant field; the CMO’s capacity with respect to safeguarding the interests of the rightholders concerned, and its possibilities to enter into reciprocity agreements with other CMOs. In Sweden, it was

147 These examples are given on the bases of received English translations of legislative provisions in different languages.
reported that the requirement of “a substantial number” means the CMO must represent “several” rightholders and not “the most” or “more than” a certain percentage of the rightholders concerned.

In Lithuania and the Netherlands, the law requires CMOs to be representative without setting any quantitative requirements. In the Netherlands, the government merely checks whether a CMO, according to its statutes, represents the rights of the rightholders concerned. In practice, this means that CMOs that have been established first (or that are most well-established in the given field) are often the ones that are authorised by the competent authorities.

In France, the authorities take into account multiple factors before authorising a CMO to grant collective licences with an extended effect to out-of-commerce books. Such factors include the diversity of membership of a CMO; equal representation of different types of rightholders among its members and in its governing bodies; professional qualifications of CMO’s managers; and the means that the CMO invests in collective management, in general, and in safeguarding the interests of rightholders non-members, in particular.

The law of the UK is also relatively explicit in enumerating a number of different criteria that the Secretary of State must take into account in assessing whether to grant authorisation to a CMO to operate an extended collective licensing scheme. Such criteria include, among others, types of works represented by the CMO; assessment of the operation of the CMO; measures taken to safeguard interests of rightholders non-members; publicity measures proposed by the CMO; and opt-out arrangements.

In conclusion, the criterion of “representativeness” of CMO is a complex criterion that is differently applied in different Member States. In most Member States, the representativeness of CMOs, regardless of how it is precisely defined by law, is not assessed on a quantitative basis alone. Usually, it is determined through a combination of quantitative factors (e.g., numbers of rightholders represented and of representation agreements concluded with foreign CMOs) and qualitative factors (e.g., the capacity of CMOs to manage rights; representation of types of rights and rightholders concerned; governance rules; measures for safeguarding interests of rightholders non-members, etc.). In general, the qualitative factors take a significant weight in establishing representativeness of CMOs. This is also because the concrete comparative numbers are not always available. Indeed, even if the number of rightholders represented is known, it is still difficult to assess how significant this number is compared to the full body of rightholders in the given field, as the latter number is often impossible to establish.

148 The territorial scope and (non)reciprocity of management mandates under representation agreements between CMOs could be also of relevance for achieving and organising CLEE with a cross-border extended effect. With regard to the territorial scope, representation agreements concluded between CMOs in all domains covered by domain-specific CLEE clauses are limited to the Member States of establishment of the contracting CMOs (some exceptions aside). The question of (non)reciprocity of representation agreements is important for the subsequent practical functioning of the system: whether it moves towards coexistence of a multitude of sufficiently representative CMOs (through reciprocal representation agreements) or towards a creation of “umbrella” licensing entities (through unilateral representation agreements).

149 The competent authorities receive and/or could ask for information regarding human resources (e.g., number of employees, qualifications of directors), premises and financial resources for ensuring operations, for example.
The present study is focused on the requirements to authorisations, where applicable, specifically for representing rightholders non-members. Authorisations to CMOs for collective management without an extended effect are excluded from the scope of this study.

**National approaches to representativeness**

The present section presents collected information on existing national provisions and/or practices with regard to the representativeness of CMOs. Laws of some of the Member States do not provide for criteria for determination of representative CMOs and/or their appointment.

**Austria**

§ 59 (broadcasting and communication to the public) and § 59c (commercial use in textbooks and some other related educational uses) of the Copyright and Related Rights Act do not set specific criteria of representativeness. These provisions only refer to the CMO, which is competent according to the Collective Management Act. The provisions are applicable to all CMOs established under the Collective Management Act, no matter how large their repertoire is.

According to § 25 (on the general presumption of representation (Wahrnehmungsvermutung)) of the Collective Management Act, the Supervisory Authority has to decide whether a CMO administers the rights to almost the entire repertoire of works or other subject-matter for its entire field of activity or a specific part thereof. To enjoy this presumption, a CMO must prove before the Supervisory Authority that it manages the rights of almost the entire repertoire of works in the area for which the legal presumption is applied for (either the entire field of activity of the CMO or a specific part thereof). The law does not provide for detailed criteria on which CMOs could be considered to manage “almost the entire repertoire”. However, in the decision that granted the legal presumption to AKM in 2008 (Supervisory Authority, decision of 14 February 2008, KOA 9.450/08-005), it was stated that:

- nearly all Austrian lyricists, composers and music publishers have granted AKM sole and exclusive rights;
- AKM has concluded corresponding reciprocity agreements with more than 60 foreign CMOs and thus also has rights in the respective foreign repertoire;
- statistics for 2005 have shown that, regarding both serious music and entertainment music, there was only a non-member share of 1.25%.

The interviewed national authority confirmed that it takes into account the number of direct contractual relations between rightholders and the CMO as well as the number of representation agreements between the CMO and its foreign partners.

**Croatia**

All CMOs authorised to carry out collective management of rights in Croatia operate under a legal presumption of representation of all rightholders in a specific domain (category of rights, works and rightholders). CMOs have to apply for an authorisation of the IPO. When
examining an application, the IPO should take the following into account when granting an authorisation to a CMO to administer a particular category of rights and/or a particular category of rightholders (Article 157(4) of the Copyright Act):

- the number of members based on powers of attorney received;
- the number of joint representation agreements with CMOs in other Member States; and
- other circumstances indicating that CMO would be the most efficient one in collective management of rights.

The interviewed national authority pointed out that while CMOs can provide it with information about numbers of their members and representation agreements with foreign CMOs, it is not possible to know what exact proportion they represent of the total number of rightholders, works or rights in a particular domain. The lack of information is balanced by taking into account some qualitative criteria for assessing applying CMOs. For example, by taking into account the overall satisfaction of rightholders with CMOs' performances and the absence of complaints and availability of adequate human and technical capacities. Usually, once a year the authority checks whether the material conditions of the basis of which the authorisation was granted are fulfilled. The authority has the right to make requests for additional information.

The authority reported that it has never received more than one application from a CMO per domain (type of rights, works and/or rightholders). So, it has never had to compare two applicants.

A Croatian CMO indicated in the survey to have always been the authorised organisation to grant collective licences under a legal presumption of representation with regard to a category of rights and/or rightholders.

**Czech Republic**

In the Czech Republic, the representativeness of a CMO is mainly considered within the process of granting authorisation by the Ministry of Culture. As part of this process, an application of a CMO must contain, inter alia:

- a list of names of rightholders who have expressed their interest in the collective management of their rights by the applicant CMO, including a list of their published works or other protected subject-matter, with the signatures of these rightholders (Section 96 para. 3 let. c) of the Copyright Act);
- a list of names of members of the applicant CMO who are holders of the rights to be collectively managed, including a list of their published works or other protected subject-matter, with the signatures of these rightholders (Section 96 para. 3 let. d) of the Copyright Act);
- a document certifying the conclusion or promise to conclude reciprocal agreements with at least two foreign CMOs (Section 96 para. 3 let. i) of the Copyright Act);

By providing these documents, the applicant basically must prove to the Ministry of Culture:

- that rightholders are either directly or indirectly associated (Section 95a para. 1 of the Copyright Act); and
that the collective management of rights is of genuinely collective nature and useful (functional/sensible) (Section 96a para. 2 sec. b) of the Copyright Act).

If the applicant fails to prove so, the authorisation is not granted.

As soon as the Ministry of Culture grants legal authorisation to a respective CMO, the CMO is deemed to be representative in the sense that it can licence its whole repertoire, as well as the rights of rightholders non-members where rights are subject to CLEE.

If a CMO stops to fulfil the basic “status” requirements, the Ministry of Culture must revoke the authorisation pursuant to Section 96a para. 1 let. A of the Copyright Act. In other words, the loss of representativeness must lead to the revocation of authorisation (Section 96c para. 1 let. a) of the Copyright Act). It was reported that, as of yet, no authorisation had been revoked to any CMO in the Czech Republic.

The interviewed national authority explained that while the law does not explicitly refer to the representativeness, this requirement is present in the spirit of the law (‘between the lines’). The lists of represented rightholders provided by CMOs have to be adequately long for the Ministry to authorise the CMOs to represent all rightholders in a domain (type of rights, works and rightholders). The authority reported that it has never received more than one application per domain. So, it has never had to compare two applicants. The applicants are the same well-established Czech CMOs.

Two Czech CMOs indicated in the survey to have always been the authorised organisations to grant collective licences with an extended effect in their respective domains.

**Denmark**

Under Section 50 of the Copyright Act, extended collective licence ‘may be invoked by users who have made an agreement on the exploitation of works in question with an organisation comprising a substantial number of authors of a certain type of works which are used in Denmark’, and the CMO ‘shall be approved by the Minister for Culture to enter into agreements within certain fields’. The decision on representativeness is made by the Minister for Culture based on information provided by the CMO, including about co-operation with “sister CMOs” abroad.

Two Danish CMOs indicated in the survey to have always been the authorised organisations to grant collective licences with an extended effect in their respective domains.

**Finland**

The conditions for extended collective licensing are set forth in Section 26 of the Copyright Act. Section 26 provides that an organisation may operate as an extended collective licensing organisation if it is approved by the Ministry of Education and Culture to operate in that function. Section 26 requires for such approval that an organisation represents “numerous authors of works used in Finland” in a given field.

Section 47a, subsections 1-3, of the Copyright Act provides that (in relation to remuneration to performers and phonogram producers for broadcasting and communication to the public of commercial phonograms and music recordings containing images):
‘(1) The remuneration for the use of a sound recording under Section 47(1)(1 and 2) shall be paid through an organisation which has been approved by the Ministry of Education and which represents numerous performing artists and sound recording producers whose performances recorded on a device and whose devices are used in Finland;

(2) The remuneration for retransmission under Section 47(1)(3) shall be paid through the organisation referred to in Section 26(1);

(3) The remuneration for the use of a music recording containing images under Section 47(3) shall be paid through an organisation which has been approved by the Ministry of Education and which represents numerous performing artists whose performances recorded on a device are used in Finland.’

The interviewed authority reported that it usually received only one application per domain. The assessment of representativeness was reported to be a complex issue. In essence, the authority relies on the information received from the CMOs, taking into account any other relevant information from stakeholders (e.g., complaints, if any) and does not have the resources to undertake time-consuming verifications. The authority reported to have received “very few” complaints from users and rightholders in different domains. Overall, it was said to be easier to access the representativeness in the domains covered by exceptions and limitations. The authority observed that authorised CMOs tend to become more representative over time. More rightholders join and the sector becomes more organised. In some cases, the Ministry of Culture has excluded certain organisations from representing some group of works as a CMO authorised to grant collective licences with an extended effect – as it was generally considered that these organisations were not sufficiently representative. For instance, one CMO wanted to grant collective licences with an extended effect covering any work that was published on the internet. The authority decided that the CMO did not have the necessary level of representativeness since many works are published for non-commercial purposes and are published outside normal channels of commerce.

A Finnish CMO indicated in the survey to have always been the authorised organisation to grant collective licences with an extended effect in its domain of activities.

France

In France, relatively detailed lists of criteria are set in law for approval of competent CMOs by the Minister of Culture in different domains with mandatory collective management, as well as collective licensing with an extended domain of rights to out-of-commerce books.

Cable retransmission

According to Article L132-20-1 of the Intellectual Property Code, CMOs managing cable retransmission rights shall be approved, taking into account the following considerations:

- the professional qualifications of the managers of the CMO, and the means that the CMO could put in place to ensure the collection of royalties and the use of works in their repertoire;
- the size of their repertoire;
- their respect of the obligations imposed on them by the provisions of Title II of Book III of the Intellectual Property Code.
The criteria are explained in more detail in Article R323-1 of the Intellectual Property Code, which also lays down the procedure for the appointment of the CMO responsible for the management of retransmission rights when rightholders have not entrusted any organisation for that purpose (Article L217-2, I, fifth paragraph, of the Intellectual Property Code).

**Annual supplementary remuneration**
According to Article L212-3-3, IV, of the Intellectual Property Code, the Minister of Culture approves the CMO(s) for collecting annual supplementary remuneration, taking into account:

- the professional qualifications of the managers of the CMO;
- the human and material means that the CMO propose to put for ensuring the collection and distribution of the annual supplementary remuneration to its members and performers non-members;
- the size of its repertoire and the representation of performers entitled to the annual supplementary remuneration in the management bodies of the CMO;
- the respect of obligations provided by Title II of Book III of the Intellectual Property Code.

These criteria are explained in more detail in Article R327-1 of the Intellectual Property Code.

**Resale right**
According to Article L127-3, III, of the Intellectual Property Code, the Minister of Culture approves the competent CMOs for administering the resale right, taking into account:

- the diversity of their members;
- the professional qualifications of their managers;
- the size of their repertoires and the representation of authors of original graphic and plastic works, beneficiaries of the resale right, in the sense of Article L122-8 of the Intellectual Property Code in the governing bodies;
- the human and material means that they propose to put in place for the allocation of collected amounts according to the supplementary pension by the authors of graphic and plastic arts.

The criteria are explained in more detail in Article R329-1 of the Intellectual Property Code.

**Private copying**
According to Article L311-6, I, second paragraph, of the Intellectual Property Code, the Minister of Culture shall take the following into account when deciding on the approval of the CMO(s) responsible for administering the private copying levies:

- the professional qualification of the managers of the CMO;
- the means that the CMO proposes to put in place for ensuring the collection of the remuneration;
- the diversity of members of the CMO.

The criteria are explained more in detail in Article R329-7 of the Intellectual Property Code.
Reprography
According to Article L122-12 of the Intellectual Property Code, the Minister of Culture shall approve CMO(s) for administering the reprography right, taking into account:

- the diversity of members of the CMO;
- the professional qualification of managers of the CMO;
- the human and material means that CMO proposes to put in place for ensuring the management of the right to reprographic reproduction;
- the equitable character of the modalities for distribution of collected amounts.

These criteria are explained in more detail in Article R322-1 of the Intellectual Property Code.

Every year the Minister of Culture appoints one CMO, among all the approved CMOs, on the basis of the highest number of works managed, to administer the reprographic reproduction rights on behalf of rightholders who on the date of publication have not given their mandate to any approved CMO. The “highest number of works managed” is determined according to the practices of the professions concerned (Article R322-4 of the Intellectual Property Code).

Public lending
According to Article L133-2 of the Intellectual Property Code, second and third paragraphs, the approval of CMO(s) for public lending by the Minister of Culture is dependent on:

- the diversity of members of the CMO;
- the professional qualification of the managers of the CMO;
- the means that the CMO proposes to put in place to ensure the collection and distribution of the remuneration for lending in libraries;
- the equitable representation of authors and publishers among the members and within the management organs of the CMO.

These criteria are explained in more detail in Article R325-1 of the Intellectual Property Code.

The CMO to which the management of the rights to remuneration is automatically entrusted if authors and publishers do not designate any CMO on the date of publication, is also determined every year by the Minister of Culture (Article R325-7, second paragraph, of the Intellectual Property Code). The only criterion is the highest number of works managed. According to Article R325-7, first paragraph, of the Intellectual Property Code: ‘[…] This number is determined according to the practices of the professions concerned.’

Automatic image referencing
The CMO(s) for automatic image referencing must be approved by the Minister of Culture. According to Article L136-3 of the Intellectual Property Code, the approval of CMO(s) by the Minister of Culture is delivered, taking into account:

- the diversity of members of the CMO;
- the professional qualification of the managers of the CMO;
- the human and material means that the CMO proposes to put in place for ensuring the management of the right to reproduction and communication of works of plastic, graphic and photographic art by services of automatic image referencing.
A decree of the Conseil d’Etat shall determine the conditions for the delivery and withdrawal of the approval.

Out-of-commerce works
According to Article L134-3, III, of the Intellectual Property Code, the CMO administering the rights in out-of-commerce works should be approved by the Minister of Culture, taking into account:

- the diversity of members of the CMO;
- the equal representation of authors and publishers among the members and in the management bodies of the CMO;
- the professional qualification of the managers of the CMO;
- the means that the CMO proposes to put in place to ensure the collection and distribution of royalties;
- the equitable character of the rules on the distribution of collected amounts among rightholders, regardless of whether they are parties of a publishing contract. The amount received by the author or authors of the book cannot be lower than the amount received by the publisher;
- the means that the CMO proposes to put in place in order to identify and locate rightholders for distributing the collected amounts;
- the means that the CMO proposes to put in place to develop contractual relations permitting to ensure the largest possible availability of the works;
- the means that the CMO proposes to put in place to ensure the defence of the legitimate interests of rightholders non-parties to the publishing contract.

These criteria are explained in more detail in Article R326-1 of the Intellectual Property Code.

According to Article R326-7 of the Intellectual Property Code, every year, the Minister of Culture appoints one CMO to which the rights are automatically entrusted if authors and publishers do not jointly appoint a CMO to manage their rights. The Minister of Culture shall base this decision only on the number of out-of-commerce works represented by the CMO.150

Germany
In order to grant collective licences with an extended effect, CMO shall apply and be granted an authorisation of a competent national authority.

Among other things, applying CMO should provide a declaration stating the number of rightholders as well as the number and commercial value of rights it is contractually authorised to represent. Other requirements to applying CMOs are requirements to the statutes, to CMOs’ representatives and a viable business plan (Section 78 of the Collective 150 For more information on the current state of the mechanism, see Section 2.c.b on the “closed” extended effect and Annex 23 on the selected French jurisprudence.
Management Act). A reason for refusal, other than non-compliance of the statutes or disqualification of the CMOs’ representatives, is that the applying CMO ‘cannot, in view of its economic basis, be expected effectively to manage the rights’. (Section 79 of the Collective Management Act).

**Greece**

In Greece, according to the law, the private copying remuneration shall be administered by a CMO that is “sufficiently representative”. This criterion refers predominantly to national representativeness (i.e., the representation of national rightholders).

** Hungary**

According to §16(8) of the Copyright Act, any reference made in the Copyright Act made to a CMO shall be construed as a reference to a representative CMO authorised following appropriate procedures established by, and that is also entitled to grant licences with an extended effect. Pursuant to §5 of the Collective Management Act, in those cases falling within the scope of mandatory collective management or “collective management of rights prescribed by law”, collective management may only be performed by a representative CMO (except in the domain of multi-territorial licensing of online rights in musical works):

- Representativeness is defined and detailed by two norms of the Collective Management Act. §4 para. 10 of the Collective Management Act states that a representative CMO responsible for administering a specific right with an extended nature shall comply with the detailed rules of §34 of the Collective Management Act and shall be registered by the Hungarian Intellectual Property Office (HIPO) as a representative CMO. §34 further states that the HIPO registers an organisation as a representative CMO (i.e. issues an authorisation for that purpose) only if it complies with the rules of Chapter IV and §34, which require the organisation to manage the rights of significant numbers of rightholders and to have signed representation agreements with the competent foreign CMOs. §32 further requires that a CMO shall have sufficient human resources and technical capacities, notably data processing capacities. The above set of rules shall be cross-checked in practice via §34(3) of the Collective Management Act, setting the following three criteria: the number of rightholders that authorised the CMO;
- the proportion of the use of the works represented by the CMO used under the licence;
- the proportion of revenues generated by the represented works to the total payments.

The interviewed national authority reported that the decisions are taken on the basis of global appreciation of all relevant factors required by law. §34(3) is interpreted as requiring the authority to take into account not only the absolute number of rightholders that contractually authorised a CMO to represent them, but also to put them in relation to the actually used works. Such examination means that a CMO that has fewer members holding rights to more used works could be more representative than a CMOs with more members holding rights to works without commercial success in Hungary. According to the interviewed authority, assessment of representativeness is a complex exercise without a single best approach for assessing representativeness of the applying CMO. The burden of collecting and providing information to the HIPO is on the applying CMO. In certain cases,
the applying CMOs also need to provide evidence that individual practising of the rights of rightholders they represent is impossible or cannot be carried out effectively in the given special case (i.e. they need a CMO to manage their rights). The interviewed national authority stated that the impossibility of individual exercise and representativeness are assessed simultaneously, offering the following illustration. If a CMO represent only top three to four rightholders that represent most of works in a domain, this may not lead to an authorisation since such a small group of rightholders may be capable to license directly on the market. The other way around, if an CMO applying representing 30 000 rightholders with just a few works that are rarely used, there is no justification for CLEE.

The HIPO as an authority also has the duty to inspect the case in depth, and therefore also makes its own research before deciding on whether to grant an authorisation or not. According to the authority, in certain cases, it is easier to make an assessment of representativeness due to databases (such as in the case of audiovisual producers who are listed by the National Media Authority151) or the membership of other organisations also representing the given rightholders group (it can be another CMO or other representative organisation such as a guild or other society). Concerning the eligible information for establishing representativeness, the interviewed authority observed that it is a “system of free proof”, no strict guidelines, therefore such “non-formal” sources like the Internet Movie Database (IMDB) list in the case of audiovisual works could work in this case as well. There is no one-best-way approach – it varies per case. According to the authority, to allow enough flexibility the law cannot be more precise on the matter of representativeness than it already is.

According to the interviewed national authority, the Hungarian law permits to have more than one CMO per domain, but only one may grant collective licences with an extended effect in order to avoid parallel licensing on behalf of rightholders non-members. In practice only one CMO operates per domain. If more than one representative CMO or a new representative CMO in addition to an already functioning representative CMO applies for an authorisation for the same domain, they have to agree on which of them should grant CLEE. If they cannot agree between themselves, it is up to the HIPO to decide based on their overall capacity. In such a case HIPO is also required to check whether the coexistence of two CMOs would endanger rightholders’ interests and in such a case only one CMO – the more effective one – may grant CLEE.

Three Hungarian CMOs indicated in the survey to have always been the authorised organisations to grant collective licences with an extended effect in their respective domains.

Iceland

The relevant provision on representativeness is found in Article 26a(4) of the Copyright Act, which states that CMOs wishing to conclude extended collective licensing agreements must be authorised by the Minister. Such authorisation is subject to the condition that the CMO must represent a significant number of the authors of a specified type of works used in Iceland. The Minister may decide to require a CMO seeking such authorisation to be the joint organisation of two or more associations. More detailed procedural rules for the authorisation, including the review of authorisation, are issues by the Minister.

Ireland

Sections 151 and 152 of the Copyright Act refer to an organisation 'representative of the class of persons that it claims to represent'. This representativeness requirement is relevant for appointing a competent CMO under Section 168 of the Copyright Act (the administration of the right to make copies by educational establishments).

Italy

One constitutional decision on the delegation of public power to an association (in the case at hand: a hunting association) is also indirectly relevant to CLEE. In case no. 454/1991, the Italian Constitutional Court ruled that when the legislator attributes to a specific entity the management of rights belonging to a category or group of citizens, the entity must be selected on the basis of its representativeness, may not discriminate between members and non-members, and should be characterised by an open membership and equal opportunities of participation in the life and government of the association (see Annex 23 on case law).

Latvia

In Latvia, only associations authorised by the Ministry of Culture are permitted to operate as CMOs. The Ministry of Culture shall issue such permission only to entities that 'represent or will immediately after obtaining the authorisation represent a significant number of authors or performers, phonogram producers, and other holders of related right'. Neither the law itself nor its preparatory materials gives a clear indication of how this notion of "a significant number" must be interpreted.

In the Supreme Court case No. 217/2018 of 28 December 2018, the court noted that the CMO in question had acquired the necessary authorisation from the Ministry of Culture, which in and of its own shall act as an indication that the CMO represents a substantial part of the works in question (see Annex 23 on case law).

Lithuania

In Lithuania, the Copyright Act does not set any explicit conditions on representativeness. It was reported that since, historically, the relevant Lithuanian CMOs had a factual monopoly in the areas of rights they manage (LATGA for authors rights, AGATA for related rights), there has never been any question about the sufficient representativeness of these CMOs.

Netherlands

In the following domains, the law in the Netherlands simply provides that the CMO shall be "representative" without defining it in any way:

- broadcasting and communication to the public of phonograms;
lending;
- reprography;
- private copying.

In the domains of lending, private copying and broadcasting and communication to the public of phonograms, CMOs were specifically created by rightholders for these purposes and, in the same year, the respective CMOs were exclusively mandated by the government to collect the respective remuneration.

Lending
With regard to authorising a CMO in the domain of lending, the law speaks of a legal person, which the Minister of Security and Justice and the Minister of Education, Culture and Science judge to be “representative” (Article 15f(1) of the Copyright Act and Article 15a(1) of the Related Rights Act). The law does not specify any conditions for representativeness. The collective management mechanism was adopted and entered into force in 1995. In 1996, in agreement with the Minister of Education, Culture and Science, the Minister of Justice exclusively entrusted Stichting Leenrecht, a CMO which was newly established for this purpose, with the collection and distribution of remunerations. On the basis of the bylaws of the foundation, which demonstrate that rightholders such as writers, translators and publishers participate in the foundation through professional organisations, Stichting Leenrecht was deemed sufficiently representative (Ministerial Decision of 30 October 1996, Staatscourant 1996, no. 222).

Private copying
With regard to authorising a CMO in the domain of private copying, the law speaks of a legal person judged “representative” by the Minister of Security and Justice (Article 16d(1) of the Copyright Act). The law does not specify any conditions for representativeness. The collective management mechanism was adopted in 1990 and entered into force in 1991. In 1991, the State Secretary for Justice entrusted Stichting de Thuiskopie, a CMO which was newly established for this purpose, with the collection and distribution of the compensation referred to in Article 16c of the Copyright Act (Decision of the State Secretary for Justice of 20 February 1991, Staatscourant 1991, no. 42), and in 1993, also with the collection and distribution of the compensation referred to in Article 10 sub e of the Related Rights Act (Decision of the State Secretary for Justice of 20 August 1993, Staatscourant 1993, no. 175). These decisions were also based on the bylaws of the foundation, which specify that rightholders such as performers, phonogram producers, publishers and publishers participate in the foundation through professional organisations, Stichting de Thuiskopie was deemed sufficiently representative for the categories of rightholders concerned, i.e. performers and phonogram producers (Ministerial Decision of 30 October 1996, Staatscourant 1996, no. 222).

Broadcasting and communication to the public of phonograms
The law speaks of “a representative legal person” (Article 15(1) of the Related Rights Act) but does not specify any conditions for representativeness. The collective management mechanism was adopted and entered into force in 1993. In fact, in 1993, the Minister of Justice exclusively entrusted Sena, a CMO which was newly established for this purpose, with the collection and distribution of remunerations. On the basis of the bylaws of the foundation, Sena was deemed sufficiently representative for the categories of rightholders concerned, i.e. performers and phonogram producers (Ministerial Decision of 30 June 1993, Staatscourant 1993, no. 121).
Unwaivable right to fair compensation of principal director, screenplay writer and leading performers of a film, who have assigned their rights to the film producer, for broadcasting or any communication to the public other than making available

Article 45d(3) of the Copyright Act, referring to the representativeness requirement, reads as follows: 'The right to the compensation referred to in the second subsection is exercised by representative legal persons who, according to their bylaws, aim to represent the interests of principal directors or screenplay writers through the exercise of that right.'

Norway

For all extended collective licensing clauses in Norway, there is a general requirement that the CMO must be approved by the Ministry and be sufficiently representative. Article 63, third paragraph, of the Copyright Act, sets out the conditions:

‘For extended collective licences pursuant to the first and the second paragraph, the agreement must be entered into by an organisation which is approved by the Ministry on the ground that it in the field represents a significant number of authors of works used in Norway, and is suited to manage the rights in the field. For use in further specified fields, the Ministry can decide that the organisation which is approved shall be a joint organisation for the rightholders concerned. The approval may be withdrawn if the organisation no longer fulfils the conditions set out in this paragraph or if there are special reasons for it. The approved organisation must report to the Ministry about circumstances that may have an impact on the approval, such as alterations with regard to the representativeness of the organisations.’

The requirement that the CMO must represent “a significant number of authors of works used in Norway” implies that neither a majority nor something close to a majority is required. This was emphasised during the legislative process leading to the present Copyright Act on the background of lower court decisions interpreting the criterion of “a substantial part” under the former act as requiring “about 50 %” of authors of works used in the field (for a reference to the case, see Annex 23 on case law). This understanding was explicitly rejected by the Ministry. In order to make that clear, the criterion was reformulated in the present Copyright Act. Relevant factors in determining what constitutes “a significant number” are:

- how well-established is the CMO in the relevant field;
- the CMO’s capacity with respect to safeguarding the interests of the rightholders, and
- its possibilities to enter into reciprocity agreements with other (and foreign) CMOs.

According to the law, the representativeness is assessed in relation to the field covered by the extended collective licensing clause, or in respect to the general extended collective licencing clause, the field covered by the agreement in question. Furthermore, the representativeness requirement refers to “authors of works used in Norway”, which implies that both domestic and foreign rightholders are covered, as long as their works are used in the Member State.

A CMO must be approved by the Ministry before it can conclude collective licences with an extended effect. This implies that the Ministry will decide on the representativeness at the time of approval. The approval may be withdrawn if the CMO at a later stage does not fulfil the representativeness criterion. As long as the approval has not been withdrawn or expired, however, the representativeness of a CMO cannot be challenged before courts. Although
not explicitly stated in the law, the Ministry may set time limits for the approval of the CMO as an organisation that can conclude extended collective licences.

Poland

General requirements for the representativeness of CMOs are laid down in Article 10 of the Collective Management Act. According to this provision, a CMO is representative (a) if it is the only CMO authorised to manage copyright or related rights in a given field (covering the relevant types of works, rightholders and uses) or (b) when there is more than one authorised CMO, if it represents the largest number of rightholders, based both on the contracts it has concluded with rightholders and on representation agreements with other (foreign) CMOs. The representativeness of a CMO is declared by a decision issued by the Minister of Culture. Such a decision ought to be revised if there has been a significant change regarding the conditions of representativeness or if there is no longer a need for a declaration.

More detailed criteria are provided with regard to the selection of the CMO administering the performers’ right to an annual supplementary remuneration (for the extended term). Article 953(4) of the Copyright and Related Rights Act reads as follows:

‘The additional remuneration referred to in paragraph 1 shall be paid through an organisation for collective management of rights related to artistic performances, appointed for a period of no more than five years by the minister competent for culture and protection of the national heritage following completion of a competition, subject to the following criteria:

- the representative nature of such an organisation;
- the organisational capacity of the organisation to perform its task in a manner ensuring efficient collection of the remuneration referred to in paragraph 1 and the payment thereof;
- efficiency and correctness of such organisation’s operations;
- the proposed costs of payment of the remuneration referred to in paragraph 1 being justified and the amount of such remuneration.’

Portugal

In Portugal, the law generally contains no representativeness criteria. Only in the domain of mandatory collective management of cable retransmission rights, Article 9 of Decree-Law 333/97, of 27 November 1997 refers to ‘entities that are representative of the various interests involved’, without further stipulating how such representativeness is assessed.

Romania

In Romania, the law provides for CLEE with regard to transmission via satellite and communication to the public of musical works. Article 168 of the Copyright and Related Rights Act states that collective licences with an extended effect can be concluded by a single CMO in the given domain. If there are several CMOs in the same domain, the Romanian Copyright Office has the power to authorise ‘the collector in the domain of
rightsholders in question, on the basis of representativeness, by a decision of the Director General’. The law does not define “representativeness” any further.

In areas with mandatory collective management (cable retransmission; private copying; public lending; resale right; broadcasting of musical works; reproduction and communication to the public of orphan works; and broadcasting and communication to the public of commercial phonograms, including reproduction for that purpose) representativeness is defined by Article 159 (1) of the Copyright and Related Rights Act:

‘In the case of mandatory collective management, if an author or a rightholder is not associated with any collective management body, the competence lies with the body in the field with the largest number of members, authorised as such by the Romanian Office for Copyright, by the decision of the General Director.’

Slovakia

In Slovakia, for the purpose of CLEE, representativeness is defined as follows: ‘Collective management organisation which represents the highest number of rightholders […] at the territory of the Slovak Republic and which is indicated in this manner in the register of collective management organisations’ (Section 79(1) of the Copyright Act).

Despite a vague wording of the provision, “the highest number of rightholders” does not refer to rightholders in general, but to the most representative CMO regarding the specific category of rightholders concerned.

Slovenia

In Slovenia, there is no provision that explicitly states that a CMO must be representative in order to be able to manage rights collectively. CMOs however need to obtain a permit from the Slovenian Intellectual Property Office (SIPO) (Article 14 of the Collective Management Act). Such permit can only be obtained by a CMO for which the collective rights management is the only and main activity and is owned or controlled solely by its members and/or is a non-profit organisation (Article 4 of the Collective Management Act). In order to obtain a permit, CMOs have to submit to SIPO a list with the repertoire of the works they administer and demonstrate that they can ensure effective collective rights management.

Sweden

Article 42a(1) of the Copyright Act provides that, to engage in extended collective licensing, a rightholders’ organisation must represent “a substantial number of authors of works that are used in Sweden in the field concerned.” The criterion of “a substantial number” signifies that “several” authors of works used in Sweden (which can be Swedish or foreign authors) must be represented by the relevant organisation or organisations of rightholders (the provision does not rule out that more than one organisation can fulfil the requirement, but this has not yet happened in practice). Thus, the criterion does not mean that “most” or “more than” a certain percentage of authors must be represented.

In Sweden, no authorisation is requirement to be considered a representative rightholders’ organisation under the extended collective licensing provisions of the Copyright Act. Rather,
the requirements apply directly by operation of the law. The representativeness of rightholders’ organisations engaged in extended collective licensing can be challenged before the courts, but so far this has never happened.

The interviewed national authority responsible for supervision reported that while rightholders’ organisations are not required to apply for an authorisation, they need to give notice to the authority about beginning to grant licences with an extended effect. The authority keeps a file with all active organisations, which is necessary for the ex officio supervision it conducts once a year. The authority has never checked whether an organisation of rightholders is representative. However, if there is a complaint, the authority is required to look into it.

All five Swedish CMOs replying to the survey stated that according to the law of the Member State of their establishment, no authorisation of a national authority is required for them to be able to grant collective licences with an extended effect.

**United Kingdom**

The authorisation to operate an extended collective licensing scheme in the UK is regulated in Section 4 of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014. It establishes that the Secretary of State may only grant such authorisation to a relevant licensing body if the Secretary of State is satisfied that:

‘(a) at the time of the authorisation, the relevant licensing body licenses by way of collective licence relevant works of the type which are to be the subject of the proposed Extended Collective Licensing Scheme;

(b) the relevant licensing body’s representation in the type of relevant works which are to be the subject of the proposed Extended Collective Licensing Scheme is significant;

(c) the code of practice of the relevant licensing body is consistent with the specified criteria including the criteria concerning the protection of non-member right holders;

(d) the opt out arrangements, including those for multiple works, are adequate to protect the interests of right holders;

(e) the arrangements for publicising the scheme, for contacting non–member right holders in order to distribute the net licence fees and for distributing any net licence fees which remain undistributed are appropriate for the proposed scheme, having regard to the interests of non-member right holders; and

(f) the relevant licensing body has obtained the required consent to the proposed Extended Collective Licensing Scheme.’
Information provided by CMOs to national authorities

In order to better understand how, in practice, national authorities can assess and establish the representativeness of CMOs, it is important to look at the type of information that CMOs for this purpose provide to the national authorities.152

Table 2.17 presents types of information provided to national competent authorities (NCAs) according to survey responses of 11 CMOs granting collective licences from five or six Member States. At least five of these Member States are EU Member States. One CMO did not disclose the Member State of its establishment.

152 For assessing representativeness, it could also be useful to look at information about the number of rightholders represented by CMOs and the number of representation agreements concluded with foreign CMOs. This information alone, however, is usually insufficient, especially because it is often not known what the total population of rightholders in a particular domain is. Nevertheless, some statistical information on these issues is provided for in Annex 22.
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

Table 2.17 Types of information provided to NCAs by CMOs in selected EEA Member States

<table>
<thead>
<tr>
<th>Type of information</th>
<th>CMO1</th>
<th>CMO2</th>
<th>CMO3</th>
<th>CMO4</th>
<th>CMO5</th>
<th>CMO6</th>
<th>CMO7</th>
<th>CMO8</th>
<th>CMO9</th>
<th>CMO10</th>
<th>CMO11</th>
<th>Total no. of CMOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number information types per CMO</td>
<td>9</td>
<td>5</td>
<td>2</td>
<td>18</td>
<td>12</td>
<td>10</td>
<td>11</td>
<td>3</td>
<td>12</td>
<td>19</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Total number of rightholders members</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Total number of representation agreements with foreign rightholders organisations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Rules on distribution of collected amounts among different groups of rightholders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Number of rightholders members in the domain concerned (having specific type of rights, etc.) by the authorisation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Total collected amounts for rightholders members</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Efficiency of your organisation at managing rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Representation of different groups of rightholders in the management bodies of your organisations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Equal treatment of all rightholders concerned by collective licences</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Number of representation agreements with foreign rightholders organisations in the domain(s) concerned by the authorisation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Total distributed amounts to rightholders members</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Amounts collected and distributed to rightholders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Overall past record of operations (financial balance, stability of operations, etc.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Professional qualifications of managers of your organisations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Collected amounts for rightholders members in the domain(s) concerned by the authorisation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Distributed amounts to rightholders members in the domain(s) concerned by the authorisation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Total number of works in the repertoire</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Number of works in the repertoire in the domain concerned by the authorisation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Total non-distributable amounts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Non-distributable amounts in the domain(s) concerned by the authorisation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Resources (financial, organisational or human) that your organisation puts or proposes to put for identifying and locating rightholders non-members</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Resources (financial, organisational or human) that your organisation puts or proposes to put for defending interests of rightholders non-members</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Number of conflicts with rightholders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>
Responding CMOs were offered a possibility to supplement their answers with additional information. Below are responses from four CMOs, and CMOs 1, 2 and 3 are established in the same Member State.

**CMO 1:** ‘As a part of our obligations under our general authorisation as a representative of rightholders of the public performance of musical works, we have to present our Articles of Association for eventual remarks, our Annual Transparency Report as per the CRM Directive and we have to account for the percentage of direct representation of the amounts distributed.’

**CMO2:** ‘Documentation for agreed boundaries towards other CMO’s operating in neighbouring domains.’

**CMO3:** ‘We work closely with the Ministry of Culture. They know us, our balance efficiency etc. etc. For that reason, we don’t need to send them a lot of information each time we apply. What they want to know is how the agreements are made, is direct licensing possible, is there an opt-out clause in the agreement etc.’

**CMO9:** ‘Your inquiry does not take into account the variations between different licensing schemes, argumentation differs from area to another in some areas there is full reporting about each and every work, in another statistical surveys define the remuneration and are basis for distribution. The evaluation methodologies regarding representativity cannot be the same.’

CMOs responding from the same Member State grant collective licences with an extended effect in different domains (categories of rights, works, uses and/or rightholders).

The three most commonly provided types of information are:

- total number of rightholders members;
- total number of representation agreements with foreign rightholders organisations; and
- rules on distribution of collected amounts among different groups of rightholders.

The information provided by CMOs to national authorities is an important part of the information on the basis of which they decide on granting an authorisation to the CMOs for granting collective licences with an extended effect. As explained by the interviewed national authorities, other factors also play an important role, most notably, absence of significant conflicts with rightholders and overall reputation as well as the number of applicants for an authorisation.

**Legal monopoly**

In certain of the studied Member States, there is one single CMO designated by law or by national competent authorities to operate in specific domains where CLEE mechanisms or mandatory collective management are used. This seems to create a situation of legal monopoly. In such Member States, CMOs are granted an authorisation to operate in specific domains on the basis of the same criteria as described in the above subsection on

---

153 On the non-interference of national legal monopoly rules with multi-territorial licensing of online rights in musical works under Title III of the CRM Directive, see Section 1.a.h.
representativeness in Section 2.d.a. The information reported demonstrates that this situation of legal monopoly does not necessarily mean that there is only one CMO in the Member State or even that a single CMO is operating in a domain. The definition of the relevant “domain” is important for understanding the scope of the monopoly. For example, domains could be defined through a type of rights, a type of protected subject-matter, a type of rightholders, and/or a type of use. Several CMOs could therefore operate within the same domain defined as a type of rights (e.g., cable retransmission or private copying), for different types of rightholders.

This section looks only into this specific situation of legal monopoly in the domains in which CLEE and mandatory collective management are applied.

All nine CMOs responding to the survey question about legal monopoly affirmed that they are and have always been the only rightholders organisations authorised by the competent authority to exercise rights of rightholders non-member in all or some domains of their operations. Three of these CMOs provided the following precisions:

- two CMOs that operate in multiple domains indicated that in some of the domains, they do not enjoy legal monopoly status. Both organisations indicated cable retransmission as such domain;
- one CMO indicated that an independent management entity was managing some rights in one of the domains of the CMO’s operations.

These nine CMOs are established in five Member States (Czech Republic, Denmark, Finland, Germany and Hungary).

Received information permitted to identify two general ways that would lead to a situation of legal monopoly. The first one is when a particular CMO is designated by a legislative act, as is the case in Italy (see below). The second one is when there is a legislative rule of a general nature stating that only one organisation could operate, be designated or authorised by a competent authority, for the purpose of managing rights under CLEE or mandatory collective management (see below examples of such situations in Austria, Croatia, Czech Republic, Denmark, Latvia and Slovenia). The general rationale for limiting the number of CMOs authorised to operate in a domain is to enhance legal certainty and stability of the collective licensing mechanisms. Under the legal monopoly, there is only one organisation entitled to grant licences and/or collect remuneration. Such situation is commonly created in domains where simultaneous operation of several CMOs is believed to be detrimental to the interests of rightholders, users and/or the general public.

It is also possible that, where the law permits operation of more than one CMO, only one CMO is authorised by a national authority. Such situation could occur for various reasons, ranging between regulatory practice and lack of interested eligible organisations. Examples of such situations could be found e.g. in Finland and France (see the descriptions below).

Below is a non-exhaustive illustration of this type of situations in the domains providing for CLEE and mandatory collective management in some of the studied Member States154. Certain Member States have a horizontal provision while others have established rules in specific areas, where CLEE or mandatory collective management are used. Legal monopoly rules can be exercised for managing exclusive rights, remuneration rights and/or

---

154 For more on the criteria on the basis of which a national authority is empowered to authorise a single CMO, see subsection on representativeness in Section 2.d.a.
compensation due under certain exceptions. On the nature of the rights concerned (exclusive rights / rights to remuneration), see Annexes 1-21.

Austria

According to § 7 of the Collective Management Act, all CMOs in Austria have a legal monopoly within their specific area of competence. Several CMOs could operate within the same domain provided that each of them manages rights to a different type of rights, works, uses and/or rightholders. For example, there are three CMOs operating in the domain of broadcasting and communication to the public, and seven CMOs in the domain of cable retransmission.

Croatia

Article 157(4) of the Copyright Act states that: ‘For collective management of rights, the [Intellectual Property] Office can grant authorisation to only one collective management organisation for a particular category of rights and a particular category of rightholders’ (emphasis added).

Czech Republic

Under the Czech law, as a general rule, rights of a certain type of protected subject-matter can be exercised only by one CMO (Section 96a para. 2 let. c of the Copyright Act, discussed by CJEU Judgment in OSA, C-351/12, ECLI:EU:C:2014:110, paras. 72, 84 and 86)). CMOs operate under authorisation granted by the Ministry of Culture. The interviewed national authority reported that these rules are in place since 2000.

Denmark

According to the preparatory works of the Copyright Act and as occurs in practice, only one CMO per domain can be approved by the Ministry for Culture to enter into extended collective licensing agreements.

Finland

In Finland, more than one CMO per domain can be approved by the Ministry of Culture and Education, with the exception of the following two domains where CLEE is used:

With regard to the collective exercise of resale rights, Section 26 j, subsection 1, of the Copyright Act provides that:

155 On a related issue of a procedural presumption of representation, see Annex 22.
‘(1) The resale remuneration shall be collected and distributed by an organisation representing the authors of the works sold, approved for this function by the Ministry of Education for a fixed period, for a maximum of five years. Only one organisation at a time can be approved for the function. The organisation to be approved must have the financial and operational prerequisites and capacity to manage the affairs in accordance with the approval decision. The organisation shall annually submit an account to the Ministry of Education of the actions it has carried out pursuant to the approval decision.’ (emphasis added).

With regard to the remuneration to performers and phonogram producers for broadcasting and communication to the public of commercial phonograms and music recordings containing images, Section 47 a, subsections 1-3, of the Copyright Act provides that:

‘(1) The remuneration for the use of a sound recording under Section 47(1)(1 and 2) shall be paid through an organisation which has been approved by the Ministry of Education and which represents numerous performing artists and sound recording producers whose performances recorded on a device and whose devices are used in Finland. (2) The remuneration for retransmission under Section 47(1)(3) shall be paid through the organisation referred to in Section 26(1). (3) The remuneration for the use of a music recording containing images under Section 47(3) shall be paid through an organisation which has been approved by the Ministry of Education and which represents numerous performing artists whose performances recorded on a device are used in Finland.’ (emphasis added)

The interviewed national authority explained that in “very few” instances it accepted that more than one CMO manages rights for the same type of works and rightholders for the purpose of granting collective licences with an extended effect. In such instances the CMOs were complementary and represented different rightholders and rights to the same repertoire.

**France**

According to the law, the Minister of Culture may approve more than one CMO to manage the rights in specific areas. Most recently, it approved only one CMO in certain areas where CLEE or mandatory collective management mechanisms are used (public lending, out-of-commerce works, automatic image referencing, annual supplementary remuneration, private copying).

For the equitable remuneration for communication to the public of commercial phonogram, the Intellectual Property Code does not explicitly provide for a requirement to approve a competent CMO(s). The Minister seems to only approve the CMO to which users need to submit their reports of use which are necessary for the distribution of collected amounts (in accordance with the decision of a tariff-setting commission established under Article L214-

---

156 For the collection of the annual supplementary remuneration for performers, the Ministry of Culture has approved only one CMO, which is an umbrella organisation of two CMOs representing performers.

157 COPIE FRANCE is the only CMO approved by the Minister of Culture. Prior to 2011, private copying compensation was collected by COPIE FRANCE and SORECOP, each operating in a distinct domain, audiovisual and audio, respectively. In 2011, the two CMOs merged into COPIE FRANCE.
4 of the Intellectual Property Code). The Paris Court of Appeal (CA Paris, 6 avril 2018, n° 17/01312) indicated that a single CMO, SPRE, was approved by the Minister of Culture.

For the exact legal provisions, see Annexes 1-21.

**Italy**

SIAE is directly authorised by the Copyright and Related Rights Act as the only competent CMO to exercise rights of rightholders non-members in the following domains covered by CLEE or mandatory collective management (for the exact legal provisions, see Annexes 1-21):

- cable retransmission;
- public performance of works or subject matter, if it occurs in places of entertainment receiving public;
- private copying;
- reprography;
- resale right;
- unwaivable right to a remuneration for rental of authors who have assigned their rights to a producer of phonograms or audiovisual works;
- equitable remuneration due in case of public performance of protected works in social care institutions or other charity associations;
- equitable remuneration for internal reproduction of radio and television broadcasting programs in prisons and public hospitals;
- rights of Italian citizens or residents who do not receive any proceeds from the use of their rights abroad for over a year.

**Latvia**

According to Article 3(3) of the Collective Management Act, specific types of rights that pursuant to the law shall be managed only on a collective basis can be managed simultaneously by only one CMO created by each group of rightholders. This applies to: public performance rights in certain specific situations; lease, rental and public lending rights; retransmission rights; resale right; reproduction for personal use; and use of phonograms published for commercial purposes.

**Slovenia**

As a general rule, in Slovenia, only one CMO at a time can manage certain rights for one type of works (Article 14/3 of the Collective Management Act).

---

158 On a related issue of a procedural presumption of representation, see Annex 22.
Achieving representativeness with multiple CMOs in one domain

In some Member States, legislation requires CMOs to cooperate for the purpose of collective licensing for achieving a higher level of representativeness by CMOs and/or simplifying licensing and payment for users. Such legislative measures include:

- requirements to establish joint CMO or subsidiary of several CMOs (i.e., a so-called “umbrella CMO”, regrouping a number of CMOs and other rightholders associations into one legal entity);
- requirements to establish so-called “one-stop shops” by CMOs (i.e., organisational arrangements between multiple CMOs, which do not necessarily result in the creation of a new legal entity);
- requirements to jointly exercise rights by CMOs (e.g., a single agreement which users conclude with all CMOs concerned and to which each of the CMOs is a party).

The below examples of such national provisions are not intended to be exhaustive but to illustrate different national approaches.

Belgium

Authorisation of an “umbrella CMO”

In Belgium, the legislator has entrusted mandatory collective management of rights to remuneration to authorised “umbrella CMOs” in the following domains (for exact legal provisions, see Annexes 1-21):

- the resale right;
- remuneration for private copying;
- remuneration for reprography;
- remuneration for reproduction and communication of works in education and scientific research;
- remuneration in the context of public lending;
- legal remuneration of publishers.

Two umbrella CMOs in Belgium (Reprobel and Auvibel) collect the remunerations due and subsequently distribute them to member-CMOs, which ensure the payment of remuneration to the final beneficiaries (authors, publishers and other rightholders) affiliated with them.

Exercise of rights through a “unique platform”

There are three different “unique platforms” in Belgium. A unique platform does not take a form of a CMO, but a form of cooperation between CMOs materialised through a single website. There is one such platform in each of the following domains:

- resale rights;
- equitable remuneration for broadcasting and communication to the public of phonograms; and
- cable retransmission, including direct injection.

In Belgium, according to Article XI.177 of the Economic Law Code, the resale right cannot be exercised by the authors themselves. This can occur only through a “unique platform” to
be established by CMOs managing the resale right, also on behalf of individual foreign rightholders who cannot collect their resale rights directly on an individual basis from a retailer. To this end, SABAM (Belgian Association of Authors, Composers and Publishers) and SOFAM (Multimedia society of the authors of the visual arts) have opened a joint account with a financial institution to which the resale right is deposited (Article 4 of the Royal Decree 2015).

Likewise, since 1 January 2020, three Belgian CMOs (PlayRight, SABAM and SIMIM) have joined forces by setting up the platform Unisono, where commercial enterprises, restaurants, bars, and event organisers can obtain copyright licences and pay the equitable remuneration for broadcasting and communication to the public of phonograms.

Article XI.225(§ 5) of the Economic Law Code equally requires all parties involved in cable retransmission and public communication by direct injection to set up a unique platform, which will be responsible for collecting these rights. The conditions with which this platform must comply, and the date on which it will come into force will be set by a Royal Decree, but to date, this has not yet been done. According to Article XI.228/1 of the Economic Law Code, the unique platform that will not only group all CMOs representing exclusive or remuneration rights of authors and/or performers, but also the broadcasting organisations that exercise cable retransmission rights or direct injection rights in respect of their own broadcasts. In this way, a single interlocutor will be established to negotiate all relevant rights with cable companies, which should facilitate the establishment of cable agreements in the future.

*Croatia*

The interviewed competent authority reported that CMOs representing rights in different domains should reach an agreement among themselves to manage the rights for private copying remuneration jointly.

*Denmark*

The Minister for Culture in Denmark may decide that an approved CMO in certain fields shall be a joint organisation comprising several CMOs (Section 50 of the Copyright Act).

*Finland*

According to Article 26(2) of the Copyright Act, ‘When several organisations are approved to grant licence for a given use of works, the terms of the approval decisions shall ensure, where needed, that the licences are granted simultaneously and on compatible terms.’

*Germany*

Section 49(2) of the Collective Management Act (on the presumption of legal standing for statutory remuneration rights) provides that: ‘Where more than one collective management organisation is entitled to assert the right, the presumption shall apply only if the right is asserted jointly by all entitled collective management organisations.’ In the domain of cable
retransmission, Section 50(1) of the Collective Management Act provides that ‘Where several collecting societies come into consideration, they shall be deemed to be jointly authorised’. Similarly, Section 51(3) of the Collective Management Act (on out-of-commerce works) reads: ‘Where more than one collective management organisation is authorised to manage the rights pursuant to subsection (1), the presumption under subsection (1) shall apply only if the rights are managed by all the collective management organisations jointly.’

Iceland

According to Article 26.a.(4) of the Copyright Act: ‘The Minister may decide to require an organisation seeking authorisation to be the joint organisation of two or more associations meeting the conditions of the first and second paragraphs.’ Article 26b of Copyright Act reads: ‘Claims by organisations authorised under Article 26a(4) for remuneration against a user for the use of works as referred to in Article 23a [cable retransmission of broadcasts], have to be made simultaneously and in writing.’ IHM is an umbrella CMO with several CMOs and rightholders’ associations as its members. IHM deals with the administration, collection and distribution of amounts due to rightholders for private copying (Article 11 of the Copyright Act); cable retransmissions of broadcasts (Article 23.a of the Copyright Act); non-linear making available of broadcasts by broadcasting stations; the use of archived broadcasts by broadcasting stations (Article 23. B of the Copyright Act); and other types of uses under other specific agreements, with which IHM is entrusted – directly or indirectly – by member-CMOs or member-associations.

Italy

Article 180bis(1) of the Copyright and Related Rights Act reads:

‘The exclusive right to authorise the cable retransmission is exercised by the holders of copyright and related rights holders exclusively through the Italian Society of Authors and Editors [SIAE]. For holders of neighbouring rights, the Italian Society of Authors and Editors acts on the basis of appropriate agreements to be concluded with the New Institute for the Protection of Performing Artists Rights (NUOVO IMAIE) for the rights of performing artists and eventually with other collecting societies specifically set up to manage, which their sole or main activity, other related rights.’

Romania

Article 168 of the Copyright and Related Rights Act provides for CLEE with regard to simultaneous transmission via satellite. It states that, in the case where there are several CMOs in the given domain, the beneficiary CMOs will conclude an agreement nominating one of them as the collecting CMO, to be appointed by a decision of the General Director of the Romanian Copyright Office. If the beneficiary CMOs fail to submit such agreement to the Romanian Copyright Office within a short time frame, the CMO that will act as collecting CMO shall be authorised by the Romanian Copyright Office.

Likewise, with respect to the collection of remuneration for private copying, Article 115 of the Copyright and Related Rights Act provides that a single collecting CMO must be created for works reproduced on sound or audiovisual carriers and another single collecting CMO for works reproduced on paper. The two collecting CMOs are nominated by obtaining the vote of the majority of the beneficiary CMOs, upon which the Romanian Copyright Office
will officially appoint the two collecting CMOs by a decision of the General Director. UPFR (https://upfr.ro/) acts as the sole collector for audio and audiovisual works, and OPERA SCRISĂ.RO (https://www.operascrisa.ro/) as the sole collector for printed works.

Spain

All Spanish CMOs are obliged to create an online one-stop-shop ("ventanilla única") (Article 157.1e, Disp. Ad. 1a Act 21/2014) to aggregate licences that apply to the same activities. This is the case, most notably, for the compensation for private copying. The one-stop-shop must display all information regarding the applicable tariffs (for each CMO), so that the user can calculate the fees to be paid and also make the payment online. The one-stop shop must be structured as a "private entity", independent from the CMOs, and be financed, managed, and maintained by all of them. All CMOs are obliged to grant their services through the one-stop shop, but the applicable fees are set and managed independently by each CMO.

So far, a "ventanilla única" exists only to collect the compensation for private copying, which affects eight CMOs established in the Spanish territory that have been authorised by the Ministry of Culture to administer this remuneration right through mandatory collective management.159 The CMOs are subject to strict conditions regarding the management of this right, as set by Real Decreto 1398/2018.160 Through the "ventanilla única", CMOs must jointly manage the compensation, address any exemptions and distribute the collected compensation among CMOs (Article 25(10) of the Intellectual Property Law). After five years, undistributed amounts will be destined to assistance and teaching activities for the benefit of member-CMOs, foster lawful digital uses, fund the "ventanilla única", or be shared proportionally with identified owners (Article 177 of the Intellectual Property Law). Other than for funding the "ventanilla única", at least 15% of the unclaimed mounts should be devoted to each of these goals.

CLEE by organisations other than national CMOs

According to the information received, in the vast majority of studied Member States and domains, collective licences with an extended effect are granted by national CMOs. These organisations are commonly also the only ones that could exercise rights subject to mandatory collective management. The following subsections provide information on uncommon cases, where organisations other than national CMOs are engaged in CLEE. This is relevant when it comes to determining how the representativeness of such organisations can be established, which is something that has not yet attracted much deliberation or consideration in the Member States where such uncommon cases (may) apply.

159 See: http://ventanillaunica.digital/.

Licensing by foreign CMOs

In two of the smallest among the studied Member States, Liechtenstein and Malta, foreign CMOs provide collective management services in the domains with mandatory collective management with an extended effect. In Liechtenstein, Swiss CMOs were approved by the government of the principality: ProLitteris (literature and art), SUISA (musical works), SUISSIMAGE (rights to films), SWISSPERFORM (neighbouring rights) and SSA (stage and audiovisual works’ authors). In Malta, the publicly available tariffs approved by the Copyright Board for cable retransmission specifically refer to PRS, UK-based CMO with an agency in Malta, which is entitled to collect royalties for cable retransmission of musical works.

An important factor for the authorisation of foreign CMOs in these specific cases was the absence of national CMOs managing respective rights and the historic operation of the same foreign CMOs in other domains where rights are exercised collectively without an extended effect.

In all other studied Member States, only domestic CMOs exercise rights subject to mandatory collective management or CLEE. The vast majority of the studied laws do not refer to specific national organisations and only refer to general criteria that a competent CMO needs to fulfil. Some of such criteria require representativeness with regard to national rightholders (see subsection on representativeness in Section 2.d.a). It is open to interpretation whether foreign CMOs could operate and/or be authorised by national authorities to operate under mandatory collective management and CLEE, where such authorisation is necessary.

Interviewed competent authorities of Croatia, Czech Republic, Finland, Hungary, Germany and Sweden have confirmed that their national laws permit EU and/or EEA-based CMOs to operate in the domains with CLEE, provided that they satisfy the general requirements. Before Croatia joined the EU in 2013, only Croatian CMOs could apply for authorisation. The Czech authority also reported that regulatory restrictions for non-national CMOs that had existed in the national law for some time were removed.

National authorities of Croatia, Czech Republic, Finland, Hungary and Germany point out that they have not received a single application from a non-domestic CMO wishing to obtain an authorisation.

Licensing by organisations other than CMOs

In general, CLEE and mandatory collective management is carried out by CMOs in the majority of the studied Member States.

In some cases, these forms of collective licensing are carried out by CMOs’ subsidiaries or other forms of contractual cooperation under national law. For example, the national authority of Germany reported that rights to remuneration are “often” managed by CMOs’ subsidiaries. German CMOs have established common structures for the collection of remuneration due for rental (Zentralstelle für Videovermietung),161 lending (Zentralstelle

---

161 ZVV (whose partners are GEMA, VG Wort, VG Bild-Kunst, GÜFA, GWFF, GVF and GVL) is run by GEMA, [www.gema.de](http://www.gema.de) (no separate website for ZVV).
für Bibliothekentantieme) and private copying (Zentralstelle für private Überspielungsrechte).

In Belgium, the law requires that the following rights are exercised through a “unique platform” (see subsection on achieving representativeness in Section 2.d.a), in each of the domains:

- resale rights,
- rights of performers and phonogram producers to an equitable remuneration for broadcasting and communication to the public of their phonograms
- cable retransmission of broadcasts and direct injections.

A unique platform does not take a form of a CMO, but a form of cooperation between CMOs materialised through a single website. Recital 9 of the Royal Decree of 11 June 2015 (on resale rights) states that the acts of the unique platform are imputable to the CMOs that create and manage the unique platform. Therefore, the collection of the resale rights by the unique platform should be assimilated to the collection by the CMOs that manage the unique platform with regard to the distribution period determined by law. In essence, it seems that although the law does not refer to CMOs as the necessary managers of rights, the rights are effectively managed by CMOs.

In some Member States, where the law does not refer to “collective management organisations” as a specific type of organisation (but merely lists criteria that organisations representing rightholders must fulfil (CMOs as well as non-CMOs)), it could be that other kinds of organisations might be eligible. In the case of Sweden, where collective licences with an extended effect could be concluded by both CMOs and non-CMOs, Swedish legislation does not require representative organisations to carry out the management of rights as their sole or primary purpose. Some of such organisations have as their main purpose labour union activities. The interviewed national authority referred to the union of journalists negotiating tariffs for freelance journalists as an example of an organisation other than CMO granting collective licences with an extended effect. According to the information received, some of these organisations usually do not fulfil the requirements of being CMOs under Article 3(a) of the CRM Directive 2014/26 as they do not manage rights as their sole or main purpose. Labour unions try to act in the best interests of the majority of their rightholder members as well as non-members, as they do in the course of collective labour negotiations in a branch of activities. All organisations responding to the survey, including five organisations from Sweden, identified themselves as CMOs in the sense of Article 3(a) of the CRM Directive.

162 ZBT (whose partners are VG Wort, VG Bild-Kunst, GEMA, GVL, VGF, GWFF and VFF) is run by VG Wort, www.vgwort.de.

163 ZPÜ (whose partners are GEMA, GÜFA, GVL, GWFF, TWF, VFF, VGF, VG Bild-Kunst and VG Wort) is registered at DPMA as “Verwertungseinsrichtung”, www.zpue.de.

2.d.b Practical application of safeguards

This section discusses the practical application in the studied Member States of relevant safeguards applied to non-members whose rights are managed under mechanisms of CLEE. The safeguards that are available in different studied Member States are equal treatment of rightholders members and non-members, including the right to claim individual remuneration, the right to opt-out and publicity measures.

Equal treatment of rightholders members and non-members

Legislation of the vast majority of studied Member States contains explicit obligations for CMOs to treat equally all rightholders whose rights they manage, members and non-members. Other than provisions on the governance of CMOs, which pertain to the transposition of the CRM Directive, the laws of some of the studied Member States specifically require equal treatment of rightholders members and non-members from CMOs engaging in CLEE or mandatory collective management. This includes, e.g., Croatia (Article 159b of the Copyright Act), Hungary (Section 17 of the Copyright Act), Iceland (Article 26b of the Copyright Act), Norway (Section 64 of the Copyright Act), Slovakia (Section 79 of the Copyright Act), and Sweden (Article 42a, second paragraph, of the Copyright Act).

Legislation of other Member States contains separate equal treatment requirements with regard to CLEE and/or mandatory collective management only in specific domains, such as cable retransmission rights (e.g., in Estonia, Italy, Latvia, Lithuania, Malta and Portugal), simultaneous transmission via satellite (e.g., in Estonia) and rights to out-of-commerce works (e.g., in Germany). The common reference in different Member States to the equal treatment obligation with regard to cable retransmission rights is arguably a consequence of the transposition of Article 9(2) of the Satellite and Cable Directive.

According to the views expressed by national experts from Finland and Norway, rightholders non-members are sometimes treated more favourably in these Member States, since they are provided with a right to claim individual remuneration or have a stronger possibility to claim such remuneration. This interpretation was supported by the interview with the Finnish competent authorities (see subsection on the right to claim individual remuneration in Section 2.d.b).

Other than a few exceptional cases where an extended effect is limited to national rightholders, we have not received any information about different treatment of rightholders nationals and nonnationals (see subsection on limitations to the scope of an extended effect in Section 2.c.b).

Altogether, 13 out of 16 CMOs responding to the survey question about equal treatment of rightholders members and non-members affirmed to treat both categories of rightholders equally, excluding governance and other rights provided only to members in line with the CRM Directive. One of these CMOs provided the following clarification of its answer: ‘Same conditions concerning remuneration and handling to everybody with the exception that if a collective distribution method is applied, non-mandated rightowners have both the right for collective benefits and right for individual remuneration.’

165 Some uncertainty was reported as to whether rightholders non-members have the same rights and obligations as rightholders members.

166 For references to the respective legislative provisions, see Annexes 1-21.
Three CMOs from two to three Member States\textsuperscript{167} gave a negative answer to the question. One of them explained that ‘the only difference is the amount of deductions for administrative expenses’ and the other stated that ‘We treat non-members better.’

\textit{Distribution of rights revenues to rightholders non-members}

\textbf{How CMOs distribute rights revenues to rightholders non-members}

In total, 16 out of 17 CMOs from seven to eight Member States\textsuperscript{168} responding to the survey question about the distribution of rights revenues to rightholders non-members\textsuperscript{169} CMOs replied that during the period 2017-2019, they did make distributions to rightholders non-members.

The survey data presented below in Table 2.18 demonstrates the ways in which rights revenues were distributed to rightholder non-members by 15 CMOs established in seven to eight Member States.

\textsuperscript{167} One responding CMO decided not to disclose the country of its establishment. All the known countries are EU Member States.

\textsuperscript{168} One responding CMO decided not to disclose the country of its establishment. All the known countries are EU Member States.

\textsuperscript{169} The following notice was displayed to respondents: “For the purpose of the present survey, “rightholders non-members” means rightholders who have not explicitly authorised your organisation to represent them by way of assignment, licence or any other contractual arrangement (neither directly nor indirectly through a representation agreement with another organisation, CMO, etc.).”.
### Table 2.18 Means of distribution of rights revenues to rightholders non-members (2017-2019)¹⁷⁰

<table>
<thead>
<tr>
<th>No. distribution means used per CMO</th>
<th>Member State A</th>
<th>Member State B</th>
<th>Member State H</th>
<th>Total no. of distribution means used by type</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMO identified and/or located rightholders non-members (or their representatives) and contacted them for distributing rights revenues to them</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Rightholders non-members claimed (directly or through their representatives) rights revenues from CMO</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMO transferred some collected amounts to rightholders organisations abroad for distribution to foreign rightholders that are not members of any rightholders organisations (neither of the sending CMO nor of the receiving organisation)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMO made indirect distribution by transferring rights revenues to an organisation undertaking social, cultural and/or educational activities for the benefit of a category of rightholders concerned without individualising attribution of benefits for each rightholder</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How rights revenues were distributed to rightholders non-members in the period 2017-2019</th>
<th>Member State C</th>
<th>Member State D</th>
<th>Member State E</th>
<th>Member State G</th>
<th>Unknown Member State</th>
<th>Total no. of distribution means used by type</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. distribution means used per CMO</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>CMO identified and/or located rightholders non-members (or their representatives) and contacted them for distributing rights revenues to them</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rightholders non-members claimed (directly or through their representatives) rights revenues from CMO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMO transferred some collected amounts to rightholders organisations abroad for distribution to foreign rightholders that are not members of any rightholders organisations (neither of the sending CMO nor of the receiving organisation)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMO made indirect distribution by transferring rights revenues to an organisation undertaking social, cultural and/or educational activities for the benefit of a category of rightholders concerned without individualising attribution of benefits for each rightholder</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹⁷⁰ CMO8 as well as another CMO from the same country (which replied to had made distributions to rightholders non-members in the period 2017-2019 but did not choose any of the proposed means of distribution in the survey) indicated that the distribution to individual rightholders is a responsibility of societies, guilds and unions representing particular groups of rightholders. For confidentiality reasons, letters attributed to countries and numbers attributed to CMOs are not the same in different tables.
Table 2.18 shows that the identification and location of rightholders non-members by CMOs and contacting them for the purpose of distribution is the first most common way in which collected amounts were distributed to rightholders non-members in the period 2017-2019. The second most common means of distribution is individual claims to remuneration by rightholders non-members. Both these measures are further discussed below.

**Measures to identify and locate rightholders non-members**

Altogether, 11 CMOs from six Member States responded to the survey question about the main search measures that they undertook to identify and locate rightholders. Search in specialised databases, in particular international databases of CMOs with rights management information, are the most commonly used measures. The CMOs notably referred to the following databases of CMOs IDA, IPI and CIS-Net, in addition to specialised databases of cultural heritage institutions.

<table>
<thead>
<tr>
<th>Type of search measure</th>
<th>Number of CMOs relying on it</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialised databases</td>
<td>7</td>
</tr>
<tr>
<td>Publication of information on CMO’s website</td>
<td>5</td>
</tr>
<tr>
<td>Contacts with known rightholders</td>
<td>4</td>
</tr>
<tr>
<td>Contacts with other CMOs, including foreign</td>
<td>4</td>
</tr>
<tr>
<td>Internet</td>
<td>3</td>
</tr>
<tr>
<td>Usage reports from users</td>
<td>2</td>
</tr>
<tr>
<td>Other publicity measures</td>
<td>1</td>
</tr>
</tbody>
</table>

CMOs were offered to provide additional explanations of their answers. The following two developed answers are particularly insightful.

‘Identification of the rightholders who are non-members holder takes place in several steps. When there is a multitude of rightholders to a specific work and some of the rightholders are members, some are not, the non-members are usually identified in the work registration process. These identified non-members get distributions on the exact same conditions as our members. When a music work with a rightholder who is not a member of neither [responding CMO] nor any other music societies ‘gets active with’ (meaning: is identified as a rightholder on a musical works on which the rightholder’s share of allocated revenue amounts to a) total value of [≈ € 7,5] it is targeted for quality assurance, and we investigate further whether the rightholder is affiliated to another music society. This process is done by matching data in the IPI Register and in the Musical Works Index in the CIS-Net. On a regular basis, high earning un-identified rightholders are being re-attempted to be identified using IPI and CIS-Net. Lists of Unidentified Performances are sent to the other music societies for their identification of the repertoire and rightholders they represent. Non Society and Unidentified rights holders are announced on our web[site f]or a period of three years after the distribution date.’
Another responding CMO from a different Member State stated that it applies 'collective and not individual distribution. Statistical surveys show what kind of works are being used under the licences and from which Member States the rightholders to those works are. The foreign share is transferred to representative organisations abroad with which bilateral agreements are concluded. If no bilateral agreement is concluded covering a foreign nation’s rightholders the revenue is reserved until an agreement has been concluded. The national share is distributed by the member organisations. Both the national and the international distributions cover members and nonmembers.'

Duration of distribution of rights revenues to rightholders non-members
The survey addressed to CMOs inquired about differences, if any, regarding distribution of rights revenues to rightholders members and non-members as well as national and international distribution to rightholders non-members.

Duration of distribution to rightholders members and non-members
In total, 11 out of 15 CMOs replying to the question to compare the distribution time for rightholders members and non-members responded that the distribution time is the same. Four CMOs indicated longer distribution time for rightholders non-members, which they explained as follows:

- ‘for members the distribution is finalised during the next year, for non-members they have three years to make their claim’;
- ‘the process regarding identification of both the musical work and the rightholder non-member is prolonging the distribution. Once properly identified, the process time is exactly the same as for members’;
- ‘1 month longer because they need to send a claim for those royalties’;
- ‘Distribution can only be made at request, since we do not have their contact information, bank account nr. etc.’

Duration of national and international distribution to rightholders non-members
Two out of 11 CMOs replying to the survey question about duration of distribution of collected amounts for rightholders non-members in their Member State of establishment and abroad reported a difference in distributions. One of these CMOs replied that the approximate difference was one month, the other reported a 1-year difference.

Use of non-distributable amounts due to rightholders non-members
According to Article 8(5)(b) of the CRM Directive, the general assembly of members of a CMO shall decide on the general policy on the use of non-distributable amounts. At the same time, Article 13(6) of the CRM Directive explicitly states that Member States 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. In a survey sent to CMOs, the research team inquired about the share of amounts collected on behalf and for rightholders non-members for the total non-distributable amounts and about the use of such amounts.

Share of the amounts due to rightholders non-members in the total non-distributable amounts
Out of 15 CMOs responding to a question about the origin of non-distributable amounts, five CMOs from three to four Member States stated that most of these amounts are composed of the amounts collected on behalf and for rightholders non-members.
Use of non-distributable amounts due to rightholders non-members
In total, 10 CMOs indicated in their survey responses how non-distributable amounts due to rightholders non-members are used. Most of the CMOs use such amounts for additional distributions to members and/or social, cultural and/or educational purposes.

Table 2.20 Use of non-distributable amounts due to rightholders non-members

<table>
<thead>
<tr>
<th>Uses of non-distributable amounts</th>
<th>Citations from the survey responses by CMOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional distributions to members</td>
<td>‘As with amounts non-distributable for other reasons (impossible to establish proper music reporting (census), impossible to identify the musical works performed) the amounts are being used in accordance with the general policy and concrete decision of the General Assembly, which is that the amounts are distributed proportionally to the identified other rightholders who have acquired distributions from the same area, e.g. same TV channel’</td>
</tr>
<tr>
<td></td>
<td>‘Non-members are treated exactly the same way as members when calculation royalties. The only exception is that they need to send a claim for payment (or give a direct non-exclusive mandate to [the CMO] - after which they are not non-members any more). They get information that there are royalties to pay for, if they send us a claim.’</td>
</tr>
<tr>
<td></td>
<td>‘At the point of collection there will be non-members that are collected for, but at the point of distribution they are members, if they are not we don’t know who to distribute to. The intention is to have no non-distributable amounts left in the end. But if anything remain they will be redistributed to the rightholders pro-rata.’</td>
</tr>
<tr>
<td></td>
<td>‘We are following the regulation in the CRM Directive and non-distributed amounts are distributed after 3 years have passed by adding to the actual distribution. The facts of earlier distribution is kept to be able to track and follow up if we get new facts on non-identified rightholder/authors.’</td>
</tr>
<tr>
<td>Social, cultural and/or educational purposes</td>
<td>‘Social, cultural and educational purposes, which are made available on a non-</td>
</tr>
</tbody>
</table>


EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Discriminatory basis to members and non-members’</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Legal aid for all writers, support to create new kind of use of literature online.’</td>
</tr>
<tr>
<td>‘In compliance with the pertinent legislation, these amounts are partly used to cover claims during the limitation period, partly transferred to the National Cultural Fund for the cultural purposes of the rightholders.’</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Social, cultural and/or educational purposes AND Additional distributions to members</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘90 % has to be paid to the National Cultural Fund, 10 % will be added to the distributable funds.’</td>
</tr>
<tr>
<td>‘Non-distributable amounts are used as regulated in the general policy of non-distributed amounts and may be distributed to other rightholders or used for social and cultural purposes or educational purposes after three years from the end of the financial year in which the collection of the revenue occurred, and provided that the other prerequisites in the Swedish Act on Collective Management of Copyright are fulfilled.’</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reserve fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘the undistributed royalties are transferred to the reserve fund’</td>
</tr>
</tbody>
</table>

**Right to claim individual remuneration**

Many of the studied Member States provide rightholders non-members with a right to claim remuneration for cable retransmission during three years following the retransmission (e.g., Estonia, Germany). Such national provisions seem to result from the literal transposition of Article 9(2) of the Satellite and Cable Directive. It was non-exhaustively established that many other studied Member States explicitly provide rightholders non-members whose rights are exercised under mechanisms of CLEE with a right to claim remuneration.

In Croatia, CMOs are legally obliged to pay the amounts due to rightholders non-members after providing the necessary information and presenting their claims. According to Article 159 of the Copyright Act, the CMOs are required to actively create an internal policy on and undertake activities to find rightholders non-members. For example, the largest Croatian

---

171 For references to the exact national provisions, see Annex 1.
CMO has to keep the non-distributable amounts for three years and, if not collected by a rightholders, it will transfer it to a fund for cultural, social and educational purposes.

In the Czech Republic, in all domains with CLEE (Section 97e para. 4 of the Copyright Act) rightholders non-members have a possibility to claim individual remuneration. According to the interviewed national authority, CMOs are obliged to look for rightholders non-members. The national authority also pointed out that CMOs experience some issues with identifying and locating some rightholders, and that rightholders non-members are also entitled to approach CMOs and claim remuneration directly, providing the necessary information. The national authority reported that CMOs provide in their annual reports information about non-distributable amounts but do not indicate specifically which part of them related to rights revenues due to rightholders non-members.

In Hungary, according to the interviewed Hungarian authority, there is no specific rule for rightholders non-member, and CMOs they have similar obligations towards rightholders members and non-members. CMOs have to undertake the necessary measures to identify and locate rightholders non-members for a period of three year. If after three years, there is still no identified rightholder, remuneration is qualified as “non-distributable” and is transferred to a fund for cultural purposes. The authority reported that in the past, 2 out of 10 CMOs registered in Hungary were found not to be effective enough, as they did not undertake efforts to identify and locate rightholders non-members and directly transferred collected and non-distributed amounts to the cultural fund. The HIPO took the necessary measures to effectively stop the practice. The national authority reported that CMOs provide in their annual reports information about non-distributable amounts but do not indicate specifically which part of them related to rights revenues due to rightholders non-members.

In Slovakia, if a rightholder opts-out, he/she can claim remuneration individually.

The legislation of Denmark (Section 50 of the Copyright Act), Finland (Section 26.5 of the Copyright Act), Iceland (Article 26b of the Copyright Act), Norway (Section 64, second paragraph, of the Copyright Act) and Sweden (Article 42a, second paragraph, of the Copyright Act) contains similar provisions on the right of rightholders non-members to claim individual remuneration. Irrespective of the principle of equal treatment of all rightholders, rightholders non-members enjoy the right to claim individual remuneration regardless of whether extended collective licences are concluded with users or licensing organisation’s rules on remuneration provide for this right. The claim for individual remuneration shall be directed to the licensing organisation only.

According to the Finnish national authority, the Copyright Act requires CMOs to undertake efforts to identify, locate and distribute funds to rightholders non-members, and rightholders non-members have the possibility to claim individual remuneration. The Ministry of Culture supplemented the legislative requirement with its own rule, which states that the search effort should be reasonable: the costs spent on identifying rightholder should not be higher than the remuneration to the rightholder. The authority reported that individual remuneration paid to rightholders non-members is often calculated more generously than for members of CMOs, as they need to ensure that non-members are satisfied and there are no complaints about collective licensing without an extended effect. The authority explained that individual remuneration is normally determined through the board of the CMO and with the agreement of rightholders. It was also clarified that even in the cases where individual remuneration is not normally received by rightholders according to the distribution scheme adopted by the CMO (i.e. the remuneration is used for collective purposes such as distributed as scholarships, educational activities etc., which is often the case if it would be difficult or too costly to distribute the remuneration on an individual basis), rightholders non-members nevertheless always shall have a right to individual remuneration. Rightholders non-members have to prove that their works were used. It is usually possible for rightholders
non-members to also benefit from forms of collective remuneration (e.g., educational support/grants). If a use permitted under a collective licence with an extended effect already occurred, rightholders cannot prohibit it afterwards. What a rightholder can do is opting-out after receiving individual remuneration for previous use.

In Sweden (Article 42a, second paragraph, of the Copyright Act), the law requires that a rightholder non-member forwards his/her claims to individual remuneration within three years from the year in which the work was used. According to the interviewed Swedish national authority, the Copyright Act, following a general principle of non-discrimination, requires that both members and non-members should receive remuneration calculated on the same basis. The authority reported to have received no complaints from rightholders non-members in this regard. It was explained that CMOs are obliged to make notifications on their websites about collections for rightholders non-members with explanations on how they could claim them. There is no legal obligation on CMOs to distribute the amounts and actively search for rightholders non-members.

In Norway (Section 64, second paragraph, of the Copyright Act), the law requires that a rightholder non-member forwards his/her claims to individual remuneration within three years from the year in which the work was used. Rightholder non-members can claim individual remuneration provided that he/she can substantiate that his/her work has been used (Section 64, second paragraph, of the Copyright Act). As an example, it was reported that the agreement between Kopinor and the Norwegian National Library for the establishment of the digital cultural heritage service ‘Bokhylla’ (bokhylla.no), which was concluded under Section 50 of the Copyright Act, provides for individual remuneration of authors. The remuneration is calculated on the basis of a fee per page and is paid individually to authors who have a claim of NOK 800 (≈ € 73) or more per year. Other remunerations are distributed collectively. Publishers are remunerated individually to the extent practically possible.

The laws of Denmark and Norway provide for a dispute-settlement procedure if there is a disagreement on the amount of individual remuneration. In Denmark, each party is entitled to bring the dispute before the Copyright License Tribunal (Section 50 of the Copyright Act), and, in Norway, each party may demand that the amount of the remuneration be determined pursuant to rules laid down by the Ministry in a regulation (Section 64, second paragraph, of the Copyright Act).

12 CMOs (five from Sweden, three from Denmark, one from the Czech Republic, Finland, Germany and Hungary) reported that rightholders non-members are entitled to individually claim remuneration for use of their works under collective licences that they concluded. At the same time, three CMOs (two from Hungary and one from the Czech Republic) responded that rightholders non-members are not entitled to individually claim remuneration for use of their works under collective licences that they concluded.

Altogether, 12 CMOs from six Member States explained in the survey to whom claims for individual remuneration could be addressed. In a large majority of cases (10 out of 12), individual claims can be addressed only to the CMO (see Table 2.21).

Table 2.21 To whom the claims to individual remuneration can be addressed

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Addressee of the claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>Only to the CMO (licensor)</td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO2</td>
<td></td>
</tr>
</tbody>
</table>
Twelve CMOs from six Member States indicated in the survey the period during which remuneration could be claimed by rightholders non-members. In a large majority of cases (nine out of 12), the remuneration can be claimed during three years since the use concerned (see Table 2.22).

**Table 2.22 Period for claiming individual remuneration**

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>during three years since the use concerned</td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO2</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO3</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO4</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>CMO5</td>
<td></td>
</tr>
</tbody>
</table>
Table 2.23 Determination of the amount of individual remuneration

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>How the amount of individual remuneration is determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>the remuneration is determined according to the same rules as for rightholders that explicitly authorised the CMO to license their rights collectively</td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO2</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO3</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO4</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>CMO5</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>CMO6</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO7</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO8</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO9</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO10</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO11</td>
<td></td>
</tr>
</tbody>
</table>
This information empirically demonstrates that in the majority of cases rightholders non-members are not provided with a right to individualised remuneration but to claim their remuneration individually.

Five CMOs from three EU Member States provided information on the number of claims for individual remuneration satisfied during the period 2017-2019 (see Table 2.24). With one notable exception (year 2019 for CMO 4), according to the reported information, numbers of claims for individual remuneration are low. The proportion of rejected claims is either zero or very low.

Table 2.24 Satisfied and rejected claims for individual remuneration (2017-2019)

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Number of satisfied claims</th>
<th>Proportion of rejected claims</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO3</td>
<td>&lt;25</td>
<td>&lt;25</td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO4</td>
<td>~10</td>
<td>~10</td>
</tr>
<tr>
<td>Germany</td>
<td>CMO5</td>
<td>≤10</td>
<td>≤10</td>
</tr>
</tbody>
</table>

**Right to opt-out**

The right to opt-out refers to the right of rightholders non-members to exclude their works or other subject-matter from CLEE or mandatory collective management with an extended effect.

From the perspective of rightholders non-members, the right to opt-out is an important means to safeguard their interests. It enables rightholders to stop and/or prevent uses to which they oppose (e.g. because they are not satisfied with the collective licensing conditions under which the use is authorised).
The right to opt-out differs from the parallel individual exercise of rights discussed above. Such individual exercise does not permit prohibition of use, but rather gives priority to individual licensing over collective. Therefore, the present study does not refer to a right to opt-out where the licensing mechanism allows for individual exercise, but instead refers to the possibility of individual exercise of rights under the studied collective management mechanisms.

In general, an individual exercise of rights that are subject to mandatory collective management is not possible. Nevertheless, it was reported that in several Member States rightholders non-members have a right to opt-out from mandatory collective management with an extended effect (e.g., in Latvia and Poland). In theory, opt-out in a domain with mandatory collective management results in the non-use of works, because users cannot obtain a licence from the CMO for the opt-out works, while according to the law a licence to use the work can only be obtained from a CMO. In practice, there could be different practices and interpretations, especially where legislative texts are not explicit in this regard, but for the present study no empirical information about such practices (and their frequency, if any) has been received.

In some Member States, the ability to exclude rights from collective management is designed from a users’ perspective. In such Member States, users in their relations with CMOs can exclude from collective licences rights that they obtained through individual agreements or they can rebut a CMO’s presumption of representation by presenting evidence to the contrary. In such cases, where the law is silent about rightholders non-members, interpretative uncertainty exists as to whether they are legally entitled to opt-out from collective licensing on their own initiative without a need to license their rights individually. For the purpose of the present study, legislative provisions giving only users the ability to exclude rights of rightholders non-members from collective licensing are not viewed as a rightholder’s right to opt-out.

Where the present study indicates that rightholders enjoy the right to opt-out, it shall be understood that it refers to a statutory right provided by law and not to a contractual right to opt-out. The interview with a Swedish competent authority confirmed that when a collective licence with an extended effect is concluded in a domain where the law does not provide rightholders non-members with a right to opt-out, the parties to such licence may contractually agree to provide rightholders non-members with a right to opt-out. Two Swedish and one Finnish CMO stated in the survey that they provide rightholders non-members with the right to opt-out on a contractual basis (by virtue of their statues, in the text of collective licences, etc.) in the domains where the national law does not provide for this right. Reports about such practices were also received from national experts from Iceland and Norway. For instance, in Norway, Section 50 of the Copyright Act does not provide rightholders non-members with a right to opt-out, but the extended collective licensing agreement between Kopinor and the National Library of Norway for the establishment of the digital cultural heritage service ‘Bokhylla’ (bokhylla.no), which is based on this provision, provides for a possibility for individual authors to opt-out, in the sense that they can prohibit the service from using their works.

The interviewed national authority of Hungary reported that it is not possible to provide for a contractual right to opt-out in the domains where the law does not grant rightholders non-members such right. The survey responses of three Hungarian CMOs affirm that they do not contractually provide for a right to opt-out where the law does not grant such right to

172 E.g., procedural presumptions in Austria and Germany. See Annex 22 on such presumptions.
rightholders non-members. The same answer was given by one CMO from each of the following Member States: Czech Republic, Denmark, German and Sweden.

The study has identified the following issues relevant to the implementation of the right to opt-out:

- requirements to opt-out requests (e.g., the form of opt-out requests, information to be provided, to whom requests shall be addressed);
- time of opt-out (whether opt-out can be made only after the conclusion of collective licences with an extended effect or also thereafter);
- scope of opt-out (the ability of rightholders to choose which rights they want to exclude from collective licensing);
- effect of opt-out (e.g., on past and/or future collective licences).

**Requirements to opt-out requests**

The scope and method of the present exploratory study permitted to collect some evidence on national requirements to opt-out requests, in particular, information and/or documents necessary for an opt-out and the addressee of an opt-out request.

**Information and/or documents necessary for an opt-out**

Ten CMOs from five Member States provided in the survey the following brief explanations of the information and/or documents that rightholders non-members wishing to opt-out have to provide to them. Overall, according to the CMOs, the information and/or documents required for opting out is rather minimal.

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Description of information and/or documents for opt-out (citations of CMOs’ survey responses)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>‘Rightholders that are not in contractual relation with [the CMO] (non-members) provide only their name, date of birth, list of titles and rights (eventually also a specific user) they wish to exclude. Rightholders that wish to conclude an agreement on economic copyright management with [the CMO] perform the opt out by crossing out a category of rights from the very agreement. Should the rightholders wish to restrict the management of their rights any time after the agreement has been signed, this is possible by closing an amendment to the agreement.’</td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO2</td>
<td>‘A reasonable level of identification of them as a rightholder to reasonably identified works’</td>
</tr>
<tr>
<td>Member State</td>
<td>CMO</td>
<td>Description of information and/or documents for opt-out (citations of CMOs’ survey responses)</td>
</tr>
<tr>
<td>--------------</td>
<td>---------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Finland</td>
<td>CMO3</td>
<td>‘Just contact us’</td>
</tr>
<tr>
<td>CMO4</td>
<td></td>
<td>‘Specific information about the works covered by the opt-out and which agreement they wish to opt out of. It is also necessary to make sure, that the one opting-out is a rightsholder.’</td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO5</td>
<td>‘The rightholder may withdraw his authorisation by way of a statement made in a private deed with full probative value and addressed to the representative collective management organisation performing extended collective management. (Act XCIII of 2016 on collective management of copyright and related rights, Section 18)’</td>
</tr>
<tr>
<td>CMO6</td>
<td></td>
<td>‘we offer standard, non-mandatory opt-out declarations. Data of the rightholder that are suitable to identify him/her, the indication of the domain, where he/she wishes to obtain the opt-out right. It should be made in writing.’</td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO7</td>
<td>‘In reality none but we need to know that they are the correct rightholder, which has this far not been a problem or any formality. Opt outs have been done, in very few cases, when rightholder can do a better agreement.’</td>
</tr>
<tr>
<td>CMO8</td>
<td></td>
<td>‘Just information that they want to opt-out.’</td>
</tr>
<tr>
<td>CMO9</td>
<td></td>
<td>‘Information about which works the rightholder wants to exclude (if not all works) and for which licensing areas the opt-out shall apply (if not all areas).’</td>
</tr>
<tr>
<td>CMO9 and CMO10</td>
<td></td>
<td>‘This is not explicitly stated by law, but preparatory legislative documentation indicates that as much must be provided as is objectively required in order for the user to practically be able to identify each work or performance in question and to identify the rightholder claiming the opt-out in order for the user and the licensor to be able to verify the ownership if in doubt and to distinguish the individual opting out in the process of distribution of remuneration.’</td>
</tr>
</tbody>
</table>
The addressee of an opt-out request

With regard to whom opt-out requests could be addressed, three approaches were identified. Rightholders could file an opt-out request (1) with the competent CMO, (2) with any party to a collective licence with an extended effect covering their rights, (3) with an authority managing a database where works covered by an extended effect are listed (e.g., out-of-commerce works).

A total of 13 CMOs from five Member States reported on whom rightholders non-members can address requests to opt-out their rights (see Table 2.26).

Table 2.26 Addressee of an opt-out request

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Addressee of an opt-out request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>to the CMO (licensor)</td>
</tr>
<tr>
<td></td>
<td>CMO2</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>CMO3</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CMO5</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CMO7</td>
<td>to broadcaster, in the case of public service broadcasting, and in all other cases to the CMO (licensor) or to a user (licensee)</td>
</tr>
<tr>
<td></td>
<td>CMO8</td>
<td>to the CMO (licensor) or to a user (licensee)</td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO9</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CMO10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CMO11</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CMO12</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CMO13</td>
<td></td>
</tr>
</tbody>
</table>

Interviewed Finnish national authority reported that an opt-out request is “usually” communicated to the CMO concerned. However, the law does not prevent rightholders from communicating the opt-out request to the user or both parties to a collective licence with an extended effect.

‘The opt-out is usually communicated to the CMO that has been authorised to operate the ECL scheme, but there is nothing that would prevent the rightholder from communicating the opt-out to the user or to both parties. Normally the CMO would inform the users of possible opt-outs and/or publish a list of opt-outs on their web-page.’
Time of opt-out

When rightholders non-members can opt-out

Depending on the period when rightholders non-members could make use of their right to opt-out, it is possible to differentiate between ex-ante opt-out (i.e. prior to the conclusion of a collective licence with an extended effect) and ex-post opt-out (i.e. after the conclusion of the collective licence with an extended effect).

A notably difference between ex-ante and ex-post opt-out is that under the former, rightholders non-members that opted out prior to the conclusion of a licence, cannot claim any remuneration received under licensed uses.

In all the studied Member States where rightholders non-members have a right to opt-out, they are provided at least with the right of ex-post opt-out. For details, see Annexes 1-21. Legislation of the studied Member States commonly provides that the ex-poste opt-out may take effect at the end of the calendar year. Interviews with the national authorities confirmed that the rationale of such provision is to provide absolute stability to the system in terms of repertoire and its price/value to users.

Legislation of France, Germany, Poland, Slovakia and the UK provides rightholders non-members also with the right of ex-ante opt-out. In France, Germany and Poland, legislation refers to the possibility of ex-ante opt-out only with regard to collective licensing of out-of-commerce works.

The results of the present exploratory study are without prejudice to a possible interpretation of the more general language of legislation provisions of some other Member States so as to permit ex-ante opt-out.

France

In France, the mechanism of collective management of rights to out-of-commerce books provides for two kinds of opt-out: ex-ante and ex-post.

1. Opt-out during six months following the registration of the book in the out-of-commerce books database and before grant of a collective licence (ex-ante opt-out)

An author of an out-of-commerce book or a publisher having the right of reproduction in printed form, could opt-out of the mechanism within six months since the registration of the book in the database of out-of-commerce books (Article L134-4, I, of the Intellectual Property Code). Hence, they are provided with the right to opt-out prior to a grant of any licences by the CMO, which could grant them only six months after the registration of works in the database.

The publisher that opts-out during the six months since the registration of the book in the out-of-commerce books database is obliged to market the book within two years after the withdrawal. He is required to provide the CMO with the proof of marketing the book. If he fails to do so, the book is again considered to be out-of-commerce (Article L134-4, II, of the Intellectual Property Code).

2. Opt-out after six months following the registration of the book in the out-of-commerce books database (ex-post opt-out)

After the expiration of the six months since the registration of an out-of-commerce book in the database, the competent CMO is entitled to grant collective licences covering rights of
rightholders non-member to out-of-commerce books. An author of the book listed in the database could oppose the use of the book if he considers that the use of the work could be harmful for his honour or reputation. This right is exercised without compensation (Article L134-4, I, of the Intellectual Property Code).

The author and the publisher having the right to reproduction of the book in printed form can jointly withdraw the rights to authorise digital reproduction and making available of the book (Article L134-6, first paragraph, of the Intellectual Property Code). This publisher is then obliged to effectively market the book in a digital form within 18 months and to bring proof to the CMO. This withdrawal is, therefore, subject to some conditions.

The author of an out-of-commerce book could decide at any moment to withdraw his rights if he proves that he is the only holder of the rights to digital reproduction and making available to the public. This provision of Article L134-6, second paragraph, of the Intellectual Property Code, effectively makes the opt-out conditional to the proof of ownership.

The CMOs should inform all the users to whom it authorised prior to the opt-outs made after six months following the registration of the book in the out-of-commerce books database. Rightholders that withdrew their rights cannot oppose the use of the books on a non-exclusive basis for the remaining duration of the licence for the maximum period of up to five years (Article L134-6, first paragraph, of the Intellectual Property Code).

Germany
Legislation on collective licensing of rights to out-of-commerce works provides for two kinds of opt-out: ex-ante and ex-post.

A rightholder may oppose the intended management of his/her rights within six weeks of notice of the entry of his/her work in the out-of-commerce works register being published (Section 51(1)(5) of the Collective Management Act) (ex-ante opt-out).

After this period, the rightholder may at any time object to the management of his/her rights by the competent CMO. The register will then be updated with the notice of refusal (Widerspruch), and cultural heritage institutions (licensees) have then to withdraw the work from use (ex-post opt-out).

Poland
Polish legislation on collective licensing of out-of-commerce works provides for two forms of opt-out: ex-ante and ex-post (Article 3510 of the Copyright and Related Rights Act).

A rightholder may file an objection in writing against collective management of their rights within 90 days from the date of disclosure of the registration of works in the list of out-of-commerce works (ex-ante opt-out).

Furthermore, the rightholders may opt-out at any time afterwards by sending a notice to the authorised CMO (ex-post opt-out).

Slovakia
In Slovakia, rightholders non-members may opt-out both prior (ex-ante) and after (ex-post) use covered by a collective licence with an extended effect. The opt-out is not limited in time. Collective licences with an extended effect could be concluded in the following domains (Section 80 of the Copyright Act):

a) technical performance of work or communication to the public of work in business or other premises through a technical device, with the exception of broadcasting, retransmission and making the work available to the public;
b) using commercially unavailable work by making copies, making the work available to the public or public distribution of copies by transfer of title;

c) live performance of literary works;

d) broadcasting of works, including broadcasting through satellite;

e) rental or lending of copies of work;

f) making copies of work available to the public;

g) retransmission of work, with the exception of cable retransmission.

United Kingdom
In the UK, Regulation 16 of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 provides rightholders non-members with the right to:

- limit or exclude the grant of licences in relation to some or all of its works under an authorised extended collective licensing scheme;

- limit or exclude the grant of licences in relation to some or all of its works under a proposed extended collective licensing scheme before its commencement.

These possibilities could be interpreted as ex-ante and ex-post opt-outs.

14 CMOs from at least five Member States (Czech Republic, Denmark, Finland, Hungary and Sweden173) reported that rightholders non-members can exercise their right to opt-out “before and after a collective licence covering their rights is granted”. Only one of the responding CMOs used an offered opportunity to further clarify its response. A Hungarian CMOs further explained: ‘At any time, with a 6 months’ notice, but the opt-out takes effect on the first day of the calendar year, following the opt-out declaration. (statutory provision).’

This important clarification draws attention to the important of the question of when opt-out request actually takes effect.

Time necessary for an opt-out to be effective

Ten CMOs from five Member States indicated in the survey the time necessary for an opt-out to take effect. There is a significant difference between the answers of CMOs from Denmark, Finland and Sweden (speaking about days and/or weeks) on the one hand and of CMOs from the Czech Republic and Hungary (speaking about six months and/or the beginning of the next calendar year) on the other hand (see Table 2.27).

Table 2.27 Time necessary for an opt-out to be effective

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>‘An opt-out for the non-members takes effect <strong>immediately</strong> when [the CMO] receives the rightholder’s intention and relevant</td>
</tr>
</tbody>
</table>

173 One responding CMO did not identify its country of establishment. Although the surveys were sent to identified CMOs in selected countries, it could be that this CMO is established in a different country.
**Scope of opt-out**

Legislation of many studied Member States does not explicitly deal with the question of the scope of opt-out by rightholders non-members. Legislation of the following Member States was reported to refer to the scope of opt-out. In some of the following Member States, it is subject to interpretation whether the law provides for an “all or nothing” approach (i.e., if

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>CMO2</td>
<td>‘It would take days, not weeks’</td>
</tr>
<tr>
<td>Finland</td>
<td>CMO3</td>
<td>‘Depends how well defined is the above mentioned info about the works, rightsowner status. 2-3 days perhaps is the minimum.’</td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO4</td>
<td>‘not exceeding 6 months. If the articles of association of the representative collective management organisation so provide, the notice of withdrawal only takes effect on the first day of the year following the end of the financial year when it was notified. The representative collective management organisation is required to comply with the notice and may not impose any other restriction on the right to withdraw.’</td>
</tr>
<tr>
<td></td>
<td>CMO5</td>
<td>‘This is provided for in the Act on Collective Management. With a 6 months’ notice, on the first day of the calendar year, following the opt-out declaration. (Reason: observation of the licensing agreement concluded for the benefit of member- and non-member rightholders including the rightholder that exercises the opt-out right).’</td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO6</td>
<td>‘Direct effect.’</td>
</tr>
<tr>
<td></td>
<td>CMO7</td>
<td>‘2 weeks’</td>
</tr>
<tr>
<td></td>
<td>CMO8</td>
<td>‘We notify licensees as soon as we receive the opt-out information needed’</td>
</tr>
<tr>
<td></td>
<td>CMO9</td>
<td>‘Not more than days.’</td>
</tr>
<tr>
<td></td>
<td>CMO10</td>
<td>‘Estimate - a couple of days at most.’</td>
</tr>
</tbody>
</table>
rightholder non-member decides to opt-out, they could do so only with regard to all rights in a particular domain).

**Czech Republic**

Opt-out by the rightholder could target ex nunc already specific concluded cumulative agreements or pro futuro all the potential not yet concluded licensing agreements - either for one specific case or all cases (Section 97e para. 2 of the Copyright Act).

Apart from the opt-out initiated by an individual rightholder, the Copyright Act also foresees a possibility of opt-out in the case, where the rights are to be managed by an IME. Namely, pursuant to the Section 104b para. 4) of the Copyright Act, the IME has a statutory obligation to inform in writing all of the CMOs which exercise collective management of the same rights in relation to the same protected subject matter and, in the case of a copyrighted work, to the same type of work, about the rightholders and protected subject matter for which will be the management of rights exercised by the IME. This information is considered (on the basis of legal fiction) as an opt-out from CLEE otherwise done by the other CMOs by all the rightholders for which the IME manages rights. Even though the Copyright Act foresees that this opt-out is general, the doctrine considers, that there is actually no ground for denying the IME to further specify the extent of the opt-out.

2 Czech CMOs confirmed in the survey that rightholders non-members ‘can opt-out only some (not all) their rights covered by the collective licence’.

**France**

In the domain of collective management of rights to out-of-commerce books, rightholders may opt-out rights to all their books or to a specific book listed in the registry of out-of-commerce books.

**Hungary**

According to §18(2) of the Collective Management Act, the notice of withdrawal may only pertain to the entire catalogue of the specified type of works or other subject-matters. Two Hungarian CMOs confirmed in the survey that rightholders non-members ‘can opt-out only all their rights covered by the collective licence’.

**Latvia**

Rightholders may opt-out only rights for certain uses and/or territories.

**Slovakia**

According to Section 79(2) of the Copyright Act, rightholder’s opt-out could be applied “to all or any of his rights”.

**United Kingdom**

Section 116B(6) of the Copyright Designs and Patents Act, titled “Extended collective licensing”, provides rightholders with “a right to limit or exclude” licensing of their rights. Pursuant to Regulation 16 of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014, rightholders non-members can limit or exclude the grant of licences “in relation to some or all of their relevant works” under the authorised extended collective licensing scheme.

---

174 This obligation must be fulfilled within 15 days of receipt of the assigned registration number by the Ministry of Culture.
Nine CMOs from Denmark, Finland and Sweden reported through the survey that rightholders non-members “can opt-out only some (not all) their rights covered by the collective licence”. A Danish CMO further clarified its answer by stating that “Opt-out can be made for an individual work and for a specific usage/user”. A Finnish CMO provided the following developed explanation of its response:

‘The situation varies from one licensing area to another. In general, in the licenses concerning works in graphical form, opt out of individual works is permitted, according to the licenses given to the users. However, this does not mean a withdrawal of rights or class of rights. It is just a right to deny the licensing of certain work in a certain area. The mandate is valid irrespective of such denial. There exists only a handful of such denials. In the field of audiovisual works a similar arrangement is in use regarding the use of AV-works in education. It is important to realise, firstly, that not even the law guarantees an opt-out in all instances, especially regarding the use of AV-works […] and secondly, that such a right is not at all given to the rightholders of AV-works by the law in the field of education, but [the CMO] has been willing also at this instance to give better rights to rightholder through its agreements.’

**Number of opt-outs**

The study has demonstrated that statistical information on opt-outs of rightholders from CLEE is not publicly available, with the exception of Hungary and France.

In Hungary, a Member State with multiple domains where collective licences with an extended effect could be concluded, CMOs shall publish on their websites the exhaustive list of those rightholders who opted-out on. The legislative obligation explains the public availability of precise data on opt-out. In the UK, the licensing body must publish the names of rightholders who have opted out and the works which are subject to an opt-out, as well as any works excluded from the authorised extended collective licensing scheme subject to contractual agreement. However, such information is not available because no scheme has been authorised in the UK (see subsection on general clauses on CLEE in Section 2.c.a).

CMOs in Member States, other than Hungary and France, where rightholders non-members have a right to opt-out from CLEE, do not make information on opt-outs publicly available on a voluntary basis. However, in Norway, parliamentary records suggest that the number of opt-outs is generally low. During the legislative revision that led to the new Copyright Act in 2018, it was discussed whether an opt-out possibility under the new extended collective licensing clause for audiovisual productions would undermine the regime of extended collective licensing, given the fact that audiovisual productions are joint works. The Ministry remarked, on a general basis, that the opt-out possibility under the extended collective licences have not been used to any noticeable extent. At the same time, the Ministry emphasised that if the situation changes in this respect, it would consider limiting the opt-out possibility. There are no indications that, to date, the situation has changed.

Interviewed national authorities of the Czech Republic and Sweden reported that while CMOs are not obliged to make lists of opt-outs public, they must provide them on request to users requesting a licence.

**Croatia**

The interviewed national authority reported only a “few” opt-outs.

**Czech Republic**

The interviewed national authority reported only a “few” opt-outs.
France
The following statistical information is available on opt-outs from CLEE in the domain of out-of-commerce books in the period 2013-2015:

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of opt-outs</td>
<td>5760</td>
<td>544</td>
<td>53</td>
</tr>
</tbody>
</table>

Hungary
Statistics on opt-outs in different domains throughout the years (aggregate) in Hungary.

<table>
<thead>
<tr>
<th>Domain</th>
<th>CMO</th>
<th>No. of opt-outs</th>
</tr>
</thead>
<tbody>
<tr>
<td>repeated broadcasting of works</td>
<td>Artisjus</td>
<td>48</td>
</tr>
<tr>
<td>public performance of musical works</td>
<td>Artisjus</td>
<td>130</td>
</tr>
<tr>
<td>reproduction and distribution of individual copies of cinematographic works</td>
<td>Filmjus</td>
<td>7</td>
</tr>
<tr>
<td>communication to the public - visual artists and cinematographic authors</td>
<td>Filmjus (Cinematographic authors)</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>HUNGART (Graphic, applied and photographic authors)</td>
<td>109</td>
</tr>
<tr>
<td>right of exhibition</td>
<td>HUNGART</td>
<td>109</td>
</tr>
<tr>
<td>making available to the public of performances</td>
<td>EJI</td>
<td>17</td>
</tr>
<tr>
<td>right of reproduction of sound recordings for the purpose of public performance</td>
<td>MAHASZ</td>
<td>1</td>
</tr>
</tbody>
</table>

Norway
It was reported that the number of opt-outs is generally low. During the legislative revision that led to the new Copyright Act in 2018, it was discussed whether an opt-out possibility under the new extended collective licensing clause for audiovisual productions would undermine the extended collective licensing, given the fact that audiovisual productions are joint works. The Ministry remarked, on a general basis, that the opt-out possibility under the extended collective licences has not been used to any noticeable extent. At the same time, it was emphasised that if the situation changes in this respect, the Ministry would consider the need for introducing limitations to the unlimited opt-out possibility. It is not known whether the situation has changed in this respect.

13 CMOs from five Member States (Czech Republic, Denmark, Finland, Hungary and Sweden) provided some information on opt-outs in the period 2017-2019 (see Table 2.28). The reported numbers of opt-outs are very low, in comparison to the total number of
rightholders and works/subject-matter represented by these CMOs by virtue of explicit authorisations from mandates. The statistical information for the given three-year period is reinforced by CMOs’ overall descriptions of opt-outs as being “quite rare” (Danish CMO), “few” or “rare” (two Swedish CMOs) or “a handful” (Finnish CMO). Another Danish CMO reported to have “never” experienced an opt-out.

Table 2.28 Number of opt-outs (2017-2019)

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Years</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>No. of rightholders</td>
<td>No. of works / subject-matter</td>
<td>No. of rightholders</td>
<td>No. of works / subject-matter</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>CMO2</td>
<td>9</td>
<td>‘usually the whole repertoire of the author’</td>
<td>16</td>
<td>‘usually the whole repertoire of the author’</td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>CMO4</td>
<td>27 opt-outs were applicable (including those from previous years)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>CMO5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Finland</td>
<td>CMO6</td>
<td>1-5</td>
<td>5-50</td>
<td>1-5</td>
<td>5-50</td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO7</td>
<td>7</td>
<td>66</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

The research team matched the opt-out information with the membership information.
MERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

### Impact of opt-outs

Opt-outs may have an impact on CMOs’ and users’ operations. Seven CMOs from four Member States (Denmark, Finland, Hungary and Sweden) shared their experiences with the impact of opt-outs and mitigation measures, if any, via the survey. Overall, either no impact or very low impact was reported by responding CMOs (see Table 2.29). In several responses, this was explained by the low number of opt-outs (see Table 2.28).

**Table 2.291 Impact of opt-outs and mitigation measures**

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Answers to the survey request: ‘Please describe the impact, if any, of opt-outs of rights on collective licences concerned and licensees, and whether your organisation takes any mitigation measures.’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>CMO1</td>
<td>‘As opt-outs are quite rare, this is difficult to answer. We would always initiate a dialogue and seek consensus.’</td>
</tr>
<tr>
<td>Finland</td>
<td>CMO2</td>
<td>‘Opt-outs are so rare, that there is no impact.’</td>
</tr>
</tbody>
</table>
To minimise impact that opt-out may have on users’ operations, some CMOs have in place arrangements to indemnify users from claims by individual rightholders. Three Danish CMOs responded affirmatively to ‘have arrangements to indemnify licence-takers from liability claims by individual rightholders (e.g. by rightholders who have opted out)’. Two of them further explained that the situations when they have to indemnify users are very rare. According to one of these CMOs, it would have to identify a user if, for example, it would not process rightholder’s request for an opt-out in a timely manner with adverse consequences for the user. Eleven CMOs from the Czech Republic, Finland, Hungary and Sweden responded to have no such arrangements.

Two Hungarian CMOs that do not have such arrangements in place, provided the following explanations.

**CMO1:** ‘This is not necessary, as there is no case where the user should be indemnified, because the withdrawal deadlines address the issue of the exercise of authorization rights’.

**CMO2:** ‘[The CMO] offers a limited title warranty that refers to the rightholders’ opt out right.’

Two Swedish CMOs complimented their answers as follows:

**CMO3:** ‘It is not needed, they are protected by law until the opt out occur and have to take action to stop the use as soon it is possible (technical).’

**CMO4:** ‘Rightholders who have not opted-out may, according to the Swedish Copyright Act, only direct claims for remuneration towards the licensing organisation. The licensing organisation is not responsible if a work not covered by a licence is used by the licensee. The licence agreements are concluded after free negotiations and we have never met a request for such arrangements from a licensee.’
Two Danish CMOs that provide for the mentioned indemnification arrangements further elaborated their answers as follows:

**CMO5:** ‘When an agreement has ECL\[extended collective licence\]-effect it has the effect that the licence-taker is indemnified, as the rightholder non-member has to address a claim towards the organisation [the CMO], confer Danish Copyright Act Section 51(2). As explained, an opt-out takes almost immediate effect and therefore a liability for post-opt-out use would only be relevant in cases where the opt-out has been noticed before [the CMO] and not been properly communicated to the user in question. But this has never happened in practice’.

**CMO6:** ‘It depends on the circumstances if [the CMO] would be willing to indemnify. The terms of the licenses granted under ECL [extended collective licence] always obligates the user to respect opt-outs, but [the CMO] might decide to indemnify a user who made a mistake in good faith.’

**Reasons to opt-out**

Six CMOs from three Member States (Czech Republic, Hungary and Sweden) were able to share the most common reasons given by rightholders non-members for opting-out their rights (see Table 2.30).

**Table 2.302 The most common reasons given by rightholders non-members to for opting-out**

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>1st most common reason</th>
<th>2nd most common reason</th>
<th>3rd most common reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>‘A push from a [user] - A [user] does not want to conclude a license agreement with [the CMO] and finds a composer who is willing to opt out a corresponding category of rights’</td>
<td>‘Promises from Independent Management Entities’</td>
<td>‘A rightholder terminates the agreement with [the CMO] – he not only ceases the optional collective management but also shows an interest to opt out from the extended collective management.’</td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO2</td>
<td>‘As far as we know the pressure from the users.’</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO3</td>
<td>‘Wish to show their work for free’</td>
<td>‘Can do a better agreement’</td>
<td>‘Misunderstanding of the effect of our agreement’</td>
</tr>
</tbody>
</table>
### Study on Emerging Issues on Collective Licensing Practices in the Digital Environment

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>Three most common reasons to opt-out</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1st most common reason</td>
</tr>
<tr>
<td>CMO4</td>
<td></td>
<td>‘They want to exercise their own right for ex time-shift’</td>
</tr>
<tr>
<td>CMO5</td>
<td></td>
<td>‘underlying contractual obligations’</td>
</tr>
<tr>
<td>CMO6</td>
<td></td>
<td>‘An interest in separate licensing, due to different business model (music delivery services such as Epidemic Sound with subscription models).’</td>
</tr>
</tbody>
</table>

### Publicity Measures

According to the information received, all CMOs make some relevant information available on their websites and/in corporate materials. For the purpose of the present study, the notion of publicity measures is broader than mere compliance with general transparency obligations (such as, publication of statutory documents and annual transparency reports) and publication of repertoire and lists of works.

National experts and interviewed national authorities reported various levels of rightholders’ awareness about the functioning of CLEE in their Member States. The present study differentiates between legal obligations for CMOs to undertake publicly measures and perceived awareness of rightholders by voluntary publicity measures taken by CMOs.

#### Publicity Measures Prescribed by Law

Of all the studied Member States, only the legislation of France and the UK contains provisions on publicity measures for CLEE aimed at safeguarding interests of rightholders non-members.

**France**

In France, legal requirements to publicity measures are limited to CLEE of rights to out-of-commerce works. The overall organisation, duration and means of publicity measures are determined by Article R134-11 of the Intellectual Property Code. An information campaign is carried out on the initiative of the Ministry of Culture in cooperation with CMOs and

---

176 E.g., requirements implementing Articles 21 “Disclosure of information to the public” and 22 “Annual transparency report” of the CRM Directive.
professional organisations in the domain of book publishing. The information campaign includes:

- presentation of the mechanism for the exercise of rights to out-of-commerce books on websites;
- advertising emailing;
- publication of adds in national press;
- banners in news websites.

The information campaign commences on 21 March of every year (the date on which new books were supposed to be added to the out-of-commerce works database) and lasts for six months.177

United Kingdom

In the UK, Regulation 4(4)(e) of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014, on authorisation to operate an extended collective licensing scheme, refers to the need for the Secretary of State to be satisfied with the “arrangements for publicising the scheme” as a condition for granting the authorisation. The regulation thus leaves it to the licensing organisation to develop and propose publicity measures for examination by the Secretary of State, without indicating any minimum requirements to such measures.

Publicity measures practiced by CMOs

12 out of 16 CMOs responding to the survey question ‘Does your organisation undertake general publicity measures to inform rightholders non-members about collective exercise of their rights by your organisation?’ provided an affirmative answer and four a negative answer. The 12 CMOs that undertake publicity measures are from six Member States; the four CMOs that do not are from two to three Member States.

Practiced general publicity measures

Twelve CMOs from six Member States (three from Denmark, Hungary and Hungary, and one from the Czech Republic, Finland and Germany) responded to the survey question about general publicity measures that they undertook in the period 2017-2019 (see Table 2.31). The most commonly used publicity measure is to make information available on the CMOs’ websites and in the corporate documents which they are obliged to disclose to the public under the CRM Directive.178

---

177 No new works were added to the database since 2016 due to the CJEU Judgment in Soulier and Doke, C-301/15, EU:C:2016:878, which established partial incompatibility of the French mechanism for collective licensing of digital rights to out-of-commerce books with the Information Society Directive 2001/29/EC.

178 Articles 21 “Disclosure of information to the public” and 22 “Annual transparency report” of the CRM Directive.
Several CMOs provided the follow supplementary information on their general publicity measures:

- CMO2: “various live events to increase copyright awareness of rightholders”;
- CMO8: “The […] Ministry of Culture informs about all ECL [extended collective licensing] authorized CMO’s in their website”;
- CMO9: “We know from surveys that [the CMO] is widely known in the [country’s] society as handling rights regarding the [type of use of copyrighted works]. Some people even (wrongly) refer to [the CMO] whenever a remuneration for copyright is in question.”
Language and Member States of publicity measures

Twelve CMOs responded to the survey question about language(s) in which their publicity measures were undertaken in the period 2017-2019. All responding CMOs made publicity measures at least in the national and/or regional languages of the Member State of their establishment. On average, CMOs carried out publicity measures in two languages. Three CMOs limited their publicity measures to the national language. English is the only non-national/regional language that was employed for publicity measures. It is used by nine CMOs.

CMOs were also asked about the Member States targeted by their publicity measures in the period 2017-2019. Seven of the responding CMOs reported to had targeted only the Member State of their establishment. Three CMOs reported to target other Member States. One referred to the Member States of CMOs members of the Societies’ Council for the Collective Management of Performers’ Rights (SCAPR), which are established in 42 countries around the world, including 26 EEA Member States. Other CMOs reported to target 15 and three EEA Member States each. Where CMOs’ publicity measures targeted more than one Member State, these included at least two neighbouring Member States. One CMO answered to the question about Member States targeted by publicity measures by stating “no specific target response”. By matching languages and targeted countries, some of the responding CMOs that targeted only their Member State of establishment (non-English-speaking Member State) used English among other languages (see Table 2.32).
Twelve responding CMOs from six Member States provided information about the time when they undertake general publicity measures in relation to the use of works and/or other subject matter concerned (see Table 2.33). Most of the CMOs undertake such measures after the use of works/or other subject matter, few do so during use, and the fewest CMOs do so also before. Approximately half of the CMOs undertake general publicity measures on an ongoing basis.
### Table 2.33 Information about the time when CMOs undertake general publicity measures in relation to the use of works and/or other subject matter concerned

<table>
<thead>
<tr>
<th>Member State</th>
<th>CMO</th>
<th>before use of works and/or other subject-matter</th>
<th>after use of works and/or other subject-matter</th>
<th>during use of works and/or other subject-matter</th>
<th>additional explanation by the CMO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>CMO1</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO2</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO3</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>CMO4</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>CMO5</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>CMO6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO7</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO8</td>
<td></td>
<td></td>
<td></td>
<td>‘The CMO operates with ongoing publicity.’</td>
</tr>
<tr>
<td>Hungary</td>
<td>CMO9</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>‘It is a constant ongoing work’</td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO10</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>CMO11</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Information typically included in the publicity measures

Twelve CMOs from six Member States (three from Denmark, Hungary and Hungary, and one from the Czech Republic, Finland and Germany) responded to the survey question about information typically included in the publicity measures (see Table 2.34). General policy on deductions, including management fees as well as information about the CMO’s legal ability to grant collective licences with an extended effect are the types of information most commonly included in the publicity measures of CMOs. This is followed by information about tariffs for licensees and procedures available for dispute resolution. Information specific to collective licences with an extended effect was reported to be included in the publicity measures by fewer CMOs.

---

180 Most of such information is covered by the requirements of Articles 21 “Disclosure of information to the public” and 22 “Annual transparency report” of the CRM Directive.
# EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

**Table 2.34 Information typically included in the publicity measures**

<table>
<thead>
<tr>
<th>Type of information</th>
<th>Hungary</th>
<th>Sweden</th>
<th>Denmark</th>
<th>Finland</th>
<th>Czech Republic</th>
<th>Germany</th>
<th>Total no. of information types provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>General policy on deductions, including management fees</td>
<td>CMO1</td>
<td>CMO4</td>
<td>CMO5</td>
<td>CMO7</td>
<td>CMO8</td>
<td>CMO9</td>
<td>CMO10</td>
</tr>
<tr>
<td>Information about legal ability of your organisation to grant collective licences covering rights of rightholders non-members in a specific domain(s)</td>
<td>CMO2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tariff(s) for licensees</td>
<td>CMO3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information about available dispute resolution procedures</td>
<td></td>
<td>CMO4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information about a fact of conclusion of a collective licence(s) covering rights of rightholders non-members in a specific domain(s)</td>
<td></td>
<td></td>
<td>CMO5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Main terms of use other than the tariff(s) for licensees</td>
<td></td>
<td></td>
<td>CMO6</td>
<td>CMO7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right of rightholders non-members to claim remuneration</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>CMO8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right of rightholders non-members to opt-out (oppose or prohibit use)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>CMO9</td>
<td></td>
</tr>
<tr>
<td>Name of the licensee(s)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>CMO10</td>
</tr>
<tr>
<td>Duration of the collective licence(s)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total no. of information types provided per CMO**

<table>
<thead>
<tr>
<th></th>
<th>Hungary</th>
<th>Sweden</th>
<th>Denmark</th>
<th>Finland</th>
<th>Czech Republic</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>10</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
<td>5</td>
</tr>
</tbody>
</table>

181 CMO9: “Information on the general policy is made in the Annual Transparency Report. Information on amounts due to un-identified works and rightholders is made on [CMO’s website]. Information on the general aspect of ECL [extended collective licensing] is made on the website of the […] Ministry of Culture.”
2.d.c CLEE from a social welfare perspective

Economics of collective management

For a welfare economic appraisal of CLEE, it is natural to turn to the economic literature on collective management in general, since CLEE is quite literally an extension of the former. Interestingly, much of this literature typically assumes CMOs to cover the entire market as a simplification for modelling – be it in a monopolistic setting or in a competitive setting with various CMOs182 – whereas such a stylised situation resembles that of CLEE much more than that of more traditional systems of collective management. The general discussion of collective management here is partly based on a broad overview of existing literature, provided in Handke (2014).183 Relevant differences between traditional systems of collective management and CLEE are discussed in the next section.

Broadly speaking, two rationales for copyright collectives can be identified:

1. Cost-savings from collective management of rights, resulting from a reduction in the number of transactions, standardization of terms, economies of scale in enforcement of rights and reduced search costs;
2. Acquisition of market power through cooperative pricing, similar to the bargaining power acquired by trade unions.

Transaction cost savings

Cost savings typically accrue to both rightholders and users, as the collective provides a one-stop-shop for both sides of the market. If there are N rightholders and M users, there are $N \times M$ potential transactions in a situation without collective management (or some other intermediary).184 When a collective covers the entire market, the number of potential transactions drops to $N + M$.

For instance, if a CMO has more than 50 thousand members and there are one thousand different potential licensees (cafés, bars, restaurants, etc.) in the CMO’s Member State of establishment, there could be over 50 million transactions in the national market for this repertoire alone, if it were not for the CMO. However, if the CMO acts as an intermediary and has individual transactions with each rightholder and with each potential licensee, the number of transactions drops to 51 thousand, a reduction of 99.9%.

To make things even more efficient, these $N + M$ transactions all involve the same collective. Therefore, they can be highly standardised. As a result, rightholders benefit even more from economies of scale in terms of administration and contracting.


184 This is, assuming only one possible transaction between an individual rightholder and a user, regardless of the number of works the rightholder represents. If works are licensed individually, the number of possible transactions becomes orders of magnitude larger again.
Thirdly, they will benefit from economies of scale in monitoring unauthorised uses of their works and the enforcement of their rights.

In turn, users also benefit from economies of scale as they do not have to contract with many individual rightholders. On top of this, they experience a significant reduction in search costs, as CMOs provide a one-stop-shop for licencing a specific type of works.

**Market power**

The price users pay for that comes with the second rationale for copyright collectives: in comparison to the expected outcome of individual bargaining between rightholders and users, the collective will on average be able to charge higher licence fees because of its bargaining power. It functions as a trade union for rightholders. This market power is enhanced by the fact that CMOs sometimes have a legal monopoly within their Member State for the type of rights they represent. Hence, they hardly ever compete for rightholders or licensees.

Regulation of the tariffs charged by CMOs may limit this effect. Moreover, many potential users of copyrighted works are also powerful players, especially some large multinational companies. The strong market position of such players will offset (some of the) bargaining power that CMOs have.

**Welfare effects**

In welfare economic terms, cost savings for both rightholders and users equate to a welfare gain (see the stylised static welfare effects of collective management in Table 2.35 below). A further welfare gain is achieved by a reduction in so-called deadweight losses. In other words, without the cost savings brought about by collective management of rights, transactions costs would be prohibitive for a substantial number of transactions. Hence, these transactions would not take place. If we assume that this means the corresponding uses do not take place either, this would lead to a loss of the welfare that the transaction would have created. Alternatively, it could lead to a situation where the work is used without a licence (unauthorised), leading to a loss of welfare for the rightholder, to the benefit of the user.

Potential welfare losses originate from standardisation and overpricing: both the strength and the weakness of collective management is that different works are treated and contracted more or less in the same way. Even though some price discrimination may take place, this is very likely to be a suboptimal situation for some individual works and rightholders. The welfare effect of this is unclear: as long as it does not stop transactions from taking place, it leads to some redistribution between individual rightholders and between individual users, without a net welfare effect. For individual rightholders and users, the large overall efficiency gains of collective management have to make up for this.

In more general terms, however, the market power obtained from collective management allows the collective to charge a mark-up as any company with market power would do. As a first order effect, this generates a transfer of welfare from users to rightholders with no net effect on total welfare. This transfer may be justified by the cost of creating works, which are fixed and sunk costs in economic terms and may therefore be hard to recoup in a competitive setting. However, using the bargaining power which collective management provides to charge a substantial mark-up over marginal costs will also lead to (some) deadweight losses caused by transactions that no longer take place.
Improved detection of and enforcement against unauthorised use by collective management organisations has two effects as well. To the extent that it causes unauthorised use to ‘go legal’, it leads to a transfer of welfare from users to rightholders with no net welfare effect. To the extent that such uses no longer take place due to improved enforcement, this creates a welfare loss for users.

Table 2.35 below summarises these static welfare effects of collective management in a stylised way. The table and the description above abstract from any dynamic effects of higher revenues for rightholders on the creation and exploitation of works.

### Table 2.35 Stylised welfare effects of collective management/CLEE

<table>
<thead>
<tr>
<th>Type of effect</th>
<th>Effect on rightholders</th>
<th>Effect on users</th>
<th>Net effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost savings</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>More transactions because of lowers costs</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Suboptimal pricing</td>
<td>+/-</td>
<td>+/-</td>
<td>+/-</td>
</tr>
<tr>
<td>Mark-up thanks to collective management</td>
<td>+</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Transactions not taking place due to mark-up</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unauthorised uses go legal due to better enforcement</td>
<td>+</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Unauthorised uses disappear due to better enforcement</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**Collective licensing with an extended effect and insights from the survey and interviews**

Membership of a collective management organisation is typically voluntary for rightholders. In almost any Member State and for almost any content domain, this leads to a situation that collectives only represent a certain percentage of the market. Part of this incomplete representation may stem from the desire of rightholders to negotiate individually. As mentioned above, collective management necessarily involves a certain amount of suboptimal pricing, which will cause some rightholders to prefer to bypass collectives.

On the other hand, incomplete representation is also likely to stem from the transaction costs of registration and lack of awareness. In these cases, non-representation is not a result of any conscious and informed choice, but rather of a non-choice or of the transaction costs of registration with a CMO.

Potential users that want to use the work of unconnected rightholders would still have to licence these uses individually, which significantly reduces the benefits of collective management discussed in the previous section and summarised in Table 2.35. In case of a CMO that covers a percentage $p$ of the market, the number of potential transactions...
becomes \((p \times N + M)\) for the collective part, plus \((1 - p) \times N \times M\) for the non-collective part. For the numerical example based on the above example of a CMO with 50 thousand members, a coverage of \(p = 80\%\) would increase the number of potential transactions to \((80\% \times 50,000 + 1000) + (1 - 80\%) \times 50,000 \times 1000 = 10,0 millions\): the reduction in the number of potential transactions would drop from 99.9\% to 79.9\%.

It is fair to say that in practice, this effect of unconnected rightholders will be smaller, since rightholders and works that are not covered by the CMO are not random. Within the non-collective part of the market, there are relatively many older works or works that are in relatively low demand, for some of which rightholders are unknown or metadata incomplete. Nevertheless, CLEE will contribute significantly to the coverage of the CMO and will significantly increase the number of ‘standardised’ uses, both in theory and in practice.

Against this background, CLEE aims to restore the inefficiencies that result from incomplete representation of CMOs. By doing so, it enhances social welfare by reducing search costs, improving the accessibility of works and thus increasing the number of licensed uses. It can also increase licence fees, as a consequence of improved coverage: in comparison with a voluntary CMO which only covers part of the market, CLEE will strengthen the bargaining position of rightholders/CMOs as a result of the potentially full market coverage. Ensuring (near) full coverage of licences based on the law also enhances legal certainty for users. It moreover prevents that the market has to find solutions to mitigate the risk of claims from rightholders non-members, e.g. by voluntary ‘blanket licensing’, which provides users with less legal certainty, as observed in section 2.b.c.

From a more dynamic perspective, CLEE will also give an incentive for rightholders to register and become members. After all, the CMO is effectively licensing their work and collecting revenues on their behalf. Hence, it becomes even more attractive for them to become members and claim what they are entitled to. Through this mechanism, CLEE can spur a virtuous circle, by which a CMO increases its market coverage and gains more legitimacy to license on behalf of the works that belong to non-members. Generally speaking, all rightholders can be expected to benefit from this, since those who for some reason do not expect to benefit – because they prefer individual negotiations or prefer not to be licenced at all – can opt out.

The survey we conducted in the context of this study sheds some very preliminary and anecdotal light on the extent to which CLEE might be efficient in terms of the discussion above. For instance, if non-membership would mainly be the result of a conscious and informed choice made by rightholders, one would expect many rightholder to opt-out of CLEE structures. Responses of the interviewed national competent authorities as well as their public statements indicate there were only a few such cases (see subsection on the number of opt-outs in Section 2.d.b). Hungary is the only Member State that requires CMOs to make information about numbers of opt-outs public. The Table in the subsection on opt-outs in Hungary in Section 2.d.b indicates the small number of opt-outs that occurred there.

Similar to the numbers of opt-outs, the number of individual claims for compensation by non-members is also very small: it amounts to less than 25 instances per year in all but one of the cases that we received information for.

Both insights underscore that non-membership is rarely a conscious and informed choice on behalf of rightholders, but rather results from a lack of awareness or interest. In such cases, CLEE with a right to opt-out is much more efficient from a social welfare perspective, in the ways explained in the previous section, than voluntary collective licencing that requires any rightholder to opt in actively.

The overall economic and social welfare advantages of CLEE are particularly pertinent, given that – safe for areas like broadcasting, in particular – CLEE is applied in many
instances in areas where the uses normally have a relatively low economic value (though collectively can add up to significant amounts). This implies that the costs of individual licencing would, in the majority of cases, outweigh the benefits, which underscore the case for collective management.

In our survey, national authorities dealing with CLEE are generally very positive about the effects of CLEE. They typically indicate that there is no alternative cost-effective way to exercise rights to rightholders and stress that transactions costs are lower, while more income for rightholders is generated and licensing for users is made easier. Also, we find confirmation for the claim that more content is available as a result of CLEE. Respondents also mention the effect of CLEE on the legal certainty for users, and they confirm the positive effects CLEE has on the membership of CMOs. A caveat for these positive statements is that these authorities typically have no actual information about the counterfactual situation without CLEE.
3. Conclusions on both study parts

This chapter summarises the main findings of both study parts. Section 3.a discusses the findings on multi-territorial licensing and Section 3.b discusses the findings on CLEE.

3.a Main findings on multi-territorial licensing of online rights in musical works

General market conditions and trends: mostly good news

Much of the market for recorded music has ventured online, and many online music services have started catering for customers in the EEA.

An efficient MTL infrastructure can facilitate innovation and technological change. Much of our research suggests that MTL in the EEA works reasonably well and has improved over time.

For instance, rightholders are reasonably and increasingly satisfied with the MTL services they receive. This holds, even though the prices that licensing entities charge on the rightholder side – in terms of management fees, typically charged as deductions from licensing fees collected among online music services – have not decreased over recent years. MTL services have not become cheaper for rightholders, but the quality of MTL services delivered by licensing entities seems to have increased in the perception of many rightholders.

By and large, licensing entities see considerable benefits in the diffusion of online music services. In the evaluation of licensing entities, online music services help make large repertoires of works available to consumers in the EEA. As one might expect, the diffusion of online music services has increased the quantity of demand for MTLs in the EEA. However, from the perspective of licensing entities, prices and terms of MTLs have hardly improved in the process. Competition between licensing entities may have increased the productivity of such organisations. It might also restrict their bargaining power in negotiations with online music services, some of which hold large market shares in specific EEA Member States.

Most repertoires are available to online music services via MTLs

Our mapping of repertoires available for MTL in the EEA as well as survey and interview results document that virtually all repertoires of EEA-based CMOs, other licensing entities and Option 3 publishers are currently available for MTL in the EEA. The repertoires are made available through the direct granting of MTLs by licensing entities and/or thorough conclusion of representation agreements for the purpose of MTL.

Many of these repertoires are available for MTL in large bundles of rightholders’ repertoires through multi-repertoire MTLs. CMOs established in EEA Member States continue to play a central role, even though some other licensing entities have started operating. Licensing entities make use of representation agreements, which reduce the number of separate
MTLs required for online music services, and CMOs have formed subsidiaries (joint ventures/licensing hubs) to exploit economies of scale and scope as well as network effects.

**A complex nexus of MTLs and cooperation arrangements**

MTL in the EEA consists of a complex nexus of separate licences. MTL itself is a means to reduce the number of transactions required in the market for copyright licences and thus aggregate transaction costs in trading copyright licences. The full potential for that is not completely exploited yet. Large online music services each operate under about 30 separate copyright licences, about half of which are MTLs granted by CMOs or subsidiaries (joint ventures) of CMOs. OMSPs still rely on mono-territorial licences with CMOs in combination with MTLs. Establishing so many licences and fulfilling the obligations associated with each of them is costly.

From an economic perspective, there are two related trade-offs between:

1. Bundling of repertoires into single licences to reduce the number of transactions required in the market for MTL licences, and the disciplining effects of competition between numerous suppliers of MTL services;

2. Standardisation of licensing terms to reduce bargaining costs and restrict the scope for discrimination of some market participants, and the flexibility of market participants to establish MTL terms, which are the best fit for idiosyncratic circumstances.

The current compromise struck in the EEA market for MTLs can be described as follows. Regarding the first trade-off, at present a great number of licensing entities granting MTLs co-exist and compete to some extent, as rightholders are – at least by law – free to withdraw and relocate their repertoire for the purposes of MTL to whichever licensing entity they see fit. However, there are in all probability great economies of scale and scope, as well as network effects in the provision of MTL services. The formation of subsidiaries between several CMOs (licensing hubs), as well as representation agreements between CMOs, can both be seen as means to increase the efficiency of MTL services by exploiting advantages of scale and scope. The CRM Directive facilitates both these practices. Thus, it is a probable scenario that licensing entities will integrate even further and that cross-border competition as well as subsidiaries will establish a narrow oligopoly in the future. Policy makers should keep an eye on further integration of licensing entities and may have to adapt regulation accordingly.

Regarding the second trade-off, some aspects of MTLs are quite uniform (standardised): as a rule, MTLs cover all of the EEA, and both mechanical as well as performing rights. However, our results suggest that many MTLs are adapted to specific activities and needs of licensees in one respect: there is some variety regarding the types of uses covered in MTLs. One further area, where there seems to be little standardisation, are the specific prices and terms of MTLs. Licensing entities do not treat the EEA as a single market unit, as some elements of tariff structures of the same MTL sometimes vary between different Member States covered. Several OMSPs complain that prices and terms remain non-transparent and subject to protracted negotiations. The resulting contracts vary between many competing OMSPs. It is not desirable that OMSPs compete on their abilities to effectively negotiate for favourable MTL terms rather than on the qualities of the services they supply to consumers. Moreover, any discrimination of licensees may distort the market for online music services and could hamper competition and innovation.
**Overall effects of the CRM Directive**

The provisions of the CRM Directive’s Title III almost certainly play an important role in shaping the general market conditions for MTL in the EEA. We discuss several specific provisions of Title III in other sections. We also discussed some overarching questions with the main stakeholders, regarding the overall impact of the CRM Directive for them.

In the experience of most licensing entities, the CRM Directive has promoted innovation in the market for online rights in musical works. Many licensing entities also report that the CRM Directive has made it easier for them to offer MTLs, and compete with other licensing entities, which fall under the same regulations. However, most CMOs established in the EEA report that their competitiveness relative to licensing entities, who face different and less regulation, has suffered.

By contrast, OMSPs provide rather mixed evaluations of the CRM Directive’s impact. Many online music services reckon their full economic costs of licensing have increased due to the CRM Directive. Some OMSPs lament the lack of capacity and even incompetence of smaller licensing entities. Others are wary of what appears to be market power on side of larger licensing entities and the licensing hubs these have created. These two concerns may be difficult to reconcile with each other.

In any case, there is no indication that the CRM Directive would have had any substantial effects on OMSPs’ ability to provide consumers with access to small European repertoires. Nevertheless, there is ample room for improvement in developing an even more reliable matching infrastructure of works and rightholders, as well as in fostering greater transparency and standardisation of MTL terms and prices (see sections 1.a.f and 1.f.d).

**Variations in the control and regulation of licensing entities**

The CRM Directive leaves scope for variations across Member States when implementing in practice some national law provisions transposing Title III and the manner in which NCAs verify compliance with these laws. Our assessment documents that the corresponding laws and regulatory procedures do indeed vary substantially along three major dimensions.

1. The transposition of Title III and the verification procedures by NCAs vary across Member States. On the one hand, some relevant provisions of the CRM Directive have not been fully implemented by all Member States’ laws and regulatory practices. On the other hand, specific oversight procedures, by which NCAs verify whether licensing entities comply with national laws corresponding to Title III, also vary substantially.

2. Some Member States apply various provisions of Title III not only to CMOs but also – and to varying degrees – to IMEs, commercial suppliers of MTL services, who do not operate as CMOs.

3. Some Member States apply the provisions of Title III not only to licensing entities established in the EEA but also – and to varying degrees – to licensing entities established outside of the EEA.

Subject to national law and regulation, fewer aspects of Title III – and not in all Member States – apply to CMOs’ subsidiaries, IMEs and non-EEA-based licensing entities of any type than for EEA-based CMOs. As documented in section 1.g.b. complying with many of these regulations is costly for licensing entities. Potentially, CMOs’ subsidiaries, IMEs and non-EEA-based licensing entities may thus enjoy some competitive advantages and fewer restrictions. Indeed, most CMOs established in the EEA report that their competitiveness relative to licensing entities, who face different and less regulation, has suffered.
However, EEA-based CMOs may provide their services across the EEA if they comply with the regulations of their domestic regulators. By contrast, some EEA Member States restrict the operations of IMEs and non-EEA-based licensing entities. There are some uncertainties with application of some provisions of national laws transposing Title III of the CRM Directive to CMOs’ subsidiaries.

Overall, it depends on the specific national regulation which types of licensing entities enjoy favourable regulatory conditions. Variations in the effective control and regulation of licensing entities different Member States can have advantages including:

- Competitiveness between Member States to set-up relatively efficient – sustainable and attractive – regulatory frameworks for suppliers of MTL services.
- Greater scope for licensing entities to tailor MTL services to specific stakeholder needs.
- Retaining some scope for EEA Member States to adapt the legal and regulatory framework of MTL to the needs of the domestic music industry or to promote cultural policy goals.

Variations in the specific application of the regulation can also have substantial disadvantages, for instance:

- The MTL system as whole may become more complex. The costs for all stakeholders to manoeuvre well in such a complex environment can be much greater than with more standardised MTL regulation and services across the EEA.
- Give national governments leeway to adopt protectionist measures.
- Create a ‘race to the bottom’ regarding the intensity of regulation for MTL services, as EEA Member States seek to attract enterprises providing MTL services, e.g., establishment of IMEs and/or CMOs’ subsidiaries in their territory.
- Last but not least, given the scope for varying regulation of different types of suppliers of MTL services, this could distort the market on which these various suppliers operate (see sections 1.b.e and 1.b.f).

The latter point is arguably the most fundamental. Variations in the regulation of potentially competing organisations raises one central economic question: does the regulation help approximate a reasonably level-playing field and adequate levels of competition to establish a reasonably efficient Internal Market?

**A level playing field for licensing entities?**

First and foremost, Title III regulates CMOs. Complying with the regulations set out in Title III is costly for them, but these costs seem to be reasonable.

From an economic perspective, one major goal of the CRM Directive is to promote competition between licensing entities, while establishing reasonable standards among licensing entities regarding the quality of MTL services. This may foster innovation and the efficiency of these organisations, but may also weaken their bargaining power among OMSPs.

In order to reap the benefits of a competitive market for MTL services over longer periods of time, it is important that all current and potential suppliers of MTL services are regulated in a reasonably consistent manner. According to our analysis, this is not the case, even
though it is difficult to deduce, what (types of) licensing entities enjoy advantages due to more favourable regulation.

On the one hand, for IMEs and non-EEA-based licensing entities, fewer aspects of Title III tend to apply in practice than for EEA-based CMOs, subject to national law and regulation. This has the potential to put EEA-based CMOs at a disadvantage, where they compete with licensing entities less restricted by regulation. On the other hand, whereas EEA-based CMOs may provide their services across the EEA if they comply with the regulations of their domestic regulators, IMEs and non-EEA-based entities are usually subject to scrutiny by each national regulator in the respective EEA Member States. What is more, some EEA Member States effectively restrict the operations of IMEs and non-EEA-based licensing entities. This has the potential to diminish the competitiveness of IMEs and non-EEA-based licensing entities and to protect the position of EEA-based CMOs and/or their EEA-based subsidiaries.

This situation does not resemble a level playing field in which MTL service providers could compete solely on price and quality. Two basic problems may occur in different EEA Member States. First, restricted market entry in certain EEA Member States of IMEs and non-EEA-based licensing entities could curtail competition between MTL service providers, inhibit innovation and the emergence of an integrated Internal Market. Second, competition between heavily regulated EEA-based CMOs and competitors, who are not subject to the same regulations, could favour relatively inefficient firms and come to render some provisions of the CRM Directive ineffective. Our survey results do indeed suggest that EEA-based CMOs feel that the CRM Directive has put them at a disadvantage compared to licensing entities, who face less restrictive regulation.

Considering the current market conditions, it might make sense in the short run to regulate CMOs more extensively than other licensing entities. CMOs have long operated as national (quasi-) monopolies and continue to hold some sway over markets for copyright licences, including MTLs for online rights in musical works. Regulating CMOs more heavily may facilitate market entry by newcomers, make the market for MTL services more contestable and promote competition and innovation. However, in the long run it is essential that all major competitors in the market fall under consistent regulations, so that the most efficient and sustainable licensing entities prevail, rather than the least regulated.

**Limited use of notification procedures regarding non-compliance and of alternative dispute resolution procedures**

According to our surveys of national authorities and stakeholders in the market for MTL, neither notification procedures regarding alleged non-compliant behaviour (according to Articles 36(2) and 37(2) of the CRM Directive) nor alternative dispute resolution procedures (Article 34(2)) have been used much in practice. This also applies in Member States, where such procedures have been in place for several years already.

What is more, these procedures receive lukewarm evaluations by relevant stakeholders. We have little indication that either of these two measures would have had much effect on the ground yet. One noteworthy exception is that most national competent authorities consider for the coming years, that notification procedures will become important to ensure the compliance with Title III.

---

185 However, the extent of regulation may also signal trustworthiness for rightholders and licensees.
Rightholders’ withdrawal rights: a mixed blessing in combination with an imprecise matching infrastructure

In principle, effective rightholders’ withdrawal rights should promote competition between licensing entities, and make licensing entities more responsive to rightholders’ interests. The respective provisions of Title III may have contributed to an increasing satisfaction of rightholders with the MTL services they receive. According to OMSPs, MTL fees charged have often increased, too, which may also be an effect of greater competition among licensing entities granting MTLs for customers on the rightholder side.

However, our results also suggest that there are corresponding costs of greater complexity in music licensing faced by licensees, as some repertoires move from one licensing entity to another. Withdrawal of rights seem to increase complexity and the full economic costs of copyright licensing incurred by OMSPs. One issue seems to be that the matching infrastructure of works and rightholders contains flaws and may not reliably and swiftly reflect changes, as repertoires move about. An efficient, comprehensive and continuously updated matching infrastructure of works and rightholders is one tool that could ensure that withdrawal rights turn more unequivocally into a blessing.

Other remaining obstacles according to OMSPs

By and large, licensing entities and rightholders reported that MTL in the EEA has developed favourably over recent years, and (aspects of) the CRM Directive seem(s) to have contributed to this development. This coincides with and in all probability promotes the development of a strong market for online music services. Consumers are voting with their feet: according to Eurostat (2019:155) a majority of EU residents (56%) used the Internet to listen to music in 2018, and among the 16 to 24-year olds, 86% did, while unauthorised access has been declining.

By contrast, most responding OMSPs are concerned with increasing costs of MTLs for them over recent years. First of all, this is not necessarily a problem where it concerns the prices of MTLs. Higher prices for MTLs on the online music services side will benefit rightholders – assuming that licensing entities pass on much of the additional revenues to rightholders – and may come to foster the creation of new creative works. However, high transaction costs – including the costs of searching for trading partners, negotiating mutually agreeable prices and terms, and of complying with these terms – are indeed a potential problem in the market for copyright licences. Regarding transaction costs, OMSPs reported three main areas, where there are problems or room for improvement regarding the performance of licensing entities:

1. There is still a fragmentation of repertoires into many separate licences, which drives up the number of licences/transactions required for OMSPs. It is noteworthy in this respect that all online music services responding to our survey have been operating a multi-territorial online music service for many years in the EEA. They have already built up a substantial ‘nexus of licensing contracts’, but they still report that an increasing number of copyright licences is costly to them. This may also create

---

barriers to entry for new OMSPs, who will have to conclude several dozen new licensing deals before they can roll out their services, according to our results;

2. Furthermore, non-transparency of licensing terms may provide scope for extensive and costly bargaining, discriminatory conduct, and market power;

3. It is hardly satisfying, either, if directories of copyright works are incomplete or faulty. There may be adverse incentives if some rightholders or licensing entities sometimes even benefit from this, as some of our respondents claimed. As a matter of economic principle, incentive alignment between licensors and licensees is desirable. This could be achieved if any party, who has de facto control over the registration of works and the underlying infrastructure, also carries adverse consequences of any gaps or faults in the directories and matching infrastructure.

**Many rightholders are not in a position to look after their interests by themselves**

Finally, our survey and interviews with rightholders brought up time and again that a many of the smaller rightholders have limited knowledge of the copyright system at large and MTL in particular. Accordingly, it may not be surprising that rightholders do not often exercise any rights granted to them, such as withdrawal rights. It is even less common for rightholders to use methods to enforce complaint conduct of MTL service providers, such as notification procedures or ADRPs. We deduce three basic insights from this.

First, policies that equip rightholders with means to individually look after their own interests may have limited effects. Proactive regulation by policy makers may have to complement any self-help mechanisms available to rightholders.

Second, collective bargaining on behalf of rightholders with OMSPs is an important function of CMOs. If competition for MTL services from IMEs were to undermine this function, many smaller rightholders could lose out.

Third, any licensing entities should be regulated so as to fulfil their functions in reasonably equitable manner regarding all of the rightholders and OMSPs concerned. On the rightholder side, regulations of CMOs regarding speedy processing of licensing revenues, transparency, and reporting on online uses of works go in the right direction. Ideally, such regulations would be effectively monitored among all licensing entities, with the aim to approximate a reasonably equitable and efficient distribution of MTL revenues among all rightholders.

**b Main findings on collective licensing with an extended effect**

Unlike multi-territorial licensing, which has a cross-border dimension by definition (see Part I of the report), CLEE is typically nationally defined and the extended effect confined to the territory of the Member State that has such regime in place.

In this study, CLEE is defined as any collective licensing mechanism whereby the law extends the scope of collective licences or the mandate of a CMO to also include the rights of ‘rightholders non-members’ (rightholders who have not explicitly authorised a CMO to exercise their rights directly or indirectly via a representation agreement). Examples include national mechanisms of extended collective licensing, statutory mandate of representation and legal presumption of representation. Mandatory collective management of rights also falls within the scope of this study, provided that it has an extended effect, i.e. allowing the relevant CMO to exercise the rights of all rightholders in a given field.
The research has demonstrated that CLEE is an integral part of the national copyright law of all EEA Member States.

The domains (types of rights, works, users and rightholders) concerned by CLEE, as well as their number and scope, vary between the Member States. In all Member States, the law provides at least for CLEE (including mandatory collective management) the right to retransmission of broadcasts originating from the other Member States. The most common domains other than those related to broadcasting are private copying, lending, reprography and resale rights. In some Member States, domains where CLEE can be used are exhaustively listed in legislative acts and are complemented with clauses enabling such licensing in other domains, defined by a competent authority or the parties to a collective licensing agreement.

The nature of the legal mechanism, by virtue of which an extended effect is achieved within the same domain, differs between some Member States. Sometimes also different mechanisms are used for attaining an extended effect in different domains within the same Member State. The most commonly used mechanisms for establishing an extended effect are the mechanisms of extended collective licensing, statutory mandate of representation and legal presumption of representation, mentioned above. These mechanisms are sometimes combined with other rules, such as mandatory collective management of rights and/or legal monopoly of the competent CMO. Mandatory collective management is most often used for the exercise of rightholders’ statutory rights to remuneration, or for compensation due under certain exceptions and limitations to copyright and related rights. In some Member States, by virtue of the law and/or jurisprudence, CMOs benefit from a procedural presumption of representing rightholders non-members. Such presumption is applicable in the course of court proceedings, but it does not provide CMOs with a right to license rights of rightholders non-members and therefore does not qualify as a mechanism of CLEE for the purpose of this study.

The scope of an extended effect commonly covers all rightholders, works and/or rights within a defined domain of the Member State’s legislation that provides for collective licensing with an extended effect. In a limited number of cases, the extended effect covers only an exhaustive number of rightholders, works and/or rights, often listed in a publicly accessible registry. An extended effect is usually not limited by the nationality of rightholders and works and therefore also covers foreign rightholders and works. In all the studied Member States, an extended effect is limited to the territory of the Member State whose legislation enables it. The DSM Directive so far only permits collective licensing with an extended effect with a reach beyond the national territory for the use of out-of-commerce works. This study points to a number of elements to be taken into account when considering the possibility of allowing such collective licensing mechanism with cross-border effect to be introduced in other domains. This includes the domains where CLEE with cross-border effect can be introduced, the territorial scope of the licensing mechanism and the safeguards to be applied (in particular the representativeness of CMOs, equal treatment, right to opt-out and publicity measures). Depending on these issues and what the legislator wants to achieve, different policy options for establishing CLEE with cross-border effect can be examined (e.g. a country-of-origin rule, a system based on national CLEE clauses in the same domains, or multi-territorial licensing on the basis of an EU law clause enabling cross-border extended effect), taking into account the specificities and particularities of the domain where the legislator wants to establish a cross-border extended effect.

In the vast majority of Member States, collective licences with an extended effect can only be granted by CMOs authorised by a competent national authority or designated by a legislative act. In many of these Member States, the authorised CMOs are also (automatically) granted a legal monopoly in the domains of their operations. In Member States where more than one CMO is authorised to grant collective licences with an extended
effect, the law sometimes provides for a mechanism facilitating cooperation between CMOs for joint licensing.

Competent national authorities usually authorise CMOs on the basis of several qualitative and quantitative criteria. The representativeness of a CMO is often assessed by the type and number of rightholders, rights, works and users that the CMO represents as well as other factors demonstrating the CMO’s capacity to effectively represent the interests of all the rightholders concerned. National rules commonly leave some room for interpretation of the most appropriate ways for demonstrating and establishing representativeness. In general, qualitative factors take a significant weight in establishing the representativeness of a CMO, in particular because exact numbers enabling comparative assessment (e.g., comparison with the number of works and/or rightholders in a given domain) are not always available. Decisions regarding the authorisation of a CMO are generally made on the basis of the information provided by the applying CMO, in accordance with the established procedures and by taking into account any apparent issues in the CMO’s operations manifested through stakeholders’ complaints. Often the same national CMOs apply for repeated authorisation to grant collective licences with an extended effect. At least in some Member States, there are no obstacles for application by CMOs established in other Member States. Where such application had not been permitted in the past, the norm was changed to comply with EU rules on the freedom to provide services. In two of the territorially smallest Member States, CMOs from historically related larger countries have been authorised to grant collective licences with an extended effect.

In the majority of Member States, equal treatment of rightholders members and non-members by CMOs is an explicit (or sometimes implicit) legal requirement. A large majority of CMOs responding to the survey executed for this study confirm that they treat equally all rightholders whom they represent, members and non-members. CMOs typically determine remuneration for rightholders non-members according to the same rules as for rightholders members. Attribution and actual distribution of collected amounts due to rightholders non-members is an important indicator of their equal treatment. In terms of the duration and the national and international distribution of collected amounts, the survey showed no significant differences between the distribution to rightholders members and non-members. In practice, distribution of collected amounts due to rightholders non-members is ensured through the process of their identification and location as well as a right to claim remuneration individually. In a large majority of reported cases, individual claims can be addressed only to the CMO concerned within three years after the use occurred. According to the information received, the number of claims for individual remuneration was low and the proportion of rejected claims was either zero or very low. Non-distributable amounts due to rightholders non-members are usually not explicitly distinguished from non-distributable amounts due to rightholders members in the CMOs’ annual transparency reports. These non-distributable amounts are typically used either for additional distributions to rightholders members or for social, cultural and educational purposes.

In many mechanisms of collective licensing with an extended effect, the right of rightholders non-members to opt-out (i.e. to exclude their works or other subject-matters from collective licensing) is an essential safeguard to protect their interests. In areas with mandatory collective management, usually no such right to opt-out exists. In some Member States, CMOs and licensees may, and indeed agree to, offer rightholders non-members a contractual right to opt-out in domains where legislative provisions do not provide for it. Overall, according to the surveyed CMOs, the information and/or documents required for opting-out is rather minimal. Depending on the applicable regulations, rightholders may file an opt-out request with the competent CMO, with any party to a collective licence with an extended effect covering their rights, and/or with a public authority managing a database where works covered by an extended effect are listed. Depending on the period when rightholders non-members could make use of their right to opt-out, it is possible to differentiate between ex-ante opt-out (i.e. prior to the conclusion of a collective licence with
an extended effect) and ex-post opt-out (i.e. after the conclusion of the collective licence with an extended effect). Two broad approaches as to when an opt-out takes effect were observed in the different Member States. In one group of Member States, opt-out requests take effect within days or weeks, while in the other group it takes effect six months or at the beginning of the next calendar year. In many Member States, the scope of opt-out is not explicitly dealt with in the law. In practice, rightholders either can choose to opt-out some works or other subject-matter or are required to opt-out for the entire repertoire. The reported number of opt-outs is very low, in comparison to the total number of rightholders and works or other subject-matter represented by surveyed CMOs by virtue of explicit authorisations from rightholders. Overall, responding CMOs reported that opt-outs had zero or very low impact on their business.

Publicity measures of CMOs aim at informing rightholders about CLEE and safeguards available to rightholders. Only in a couple of studied Member States, the law requires CMOs to undertake publicity measures beyond the transparency obligations under the CRM Directive. It has been established that, at least in some Member States, CMOs carry out publicity measures without an explicit legislative requirement to do so. The most commonly used publicity measures are making information available on the CMOs’ websites and in their corporate documents. Fewer CMOs reported that they include information specific to collective licences with an extended effect in their publicity measures. All responding CMOs make publicity measures at least in the national and/or regional languages of the Member State of their establishment. English is the only non-national and non-regional language commonly employed for publicity measures by a majority of the surveyed CMOs.

In general terms, from a social welfare perspective, CLEE reinforces the impact of collective management of copyright and related rights. CLEE strengthens the market power of CMOs, as a consequence of more complete market coverage, and could also lead to the increase of licence fees. CLEE amplifies the cost-saving rationale of collective management of copyright, resulting from a reduction in the number of transactions, standardisation of terms, economies of scale in the enforcement of rights and reduced search costs. Where non-membership is rarely a rightholder’s active choice, but rather results from transaction costs of registration or a lack of awareness, CLEE with a right to opt-out appears to be more efficient from a social welfare perspective than collective licensing relying only on explicit authorisations from rightholders.
# List of national experts

<table>
<thead>
<tr>
<th>Member State</th>
<th>Expert</th>
</tr>
</thead>
</table>
| Austria      | Clemens Appl, Full Professor and Head of the IP, Media & Innovation Law Center, Danube-University Krems, Austria  
Philipp Homar, Senior Scientist, Danube-University Krems, Austria |
| Belgium      | Marie-Christine Janssens, Professor, Centre for IT & IP Law, University of Leuven (KU Leuven), Belgium |
| Bulgaria     | Veronika Dimova, IP and IT Attorney-at-Law, Bulgaria |
| Croatia      | Branka Marušić, LL.D. Candidate, Department of Law, Stockholm University, Sweden |
| Cyprus       | Philippe Jougleux, Associate Professor, Law Faculty, European University, Cyprus |
| Czech Republic | Matěj Myška, JUDr., Ph.D., Assistant professor and Deputy Head of Institute of Law and Technology, Faculty of Law, Masaryk University, Brno, Czech Republic  
Rudolf Leška, JUDr., Ph.D., Senior assistant professor, University of Finance and Administration, Prague; partner, law offices ŠTAIDL LEŠKA ADVOKÁTI, Czech Republic |
<p>| Denmark      | Terese Foged, Partner, Lassen Ricard, and Substitute Member of the Danish Copyright Licence Tribunal |
| Estonia      | Elise Vasamäe, PhD, Attorney at Law and Partner, Aavik &amp; Partners Law Office, Estonia |
| Finland      | Petteri Gunther, Legal Counsel, Elisa, Finland |
| France       | Oleksandr Bulayenko, Associated Researcher, IViR, University of Amsterdam, the Netherlands; and Researcher and Academic &amp; Scientific Coordinator, Centre of International Intellectual Property Studies (CEIPI), University of Strasbourg, France |
| Germany      | Sylvie Nérisson, Associate Professor, Institut de recherche en droit des affaires et du patrimoine (IRDAP), University of Bordeaux, France |
| Greece       | Alexandra Giannopoulou, Postdoctoral Researcher, IViR, University of Amsterdam, the Netherlands |</p>
<table>
<thead>
<tr>
<th>Member State</th>
<th>Expert</th>
</tr>
</thead>
</table>
| Hungary      | Péter Mezei, Associate Professor of Law, Deputy Head of the Institute of Comparative Law and Legal Theory, Faculty of Law and Political Sciences, University of Szeged, Hungary; and Adjunct Professor (doseniti) of the University of Turku, Finland  
Gergely Békés, Attorney-at-Law, Hungary |
| Iceland      | Rán Tryggvadóttir, Senior Advisor for Copyright, Ministry of Education and Culture, Reykjavik, Iceland |
| Ireland      | Kevin O’Sullivan, IP Law Lecturer and Government of Ireland Research Scholar, University College Cork, Ireland |
| Italy        | Caterina Sganga, Associate Professor of Comparative Private Law, Sant’Anna School of Advanced Studies, Pisa, Italy  
Giulia Priora, Postdoctoral Researcher, Sant’Anna School of Advanced Studies, Pisa, Italy |
| Latvia       | Niklāvs Zieds, Associate, Klauberg BALTICS attorneys-at-law  
Theis Klauberg, Managing Partner, Klauberg BALTICS attorneys-at-law |
<p>| Liechtenstein| Georges Baur, Dr., Research Fellow, Liechtenstein-Institut, Liechtenstein |
| Lithuania    | Rita Matulionyte, Senior Lecturer, Macquarie Law School, Macquarie University, Australia; Associated senior research fellow, Law Institute of Lithuania |
| Luxembourg   | Bernd Justin Jütte, Dr., Assistant Professor in Intellectual Property, Sutherland School of Law, University College Dublin, Ireland; Senior Researcher, Faculty of Law, Vytautas Magnus University, Lithuania |
| Malta        | Jeanine Rizzo, Lawyer and IP Consultant at Rizzo, Malta |
| Netherlands  | Stef van Gompel, Associate Professor, IViR, University of Amsterdam, the Netherlands |
| Norway       | Ole-Andreas Rognstad, Professor of Law, Department of Private Law/Center for European Law, University of Oslo, Norway |</p>
<table>
<thead>
<tr>
<th>Member State</th>
<th>Expert</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>Tomasz Targosz, Partner, Traple Konarski Podrecki &amp; Wspólnicy Law Firm, &amp; Assistant Professor Jagiellonian University, Krakow, Poland</td>
</tr>
<tr>
<td>Portugal</td>
<td>Tito Rendas, Lecturer at Universidade Católica Portuguesa, Lisbon, Portugal</td>
</tr>
<tr>
<td>Romania</td>
<td>Monica Lupasçu, Phd Candidate, Nicolae Titulescu University, Faculty of Law, Romania</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Zuzana Adamová, JUDr., PhD., Head of IP&amp;ICT Law Dpt., Law Faculty, Trnava University, Slovakia</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Maja Bogataj Jančič, Dr., Intellectual Property Institute, Slovenia</td>
</tr>
<tr>
<td>Spain</td>
<td>Raquel Xalabarder, Chair of Intellectual Property, Universitat Oberta de Catalunya (UOC), Spain</td>
</tr>
<tr>
<td>Sweden</td>
<td>Johan Axhamn, LL.D., Senior Lecturer in Business Law, Department of Business Law, Lund University, Sweden</td>
</tr>
<tr>
<td>UK</td>
<td>Bernd Justin Jütte, Dr., Assistant Professor in Intellectual Property, Sutherland School of Law, University College Dublin, Ireland; Senior Researcher, Faculty of Law, Vytautas Magnus University, Lithuania</td>
</tr>
</tbody>
</table>
# List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADRP</td>
<td>alternative dispute resolution procedure</td>
</tr>
<tr>
<td>AGCM</td>
<td>Competition Authority (Italy)</td>
</tr>
<tr>
<td>AP</td>
<td>regional court (Spain)</td>
</tr>
<tr>
<td>APAC</td>
<td>Asia-Pacific</td>
</tr>
<tr>
<td>AV</td>
<td>audiovisual</td>
</tr>
<tr>
<td>BGH</td>
<td>Federal Court of Justice (Germany)</td>
</tr>
<tr>
<td>BIEM</td>
<td>Bureau International des Sociétés Gérant les Droits d’Enregistrement et de Reproduction Mécanique / International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction</td>
</tr>
<tr>
<td>CCID</td>
<td>Claim Confirmation and Invoicing Details</td>
</tr>
<tr>
<td>CEE</td>
<td>Central and Eastern Europe</td>
</tr>
<tr>
<td>CELAS</td>
<td>Centralised European Licensing and Administrative Service</td>
</tr>
<tr>
<td>CHI</td>
<td>cultural heritage institution</td>
</tr>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
</tr>
<tr>
<td>CIS</td>
<td>Common Information System</td>
</tr>
<tr>
<td>CISAC</td>
<td>Confédération Internationale des Sociétés d’Auteurs et Compositeurs / International Confederation of Societies of Authors and Composers</td>
</tr>
<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
</tr>
<tr>
<td>CLEE</td>
<td>collective licensing with an extended effect</td>
</tr>
<tr>
<td>CMO</td>
<td>collective management organisation</td>
</tr>
<tr>
<td>COVID-19</td>
<td>Coronavirus disease 2019</td>
</tr>
<tr>
<td>CRD</td>
<td>Common Royalty Distribution</td>
</tr>
<tr>
<td>DDEX</td>
<td>digital data exchanges</td>
</tr>
<tr>
<td>DPMA</td>
<td>German Patent and Trade Mark Office</td>
</tr>
<tr>
<td>DSP</td>
<td>Digital service provider</td>
</tr>
<tr>
<td>DZIV</td>
<td>State Intellectual Property Office (Croatia)</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EUIPO</td>
<td>European Union Intellectual Property Office</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
</tr>
<tr>
<td>---------</td>
<td>-----------</td>
</tr>
<tr>
<td>HIPO</td>
<td>Hungarian Intellectual Property Office</td>
</tr>
<tr>
<td>ICCJ</td>
<td>High Court of Cassation and Justice (Romania)</td>
</tr>
<tr>
<td>ICE</td>
<td>International Copyright Enterprise</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and communications technology</td>
</tr>
<tr>
<td>IFPI</td>
<td>International Federation of the Phonographic Industry</td>
</tr>
<tr>
<td>IMDB</td>
<td>Internet Movie Database</td>
</tr>
<tr>
<td>IME</td>
<td>independent management entity</td>
</tr>
<tr>
<td>IMPEL</td>
<td>Independent Music Publishers’ European Licensing</td>
</tr>
<tr>
<td>IPO</td>
<td>intellectual property office</td>
</tr>
<tr>
<td>ISRC</td>
<td>International Standard Recording Codes</td>
</tr>
<tr>
<td>ISWC</td>
<td><em>International Standard Musical Work Code</em></td>
</tr>
<tr>
<td>MENA</td>
<td>Middle East and North Africa</td>
</tr>
<tr>
<td>MG</td>
<td>minimum guarantee</td>
</tr>
<tr>
<td>MTL</td>
<td>multi-territorial licence</td>
</tr>
<tr>
<td>NCA</td>
<td>national competent authority</td>
</tr>
<tr>
<td>NDA</td>
<td>non-disclosure agreements</td>
</tr>
<tr>
<td>NOK</td>
<td>Norwegian krone</td>
</tr>
<tr>
<td>OCSS</td>
<td>online content-sharing service</td>
</tr>
<tr>
<td>OCSSSP</td>
<td>online content-sharing service provider</td>
</tr>
<tr>
<td>OGH</td>
<td>Supreme Court (Austria)</td>
</tr>
<tr>
<td>OLG</td>
<td>Higher State Court (Germany)</td>
</tr>
<tr>
<td>OMSP</td>
<td>online music service provider</td>
</tr>
<tr>
<td>OLE</td>
<td>other licensing entity</td>
</tr>
<tr>
<td>PAECOL</td>
<td>Pan-European Central Online Licensing</td>
</tr>
<tr>
<td>RON</td>
<td>Romanian leu</td>
</tr>
<tr>
<td>SCAPR</td>
<td>Societies’ Council for the Collective Management of Performers’ Rights</td>
</tr>
<tr>
<td>SIPO</td>
<td>Slovenian Intellectual Property Office</td>
</tr>
<tr>
<td>TFEU</td>
<td>Consolidated version of the Treaty on the Functioning of the European Union</td>
</tr>
<tr>
<td>TOWGE</td>
<td>Technical Online Working Group Europe</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>TV</td>
<td>television</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom of Great Britain and Northern Ireland</td>
</tr>
<tr>
<td>UMPI</td>
<td>Universal Music Publishing International</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>WCM</td>
<td>Warner Chappell Music</td>
</tr>
</tbody>
</table>
List of mentioned EU law and cases

**EU/EEA treaties**

Consolidated version of the Treaty on the European Union (2012/C 326/01) (TEU)

Consolidated version of the Treaty on the Functioning of the European Union (2012/C 326/01) (TFEU)


**EU Directives**


**Cases**

CJEU Judgment in Soulier and Doke, C-301/15, ECLI:EU:C:2016:878

European Commission, Decision of 26 October 2018 non-opposition to a notified concentration (Case M.8989 — Sony/EMI Music Publishing) C(2018)7293 final

European Commission, Decision of 16 June 2015 declaring a concentration to be compatible with the internal market and the EEA agreement (Case M.6800 – PRSfM / STIM / GEMA / JV) C(2015) 4061 final

European Commission, Decision of 21 September 2012 declaring a concentration to be compatible with the internal market and the EEA agreement (Case No COMP/M.6458 – Universal Music Group / EMI Music) C(2012) 6459 final

European Commission, Decision of 19 April 2012 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 (Case No. COMP/M.6459 – Sony/Mubadala/EMI Music Publishing) C(2012) 2745

**Commission Recommendation**

Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC); Corrigendum in OJ 2005 L 284/10 (Commission Recommendation)
### List of mentioned CMOs

<table>
<thead>
<tr>
<th>CMO</th>
<th>Country of establishment</th>
<th>CMO</th>
<th>Country of establishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUME/AKM</td>
<td>Austria</td>
<td>SACEM Luxembourg</td>
<td>Luxembourg</td>
</tr>
<tr>
<td>SABAM</td>
<td>Belgium</td>
<td>PAM CG</td>
<td>Montenegro</td>
</tr>
<tr>
<td>AMUS</td>
<td>Bosnia-Herzegovina</td>
<td>BUMA/STEMRA</td>
<td>Netherlands</td>
</tr>
<tr>
<td>MUSICAUTOR</td>
<td>Bulgaria</td>
<td>NORWACO</td>
<td>Norway</td>
</tr>
<tr>
<td>SOCAN</td>
<td>Canada</td>
<td>TONO</td>
<td>Norway</td>
</tr>
<tr>
<td>HDS ZAMP</td>
<td>Croatia</td>
<td>ZAiKS</td>
<td>Poland</td>
</tr>
<tr>
<td>OSA</td>
<td>Czech Republic</td>
<td>SPA</td>
<td>Portugal</td>
</tr>
<tr>
<td>KODA</td>
<td>Denmark</td>
<td>UCMR-ADA</td>
<td>Romania</td>
</tr>
<tr>
<td>EAÜ</td>
<td>Estonia</td>
<td>UPFR</td>
<td>Romania</td>
</tr>
<tr>
<td>TEOSTO</td>
<td>Finland</td>
<td>SOKOJ</td>
<td>Serbia</td>
</tr>
<tr>
<td>SACEM/SDRM</td>
<td>France</td>
<td>SOZA</td>
<td>Slovakia</td>
</tr>
<tr>
<td>GEMA</td>
<td>Germany</td>
<td>AIPA</td>
<td>Slovenia</td>
</tr>
<tr>
<td>VG Wort</td>
<td>Germany</td>
<td>SAZAS</td>
<td>Slovenia</td>
</tr>
<tr>
<td>AUTODIA</td>
<td>Greece</td>
<td>SGAE</td>
<td>Spain</td>
</tr>
<tr>
<td>ARTISJUS</td>
<td>Hungary</td>
<td>STIM</td>
<td>Sweden</td>
</tr>
<tr>
<td>STEF</td>
<td>Iceland</td>
<td>SUISA</td>
<td>Switzerland</td>
</tr>
<tr>
<td>IMRO</td>
<td>Ireland</td>
<td>IMPEL</td>
<td>UK</td>
</tr>
<tr>
<td>ACUM</td>
<td>Israel</td>
<td>PRS</td>
<td>UK</td>
</tr>
<tr>
<td>SIAE</td>
<td>Italy</td>
<td>PRSIM</td>
<td>UK</td>
</tr>
<tr>
<td>KOMCA</td>
<td>South Korea</td>
<td>AMRA</td>
<td>USA</td>
</tr>
<tr>
<td>AKKA-LAA</td>
<td>Latvia</td>
<td>ASCAP</td>
<td>USA</td>
</tr>
<tr>
<td>AGATA</td>
<td>Lithuania</td>
<td>BMI</td>
<td>USA</td>
</tr>
<tr>
<td>GRETA</td>
<td>Lithuania</td>
<td>GMR</td>
<td>USA</td>
</tr>
<tr>
<td>LATGA</td>
<td>Lithuania</td>
<td>HFA</td>
<td>USA</td>
</tr>
<tr>
<td>NATA</td>
<td>Lithuania</td>
<td>SESAC</td>
<td>USA</td>
</tr>
</tbody>
</table>
### Annex 1: Retransmission of broadcasts

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year(^{187})</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>cable retransmission of broadcasts, including retransmission over UMTS mobile radio networks</td>
<td>1998</td>
<td>§ 59a Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>right of participation of film authors in the remuneration which the film producers achieve for the cable retransmission</td>
<td>1996</td>
<td>§ 38 (1a) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>cable or microwave retransmission of broadcasts</td>
<td>1994</td>
<td>Art. XI.224 Economic Law Code</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>

\(^{187}\) Either the year of adoption or entry into force, whichever is earlier, of a national act enabling collective licensing with an extended effect and/or mandatory collective management.
## Emergent Issues on Collective Licensing Practices

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of Rights under National Law</th>
<th>Rights Can Only Be Managed Collectively</th>
<th>Collective Management of the Rights of Outsiders</th>
<th>Possibility of Parallel Individual Exercise</th>
<th>Right to Opt-out</th>
<th>Authorisation of the Competent CMO(s) by Law or an Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>cable or microwave retransmission of broadcasts covered by inalienable rights to remuneration of authors and performers in case of transfer of their exclusive retransmission rights to an AV producer</td>
<td>2015</td>
<td>Art. XI.225 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>retransmission of broadcasts via electronic communications networks</td>
<td>2002</td>
<td>Art. 21, paragraph 2, Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Croatia</td>
<td>retransmission of broadcasts by any means</td>
<td>2003</td>
<td>Art. 156(3) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Cyprus</td>
<td>cable retransmission</td>
<td>2002</td>
<td>Sec. 10 B Law 59(I)/1976</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>cable retransmission of broadcasts by cable or other means</td>
<td>2000</td>
<td>Sec. 97d para. 1 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>retransmission over the internet</td>
<td>2014</td>
<td>Sec. 35(4) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>retransmission of broadcast by cable or wireless means</td>
<td>1961</td>
<td>Sec. 35(1) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>cable retransmission of broadcasts</td>
<td>1999</td>
<td>Sec. 79 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>retransmission of broadcasts by any means</td>
<td>1986</td>
<td>Sec. 25h Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>retransmission of commercial phonograms and music recordings with images</td>
<td>1986</td>
<td>Sec. 47 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>------------------------------------</td>
<td>----------------------------------------</td>
<td>-------------------------------------------------</td>
<td>------------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Germany</td>
<td>cable retransmission of broadcasts</td>
<td>1998</td>
<td>§ 20b Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Greece</td>
<td>cable retransmission of broadcasts</td>
<td>2017</td>
<td>Art. 35§5 and 35§7 Intellectual Property and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Hungary</td>
<td>cable retransmission of broadcasts</td>
<td>1994</td>
<td>§28(2)-(6) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Iceland</td>
<td>cable and satellite retransmission of broadcasts</td>
<td>1992</td>
<td>Art. 23a Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National Law</td>
<td>Nature of Rights under National Law</td>
<td>Rights can only be managed collectively</td>
<td>Collective Management of the Rights of Outsiders</td>
<td>Possibility of Parallel Individual Exercise</td>
<td>Right to Opt-Out</td>
<td>Authorisation of the Competent CMO(s) by Law or an Authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Ireland</td>
<td>Cable transmission of phonograms</td>
<td>2000?</td>
<td>Sec. 38 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cable retransmission of broadcasts</td>
<td>2000?</td>
<td>Sec. 174 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>Cable retransmission of broadcasts</td>
<td>1996</td>
<td>Art. 180bis Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>Retransmission of broadcasts through any means, including cable, online or mobile networks</td>
<td>2000</td>
<td>Art. 3(2)(3) Collective Management Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>Retransmission of broadcasts by any means, including IP networks</td>
<td>1999</td>
<td>Art. 25 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------</td>
<td>------</td>
<td>-------------------------------------------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Lithuania</td>
<td>retransmission of commercial phonograms</td>
<td>2003</td>
<td>Art. 65(2) of the Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>cable retransmission of broadcasts</td>
<td>1999</td>
<td>Art. 65(2) and (3) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>cable or microwave retransmission of broadcasts</td>
<td>1997</td>
<td>Art. 60 and 61 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td>cable retransmission of broadcasts</td>
<td>2000</td>
<td>Chapter 415 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>cable retransmission of broadcasts</td>
<td>1996</td>
<td>Art. 26a-26c Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>cable retransmission of broadcasts</td>
<td>1985</td>
<td>Sec. 57, para. 3, Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Retransmission of broadcasts

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year(^{187})</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>cable retransmission of broadcasts</td>
<td>2004</td>
<td>Art. 21 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>cable retransmission of phonograms</td>
<td></td>
<td>Art. 95(^{(1)}) in conj. with 21(^{(1)}, 21^{1-21}) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>cable retransmission of broadcasts</td>
<td>1997</td>
<td>Art. 7(^{(1)-(2)}) and 8 Decree-Law 333/97, 27 November 1997</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>retransmission of broadcasts, including by a <strong>digital system</strong></td>
<td>2004</td>
<td>Art. 145 ((1)) g), 138 ((1)) and ((5), and 159 ((1)) and ((4)) Copyright</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year[^187]</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------------</td>
<td>--------------</td>
<td>-----------------------------------</td>
<td>----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------------------</td>
<td>----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>Slovakia</strong></td>
<td>using of work by its public disclosure through cable retransmission and equitable remuneration for cable retransmission of artistic performance, sound recording and audiovisual recording which constitutes an original of AV work</td>
<td>2004</td>
<td>Sec. 146(d) and (f) and 147 Copyright Act</td>
<td>remuneration / compensation exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>retransmission of works by means other than cable</td>
<td>2016</td>
<td>Sec. 80(g) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>cable retransmission of works</td>
<td>1995</td>
<td>Art. 9(4) Collective Management Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National Law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Spain</td>
<td>retransmission of broadcasts by any means</td>
<td>1995</td>
<td>Art. 20 Intellectual Property Law</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>remuneration to producers for retransmission by any means of broadcasted AV recordings</td>
<td>1994</td>
<td>Art. 122.2 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>retransmission of broadcasts by any means</td>
<td>1986</td>
<td>Art. 42f Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>cable retransmission of a broadcast</td>
<td>1996</td>
<td>Sec. 144 A Copyright, Designs and Patents Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex 2: Annual supplementary remuneration of performers

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>§ 76 (8) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>annual supplementary remuneration</td>
<td>2015</td>
<td>Art. XI.210 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>annual supplementary remuneration</td>
<td>2014</td>
<td>Art. 77a, paragraph 3, Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Croatia</td>
<td>annual supplementary remuneration</td>
<td>2003</td>
<td>Art. 156(3) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(due to performers, whose contract with phonogram producers provided them with a claim to a non-recurring remuneration, for every year following the 50th year after the publication of the phonogram)
STUDY ON EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES IN THE DIGITAL ENVIRONMENT

Annual supplementary remuneration of performers (term extension) (due to performers, whose contract with phonogram producers provided them with a claim to a non-recurring remuneration, for every year following the 50th year after the publication of the phonogram)

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>annual supplementary remuneration</td>
<td>2014</td>
<td>Sec. 97d para. 1 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Denmark</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>Sec. 66b Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Estonia</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>Sec. 67¹ Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>annual supplementary remuneration</td>
<td>2015</td>
<td>Art. L212-3-3 Intellectual Property Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>§ 79a Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>§74/A Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Iceland</td>
<td>annual supplementary remuneration</td>
<td>2016</td>
<td>Art. 47b Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>annual supplementary remuneration</td>
<td>2014</td>
<td>Art. 84bis Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
STUDY ON EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES IN THE DIGITAL ENVIRONMENT

Annual supplementary remuneration of performers (term extension) (due to performers, whose contract with phonogram producers provided them with a claim to a non-recurring remuneration, for every year following the 50th year after the publication of the phonogram)

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature rights under national law</th>
<th>Rights only managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>annual supplementary remuneration</td>
<td>2015</td>
<td>Art. 95(^3) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Portugal</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>Art. 183-A(7) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>Sec. 146(e) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

---

**Annual supplementary remuneration of performers (term extension)**
(due to performers, whose contract with phonogram producers provided them with a claim to a non-recurring remuneration, for every year following the 50th year after the publication of the phonogram)

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovenia</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>Art. 9(5) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Spain</td>
<td>annual supplementary remuneration</td>
<td>2014</td>
<td>Art. 110bis(2) Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>annual supplementary remuneration</td>
<td>2013</td>
<td>Sec. 45 a and 45 b Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 3: Remuneration for broadcasting and communication to the public of phonograms

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>right to remuneration of producers for broadcasting and public performance produced for commercial purposes</td>
<td>1973</td>
<td>§ 76 (3) 1. Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>right of participation of performing artists in the remuneration of the phonogram producer for broadcasting or communicating to the public a sound carrier produced for commercial purposes</td>
<td>1973</td>
<td>§ 76 (3) 2. Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>rights of performers and phonogram producers to an equitable remuneration for broadcasting and communication to the</td>
<td>1994</td>
<td>Art. 213 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Remuneration for Broadcasting and Communication to the Public of Phonograms

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of Rights under National Law</th>
<th>Rights can only be Managed Collectively</th>
<th>Collective Management of the Rights of Outsiders</th>
<th>Possibility of Parallel Individual Exercise</th>
<th>Right to Opt-out</th>
<th>Authorisation of the Competent CMO(s) by Law or an Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>public (including linear online radio) of commercial phonograms</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>right of phonogram producers to a remuneration for broadcasting and public communication of a phonogram</td>
<td>2003</td>
<td>Art. 156(3) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>remuneration for performers and phonogram producers for broadcasting and retransmission of commercial phonograms</td>
<td>2000</td>
<td>Sec. 97d para. 1 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>----------------</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Denmark</td>
<td>remuneration for performers and phonogram producers for broadcasting and public performance</td>
<td>1961</td>
<td>Sec. 68 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Estonia</td>
<td>remuneration to performers and phonogram producers for broadcasting and communication to the public</td>
<td>1992</td>
<td>Sec. 72 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>remuneration for performers and phonogram producers for broadcasting and public performance of commercial phonograms and music recordings with images</td>
<td>1986</td>
<td>Sec. 47 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>
### Remuneration for Broadcasting and Communication to the Public of Phonograms

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of Rights under National Law</th>
<th>Rights can only be Managed Collectively</th>
<th>Collective Management of the Rights of Outsiders</th>
<th>Possibility of Parallel Individual Exercise</th>
<th>Right to Opt-out</th>
<th>Authorisation of the Competent CMO(s) by Law or an Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Remuneration for broadcasting and communication to the public (including linear online radio) of commercial phonograms</td>
<td>1985</td>
<td>Art. L214-5 Intellectual Property Code</td>
<td>Remuneration / Compensation</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>Broadcasting and communication to the public of phonograms</td>
<td>1994</td>
<td>§77 Copyright Act</td>
<td>Remuneration / Compensation</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Iceland</td>
<td>Broadcasting and communication to the public of phonograms</td>
<td>1972</td>
<td>Art. 47 Copyright Act</td>
<td>Remuneration / Compensation</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Ireland</td>
<td>Broadcasting and public performance of phonograms</td>
<td>2000?</td>
<td>Sec. 38 Copyright Act</td>
<td>Remuneration / Compensation</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
## Remuneration for broadcasting and communication to the public of phonograms

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>broadcasting and other communication to the public of commercial phonograms</td>
<td>2003</td>
<td>Art. 65(2) of the Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>broadcasting and communication to the public of phonograms</td>
<td>1993</td>
<td>Art. 7 Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Remuneration for broadcasting and communication to the public of phonograms

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>broadcasting of phonograms</td>
<td>2004</td>
<td>Art. 95(1) in conj. with 21(1), 21(^1)-21(^3) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>performers’ right to an equitable remuneration for broadcasting and communication to the public</td>
<td>2004</td>
<td>Art. 178(2) Copyright and Related Rights Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>broadcasting and communication to the public of commercial phonograms, including reproduction for that purpose. The communication includes free of charge online and mobile services, without</td>
<td>2004</td>
<td>Art.145 (1) f) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>-----------------------------------------------------------</td>
</tr>
<tr>
<td>Slovakia</td>
<td>the possibility of downloading</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>right of performers and phonogram producers to remuneration for communication to the public of phonograms (except for making available to the public)</td>
<td>1995</td>
<td>Art. 9(1) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Spain</td>
<td>performers and phonogram producers right to a single equitable remuneration for communication to the public of commercial</td>
<td>1987</td>
<td>Art. 108.4 and 116.2 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>-----------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Sweden</td>
<td>phonograms (excluding making available)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>public performance and communication to the public (other than making available on demand)</td>
<td>1960</td>
<td>Sec. 47 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex 4: Broadcasting and communication to the public

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>public performance by loudspeakers of broadcasts (terrestrial, satellite, Internet broadcasts) of linguistic works and works of sound art</td>
<td>1936</td>
<td>§ 59 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>public performance of films in accommodation establishments</td>
<td>1996</td>
<td>§ 56d Copyright and Related Rights Act</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>communication to the public by direct injection</td>
<td>2018</td>
<td>Art. XI. 226-227 Economic Law Code</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>right of authors and performers to broadcasting and retransmission, public performance</td>
<td>2003</td>
<td>Art. 156(3) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Cyprus</td>
<td>communication to the public, including <strong>making available</strong> right of authors, performers and phonogram producers to public performance and communication to the public, including <strong>making available</strong> (excluding stage musical and literary works)</td>
<td>2003</td>
<td>Art. 156(2)(1a), (2a), (2b), (2c) and (3a) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>public performance of broadcasting of a work, a performance, a phonogram or a videogram</td>
<td>2000</td>
<td>Sec. 97e para. 4 let. d) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>public performance of commercial phonograms by means of a technical device; and non-theatrical performance of a musical work from a</td>
<td>2000</td>
<td>Sec. 97e para. 4 let. a), b) and c) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** The table lists the scope, laws, and rights related to the public performance and communication of works, including making them available, in Cyprus and the Czech Republic. The rights can only be managed collectively, with the possibility of parallel individual exercise and the right to opt-out.
## Broadcasting and communication to the public

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>broadcasting of works (excluding dramatic and cinematographic works)</td>
<td>1961</td>
<td>Sec. 30 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>making available on-demand by broadcasters; reproduction and making available of broadcasted works in connection with the broadcasting in terms of time; and making available and reproduction necessary for this purpose of works that were made available by broadcasters, when they are</td>
<td>2014</td>
<td>Sec. 35(4) and (5) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>commercial phonogram: broadcasting of works (except AV works)</td>
<td>2006</td>
<td>Sec. 97e para. 4 let. g) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>non-commercial non-theatrical public live performance of a work</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Estonia</td>
<td>right of communication by satellite simultaneous to a terrestrial broadcast by the same broadcaster. Applies to holders of copyright and related rights. AV works are excluded.</td>
<td>1999</td>
<td>Sec. 79(^{18}) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>broadcasting of works, as well as communication by satellite simultaneous to a terrestrial transmission of the same broadcaster (excluding dramatic and cinematographic works)</td>
<td>1961</td>
<td>Sec. 25f Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Germany</td>
<td>public performance and other communication to the public</td>
<td>1969</td>
<td>§§25(1) and (2) and 26 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>communication to the public by satellite</td>
<td>1969</td>
<td>§27(2) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>broadcasting of literary and musical works, with exception of works intended for stage or scene (and some other exceptions)</td>
<td>1969</td>
<td>§27(1) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Iceland</td>
<td>broadcasting, including satellite simulcasting. Dramatic and cinematographic works are excluded.</td>
<td>1992</td>
<td>Art. 23 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>------------------------------------------------------------------------------</td>
<td>-------------------------------------</td>
<td>----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>Italy</td>
<td>public performance of in public establishments of broadcast works by means of sound radio receivers equipped with loudspeakers</td>
<td>1941</td>
<td>Art. 58 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>broadcasting and any communication to the public of movie or AV work including the performer's artistic contribution</td>
<td>1941</td>
<td>Art. 84 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Latvia</td>
<td>public performance of works or subject matter, if it occurs in places of entertainment receiving public</td>
<td>2000</td>
<td>Art. 3(2)(1) Collective Management Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>broadcasting</td>
<td>1999</td>
<td>Art. 25 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Lithuania</td>
<td>broadcasting</td>
<td>1999</td>
<td>Art. 25 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>
## Broadcasting and communication to the public

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td>Related Rights Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>unwaivable right to fair compensation of principal director, screenplay writer and leading performers of a film, who have assigned their rights to the film producer, for broadcasting or any communication to the public other than making available</td>
<td>2015</td>
<td>Art. 45d(2) Copyright Act and Art. 4(2) Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>communication to the public of AV productions, including satellite simulcasting by the same broadcaster, and making of ancillary copies to such communication. All kinds of</td>
<td>2018</td>
<td>Sec. 57 Copyright Act</td>
<td>exclusive rights</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
<td>------------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>------------------------------------------</td>
<td>---------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Poland</td>
<td>retransmissions, other than by cable are covered.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>communication to the public in public places by means of equipment capable of receiving broadcasted programmes</td>
<td>2018</td>
<td>Art. 21(^3) Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Poland</td>
<td>broadcasting, including by satellite, and <strong>making available</strong> to the public by broadcasters of minor musical works and/or minor textual works</td>
<td>1994</td>
<td>Art. 21 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Poland</td>
<td>remuneration of authors and performers for broadcasting, <strong>making available</strong>, screening in cinemas and presentation of AV works</td>
<td>1994</td>
<td>Art. 70(3) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>communication to the public of phonograms by means other</td>
<td></td>
<td>Art. 95(^1)(1) in conj. with 21(1), 21(^1)-21(^3)</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Portugal</td>
<td>communication to the public by satellite simultaneously to a terrestrial broadcast by the same broadcaster</td>
<td>1997</td>
<td>Art. 6 Decree-Law 333/97, 27 November 1997</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Romania</td>
<td>broadcasting of musical works</td>
<td>2004</td>
<td>Art. 145 (1) d) Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>communication to the public of musical works</td>
<td>2019</td>
<td>Art. 145 (3) Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>satellite simulcasting to terrestrial broadcast (AV works are excluded)</td>
<td>1996</td>
<td>Art. 137(2) and (3) Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>----------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Slovakia</td>
<td>broadcasting, including satellite broadcasting, public performance and communication to the public, except making available to the public; life performance of literary works</td>
<td>2016</td>
<td>Sec. 80(a), (c) and (d) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>communication to the public of non-theatrical musical and written works and phonograms (except for the right of making available to the public)</td>
<td>1995</td>
<td>Art. 9(1) Collective Management Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>remuneration to producers for communication in public places of AV recordings</td>
<td>1994</td>
<td>Art. 122.2 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
<td>-------------------------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>unwaivable right to a single equitable remuneration to performers of AV recordings for any form of communication to the public</td>
<td>2006</td>
<td>Art. 108.5 Intellectual Property Law</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a single equitable remuneration right for wireless broadcasting or any form of communication to the public, shared by performers and producers of commercial phonograms</td>
<td>1994</td>
<td>Art.108.4 and Art.116.2 Intellectual Property Law</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>unwaivable equitable remuneration right of performers for transfer of making available right to producers of phonograms and AV recordings</td>
<td>2006</td>
<td>Art.108.3 Intellectual Property Law</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------</td>
<td>------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>performers and producers right to remuneration for any communication to the public of AV recordings</td>
<td>1996</td>
<td>Art. 108.4 and 5 Intellectual Property Law</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>unwaivable and inalienable authors' share in the boxes office revenues generated by the public showing of the AV work</td>
<td>1966</td>
<td>Art.90.3 Intellectual Property Law</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>unwaivable and inalienable equitable remuneration for the projection of an AV work in a public place without an entrance fee</td>
<td>1987</td>
<td>Art.90.4 Intellectual Property Law</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>unwaivable and inalienable equitable remuneration of authors and performers who transferred their rights to AV</td>
<td>2006</td>
<td>Art. 90.4 and 108.3 Intellectual Property Law</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>----------------------------------</td>
<td>--------------------------------------</td>
<td>------------------------------------------------</td>
<td>------------------------------------------</td>
<td>----------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Sweden</td>
<td>broadcasting, including satellite simulcasting, and making available of literary and musical works by broadcasters</td>
<td>1960</td>
<td>Art. 42e Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 5: Repeated broadcasting and/or communication to the public of works stored in broadcasters’ archives

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>repeated broadcasting and making available by DR and TV2 and regional TV 2 broadcasters of works in their archives and that were broadcast before 1 January 2007</td>
<td>2002</td>
<td>Sec. 30a Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>----------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Estonia</td>
<td>reproduction and communication to the public by broadcasters of works stored in their archives that were broadcast before 1 January 2002</td>
<td>2005</td>
<td>Sec. 25g(1) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Finland</td>
<td>reproduction and communication to the public by broadcasters of works stored in their archives that were broadcast before 1 January 2002</td>
<td>2005</td>
<td>Sec. 25g(1) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>France</td>
<td>equitable remuneration of performers for repeated broadcasting of performances recorded for broadcasting or communication to the public</td>
<td>1999</td>
<td>§74(2) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>equitable remuneration of performers for repeated broadcasting of performances recorded for broadcasting or communication to the public</td>
<td>1999</td>
<td>§74(2) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>
Repeated broadcasting and/or communication to the public of works stored in broadcasters’ archives

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iceland</td>
<td>repeated broadcasting of works</td>
<td>1994</td>
<td>§26(6) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>repeated broadcasting and making available by broadcasters of works in their archives that were broadcast before 16 February 2016</td>
<td>2016</td>
<td>Art. 23b Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>communication to the public of AV productions, including satellite simulcasting by the same broadcaster, and making of ancillary copies to such communication. <strong>All kinds of retransmissions, other than by cable</strong> are covered.</td>
<td>2018</td>
<td>Sec. 57 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Poland</td>
<td>broadcasting and <strong>making available</strong> by a broadcaster of works that were a part of the broadcaster's own productions and which have been broadcasted before 1 July 2003. Including</td>
<td>2018</td>
<td>Art. 21 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National Law</td>
<td>Nature rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-----------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------------</td>
</tr>
<tr>
<td>Portugal</td>
<td>reproduction necessary for such acts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>communication to the public by a broadcaster of works that form part of the broadcaster's own productions and which have been broadcast before 1 July 2005. Including reproduction necessary for such acts</td>
<td>2011</td>
<td>Art. 42g Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Repeated broadcasting and/or communication to the public of works stored in broadcasters' archives

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Annex 6: Reproduction for broadcasting purposes

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>25f Copyright Act</td>
<td>2005</td>
<td>Sec. 25f Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>ephemeral recording by broadcasting, including by transmission via a satellite simultaneously to the terrestrial broadcast. Dramatic and</td>
<td>2005</td>
<td>Sec. 25f Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature rights of under national law</td>
<td>Rights only managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>----------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>reproduction of non-theatrical musical works available on the market for broadcasting purposes</td>
<td>2006</td>
<td>Art. 26b Copyright and remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Reproduction for broadcasting purposes

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of rights under national law</th>
<th>Rights only managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td>Related Rights Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>making of ancillary copies for communication to the public of AV productions, including satellite simulcasting by the same broadcaster</td>
<td>2018</td>
<td>Sec. 57 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature rights of national law</td>
<td>Rights only managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>----------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 7: Resale right

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>resale right</td>
<td>2006</td>
<td>§ 16b Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>resale right</td>
<td>1921</td>
<td>Art. XI. 177 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>resale right</td>
<td>2003</td>
<td>Art. 156(2)(1e) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>resale right</td>
<td>2000</td>
<td>Sec. 97d para. 1 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Denmark</td>
<td>resale right</td>
<td>1961</td>
<td>Sec. 38 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------</td>
<td>------</td>
<td>----------------------------</td>
<td>-------------------------------------</td>
<td>--------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Estonia</td>
<td>resale right</td>
<td>1992</td>
<td>Sec. 15 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>resale right</td>
<td>1995</td>
<td>Sec. 26i Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>France</td>
<td>resale right of unknown rightholders. Collective licensing is decided by a court, on a request of the Minister of Culture or of the designated CMO</td>
<td>2016</td>
<td>Art. L123-7 Intellectual Property Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>resale right</td>
<td>1978</td>
<td>§70 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------</td>
<td>------</td>
<td>-------------------------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Iceland</td>
<td>resale right</td>
<td>1992</td>
<td>Art. 25(b)(5) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>resale right</td>
<td>2006</td>
<td>Art. 152-154 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Latvia</td>
<td>resale right</td>
<td>2000</td>
<td>Art. 3(2)(6) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
<td>------</td>
<td>---------------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>--------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>resale right</td>
<td>2004</td>
<td>Art. 145 (1) c Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Slovakia</td>
<td>resale right</td>
<td>2004</td>
<td>Sec. 146(c) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Slovenia</td>
<td>resale right</td>
<td>1995</td>
<td>Art. 9(2) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Spain</td>
<td>resale right</td>
<td>2019</td>
<td>Art. 24 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Resale right

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>resale right</td>
<td>1996</td>
<td>Sec. 26 n - 26 o Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>resale right</td>
<td>2009</td>
<td>Sec. 14 The Artist's Resale Rights Regulations</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Annex 8: Private copying

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>private copying</td>
<td>1981</td>
<td>§ 42b (1) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>private copying</td>
<td>1994</td>
<td>Art. XI.229 and YESI.318/7 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>private copying</td>
<td>2000</td>
<td>Art. 26, paragraph 8, Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>private copying</td>
<td>2003</td>
<td>Art. 156(3) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>private copying</td>
<td>2000</td>
<td>Sec. 97d para. 1 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
### Private copying

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights only managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>private copying</td>
<td>1992</td>
<td>Sec. 39-46 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>private copying</td>
<td>1992</td>
<td>Sec. 27 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>private copying</td>
<td>1984</td>
<td>Sec. 26a and 26b Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>private copying (including NPVR services of broadcasters)</td>
<td>1985</td>
<td>Art. L311-6 Intellectual Property Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>private copying</td>
<td>1985</td>
<td>§54h(1) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>private copying</td>
<td>1993</td>
<td>Art. 18§§ 3, 4 and 9 Intellectual Property and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights only managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------</td>
<td>------</td>
<td>-------------------------------------------------</td>
<td>-------------------------------------</td>
<td>----------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Hungary</td>
<td>private copying</td>
<td>1982</td>
<td>§§ 18 and 23 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Iceland</td>
<td>private copying</td>
<td>1972</td>
<td>Art. 11 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>private copying</td>
<td>1993</td>
<td>Art. 71octies Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Latvia</td>
<td>private copying</td>
<td>2000</td>
<td>Art. 3(2)(4) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>private copying</td>
<td>2003</td>
<td>Art. 65(2) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------</td>
<td>------</td>
<td>-------------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>private copying</td>
<td>1990</td>
<td>Art. 16c-16ga Copyright Act and Art. 10 sub e Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>private copying</td>
<td>1994</td>
<td>Art. 20 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>private copying</td>
<td>1998</td>
<td>Art. 6(1) of Law 62/98, 1 September 1998</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>private copying</td>
<td>2004</td>
<td>Art. 145(1) a), 115, 168(6)-(8), 169(1), 159(1) and (4) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights only managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>---------------------------------</td>
<td>---------------------------------------------</td>
<td>---------------------------------</td>
<td>----------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Slovakia</td>
<td>private copying</td>
<td>1998</td>
<td>Sec. 146(a) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>private copying</td>
<td>1995</td>
<td>Art. 9(3) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Sweden</td>
<td>private copying</td>
<td>1999</td>
<td>Sec. 26 k - 26 m Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 9: Reprography

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>reprographic reproduction for own use</td>
<td>1996</td>
<td>§ 42b (2) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>reprographic reproduction</td>
<td>1994</td>
<td>Art. XI.239 and XI.318/1 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>reprographic reproduction</td>
<td>2000</td>
<td>Sec. 97d para. 1 let. a) nr. 4 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Denmark</td>
<td>reprographic reproduction</td>
<td>2008</td>
<td>Sec. 24 a Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Estonia</td>
<td>reprographic reproduction</td>
<td>2002</td>
<td>Sec. 27¹ Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Finland</td>
<td>reprographic reproduction or similar techniques</td>
<td>1980</td>
<td>Sec. 13 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>France</td>
<td>reprographic reproduction or other similar techniques. Making of copies for the purpose of sale, rental, publicity or promotion is excluded</td>
<td>1995</td>
<td>Art. L122-10 and R322-4 Intellectual Property Code</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Germany</td>
<td>operation of photocopies in educational establishments and CHIs</td>
<td>1985</td>
<td>§54h(1) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
</tbody>
</table>
## Reprography

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td>private copying through reprographic reproduction</td>
<td>1999</td>
<td>§21(1) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Hungary</td>
<td>reprographic reproduction</td>
<td>1982</td>
<td>Art. 18 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Ireland</td>
<td>reprographic reproduction in copy centres and libraries</td>
<td>2000</td>
<td>Art. 68 and 181ter Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Latvia</td>
<td>reprographic reproduction for private use</td>
<td>2000</td>
<td>Art. 3(2)(5) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>--------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Lithuania</td>
<td>reprographic reproduction</td>
<td>2003</td>
<td>Art. 65(2) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>reprographic reproduction</td>
<td>1974</td>
<td>Art. 16h-16m Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>commercial reprographic reproduction</td>
<td>2003</td>
<td>Art. 20 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Portugal</td>
<td>reprography for private use</td>
<td>1998</td>
<td>Art. 75(2)(a) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

## Reprography

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovakia</td>
<td>reprographic reproduction</td>
<td>2004</td>
<td>Sec. 146(b) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Slovenia</td>
<td>reprographic reproduction</td>
<td>1995</td>
<td>Art. 9(3) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Annex 10: Internal use by organisations

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>photocopying by business enterprises, institutions, etc. of descriptive articles in newspapers, magazines, etc., and excerpts of other descriptive works (musical works and illustrations in connection with the text) for</td>
<td>1995</td>
<td>Sec. 14 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Internal use by organisations

<table>
<thead>
<tr>
<th>Member State</th>
<th>Year</th>
<th>National law</th>
<th>Nature rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>2005</td>
<td>Sec. 13a Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-----------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td>reproduction by public institutions or public or private organisations for their internal use. Cinematographic works intended for theatrical release are excluded.</td>
<td>1982</td>
<td>Art. 18 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>reproduction of copies of works in companies, public administrations, institutes, commissions and similar institutions for internal</td>
<td>2006</td>
<td>Arts. 22(1)(c) and 23 Copyright and</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature rights under national law</td>
<td>Rights only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>----------------------------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>reproduction of works by public and private organisations and enterprises for their own activities</td>
<td>1995</td>
<td>Sec. 47 Copyright Act + D25</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Internal use by organisations

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>making copies and communication to the public by public authorities and public organisations in order to satisfy the need for information within their field of activities</td>
<td>2005</td>
<td>Art. 42b Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 11: Lending

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>lending by public institutions</td>
<td>1994</td>
<td>§ 16a (2) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td>public lending</td>
<td>1994</td>
<td>Art. 244 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>lending</td>
<td>2005</td>
<td>Art. 22a, paragraph 5, Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>public lending</td>
<td>2003</td>
<td>Art. 156(3) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lending</td>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
</tr>
<tr>
<td>---------</td>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Public lending</td>
<td>Czech Republic</td>
<td>lending of works, phonograms and videograms (AV works and computer programs are excluded)</td>
<td>2006</td>
<td>Sec. 97e para. 4 let. e) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td></td>
<td>public lending for distance loans by libraries</td>
<td>2000</td>
<td>Sec. 97d para. 1 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Estonia</td>
<td>lending of works and phonograms</td>
<td>2004</td>
<td>Sec. 13Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Finland</td>
<td>public lending</td>
<td>2006</td>
<td>Sec. 19(4) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>lending in libraries open to the public</td>
<td>2003</td>
<td>Art. L133-1, L133-2 and R325-7 Intellectual Property Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
</tbody>
</table>
## Emerging Issues on Collective Licensing Practices

<table>
<thead>
<tr>
<th>Lending</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>public lending</td>
<td>1972</td>
<td>§ 27 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>public lending</td>
<td>1999</td>
<td>§§ 23/A, 23(3) and §78(1) and (2) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>lending of works</td>
<td>1994</td>
<td>Art. 18bis Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>performers’ right to remuneration for the lending of fixed copies of their performance</td>
<td>2003</td>
<td>Art. 80(2)(f) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
</tbody>
</table>
### Table: Emerging Issues on Collective Licensing Practices in the Digital Environment

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latvia</td>
<td>public lending</td>
<td>2000</td>
<td>Art. 3(2)(2) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>lending of publications in paper form in libraries</td>
<td>2003</td>
<td>Art. 65(2) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>lending</td>
<td>1995</td>
<td>Art. 15c-15g Copyright Act and Art. 2(3), 6(3), 7a(3), 8(3) and 15a-15d Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>lending by libraries</td>
<td>2015</td>
<td>Art. 35 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>public lending by libraries except those that provide free access to public and libraries from all educational institutions</td>
<td>2004</td>
<td>Art. 145 (1) b) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>lending</td>
<td>2004</td>
<td>Sec. 80(e) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>public lending</td>
<td>2007</td>
<td>Art. 37.2 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Annex 12: Rental

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>exclusive rights of authors, performers and phonogram producers; unwaivable rights to remuneration of authors and performers who granted their rental rights in respect of audio or AV recording to a producer</td>
<td>2003</td>
<td>Art. 156(3) Copyright Act</td>
<td>remuneration / compensation exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>equitable remuneration of authors and performers for rental of works, phonograms and videograms</td>
<td>2000</td>
<td>Sec. 97d para. 1 let. b) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
### EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>unwaivable right to an equitable remuneration of authors who granted their rental rights in respect of audio or AV recording to a producer</td>
<td>1972</td>
<td>§ 27 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Estonia: right of authors and performers to an equitable remuneration for use rental where they have transferred their rights to a phonogram and/or AV producer or it is presumed that they did...
<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td></td>
<td>1999</td>
<td>§§23(6) and §78(1) and (2) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td>1994</td>
<td>Art. 18bis Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td>2003</td>
<td>Art. 80(2)(f) Copyright and</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
</tr>
</tbody>
</table>

Error! Reference source not found.
### MERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latvia</td>
<td>rental</td>
<td>2000</td>
<td>Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>rental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>rental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>rental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td>rental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>rental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>rental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>remuneration of authors and performers for rental of AV works</td>
<td>1994</td>
<td>Art. 70(3) Copyright and remuneration / compensation</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
## Rental

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td>Related Rights Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>rental</td>
<td>2016</td>
<td>Sec. 80(e) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>unwaivable right of authors and performers, who transferred their rights, to equitable remuneration for rental of AV and musical works</td>
<td>1994</td>
<td>Art. 90.2 and 109.3 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 13: Educational and scientific use

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>making works available for teaching purposes (&quot;e-Learning&quot;)</td>
<td>2015</td>
<td>§ 42g (3) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>public performance of films and related musical works in classrooms</td>
<td>1996</td>
<td>§ 56c Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>uses in non-commercial textbooks and other educational (and partly religious) materials</td>
<td>1993</td>
<td>§ 45 (1), § 51, § 54 (1) 3 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>commercial uses in textbooks and some other related educational uses. Reproduction, distribution and making available of linguistic works (for uses in e.g. text- and</td>
<td>2003</td>
<td>§ 59c Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
<td>-----------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Belgium</td>
<td>schoolbooks, books for churches and educational broadcasting); musical notations (in text- and schoolbooks) and works of fine art (schoolbooks)</td>
<td>2014</td>
<td>Art. 242 Economic Law Code</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>reproduction and communication of works in the framework of the exceptions for teaching and scientific research</td>
<td>2003</td>
<td>Art. 156(2)(1g) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Cyprus</td>
<td>reproduction on paper or any similar medium and distribution of parts of works or integral short works in a form of collection for educational or scientific research. AV works are excluded.</td>
<td>2003</td>
<td>Art. 156(2)(1g) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>
### Educational and scientific use

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>non-commercial print reproduction of works and distribution to educational establishments for the purpose of education; non-commercial print reproduction of a musical notation of a musical or musical-dramatic work for teaching, scientific research and private use</td>
<td>2017</td>
<td>Sec. 97e para. 1) let. j) and k) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>Making photocopies, digital copies etc. and recording from radio and TV by educational institutions. Special rules apply for cinematographic works and teachers’ and students’ recordings of own performances of works.</td>
<td>1961</td>
<td>Sec. 13 Copyright Act</td>
<td>exclusive rights</td>
<td></td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
<td>-------------------------------</td>
<td>------------------------------------</td>
<td>----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Finland</td>
<td>reproduction and communication to the public (other than by radio and TV) of works for use in educational activities and scientific research</td>
<td>1984</td>
<td>Sec. 14 Copyright Act</td>
<td>exclusive rights</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>reproduction and communication to the public of works for use in educational activities and scientific research</td>
<td>2017</td>
<td>§60h Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td>reproduction in general educational material, in the context of criticism or review, or academic research, even for commercial purposes</td>
<td>2016</td>
<td>Art. 14(3) Copyright Act</td>
<td>exclusive rights</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>
## Educational and scientific use

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>making copies of works by educational establishments</td>
<td>2000?</td>
<td>Sec. 168 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>any use of works by the teacher for classroom instruction</td>
<td>2006</td>
<td>Arts. 22(1)(b) and (d) and 23 Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Educational and scientific use

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norway</td>
<td>reproduction of works and recordings of broadcasts for use in own educational activities</td>
<td>1979</td>
<td>Sec. 46 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>use of publications by universities or public research centers for teaching and research purposes</td>
<td>2014</td>
<td>Art. 32.4-5 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>making copies of works for educational purposes</td>
<td>1981</td>
<td>Art. 42c Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
## Educational and scientific use

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Annex 14: Use for the benefit of persons with disabilities

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>uses by disabled persons or by authorised entities</td>
<td>2003</td>
<td>§ 42d (8) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>recording and distribution of radio and TV programmes for persons with disabilities by government or municipal</td>
<td>1995</td>
<td>Sec. 17(3) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
Use for the benefit of persons with disabilities

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td>making AV or audio recordings of broadcasted works or made available to the public when such acts are carried by government institutions and other non-commercial public interest institutions for use by persons with disabilities</td>
<td>2016</td>
<td>Art. 19(4) Copyright Act</td>
<td>exclusive rights</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>---------------</td>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Ireland</td>
<td>non-commercial reproduction and distribution of works for use by persons with disabilities (phonograms are excluded)</td>
<td>1972</td>
<td>Art. 19(3) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>reproduction and distribution of works in an accessible form for persons with disabilities</td>
<td>2006</td>
<td>Art. 26c Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>---------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------</td>
<td>-----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Annex 15: Use by cultural heritage institutions

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>uses of image or sound carriers in public libraries</td>
<td>1996</td>
<td>§ 56b Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>communication to the public, and necessary for this purpose reproduction, of some works through a library for research or private study</td>
<td>2006</td>
<td>Sec. 97e para. 4 let. h) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
## Emergent Issues on Collective Licensing Practices

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of Rights under National Law</th>
<th>Rights can only be Managed Collectively</th>
<th>Collective Management of the Rights of Outsiders</th>
<th>Possibility of Parallel Individual Exercise</th>
<th>Right to Opt-Out</th>
<th>Authorisation of the Competent CMO(s) by Law or an Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>making available, including reproduction necessary for that purpose, by a library through dedicated terminals of works that are not in its collection</td>
<td>2017</td>
<td>Sec. 97e para. 4 let. f) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>reproduction and communication to the public of works in collections of archives, libraries and museums open to the public</td>
<td>2005</td>
<td>Sec. 16d Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>digital reproduction of certain works by public libraries upon request and digital transmission to a registered reader or other libraries</td>
<td>2004</td>
<td>Sec. 16 b Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Use by cultural heritage institutions</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>--------------------------------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>------------------------------------------</td>
<td>----------------</td>
<td>-----------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td>reproduction and making available to the public by cultural heritage institutions of works in their collections</td>
<td>2016</td>
<td>Art. 12b Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## MERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>reproduction and any communication to the public, including making available by archives, libraries and museums of published works, publicised works of arts and phonographic works in their collections</td>
<td>2005</td>
<td>Sec. 50 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>reproduction and communication to the public of works by archives and libraries</td>
<td>?</td>
<td>Art. 42d Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 16: Out-of-commerce works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>reproduction and making available of out-of-commerce works</td>
<td>2017</td>
<td>Sec. 97e para. 4 let. i) Copyright Act</td>
<td>exclusive rights</td>
<td>?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>------------------------------------</td>
<td>----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Germany</td>
<td>reproduction and making available of out-of-commerce works first published in Germany before 1 January 1966 in</td>
<td>2013</td>
<td>§ 51 Collective Management Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
**EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES**

## Out-of-commerce works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td>books, journals, newspapers, magazines or in other writings. Non-commercial purposes.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>copying of out-of-commerce works</td>
<td>1999</td>
<td>Art. 22(3)(a) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>reproduction and making available by archives, educational and cultural institutions of out-of-commerce works first published in Poland before 24 May 1994 and stored in their collections</td>
<td>2015</td>
<td>Art. 3510 Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>using out-of-commerce work by making copies, making the work available to</td>
<td>2014</td>
<td>Sec. 80(b) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
## Out-of-commerce works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovenia</td>
<td>the public or public distribution of copies by transfer of title</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Annex 17: Orphan works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>use of orphan works</td>
<td>2014</td>
<td>Sec. 103 para. 1 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Orphan works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>reproduction and communication to the public of orphan works by cultural heritage institutions and broadcasters</td>
<td>2015</td>
<td>Art. 145 (1) h) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex 18: Use of works of visual arts

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>reproduction of published works of art. Use of works of art in generally informative presentations, for example in encyclopaedias, general art books, educational material and the like, and reproduction of works of art in critical and scientific</td>
<td>2008</td>
<td>Sec. 24 a Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>--------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------------------------</td>
<td>-----------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Estonia</td>
<td>representations for business purposes.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>Use of works of art in catalogues and in information and pictorial representation of a building: A work of art which is included in a collection or displayed or offered for sale, may be reproduced in pictorial form for the purpose of disseminating information about the exhibition or sale or for a catalogue produced by printing, photocopying or by other corresponding means</td>
<td>2005</td>
<td>Sec. 25a Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>Reproduction and communication to the public of work of plastic, graphic or photographic art in the course of services of automatic image referencing. In simple terms,</td>
<td>2016</td>
<td>Art. L136-2 Intellectual Property Code</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
## Use of works of visual arts

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>the provision covers search engine services offering their users to see images associated with their research queries.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>public exhibition of works of visual artists, applied artists, photographers and applied designers</td>
<td>1999</td>
<td>§69 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>---------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-----------------------------------</td>
<td>--------------------------------------</td>
<td>------------------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Use of works of visual arts

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Annex 19: Reproduction of musical works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>reproduction of musical works (audio recording)</td>
<td>2003</td>
<td>Art. 156(2)(1b) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Reproduction of musical works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>mechanical reproduction or distribution of copies of previously published non-theatrical compositions and lyrics.</td>
<td>?</td>
<td>§19(1) Copyright Act exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>reproduction of musical works on</td>
<td>1995</td>
<td>Art. 9(3) Collective Management Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
# Reproduction of musical works

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>phonograms and videograms</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Annex 20: Domaine public payant

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>communication to the public of folk literary and artistic creations</td>
<td>1957</td>
<td>Art. 8(3) and 156(2) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>Nature rights under national law</td>
<td>Rights only managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>----------------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>equitable remuneration for the benefit of visual artists, in case ownership of the original work of fine art is transferred with the cooperation of an art dealer after expiration of the duration of copyright protection</td>
<td>1994</td>
<td>§100 Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature rights national law</td>
<td>Rights only managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>---------------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------------------</td>
<td>----------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National Law</td>
<td>Nature Rights of Works under National Law</td>
<td>Rights Only Managed Collectively</td>
<td>Collective Management of the Rights of Outsiders</td>
<td>Possibility of Parallel Individual Exercise</td>
<td>Right to Opt-Out</td>
<td>Authorisation of the Competent CMO(s) by Law or an Authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>------------------------------------------</td>
<td>----------------------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------------------------</td>
<td>----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Annex 21: Other domains

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Using linguistic works in a work of musical art created for the purpose of setting the linguistic work to music</td>
<td>1936</td>
<td>§ 47 (2) Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>right of authors to distribution of their works</td>
<td>2003</td>
<td>Art. 156(2) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>right to equitable remuneration from the TV broadcaster, commercial lessor or another</td>
<td>2000</td>
<td>Sec. 14(6) Copyright Act</td>
<td>remuneration right</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>person who uses the AV work of an author who transferred his rights or where the transfer it presumed</td>
<td>2013</td>
<td>Sec. 25g(2) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>reproduction and communication to the public of works stored in archives of publishers and published before 1 January 1999</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>online recording service of TV programmes</td>
<td>2015</td>
<td>Sec. 25l Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>equitable remuneration to authors that granted their rights to other persons without limitation of uses that were known at that time between 1966 (entry into force of the German copyright law prohibiting licenses</td>
<td>2007</td>
<td>§ 137l Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>Other</td>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
</tr>
<tr>
<td>-------</td>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>---------------</td>
<td>-------------------------------------</td>
<td>------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td></td>
<td>Greece</td>
<td>in unknown type of use) and 2008 (entry into force of the possibility to license rights in unknown type of use)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>right of reproduction and distribution of individual copies of cinematographic works</td>
<td>1999</td>
<td>§§ 18 and 23 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>phonogram producers’ right of reproduction of phonograms for the purpose of public performance</td>
<td>1999</td>
<td>§76(1)(a) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>right of performers to make available their fixed performances</td>
<td>2003</td>
<td>§74(2) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Emerging Issues on Collective Licensing Practices

<table>
<thead>
<tr>
<th>Other Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National Law</th>
<th>Nature of Rights under National Law</th>
<th>Rights can only be Managed Collectively</th>
<th>Collective Management of the Rights of Outsiders</th>
<th>Possibility of Parallel Individual Exercise</th>
<th>Right to Opt-Out</th>
<th>Authorisation of the Competent CMO(s) by Law or an Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iceland</td>
<td>public communication of a work at religious services and other official church functions</td>
<td>1972</td>
<td>Art. 21(4) Copyright Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>equitable remuneration due in case of public performance of works in social care institutions or other charity associations for non-profit activities</td>
<td>1996</td>
<td>Art. 15bis Copyright and Related Rights Act</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>all rights of Italian citizens or residents who have not received any proceeds from the use of their rights abroad for over a year</td>
<td>1941</td>
<td>Art. 180(6) and (7) Copyright and Related Rights Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>all use of phonograms published for commercial purposes</td>
<td>2004</td>
<td>Art. 3(2)(7) Collective Management Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>
### Other

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liechtenstein</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>making available for informative purposes in the press, radio and TV the materials that have been already broadcast, reports and articles on current events and issues, photographs taken by reporters, excerpts from reports, reviews and summaries, etc.</td>
<td>2004</td>
<td>Art. 25(4) Copyright and Related Rights Act</td>
<td>remuneration/compensation</td>
<td>YES</td>
<td></td>
<td>YES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Member State</th>
<th>Scope</th>
<th>Year</th>
<th>National law</th>
<th>Nature of rights under national law</th>
<th>Rights can only be managed collectively</th>
<th>Collective management of the rights of outsiders</th>
<th>Possibility of parallel individual exercise</th>
<th>Right to opt-out</th>
<th>Authorisation of the competent CMO(s) by law or an authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romania</td>
<td>making copies of work available to the public</td>
<td>2016</td>
<td>Sec. 80 Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Slovakia</td>
<td>making copies of a literary work</td>
<td>2016</td>
<td>Sec. 80 (e) Copyright Act</td>
<td>exclusive rights</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Slovenia</td>
<td>making available to the public by providers of digital services of contents aggregation of non-significant fragments of contents, available in periodical publications or in periodically updated websites and which have an informative purpose, of creation of public opinion or of entertainment</td>
<td>2014</td>
<td>Art. 32.2 Intellectual Property Law</td>
<td>remuneration / compensation</td>
<td>YES</td>
<td>YES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member State</td>
<td>Scope</td>
<td>Year</td>
<td>National law</td>
<td>Nature of rights under national law</td>
<td>Rights can only be managed collectively</td>
<td>Collective management of the rights of outsiders</td>
<td>Possibility of parallel individual exercise</td>
<td>Right to opt-out</td>
<td>Authorisation of the competent CMO(s) by law or an authority</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>------</td>
<td>--------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex 22: Procedural presumptions of representation

Without ambition for exhaustiveness, this annex presents well-established procedural presumptions in a few of the studied Member States, namely, Austria, Germany, Hungary, Latvia, Poland and Spain. Such presumptions are aimed at facilitating relations between CMOs and users by freeing CMOs from the burden of proof that they were explicitly authorised by rightholders of collectively licensed rights. From the formalistic legal perspective, such presumptions are of procedural nature and, as such, do not empower CMOs to represent rightholders non-members vis-à-vis potential licensors.

Figure A.31 Procedural presumptions of representation

Austria

In Austria, § 25 of the Collective Management Act provides for a presumption of representation (Wahrnehmungsvermutung). According to this provision, the national authority supervising CMOs, after having assessed the representativeness of a CMO, may determine by decision that a CMO manages the rights to almost the entire repertoire of works or other subject-matter for its entire field of activity or a specific part thereof (see the subsection on representativeness in Austria in Section 2.d.a). The decision gives rise to the presumption that the authorised CMO manages the rights of the entire repertoire of works or other subject-matter in the area defined by the notice, unless the contrary is proven. The supervisory authority can make such decision at the request of a CMO, a legal entity with the capacity of concluding general agreements or a user. To the extent that the prerequisites for the decision subsequently cease to apply, the supervisory authority shall revoke the decision ex officio or upon a request by the same persons who are entitled to request the authority to establish the presumption.

In principle, the law does not restrict to any specific domains the power of the national supervisory authority to establish such presumptions. Instead, the domains are to be defined by the decision of the authority.

For example, by decision of 14 February 2008, the supervisory authority decided that AKM enjoys a legal presumption that it manages, for the entire repertoire of works or other
subject-matter, the rights of presentation, performance and demonstration ("communication to the public") described in its operating licences as well as the broadcasting rights regarding musical works in the field of entertainment music. Therefore, if someone who publicly performs modern entertainment music cannot prove that the musical works are not managed by AKM, has to obtain an authorisation from AKM.

The presumption is aimed at relations between CMOs and users. It does not grant CMOs a right to represent rightholders non-members, and CMOs can collect and distribute the collected amounts to rightholders members. The presumption shifts the burden of proof in relations between CMOs and users. Since the AKM enjoys the presumption of representation according to § 25 of the Collective Management Act, a user will have to prove that the music he plays is only the music of rightholders non-members in order to escape the obligation to seek a licence and pay remuneration to the AKM. The presumption is, therefore, rebuttable.

Accordingly, § 25 of the Collective Management Act does not explicitly regulate relations between rightholders non-members and CMOs and does not impact the individual exercise of rights by rightholders non-members.

Germany

In Germany, three different kinds of presumptions provide CMOs with legal standing, helping them with the enforcement of rights. The presumptions are hence of a rather procedural nature. Two of them are provided by §§ 48 and 49 of the Collective Management Act and one, the so-called “GEMA presumption”, was developed through the jurisprudence. The number of domains in which the first two presumptions are applicable is specifically and exhaustively defined by law. At the same time, the application of the “GEMA presumption” is not exhaustively limited to any specific domain.

§ 48 of the Collective Management Act provides for a rebuttable presumption of legal standing for CMOs for claims to obtain information from users regarding rights of all rightholders (including non-members) whose works they use. The objective of such claims is collection of information necessary for assessing users’ obligation to pay. Under this presumption, users do not have to answer to individual claims for information. The legal condition for the presumption is that the claim regards a right that can only be asserted by a CMO. The presumption is rebuttable. It is for the user to prove that he has all the necessary authorisations or made all the payments (Re. a porno Film BGH 13 June 1985, GRUR 1986, 66, 68, BGHZ 95 p. 285, ZUM 1986 53, NJW 1986, 1247 GEMA Vermutung II).

§ 49 of the Collective Management Act provides that where a CMO manages remuneration rights (i.e., not exclusive rights), it is presumed to manage the rights of all rightholders. The presumption was introduced in the Copyright Act of 1985. The presumption provides the CMO with a legal standing to claim remuneration with regard to rights of rightholders non-members. According to § 49(3) of the Collective Management Act, in so far as the CMO also receives payments for rightholders who have not explicitly authorised the CMO to manage their rights, it shall indemnify users from individual claims to remuneration by rightholders non-members. Rightholders non-members can claim their share of collected amounts from the CMO that has collected payments on their behalf. The presumption is
rebuttable if a user can prove that he has obtained the necessary permissions from rightholders non-members through individual agreements.

The scope of § 49 (providing for the presumption to claim payment) is broader than the scope of § 48 (providing for the presumption to claim information) of the Collective Management Act, because there are more remuneration rights than information rights under the Copyright Act. Section 49 of the Collective Management Act expressly covers the following domains under Copyright Act:

- Section 27 (rental and lending rights of authors);
- Section 54 (1) (remuneration right of authors for private and own uses);
- Section 54c (1) (reprography remuneration for authors);
- Section 77 (2) (exclusive right of the performer to reproduce and distribute phonograms);
- Section 85 (4) (rental and lending remunerations of the phonogram producers and compensations under limitations);
- Section 94 (4) (rental and lending remunerations of the film producers and compensations under limitations); and
- Section 137l (5) (transitional provision about licences concluded in the past covering unknown uses) of the Copyright Act.

Established jurisprudence provides for a so-called “GEMA presumption” (“GEMA Vermutung”) in domains where exclusive rights can also be exercised individually. In establishing this presumption, the courts relied, notably, on the principle of good faith of § 242 of the Civil Code that extends to precontractual situations. The presumption empowers the CMO to claim information with regard to the use of all works. The presumption is established only in cases where it is likely (wahrscheinlich) that the user uses works of the CMO’s repertoire (see BGH 21 April 1988, ZUM 1988 575, GRUR 1988 604 NJW 1989 389). In the past, the courts took into account GEMA’s de facto monopoly position in the German market. It is left to the court to judge the likelihood of use, and hence to decide on the presumption of representation, when the CMO sues a user. The presumption is rebuttable if a user can prove that he has obtained the necessary permissions from rightholders non-members through individual agreements. In principle, rightholders non-members can also prohibit the exercise of their rights by the CMO without concluding individual agreements with users. The jurisprudence is not very explicit about the position of rightholders non-members and does not provide for specific safeguards of their rights. For a brief summary of founding jurisprudence on the “GEMA presumption” (see Annex 23 on case law).

Hungary

Three out of four Hungarian CMOs responding to the survey gave an affirmative answer to the following question: ‘In the case of a court dispute, does your organisation benefit from a legal presumption that it represents all rightholders unless the contrary is proven by the other party?’.

One of these CMOs explained its answer as follows: ‘There is no such express legal provision. But there is a legal provision that the CMO may bring in a lawsuit in its own name without the participation of the rightholders represented, and the extended collective
management + the obligation to publish the list of those who have withdrawn their mandate, gives rise to a judicial presumption that the scope of representation shall be regarded as given.'

Another CMO referred to the following legal provisions in Hungarian Law:

Section 9(1) of the Hungarian Collective Management Act: ‘For the purposes of exploiting the copyright and related right represented by the collective management organisation, and asserting such a right before a court, the collective management organisation shall be regarded as the rightholder of the copyright or related right. No other rightholder needs to participate in the action for the collective management organisation to assert its claim before a court.’

Section 10(1) of the Hungarian Collective Management Act: ‘For the purposes of collective management of rights, with the exception of licensing mechanical reproduction, the works and subject-matters protected by neighbouring rights used shall be presumed to be protected until proved otherwise.’

Article 94/A(8) of the Hungarian Copyright Act: ‘Where one of the parties in a copyright infringement lawsuit has already rendered its statements probable to a reasonable extent, upon the request of the party providing evidence, the court may order the other party: a) to present and allow the inspection of the documents and other material proof in his possession, b) to give notification of and to present bank, financial or commercial information and documents in his possession if the infringement is carried out on a commercial scale [Article 94(5)].’

Article 265(1) of the Hungarian Civil Procedure Code (Act CXXX. of 2016): ‘Unless otherwise provided by an Act, the relevant facts in a case shall be proven by the party having an interest in the fact being accepted by the court as the truth (hereinafter “interest to prove”), and the consequences of not proving or unsuccessfully proving such a fact shall be borne by the same party.’

Latvia

In case No. SKC-217/2018 of 28 December 2018, the Supreme Court of Latvia decided, with reference to Article 113 of the Constitution (providing for a duty of the state to recognise the freedom of scientific research, artistic and other creative activity, and the duty to protect copyright and patent rights), that the right of CMOs to grant licences does not encompass all circumstances in which rightholders are entitled to manage their rights individually. The Supreme Court considered that a presumption that the CMO manages the respective rightholder's rights could be appropriate, but only insofar as (1) the individual management of copyright is deemed to be impossible or cumbersome, and (2) it would not be just to expect that the CMO shall be able to precisely substantiate the scope of use of copyrights under its management. If both of the aforementioned preconditions are fulfilled, it shall be presumed that the CMO representing a substantial part of the respective works (a particular repertoire in the decided case) is also entitled to manage rights pertaining to the whole of the repertoire which has been utilised. The court deduced from the scope of Article 3(2) of the Collective Management Act that the legislator acknowledged that the management of certain economic rights on an individual basis is at least cumbersome, if not impossible. In examining the admissibility of the second criterion above, the court noted that the CMO in
question had acquired the necessary authorisation from the Ministry of Culture, which in and of its own is an indication that the CMO represents a substantial part of the works in question.

Other than by proving that any of these prerequisites have not been fulfilled, a user may rebut the presumption by substantiating that the works, for which the respective CMO has obtained no mandate from rightholders, were used to such a degree as to cause justifiable doubts about the wide scope of the CMO’s representation powers over the particular repertoire.

**Poland**

In Poland, Article 5(1) of the Copyright and Related Rights Act reads as follows: ‘It is presumed that a collective management organisation may exercise collective management within the scope of its authorisation and that it has procedural standing within this scope.’ The presumption of representation is of a general nature: it may apply to all works and all types of uses (touching upon all acknowledged exclusive rights), within the scope of CMO’s authorisation. Yet, this presumption is designed primarily as a procedural law mechanism addressing relations between CMOs and users/third parties: it confirms that a CMO has legal standing to enforce copyright, e.g. sue for infringement and damages, regardless of whether it has obtained a mandate from all rightholders concerned. It was reported that, in essence, the presumption also refers to the sphere of substantive law (introducing a presumption that a CMO is authorised to represent a particular rightholder), but it is noted that the provision was not designed to address relations between CMOs and rightholders non-members.

The presumption is rebuttable in the sense that it places the burden of proof that a CMO does not represent specific rightholders by virtue of an explicit mandate from those rightholders on the user. In principle, rightholders can opt-out (excluding their rights from the existing and/or future agreements) at any stage, simply by informing the interested parties that they have not authorised the relevant CMO to represent them.

Although this provision was added to the Copyright Act in 2018, a very similar provision had existed for a long time. Article 105 of the Copyright and Related Rights Act (now deleted), combined with the civil law concept of benevolent intervention in another person’s affairs, for long time served to establish the CMOs’ competence to represent rightholders non-members. It was reported that Article 5(1) and Article 105 (deleted) of the Copyright and Related Rights Act have generated some conflicting interpretations over the years.

**Spain**

In Spain, all CMOs that have been authorised by the Ministry of Culture are ‘legitimised… to exercise intellectual property rights entrusted to their management and enforce them in all kinds of administrative or judicial procedures’ (Article 150 of the Intellectual Property Law). This is commonly known as a “universal legitimisation” not only for “administrative and judicial procedures” (ad processum) but, in general, for the exercise of intellectual property rights entrusted to a CMO according to its Statutes (ad causam). Therefore, in practice, this legitimisation somehow operates as a iuris tantum “legal presumption of representation” for the licensing of rights managed by the CMO, especially in areas where there is only one CMO: to the extent that the CMO does not need to submit evidence of its repertoire, a collective licence of rights by this CMO may be perceived as covering all
authors (members and non-members) in that area, unless evidence to the contrary is produced (for instance, that the work is subject to a Creative Commons licence or that the author has not entrusted his rights to the CMO).

The concept of “universal legitimisation” is relevant for voluntary collective licensing, insofar as CMOs do not need to prove their mandate over repertoire when granting licences or suing users, but needless when rights are subject to mandatory collective management, since there is “no way out” from the extended effect: the legitimisation for a CMO to act in these cases is “ex lege” (rather than a legitimisation, a legal obligation is imposed on the CMO by law).

The “universal legitimisation” facilitates the capacity of CMOs to act towards third parties (licensees, infringers, courts, etc.), as CMOs do not bear the burden of proof in infringement cases, but does not address the relations between CMOs and rightholders non-members. As far as voluntary collective licensing is concerned, licences granted by a CMO under the flag of “universal legitimisation” only cover works explicitly mandated by rightholders. It does not give CMOs a legal right to grant licences on behalf of rightholders non-members.

For more detailed information on the application of the “universal legitimisation” (see Annex 23 on case law).
Annex 23: Selected jurisprudence on CLEE and mandatory collective management

Below is a list of judgements of national courts and semi-judicial bodies regarding CLEE and mandatory collective management. Decisions regarding domains where CMOs cannot exercise rights of rightholders non-members are excluded.

**Austria**

**Austrian Supreme Court (OGH)**

**OGH 4 Ob 89/08d**, confirming that § 59a of the Copyright and Related Rights Act, subjecting the cable retransmission right to mandatory collective management with an extended effect on “outsiders”, also applies to retransmitting broadcasts via streaming technology, because there is no viable reason for different treatment of retransmission via cable and microwave systems and transmissions via mobile telephony.

**OGH 4 Ob 107/04w**, ruling that no extension effect applies to statutory remuneration rights which the Copyright and Related Rights Act subjects to mandatory collective management, as CMOs can only administer, in a fiduciary capacity, rights that have been assigned to them by rightholders and cannot collect any remuneration for rightholders non-members.

**OGH 4 Ob 341/97v**, leaving the question open whether the mandatory collective management of rights to use broadcasts of § 59 of the Copyright and Related Rights Act is also applicable to film works.

**OGH 4 Ob 116/97f and 4 Ob 7/88**, confirming that the legal presumption of representation which exists for the AKM pursuant to § 25 of the Collective Management Act already existed before the provision of § 25 of the Collective Management Act was adopted in 2016.

**Supervisory Authority of CMOs**

**KOA 9.450/08-005** of 14 February 2008, acknowledging that AKM, within the territory of the Republic of Austria, exercises the lecture, performance and presentation rights described in its operating licences as well as the broadcasting rights to almost the entire stock of musical works.

**Belgium**

**Supreme Court**

**Cass. 14 June 2010, Uradex v RTD, IRDI/2011, 156**, holding that the cable retransmission right contained in Article XI.224 of the Economic Law Code can ‘very well be exercised by a company for the collective management of producers' rights, thus attaining the legislator's objective’ and confirming – in line with the CJEU’s decision of 1 June 2006 (C-169/05) – that the legal presumption of representation in respect of the cable retransmission right contained in Article XI.224(2) of the Economic Law Code not only relates to the financial aspects of the right but also to its exercise (case C-169/05 was the result of questions
referred to the CJEU by the Supreme Court (Cass. 4 April 2005, Uradex v RTD & Brutélé, AM 2005, 404).

Constitutional Court

Case nr.128/2016 of 13 October 2016, dismissing as unfounded the claim brought forward by the CMO managing producers’ rights that the mechanism in Article XI.225 of the Economic Law Code (containing a title on copyright and related rights) violates the non-discrimination principle. Pursuant to the mechanism in Article XI.225, authors and performers have a non-transferable remuneration right that also applies if they would have transferred their exclusive right to a producer of an audiovisual work. This right is subject to mandatory collective rights management by a CMO that must be one that manages the rights of its own category (i.e. for the authors’ remuneration right, this must be a CMO representing authors, for the performers’ remuneration right, this must be a CMO representing performers). The right can therefore not be administered by a CMO representing producers.

Bulgaria

Sofia Court of Appeal, Commercial Division

Judgment № 1639 of 20 July 2015 in commercial case № 1663/2015, Judgment № 1740 of 6 July 2018 in commercial case № 457/2018 confirming that the right of retransmission of broadcasts in Article 21, paragraph 2 of the Copyright and Related Rights Act is managed exclusively by CMOs, except in case it has been granted to media service providers.

Croatia

Constitutional Court

U-I/64450/2009 of 12 May 2010, dismissing a constitutional complaint about the mechanism of legal presumption of representation by CMOs, because the applicant failed to identify the constitutional grounds on which this mechanism might be deemed unconstitutional.

Supreme Court

Revt 167/2013-2 of 15 July 2014, deciding that the provision in the Copyright and Related Rights Act that authorises DZIV to grant authorisations to CMOs is general in application and cannot lead to a revision of the authorisation that DZIV granted to HDS ZAMP on the basis of an “equal application of the law” (while the authorisation conferred on this CMO a monopoly position and with it a monopolistic determination of tariffs for collecting royalties, it would be impossible to apply an equal application test to tariff decisions by CMOs, since tariffs depend on the type of beneficiaries, works covered and the market and must therefore be evaluated on a case-by-case basis).
**High Misdemeanour Court**

**Gż-1884/11** of 7 June 2013, confirming that the legal presumption of representation of HDS ZAMP applies both to domestic and foreign authors and rightholders, irrespective of whether

**Czech Republic**

**Constitutional Court**

**ÚS 3102/16** of 21 May 2019, ruling that the mere existence of an operational TV or radio in a restaurant cannot automatically lead to the conclusion that the user must enter into a licensing contract (with extended effect) with a CMO or that these circumstances give rise to an unjust enrichment by the user; in such case, the CMO (or the court in a legal proceeding) must check whether the protected subject matter is actually communicated to the public and thus infringes copyright, whether the rights are collectively managed, whether the protected subject matter is actually managed by the CMO and, finally, whether the user communicates the protected subject-matter to the public lawfully, i.e. under valid licence agreement (§ 10 of the Copyright Act) (see also **ÚS 1598/19** of 27 December 2019, essentially reaching the same conclusions).

**Supreme Court**

**30 Cdo 698/2017** of 29 November 2017, deciding that: ‘In the dispute over the granting of unjust enrichment obtained by operating television broadcasts in rooms of accommodation establishments without a licence, the plaintiff (collective manager) does not bear the burden of assertion and the burden of proof as to what particular objects of protection have been used’, which seemingly diverges from the case law of the Constitutional Court of a later date.

**France**

**Constitutional Court**


**Council of State**

**Décision n° 368208**, 7 June 2017, ECLI:FR:CECHR:2017:368208.20170607, ruling that the CJEU Judgment in **Soulier and Doke**, C-301/15, ECLI:EU:C:2016:878 only partially
annuls the mechanism for collective management of digital rights to out-of-commerce books, and does not impact the licences granted by the approved CMO prior to the CJEU Judgment.

**Supreme Court**

**Décision n° 18-21.211**, 11 December 2019, ECLI:FR:CCASS:2019:C101021, confirming the decisions of the Paris Court of Appeal of 6 April 2018 (n° 17/01312) and Tribunal de grande instance de Paris of 18 November 2016, (n° 14/03917), according to which mandatory collective management of the right of performers and phonogram producers to an equitable remuneration for broadcasting and communication to the public of phonograms published for commercial purposes is compatible with EU law and that competent CMO(s) can manage the rights of rightholders non-members (as the issue was considered sufficiently clear, the courts refused a request for a preliminary ruling to the CJEU).

**Germany**

**Federal Court of Justice (BGH – Bundesgerichtshof)**

*Brief summary of the case-law founding the “GEMA presumption” (“GEMA Vermutung”)*

**BGH 24 June 1955, I ZR 178/53, “Betriebsfeier”, BGHZ 17, 376**, establishing the de facto presumption that GEMA manages the performing right in musical works, stating that, due to its monopoly position in this field (not a legal monopoly but a de facto monopoly), GEMA is the only CMO for musical authors’ rights with an almost complete (lückenlos, without any hole nor gap) repertoire of domestic and foreign music (para. 11).

**BGH 7 October 1960, I ZR 17/59 “Sportheim”,** confirming the de facto presumption that GEMA manages the performing right in musical works, stating that nothing can dispel the de facto presumption that GEMA, as the sole CMO in Germany for musical authors’ rights with an almost complete repertoire of domestic and foreign music, manages the performing rights in musical works (para. 15).

**BGH 5 June 1985, IZR 53/83 “GEMA Vermutung I”** (similarly: **BGH 13 June 1985, I ZR 35/83 “GEMA Vermutung II”,** para. 13; **BGH 5 December 1985, I ZR 137/83 “GEMA Vermutung III”**, para. 16; **BGH 15 October 1987, I ZR 96/85 “GEMA Vermutung IV”,** para. 13), finetuning the GEMA presumption, by acknowledging the de facto presumption in favour of GEMA of its power to manage the performing rights in domestic and foreign dance and entertaining music, but holding that, in the case at hand (which involved the mechanical reproduction and distribution of film music on videotapes for personal use), this presumption does not hold, since it can be assumed that GEMA’s repertoire of domestic works is complete, but not its repertoire of foreign works, especially when paying attention to the litigious rights. The BGH defines the “GEMA Vermutung” in para. 10: *‘The GEMA presumption recognised by the courts states that, considering GEMA’s extensive domestic and foreign repertoire, there is a de facto presumption in favour of GEMA of its power to administer the performing rights to domestic and foreign dance and entertaining music for the so-called mechanical rights; the presumption also extends to the fact that the works are protected by copyright […]. However, the presumption does not apply’*- as the Court of
Appeal rightly assumed - to all rights administered by [GEMA]. Rather, the prerequisite is that the plaintiff has a de facto monopoly position with regard to the rights it exercises. This is the case of [GEMA], because it is the only CMO responsible for the administration of copyright in musical works for the Federal Republic of Germany, including West Berlin, which also administers the rights of foreign music authors via a system of reciprocity agreements with foreign collecting societies, can rely on a complete or almost complete repertoire of rights of the type in dispute.’

BGH 21 April 1988, ZUM 1988 575, GRUR 1988 604 NJW 1989 389, interpreting Section 48 of the Collective Management Act, according to which a CMO, when asserting a right to information that may only be asserted by a CMO, shall be presumed to manage the rights of all the rightholders, stating that the presumption is rebuttable if the user can justify all licences necessary to his/her use. The legal condition for the presumption to apply is that the claim regards a right that can only be asserted by a CMO. However, case law admits the so-called “GEMA Vermutung” also in cases where rights may be individually exercised, if it is likely (wahrscheinlich) that the user uses works of the CMO’s repertoire.

Higher State Court (OLG – Oberlandesgericht)

OLG Munich, 23 December 1999, ZUM 2000, 243 “Mediaspiegel”, admitting the claim of VG Wort against an enterprise merchandising excerpts of press publications, which refused to provide information to VG Wort about the texts it distributed because VG Wort did not show evidence that it represented all rightholders of works that the enterprise used. The court held that, since VG Wort enjoys a de facto monopoly in Germany as regards the management of rights in press publications, it is entitled to request information about the use of copyright protected works, regardless of the rightholders who it contractually represents.

Hungary

High Court

Pfv.IV.20.248/2019/6, ruling that representation of fewer than 11% of all audiovisual works registered in a public database is not enough for establishing that the CMO is representative. The said database mentioned only those audiovisual producers who received state support for the creation of their work since 2004 in Hungary. It is considered reasonable to assume the actual “representativeness” was lower than that compared to all audiovisual producers.

Municipal Court of Appeals

Municipal Court of Appeals, 8.Pf.21.212/2017/6, confirmed the below ruling almost in its entirety by its interlocutory judgment, only changing the trial court’s ruling on the deadline of data disclosure.

Municipal Court of First Instance
**Municipal Court of First Instance, 1.P.26.229/2013/54**, ruled that a lack of publication of the names of musical performers represented by the CMO of performers, EJI, is not a misuse of rights, as international performers are lawfully represented by EJI under the concept of extended collective rights management, and EJI has published the list of performers who directly authorised EJI to represent them. Any submissions to the contrary must be evidenced by the defendant, Deezer. Any payment to phonogram producers cannot exempt a streaming platform from seeking a licence and paying the necessary fees to EJI. Payment to phonogram producers alone might be relevant only if relevant performers opted-out of EJI’s regime.

**Italy**

**Constitutional Court**

**No. 454/1991**, ruling that when the legislator attributes to a specific entity the management of rights belonging to a category or group of citizens, the entity should be selected on the basis of its representativeness, should not discriminate between members and non-members, and should be characterised by open membership and equal opportunities of participation in the life and government of the association. The decision concerned a hunting association, but may indirectly also be relevant to mechanisms of CLEE.

**Supreme Court**

**No. 34857, III criminal Section**, 29 April 2009, defining SIAE as “direct assignee of the right to enforce” copyright and related rights in the case of cable retransmission under Article 180bis of the Copyright and Related Rights Act.

**No. 34172, III criminal Section**, 24 July 2017, and **no. 27074**, 11 July 2007, affirming, more specifically on related rights, that Article 180bis of the Copyright and Related Rights Act is ‘the only scenario of mandatory exclusive management of related rights by SIAE’, which may instead serve as a mandatory intermediary for the management of the rights of authors.

**District courts**

**Tribunale di Milano, 12 September 2014**, limiting the scope of SIAE’s legal mandate and the scope of Article 180 of the Copyright and Related Rights Act, by ruling that ‘it cannot be stated that foreign authors are obliged to respect the legal mandate deriving from Articles 180 and 185 of the Copyright and Related Rights Act. Only Italian authors are obliged to refer to SIAE for the management of their rights […] in line with the EU principles of free market and competition’ (as in **Tribunale di Trento, 20 July 2015**, confirming the same interpretation).

**Tribunale di Torino, 16 March 2010**, qualifying the scheme introduced by Article 180bis of the Copyright and Related Rights Act as mandatory collective management, with no reference to an extended effect, by stating that ‘Article 180 [of the Copyright and Related Rights Act] attributes to SIAE the exclusivity in the intermediation only with regard to the rights listed in the provision. The only case where also the management of related rights is
attributed to SIAE is the mandatory licensing scheme provided by Article 180bis in the field of cable rebroadcasting. Thus, in all the other cases, any activity of intermediation is subject to freedom of contract and a regime of free competition, and rightholders may act individually or collectively, by means of collecting societies or delegating SIAE on the basis of specific agreements’.

**Tribunale di Milano (ordinanza), 11 April 2011**, seemingly excluding the possibility of an extended effect exercised by SIAE for the protection and management of exclusive rights over a cinematographic work, as it asserted that ‘no license can be granted by SIAE in the absence of a specific mandate by the rightholder of the movie’.

**Tribunale di Vicenza, 30 September 1997**, stating that SIAE is the only actor legitimised to proceed against persons who are under an obligation to pay the equitable remuneration for private copying, by confirming that SIAE is ‘the only possible addressee of such remuneration […] even in the absence of a specific mandate by the rightholder to do so’.

**Competition Authority (AGCM – Autorità Garante della Concorrenza e del Mercato)**

**Decision A508 of 25 September 2018**, holding that SIAE abused its dominant position under Article 102 of the TFEU for having implemented ‘a complex strategy directed to exclude competitors in the market for intermediation services in the field of copyright, including the imposition of barriers in the offer of services related to the management of author’s rights […] and to the management of rights of authors not enrolled in SIAE, and the creation of barriers against competitors in the issuance of licences to broadcasters or for the management of foreign repertoires’.

In this context, the AGCM conducted a broad analysis of the treatment of protected works co-authored by members and non-members of SIAE, focusing on SIAE’s consolidated practice of attributing a de facto extended effect to licenses covering such works. The decision harshly criticises SIAE’s blanket licence scheme and its impact on the principles of free competition and representation, formally delegitimizing the attribution of extended effects to licenses without an explicit legislative provision that would back them.

**Opinion no. 10138 of 2 January 2020**, requesting the Ministry for Cultural Heritage and the President of the Council of Ministers to exercise their supervising powers over SIAE and to make sure that SIAE defines the criteria for the distribution and payment of the equitable remuneration for private copying under Article 71octies of the Copyright and Related Rights Act with the participation of “all interested intermediaries”. The Opinion also intervened on a long-standing querelle, ruling that the Italian Copyright and Related Rights Act does not compel SIAE to revert to rightholders’ associations in order to define such criteria.

**Latvia**

**Supreme Court**

**SKC-222/2019** of 19 August 2019, ruling that rightholders have an exclusive right to refuse the utilisation of their work. To protect the economic interests of rightholders, CMOs are entitled to request a final injunction, i.e. the prohibition to use works of the rightholder.

---

188 The text of the decision is available (in Italian) at https://www.agcm.it/media/comunicatistampa/2018/10/A508 (last accessed February 28, 2020).
represented by the respective CMO. The court must assess the appropriateness of such final injunction, and is entitled to restrict it, also in terms of its temporal scope.

**SKC-217/2018** of 28 December 2018: If a user utilises works of a rightholder represented by a CMO without a licence even though licences granted by the respective CMO are freely available, the licence fee is to be determined in accordance with the licence fees previously set by the CMO. If the fee has been set prior to the unlawful use of the copyrighted work and imposed upon lawful users of the work, the user without a licence may not claim that the licence fee does not adhere to the concept of fair remuneration. If no licence fee had been either set or published prior to the unlawful use of the copyrighted work, the CMO may request that a fee for a similar use be applied either in full or part. Under such circumstances, the court must undertake to examine the appropriateness of the invoked similar fee. However, the user without a licence may dispute the application of a similar fee on the grounds of insufficient similarity between the different methods of utilisation of the work. By referring to Article 113 of the Constitution, i.e. the duty of the state to recognise the freedom of scientific research, artistic and other creative activity, and the duty to protect copyright and patent rights, the court stresses that the right of CMOs to grant licences does not encompass all circumstances wherein rightholders themselves are entitled to manage their rights individually. Consequently, the Supreme Court deducts that a presumption that the CMO manages the respective rightholder’s rights is appropriate insofar as (1) the individual management of copyright is deemed to be impossible or cumbersome, and (2) it would not be just to expect that the CMO shall be able to precisely substantiate the scope of use of copyrights under its management. Should both of the aforementioned preconditions be fulfilled, it shall be presumed that the CMO representing a substantial part of the respective work, a particular repertoire in the present case, is also entitled to manage rights pertaining to the whole of the repertoire which has been utilised. The court further notes that the exact scope of Article 3(2) of the Collective Management Act of Copyright is to be interpreted as the legislator’s acknowledgement that the management of certain economic rights on an individual basis is at least cumbersome, if not impossible. Additionally, in examining the admissibility of the second criterion above, the court notes that the CMO in question had acquired the necessary authorisation from the Ministry of Culture, which in and of its own shall act as an indication that the CMO represents a substantial part of the works in question.

**Lithuania**

**Supreme Court**

**E3K-3-46-969/2018** of 28 February 2018, confirming that a café owner who played musical recordings as background music in its establishment had to pay damages to AGATA, the main CMO representing rightholders of related rights, despite the fact that the café owner had made an attempt to conclude a collective licensing agreement with GRETA, an organisation that was claiming to also represent rightholders of related rights. In Lithuania, the right to publicly communicate musical recordings can only be managed collectively by CMOs. The court held that the recordings used belonged to the repertoire of AGATA, not GRETA. Because of the attempt to conclude a licensing deal with GRETA, however, the damages were reduced.
Vilnius Regional Court

2-99-803/2015 of 28 April 2015, deciding that a broadcasting organisation, which used works from the repertoire that NATA administers in its broadcast, should pay this CMO €30.000 compensation for copyright infringement. In Lithuania, cable retransmission rights are subject to mandatory collective management, which is exercised by two CMOs, LATGA and NATA, on behalf of their members (authors of musical works). The broadcasting organisation in question was not willing to enter into licensing agreements with NATA and was willing not to use works from the repertoire that NATA administers. However, as NATA did not disclose details about the repertoire it administers, but only a list of its members (which use different pseudonyms), the broadcasting organisation – arguably unintentionally – used works from the repertoire that NATA administers in its broadcast. The court found this to be an infringement, considering that it is a duty of a user to correctly identify the authors behind each work used, despite a lack of intent. The case demonstrates a problem that arises when two or more CMOs are administering rights that are subject to mandatory collective management and they do not provide sufficient information and clarification about their repertoires to users.

Norway

Oslo City Court

Case 10-17293TVI-OTIR-04, 14 June 2011 (Riks TV), holding that Norwaco, managing rights to retransmission of broadcasts, did not fulfil the representativeness requirement and that its approval as the CMO granting extended collective licences was not valid since the organisation represented less than 50% of relevant rightholders.

Cable Conflict Commission (now repealed)

Joined cases 1/2010 (Riks TV) and 4/2010 (Canal Digital), 29 June 2011, also holding that, in the area of retransmission rights of broadcasts, Norwaco did not fulfil the requirement of representativeness and that its approval as the CMO granting extended collective licences was not valid since the organisation represented less than 50% of relevant rightholders.

It is not likely that future courts will hold on to this position, as it is not in accordance with the premises of the new Copyright Act. The position that representativeness requires “around 50%" was expressly “overruled" in the preparatory works to the Copyright Act, which was adopted on 15 June 2018. The Ministry has also issued a new approval to Norwaco.

Poland

Supreme Court

OSP 2000/2, no. 24 of 20 May 1999, stating that the presumption of representation under (the old) Article 105 of the Copyright Act (currently: Article 5(1) of the Collective Management Act) takes a broad reading and results from the fact that a given CMO
manages certain rights in respect of certain types of uses, as long as this is consistent with the scope of authorisation issued by the Minister of Culture (a CMO must have an authorisation in the form of a decision issued by the Minister). To rebut the presumption, it is necessary to prove that a CMO has not been authorised to manage copyright in respect of a specific work.\footnote{189}{This decision has been criticised because, according to some commentators, it was based on the assumption that there would be no overlaps between CMOs, and this assumption has proven incorrect.}

\textbf{I CKN 971/98} of 8 December 2000 and \textbf{I CSK 35/09, OSNC 2010/3, no. 47} of 16 September 2009, weakening the effects of the presumption of representation under (the old) Article 105 of the Copyright Act (currently: Article 5(1) of the Collective Management Act) by focusing the presumption on the scope of rights the presumption encompasses, while in respect of the works represented the position of the opposing party remains difficult as it would be required of him/her to prove a negative circumstance (lack of authorisation). The result of this decision is that, when the defendant questions the existence of representation, the CMO cannot be free of any obligation to submit evidence supporting its claims.

\textbf{III CSK 30/11} of 17 November 2011, holding that the existence of the presumption of representation under (the old) Article 105 of the Copyright Act (currently: Article 5(1) of the Collective Management Act) does not absolve a CMO from specifying which copyright works are covered by its claims.

\textbf{I CSK 617/12, OSNC-ZD 2014/4, no. 62} of 27 June 2013, ruling that the presumption of representation under (the old) Article 105 of the Copyright Act (currently: Article 5(1) of the Collective Management Act) encompasses the entire repertoire of a CMO, including foreign rightholders.

\textbf{I CSK 51/17} of 9 November 2017, arguing that the presumption of representation under (the old) Article 105 of the Copyright Act (currently: Article 5(1) of the Collective Management Act) cannot be rebutted merely by showing that the scopes of authorisations of two or more CMOs overlap.

\textit{Constitutional Tribunal}

\textbf{K 5/05, Dz.U. Nr 94, it. 685} of 24 May 2006, annulling, for reason of being unconstitutional, the previous version of Article 70(2) of the Copyright Act listing the categories of co-authors entitled to an additional remuneration for the retransmission of audiovisual works, which is subject to mandatory representation pursuant to Article 70(3) of the Copyright Act. The current version of Article 70(2) of the Copyright Act now generally refers to "co-authors of an audiovisual work and performers" without listing the specific categories of co-authors entitled to said remuneration.

\textit{Portugal}

\textit{Supreme Court}

\textbf{Proc. No. 197/14.2YHLSB.L1.S2}, 15 March 2018, deciding that, to succeed in a legal action against a hotel that communicated TV broadcasts to its clients without the necessary...
licensure, the CMO representing videogram producers did not need to prove which concrete producers it represented, provided that it was established that it represented virtually the entire repertoire of national and foreign videograms used and commercialised in Portugal. In the case at hand, while the CMO did not give evidence of the concrete producers that it represented, it managed to successfully establish (i) that it represented the quasi totality of videogram producers and (ii) that the hotel had engaged in an unauthorised communication of videograms to the public. This was deemed sufficient by the court, which decided the case in favour of the CMO.

**Romania**

*High Court of Cassation and Justice (ICCJ)*

**Decision no. 4815/2013**, ruling that, despite the mandatory collective management of the right of communication to the public of musical works by UCRM-ADA, rightholders have the right to exercise their rights individually, thus recognising the possibility of separate exercise of rights without denying the mandatory character of the collective management in question; the mechanism of mandatory collective management as such is not transformed into a form of voluntary collective management, as it still operates in relation to any other third party.

**Decision no. 880/2014 - Case nr. 33034/3/2009**, ruling that, also in respect of the mandatory collective management of the right of communication to the public of phonograms by UPFR, rightholders cannot be deprived of the right to exercise their rights individually; the Court emphasises that the ruling does not abolish the legal distinction between mandatory collective management (Article 123\(^1\)), voluntary collective management (Article 123\(^2\)) and management based on a special mandate (Article 123\(^3\)) of the Copyright Act; however, users are not in a position to choose between mandatory collective management (in case they would require the authorisation from the CMO) and individual management by phonogram producers; in this case, the phonogram producer publicly communicated or broadcasted his own phonograms to the public, for which he did not need to obtain authorisation from the CMO.

**Decision no. 317/2013 - Case 904/3/2010**, holding that the mandatory collective management under Article 123\(^1\) of the Copyright Act indeed entails a legal presumption of mandate in favour of the CMO that manages the rights of the respective rightholders, which however is only a simple presumption that can be overturned by proof to the contrary, in the sense that either the rightholder or the user can prove that the right is or has been exercised individually or licensed other than through the relevant CMO (the rightholders in the case at hand were not members of that CMO); the court ruled that ‘To interpret otherwise the provisions of art. 123\(^1\) paragraph (2) of Law no. 8/1996 would mean to accept that, for certain categories of rights, the rightholders lose their right to manage them individually, which is obviously contrary to the spirit of the law, which established the mandatory collective management as a measure of protection of the holders, and not for the purpose of limiting their right.’

**Decision no. 4982/2010**, establishing that, in a situation where a user has been transmitted all the patrimonial rights to use musical works or their performances and thus having become the exclusive rightholder of those works and performances, UCMR-ADA cannot hold that user accountable for paying remuneration for the communication to the public of those works and performers under the mandatory collective management of Article 123\(^1\) of the Copyright Act. The court said that ruling otherwise would have the effect of limiting the
rights of rightholders to exercise themselves, individually, the rights recognised by law; the mandatory collective management of Article 123\(^1\) of the Copyright Act was established to provide better protection for rightholders and not to restrict their possibilities to exercise these rights themselves.

**Slovenia**

**Supreme Court**

**No. II Ips 196/2017**, ECLI:SI:UPRS:2018:I.U.526.2017.18, ruling that CMOs must assure equal treatment of rightholders members and rightholders non-members within the system of mandatory collective rights management, because a CMO that collectively manages rights that pursuant to the law can only be managed collectively, cannot act arbitrarily. This means that rightholders non-members have to enjoy the same set of rights as rightholders members of that CMO. Under the mandatory collective rights management system, even if a rightholder is not a member of the CMO, the law creates a legal mandate, pursuant to which the CMO has to manage that rightholder’s rights.

**No. III Ips 33/2014**, ECLI:SI:VSRS:2015:III.IPS.33.2014 (see also: Ljubljana Hight Court no. V Cpg 828/2017), holding that, if no CMO has the authorisation to collectively manage rights which, pursuant to the law, can only to managed collectively, rightholders themselves can manage and exercise their own rights, because a different explanation would lead to a situation, where the rightholders could not, in any way, exercise their rights, which would also cause a conflict with the Constitution of the Republic of Slovenia.

**No. II Ips 219/2017** (ECLI:SI:VSRS:2018:II.IPS.219.2017); **no. II Ips 327/2017** (ECLI:SI:VSRS:2018:II.IPS.327.2017) and **no. II Ips 43/2018**, holding that remuneration for cable retransmission of film music is to be paid to AIPA, which collectively manages the rights to film music since 2010, whereas remuneration for cable retransmission of pre-existing music used in a film is to be paid to SAZAS, the CMO responsible for collective management of musical works. The court observes that Slovenian copyright law treats musical composers that create music specifically for use in a film (film music) as co-authors of the audiovisual work (the film) and not as authors of the musical work, while the composers of pre-existing musical works that are used in a film are treated as authors of the musical work.

**Ljubljana High Court**

**No. V Cpg 535/2015**, ECLI:SI:VSLJ:2016:V.CPG.535.2015, imposing upon CMOs a duty to contract, by ruling that, upon a user’s demand, a CMO has a duty to grant a non-exclusive licence for the use of works contained in its repertoire, provided that such a licence is subject to the currently valid tariff.

**Spain**

**Supreme Court**
Decisions of 18 October 2001, 18 December 2001, 15 October 2002, 24 December 2002, 31 January 2003, 10 May 2003, 15 January 2008, confirming the “universal legitimisation” enjoyed by CMOs once they have been authorised by the Ministry, in the sense that they have standing to sue to claim rights, without having to prove their repertoire or that they were entrusted with their management (the onus probandi lies basically on the defendant). In Spain, all CMOs that have been authorised by the Ministry of Culture are ‘legitimised... to exercise intellectual property rights entrusted to their management and enforce them in all kinds of administrative or judicial procedures’ (Article 150 of the Intellectual Property Law). This is commonly known as a “universal legitimisation”. For more information on this concept, see Annex 22 on Procedural presumptions of representation.

Regional courts (AP – Audiencia Provincial)

AP Madrid (sec. 28), 5 July 2007, “Buenavistilla Club Social”, and AP Alicante, 21 March 2007, “Bowling Sur”, finetuning the rule of “universal legitimisation” in order to “share” the onus probandi among claimant and defendant, which became important in light of the arrival and spread use of Creative Commons licences and the allegation of this rule in infringement claims brought by CMOs (for failure to obtain the applicable licence).

AP Cáceres (sec. 1), 28 April 2008, holding that, in principle, the claimant must prove the facts alleged, unless these are “absolutely and generally notorious” facts (for instance, music is played in a musical bar) which do not need to be proven by claimant. Then, the defence should be proving differently (for instance, music played in that musical bar is only Creative Commons licensed music). Once the defence has proven this, the claimant should be the one proving that despite that, the defendant is still playing the music of its repertoire.

AP Burgos, 28 July 2017, “La Rua”, granting a claim brought by SGAE, but modulating (reducing) the payment of the SGAE licence to the percentage of works that were proven to be in SGAE’s repertoire.

AP Madrid (sec. 28ª), 18 February 2011, “Bar La Troupe”, making a special distinction to the different kind of Creative Commons licences in the application of the rule of “universal legitimisation” (not all such licences allow commercial uses) and asserting that a distinction must be made between rights that are subject to mandatory collective management (usually, remuneration rights that are unwaivable and inalienable) and rights managed collectively on a voluntary basis. Remuneration rights that are unwaivable and subject to mandatory collective management will not be affected by Creative Commons licences, as they are unwaivable and inalienable by nature and CMOs are “universally legitimised” to claim for them, regardless of any contract or mandate. By contrast, exclusive rights entrusted to collective management on a voluntary basis may be affected (and differently so) by different Creative Commons licences (i.e., allowing for commercial uses or not); in any case, even in these cases, the ex lege “universal legitimization” of the CMO will still...

apply (as long as the infringed right is within the CMO’s scope of action, as envisaged in its Statutes).
Annex 24: Statistical information related to representativeness

The tables below summarise publicly available information about the number of rightholders represented by CMOs and the number of representation agreements concluded with foreign CMOs. This statistical information is relevant for understanding representativeness.

At least the following shall be taken into account when reading the tables:

- different rightholders hold rights to a different number of works and other subject-matters;
- one rightholder member could represent other rightholders (e.g., in case of an umbrella CMO, multiple CMOs are its members);
- rights of some foreign rightholders could be represented through their direct membership or indirectly through their sub-contractors, etc.;
- one representation agreement may cover more than one Member State, and a few representation agreements may cover the same Member State;
- works and other subject-matter of different rightholders are used with different intensity and frequency;
- representation agreements concluded between CMOs could be bilateral and unilateral.

In Member States where a CMO’s representativeness is assessed in part on the basis of the number of rightholders represented, the information provided in the tables below could be indicative for understanding the threshold for a sufficient minimum number of rightholders for a CMO to be considered representative (subject to all the analytical limitations, some of which are listed above). A more complete analysis of such threshold would require matching of data on the number of rightholders represented at the time when decisions on representativeness (if any) were made by national competent authorities. Such analysis was not undertaken.

The tables also indicate that the number of rightholders (national and foreign) represented by CMOs in different domains differs significantly (subject to all the analytical limitations, some of which are listed above). Notably, the number of rightholders represented by CMOs in the domain of broadcasting and communication to the public of musical works is significantly higher than the number of rightholders represented by CMOs in the domain of visual arts.

Yet, even when representativeness is assessed in terms of number of rightholders represented, such numbers cannot be properly interpreted without understanding the full context to which the numbers relate (taking into account, e.g., types of uses, frequency and intensity of uses involved, the overall number of rightholders and works in the domains concerned).

Numbers of members and representation agreements followed by an asterisk (*) are numbers taken from the CISAC Members Directory. These numbers are not necessarily domain-specific.

---

### Austria

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements with CMOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public lectures and performances of broadcasts of linguistic works and works of sound art by means of loudspeakers (“communication to the public”); the type of broadcast (terrestrial, satellite, internet) is irrelevant. Copyright and related rights are covered.</td>
<td>Literar Mechana</td>
<td>over 16.000</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td>AKM and Austro Mechana</td>
<td>over 25.000</td>
<td>approx. 80 (AKM) and approx. 40 (Austro Mechana)</td>
</tr>
<tr>
<td></td>
<td>LSG</td>
<td>over 20.000</td>
<td>over 25</td>
</tr>
<tr>
<td></td>
<td>VGR</td>
<td>over 60 members (broadcasting organisations)</td>
<td></td>
</tr>
<tr>
<td>Cable retransmission of broadcasts, including retransmission over UMTS mobile radio networks (see Annex 23 on case law)</td>
<td>Literar Mechana</td>
<td>same as above</td>
<td></td>
</tr>
<tr>
<td></td>
<td>AKM and Austro Mechana</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>LSG</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VGR</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VAM</td>
<td>over 300</td>
<td>over 20</td>
</tr>
<tr>
<td></td>
<td>VdFS</td>
<td>approx. 3000</td>
<td>over 50</td>
</tr>
<tr>
<td></td>
<td>Bildrecht</td>
<td>approx. 5000</td>
<td>approx. 40</td>
</tr>
<tr>
<td>Commercial uses in textbooks and some other related educational uses. Reproduction, distribution and making available of linguistic works (for use in teaching, churches and educational broadcasting); musical notations (teaching use)</td>
<td>Bildrecht</td>
<td>approx. 5000</td>
<td>approx. 40</td>
</tr>
<tr>
<td></td>
<td>Literar Mechana</td>
<td>over 16.000</td>
<td>72</td>
</tr>
</tbody>
</table>
and works of fine art (teaching use).

Croatia

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements with CMOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various rights of performers</td>
<td>Hrvatska udruga za zaštitu izvođačkih prava (HUZIP) Croatian Association for the Protection of Performers’ Rights</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Various rights of phonogram producers</td>
<td>Udruga za zaštitu, prikupljanje i raspodjelu naknada fonogramskih prava (ZAPRAF) Association for Protection, Collection and Distribution of Phonogram Producers’ Rights</td>
<td>In 2018: 263 domestic members and 34 foreign members</td>
<td>3</td>
</tr>
<tr>
<td>Right to remuneration for public lending of a videogram, and a right to a remuneration for reproduction of a videogram for private or other personal use</td>
<td>Društvo hrvatskih filmskih redatelja (DHFR) Croatian Film Director’s Guild</td>
<td>164*</td>
<td>29</td>
</tr>
<tr>
<td>Various rights of authors</td>
<td>Društvo hrvatskih književnika (DHK) Croatian Writers’ Association</td>
<td>In 2018: 532 members</td>
<td>3</td>
</tr>
<tr>
<td>Various rights of authors of musical works</td>
<td>Hrvatsko društvo skladatelja (HDS ZAMP) Croatian Composers’ Society</td>
<td>58 (for communication rights) and 43 (for mechanical reproduction rights); 10 236*</td>
<td>107*</td>
</tr>
</tbody>
</table>
### Czech Republic

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>Subject-matter</th>
<th>No. of members</th>
<th>No. of representation agreements with CMOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>non-theatrical performance of a musical work from a commercial phonogram</td>
<td>OSA</td>
<td>502276 (domestic musical works), 48800 (domestic audiovisual works)*</td>
<td>9338* – these are only contractually represented rightholders, not members</td>
<td>81*</td>
</tr>
<tr>
<td>communication, and necessary for this purpose reproduction, of some works through a library for research or private study</td>
<td>DILIA</td>
<td>50 847*</td>
<td>8040</td>
<td>41*</td>
</tr>
<tr>
<td>public performance of commercial phonograms by means of a technical device</td>
<td>INTERGRAM</td>
<td></td>
<td></td>
<td>41*</td>
</tr>
<tr>
<td>see below</td>
<td>OOA-S</td>
<td>61 493 (domestic works)*</td>
<td>3716*</td>
<td>38*</td>
</tr>
<tr>
<td>see below</td>
<td>GESTOR</td>
<td></td>
<td>497*</td>
<td>20</td>
</tr>
<tr>
<td>see below</td>
<td>OAZA</td>
<td>909 268*</td>
<td>662*</td>
<td>14</td>
</tr>
<tr>
<td>making available, including reproduction necessary for that purpose, by a library through dedicated terminals of works that are not in its collection;</td>
<td>OOA-S and DILIA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domain(s)</td>
<td>CMO</td>
<td>Subject-matter</td>
<td>No. of members</td>
<td>No. of representation agreements with CMOs</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>--------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>----------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>reproduction and making available of out-of-commerce works for a period not exceeding 5 calendar years; non-commercial print reproduction of works and distribution to educational establishments for the purpose of education.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>non-commercial print reproduction of a musical notation of a musical or musical-dramatic work for teaching, scientific research and private use</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>non-commercial non-theatrical public live performance of a work</td>
<td>OSA, DILIA</td>
<td>and OOA-S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>broadcasting of works (except AV works)</td>
<td>OSA, DILIA</td>
<td>OOA-S, OAZA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>public performance of broadcasting of a work, a performance, a phonogram or a videogram</td>
<td>OSA, DILIA</td>
<td>OOA-S, OAZA, INTERGRAM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>lending of works, phonograms and</td>
<td>OSA, DILIA</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Domain(s)

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>Subject-matter</th>
<th>No. of members</th>
<th>No. of representation agreements with CMOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>videograms (AV works are excluded)</td>
<td>OAZA, INTERGRAM</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Finland

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements with CMOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>resale</td>
<td>Kuvasto</td>
<td>more than 1.000</td>
<td>34*</td>
</tr>
<tr>
<td>• photocopying;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• use for internal communication;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• re-use of work included in a periodical;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• online recording service of TV programmes.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>educational activities and scientific research</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>educational activities and scientific research</td>
<td>Gramex</td>
<td>54.118 rightholders represented</td>
<td></td>
</tr>
<tr>
<td>use of a sound recording and a music recording containing images</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>use of works in archives of CHIs lending</td>
<td>Kapiosto</td>
<td>see above</td>
<td></td>
</tr>
<tr>
<td>• original radio and television transmissions;</td>
<td>Sanasto</td>
<td>4*</td>
<td>2*</td>
</tr>
<tr>
<td>• re-use of an archived programme.</td>
<td>Teosto</td>
<td>ca. 33 000</td>
<td>73*</td>
</tr>
<tr>
<td>retransmission of a radio or television transmission</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kapiosto</td>
<td>see above</td>
<td></td>
</tr>
</tbody>
</table>

### Hungary

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>mechanical reproduction of musical works</td>
<td>Artisjus</td>
<td>22 652*</td>
<td>56 (covering 117 countries)</td>
</tr>
<tr>
<td>private copying</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domain(s)</td>
<td>CMO</td>
<td>No. of members</td>
<td>No. of representation agreements</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>----------------------</td>
<td>----------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>repeated broadcasting of works</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>public performance of musical works</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>communication to the public - composers and lyricists</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>private copying through reprography</td>
<td>RSZ</td>
<td></td>
<td>19 (covering 9 countries)</td>
</tr>
<tr>
<td>public lending of literary works and sheet music by libraries</td>
<td>MISZJE</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>reproduction and distribution of individual copies of cinematographic works</td>
<td>Filmjus</td>
<td>2 267*</td>
<td>28</td>
</tr>
<tr>
<td>communication to the public - visual artists and cinematographic authors</td>
<td>Filmjus (Cinematographic authors)</td>
<td>423*</td>
<td>42 (covering 34 countries)</td>
</tr>
<tr>
<td>HUNGART (Graphic, applied and photographic authors)</td>
<td></td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>retransmission by cable</td>
<td>Artisjus - representing the composers and lyricists</td>
<td>77 (covering 212 countries)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Filmjus - representing the cinematographic authors and film producers</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td></td>
<td>HUNGART - representing the graphic, applied and photographic authors</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td></td>
<td>EJI - representing the performing artists</td>
<td>43</td>
<td></td>
</tr>
</tbody>
</table>
## MERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>right of exhibition</td>
<td>HUNGART</td>
<td></td>
<td>42 (covering 34 countries)</td>
</tr>
<tr>
<td>droit de suite</td>
<td>HUNGART</td>
<td></td>
<td>42 (covering 34 countries)</td>
</tr>
<tr>
<td>domaine public payant</td>
<td>HUNGART</td>
<td></td>
<td>42 (covering 34 countries)</td>
</tr>
<tr>
<td>making available to the public of performances</td>
<td>EJI</td>
<td></td>
<td>43 (covering 34 countries)</td>
</tr>
<tr>
<td>repeated broadcasting of performances</td>
<td>EJI</td>
<td></td>
<td>43 (covering 40 countries)</td>
</tr>
<tr>
<td>right to obtain an annual supplementary remuneration</td>
<td>EJI</td>
<td></td>
<td>43 (covering 40 countries)</td>
</tr>
<tr>
<td>right of reproduction of sound recordings for the purpose of public performance</td>
<td>MAHASZ</td>
<td></td>
<td>7 (covering 7 countries)</td>
</tr>
<tr>
<td>right of equitable remuneration for the broadcasting or any other communication to the public</td>
<td>MAHASZ</td>
<td></td>
<td>7 (covering 7 countries)</td>
</tr>
</tbody>
</table>

### France

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right in out-of-commerce books published in France</td>
<td>SOFIA</td>
<td></td>
<td>6</td>
</tr>
</tbody>
</table>

In 2010, the year preceding the adoption of the law on collective licensing of digital rights to out-of-commerce books, SOFIA represented 'more than 6 000 authors and 200 publishers constituting 80% of sales revenues of French
出版’，根据该州当局负责控制CMOs。

### Latvia

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public lending</td>
<td>Copyright and Communication Consulting Agency/ Latvian Authors Association (AKKA/LAA)</td>
<td>over 5500</td>
<td>over 130</td>
</tr>
<tr>
<td>Public performance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cable retransmission</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resale right</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private copying</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cable retransmission</td>
<td>Latvian Performers’ and Producers’ Association (LAIPA)</td>
<td>over 2 000</td>
<td>over 90</td>
</tr>
<tr>
<td>Public performance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private copying</td>
<td>Association “Film Producers Association of Latvia”</td>
<td>over 270</td>
<td>Latvian and foreign film producers</td>
</tr>
<tr>
<td>Private copying</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cable retransmission</td>
<td>Union of Professional Actors of Latvia</td>
<td>over 370</td>
<td></td>
</tr>
<tr>
<td>Private copying</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Romania

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>Subject-matter</th>
<th>No. of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. communication to the public of musical works; 2. broadcasting of musical works.</td>
<td>UCMR-ADA</td>
<td>146 056* domestic musical works</td>
<td>9 769*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>10 034 (on 18.09.2019)</td>
</tr>
</tbody>
</table>

---

### Emerging Issues on Collective Licensing Practices

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>Subject-matter</th>
<th>No. of members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>125,455 works in 2015</td>
<td>8,905 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td>98,886 works in 2012</td>
<td>7,768 in 2012</td>
</tr>
<tr>
<td>resale right</td>
<td>VISARTA</td>
<td>5,506 works in 2015</td>
<td>589 (on 31.01.2020)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5,341 works in 2014</td>
<td>501 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>487 in 2014</td>
</tr>
<tr>
<td>see below</td>
<td>COPY.RO</td>
<td>19,916 works in 2015</td>
<td>1,897 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td>14,817 works in 2014</td>
<td>1,870 in 2014</td>
</tr>
<tr>
<td>see below</td>
<td>UPFR</td>
<td>4,767,116 works in 2015</td>
<td>60 in 2019</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5,076,670 works in 2014</td>
<td>51 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>52 in 2014</td>
</tr>
<tr>
<td>see below</td>
<td>CREDIDAM</td>
<td>5,105,892 works in 2015</td>
<td>15,050 (on 14.06.2019)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4,585,412 works in 2014</td>
<td>12,705 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>11,950 in 2014</td>
</tr>
<tr>
<td>see below</td>
<td>PERGAM</td>
<td>20,773 works in 2015</td>
<td>553 on 27.02.2020</td>
</tr>
<tr>
<td></td>
<td></td>
<td>16,829 works in 2014</td>
<td>461 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>416 in 2014</td>
</tr>
<tr>
<td>see below</td>
<td>DACIN-SARA</td>
<td>17,113* domestic audiovisual works</td>
<td>456*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12,575 works in 2015</td>
<td>372 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9,065 works in 2014</td>
<td>335 in 2014</td>
</tr>
<tr>
<td>Domain(s)</td>
<td>CMO</td>
<td>Subject-matter</td>
<td>No. of members</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------------------</td>
<td>-----------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>see below</td>
<td>UPFAR-ARGOA</td>
<td>903.415 works in 2015</td>
<td>91 in 2020</td>
</tr>
<tr>
<td></td>
<td></td>
<td>809.402 works in 2014</td>
<td>70 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>76 in 2014</td>
</tr>
<tr>
<td>see below</td>
<td>OPERA SCRISA.RO</td>
<td>3.108 works in 2015</td>
<td>403 in 2019</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3.020 works in 2014</td>
<td>398 in 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>386 in 2014</td>
</tr>
<tr>
<td>public lending</td>
<td>VISARTA</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>COPY.RO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>simultaneous transmission via satellite (excluding audiovisual works)</td>
<td>UCMR-ADA</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>COPY.RO</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UPFR</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>CREDIDAM</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VISARTA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cable retransmission</td>
<td>UCMR-ADA</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>DACIN-SARA</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>PERGAM</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VISARTA</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>CREDIDAM</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UPFAR-ARGOA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>broadcasting and communication to the public of commercial phonograms,</td>
<td>UPFR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>including reproduction for that purpose. The communication includes</td>
<td>CREDIDAM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>online and mobile services, without the possibility of downloading,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>carried out for free</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**MERGING ISSUES ON COLLECTIVE LICENSING PRACTICES**

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>Subject-matter</th>
<th>No. of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>private copying</td>
<td>OPERA SCRISA.RO</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UPFR</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Slovakia**

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>rights to musical works</td>
<td>SOZA</td>
<td>2971</td>
<td>106 with 68 foreign partner organisations</td>
</tr>
<tr>
<td>right to literary, dramatic, music-dramatic work, choreographic work, audio-visual work, photographic work, work of art, work of architecture and work of applied art</td>
<td>LITA</td>
<td>3577</td>
<td>130 reciprocal and mandate contracts (70 for dramatic, literary and audio-visual works, 40 for works of art and photographs, and 20 for reprography reproductions).</td>
</tr>
<tr>
<td>Rights to performances and phonograms (partially also to music videos)</td>
<td>SLOVGRAM</td>
<td>5698 performers, 259 heirs, 491 bodies, and 741 producers</td>
<td>28</td>
</tr>
<tr>
<td>AV works and AV recordings</td>
<td>SAPA</td>
<td>50 Slovak film producers</td>
<td>11</td>
</tr>
</tbody>
</table>

**Spain**

<table>
<thead>
<tr>
<th>Domain(s)</th>
<th>CMO</th>
<th>No. of members</th>
<th>No. of representation agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>resale rights</td>
<td>VEGAP</td>
<td>2.763 members: 1.796 plastic artists, 497 photographers, 258 illustrators, 56 designers and 48 CMOs from other countries</td>
<td></td>
</tr>
<tr>
<td>Domain(s)</td>
<td>CMO</td>
<td>No. of members</td>
<td>No. of representation agreements</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>-----------</td>
<td>-----------------------------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>public lending</td>
<td>CEDRO</td>
<td>27,098 members: 24,835 authors and 2,263 publishers</td>
<td>with CMOs in 42 countries</td>
</tr>
<tr>
<td>annual supplementary remuneration of performers</td>
<td>AIE</td>
<td>over 28,795 members in Spain</td>
<td>98 agreements with 79 CMOs in 57 countries</td>
</tr>
<tr>
<td>cable retransmission remuneration to AV producers for public communication</td>
<td>EGEDA</td>
<td>2,862 members (2,150 of them corporations, 712 persons)</td>
<td></td>
</tr>
<tr>
<td>unwaivable remuneration for rental (authors)</td>
<td>SGAE</td>
<td>127,122 members (116,361 authors, 2,462 music publishers and 8,299 rightholders)</td>
<td>301 agreements with 168 CMOs in 220 territories</td>
</tr>
<tr>
<td></td>
<td>DAMA</td>
<td>1,084 audiovisual authors and 1,094,039 works</td>
<td>47*</td>
</tr>
<tr>
<td>use of publications by universities or public research centers for teaching and research purposes</td>
<td>VEGAP and CEDRO</td>
<td>see above</td>
<td></td>
</tr>
<tr>
<td>unwaivable remuneration for rental (performers)</td>
<td>AIE</td>
<td>see above</td>
<td></td>
</tr>
<tr>
<td>single equitable remuneration of performers and phonogram producers for communication to the public of phonograms</td>
<td>AISGE</td>
<td>15,070 members</td>
<td>32</td>
</tr>
<tr>
<td>performers remuneration for public communication of phonograms and AV recordings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domain(s)</td>
<td>CMO</td>
<td>No. of members</td>
<td>No. of representation agreements</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>---------</td>
<td>-----------------------------------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>single equitable remuneration for communication to the public of commercial phonograms</td>
<td>AGEDI</td>
<td>453 members (including 24 managing entities representing other producers)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>AIE</td>
<td>see above</td>
<td></td>
</tr>
<tr>
<td>private copying</td>
<td>8 CMOs</td>
<td>via a “single window”</td>
<td></td>
</tr>
</tbody>
</table>


Annex 25: Methodology

Part 1 on Multi-territorial licensing

**Objective: Multi-territorial licensing of musical works for online use**

The objective of this part of the study was to provide a complete picture of the developments, current functioning and efficiency of the MTL market, the actors involved in MTL in the EEA, the repertoires they represent and the territorial scope covered by MTL agreements, as well as the impact of licensing activities on OMSPs, consumers and rightholders. The analysis covered also the possible issues that can raise obstacles to the development in MTL and the reasons behind this.

The picture provides a foundation for a legal and economic assessment of the current market situation and possible future developments regarding MTL. In general, the study gathered evidence and analyse the extent of MTL practices by national CMOs and other licensing entities, the conclusion of representation agreements between CMOs, the use of the withdrawal of rights by rightholders for the purposes of MTL, the overall impact of the development in MTL on online music services and the methods of NCAs to verify compliance of CMOs with the requirements set out in Title III of the CRM Directive. Below a more specific description of the information collected through five research tasks:

1. Mapping CMOs, licensing entities, including 'licensing hubs', involved in MTL:
   - CMOs and other licensing entities’ corporate structure and geographical and functional scope of activity;
   - Overview of whether CMOs and other licensing entities grant MTL, and, if so:
     - for which repertoire (their single own repertoire, the repertoire of a particular music publisher, or the repertoire of multiple CMOs);
     - for which types of uses; and
     - for which territories.

2. Legal and economic assessment of the practice of MTL in the EEA:
   - The compliance by CMOs granting MTL with the various requirements set out in Title III of the CRM Directive and, to the extent possible, how such compliance is measured by NCAs;
   - The efficiency of alternative dispute resolution procedures for conflicts on MTL in a cross-border environment;
   - The extent to which representation agreements between CMOs for MTL have been concluded and, if they are not concluded, the reasons behind;
   - The extent to which rightholders have withdrawn their online rights for the purposes of MTL.

3. Case studies to analyse the efficiency of the overall situation on the market:
   - availability and use of MTL covering the repertoire of more than one CMO;
   - average number of licences an OMSP must obtain to operate in EU;
   - the average licensing fee for MTL covering the repertoire of more than one CMO in comparison to mono-territorial and single repertoire licences (at least an estimate or indication of the differences in the level of these fees);
   - the accessibility of content for consumers through these OMSPs, including in terms of the repertoires made available by them and the Member States in which the services are offered to EEA consumers; and
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

- the extent to which OMSPs rely on multi-territorial and mono-territorial licences (mono-repertoire and multi-repertoire MTLs) for offering their services in the EEA.

4. Description of the development and current state of MTL in the EEA:
- the legal systems in place in the EU Member States that permit only one CMO to manage a certain category of rights in musical works (the reproduction right, the right of communication to the public, or both); and
- for the EU Member States where such legal systems exist:
  - Whether, despite the existence of the legal system, MTL covering the territory of that EU Member State is taking place; and
  - If not, whether this is caused by the legal system or by other reasons;
  - If so, how exactly does MTL take place in that territory, in particular:
    - whether MTL can be issued by other entities than the CMO that, by exclusion of others, can manage a certain category of rights in that territory;
    - whether the CMO that, by exclusion of others, can manage a certain category of rights in that territory is necessarily involved in the MTL that is taking place; if so:
      - how and in what capacity is the CMO involved; and whether this is subject to arrangements in representation agreements and, if so, which ones.
- the use by CMOs of existing voluntary industry standards for:
  - the identification of musical works and rightholders of those works;
  - the registration of musical works;
  - the reporting of use by OMSPs; and
  - the invoicing of OMSPs.
- the way in which CMOs use or are investigating the possibility of using emerging technologies, such as blockchain technologies, to facilitate the provision of MTL.

5. Listing potential obstacles for MTL in the EEA.

These five tasks were performed through six research activities:

- Survey with licensing entities, NCAs, OMSPs and rightholders;
- Interviews with licensing entities, including licensing hubs, NCAs and OMSPs;
- Desk-research of readily available sources of information and documentation shared as a result of stakeholder consultation in MTL survey and interviews;
- Case studies of OMSPs;
- Structured analysis of collected data;
- Stakeholder workshop.

Table A.1 Overview of tasks and research activities performed as part of the MTL study part

<table>
<thead>
<tr>
<th>Survey</th>
<th>Interviews</th>
<th>Desk research</th>
<th>Case studies</th>
<th>Analysis</th>
<th>Workshop</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 4</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Each of the data collection activities performed as part of the MTL study had a complementary purpose in the broader picture of this study. The purpose and structure of each activity is explained in the sections below.

---

### Survey

Four separate surveys were developed with unique questionnaires, each addressed at a specific type of stakeholder in MTL:

1. All NCAs established in the EEA Member States to monitor compliance by CMOs established in their territory with the requirements of the CRM Directive;
2. All EEA-based CMOs managing online rights in musical works, as well as the licensing hubs and other entities in the EEA engaged in multi-territorial licensing of online rights in musical works;
3. Rightholders in the EEA, who hold rights in musical works, approached through representative bodies, such as big music publishers, an independent music companies association, and an European association for composers and songwriters;
4. OMSPs, i.e. providers of online music services that are multi-territorial licensees, operating in the EEA.

This set of surveys was designed to cover all major aspects of the CRM Directive’s Title III ‘Multi-territorial licensing of online rights in musical works by collective management organisations’. For each aspect, we motivated respondents to provide information to what extent there had been practical implications for them, and how they evaluated the consequences. Thus, the results go beyond the information that could be gathered in studies of national laws implementing the CRM Directive. The surveys also gather some factual quantitative and qualitative information not available through publicly available sources, including, for example, websites and annual transparency reports of CMOs. The surveys can be found at the end of this section.

---

<table>
<thead>
<tr>
<th>Task</th>
<th>Survey</th>
<th>Interviews</th>
<th>Desk research</th>
<th>Case studies</th>
<th>Analysis</th>
<th>Workshop</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>√</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>√</td>
<td>√</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>√</td>
</tr>
</tbody>
</table>
A non-exhaustive list of topics that were addressed in the survey includes:

- The respondent’s corporate structure, their geographical and functional scope of activity, their involvement in MTL;
- Availability of MTL for the use of respective repertoires of CMOs and music publishers by OMSPs;
- The fulfilment by CMOs managing online rights in musical works of the requirements of Title III of the CRM Directive, regarding functional, legal, technical and operational requirements and additional standards of good governance for CMOs to engage in MTL;
- The methods of NCAs to assess the fulfilment of those requirements and standards of good governance;
- Alternative dispute resolution for conflicts on MTL, pursuant to Article 34(2) of the CRM Directive;
- Use of representation agreements concluded pursuant to Articles 29-30 of the CRM Directive;
- Withdrawal of rights for MTL pursuant to Article 31 of the CRM Directive.

The structured data generated by the survey provided all necessary input for the MTL mapping exercise. For the case studies, the description of the current state and development of MTL and the legal and economic assessment of MTL practices, additional inputs are collected through means of separate rounds of interviews with several stakeholder groups.

**Developing and programming the surveys**

From a content perspective, the development of the survey was an iterative process with several rounds of internal reviews of the data needs, as well as matching questions and answer categories – the latter both in terms of content and types of answer categories (numerical, open/closed, predefined list of answers, follow-up questions).

In designing the survey, several measures were adopted to ensure valid and precise responses. For instance, wherever a time period needed to be specified to elicit precise and comparable answers, we used ‘over the last five years’, which reaches back to the period just before the provisions of the CRM Directive were implemented into national law. Where open-ended questions were used, respondents were instructed to provide concise answers, focusing on the most adequate and important aspects from their perspective. This way, the survey could produce relevant responses on a variety of subjects without overburdening respondents. Considering the characteristics and perspectives of respondents, a deliberate variation was made in the technical detail and precision of questions, to maximise the quantity of relevant data produced. Whereas licensing entities received the most technical questions, questions in the rightholders survey were kept the most accessible, assuming less specialised knowledge of some individual authors. In any case, all surveys contained links to relevant provisions of the CRM Directive, so that each respondent could easily check on the precise legal context of questions. The interview protocol can be found at the end of this section.

Subsequently, the survey was entered into Ecorys’ default survey tool CheckMarket. To prevent or solve any programming errors, the design of the survey was checked through
various test-runs by members of the project team. The main focus was on the routing of the survey. The routing is especially important in case only a selection of questions is relevant to a respondent, e.g. when working with follow-up questions. By filling out the survey with various combination of answers in the test-runs, any mistakes in the survey design were identified and resolved.

**Selection of respondents, launch of the survey & monitoring progress**

**National Authorities**

We identified 32 national competent authorities (NCAs), operating in 30+1 EEA Member States (including the UK) as well as in Switzerland, who have competences to oversee multi-territorial licensing of online rights in musical works (see the List of contacted national authorities on the next page). We invited each of these national authorities to participate in our survey. The survey was live for 89 days. First, it was launched between 30 March 2020 and 31 May 2020. We sent out up to three reminders per invitee. The second round of the survey was open from 12 August 2020 until 6 September 2020. Again, we sent out up to three reminders per invitee. Authorities that replied to the first round did not receive the survey twice.

In that time, 23 national authorities provided responses, and 19 of these organisations completed the entire survey. The Member States covered are: Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Spain, and Sweden. Usually, there was only one relevant national authority per EEA Member State. Only in a single, mid-sized EU Member State according to its population, 2 national authorities were invited and responded to the survey. A representative of an EEA Member State indicated that the national legislation has not yet transposed the CRM Directive. According to the publicly available information, the Member State communicated on the national transposition measures a few years before the survey.

As illustrated in Figure A.32, survey results provide rather good coverage of the EEA overall. We have responses from Member States with various population sizes. Survey results cover EEA Member States of various historic and economic development. The participating national authorities oversee MTL for the majority of the population in the EEA.
The average time for completing the survey was 39 minutes, with a minimum of 11 minutes and a maximum of 87 minutes. The workload associated with completing survey seems to have been reasonable, and most respondents took the time required to provide precise answers.

The number of responses per survey item varies, as there were some filter questions and some respondents did not complete later parts of the survey or skipped open question, which tend to be more laborious to deal with for respondents.

The survey was addressed to all the authorities listed in Table A.2. The list covers all the authorities mentioned in the list of competent authorities published by the European Commission in February 2020, as well as authorities of some EEA Member States not mentioned in the list.

### Table A.2 Contacted national competent authorities (NCA)

<table>
<thead>
<tr>
<th>#</th>
<th>Member State</th>
<th>Name of NCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Austria</td>
<td>Supervisory Authority for Collective Management Organisations (Aufsichtsbehörde für Verwertungsgesellschaften)</td>
</tr>
<tr>
<td>#</td>
<td>Member State</td>
<td>Name of NCA</td>
</tr>
<tr>
<td>----</td>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>2</td>
<td>Belgium</td>
<td>Service de contrôle des sociétés de gestion du droit d’auteur et des droits voisins (SPF Economie)</td>
</tr>
<tr>
<td>3</td>
<td>Bulgaria</td>
<td>Copyright Directorate at the Ministry of Culture</td>
</tr>
<tr>
<td>4</td>
<td>Croatia</td>
<td>State Intellectual Property Office (Državni zavod za intelektualno vlasništvo (DZIV))</td>
</tr>
<tr>
<td>5</td>
<td>Cyprus</td>
<td>Copyright and Related Rights Authority</td>
</tr>
<tr>
<td>6</td>
<td>Czechia</td>
<td>Ministry of Culture</td>
</tr>
<tr>
<td>7</td>
<td>Denmark</td>
<td>Copyright and Legal Unit, Ministry of Culture</td>
</tr>
<tr>
<td>8</td>
<td>Estonia</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>9</td>
<td>Finland</td>
<td>Patent and Registration Office (PRH)</td>
</tr>
<tr>
<td>10</td>
<td>France</td>
<td>Ministry of Culture</td>
</tr>
<tr>
<td>11</td>
<td>Germany</td>
<td>German Patent and Trademark Office (Deutsches Patent- und Markenamt (DPMA))</td>
</tr>
<tr>
<td>12</td>
<td>Greece</td>
<td>Hellenic Copyright Organisation</td>
</tr>
<tr>
<td>13</td>
<td>Hungary</td>
<td>Hungarian Intellectual Property Office (Szellemi Tulajdon Nemzeti Hivatala)</td>
</tr>
<tr>
<td>14</td>
<td>Iceland</td>
<td>Ministry of Education, Culture and Science</td>
</tr>
<tr>
<td>15</td>
<td>Ireland</td>
<td>Controller of Patents, Trademarks and Industrial Designs</td>
</tr>
<tr>
<td>16</td>
<td>Italy</td>
<td>Autorità per le Garanzie nelle Comunicazioni (AGCOM)</td>
</tr>
<tr>
<td>17</td>
<td>Latvia</td>
<td>Ministry of Culture</td>
</tr>
<tr>
<td>18</td>
<td>Liechtenstein</td>
<td>Copyright Department, Office of Economic Affairs</td>
</tr>
<tr>
<td>19</td>
<td>Lithuania</td>
<td>Copyright Division, Ministry of Culture</td>
</tr>
<tr>
<td>20</td>
<td>Luxembourg</td>
<td>Intellectual Property Office</td>
</tr>
<tr>
<td>21</td>
<td>Malta</td>
<td>Copyright Board</td>
</tr>
<tr>
<td>22</td>
<td>Netherlands</td>
<td>Copyright Supervisory Board (College van Toezicht Auteurs, CvTA)</td>
</tr>
<tr>
<td>23</td>
<td>Norway</td>
<td>Department of Media Policy and Copyright, Ministry of Culture</td>
</tr>
<tr>
<td>24</td>
<td>Poland</td>
<td>Ministry of Culture (Ministerstwo Kultury i Dziedzictwa Narodowego, Departament Własności Intelektualnej i Mediąw)</td>
</tr>
<tr>
<td>25</td>
<td>Portugal</td>
<td>General Inspection of Cultural Activities (IGAC)</td>
</tr>
</tbody>
</table>
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

<table>
<thead>
<tr>
<th>#</th>
<th>Member State</th>
<th>Name of NCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>Romania</td>
<td>Romanian Copyright Office (ORDA)</td>
</tr>
<tr>
<td>27</td>
<td>Slovakia</td>
<td>Ministry of Culture</td>
</tr>
<tr>
<td>28</td>
<td>Slovenia</td>
<td>Slovenian Intellectual Property Office (Urad Republike Slovenije za intelektualno lastnino)</td>
</tr>
<tr>
<td>29</td>
<td>Spain</td>
<td>Deputy General Directorate for Intellectual Property (Ministry of Education, Culture and Sports)</td>
</tr>
<tr>
<td>30</td>
<td>Sweden</td>
<td>Swedish Patent and Registration Office (Patent- och registreringsverket)</td>
</tr>
<tr>
<td>31</td>
<td>United Kingdom</td>
<td>Intellectual Property Office</td>
</tr>
</tbody>
</table>

The survey was also addressed to the NCA of Switzerland, the Swiss Federal Institute of Intellectual Property.

**Licensing entities**

We initially identified over 40 collective management organisations (CMOs) and other licensing entities (OLEs) engaging in licensing of online rights in musical works in the EEA. For each, we identified the most relevant contact available and invited them by email to participate in the survey. In the first round, the survey was live for 52 days, from 30 March 2020 to 20 May 2020. We sent out up to three email reminders per invitee, and we also had a team of specialists contact 33 non-responding organisations by phone. Four licensing entities could not be reached at all, and one explicitly declined the invitation. Finally, an ultimate attempt to generate additional survey responses was undertaken from 31 July to 6 September 2020, with a final reminder sent out on 28 August 2020. In total, the survey was live for 90 days.

We conducted some screening of all licensing entities, based on initial answers, to ensure that they were engaged with licensing of online rights in musical works covered by Title III of the CRM Directive. After the screening stage, information from 18 relevant organisations was considered appropriate, of which 15 organisations completed the entire survey. The responding organisations were located in Austria, Belgium, Croatia, Czech Republic, Denmark, Finland, France, Germany, Italy, Lithuania, Netherlands, Poland, Romania, Slovakia, Spain, United Kingdom – in two of these Member States, there were two different organisations providing relevant information. Mostly, there is one organisation established per Member State. Our coverage is reasonable but not as comprehensive as in the survey of national authorities, as can be seen in Figure A.33.
Out of the relevant 18 respondents, 15 (83%) classified themselves as a CMOs. Two (11%) respondents classified themselves as ‘independent management entities’ (IMEs) according to Article 3(b) of the CRM Directive. One respondent selected the ‘Other’ option and specified that it was a ‘European grouping’. This concerned a supraorganisation of CMOs. Accordingly, the latter organisation did not supply any licensing services itself. We exclude that organisation from the reports regarding several questions, which do not apply to it. We include other responses by the supraorganisation; while it lacks the first-hand experience, it is in an excellent position to assess the broader situation in the EEA.

The average time to complete the survey was 90 minutes, with a minimum of 12 minutes (for the supraorganisation) and a maximum of over 5 hours. Respondents took the time required to give precise answers. The number of responses per survey item varies, as there were some filter questions.

**Rightholders**

We identified relevant contact persons at two international and European supraorganisations, which represent relevant rightholders (composers, lyricists and publishers) holding rights in musical works, and invited them to share the survey in their
networks of rightholders. The survey was live for 52 days from 30 March 2020 to 20 May 2020.

56 rightholders provided responses. Of these, 47 were authors (composers or lyricists), and nine respondents were publishers. Respondents could indicate to belong to both categories: authors and publishers. Three out of 47 authors indicated to also be publishers. Responding rightholders did not include the major publishers. 37 rightholders completed the entire survey.

The distribution of responding rightholders over countries is rather skewed. Many respondents were located in Belgium and the UK. Northern and Western European EEA Member States are overrepresented. These Member States have relatively high, generic ‘rule of law’-scores, and their domestic CMOs tend to enjoy relatively good reputations.

Table A.3 Location of rightholders as they completed the survey, according to their IP address

<table>
<thead>
<tr>
<th>Rank by number of respondents</th>
<th>Country</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Belgium</td>
<td>14</td>
<td>25.0</td>
</tr>
<tr>
<td>2</td>
<td>United Kingdom</td>
<td>10</td>
<td>17.9</td>
</tr>
<tr>
<td>3</td>
<td>Sweden</td>
<td>6</td>
<td>10.7</td>
</tr>
<tr>
<td>4</td>
<td>Germany</td>
<td>5</td>
<td>8.9</td>
</tr>
<tr>
<td>5</td>
<td>France</td>
<td>3</td>
<td>5.4</td>
</tr>
<tr>
<td>6 to 9</td>
<td>Denmark; Ireland, Portugal, Spain</td>
<td>2</td>
<td>3.6 each (14.4 total)</td>
</tr>
<tr>
<td>10 to 19</td>
<td>Austria, Croatia, Finland, Hungary, Italy, North Macedonia, Norway, Poland, Serbia, USA</td>
<td>1</td>
<td>1.8 each (18.8 total)</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>56</td>
<td>100</td>
</tr>
</tbody>
</table>

With 7:20 minutes, the average response time was much shorter for the rightholder survey than for the survey completed by national authorities, licensing entities or professional OMSPs. Completion times for the rightholder survey also varied a lot, between a maximum of two hours and a minimum of approximately a minute. The survey for rightholders was the

---

197 Some major rightholders were directly contacted, too.
shortest and simplest of the surveys addressed to four groups of stakeholders in the framework of this study.

The number of responses per survey item varies, as there were some filter questions, and some respondents did not complete later parts of the survey. Many rightholders lacked awareness or relevant experiences, so that some survey items did not produce much data. Furthermore, few rightholders were prepared to engage with open questions.

**OMSPs**

In line with Article 3(k) of the CRM Directive, ‘OMSP’ is defined for the purpose of the survey as any person or entity that is supplying online music services subject to the authorisation of rightholders and is not acting in the capacity of a consumer. We identified and contacted 22 OMSPs, taking into account their size, number of Member States in which they provide their services, diversity of their online music services (including streaming, downloading and online content-sharing). In the case of 16 OMSPs, it was possible to send invitations to participate in the survey directly to the persons dealing with copyright licensing. The survey was live for 93 days, between 30 March and 30 June 2020. We sent up to three email reminders, and two specialists also contacted potential respondents by phone to motivate participation. This process led to numerous interactions, concerning the conditions of participation in the survey (confidentiality and alternative manners of submitting survey responses than the online survey) and other means of submitting information for this project (e.g. by means of interviews or to enable case studies).

With 5 respondents – four completing the entire online OMSP survey and 1 providing info on most survey items via a separate file – there is limited scope for quantitative analysis. As part of the MTL mapping exercise, more comprehensive quantitative data is collected regarding MTL and online music services based on other sources of data. What is more, to comply with confidentiality agreements, we cannot always report all specific results. For instance, information on the country in which the firm supplying an online music service is established or the year in which it started operating in the EEA, could otherwise make respondents identifiable. Therefore, for the investigation of OMSPs, survey outcomes were complemented with sources of information from subsequent data collection activities, including interviews and case studies. The combined market share of surveyed OMSPs is very substantial. The information they submitted reveals some noteworthy details and patterns, and especially the qualitative data produced in this survey is rich and informative.

The responding OMSPs took the time to provide detailed and careful responses. The average time for completing the survey was 142 minutes, with a minimum of 20 minutes and one respondent engaged for 406 minutes. The number of responses per survey item varies, as there were some filter questions, and 1 respondent refused to answer some initial questions.
Interviews

Developing the interview protocol and arranging interviews

Following the inventory of data through the survey, in-depth interviews were conducted with groups of NCAs, CMOs, licensing hubs and OMSPs. The interviews performed had the purpose of complementing the survey results, through underlining, deepening, broadening, nuancing or contradicting its key findings – as a means to have an informed and complete overview of views on MTL from all stakeholder perspectives. The outcomes feed into the legal and economic assessment of MTL practices, the case studies and the description of the development and current state of MTL practices.

At each NCA, CMO, licensing hub and OMSP selected for an interview, the appropriate and responsible person for MTL matters was identified and approached via e-mail for an interview. For NCAs, these almost exclusively people with functions such as the General Counsels, legal advisors or heads of Copyright Department. For CMOs, licensing hubs and OMSPs, these almost exclusively people with functions such as the General Counsels, Directors of licensing, CEOs or VPs Legal and Business Development. We sent up to three email reminders to each potential respondent, and also contacted them by phone to motivate participation – if the phone number was available. This process led to numerous interactions, concerning the purpose of the interview, the conditions of participation in the interview (e.g. confidentiality) and the means of submitting information for this project (e.g. by means of a written contribution).

Regarding confidentiality, the project team offered each respondent the possibility to conclude an non-disclosure agreement together, to ensure confidential treatment of their contributions. Moreover, minutes were drafted by a member of the project team, and were shared for approval with the interviewees, to come to a confirmed interview report appropriated for analysis purposes.

In advance of the first interview, the interview protocol was designed, including an introduction, the questionnaire and a description of the interview process. The protocol was developed through an iterative internal review process that developed from a list of key topics to be discussed into a concise, but comprehensive list of questions.

Conducting the interviews

The interviews were conducted in a semi-structured way. To ensure optimal consistency between interviews, all interviews were conducted by a group of three team members, with one member dedicated to making notes and two content experts, and followed a similar introduction to structure the interview, containing a brief outline of the purpose, process and confidentiality. The questionnaire was directing the content and structure of the interview. However, for each interview questions were adjusted to some extent to prioritise the most relevant questions and tailor them to interviewee-specific questions. The latter would be based on desk-research (e.g., information on websites and organisations’ annual (transparency) reports) or survey outcomes. Moreover, sometimes the questions had to be rephrased, or interviewees provided answers they considered to answer the asked questions. Finally, interviewees were offered an opportunity to communicate on issues not covered by the questions asked by interviewers. In some cases, there were written follow-up queries after the interview.
NCAs

For the NCA interviews, Member States were selected with the aim to represent different practices and stages in the adoption of MTL. This meant that we selected NCAs from EEA Member States where many multi-territorial licences have been offered to the market and NCAs from EEA Member States where multi-territorial licensing is merely in an infant phase. Other important selection criteria were geographical distribution, size of the Member State, and the NCAs procedures for, and level of experience with, alternative dispute resolution procedures.

As the interviews with NCAs on MTL ran in parallel with the interviews with NCAs on CLEE, different interview questionnaires were developed for interviewees that were consulted on CLEE, MTL or both CLEE and MTL, to ensure that the questionnaires contained only those questions relevant to the target interviewee. The interview protocol can be found at the end of this section.

In total, eight NCAs agreed to answer the interview questionnaire on MTL, representing eight EEA Member States. As such, the surveys were complemented with significant interview outputs, offering an opportunity for a more in-depth and interactive exchange of information with key interviewees. The NCAs were selected to match the Member States selected in the survey. In two cases, an NCA did not respond to repeated interview requests. It was decided to replace these Member States with Member States with similarities in both geographic origin and the MTL practices.

CMOs

For the CMO interviews, CMOs were selected with the aim to represent different practices and stages in the adoption of MTL. This meant that we selected both CMOs that have concluded representation agreements pursuant to Article 29 of the CRM Directive and CMOs that have not entered into such agreements. Beside level of experience with granting MTL, other important selection criteria were geographical distribution, relative size of the organisation, the CMOs level of experience with withdrawal of rights by rightholders for the purposes of MTL, and the inclusion of both CMOs that license single repertoires (their own repertoire or the repertoire of a particular music publisher) and CMOs that license the repertoire of multiple CMOs. Table A.4 provides an overview of how the interviewed CMOs described their own MTL practices. Moreover, in one case, a CMO reported itself that it grants and offers to grant MTL, but according to a OMSP did not possess the necessary technical capacity for processing MTLs. The OMSP concluded a mono-territorial licence with this CMO.
Table A.4 Interviewed collective management organisations (CMOs)

<table>
<thead>
<tr>
<th>CMO’s practice regarding MTL mandates</th>
<th>Number of CMOs interviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMO and/or its subsidiary is mandated by other CMOs to grant MTLs</td>
<td>5</td>
</tr>
<tr>
<td>CMO reported to have mandated their subsidiary to grant MTLs</td>
<td>3</td>
</tr>
<tr>
<td>CMO reported to grant and offer to grant MTLs itself, without mandating any other entity</td>
<td>3</td>
</tr>
<tr>
<td>CMO reported not to grant or offer to grant MTLs</td>
<td>3</td>
</tr>
<tr>
<td>CMO is based outside 30 EEA Member States</td>
<td>2</td>
</tr>
<tr>
<td>CMO used to be mandated by another CMO to grant MTLs, and later the mandating CMO withdrew its mandate and mandated another licensor</td>
<td>1</td>
</tr>
</tbody>
</table>

Some of the CMO representatives that were consulted in interviews, were also interviewed as representatives of the digital licensing hub that their CMO was member of. In this case, the interview questionnaire also included some questions directed specifically at the functioning and structure of the hubs. A description of the interviews with these hubs is given in the next section. The interview protocol can be found at the end of this section.

As such, the surveys were complemented with significant interview outputs, offering an opportunity for a more in-depth and interactive exchange of information with key interviewees.

**Licensing hubs**

Four CMO-‘licensing hubs’ that license the repertoire of multiple CMOs were identified for an interview. These interviews aimed to complement and provide additional information for the mapping, the legal and economic assessment and the case studies. The hubs were involved in the study because their scope of activities requires them typically to be engaged in licensing their repertoires to the OMSPs included in the case studies. Two of the interviewed CMOs’ subsidiaries reported to be mandated by CMOs to grant MTLs.

In total, three licensing hubs agreed to conduct an interview on MTL, representing some of the biggest licensing hubs in the EEA. We sent up to three email reminders to motivate the participation of the identified four licensing hubs.

**OMSPs**

Based on a draft longlist of proposed cases of OMSPs operating in more than one EEA Member State (‘OMSPs’), a selection of six cases and several back-up options was agreed in consultation with the Commission. Guided by our experiences with motivating OMSPs to
contribute to the survey, the back-up options were included to allow a modification of the proposed selection during the process. The core criteria for the selection of case study interviewees were to have considerable variation in:

- The size of the businesses (large, medium and small);
- The time the OMSP was active on the market (well-established and new entrants); and
- The level of cross-border operation of their services (pan-EEA, many but not all Member States and only several);
- The type of online music services provided (subscription-based, ads-based and B2B; online content-sharing service providers; music streaming and downloading services; audio and audiovisual services);
- Country of establishment (headquartered in the EEA Member States/outside the EEA).

In total, eight OMSPs agreed to conduct an interview on MTL, representing some of the biggest OMSPs, as well as some medium-sized competitors and fresh market entrants. As such, the survey was complemented with interview outputs, offering an opportunity for a more in-depth and interactive exchange of information with key interviewees.

**Desk-research**

On the basis of readily available sources of information, as well as documentation shared as a result of stakeholder consultation in MTL surveys and interviews, desk-research was conducted as a means of focused follow-up data collection.

The desk-research covered public databases, academic literature, and business reports, including, in particular, publications (such as annual reports), or studies carried out by or on behalf of industry, government, trade organisations and national authorities.

To identify the relevant publications, a range of sources was used. The main sources of information were official websites, electronic databases and relevant electronic journal hosts. From those sources, relevant electronic papers, articles and documents were identified through key word searches of the relevant databases and internet searches. In addition, our network of national practitioners and cooperation partners were specifically requested to supplement our initial list of documents. Finally, documentation was requested from (or proactively shared by) stakeholders in when consulting them in the framework of MTL surveys and interviews.

Predominantly, the desk-research outputs were used for two purposes. First, before each interview, questions were adjusted to some extent to prioritise the most relevant questions and tailor them to interviewee-specific questions. The latter would be based on desk-research (e.g., information on websites and organisations' annual (transparency) reports) or survey outcomes. And second, the desk-research intended to supplement existing insights and create an informed, nuanced and complete picture of MTL practices through verifying or supplementing findings from primary data collection.
Case studies to analyse the efficiency of the overall market situation

To gather information on the use of MTL across EEA Member States and analyse the efficiency of the overall market situation, eight case studies into OMSPs operating in the EEA were conducted. The case studies allow for more in-depth insight into specific situations and issues in the practical application of the CRM Directive. Data for the case studies was primarily obtained from in-depth interviews with OMSPs and the outcomes of the survey addressed to OMSPs (in which some of the selected cases also participated). In addition, follow-up desk research activities were performed in some cases.

Case study process

The process used for the case studies followed these steps:

1. Case study selection;
2. Information collection;
3. Consolidation of findings.

Case study selection

See the section above on OMSPs for a description of the case study selection process.

Information collection

Case study reports were largely based on two separate primary data collection activities. First, a survey was launched under OMSP organisations. A comprehensive report of the content, process and outcomes of the survey addressed to OMSP organisations can be found in the section on surveys above. Second, in-depth interviews were held with eight OMSP organisations. In preparation of interviews as well as in the consolidation of findings, follow-up desk research was performed to create an informed and complete picture of the OMSPs and to verify or supplement findings from primary data collection.

Consolidation of findings

The information from the case studies was consolidated using a structured cross-analysis of the inputs per case in order to obtain a clear and comprehensive overview that allow a comparative analysis. Rather than presenting isolated case study reports, the outcomes of the case studies will be integrated in the overall analysis of MTL – especially in the parts on OMSPs.

Analysis

The analysis is built upon a number of key principles.

Assembling relevant findings

First, all information with relevance to the analysis of a specific task was grouped together. For each piece of information, the source was included in order to be able to establish potential biases present in the information base. This approach also allowed us to clearly
distinguish objectively verifiable evidence and opinions, and to verify if opinions presented were supported by evidence or widely supported by opinions of others in order to assign a degree of credibility to these opinions.

Check on invalid survey responses

During the analysis of survey responses specifically, a check was performed for obviously invalid responses – there were virtually none. In general, responses were reported faithfully but validity concerns were highlighted a couple of times in the following. Regarding qualitative data produced in open questions, a method of thematic analysis was implemented to produce structured summaries. Thematic analysis is a well-established method to order elements of qualitative data into themes (also considering any evaluations associated with themes). To produce evidence on the import and pervasive relevance of themes, the number of times themes were mentioned and evaluated in a specific manner by different respondents were counted out. Wherever the available data allowed for it, a check was performed for notable differences between types of respondents – for instance by size and economic development of Member States for national authorities, by size of the organisation for licensing entities, or by distinguishing authors and publishers in the rightholder survey. As a rule, only pronounced differences between the responses of such sub-categories of respondents that were identified by the project team were reported, not on every check conducted.

Triangulation of different data collection activities

Secondly, analytical conclusions should be clearly traceable to evidence on which these conclusions are based. In case of conflicting evidence, the evidence was weighted against the credibility of the sources and, if sources were considered of equal credibility, the quality and amount of supporting evidence is considered.

Reaching transparent conclusions

Finally, the analytical process was designed for full transparency. As a result, this final report provides full disclosure of non-confidential information sources, methodologies used, barriers encountered and results of the analysis.

In the analysis, both legal questions (regarding the transposition of aspects of Title III of the CRM Directive into national law, related regulatory practices, and the compliance with Title III of the CRM Directive), as well as economic questions (regarding the efficiency of MTL in the EEA and how the CRM Directive and corresponding national laws and regulations affect them) were considered.

Workshop

The online stakeholder workshop had a dual objective. Not only did it offer the study team an opportunity to present its preliminary study outcomes to an audience of key stakeholders,
it also provided an opportunity for stakeholder validation, as they could ask questions and provide comments on the preliminary outputs as input for the final report. For optimal added value, the study team strived for a most effective and efficient event. The effectiveness of the event relies on active participation of a highly relevant group of participants and convincing moderation during the event, while optimal efficiency is achieved by proper preparation.

**Event organisation process**

The process used for the workshop followed these steps:

1. Composing the list of invitees;
2. Developing a workshop agenda;
3. Design of invitations; and
4. Invitation and registration of participants.

**Composing the list of invitees**

The list of invitees built on two primary sources of input. All identified and approached contacts in the previous phases of data collection, case studies and interviews were invited, supplemented with a list of additional recommended experts and stakeholders suggested by the Commission. The list of invitees included stakeholders including policymakers, experts and multiple interest groups, such as industry representatives, music services, rightholders, national competent authorities, CMOs and other licensing entities.

**Developing a workshop agenda**

The speakers in the workshop were selected from the core study team. Once the content of the presentation and its division over speakers was confirmed, an agenda was created. The agenda was the shared with the Commission, and included in the invitation upon their approval.

**Workshop Agenda**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>14:50 – 15:00</td>
<td>Virtual room open to attend</td>
</tr>
<tr>
<td>15:00 – 15:10</td>
<td>Introductions and house rules - David Regeczi (Ecorys)</td>
</tr>
<tr>
<td>15:10 – 15:15</td>
<td>Welcome words, DG CONNECT - Sabina Tsakova (Commission)</td>
</tr>
<tr>
<td>15:15 – 15:35</td>
<td>Presentation of results of study part on MTL - Oleksandr Bulayenko (IViR) - Christian Handke (Erasmus University)</td>
</tr>
</tbody>
</table>
Invitation and registration of participants

Invitations were sent out in advance of the meeting, and participants had to register beforehand. In total, 133 registered participants attended the online event.

Outcomes of the workshop

A report with detailed overview of participants, the presented outcomes and received feedback and comments from stakeholders can be found in Annex 27.

Part 2 on Collective Licensing with an Extended Effect

Objective: Collective Licensing with an Extended Effect (CLEE)

As collective licensing with extended effect becomes a more pronounced part of EU copyright law, it is important to get a better understanding of the existence, operation and functioning of CLEE at Member State level, especially with a view to understanding how the national regimes ensure the necessary balance between protecting the interests of rightholders and non-members, on the one hand, and facilitating licensing in the interests of licensee and the general public, on the other hand.

This study increases understanding of the various national CLEE models through the execution of three research tasks:

1. Mapping the national legal mechanisms in the EEA Member States;
2. Legal and economic assessment of the conditions for certain types of mechanisms;
3. Legal and economic assessment of the mechanisms in place and their impact on the market and social welfare.

These three tasks were performed through two core tasks:

- National mapping exercise of EEA Member States by Member State experts, entailing:
  - Desk-research;
  - Interviews.
- In-depth Member State studies of six selected EEA Member States, entailing:
  - Survey with CMOs;
  - Interviews with NCAs.

Each of the data collection activities performed as part of the two core tasks had a complementary purpose in the broader picture of this study. The purpose and structure of each activity is explained in the sections below.

**National mapping by Member State experts**

To provide a detailed overview of the legal mechanisms of CLEE in place across EEA Member States and the concrete way in which they are applied, including their scope, conditions and other specificities, this study employed a national mapping process. An EEA-wide network of national experts identified the legal mechanisms of CLEE in place across the EEA. Following the mapping, the core team drafted a comprehensive overview of the various mechanisms used, as well as their similarities, differences and possible overlaps.

Specifically, the Member State reports zoom in on whether there are any provisions in national law that give extended effect to collective licences and, if so, to specify for each provision:

- how the licensing mechanism can be legally qualified;
- to which areas (rights; rightholders; types of uses; sectors) the licensing mechanism applies;
- the conditions of granting licenses in the framework of the licensing mechanism; and
- the safeguards provided by the legal mechanism.

In addition, national experts were asked to:

- supply statistical information and analysis on the practical application of the legal mechanisms in place, including existing contractual and negotiating practices; and
- identify and assess the most relevant case law concerning CLEE in their Member State.

The national mapping forms an important information base for the legal and economic analysis and covered all 28 EU Members States and additional EEA members (Iceland, Liechtenstein and Norway). A full overview of national experts involved can be found in 'List of national experts', right after the concluding chapter with the main findings of this study.
Methods

National mapping refers to the collection of information at national level. The methods of information collection used were desk research and interviews. The main difference is that the national mapping was conducted by natives of the individual Member States, ensuring a strongly improved accessibility to information that is only available in the national language of a Member State.

Primarily, national experts collected relevant data through conducting desk-research into existing legal sources and academic literature that were readily available.

The national mapping process consisted of four steps. First, a detailed and clear guidance document was prepared for the national experts, containing information such as a short study overview, descriptions of timeframe, deadlines, definitions and data collection guideline, and a reporting template. Second, the core team developed a reporting infrastructure for the output, including the overall reporting template, templates for literature fiches, and templates for interview minutes. Subsequently, the network of national experts was activated by the core team to start its Member State studies. At this stage, the core team provided support through a helpdesk, dealing with any preliminary questions and clarify any doubts that the national legal experts encountered. Finally, the contributions of national experts were collected, reviewed on quality, sent back for potential adjustments/additions by Member State experts and integrated into one consolidated report.

Member State studies

On the basis of the findings of the national legal mechanisms of CLEE identified in the national mapping exercise, six EU Member States were selected for more in-depth examination: Croatia, Czech Republic, Denmark, Germany, Hungary and Sweden. The selection ensured that each of the three most prominent core licensing mechanisms (statutory or legal mandate/presumption of representation, ECL and mandatory collective rights management) was covered, while also keeping in mind a degree of regional economic diversity.

The outcomes of the national mapping were supplemented with two distinct primary data collection activities: survey for CMOs and interviews with national competent authorities. Given that more than 60 relevant CMOs were identified in the six selected Member States and that generalizable and comparable outcomes are required for the analysis, CMOs were consulted on CLEE through a survey. National competent authorities (NCAs) were consulted through means of an interview. The data collection activities aimed to facilitate the legal and economic assessment of the conditions for certain types of mechanisms, as well as the mechanisms in place and their impact on the market and social welfare.

The survey and interviews with CMOs and NCAs in selected Member States were the most important pillars of information collection for the Member State studies. Overall, the survey aimed to clarify how national models on CLEE and the collective licensing agreements that have been given extended effect under those schemes set out conditions for the usage of the licensing mechanisms and safeguards for rightholders. At the same time, qualitative
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

data from interviews provided the foundation for explanations on how and why patterns in quantitative data came about; and identified broader consequences of CLEE in the perception of stakeholders.

More specifically, the following data was collected to facilitate the legal and economic assessment of the conditions for certain types of mechanisms through the surveys and interviews:

- methods to establish representativeness of CMOs for CLEE;
- opt-out possibilities for rightholders;
- provisions on indemnification for claims resulting from CLEE;
- the scope of licences and licensing agreements;
- methods for distribution of the amounts due to rightholders;
- the practice of dispute settlement mechanisms;
- transparency about CLEE;
- the remuneration of rightholders members and non-members;
- the right clearance process, the facilitation of licensing, the resulting transaction costs and the resulting costs for the users;
- changes in accessibility of the content in the uses covered by the relevant legislation.

For the impact assessment on market and social welfare, the following information was collected on the development of:

- the numbers of works supplied under CRM licences and participating rightholders;
- the number of licensees;
- the demand/commercial value of CRM licences;
- the numbers of new works supplied;
- the quality of new works supplied;
- innovation in the dissemination and use of copyright works; and
- the number of judicial disputes in relevant aspects of markets for copyright works.

Survey

Methods

Developing and programming the survey

From a content perspective, the development of the survey was an iterative process with several rounds of internal reviews of the data needs, as well as matching questions and answer categories – the latter both in terms of content and types of answer categories (numerical, open/closed, predefined list of answers, follow-up questions). All questions for CMOs were clustered into a single survey to avoid multiple questionnaire to be sent to a single stakeholder. In designing the survey, several measures were adopted to ensure valid and precise responses. Where open-ended questions were used, respondents were instructed to provide concise answers, focusing on the most adequate and important aspects from their perspective. This way, the survey could produce relevant responses on a variety of subjects without overburdening respondents. The survey contained links to relevant provisions of the CRM Directive, so that each respondent could easily check on
the precise legal context of questions. The survey can be found below at the end of this section.

Subsequently, the survey was entered into Ecorys’ default survey tool CheckMarket. To prevent or solve any programming errors, the design of the survey was checked through various test-runs by members of the project team. The main focus was on the routing of the survey. The routing is especially important in case only a selection of questions is relevant to a respondent, e.g. when working with follow-up questions. By filling out the survey with various combination of answers in the test-runs, any mistakes in the survey design are identified. All issues were addressed by adjusting the design and routing.

Selection of respondents, launch of the survey & monitoring progress

We identified over 60 CMOs and other licensing entities (OLEs) engaging in licensing in the six selected EU Member States. For each, we identified the most relevant contact available and invited them by email to participate in the survey. Given that some CMOs were subsidiaries of the same umbrella CMO and shared some general management tasks, in the end a total of 58 unique contact persons at the CMOs were approached. We sent out up to three email reminders per invitee. As intra-EU differences in CLEE systems made it difficult for some licensing entities to follow exactly the survey and it was technically impossible in a limited number of cases to skip questions, we agreed with a small number of licensing entities that they shared their responses in a separate Word or pdf file, either responding to all applicable questions or by providing an encompassing written position report on the topic. The survey was live for 30 days, from 3 September 2020 to 2 October 2020.

We conducted some screening of licensing entities to ensure that they were engaged with CLEE as covered by the CRM Directive. After the screening stage, we have received information from 29 relevant organisations, of which 18 organisations completed the entire survey and 6 provided written contributions. The responding organisations were located in Belgium, Croatia, Czech Republic, Denmark, Germany, Hungary, Italy, Portugal, Sweden.

Interviews

The interviews performed had the purpose of complementing the survey results, through underlining, deepening, broadening, nuancing or contradicting its key findings – as a means to have an informed and complete overview of views on CLEE from the perspectives of key stakeholders.

At each NCA selected for an interview, the appropriate and responsible person for CLEE matters was identified and approached via e-mail for an interview. For NCAs, these are almost exclusively people with functions such as the General Counsels, legal advisors or heads of Copyright Department. We sent up to three email reminders to each potential respondent, and also contacted them by phone to motivate participation – if the phone number was available. This process led to numerous interactions, concerning the purpose of the interview, the conditions of participation in the interview (e.g. confidentiality) and the means of submitting information for this project (e.g. by means of a written contribution).
Regarding confidentiality, the project team offered each respondent the possibility to conclude a non-disclosure agreement together, to ensure confidential treatment of their contributions. Moreover, minutes were drafted by a member of the project team, and were shared for approval with the interviewees, to come to a confirmed interview report appropriated for analysis purposes.

In advance of the first interview, the interview protocol was designed, including an introduction, the questionnaire and a description of the interview process. The protocol was developed through an iterative internal review process that developed from a list of key topics to be discussed into a concise, but comprehensive list of questions. To ensure optimal consistency between interviews, all interviews were conducted by a group of three team members, with one member dedicated to making notes and two content experts, and followed a similar introduction to structure the interview, containing a brief outline of the purpose, process and confidentiality.

The interviews were conducted in a semi-structured way. The questionnaire was directing the content and structure of the interview. However, for each interview questions were adjusted to some extent to prioritise the most relevant questions and tailor them to interviewee-specific questions. The latter would be based on desk-research (e.g., information on websites and organisations' annual (transparency) reports) or survey outcomes. Moreover, sometimes the questions had to be rephrased, or interviewees provided answers they considered to answer the questions asked. Finally, interviewees were offered an opportunity to communicate on issues not covered by the questions asked by interviewers. In some cases, there were written follow-up queries after the interview.

As the interviews with NCAs on CLEE ran in parallel with the interviews with NCAs on MTL, different interview questionnaires were developed for interviewees that were consulted on CLEE, MTL or both CLEE and MTL, to ensure that the questionnaires contained only those questions relevant to the target interviewee. The interview protocol can be found below at the end of this section.

In total, seven NCAs agreed to conduct an interview on CLEE, representing seven EEA Member States. As such, the surveys were complemented with significant interview outputs, offering an opportunity for a more in-depth and interactive exchange of information with key interviewees. NCAs did not only include CMO supervisory bodies, but also ministries involved in effectuating CLEE. The NCAs were selected to match the Member States selected in the survey. In one case, a NCA did not respond to repeated interview requests. It was decided to replace this Member State with a Member State with similarities in both geographic origin and the CLEE mechanism. Moreover, another back-up Member State agreed to participate in an interview, while the initially approached Member State (Germany) also provided answers.

Analysis

Both the survey and interviews outputs were assembled centrally and separate summaries were made of the important outcomes of both data collection activities. During the analysis of responses, we checked for obviously invalid responses. Regarding qualitative data produced in open questions, a method of thematic analysis was implemented to produce structured summaries. Thematic analysis is a well-established method to order elements of qualitative data into themes (also considering any evaluations associated with themes). To produce evidence on the import and pervasive relevance of themes, the number of times
themes were mentioned and evaluated in a specific manner by different respondents were counted out. Wherever the available data allowed for it, notable differences between types of respondents were checked – for instance by size of the organisation for licensing entities. In the analysis, both legal questions and economic questions were considered.

The core team assessed for each Member State selected to what extent the different elements mentioned in the survey appear in the national models on CLEE and how this contributes to ensuring the necessary balance between protecting the interests of rightholders and non-members, on the one hand, and facilitating licensing in the interests of licensees and the general public, on the other hand.

**Workshop**

The online stakeholder workshop had a dual objective. Not only did it offer the study team an opportunity to present its preliminary study outcomes to an audience of key stakeholders, it also provided an opportunity for stakeholder validation, as they could ask questions and provide comments on the preliminary outputs as input for the final report. For optimal added value, the study team strived for a most effective and efficient event. The effectiveness of the event relies on active participation of a highly relevant group of participants and convincing moderation during the event, while optimal efficiency is achieved by proper preparation.

**Event organisation process**

The process used for the workshop followed these steps:

1. Composing the list of invitees;
2. Developing a workshop agenda;
3. Design of invitations; and
4. Invitation and registration of participants.

**Composing the list of invitees**

The list of invitees built on two primary sources of input. All identified and approached contacts in the previous phases of data collection, case studies and interviews were invited, supplemented with a list of additional recommended experts and stakeholders suggested by the Commission. The list of invitees included stakeholders including policymakers, experts and multiple interest groups, such as industry representatives, music services, rightholders, national competent authorities, CMOs and other licensing entities.

**Developing a workshop agenda**

The speakers in the workshop were selected from the core study team. Once the content of the presentation and its division over speakers was confirmed, an agenda was created. The agenda was the shared with the Commission, and included in the invitation upon their approval.
Workshop Agenda

14:50 – 15:00  Virtual room open to attend

15:00 – 15:10  Introductions and house rules  David Regeczi (Ecorys)

15:10 – 15:15  Welcome words, DG CONNECT  Sabina Tsakova (Commission)

15:15 – 15:35  Presentation of results of study part on MTL  Oleksandr Bulayenko (IViR)
                Christian Handke (Erasmus University)

15:35 – 16:05  Q&A on MTL study part  Study team

16:05 – 16:10  Virtual coffee break

16:10 – 16:15  Welcome new participants and reminder of rules  David Regeczi (Ecorys)

16:15 – 16:35  Presentation of results of study part on CLEE  Stef van Gomepl (IViR)
                Oleksandr Bulayenko (IViR)

16:35 – 17:05  Q&A on CLEE study part  Study team

17:05 – 17:07  Closing words  David Regeczi

17:07 – 18:00  Optional additional Q&A time  Study team

Invitation and registration of participants

Invitations were sent out in advance of the meeting, and participants had to register beforehand. In total, 133 registered participants attended the online event.

Outcomes of the workshop

A report with detailed overview of participants, the presented outcomes and received feedback and comments from stakeholders can be found in Annex 27.
Surveys and Interview questionnaires

Surveys on MTL

NCAs

Thank you for agreeing to participate. All of your answers are private and confidential.

1. Does your organisation verify the compliance of collective management organisation or other licensing entities, which are established in your country and grant multi-territorial licences, with the national legislation transposing Title III of the Collective Rights Management Directive (2014/26/EU)?

- Yes
- In some cases
- No

2. Please indicate how compliance is currently being established.

- Licensing organisations make self-assessment declarations
- Licensing organisations submit documents and information regarding their technical and organisational capacities
- A third party conducts an audit of the licensing organisations’ technical and organisational capacities
- Other, please briefly describe the essential features

3. In your country, are there currently specific measures to prepare the verification of collective management organisations’ and other licensing entities’ compliance in the future?

- No
- Yes, my organisation is mostly charged with conducting this
- Yes, another organisation is mostly charged with conducting this. Please state the name of the organisation

4. Are collective management organisations and other licensing entities established outside the European Economic Area (EEA) but operating in your jurisdiction required to comply with the national legislation transposing Title III of the Collective Rights Management Directive (2014/26/EU)? For an explanation of what the EEA is and which countries belong to it, see this web page.

- Yes
- No
- In some cases Please explain

5. Please briefly describe whether the requirements for multi-territorial licensing of online rights to musical works are the same or different (how) for licensing organisations based in the EEA and those based outside the EEA.
6. Are there any regulatory obstacles for collective management organisations, independent management entities and other licensing entities established in other EEA countries to grant MTLs covering your territory?

- No
- Yes, only one organisation can grant licences in one field, including licensing online rights to musical works
- Yes, an organisation licensing online rights to musical works needs to be a collective management organisation
- Yes, another regulatory obstacle. Please specify:

7. Are there any specific procedures in place in your country that enable rightholders, collective management organisations and any other interested parties, to notify your organisation of activities or circumstances regarding copyright licensing that could constitute a breach of your national legislation transposing Title III of the Collective Rights Management Directive (2014/26/EU)? About such notification procedures see Article 36(2) of the Collective Rights Management Directive.

- Yes
- No, specific notification procedures are not in place

8. Please briefly describe essential aspects of how such notifications currently work.

9. How many such notifications has your organisation received? A good estimate is sufficient.

10. How many of these notifications have already helped identifying actual breaches of the law?

11. In your judgement, how effective are the current notification procedures to ensure compliance with the relevant laws?

- Very effective
- Somewhat effective
- Neutral
- Somewhat ineffective
- Very ineffective
12. Are there currently specific actions taken in your country to introduce these notification procedures?
   - Yes
   - No

13. Over the last five years, has your organisation notified a competent authority from another EEA country about possible non-compliance of collective management organisations or licensing entities established in that country with its national legislation transposing Title III of the Collective Rights Management Directive (2014/26/EU)? About such notification procedures, see Article 37(2) of the Collective Rights Management Directive (2014/26/EU).
   - Yes
   - No

14. How many times has your organisation notified a competent authority from another EEA country? A good estimate is sufficient.

15. To how many of your notifications you received a reasoned reply by the notified competent authorities within three months?

16. To your knowledge, how many of your notifications have led to any appropriate actions taken by the notified competent authority?

17. In your judgement, how effective is it when your organisation notifies a competent authority in another EEA country, in the sense that the matter is swiftly dealt with in the other EEA country?
   - Very effective
   - Somewhat effective
   - Neutral
   - Somewhat ineffective
   - Very ineffective

18. In your judgement, how effective is it when your organisation notifies a competent authority in another EEA country, in the sense that the matter is adequately dealt with in the other EEA country for all stakeholders?
   - Very effective
   - Somewhat effective
   - Neutral
19. Which of these three response options best describes why – over the last five years – your organisation has not notified any competent authority in another EEA country about possible non-compliance of collective management organisations or licensing entities established in that country?

- There has been no serious case of non-compliance to report.
- There has been one or several serious cases of non-compliance, but we do not expect the competent authorities in the countries concerned to effectively deal with them.
- We do not have the capacity or motivation to deal with compliance in other territories.
- We did not know whom to contact
- Other. Please specify

20. According to your judgement, how important will it be for effective regulation, over the next five years, that competent authorities of EEA countries notify each other about possible non-compliance of collective management organisations or licensing entities established in their countries with their national law transposing Title III of the Collective Rights Management Directive (2014/26/EU)?

- Very effective
- Somewhat effective
- Neutral
- Somewhat ineffective
- Very ineffective


- No, such alternative dispute resolution mechanisms are not in place.
- Yes, and our organisation is in charge of these procedures.
- Yes, and other organisations are in charge of these procedures. Please specify which other organisations are mostly in charge:

22. Were the alternative dispute resolution procedures in place already before the adoption of the Collective Rights Management Directive (2014/26/EU)?

- Yes
- No

23. How has the Collective Rights Management Directive (2014/26/EU) and its implementation into national law affected these alternative dispute resolution procedures?
These procedures largely remained the same as before the Directive was transposed into national law.
These procedures have been newly introduced with the Directive.
Such procedures were in place before but they have been greatly reformed with the Directive.

24. Please briefly describe essential aspects of these alternative dispute resolution procedures.

25. How many times have such alternative dispute resolution procedures been used in your country since the transposition of the Collective Rights Management Directive (2014/26/EU)? A good estimate is sufficient.

26. How many disputes have already been resolved by these alternative dispute resolution procedures in your country since the transposition of the Collective Rights Management Directive (2014/26/EU)?

27. In your judgement, how effective are the current alternative dispute resolution procedures, in the sense that they result in swift resolutions?

- Very effective
- Somewhat effective
- Neutral
- Somewhat ineffective
- Very ineffective

28. Are there currently specific actions taken in your country to introduce alternative dispute resolution procedures?

- Yes
- No

29. This is the last page of the survey. Here you may provide any other information you consider relevant.
Licensing entities

Thank you for agreeing to participate. All of your answers are private and confidential.

1. What is the name of your organisation?

2. In which country is your organisation established?

3. How would you categorise your organisation according to the classification in the Collective Rights Management Directive (2014/26/EU)? It is a.

   • Collective management organisation (CMO) 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: (i) it is owned or controlled by its members and (ii) it is organised on a not-for-profit basis. (Article 3(a) of the Collective Rights Management Directive)

   • Independent management entity (IME) 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: (i) neither owned nor controlled, directly or indirectly, wholly or in part, by rightholders and (ii) organised on a for-profit basis. (Article 3(b) of the Collective Rights Management Directive)

   • Other licensing entity whose sole or main purpose is copyright management Any licensing organisation that manages rights of rightholder(s) and that does not fall in the definition of the ‘collective management organisation’ or ‘independent management entity’.

   • Other, please specify:

4. Does your organisation currently offer to grant multi-territorial licenses of online rights in musical works in the European Economic Area (EEA)? This question concerns multi-territorial licensing according to Title III of the Collective Rights Management Directive (2014/26/EU). For an explanation of what the EEA is and which countries belong to it, see this web page.

   • Yes
   • No

5. Please, indicate since which year your organisation offers to grant multi-territorial licences for online rights in musical works in the EEA.
6. Does your organisation currently take a specific action to prepare for offering to grant multi-territorial licenses for online rights in musical works in the EEA over the next years?

- Yes
- No

7. Please, specify the reasons for which your organisation does not offer to grant multi-territorial licences for online rights in musical works nor takes specific actions to achieve this:

- Too difficult to meet the regulatory requirements
- The necessary technical and organisational measures are too costly
- No commercial incentive to do this
- Lack of demand from cross-border online music services
- Other, please specify:

8. Since which year does your organisation meet the requirements of Title III of the Collective Rights Management Directive (2014/26/EU) and of the respective national legislation transposing the Directive. Please note that this year may be before the Directive was passed or transposed into national law.

- Title III of the Collective Rights Management Directive does not apply to our organisation
- It is difficult to give a precise date
- Year:

For the following questions, please indicate how costly according to your estimates it is – in terms of financial costs and time – to comply with the requirements for multi-territorial licensing. These questions concern multi-territorial licensing, according to Title III of the Collective Rights Management Directive (2014/26/EU) and the respective national legislation transposing it.

9. The costs of meeting the requirements regarding the capacity to process multi-territorial licences (as stipulated in Art. 24 of the Collective Rights Management Directive) are:

- Very high
- Quite high
- Moderate
- Quite low
- Very low
10. The costs of meeting the requirements regarding the transparency of multi-territorial repertoire information (as stipulated in Art. 25 of the Collective Rights Management Directive) are:

- Very high
- Quite high
- Moderate
- Quite low
- Very low

11. The costs of meeting the requirements regarding the accuracy of multi-territorial repertoire information (as stipulated in Art. 26 of the Collective Rights Management Directive) are:

- Very high
- Quite high
- Moderate
- Quite low
- Very low

12. The costs of meeting the requirements regarding the reporting and invoicing (as stipulated in Art. 27 of the Collective Rights Management Directive) are:

- Very high
- Quite high
- Moderate
- Quite low
- Very low

13. The costs of meeting the requirements regarding the payments to rightholders (as stipulated in Art. 28 of the Collective Rights Management Directive) are:

- Very high
- Quite high
- Moderate
- Quite low
- Very low

14. Overall costs of compliance with the regulations for multi-territorial licensing (as stipulated in Title III of the Collective Rights Management Directive) are:

- Very high
- Quite high
- Moderate
- Quite low
- Very low
15. To how many different online music services did your organisation grant multi-territorial licences for online rights in musical works in the EEA during the last 5 years. A reasonable estimate is sufficient.

Please, provide us in the following questions with basic information regarding up to 5 of your most recent multi-territorial licences for online rights in musical works to providers of online music services.

16. In which year was the multi-territorial licence concluded?

17. What repertoires are covered by the licence?
   - Your organisation’s own repertoire (works of members)
   - Repertoire(s) of (an)other CMO(s)
   - Other, please specify:

18. If the provider of the online music service so requested, would it be possible for you to offer a broader repertoire?
   - Yes
   - No

19. Which EEA countries are covered by the license?

20. If the provider of the online music service so requested, would it be possible for you to cover more countries?
   - Yes
   - No

21. What types of rights are covered by the licence?
   - Mechanical (reproduction)
   - Performing (communication to the public)
   - Mechanical and performing (reproduction and communication to the public)

22. What general types of uses are covered by the licence?
   - All digital
• All digital, except VoD
• Music streaming service
• Music downloading service
• Other, please specify:

23. If the provider of the online music service so requested, would it be possible for you to cover more rights and uses?
• Yes
• No

Please, provide us in the following questions with basic information regarding up to 5 of your most recent multi-territorial licences for online rights in musical works to providers of online music services.

24. In which year was the multi-territorial licence concluded?
• Our organisation concluded only 1 multi-territorial licence
• Year:

25. What repertoires are covered by the licence?
• Your organisation’s own repertoire (rights of its members)
• Repertoire(s) of (an)other CMO(s)
• Other, please specify:

26. If the provider of the online music service so requested, would it be possible for you to offer a broader repertoire?
• Yes
• No

27. Which EEA countries are covered by the licence?

28. If the provider of the online music service so requested, would it be possible for you to cover more countries?
• Yes
• No

29. What types of rights are covered by the licence?
• Mechanical (reproduction)
• Performing (communication to the public)
• Mechanical and performing (reproduction and communication to the public)

30. What general types of uses are covered by the licence?

• All digital
• All digital, except VoD
• Music streaming service
• Music downloading service
• Other, please specify

31. If the provider of the online music service so requested, would it be possible for you to cover more rights and uses?

• Yes
• No

Please, provide us in the following questions with basic information regarding up to 5 of your most recent multi-territorial licences for online rights in musical works to providers of online music services.

32. In which year was the multi-territorial licence concluded?

• Our organisation concluded only two multi-territorial licences
• Year:

33. What repertoires are covered by the licence?

• Your organisation’s own repertoire (rights of its members)
• Repertoire(s) of (an)other CMO(s)
• Other, please specify:

34. If the provider of the online music service so requested, would it be possible for you to offer a broader repertoire?

• Yes
• No

35. Which EEA countries are covered by the license?

36. If the provider of the online music service so requested, would it be possible for you to cover more countries?
37. What types of rights are covered by the licence?

- Mechanical (reproduction)
- Performing (communication to the public)
- Mechanical and performing (reproduction and communication to the public)

38. What general types of uses are covered by the licence?

- All digital
- All digital, except VoD
- Music streaming service
- Music downloading service
- Other, please specify:

39. If the provider of the online music service so requested, would it be possible for you to cover more rights and uses?

- Yes
- No

Please, provide us with in the following questions basic information regarding up to 5 of your most recent multi-territorial licences for online rights in musical works to providers of online music services.

40. In which year was the multi-territorial licence concluded?

- Our organisation concluded only 3 multi-territorial licences
- Year:

41. What repertoires are covered by the licence?

- Your organisation’s own repertoire (rights of its members)
- Repertoire(s) of (an)other CMO(s)
- Other, please specify:

42. If the provider of the online music service so requested, would it be possible for you to offer a broader repertoire?

- Yes
- No

43. Which EEA countries are covered by the license?
44. If the provider of the online music service so requested, would it be possible for you to cover more countries?

- Yes
- No

45. What types of rights are covered by the licence?

- Mechanical (reproduction)
- Performing (communication to the public)
- Mechanical and performing (reproduction and communication to the public)

46. What general types of uses are covered by the licence?

- All digital
- All digital, except VoD
- Music streaming service
- Music downloading service
- Other, please specify:

47. If the provider of the online music service so requested, would it be possible for you to cover more rights and uses?

- Yes
- No

Please, provide us in the following questions with basic information regarding up to 5 of your most recent multi-territorial licences for online rights in musical works to providers of online music services.

48. In which year was the multi-territorial licence concluded?

- Our organisation concluded only four multi-territorial licences
- Year:

49. What repertoires are covered by the licence?

- Your organisation’s own repertoire (rights of its members)
- Repertoire(s) of (an)other CMO(s)
- Other, please specify:
50. If the provider of the online music service so requested, would it be possible for you to offer a broader repertoire?

- Yes
- No

51. Which EEA countries are covered by the license?

52. If the provider of the online music service so requested, would it be possible for you to cover more countries?

- Yes
- No

53. What types of rights are covered by the licence?

- Mechanical (reproduction)
- Performing (communication to the public)
- Mechanical and performing (reproduction and communication to the public)

54. What general types of uses are covered by the licence?

- All digital
- All digital, except VoD
- Music streaming service
- Music downloading service
- Other, please specify:

55. If the provider of the online music service so requested, would it be possible for you to cover more rights and uses?

- Yes
- No

56. Please indicate why your organisation has not granted any multi-territorial licence during the last 5 years.

- So far, no one has approached your organization with a request for a multi-territorial licence
- No agreements on prices and terms could be reached with an online music service
- Negotiations are still ongoing with an online music service
- Other, please specify:
57. At present, are there national regulations on copyright licensing in any of the EEA countries that affect your organisation’s ability to grant multi-territorial licences covering territories of these countries?

- Yes, in the following EEA country(ies), only one organisation can grant licences in one field, including the licensing of online rights in musical works
- Yes, in the following EEA country(ies), an organisation licensing online rights in musical works needs to be a CMO
- Yes, in the following EEA country(ies), another regulatory obstacle exists.
- No

58. You indicated that in specific EEA country(ies), only one organisation can grant licences in one field, including the licensing of online rights in musical works. Please indicate in the textbox the EEA country(ies) concerned

59. You indicated that in specific EEA country(ies), an organisation licensing online rights in musical works needs to be a CMO. Please indicate in the textbox the EEA country(ies) concerned

60. You indicated that in specific EEA country(ies), other regulatory obstacles exists. Please specify the country(ies) and the regulatory obstacle concerned

61. In your view, how has the Collective Rights Management Directive (2014/26/EU) and its transposition into national law affected your organisation’s ability to offer multi-territorial licences? Please mark what best applies.

- It removed major obstacles so that it became feasible for us to conduct multi-territorial licensing
- It made multi-territorial licensing easier for us but some major obstacles remain
- It had no effect
- It made multi-territorial licensing harder for us
- It resulted in new regulations that prevent us from conducting multi-territorial licensing
- The situation varies too much between various territories to give a general answer

62. Over recent years, several organisations that manage copyrights on behalf of rightholders have created separate entities – via subsidiaries, joint ventures, economic groupings and the like – for the purpose of multi-territorial licensing of online rights in musical works in the EEA. Does your organisation currently participate in at least one such separate licensing entity and/or use its services?

- Yes
• No

63. Please, indicate the number of such entities

64. Please name the first entity.

65. Please indicate your relation to this entity
   • We (co-)created this entity
   • We joined this entity, which had been created by others
   • We only use certain services of this entity

66. Please specify in which year your organisation joined, created or started using services of this entity.

67. What services does this entity provide to you?
   • Multi-territorial licensing
   • Back-office processing
   • Other, please specify:

68. Please name the second entity.

69. Please indicate your relation to this entity
   • We (co-)created this entity
   • We joined this entity, which had been created by others
   • We only use certain services of this entity

70. Please specify in which year your organisation joined, created or started using services of this entity.

71. What services does this entity provide to you?
   • Multi-territorial licensing
   • Back-office processing
   • Other, please specify:
72. Please name the third entity.

73. Please indicate your relation to this entity
   - We (co-)created this entity
   - We joined this entity, which had been created by others
   - We only use certain services of this entity

74. Please specify in which year your organisation joined, created or started using services of this entity.

75. What services does this entity provide to you?
   - Multi-territorial licensing
   - Back-office processing
   - Other, please specify:

76. Please name the fourth entity.

77. Please indicate your relation to this entity
   - We (co-)created this entity
   - We joined this entity, which had been created by others
   - We only use certain services of this entity

78. Please specify in which year your organisation joined, created or started using services of this entity.

79. What services does this entity provide to you?
   - Multi-territorial licensing
   - Back-office processing
   - Other, please specify:

80. Please name the fifth entity.

81. Please indicate your relation to this entity
• We (co-)created this entity
• We joined this entity, which had been created by others
• We only use certain services of this entity

82. Please specify in which year your organisation joined, created or started using services of this entity.

83. What services does this entity provide to you?

• Multi-territorial licensing
• Back-office processing
• Other, please specify:

84. Does your organisation also grant multi-territorial licences itself in addition to the licensing done by the entity that your organisation has joined/created or whose services it is using?

• Yes
• No

85. Does your organisation currently have specific plans to create such an licensing entity, join or use services of an existing licensing entity?

• Yes, we plan to create a new entity
• Yes, we plan to create a new entity with (an)other partner(s)
• Yes, we plan to join an existing entity
• No

Please consider the market for licensing online rights to musical works in the EEA as a whole.

86. Over the last 5 years, how has the number of users, who seek to conclude multi-territorial licences, changed?

• Increased very much
• Increased somewhat
• There was no change
• Decreased somewhat
• Decreased very much
• There is no reasonably consistent pattern

87. Over the last 5 years, what best describes how the prices and conditions of multi-territorial licences offered and/or accepted by users changed?

• Increased very much
88. Over the last 5 years, has your organisation received a request from a CMO established in the EEA to represent its repertoire for the purpose of multi-territorial licensing of online rights to musical works in the EEA?

- Yes
- No

89. Please indicate how many requests from CMOs established in the EEA for representation for the purpose of multi-territorial licensing your organisation has received over the last 5 years.

90. How many of these requests from CMOs established in the EEA for representation for the purpose of multi-territorial licensing has your organisation accepted over the last 5 years?

91. How many of these requests from CMOs established in the EEA for representation for the purpose of multi-territorial licensing has your organisation refused over the last 5 years?

92. Over the last 5 years, has your organisation requested another CMO established in the EEA to represent your organisation’s repertoire for the purpose of multi-territorial licensing of online rights in musical works?

- Yes
- No

93. Please indicate how many times your organisation has made such requests over the last 5 years.

94. How many of your organisation’s requests for representation for the purpose of multi-territorial licensing have been accepted over the last 5 years?
95. How many of your organisation’s requests for representation for the purpose of multi-territorial licensing have been refused over the last 5 years?

Rightholders have in certain specific cases the right to withdraw their online rights in musical works for the purpose of multi-territorial licensing while keeping them for the purpose of mono-territorial licensing (Article 31 of the Collective Rights Management Directive Collective Rights Management Directive (2014/26/EU)).

96. Over the last 5 years, have any rightholders withdrawn some or all of their online rights from your organisation for the purpose of multi-territorial licensing?

- Yes
- No

97. For each of the following years, please indicate the percentage share in the total number of works, for which any online rights were withdrawn from your organisation for the purpose of multi-territorial licensing. Please also consider withdrawals for only a part of the online rights, if applicable. Reasonable estimates are sufficient.

- 2017: ............................................................
- 2018: ............................................................
- 2019: ............................................................

98. For each of the following years, please indicate the percentage share in the total number of rightholders, for which any online rights were withdrawn from your organisation for the purpose of multi-territorial licensing. Please also consider withdrawals for only a part of the online rights, if applicable. Reasonable estimates are sufficient.

- 2017: ............................................................
- 2018: ............................................................
- 2019: ............................................................

99. Over the last 5 years, which type of online rights in musical works were withdrawn?

- Only mechanical rights
- Mostly mechanical rights
- Both mechanical and performing rights, about the same
- Mostly performing rights
- Only performing rights

100. Regarding the types of musical works to which online rights were withdrawn over the last 5 years, these were:

- Mostly works in high demand
Mostly works in low demand
Both about the same

101. Regarding the types of rightholders, who withdrew their online rights in musical works over the last 5 years, these were:

- Only large publishers
- Large and medium-size publishers
- All kinds of publishers
- Only large publishers and known successful authors
- Large and medium-size publishers and known successful authors
- All kinds of publishers and authors

Your organisation may be affected by withdrawals but your organisation may also have had new works and rightholders registering online rights with you.

102. Taking into account all the withdrawals and new mandates from rightholders, what best describes the aggregate effect on the rights revenues of your organisation from multi-territorial licensing of online rights in musical works over the last 5 years?

- Revenues increased very much
- Revenues increased somewhat
- Revenues were unchanged
- Revenues decreased somewhat
- Revenues decreased very much

103. What percentage from the total rights revenues was deducted to cover the cost of the online rights management in the following years? Feel free to use information from your organisation’s annual transparency reports, as stipulated in Point 2(b)(vi) of the Annex to Collective Rights Management Directive (2014/26/EU). If precise data is not available, reasonable estimates are sufficient.

- 2017: ............................................................
- 2018: ............................................................
- 2019: ............................................................

Overall, how do you evaluate the cross-border availability of your repertoire in online music services:

104. In terms of being available in many EEA countries?

- Very positive
- Somewhat positive
- Neutral
105. In terms of prices and terms of multi-territorial licences?

- Very positive
- Somewhat positive
- Neutral
- Somewhat negative
- Very negative

106. What best describes the effect of the Collective Rights Management Directive (2014/26/EU) and its implementation into national law, in terms of promoting innovation in the online market for music services in the EEA?

- Very positive
- Somewhat positive
- Neutral
- Somewhat negative
- Very negative

In your view, how does the Collective Rights Management Directive (2014/26/EU) and its implementation into national law affect your organisation’s ability to provide competitive online music licensing services to rightholders:

107. Your organisation’s competitiveness, compared to other CMOs established in the EEA?

- Improved very much
- Improved somewhat
- There is no change
- Deteriorated somewhat
- Deteriorated very much

108. Your organisation’s competitiveness, compared to licensing organisations that are not regulated by Title III of the Collective Rights Management Directive (2014/26/EU)?

- Improved very much
- Improved somewhat
- There is no change
- Deteriorated somewhat
- Deteriorated very much
In your view, how does the Collective Rights Management Directive (2014/26/EU) and its implementation into national law affect your organisation’s ability to provide competitive repertoire to online music service providers:

109. Your organisation’s competitiveness, compared to other CMOs established in the EEA?
   - Improved very much
   - Improved somewhat
   - There is no change
   - Deteriorated somewhat
   - Deteriorated very much

110. Your organisation’s competitiveness, compared to licensing organisations that are not regulated by Title III of the Collective Rights Management Directive (2014/26/EU)?
   - Improved very much
   - Improved somewhat
   - There is no change
   - Deteriorated somewhat
   - Deteriorated very much

111. Are there any alternative dispute resolution procedures in the country of your organisation’s establishment? For the notion of ‘alternative dispute resolution procedures’, see Art. 34(2) of Collective Rights Management Directive (2014/26/EU). The definition provided there is: procedures that allow to deal with disputes between a CMO granting or offering to grant MTLs and online service provider/rightholder/other CMO.
   - Yes
   - No

112. Over the last 5 years, has your organisation been involved in alternative dispute resolution procedures?
   - Yes
   - No

113. In your view, how effective are the current alternative dispute resolution procedures in the country in which your organisation is established, in the sense that they result in swift resolutions?
   - Very effective
   - Somewhat effective
   - Neutral
   - Somewhat ineffective
114. In your view, how effective are the current alternative dispute resolution procedures in the country in which your organisation is established, in the sense that they result in adequate resolutions for all stakeholders?

- Very effective
- Somewhat effective
- Neutral
- Somewhat ineffective
- Very ineffective

115. In your view, how effective are the current alternative dispute resolution procedures in the country in which your organisation is established, in the sense that they encourage stakeholders to develop mutually acceptable solutions before any alternative dispute mechanisms are initiated?

- Very effective
- Somewhat effective
- Neutral
- Somewhat ineffective
- Very ineffective

116. This is the last page of the survey. Here you may provide any other information you consider relevant.
OMSPs

Thank you for agreeing to participate. All of your answers are private and confidential.

1. What is the name of your organisation?

2. What is the name of the online music services that you provide?

3. In which year did your organisation first provide online music services in at least one country of the European Economic Area (EEA)? For an explanation of what the EEA is and which countries belong to it, see this web page.

4. In which year did your organisation first provide online music services in more than one country of the EEA? Please also enter a year if it is the same as in your response to question 3.

5. Please indicate in which of the EEA countries listed below your organisation provides its online music services.

6. Is the musical library that your organisation currently offers its users identical across the countries selected in the previous question?
   - Yes, completely
   - Yes, to a large extent
   - No, different offer per region
   - No, different offer for each country

7. Please indicate in which country/countries your organisation currently offers the largest music library, and in which ones it offers the smallest musical library via its online music service. The largest musical library is made available in:
8. The smallest musical library is made available in:

9. Why are there differences in the music libraries your organisation makes available across different EEA countries? Please briefly state the main reasons.

........................................................................................................

10. Are the prices your organisation charges customers for its online music service identical across the EEA? Please feel free to ignore minor variations due to currency exchange rates, e.g. between countries in and out of the Euro area.

- Yes
- No

11. Why does your organisation charge different prices in different EEA countries? Please briefly state the main reasons.

........................................................................................................

12. Are there countries of the EEA where your organisation has obtained all relevant copyright licences to provide its online music service, but where it does not actually offer this service at present?

- Yes
- No

13. What are the main reasons that your organisation currently does not provide its online music service in some EEA countries, even though it has obtained all necessary copyright licences?

........................................................................................................

14. In total and considering all EEA countries in which your organisation operates its online music service, under how many separate licences for online rights in musical works does your organisation currently provide its service? A reasonable estimate is sufficient if precise numbers are hard to obtain.

........................................................................................................

15. Out of this total number of licences, approximately how many are multi-territorial licences covering the repertoire of a single CMO?

........................................................................................................
16. Out of this total number of licences, approximately how many are multi-territorial licences covering several repertoires of CMOs?

............................................................

17. Approximately what percentage of the total quantity of online rights in the music library of your online music service offered in EEA countries is covered by multi-territorial licences? A rough estimate is sufficient.

............................................................

18. Over the last five years, how has changed the typical number of separate licences required to provide online music services with the same size libraries and in the same EEA countries? Please mark what best applies across all countries, in which you offer online music services.

- Increased very much
- Increased
- Remained stable
- Decreased
- Decreased very much
- Developments are too varied to give any general answer

19. Over the last five years and according to your judgement, what specific factors have most affected the number of licences required to provide online music service with the same size libraries and in the same EEA countries? Please briefly state the main factors and indicate whether each of them increased or decreased the number of licences required.

20. Over the last five years, has your organisation experienced substantial changes in the pricing of copyright licences for online music services?

- No
- Yes. Please briefly state the most important changes and how they changed prices per instance of use:..............................................................

21. Over the last five years – and besides pricing of licenses – has your organisation experienced substantial changes in the effort required to strike and comply with copyright licences for online music services?

- No
22. In your judgment, how has the Collective Rights Management Directive (2014/26/EU) and its implementation affected your organisation’s ability to make small European repertoires available via online music service in EEA countries overall? By and large, as a consequence the music libraries we offer:

- Increased very much
- Increased
- Remained stable
- Decreased
- Decreased very much
- The effects were too diverse to identify any general pattern.

The Collective Rights Management Directive (2014/26/EU) and its implementation may have had various effects. The next two questions allow you to signal specific aspects that had noteworthy positive or negative consequences.

23. Please briefly state any important reasons why the Collective Rights Management Directive (2014/26/EU) and its implementation have made it more difficult for your organisation to make small European repertoires available via its online music service in EEA countries. Please also indicate whether these reasons apply in specific countries only.

............................................................

24. Please briefly state any important reasons why the Collective Rights Management Directive (2014/26/EU) and its implementation have made it easier for your organisation to make small European repertoires available via its online music service in EEA countries. Please also indicate whether these reasons apply in specific countries only.

............................................................

25. How have the Collective Rights Management Directive (2014/26/EU) and its implementation affected the overall cost and effort required for your organisation to acquire the copyright licensing for its online music service? By and large, as a consequence the overall cost and effort for licensing:

- Increased very much
- Increased
- Remained stable
- Decreased
- Decreased very much
- The effects were too diverse to identify any general pattern.
The Collective Rights Management Directive (2014/26/EU) and its implementation may have had various effects. The next two questions allow you to signal specific aspects that had noteworthy positive or negative consequences.

26. Please briefly state any important reasons why the Collective Rights Management Directive (2014/26/EU) and its implementation have made it more difficult for you to obtain copyright licences for multi-territorial online music services. Please also indicate whether these reasons apply in specific countries only.

............................................................

27. Please briefly state any important reasons why the Collective Rights Management Directive (2014/26/EU) and its implementation have made it easier for you to obtain copyright licences for multi-territorial online music services. Please also indicate whether these reasons apply in specific countries only.

............................................................

28. In the EEA, rightholders have the right to withdraw their rights from CMOs. Over the last five years, have such withdrawals of online rights from CMOs had substantial consequences for your organisation’s online music service?

- Yes
- No

29. Please briefly explain why withdrawals have not affected your organisation’s online music service.

............................................................

30. Over the last five years, how have withdrawals of rights from CMOs affected your organisation's online music service? Please mark what best applies. Licensing fees per instance of use

- Increased very much
- Increased
- Remained stable
- Decreased
- Decreased very much

31. Sustainability/profitability of your organisation’s online musical service
32. The size of the music library that your organisation makes available, in terms of the total number of different works supplied

- Increased very much
- Increased
- Remained stable
- Decreased
- Decreased very much

33. The proportion of small European repertoires in the music library that your organisation makes available, in terms of the total number of different works supplied

- Increased very much
- Increased
- Remained stable
- Decreased
- Decreased very much

34. The number of copyright to provide online music service with the same size libraries and in the same countries

- Increased very much
- Increased
- Remained stable
- Decreased
- Decreased very much

35. The conditions and terms of copyright licences – other than price – became:

- Much more favourable
- Somewhat more favourable
- Virtually unchanged
- Somewhat less favourable
- Much less favourable

36. Are you aware of any alternative dispute resolution procedures in the EEA countries where the CMO(s) with which your organisation has concluded licences are established? Art. 34(2)(a) of the Collective Rights Management Directive (2014/26/EU) concerns this issue.
37. Over the last five years, has your organisation been involved in an alternative dispute resolution procedures with regard to copyright licensing for online music services?

- Yes
- No

38. Why has your organisation not been involved in an alternative dispute resolution procedure? Multiple answers are feasible. Please mark what applies.

- This procedures have not been in place for long
- There were no disputes
- Our organisation managed to resolve disputes in other ways
- Other, please specify: .................................................................

39. Over the last five years, in how many different alternative dispute resolution procedures has your organisation been directly involved in, regarding online music services? A good estimate is sufficient.

.................................................................

40. How many of these alternative dispute resolution procedures has your organisation initiated?

.................................................................

41. How many of these alternative dispute resolution procedures have already been resolved?

.................................................................

42. How many of these alternative dispute resolution procedures are still pending?

.................................................................

43. In your judgment, how effective are the current alternative dispute resolution procedures:

- a. In the sense that they result in swift resolutions?
44. b. In the sense that they result in adequate resolutions for all parties?

- Very effective
- Somewhat effective
- Neutral
- Somewhat ineffective
- Very ineffective

45. In your perspective, are any specific amendments to alternative dispute resolution procedures required to make them work better?

- No
- Yes. Please briefly specify: ................................................

46. This is the last page of the survey. Here you may provide any other information you consider relevant.

.................................................................
Rightholders

Thank you for agreeing to participate. All of your answers are private and confidential.

1. Please indicate whether you represent a publisher or you are an author of a musical work

- Author (composer or lyricist)
- Publisher, please indicate the name:..............................................................

2. Are your online rights in musical works licensed on a multi-territorial basis in the European Economic Area (EEA)? For an explanation of what the EEA is and which countries belong to it, see this web page.

- Yes
- No
- Do not know

3. Why are your online rights in musical works not licensed on a multi-territorial basis in the EEA?

..............................................................

4. Can you explain why you do not know whether your online rights in musical works are licensed on a multi-territorial basis in the EEA?

..............................................................

5. Are your online rights in musical works licensed on a multi-territorial basis in the EEA by a collective management organisation, independent management entity or other licensing entity?

- Yes
- No
- Do not know

6. Please indicate how you exercise your online rights in musical works on a multi-territorial basis in the EEA and why you opted for this way of exercise instead of mandating your rights to a collective management organisation, independent management entity or other licensing entity.

..............................................................
7. Can you explain why you do not know whether your online rights in musical works are licensed on a multi-territorial basis in the EEA by a collective management organisation (CMO), independent management entity (IME) or other licensing entity?

8. A collective management organisation, independent management entity or other licensing entity that grant multi-territorial licences of your online rights in musical works:
   - received your direct mandate for multi-territorial licensing
   - received a mandate from the collective management organisation of which you are a member
   - Other, please specify:............................................................

9. To what type of licensing organisation have you mandated your online rights in musical works for the purpose of multi-territorial licensing in the EEA?
   - Collective management organisation (CMO)
   - Independent management entity (IME)
   - Other licensing entity
   - In case of doubt, please indicate the name of the licensing organisation:.................................

10. When did you mandate your online rights in musical works to the licensing organisation that is licensing them on a multi-territorial basis in the EEA today?
    - During the last 5 years
    - Before the last 5 years

11. What were your main criteria for choosing the organisations to which your mandated your online rights to musical works for the purpose of multi-territorial licensing in the EEA?
     ............................................................

12. What part of your musical repertoire, in terms of the number of works, did you mandate to this organisation for the purpose of multi-territorial licensing in the EEA?
    - All of it (100%)
    - Most of it (99% to 66%)
    - Approximately half of it (66% to 33%)
    - Some of it (33% to 0%)

13. What type of your online rights in musical works did you mandate to this organisation for the purpose of multi-territorial licensing in the EEA?
• Mechanical (reproduction)
• Performing (communication to the public)
• Mechanical and performing (reproduction and communication to the public)

14. What were the main reasons for mandating this part of your repertoire and this type of rights to this organisation for the purpose of multi-territorial licensing?

............................................................

15. Are you aware of the right to withdraw your online rights in musical works from the collective management organisation?

• Yes
• No

16. Over the last five years, have you withdrawn all or a part of your online rights to musical works from CMOs for the purpose of multi-territorial licensing?

• Yes
• No

17. Please indicate, at least approximately, the year when you withdrew your rights or a part of them

............................................................

18. What was your main reason to withdraw your online rights in musical works or a part of them?

............................................................

19. Have you withdrawn all or only a part of your online rights to musical works?

• Full withdrawal
• Partial withdrawal

20. Please explain the reasons for withdrawing all the online rights.

............................................................
21. Please explain the reasons for withdrawing only some rights. Please specify in general terms which rights you have withdrawn.

............................................................

22. How easy it was to withdraw your rights on a scale from 1 to 5, where 1 is “very easy” and 5 “very difficult”.

- Very easy
- Easy
- Neutral
- Difficult
- Very difficult

23. What main obstacles have you encountered, if any, when withdrawing your online rights in musical works?

............................................................

24. Have you mandated the multi-territorial licensing of the withdrawn rights or a part of them to another CMO, independent management entity or other licensing entity?

- Yes
- No

25. Please indicate the main reasons for the change of one collective management organisation to another collective management organisation, independent management entity or other licensing entity.

............................................................

How satisfied are you with the following aspects of the multi-territorial licensing of your online rights in musical works by the collective management organisation, independent management entity or other licensing entity you have mandated (on a scale from 1 to 5, where 1 is “very satisfied” and 5 “very unsatisfied”)?

26. How well the licensing organisation is managed

- Very satisfied
- Satisfied
- Neutral
- Unsatisfied
• Very unsatisfied

27. How transparent the licensing organisation is to you with regard to the management of your online rights

• Very satisfied
• Satisfied
• Neutral
• Unsatisfied
• Very unsatisfied

28. Amounts deducted to cover the costs of management of your online rights

• Very satisfied
• Satisfied
• Neutral
• Unsatisfied
• Very unsatisfied

29. The frequency of distribution of online rights revenues

• Very satisfied
• Satisfied
• Neutral
• Unsatisfied
• Very unsatisfied

30. Reporting on online uses of your works

• Very satisfied
• Satisfied
• Neutral
• Unsatisfied
• Very unsatisfied

31. Over the last five years, have you observed a positive trend in the increase of the quality of management of your online rights by collective management organisations, independent management entities or other licensing entities?

• Yes, things are much better
• Yes, things are better
• No, things are the same
• No, things are worse
• No, things are much worse
• Difficult to say
32. Please explain how the quality of management of your online rights has changed.

............................................................

33. Are you aware of any alternative dispute resolution procedures in the country where the collective management organisation managing your online rights for multiple territories is established? Such procedures allow notably to submit a dispute between collective management organisations and rightholders to an independent and impartial alternative dispute resolution procedure. Article 34(2)(b) of the Collective Rights Management Directive (2014/26/EU) explains these procedures.

- Yes
- No

34. Have you used alternative dispute resolution procedures?

- Yes
- No

35. How satisfied have you been with the alternative dispute resolution procedures on a scale from 1 to 5, where 1 is "very unsatisfied" and 5 "very satisfied"

- Very satisfied
- Satisfied
- Neutral
- Unsatisfied
- Very unsatisfied

36. Please indicate why you were not satisfied with the alternative dispute resolution procedures.

............................................................

37. This is the last page of the survey. Here you may provide any other information you consider relevant.

............................................................
Interview questionnaires on MTL

NCA interview questionnaire

Introduction by Ecorys (max 5 minutes)

- The study and its objectives;
- Presentation of the structure of the interview;
- Importance of user’s contribution to the study;
- Respondents are free not to reply to some questions;
- Confidentiality.

Multi-territorial licensing

I. Control of entities engaged in MTL

- How do you supervise, if at all, entities (CMOs/IMOs) that engage in multi-territorial licensing in your country?
- How do you obtain relevant information about CMOs, IMEs and their subsidiaries acting in your country but established outside your country? Are you somehow notified (directly by these entities or indirectly, e.g. by the European Commission, other national competent authorities, or others)?
- Have you ever been notified by rightholders, CMOs and other interested parties about activities or circumstances that in their opinion constitute a breach of the CRM Directive? And have you ever received notifications about non-compliance of a CMO by national competent authorities in other Member States?
- Has the attractiveness of minimum requirements and overall ‘business climate’ for CMOs, IMEs and/or their subsidiaries been part of the national policy discussion/considerations when transposing the CRM Directive into national law (e.g., competitiveness of national licensors in comparison to foreign; attractiveness of the country for creation/move of CMOs or IMEs; establishment or participation of national CMOs in licensing hubs)?

II. Dispute resolution

- What are your experiences with the functioning of alternative dispute resolution mechanisms for the purpose of multi-territorial licensing? Have they ever been applied by CMOs, OMSPs, and/or rightholders? In which (types of) cases?
- Have you ever received complaints from OMSPs or rightholders regarding multi-territorial licensing (or other information that could be of relevance)?

CMOs, licensing hubs and other licensing entities interview questionnaire

Introduction by Ecorys (max 5 minutes)

- The study and its objectives;
- Presentation of the structure of the interview;
- Importance of user’s contribution to the study;
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

- Respondents are free not to reply to some questions;
- Confidentiality.

I. General and Background
- How does your organisation conduct multi-territorial licensing (MTL)?
- How many MTLs do you provide (pan-EEA and others)?

II. Legal issues
- How has the CRM Directive affected your MTL practice?
- Where do you see any room for improvement in your practice and in the law? Why?
- Do you face legal issues in certain countries? E.g. are there limitations in law or in practice to the number of CMOs that can manage rights for MTL in certain countries? If so, can you describe them? How do they affect your business?

III. Licensing relations with OMSPs
- Do you experience particular demands of OMSPs seeking a MTL (territories, repertoire, uses)?
- What is the typical time until a licence runs out or is renegotiated? How costly are renewals / renegotiations?
- To what extent does your organisation make specific licensing prices and terms available to different parties, such as (i) rightholders you represent, (ii) national competent authorities (NCAs) or any other public authorities; (iii) other licensees or potential licensees? Why? (e.g. do some licensees insist on non-disclosure agreements?)
- How much do licensing prices and terms differ for different online music services (licensees)? Why? Do you think a uniform tariff (per instance of use) would be desirable? Why?

IV. Relations with other licensors
- Can you describe your relationship with other licensors as regards the offering and granting of MTLs? Is there any cooperation/exchange of information? Have you been approached by other CMOs to administer their online rights (passport construction)? If so, how did this work?

V. Relations with rightholders
- Can you describe your relationship with different right holders, including publishers?
- How have withdrawal rights affected your operations? For example, have they led to a change in licensing terms for rightholders? If so, in what way (e.g. more or less favourable terms for particular rightholders?)
- Has your organisation ‘offered to grant MTLs’ (per 10 April 2017) to avoid partial withdrawal rights according to Article 31 CRM Directive? Or has this obligation affected your operations in other ways?

VI. Other issues (if time allows)
• Do you apply voluntary industry standards (e.g. to identify or register works and rightholders; to report online use; or to invoice licensees)?
• Do you use, or plan to use, emerging/advanced digital technologies (e.g. blockchain technologies) to facilitate MTL?
• Are there any other areas where you see room for improvement of your services (e.g. lowering costs or introducing new services)?

OMSP interview questionnaire

Introduction by Ecorys (max 5 minutes)

• The study and its objectives;
• Presentation of the structure of the interview;
• Importance of user’s contribution to the study;
• Respondents are free not to reply to some questions;
• Confidentiality.

I. General and Background

Type of online music service or services (where there are a few) the company provides and their main features (downloading, streaming and/or online content-sharing).

• We want to know what services the company provides.
• Since when it provides its services and since when it provides its services in the EEA (both years could be the same)
• We would like to empirically establish whether OMSPs enter the EEA market without clearing rights to all countries and what these countries are (in general: small / low-income, etc.)

II. Accessibility of music services for consumers

Territories

• Whether the company provides services on pan-EEA basis or only in some Member States?
• If it provides the services in some EEA Member States, we would like to know in which and why only is some?
• Whether there are Member States for which it has obtained rights but where it does not provide its services? If yes, why?

Music libraries

• Existence and estimation of difference (if any) between music libraries offers in different EEA Member States in which it provides its services?
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

- Member States with the largest / smallest libraries?
- If the music libraries offered to different Member States are of different size, why?

Prices

- Whether the prices are identical across the EEA?
- If not, why?

III. Licencing of online rights in musical works

- Under how many separate licences for online rights in musical works does your organisation currently provide its service? A reasonable estimate is sufficient if precise numbers are hard to obtain. How this number compares to the number of licences for corresponding recordings?
- Could you give an indication of the division of obtained MTLs; what share is MTLs covering (i) the repertoire of a single CMO, and (ii) several repertoires of CMOs?
- For what proportion of repertoires online mechanical and performing rights are licensed jointly / separately? Any trend?
- Overall, do you observe a trend towards decrease or increase of licences to online rights in musical works that need to be concluded in order to operate your business in the EEA?
  - Has the minimum number of licences that is sufficient (economically sustainable) for operating your business in the EEA sustainably decreased?
  - Whether MTLs help with faster multi-territorial roll-out of services?
- What is your experience (past/present) about clearance of rights for some Member States with a relatively small population and/or low income per capita?
- In your experience, are there CMOs that neither grant MTLs themselves nor mandate other licensing entities to grant MTLs covering their repertoire? If so, what is your experience obtaining rights for multi-territorial use of their repertoire (e.g., they do not obtain their repertoires or they conclude mono-territorial licences)?
- Do they observe any differences in the quality of multi-territorial licensing services provided by CMOs under Title III? If yes, what are the most significant / differences (non-compliance, if any)?
- Are MTLs granted only by CMOs and/or their subsidiaries, or are some MTLs granted directly by some publishers, IMEs and/or other licensing entities?
- Do they have to obtain multi-territorial licences to online rights to musical works from organisations to which Title III is not applicable? If yes, experience with such entities?
- Is it possible to obtain MTLs covering repertoires of the same CMOs / rightholders from different sources? If yes, what is an approximate proportion of such repertoire?
- Generally, for what contract period are MTL contracts concluded; i.e. how long do they last, and how frequently do they have to be renewed? How much of the agreements come under revision when renewal is up? How do withdrawals and other repertoire changes impact licences?
- Have they concluded MTLs covering only some Member States but not all? If yes, why?
• Whether it is accurate to state that OMSP’s multi-territorial licences mentioned in the CISAC Licensing Rules Definition document cover all EEA Member States except where it is explicitly mentioned otherwise?\textsuperscript{198}

IV. Additional questions, to be discussed if there is time and if these issues were not discussed through preceding responses

• OMSP’s appreciation of the CRM Directive
• Overall appreciation
• Prices (how they changed / specificity of multi-territorial licensing)
• Availability of information about repertoires (in particular non-most popular)
• Organisation of the market (e.g., aggregation of repertoires by a few licensing entities, better transparency and quality of services)
• Comparison with the past multi-repertoire but mono-territorial licensing
• Withdrawal of rightholders from CMOs
• Alternative dispute resolution procedures

Impact of the CRM Directive on availability of small repertoires:

• Did CRM Directive implementation impact:
  - OMSP’s ability to make small European repertoires available via online music service. If so, how?
  - OMSP’s overall cost and effort to acquire copyright licensing for online music service. If so, how?

Surveys on CLEE

At the moment, we are performing a study of certain aspects relating to the application of the Collective Rights Management Directive (CRM Directive). This study, commissioned by the DG CNECT (European Commission), aims to assess among others the economic and legal situation and the development in CLEE. As the results of our study will contribute to the Commission’s reflection in the context of future reports on the application of the CRM Directive, we would like to collect information and your views on how the rules stemming from the CRM Directive work in practice. We greatly appreciate that you have agreed to participate to this survey. All of your answers are private and confidential. Many thanks again for your cooperation!

Kindest regards,

The project team

1. Please provide a full and a short name of your organisation.

........................................................................................................

2. Please indicate the country in which your organisation is established.

3. Is your organisation a "collective management organisation" (in the sense of Article 3(a) of the EU Directive 2014/26/EU)?

   - Yes
   - No. Please describe how your organisation differs from a “collective management organisation” (as defined by Article 3(a) of the EU Directive 2014/26/EU):.................................................................

4. Please briefly explain for what type of works, rightholders, rights and users your organisation grants licences/collects remuneration.

........................................................................................................

5. Since which year your organisation is managing rights of rightholders?

........................................................................................................

6. According to the national law and/or jurisprudence, is your organisation under certain conditions entitled to conclude collective licences covering rights of rightholders non-members? For the purpose of the present survey, “rightholders non-members” means rightholders who have not explicitly authorised your organisation to represent them by way of assignment, licence or any other contractual arrangement (neither directly nor indirectly through a representation agreement with another organisation, CMO, etc.).

   - Yes
   - No

7. Please list domains (types of works or other subject-matter, rights and/or uses) where your organisation can conclude collective licences covering rights of rightholders non-members. Indicate for each domain legislative provisions that enable your organisation to conclude such collective licences.

........................................................................................................
8. Does the national law enable your organisation to grant collective licences on behalf of rightholders non-members in domains not specifically indicated by law? For example, the national law may not refer to specific types of uses but only set requirements that your organisation needs to fulfil

- Yes
- No

9. You may provide a further explanation to your answer on the previous question.

............................................................

10. Please indicate the exact legal provisions in the national law enabling such collective licensing (name of the legislative act, article(s), etc.).

............................................................

11. Please briefly explain the main conditions for concluding collective licences under such legislative provisions.

............................................................

12. Has your organisation granted collective licences under such provisions?

- Yes
- No

13. You may provide a further explanation to your answer on the previous question.

............................................................

14. Please provide several examples of uses that were licensed under such provisions, including ways in which those uses are contractually demarcated (e.g. specific licensing terms and conditions, requirements to apply geo-blocking or technical protection measures against copying, etc.).

............................................................

15. According to the law of your country, is an authorisation of a national authority necessary for your organisation to be able to grant licences on behalf of rightholders non-members?
• Yes
• No

16. Please explain how the compliance of your organisation with the requirements to conclude collective licences covering rights of rightholders non-members is verified.

..............................................................

17. Please provide the full name in the national language(s) and/or English of the national authority..............................................................

18. Please indicate the domain(s) (type of works, rights and/or uses) and year(s) for which you have received authorisations and the duration of the authorisations.

..............................................................

19. Is your organisation the only rightholders organisation authorised by the competent authority to exercise rights of rightholders non-members in the domains of your operation?

• No
• Yes. Please indicate whether your organisation has always been the only rightholders organisation authorised to exercise rights of rightholders non-members in the domains of your operation and, if not, which other organisation(s) was authorised to do so:........................................

20. Please indicate the full name(s) of the other rightholders organisation(s) that have been authorised.

..............................................................

21. Does the national law require your organisation to cooperate with other rightholders organisation(s) operating in the same domain?

• No
• Yes. Please indicate whether the national law refers to any specific form of cooperation:.............

22. Does your organisation cooperate with other rightholders organisation(s) operating in the same domain?

• No
• Yes. Please explain how you cooperate:.................................................................................
23. Please indicate the number of rightholders that your organisation represents by virtue of direct membership, transfers, mandates, etc. in each of the domains where it could conclude licences covering rights of rightholders non-members.

............................................................

24. Please indicate how many of these rightholders are collective management organisations and/or other associations of rightholders (representing multiple rightholders).

............................................................

25. Please indicate the number of works and/or other subject matter that your organisation represents by virtue of direct membership, transfers, mandates, etc. in each of the domains where it could conclude licences covering rights of rightholders non-members.

............................................................

26. Please indicate the number of representation agreements that your organisation concluded with foreign organisations of rightholders in each of the domains where it could conclude licences covering rights of rightholders non-members.

............................................................

27. Please indicate the number of representation agreements that your organisation concluded with organisations of rightholders in your country in each of the domains where it could conclude licences covering rights of rightholders non-members.

............................................................

28. If your organisation can grant collective licences to works of rightholders non-members exhaustively listed in a registry or a database (orphan works, out-of-commerce works, etc.), please indicate the type of such works and their number in the database.

............................................................

29. Please indicate what kind of information your organisation provided to competent national authorities for authorising your organisation to conclude collective licences covering rights of rightholders non-members.

- total number of rightholders members
- total number of works in the repertoire
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

- number of rightholders members in the domain concerned (having specific type of rights, etc.) by the authorisation
- number of works in the repertoire in the domain concerned by the authorisation
- total number of representation agreements with foreign rightholders organisations
- number of representation agreements with foreign rightholders organisations in the domain(s) concerned by the authorisation
- total collected amounts for rightholders members
- total distributed amounts to rightholders members
- total non-distributable amounts
- collected amounts for rightholders members in the domain(s) concerned by the authorisation
- distributed amounts to rightholders members in the domain(s) concerned by the authorisation
- non-distributable amounts in the domain(s) concerned by the authorisation
- amounts collected and distributed to rightholders
- efficiency of your organisation at managing rights
- overall past record of operations (financial balance, stability of operations, etc.)
- professional qualifications of managers of your organisations
- representation of different groups of rightholders in the management bodies of your organisations
- rules on distribution of collected amounts among different groups of rightholders
- resources (financial, organisational or human) that your organisation puts or proposes to put for identifying and locating rightholders non-members
- resources (financial, organisational or human) that your organisation puts or proposes to put for defending interests of rightholders non-members (other their identification and location)
- equal treatment of all rightholders concerned by collective licences
- number of conflicts with rightholders: ............................................................

30. You may provide additional information here for understanding your answer.

..............................................................................................................................

31. In the case of a court dispute, does your organisation benefit from a legal presumption that it represents all rightholders unless the contrary is proven by the other party?

- Yes
- No

32. You may provide a further explanation to your answer on the previous question.

..............................................................................................................................
33. Please indicate the provisions of statutory law (e.g., number of the article, name of the legislative act) or jurisprudence (e.g., reference to court decision(s)) providing that it is for the opposite party to prove that your organisation does not represent some rightholders.

34. Can this presumption also be used to licence rights of rightholders non-members?

- Yes
- No

35. Can rightholders non-members claim remuneration for use of their works under collective licences granted by your organisation?

- Yes
- No

36. Does your organisation treat rightholders members and non-members equally?

- Yes
- No

37. Please feel free to provide additional information for understanding your answer.

38. During the last three years (2017-2019), has your organisation distributed rights revenues to rightholders non-members? NB: For the purpose of the present survey, “rightholders non-members” means rightholders who have not explicitly authorised your organisation to represent them by way of assignment, licence or any other contractual arrangement (neither directly nor indirectly through a representation agreement with another organisation, CMO, etc.).

- Yes
- No

39. Please indicate how the rights revenues were distributed to rightholders non-members.

- Rightholders non-members claimed (directly or through their representatives) rights revenues from your organisation
- Your organisation identified and/or located rightholders non-members (or their representatives) and contacted them for distributing rights revenues to them
• your organisation made indirect distribution by transferring rights revenues to an organisation undertaking social, cultural and/or educational activities for the benefit of a category of rightholders concerned without individualising attribution of benefits for each rightholder
• your organisation transferred some collected amounts to rightholders organisations abroad for distribution to foreign rightholders that are not members of any rightholders organisations (neither of yours nor of theirs)
• other, please explain:............................................................

40. Please indicate the main search measures your organisation undertook specifically to identify and/or locate rightholders non-members, including foreign rightholders non-members.

.................................................................

41. Please indicate the amounts (mentioning the national currency) of rights revenue distributed during the last three years (2017-2019) to all rightholders and to rightholders non-members, as well as non-distributable amounts, in the domains where your organisation is entitled to also represent rightholders non-members:

  to all rightholders in 2019:............................................................
  to rightholders non-members in 2019:............................................................
  non-distributable amounts in 2019:............................................................

  to all rightholders in 2018:............................................................
  to rightholders non-members in 2018:............................................................
  non-distributable amounts in 2018:............................................................

  to all rightholders in 2017:............................................................
  to rightholders non-members in 2017:............................................................
  non-distributable amounts in 2017:............................................................

42. Please indicate (at least approximately) what percentage of the total rights revenues distributed to rightholders non-members during the last three years (2017-2019) was distributed to rightholders who are nationals and/or residents of other EU Member States. For avoidance of doubt, the UK was an EU Member State during this period.

.................................................................
43. Please indicate (at least approximately) how long on average takes the distribution of collected amounts for rightholders non-members.

In your home country: ............................................................

In foreign countries: ............................................................

44. Is the distribution time for rightholders non-members longer than for rightholders members?
   - No
   - Yes. Please explain how much longer on average and why: ............................................................

45. Is it accurate to state that the majority of non-distributable amounts is composed of amounts collected on behalf and for rightholders non-members?
   - Yes
   - No

46. How or for what purposes are amounts that remain non-distributable due to the extended effect used?

............................................................

47. Please indicate any other information you consider the research team shall take into account regarding distribution of rights revenue to rightholders non-members.

............................................................

48. Are rightholders non-members entitled to individually claim remuneration for use of their works under collective licences concluded by your organisation?
   - Yes
   - No

49. To whom can the claims for individual remuneration be addressed?
   - only to your organisation (licensor)
   - only to the user (licensee)
   - to your organisation or the user
   - other, please explain: .............................................................
50. When can such claim for individual remuneration be made?

- during 1 year since the use concerned
- during two years since the use concerned
- during three years since the use concerned
- no limit in time
- other, please explain: ............................................................

51. How is the amount of such claim for individual remuneration determined?

- the remuneration is determined according to the same rules as for rightholders that explicitly authorised your organisation to licence their rights collectively
- the remuneration could be individualised according to the rules different from those used for determining remuneration for rightholders that explicitly authorised your organisation to licence their rights collectively
- other, please explain: ............................................................

52. How many of such claims for individual remuneration has your organisation satisfied during the last three years (2017-2019)? Reasonable estimates are sufficient.

2019: ............................................................
2018: ............................................................
2017: ............................................................

If you wish, you may provide additional information here: ............................................................

53. Please indicate a proportion of such claims for individual remuneration that your organisation has refused during the last three years (2017-2019). A reasonable estimate is sufficient.

2017-2019: ............................................................

If you wish, you may provide additional information here: ............................................................

54. Please indicate any other information you consider the research team shall take into account regarding claims to remuneration of rightholders non-members.
55. Does your organisation undertake general publicity measures to inform rightholders non-members about collective exercise of their rights by your organisation?

- Yes
- No

56. Please indicate information that is typically included in the publicity measures.

- information about legal ability of your organisation to grant collective licences covering rights of rightholders non-members in a specific domain(s).
- information about a fact of conclusion of a collective licence(s) covering rights of rightholders non-members in a specific domain(s)
- name of the licensee(s)
- duration of the collective licence(s)
- main terms of use other than the tariff(s) for licensees
- tariff(s) for licensees
- right of rightholders non-members to claim remuneration
- right of rightholders non-members to opt-out (oppose or prohibit use)
- general policy on deductions, including management fees
- information about available dispute resolution procedures
- other information, please explain: ............................................................

57. Please indicate what general publicity measures your organisation undertook during the last three years (2017-2019) to inform rightholders concerned.

- publicly accessible website of your organisation
- social media accounts of your organisation
- annual report, annual transparency report, special report on the use of any amounts deducted for the purposes of social, cultural and educational services, audit report and/or other periodic corporate documents
- publications in press (newspapers, journals, etc.)
- presentations at events likely to be attended by rightholders
- display of posters and other notices in places likely to be visited by rightholders
- advertising banners on third party websites and social media
- advertising by email
- sending of information to associations of categories of rightholders concerned
- other, please explain: .............................................................

58. Please indicate language(s) in which such publicity measures were undertaken during the last three years (2017-2019).
59. Please indicate countries which your publicity measures targeted during the last three years (2017-2019).

60. Please indicate when your organisation undertakes such general publicity measures.
   - before use of works and/or other subject-matter
   - after use of works and/or other subject-matter
   - during use of works and/or other subject-matter
   - other, please explain: .............................................................

61. Does national law provide rightholders concerned by collective licences concluded by your organisation with a right to opt-out their rights? The right to opt-out refers to the possibility for rightholders to oppose or prohibit collective exercise of their rights. This could refer to the future or past collective licences.
   - No, rightholders do not enjoy the right to opt-out
   - Yes, rightholders always enjoy the right to opt-out
   - Yes, rightholders enjoy the right to opt-out in the following domains. Please list them: ...............  

62. Where the national law does not provide rightholders with a right to opt-out, does your organisation provide them with such a right on a voluntary basis (by virtue of the statute, in the text of collective licences, etc.)?
   - Yes
   - No

63. What information or documents, if any, do rightholders have to provide in order in opt-out their rights from collective licensing?
       .................................................................

64. How long does it take for a request to opt-out to take effect? Reasonable estimate is sufficient. Please indicate a number of days, months and/or mentioning how the period is calculated.
       .................................................................

65. When can rightholders exercise their right to opt-out?
   - after a collective licence covering their rights is granted
   - before a collective licence covering their rights is granted
   - before and after a collective licence covering their rights is granted
66. Please feel free to provide additional information on your answer to the previous question.
...........................................................................................................................................

67. Can rightholders opt-out only some (not all) their rights concerned by the collective licence?
• Yes, they can opt-out only some (not all) their rights covered by the collective licence
• No, they can opt-out only all their rights covered by the collective licence

68. Please feel free to provide additional information on your answer to the previous question.
...........................................................................................................................................

69. To whom can rightholders address the request to opt-out their rights?
• to your organisation (licensor)
• to a user (licensee)
• to your organisation (licensor) or to a user (licensee)
• other, please explain:........................................................................................................

70. Please provide up to three most common reasons given by rightholders for opting-out their rights.
1st most common reason:.................................................................................................
2nd most common reason:.................................................................................................
3rd most common reason:.................................................................................................

71. Please describe the impact, if any, of opt-outs of rights on collective licences concerned and licensees, and whether your organisation takes any mitigation measures.
...........................................................................................................................................

72. Does your organisation have arrangements to indemnify licence-takers from liability claims by individual rightholders (e.g. by rightholders who have opted out)?
• Yes
73. You may provide a further explanation to your answer on the previous question.
........................................................................................................

74. Please explain to what extent your organisation legally and/or financially indemnifies a licence-taker from liability. If relevant, it would be useful if you could give a sample of an indemnity clause your organisation applies.
........................................................................................................

75. Please provide information on opt-outs in 2019. “0” (zero) will be interpreted that no rightholder opted-out in the specified year. “N/A” (not applicable) will be interpreted that the right of opt-out was not applicable in the specified year.

No. of rightholders: ..............................................................................

No. of works/ subject-matter: ..............................................................

76. Please provide information on opt-outs in 2019. Which domain(s) / types of rights did the opt-out(s) described in the previous question involve?

Domain(s) / types of rights #1: ............................................................

Domain(s) / types of rights #2: ............................................................

Domain(s) / types of rights #3: ............................................................

Domain(s) / types of rights #4: ............................................................

Domain(s) / types of rights #5: ............................................................

Domain(s) / types of rights #6: ............................................................

Domain(s) / types of rights #7: ............................................................

Domain(s) / types of rights #8: ............................................................

Domain(s) / types of rights #9: ............................................................

Domain(s) / types of rights #10: ..........................................................
77. Please provide information on opt-outs in 2018. “0” (zero) will be interpreted that no rightholder opted-out in the specified year. “N/A” (not applicable) will be interpreted that the right of opt-out was not applicable in the specified year.

No. of rightholders: ............................................................

No. of works/ subject-matter: ..................................................

78. Please provide information on opt-outs in 2018. Which domain(s) / types of rights did the opt-out(s) described in the previous question involve?

Domain(s) / types of rights #1: .............................................
Domain(s) / types of rights #2: .............................................
Domain(s) / types of rights #3: .............................................
Domain(s) / types of rights #4: .............................................
Domain(s) / types of rights #5: .............................................
Domain(s) / types of rights #6: .............................................
Domain(s) / types of rights #7: .............................................
Domain(s) / types of rights #8: .............................................
Domain(s) / types of rights #9: .............................................
Domain(s) / types of rights #10: ..........................................  

79. Please provide information on opt-outs in 2017. “0” (zero) will be interpreted that no rightholder opted-out in the specified year. “N/A” (not applicable) will be interpreted that the right of opt-out was not applicable in the specified year.

No. of rightholders: ............................................................

No. of works/ subject-matter: ..................................................

80. Please provide information on opt-outs in 2017. Which domain(s) / types of rights did the opt-out(s) described in the previous question involve?

Domain(s) / types of rights #1: .............................................
Domain(s) / types of rights #2: .............................................
Domain(s) / types of rights #3: .............................................
81. Is it accurate to state that your organisation exercise rights of rightholders non-members on a non-exclusive basis (that is rightholders non-members retain the right to exercise their rights individually in parallel to collective licensing)?

- No
- Yes, always
- Yes, in some domains. Please list the domains: ............................................................

82. Please explain the consequences of an individual licence concluded by rightholders non-members with the same user with which you have concluded a collective licence to the same rights.......................................................

83. Please explain briefly how disputes can be resolved between your organisation and rightholders, including rightholders non-members.

............................................................

84. Please provide relevant examples of settlement of disputes regarding opt-out or individual remuneration to rightholders, if any.

............................................................

85. Please explain briefly how disputes can be resolved between your organisation and licensees regarding collective licences covering rights of rightholders non-members.

............................................................
86. Please provide data (e.g. from the annual reports of your organisation) regarding collective licences covering rights of rightholders non-members for the last three years (2017-2019) on:

2017

no. of works supplied under such licences: ............................................................
no. of new works supplied under such licences: ............................................................
no. of participating rightholders: ............................................................................
no. of works supplied under such licences: ............................................................
no. of new works supplied under such licences: ............................................................
no. of participating rightholders: ............................................................................

2018

no. of works supplied under such licences: ............................................................
no. of new works supplied under such licences: ............................................................
no. of participating rightholders: ............................................................................
no. of works supplied under such licences: ............................................................
no. of new works supplied under such licences: ............................................................
no. of participating rightholders: ............................................................................

2019

no. of works supplied under such licences: ............................................................
no. of new works supplied under such licences: ............................................................
no. of participating rightholders: ............................................................................
no. of works supplied under such licences: ............................................................
no. of new works supplied under such licences: ............................................................
no. of participating rightholders: ............................................................................
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

87. Please upload the annual reports of your organisation, in English if possible, for the last three years (2017-2019).

88. Please provide a hyperlink to the annual reports of your organisation, in English if possible, for the last three years (2017-2019).

2017:............................................................
2018:............................................................
2019:............................................................

Interview questionnaire on CLEE

Introduction by Ecorys (max 5 minutes)

- The study and its objectives;
- Presentation of the structure of the interview;
- Importance of user’s contribution to the study;
- Respondents are free not to reply to some questions;
- Confidentiality.

I. General and Background

- How widely established is collective licensing with extended effect in your country? Does it exist for a long time?

II. Authorisation procedure

- Do CMOs need to be authorised to engage in collective Licensing with an extended effect? How does this work? Is it part of an authorisation to operate as a CMO generally? Or is it a separate procedure?
- Do you grant authorisation per licence (e.g. in case of general ECL clauses) or in general to a CMO for specific domains? Have the authorised CMOs always been the same in the same domains? How many applicants compete for authorisation per domain (one, a few or many)?
- Does the law require that there is only one CMO authorised per domain? If not, how can you authorise a plurality of CMOs? Can authorisation also be granted to a foreign CMO? Has a foreign CMO ever applied?
- On what basis do you grant authorisation? What are the criteria? Which documents and information do you require? How do you assess things (e.g. qualitative / quantitative criteria; how quantitative criteria are assessed (majority, approximate half or a significant number of rightholders; domain-specific examination or general?)
III. Safeguards for rightholders and users

- What safeguards are there to protect rightholders non-members? And how do these safeguards function in practice?
  - **Opt-out**: Under what conditions can rightholders oppose to the exercise of their rights by CMOs? How does this function?
  - **Publicity measures**: How are rightholders whose rights are exercised without their explicit authorization informed about such exercise? Any specific information or any specific publicity measures that is required? How are CMOs compelled to undertake such measures?
  - **Distribution of rights revenue**: Are CMOs required to actively undertake measures to identify and locate rightholders non-members for the purpose of distributing rights revenue? Can CMOs instead comply with its distribution rules by making indirect distributions (e.g., for social, cultural or educational purposes)?
  - **Individual remuneration**: Can rightholders non-members individually claim remuneration for use of their works collected by CMOs? When and to whom the claims could be addressed? How are such individual remunerations calculated?

- What information must CMOs report to the national competent authority about the exercise of rights of rightholders non-members (e.g. about numbers of rightholders that opposed collective exercise of their rights, distributions to rightholders non-members)?

- Have you receives any complaints from users or from rightholders whose rights are exercised by CMOs without their explicit consent? Are there procedures to resolve disputes between CMOs and users and between CMOs and rightholders in this regard? Are they often used?

IV. Effects of collective licensing with extended effect

- What in your opinion are the effects of collective licensing with extended effect on (a) the right clearance process, (b) the facilitation of licensing and the resulting transaction costs, and (c) the accessibility of content in the uses covered by the relevant legislation?
  - Have these points changed (positively/negatively) after collective licensing with extended effect was established in your country?
  - Has collective licensing with extended effect positively affected users, rightholders, or both? Does it benefit the public at large?
  - Do you see many differences with Member States that have no collective licensing with extended effect?
Annex 26: List of EEA-based CMOs managing online rights in musical works

For the purpose of the present study, it is estimated that the number of CMOs established in EEA Member States and managing online rights in musical works is 26. This estimation is simplified. Where online rights in musical works are jointly licensed by two cooperating CMOs (one managing reproduction rights and another communication to the public rights) established in the same Member States, they are counted as a single licensing CMO, in spite of being two legal entities.

No independent CMO is established in Cyprus, Liechtenstein, Luxembourg and Malta. SACEM Luxembourg is a subsidiary of SACEM, CMOs established in France and managing online rights for Luxembourg.

Table A.5 EEA-based CMOs managing online rights in musical works

<table>
<thead>
<tr>
<th>CMO</th>
<th>EEA Member State of establishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. AUME/AKM</td>
<td>Austria</td>
</tr>
<tr>
<td>2. SABAM</td>
<td>Belgium</td>
</tr>
<tr>
<td>3. MUSICAUTOR</td>
<td>Bulgaria</td>
</tr>
<tr>
<td>4. HDS ZAMP</td>
<td>Croatia</td>
</tr>
<tr>
<td>5. OSA</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>6. KODA</td>
<td>Denmark</td>
</tr>
<tr>
<td>7. EAÜ</td>
<td>Estonia</td>
</tr>
<tr>
<td>8. TEOSTO</td>
<td>Finland</td>
</tr>
<tr>
<td>9. SACEM/SDRM</td>
<td>France</td>
</tr>
<tr>
<td>10. GEMA</td>
<td>Germany</td>
</tr>
<tr>
<td>11. AUTODIA</td>
<td>Greece</td>
</tr>
<tr>
<td>12. ARTISJUS</td>
<td>Hungary</td>
</tr>
<tr>
<td>13. STEF</td>
<td>Iceland</td>
</tr>
<tr>
<td>14. IMRO</td>
<td>Ireland</td>
</tr>
<tr>
<td>15. SIAE</td>
<td>Italy</td>
</tr>
<tr>
<td>16. AKKA-LAA</td>
<td>Latvia</td>
</tr>
<tr>
<td>CMO</td>
<td>EEA Member State of establishment</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>LATGA</td>
<td>Lithuania</td>
</tr>
<tr>
<td>BUMA/STEMRA</td>
<td>Netherlands</td>
</tr>
<tr>
<td>TONO</td>
<td>Norway</td>
</tr>
<tr>
<td>ZAiKS</td>
<td>Poland</td>
</tr>
<tr>
<td>SPA</td>
<td>Portugal</td>
</tr>
<tr>
<td>UCMR-ADA</td>
<td>Romania</td>
</tr>
<tr>
<td>SOZA</td>
<td>Slovakia</td>
</tr>
<tr>
<td>SAZAS</td>
<td>Slovenia</td>
</tr>
<tr>
<td>SGAE</td>
<td>Spain</td>
</tr>
<tr>
<td>STIM</td>
<td>Sweden</td>
</tr>
</tbody>
</table>
Annex 27: Workshop report

Report of workshop on MTL and CLEE on Thursday 26 November 2020

On Thursday 26 November 2020, the study team of Ecorys and IViR hosted an online workshop to present the preliminary outcomes of their study on emerging issues in collective licensing practices in the digital environment, specifically in multi-territorial licensing (MTL) and collective licensing with an extended effect (CLEE). The event was moderated by study team leader dr. David Regeczi from Ecorys, and was opened by EC project leader Sabina Tsakova, policy & legal officer of DG CONNECT’s Copyright Unit.

The online event was attended by 133 registered participants, including public stakeholders, private organisations and members of the study consortium. Various interests were represented in the workshop. Largely, participants can be classified in seven categories of types of stakeholders:

<table>
<thead>
<tr>
<th>Types of stakeholders</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMOs, associations of CMOs, IMEs and other licensing entities or private organisations involved in managing rights of rightholders</td>
</tr>
<tr>
<td>Associations of rightholders</td>
</tr>
<tr>
<td>Online music service providers</td>
</tr>
<tr>
<td>Member States representatives, including from national Competent authorities</td>
</tr>
<tr>
<td>EC representatives</td>
</tr>
<tr>
<td>External or independent expert (groups)</td>
</tr>
<tr>
<td>Study team</td>
</tr>
</tbody>
</table>

Most participants represented CMOs, associations of CMOs, IMEs and other licensing entities or private organisations involved in managing rights of rightholders (63 attendees; 48%). Competent national authorities involved with collective licensing (19 attendees; 14%) and EC officials (15 attendees; 11%) were the second and third best represented groups of stakeholders. Furthermore, there were representatives of the online music service providers (9 attendees; 7%), the study team (8 attendees; 6%), independent experts or expert groups (7 attendees; 5%) and associations of rightholders (2 attendees; 2%). The remaining ten participants did not disclose the stakeholders they represented.

The group of attendees was not only balanced in interests represented, participants were also geographically spread over the territory of the EEA. Representatives joined from 26 European countries, including 24 EEA Member States, Switzerland and the United Kingdom.

Moderator David Regeczi provided a kick-off for the session with a brief introduction, which was followed by opening remarks from Sabina Tsakova. After this opening of the event, the remainder was split up into two parts: the first hour of the event was used to present and
discuss the preliminary findings from the study part on multi-territorial licensing of online rights in musical works, while the second hour of the event was dedicated to the presentation and discussion of the preliminary findings from the study part on CLEE.

**Presentation of MTL findings**

The session on MTL was presented by dr. Oleksandr Bulayenko (Associated Researcher at IViR) and dr. Christian Handke (Associate Professor at Erasmus University Rotterdam). After their presentation of the key outcomes of the study, the floor was opened for stakeholders to pose questions and provide feedback on the work carried out.

Key discussion points concerned topics such as the license fees for the use of recordings as opposed to those paid for the use of musical works (the latter alleged to be much lower), the alleged lack of sufficient transparency in the deals between CMOs and OMSP, the importance of a CMO’s repertoire or of major publishers for the operation of OMSPs services and the lack of substantial differences on the market between the licensing (i) by different rightholders (producers, performers) and respective CMOs, and the joint licensing of mechanical and performing rights.

**Presentation of CLEE findings**

Dr. Stef van Gompel (Associate Professor at IViR) and dr. Oleksandr Bulayenko (Associated Researcher at IViR) presented the preliminary findings of the study part on CLEE. After their presentation of the key outcomes of the study, stakeholders were given the opportunity to pose questions and provide feedback on the presented outcomes.

Key discussion points concerned topics such as the issue of cross-border effects of CLEE, the authorisations of CMOs established in one Member State to grant CLEE in another Member State, opt-out of CLEE and the social welfare of CLEE.
Annex 28: Task descriptions in tender specifications

This report is provided in relation to the Study on Emerging Issues on Collective Licensing Practices in the Digital Environment (SMART 2018/0069). The main objective of the study has been to provide the Commission data and support for the ongoing analysis of collective licensing regarding collective licensing with an extended effect and multi-territorial licensing of musical works for online use.

This document presents a report of the data collected by the study team as a result of the Tasks outlined for this project in its Tender specifications. In this section, we present the Task descriptions of the performed tasks as included in the Tender specifications:

- **Task 1**: ‘Provide a detailed mapping of the legal mechanisms in place across EEA Member States using one of the techniques of collective licensing with an extended effect and the concrete way in which these mechanisms are used by the relevant players. For this, the Contractor should identify the national legal provisions, contractual and negotiating practices in the relevant Member States (i.e. those that use any of the mechanisms in question) on the basis of legal research, complemented by a questionnaire. It should provide information at least on:
  1. the characteristics of the various legal techniques applied in the various Member States;
  2. the types of uses, rights and sectors for which the mechanisms are applied;
  3. the conditions of granting licenses in the framework of these mechanisms and existing contractual practices;
  4. the safeguards which are provided by the legal mechanisms;
  5. statistical information and analysis on the practical application of the legal mechanisms in place, in terms of number of contracts, number of opt-outs exercised by the rightholders if relevant (i.e. if opt-out is built in the system), the effective distribution of royalties to the rightholders not being a member of a relevant CMO, in comparison to the members of the CMO;
  6. summary and assessment of the most relevant national case law concerning collective licensing with an extended effect.

The Contractor should accompany the mapping with a clear and comprehensive description of the various mechanisms used, e.g. in a form of a table, including comparison of similarities and differences and the possible overlaps between these mechanisms, e.g. mandatory collective management with presumption of representation.

Based on this mapping, the Contractor should propose to the Commission between 6 and 8 EU Member States which are the most representative for particular mechanisms and regarding which a more in-depth analysis will be conducted.’

- **Task 2**: ‘Provide data together with a legal and economic assessment of the conditions for the usage of certain types of mechanisms for the specific uses and sectors, in particular various safeguards for the rightholders relative to the different mechanisms, e.g. procedure to exercise the right to opt-out, particular requirements of representativeness of a CMO granting a licence and the procedure of indicating it, requirements on publicity.'
This task should cover the 6 to 8 EU Member States referred to above and should be based on a questionnaire, legal and economic research and analysis, complemented with interviews with relevant stakeholders (i.e. CMOs, rightholders, commercial users, competent authorities).'

Task 3: ‘Provide data and a legal and economic assessment of the mechanisms in place and their impact on the market and social welfare. This task should be fulfilled regarding the 6 to 8 EU Member States referred to above and should be based on interviews with a representative group of relevant stakeholders in these Member States (i.e. CMOs, rightholders, commercial users, competent authorities), questionnaire and legal and economic research. The precise parameters for the comparisons mentioned below will be consulted with the Commission. The assessment should focus in particular on:

1. the remuneration of rightholders, in particular those that are not members of a CMO operating a licence with a particular focus on foreign rightholders, in terms of e.g. punctuality of payments and identification of such rightholders;
2. the right clearance process, the facilitation of licensing and the resulting transaction costs, in comparison, where possible, to the situation prior to the application of the relevant mechanisms in the relevant Member State and/or with a Member State that does not make use of the mechanisms in question;
3. the right clearance process, the facilitation of licensing and the resulting costs for the users in Member States using these mechanisms, in comparison, where possible, to the situation in Member States not using the mechanisms in question, including the examples of the alternative legal solutions used in these Member States for the similar uses;
4. changes in accessibility of the content in the uses covered by the relevant legislation in comparison, where possible, to the situation that existed prior to the application of the relevant mechanisms in the relevant Member State and/or with a Member State that does not make use of the mechanisms in question;
5. changes in accessibility of the content in the uses covered by the relevant legislation in comparison, where possible, to a Member State that does not make use of the mechanisms in question.’

Task 4: ‘Provide a detailed mapping of 'licensing hubs'. CMOs and other entities granting multi-territorial licenses covering the repertoire of more than one CMO in the EU, including information on their scope of activity and their corporate structure, details on the repertoires represented and the territorial scope of the licenses granted. When conducting this mapping, the Contractor should also identify those CMOs and entities (including publishers and independent management entities) that license their single (own) repertoire in several EU territories (mono-repertoire licensing on a multi-territorial basis). The Contractor should verify the results of this mapping exercise with the relevant entities licensing on a multi-territorial basis and with a representative sample of online music services operating based on multi-territorial licenses via a questionnaire.’
EMERGING ISSUES ON COLLECTIVE LICENSING PRACTICES

- **Task 5:** ‘Gather data (notably through a questionnaire) and provide a legal and economic assessment of:
  4. The fulfilment by CMOs managing online rights in musical works of the requirements of Title III of the CRM Directive. The Contractor should gather information on the way in which the fulfilment of the requirements is assessed by national competent authorities;
  5. Alternative dispute resolution procedures available at national level (pursuant to Article 34(2) of the CRM Directive), and about any pending disputes or disputes resolved by the competent body. Based on the data gathered, the Contractor should assess the efficiency of these procedures in a cross-border environment.
  6. The use of representation agreements concluded pursuant to Articles 29 and 30 of the CRM Directive. Depending on the data gathered, the Contractor should also identify the reasons for CMOs not to conclude representation agreements for multi-territorial licensing.
  7. The use by rightholders of the mechanism enabling the withdrawal of rights for multi-territorial licensing (ref. Article 31 of the CRM Directive). In this regard, the Contractor should strive, as much as possible, to provide statistical information on the number of withdrawal requests. If the mechanism has not been used, the Contractor should provide an explanation of the reasons behind.’

- **Task 6:** ‘Provide data on the use of multi-territorial licensing across Member States and an analysis of the efficiency of the overall situation on the market through case studies. The case studies shall be based, amongst others, on interviews and collection of information from 5 to 8 online music service providers operating across the EU (to be agreed with the Commission) and be complemented by data gathered from at least 4 entities providing multi-territorial licenses to users in the EU covering more than one repertoire. The list of entities and users will be identified by the Contractor, and agreed with the Commission.

  The case studies should include information on the availability of such licenses (including the average number of licences a user needs to obtain to operate an online music service in the EU), indications on the average licensing fee in comparison to mono-territorial and single repertoire licenses and on the indirect impact on the rightholders' remuneration, information on the accessibility of content for consumers and the reasons for users to opt for mono-territorial licenses.’

- **Task 7:** ‘Provide a description of:
  - (1) the development of multi-territorial licensing in Member States where only one CMO can manage a certain category of rights, including mapping of such legal systems.
  - (2) the existing voluntary industry standards used for the identification and registration of musical works, reporting of use by users and invoicing. The Contractor should also describe the emerging technologies (e.g. blockchain) facilitating the provision by CMOs of multi-territorial licensing. For the completion of this task, the Contractor should use readily available sources of information and verify the evidence gathered with the relevant stakeholders (e.g. the questionnaire used for the completion of previous tasks can be used for this purpose).’
• **Task 8**: ‘Based on the information gathered from the tasks listed above, the Contractor shall list any possible potential obstacles regarding the development of multi-territorial licensing and identify the reasons for this (if any). The Contractor should also provide ideas to solve any of the identified problems.’

• **Task 9**: ‘Organisation of a workshop with experts and stakeholders.’
GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service:

– by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
– at the following standard number: +32 22999696 or
– by email via: https://europa.eu/european-union/contact_en

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en

EU publications

You can download or order free and priced EU publications at: https://publications.europa.eu/en/publications. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: http://eur-lex.europa.eu

Open data from the EU

The EU Open Data Portal (http://data.europa.eu/euodp/en) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.