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NOTE

From: Presidency

To: Working Party on Intellectual Property (Copyright)

Subject: Policy questionnaire on the Challenges facing Collective Management Organizations in the EU Member States

Delegations will find attached a Presidency policy questionnaire on the current and future challenges to the Collective Management Organizations Ecosystem in the EU. The questionnaire is to be discussed at the Copyright Working Party meeting of 10th February 2025, with a view to exchanging views and experiences on this topic at this and future meetings.

**POLICY QUESTIONNAIRE
ON THE CHALLENGES FACING COLLECTIVE MANAGEMENT ORGANIZATIONS
IN THE EU MEMBER STATES**

Introduction

The impact of emerging technologies on the ecosystem of copyright and related rights is a subject of academic, legal, and policy debate, attracting numerous stakeholders, from artists and leading media outlets to high technology enterprises. A key concern lies in balancing interests and remuneration of rights holders with the goals of promoting innovations, maintaining global competitiveness and safeguarding freedom of expression.

In this context, the role of **Collective Management Organizations (“CMOs”)** is becoming increasingly important, as licensing and remunerating rights holders is essential for the continued development of the copyright ecosystem. At the same time, as underlined in Recital 2 of the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (“the CRM Directive”), it is for the rights holders to choose between the individual or collective management of their rights, unless Member States provide otherwise in line with EU law and international obligations.

The main advantage of CMOs lies in their capacity to coordinate and administer the rights of multiple individuals or entities, thus reducing administrative burdens, ensuring fair remuneration, and strengthening rights enforcement. Through pooling resources and coordinating licensing, CMOs simplify the process for rights holders as well as users when it comes to accessing copyrighted works, while helping to ensure that creators are protected and receive the remuneration that they rightly deserve.

However, rapid technological advancements and evolving business models confront also the CMOs with new challenges, question existing paradigms and traditional licensing frameworks. In this context, it is important for CMOs to adapt their strategies to guarantee efficient management of rights, continued protection and fair remuneration of rights holders.

The abovementioned challenges might affect standards of governance, financial management and transparency of the CMOs, and, in turn, require adequate approach of competent supervisory authorities in the Member States. The latter will therefore also need to respond to new challenges in order to help maintain the integrity, efficiency and credibility of CMOs, ensuring they serve the interests of rights holders.

The copyright landscape has evolved significantly since the adoption of the CRM Directive, and the Commission report on the application of the Directive, published in 2021¹.

Therefore, the Polish Presidency is of the view that a thorough analysis of the current conditions in which the CMOs operate, with a particular focus on the licensing practices, is essential to identify emerging challenges faced by CMOs, while the current copyright infrastructure is increasingly tested by rapid technological growth.

At the same time the Polish Presidency takes note of the development of AI legislation in the EU, especially the first-ever comprehensive legal framework on AI worldwide.

The Presidency is also attentive to the voices expressed by the creative milieus, including CMOs, who call for a meaningful implementation of the AI Act to enable creators and rights holders to exercise and enforce their rights when it comes to ingesting and copying copyright protected works for training by AI models².

To this end, the Presidency invites the Member States to actively participate in the expert discussion on this policy Questionnaire, and, where possible, to share best practices in collaboration with national CMOs.

The Presidency appreciates also the significant contribution of the previous Presidency in this Working Group and wishes to continue constructive dialogue, based on the valuable findings of the

¹ European Commission: Commission Staff working document: *Report on the application of Directive 2014/26/EU on collective management on copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market*. SWD(2021) 338 final, <https://digital-strategy.ec.europa.eu/en/library/reports-collective-management-and-extended-licensing>

² Joint letter of Creators and Rightholders Organisations Calling for a meaningful implementation of the AI Act to enable creators and rightholders to exercise and enforce their rights when it comes to ingesting and copying copyrightprotected works for training by AI models, dated 29 October, 2024 and Open letter to Executive Vice-President of the European Commission for Tech Sovereignty, Security and Democracy and to Commissioner for Intergenerational Fairness, Youth, Culture and Sport of 4 December 2024.

questionnaire on the relationship between generative artificial intelligence and copyright and related rights.

The Polish Presidency hopes that this document will provide a meaningful contribution to forthcoming policy discussions on understanding and responding to new challenges in the evolving digital landscape and may inform future policy developments.

This Policy Questionnaire of the Polish Presidency of the Council of the EU shall explore in particular the following four thematic areas:

- I. Challenges of AI to the Collective Management Ecosystem in the EU**
- II. Collective Management Organizations and the Relationship with Online Platforms and Other Online Players**
- III. Supervision and Transparency of CMOs at the Forefront of Innovation**
- IV. Independent Management Entities – Old Questions, New Paradigms?**

I. Challenges of AI to the Collective Management Ecosystem in the EU

The training phase of generative AI models is supported by text and data mining (“TDM”), which is very often carried out over copyright-protected content. The existing EU legal framework addresses certain challenges related to AI-training in the context of copyright law, specifically, the TDM exception outlined in Article 4 of the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (“the DSM Directive”), along with the pertinent articles of the AI Act, which establish key requirements, designed to improve transparency and accountability in the use of copyrighted materials in the development of general purpose AI (“GPAI”) models. Articles 53(1)(c) and 53(1)(d) of the AI Act require GPAI providers to put in place a policy to ensure compliance with EU copyright law and to draw up and make publicly accessible a sufficiently detailed summary regarding the content used for AI training.

However, the emergence of AI continues to present significant challenges to CMOs, which traditionally focus on the protection and compensation of creators for their intellectual property.

One may argue that AI solutions have shifted attention away from the creative nature of copyrighted works, instead prioritizing the volume, diversity, and timeliness of data. This shift results in a framework where compensation is increasingly determined by the pace, scale and variety of data processed, rather than the intrinsic creativity or originality of the works themselves. These processes, in turn, trigger reactions of the creative sectors, with growing calls for clarity regarding consent, transparency, and fair remuneration for authors and performers that need to be handled not only by policymakers, but on practical level, also by CMOs³. However, it is not just the quantity, but primarily the high quality of the data that plays a decisive role in the said processes, as it leads to more reliable and accurate AI models. A mutually beneficial outcome can be therefore achieved when AI developers can obtain access to such quality content, and at the same time rights holders can receive appropriate remuneration. This win-win approach could serve as a foundation for the development of a healthy and fair licensing market.

³ Joint letter of Creators and Rightholders Organisations Calling for a meaningful implementation of the AI Act to enable creators and rightholders to exercise and enforce their rights when it comes to ingesting and copying copyrightprotected works for training by AI models, dated 29 October, 2024 and Open letter to Executive Vice-President of the European Commission for Tech Sovereignty, Security and Democracy and to Commissioner for Intergenerational Fairness, Youth, Culture and Sport of 4 December 2024.

Consequently, CMOs are confronted with the challenges of adapting to this evolving landscape, where the value of creative content may be impacted by the technological capacity to manage, aggregate, and analyse large datasets. This, in turn, introduces the issue of (financial) valuation of large-scale content collections. Equally significant are the problems related to determining authorship, estimating, or if possible, assessing the human creative contribution to AI-assisted output, and enforcing copyright or related rights.

Conversely, new technologies may also present valuable instruments for CMOs. The following questions seek to explore these matters in greater detail.

Detailed questions:

Use of AI-powered technologies to assist the CMOs' daily functions

I.1. Do CMOs in your Member State utilize AI services or blockchain technologies? If so, for what purposes?

Identification of AI-generated or AI-assisted output

I.2. Do CMOs in your Member State have mechanisms in place to determine whether a work submitted by a rights holder to the CMO has been AI-assisted or AI-generated? If such determination is positive, what consequences does it have, e.g. on remuneration calculation and its distribution?

Licenses of the CMOs repertoire for Generative AI training

I.3. Do CMOs in your Member State license works of the rights holders they represent for the purpose of training AI models? If so, do they encounter any specific challenges, e.g. related to the expression or identification of the TDM rights reservation? In your view, what measures could assist CMOs in licensing large collections of content for the purpose of training AI models?

I.4. How do CMOs in your Member State, in accordance with the principles established in Article 16 of the CRM Directive, assess the value of content licensed for AI training (considering that in this specific context an individual work may be considered to not have significant market value, but a collection of such works might)?

I.5. Do you think that the scale of repertoires represented by CMOs might impact their bargaining power with AI-service providers? Should the approach to negotiating licensing agreements differ across sectors in the context of AI?

Role of CMOs in enforcement of rights

I.6. What actions are or should be taken by CMOs to protect rights holders from the unauthorized use of their works by AI services? What are the best practices and most common challenges in your Member State with regards to this issue?

I.7. Do CMOs in your Member State observe any impact on their revenue from the widespread generation of content by AI? What measures are they taking in response?

I.8. Apart from the abovementioned issues, do CMOs in your Member State face any other challenges or concerns related to AI technologies?

II. Collective Management Organizations and the Relationship with Online Platforms and Other Online Players

In light of ongoing technological advancements, creators are confronted with new challenges associated with adapting to the evolving digital landscape. In many cases the use of works protected by copyright or related rights in analogue form is becoming obsolete, as users increasingly access them in digital formats via platforms, which are constantly expanding their market share. Given the negotiating position of authors and performers has been affected as a result of these developments, CMOs, who act on behalf of rights holders they represent, could more efficiently secure fair remuneration for the use of works protected by copyright and related rights from online platforms, including streaming media services. In this context, Recital 2 of the CRM Directive highlights that collective management organisations enable rights holders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets.

To ensure that rights holders receive fair remuneration for the use of their works in the digital environment, it is essential to equip CMOs with necessary tools to enhance their negotiating leverage with online platforms. Such tools are already envisaged in both the CRM and DSM Directive. The former provides horizontal rules in Article 16 i.e. good faith negotiations, fair licensing terms (objective and non-discriminatory), and appropriate remuneration, whereas Articles 15 and 17 of the DSM Directive were meant to ensure a fairer level field and concern the protection of press publications with respect to online uses and address the use of copyrighted content by online content-sharing service providers, respectively. Several Member States have introduced specific measures to support the negotiation process between CMOs and online platforms, and it will be interesting to see how well these mechanisms perform against the challenges.

In recent years, technological changes have accelerated. Existing EU regulations governing collective management organizations were developed at a time when the widespread use of AI tools was not yet a factor. Given the dynamic nature of market and technology developments – such as the proliferation of AI technologies – there is a clear need for continued dialogue and the exploration of new solutions that will ensure authors and performers are afforded adequate protection of their rights in the digital environment.

Detailed questions:

- II.1. Have there been any relevant surveys, studies, or research in your country, particularly by CMOs, concerning the business relationships between CMOs and online platforms/other online players that you would consider worth sharing?
- II.2. What challenges do you observe in the relations between CMOs and online content-sharing service providers (“OCSSPs”) in relation to Article 17 of the DSM Directive in the different creative sectors? Are CMOs encountering difficulties in negotiations with OCSSPs under Article 17 of the DSM Directive? If so, what is the specific nature of these challenges?
- II.3. How do you assess the effectiveness of alternative dispute resolution mechanisms (in particular mediation) in resolving disputes between CMOs and technology companies?
- II.4. Have national regulations been introduced in your Member State to facilitate the negotiation of agreements with technology companies under Article 15 of the DSM Directive? How would you assess the effectiveness of these regulations?
- II.5. Which CMOs in your Member State have experience in utilizing blockchain technology to support the use of digital tools? Are any changes in this regard planned?
- II.6. In your opinion, are new technologies reshaping the operational model or giving rise to new business models of CMOs? For instance, how is the role of CMOs evolving in relation to music or audiovisual streaming platforms, multi-territorial music licensing hubs, online intermediaries, or any other category of online platform?
- II.7. On January 17, 2024, the European Parliament adopted a resolution on cultural diversity and the conditions for authors in the European music streaming market⁴. The document highlights the need for a fairer models of streaming revenue allocation for authors and performers. What role should CMOs play in supporting authors and performers to obtain fair remuneration in this process?
- II.8. Is there a discussion in your Member State about the introduction of new remuneration models in response to emerging technologies, in accordance with the Article 18 of the DSM Directive (such as additional and non-transferable remuneration for online streaming)?

⁴ European Parliament resolution of 17 January 2024 on cultural diversity and the conditions for authors in the European music streaming market ([2023/2054\(INI\)](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0020_EN.html)) available at: https://www.europarl.europa.eu/doceo/document/TA-9-2024-0020_EN.html

III. Supervision and Transparency of CMOs at the Forefront of Innovation

The CRM Directive harmonized the core operational principles of CMOs across the EU. This includes regulations on membership, their relations with rights holders and users, the rules for collecting and distributing of revenues derived from the exploitation of rights, as well as ensuring transparency in their activities toward represented rights holders, other domestic and foreign CMOs, users and the public. Additionally, the Directive (Article 36) explicitly mandates that Member States oversee the compliance of CMOs operating within their territory with national laws implementing the provisions of the Directive.

The following questions aim to gather feedback from Member States on their monitoring practices regarding CMOs compliance with national rules stemming from the CRM Directive, as well as potential challenges and best practices in this regard.

Detailed questions:

- III.1. Have you identified specific challenges in monitoring the activities of CMOs, in particular, in relation to the implementation of the CRM Directive? Which measures have been taken at national level to monitor the CMOs' activities and ensure compliance with the CRM Directive?
- III.2. Are CMOs in your Member State audited by a national competent supervisory authority? What methodologies or procedures are followed during audits? How are the audit areas selected? Which authority and specific organisational unit is responsible for conducting these audits?
- III.3. What challenges are encountered when reviewing the annual reports published by CMOs? Is there an authority and specific organisational unit tasked with reviewing these reports and which one? Are CMOs asked to rectify any deficiencies, and if so, within what timeframe are they required to provide the necessary information?
- III.4. What instances of non-compliance with applicable legal provisions by CMOs have been observed in your Member State? How is information about these instances (violations) gathered? What types of sanctions are most commonly applied? Which sanctions have proven to be the most effective?
- III.5. How has Article 12 of the CRM Directive, concerning deductions, been transposed into your national legal framework? What trends have you observed in relation to the operational costs of CMOs in your Member State, and what are the underlying causes?

III.6. Are there any advisory or supporting bodies in your Member State that assist the supervisory authority in its functions? If so, what is the scope of these bodies' responsibilities, and their structure?

III.7. In your view, is there a need to enhance the transparency of the data disclosed by CMOs to the public, rights holders or, where relevant, to supervisory authority?

IV. Independent Management Entities – Old Questions, New Paradigms?

The CRM Directive introduced the concept of an independent management entity (“IME”), outlining in Article 2(4) which provisions of the CRM Directive, applicable to CMOs, also extend to such an entity. Given the broad nature of the IMEs regulatory framework, the requirements for their operation differ significantly across Member States. Several Member States have implemented national laws that go beyond the scope of the CRM Directive, including imposing notification and registration requirements on IMEs. Nevertheless, it might be challenging for relevant authorities to monitor the activities of IMEs, especially where there are no notification or registration requirements.

The relatively easy market entry and less stringent transparency requirements imposed by Member States on IMEs have made this form of collective rights management more appealing, influencing competition in the collective management sector. According to the Commission report⁵, IMEs are predominantly active in the music and audiovisual sectors.

However, the data collected for the European Commission’s Study⁶ shows that, according to almost half of surveyed CMOs and national authorities, IMEs are not necessarily more attractive to rights holders than CMOs because of lack of full transparency regulation.

In practice, difficulties arise in distinguishing IMEs from other entities managing rights to large collections of works, particularly in those Member States that do not impose registration requirements on IMEs. Such uncertainties typically relate to entities offering royalty-free collections of music for commercial use e.g. in restaurants or shopping malls.

Given that the data used for the Commission report was collected in 2021, and considering that the landscape of collective rights management may have evolved with the proliferation of new technologies, Member States are addressed with questions regarding the current state of the market within the EU. This would provide insight into the role of IMEs and offer a clearer view of the prospects for their future development.

⁵ European Commission: Commission Staff working document: *Report on the application of Directive 2014/26/EU on collective management on copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market*. SWD(2021) 338 final, <https://digital-strategy.ec.europa.eu/en/library/reports-collective-management-and-extended-licensing>

⁶ European Commission: Directorate-General for Communications Networks, Content and Technology, *Study on selected issues relating to the application of the CRM Directive – Final report*, Publications Office, 2021, <https://data.europa.eu/doi/10.2759/91877>

Detailed questions:

- IV.1. How many IMEs are operating in your Member State and in which sectors/for which repertoires? Are they subject to any further requirements beyond those stemming from the CRM Directive (e.g. notification, registration – please specify)?
- IV.2. Are there any challenges concerning the operation of IMEs, in terms of competition with CMOs and entry on the market in your Member State (and what are such challenges)?
- IV.3. Have you encountered any challenges in classifying a particular entity as an IME?
- IV.4. What is your general view on the functioning of IMEs' infrastructure in your Member State?
- IV.5. In response to technological advancements, are new IMEs models emerging, such as those offering specialized datasets for the training of AI models?
- IV.6. How do the competent authorities in your Member State fulfil their monitoring obligations with regard to IMEs, as stipulated in Article 36 of the CRM Directive?
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