

Transparency, Accountability and Good Governance for CMOs: EU CRM Directive and other initiatives

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Conference on Collective Management of Rights

14 May 2014

Riga

Assessing and improving the transparency, accountability and good governance of CMOs

1. EU recent legislation
2. TAG initiative
3. Compliance of TAG with the CRM Directive

1. EU Collective Rights Management (CRM) Directive

Now Directive 2014/26/EU



European Commission proposal on 11 July 2012

Compromise text EP – Council endorsed on 6 November 2013

Final adoption (Plenary) on 4 February 2014

Publication in the EU Official Journal on 20 March 2014

Member States have two years to implement the Directive

EU CRM Directive

Relevant issues for CMOs

An important milestone in the EU Copyright field

Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

- **Harmonisation of some rules at EU level**
- **A balanced and acceptable text**

EU CRM Directive

Relevant issues for CMOs

Preservation of the variety of models of operation

✓ **In line with IFRRO's position**

Acknowledgement of the different existing models of operation (the directive “*does not interfere with arrangements concerning the management of rights in the Member States*”) accompanied with a list of existing models:

- Extended Collective Licensing,
- Mandatory Collective Management,
- Legal Presumption, etc.

(Recital 12 of the CRM Directive)

EU CRM Directive

Relevant issues for CMOs

Reference to the *Services Directive* deleted

✓ **In line with IFRRO's position**

See also the recent CJEU Case C-351/12

Ochranný svaz autorský pro práva k dílům hudebním, o.s. (OSA) v Léčebné lázně Mariánské Lázně a. s (2014)

That confirmed that these activities are outside the scope of the Services Directive,

and

That the **territorial monopoly** granted to CMOs is compatible with the freedom to provide services.

EU CRM Directive

Relevant issues for CMOs

Key issues of interest to the IFRRO Community (RROs, authors and publishers' associations, all of them representing rightholders):

- Distribution
- Tariff setting, dispute resolution mechanism
- Terminology

EU CRM Directive

Relevant issues for CMOs

1. Distribution

Deadline for the distribution of revenues

EC: 12 months; EP: 3 months; **Final: 9 months.** (Article 13)

Models of distribution

The right of authors and publishers to decide on the model of distribution is enshrined.

Collective distribution

No obligation for CMOs to provide a list of works but
“information on works and other subject matter” (Article 13.3)

EU CRM Directive

Relevant issues for CMOs

(...) Distribution

Distribution through a CMO/ rightholders' organisation and through authors and publishers' organisations

A reference is made in Art. 13.1: “*Collective management organisations or their members who are entities representing rightholders*”.

Undistributed amounts

- ❖ No public fund **but** Member States may limit the uses permitted. (Article 13.6)
- ❖ Identifying rightholders: mandatory but in relation with the CMO's model of operation.

EU CRM Directive

Relevant issues for CMOs

2. Tariff setting/ dispute resolution

□ **Tariff setting: criteria and conditions**

Usefulness of mentioning tariff setting?

Final text: tariffs have to be **reasonable** in relation to the uses of the works + conditions and obligations on users to provide information (Article 17 on users' obligations).

□ **Dispute resolution mechanism**

IFRRO: not supportive, except if it clearly allows CMOs to refer dispute to it.

Final text: there is a DSM but its scope has been narrowed.
(Article 34)

3. Terminology

- ❑ “Collecting society” replaced with “collective management organisations

✓ **Agreed**

Up to CMOs and rightholders to use the term with consistency.

- ❑ Rightholders: it should include **both** authors and publishers

✓ **Agreed**

Up to CMOs to always include both authors and publishers when using the term.

EU CRM Directive

Relevant issues for CMOs

(...) Terminology

Supervisory function

IFRRO asked it be clarified that the supervisory function is related to executive management and can be carried out by the Board of Directors/ Management Board

✓ **Included in the Directive**

Definitions of consumer and repertoire

x No definition of “consumer” in the final text.

x “Repertoire” still limited to works without the addition of *categories of works*.

2. IFRRO-International federations -WIPO cooperation on a certification for CMOs carried by an independent body:

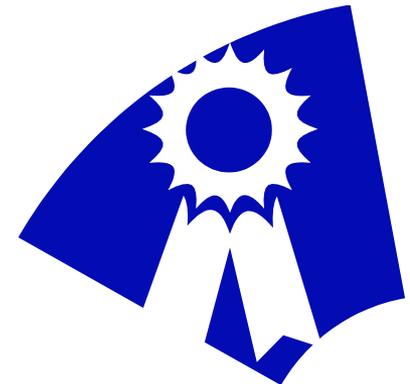
TAG

(Transparency; Accountability; Good Governance)

WIPO Initiative TAG

Transparency, Accountability, Good Governance

- ✓ Voluntary quality mark
- ✓ Private-Public Partnership
 - WIPO acting as a facilitator
 - International federations of CMOs
 - IFRRO, SCAPR, AGICOA, IFPI
 - Observers: EVA, SAA
 - Invited also: CISAC
 - Involvement of national CMOs; Governments; Users
- ✓ Accreditation mechanism
- ✓ Training programme
- ✓ Educational activities



WIPO Initiative TAG

Transparency, Accountability, Good Governance

- ✓ Free, independent and on demand certification



- ✓ A real answer to the increasing need for transparency, proved seriousness and reliability
- ✓ IFRRO perspective: TAG will allow any CMO to, on a voluntary basis, solicit a certificate of excellence issued by an impartial body that it is a trustworthy CMO that is well governed.

3. Where the EU CRM Directive and the TAG initiative meet:

Ensuring an independent certification in full
compliance with EU legislation

TAG and the CRM Directive

Compliance with EU legislation

First analysis of TAG against the CRM Directive



Main outcomes:

- ✓ TAG is **fully compatible** with the CRM Directive
- ✓ TAG and the Directive provide the **same level of requirements**
- ✓ **Not a single discrepancy** between TAG and the Directive

TAG and the CRM Directive

Compliance with EU legislation

➔ When the CRM Directive and TAG complement each other (examples)

- **Information to be made available to rightholders:**

Same list of information, with the addition of:

- **CRM:** deduction and management fees
- **TAG:** guidance on how to contact the CMO; reference to the Code of Conduct/Corporate Management Charter/ ...

- **Objectives/duties of the CMO:**

Same list of objectives/duties, with the addition of:

- **CRM:** **reasonable** deduction and management fees
- **TAG:** defend copyright and related rights

TAG and the CRM Directive

Compliance with EU legislation

- **Management of the organisation:**

Same list of requirements, with the addition of:

- **CRM:** Conflicts of interest to be declared every year
- **TAG:** independent internal supervision; liability and accountability of persons managing the organisation

- **Social/cultural deductions:**

- **CRM:** To be decided by the members of the CMO
- **TAG:** % limit of deductions for social and cultural purposes

TAG and the CRM Directive

Compliance with EU legislation

TAG

```
graph TD; TAG --> A[complies with EU legislation]; TAG --> B[is a set of standards]; A --- AND[and]; AND --- B;
```

complies with EU legislation *and* **is a set of standards**

- ✓ A useful tool for CMOs
- ✓ Will help CMOs at all stages
- ✓ CMOs will see their efforts rewarded!

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Thank you!

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