Hotrec
Hospitality Europe

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Initial comments from HOTREC on Copyright: 6 key principles to be made binding for Collective Right Management organisations

CONTEXT

The European hospitality industry considers that six basic principles should apply to all collective rights management organisations, at national or EU level. These 6 principles should be made binding in the upcoming Commission legislative proposal on the collective management of rights:

1. Good governance
2. Transparency
3. External and independent authorisation and control
4. Efficiency
5. Fair dispute resolution mechanisms
6. Stakeholders involvement

Concrete details on the implementation of these six key principles are provided further below in this paper.

1. GOOD GOVERNANCE

Collective Right Management organizations should respect basic principles of good governance. In particular, they should inform their members on a regular and frequent basis. They should be accountable to all their members, regarding how they enforce applicable rules.

2. TRANSPARENCY

Collective Right Management organizations should be bound to respect basic transparency principles in the way they function. This encompasses several requirements:

a) Transparency of the economic rights represented

Transparency concerning the economic rights which are managed by collecting societies is essential, in order to avoid multiple remunerations for one and same use of copyright works. Non-transparent repertoires, dubious representations and unclear legal situations should be prevented. For that

reason, Collective Rights Management organisations should publish in an open database the repertoire they represent, their reciprocal agreements, other contracts signed with other users (in order to know conditions applied to others users, as a reference), and the rules for the repartition between their members of the sums collected. Such an open database should not prevent right users from the possibility to request whether a work they intend to use is protected or not by either copyright and/or neighbouring rights.

b) Transparency in the accountability:

Collective Rights Management organisations must be subject to a clear and strict accounting framework which brings full transparency in their bookkeeping – including their cost structure (costs should always be clearly identified including those for social and cultural funds; cross-subsidy of activities should also be indicated) – and on financial transfers between collecting societies as regards the redistribution of fees amongst themselves. Such common accounting framework should also allow for benchmarking between collecting rights management organisations.

c) Ex-ante information in negotiations with right users

Ex-ante information should be provided by Collective Rights Management organisations to the copyright user in the context of negotiations: information should be delivered to the users regarding all necessary criteria for the calculation of tariffs (including split costs of both, rights usage and administration fees), the licensing conditions, and administrative requirements.

Tariffs proposals for communication to the public of copyright protected materials should always take into consideration the reality of the access by the public to such materials (e.g. As far as hospitality businesses are concerned, Collective Right Management organisations very often claim the payment of copyright fees, even though no public was given access to a protected work, as in the case of empty hotel rooms for which fees are being asked).

It is not uncommon for collective rights' management organisations to raise their fees once a contract has to be renewed. Such increase should also be clearly motivated on the basis of justified cost increases. Tariffs, if any, should be construed as a reference offer whereby all different costs are clearly identified and motivated on economic grounds. This offers the possibility to start a fair negotiation process. If there is a possibility that tariffs can be negotiated collectively, a collecting society has to enter into a fair negotiation process. Otherwise the tariff is invalid for the next, e.g., 12 months, and could be established by an independent third party.

3. EXTERNAL AND INDEPENDENT AUTHORISATION AND CONTROL

Collective rights management organisations should be submitted to:

a. An independent authorisation regime;

b. An external control of the good governance and transparency principles. This control should in particular examine regularly the accounts published by collective rights'

management organisations, the respect of their official aims and tasks. Such controls should also ensure that Collective Right Management organisations do not exert in practice exclusivities that would result in a territorial fragmentation of the Single Market.

Control and authorisation should be performed by an independent body, sufficiently resourced and competent.

It should be possible to require an audit on the activities of Collective Rights Management organisations (regarding the territorial scope of the mandates right-holders have granted them, the reciprocal agreements they have entered into, and the destination of the monies received – including those monies that are not distributable; e.g. when a right-holder cannot be found).

4. EFFICIENCY

Collective Rights Management organisations should be bound to seek effective, efficient and flexible solutions for both right-holders AND rights users. Collective Rights Management organisations should act service-orientated, avoid long delays to settle all the rights, keep administrative fees paid by rights users as low as possible.

Licensing systems that take advantage of the economies of scale and of the possible saving in transaction costs should be promoted.

5. FAIR DISPUTE RESOLUTION MECHANISMS

This principle includes the need to establish in each EU Member State fair procedures in order to prevent abuse of a dominant position by any collective rights' management organisation. Arbitration systems should be encouraged to solve rights clearance problems without going to court.

Such dispute resolution systems should respect the following principles:

a. A special arbitration or mediation body should handle disputes over licenses quickly and efficiently.

b. Independence and equal representation: The specialised arbitration or mediation body should be truly independent and ensure that both parties (right-holders and right users) are equally represented.

c. Competence: the specialised arbitration or mediation body should be competent for all kinds of disputes concerning remuneration, including on the level of administrative fees and the level of any social and cultural contributions which are part of the license fee, as well as for other matters where the granting of a license is declined (e.g. whether or not the refusal is reasonable, discriminatory practices or imposition of restrictive conditions), and to adjudicate other matters relating to the transparency of the Collective Rights Management organization such as its repertoire;

d. Staff and resources: the specialised arbitration body should be granted sufficient resources to ensure that the dispute resolution system will be quick and affordable. It should be staffed with well-qualified professionals with backgrounds in antitrust law, economics and intellectual property law.

e. Appeals: Recourse to the ordinary courts for a first instance decision is less desirable. The ordinary courts may be competent for appeals of the decision taken by arbitration or mediation bodies as long as they are equipped with specialised chambers for the issues in question.

6. STAKEHOLDERS' INVOLVEMENT

As a horizontal principle to be applied, there should be a systematic and active involvement of all stakeholders (in particular of right users' representatives) in the definition of tariffs and in the dispute resolution mechanisms.

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