Collective Rights Management in the Digital Single Market:

Consultation on the implementation of the EU Directive on the collective management of copyright and multi-territorial licensing of online music rights in the internal market

Response from PRS

Introduction

This response is from PRS, the collective management society which licenses and administers the rights of communication to the public and public performance in musical works for composers, songwriters and music publishers. PRS is a collective management organisation as defined by Article 3(a) of the Directive.

In this response, we refer to both PRS for Music and MCPS. PRS for Music is a subsidiary of PRS which provides services for both PRS and MCPS. PRS and MCPS are separate collective management organisations with their own governance and mandates. MCPS licenses and administers the reproduction rights in musical works and the communication to the public and reproduction rights in library sound recordings. MCPS has provided a separate response to the Consultation, which cross-refers to this response in many places.

Overarching comments in relation to implementation of the Directive:

- We think that, as far as possible, the Government should follow the Directive as the sole set of rules governing collective management organisations ("**CMOs**"). There should be no gold-plating. The Government should attempt to copy out the terms of the Directive.

- We request the Government to confirm its intention to exercise any of the discretionary powers early, so that CMOs have time to adapt in time to meet the implementation date of 10 April 2016, and to update their own rules and impact assessments, as relevant.

- The Government should leave the detail to guidance notes and not the implementing regulations.

- There are substantial sectoral differences between the collective management of rights in musical works, text, visual arts, and so forth, and the Government should therefore be cautious not to assume a one-size-fits-all when assessing the impact of the Directive on the market.

- Recitals are important to the interpretation of the standards in the Directive. We request that the Government clarifies how it intends to communicate those provisions.

1. Please say whether and why you would prefer to implement using Option 1 or 2?

We support Option 2.

We think the most appropriate way to implement the Directive will be to implement the Directive through new secondary legislation and to repeal the UK-specific Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 ("**2014 Regulations**").

We think the extent of amendments that would be required to integrate one into the other would be challenging, whilst a simple copy out of the Directive will ultimately provide a clearer and more transparent legal framework for PRS, members, users and affiliate CMOs. The other reasons for selecting this option include: anticipated lower cost burden on all relevant parties; direct comparability with implementing legislation in other member states; assurance of a level playing field with other CMOs in Europe; and meeting the Government's intention for 'one in-one out' regulation.

2. How important is it to retain those aspects of the 2014 Regulations that go beyond the scope of the Directive?

The Government identified two specific provisions in the Consultation paper as being provisions of the 2014 Regulations which go beyond the scope of the Directive. The first was a commitment from licensees to respect creators' rights and to ensure the use of copyright material is in accordance with licence terms and conditions. The second was a commitment from CMOs to training staff on conduct that complies with the standards of transparency in the Regulations.

We support the principles of both provisions but do not think it is necessary or desirable to maintain these rules over and above the standards of the Directive. First, the commitment from the licensees is an integral part of the terms and conditions of any licence, but the 2014 Regulations give no additional powers to CMOs to enforce those licence terms and conditions. Only if the new proposals from the Government could enhance the ability of CMOs to enforce all licence terms and conditions would this be interesting. Second, on the commitments by CMOs, we can assure the Government that PRS is committed to staff training and, as we move from self-regulation to a fully regulated system, this will only become more important (see further the reply to Question 4 below).

In conclusion, we supported both provisions as part of the 2014 Regulations but do consider that presented with this new situation - the transposition of specific harmonising standards – they would not add anything to the standards of the Directive or to the position of any party in practice. Our concerns also reflect doubt that either provision would add meaningfully to already-existing obligations and contracts in practice.

3. What is your best estimate for the overall cost of (a) implementation and (b) ongoing compliance with this Directive?

Any compliance costs will be borne by the members of PRS: this is because PRS is owned by its members, and the members have chosen to run PRS in such a way as to collect all royalties due to members, to deduct all costs incurred, and to distribute the remaining amount. This should be a primary consideration for the Government.

We consider PRS to be generally compliant with the requirements of the Directive. Nevertheless, we need to implement certain systems and business changes to ensure our ongoing compliance with the Directive and to deliver certain specific requirements such as the Annual Transparency Report. We estimate the cost of business changes to be around [*confidential*], whereas the cost of systems changes is estimated to be around

[*confidential*]. These systems changes are not necessitated by the Directive, but are advisable to ensure that we can continue to comply in the most cost-efficient and effective way with the Directive. Once these systems and business changes have been implemented, there will also be some recurring costs per annum, such as those referred to in reply to Questions 18 and 30 below.

It is also relevant to note the investment already made by CMOs in the self-regulatory system. PRS introduced a code of conduct for licensees in 2006 and for members in 2009 (together, the PRS for Music Code of Conduct ("**Code**")). The processes supporting the Code included staff training, a formal complaints process and the offer of independent dispute resolution via the Ombudsman Services. The costs incurred in establishing and operating these mechanisms will enable PRS to comply with the standards and processes required by the Directive without much additional work. The costs declared above exclude costs associated with the Code (which were reported to IPO during the consultation on the 2014 Regulations).

4. If Option 2 was the preferred option, as a CMO would you consider retaining a revised code of practice as a means of making the new rules accessible to members and users?

Yes. We intend to retain the Code and to make any necessary amendments to the Code so that it complies fully and/or gives effect properly (where relevant) to the standards of the Directive. The Code has been and still is an important practical tool to explain PRS values, service standards and complaints processes, and it already bridges the gap between detailed legislation and day-to-day processes. The revised Code will be one way in which we will make the new rules accessible to members, licensees and CMOs. Additionally, by way of example, we already actively engage with members about the Directive, via member newsletters and meetings with representative bodies, and we intend to improve our website content to explain the rules (where appropriate) of the Directive.

5. Given the definitions of "collective management organisation" and "independent management entity", would you consider your organisation to be caught by the relevant provisions of the Directive? Which type of organisation do you think you are and why? Please also say whether you are a micro-business.

PRS is a "collective management organisation" as defined in Article 3(a) of the Directive because it is "authorised…by way of assignment…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 it is "owned…by its members". We therefore consider that PRS would be subject to the whole (i.e. Titles I to V) of the Directive, with Title III and Article 34(2) and Article 38 of the Directive applying only to our multi-territorial online licensing activities as per Article 2(2) of the Directive.

6. If you are a rightholder or a licensee, do you either have your rights managed or obtain your licences from an organisation which you think

is an IME? If so, could you please identify the organisation, and explain why it is an IME.

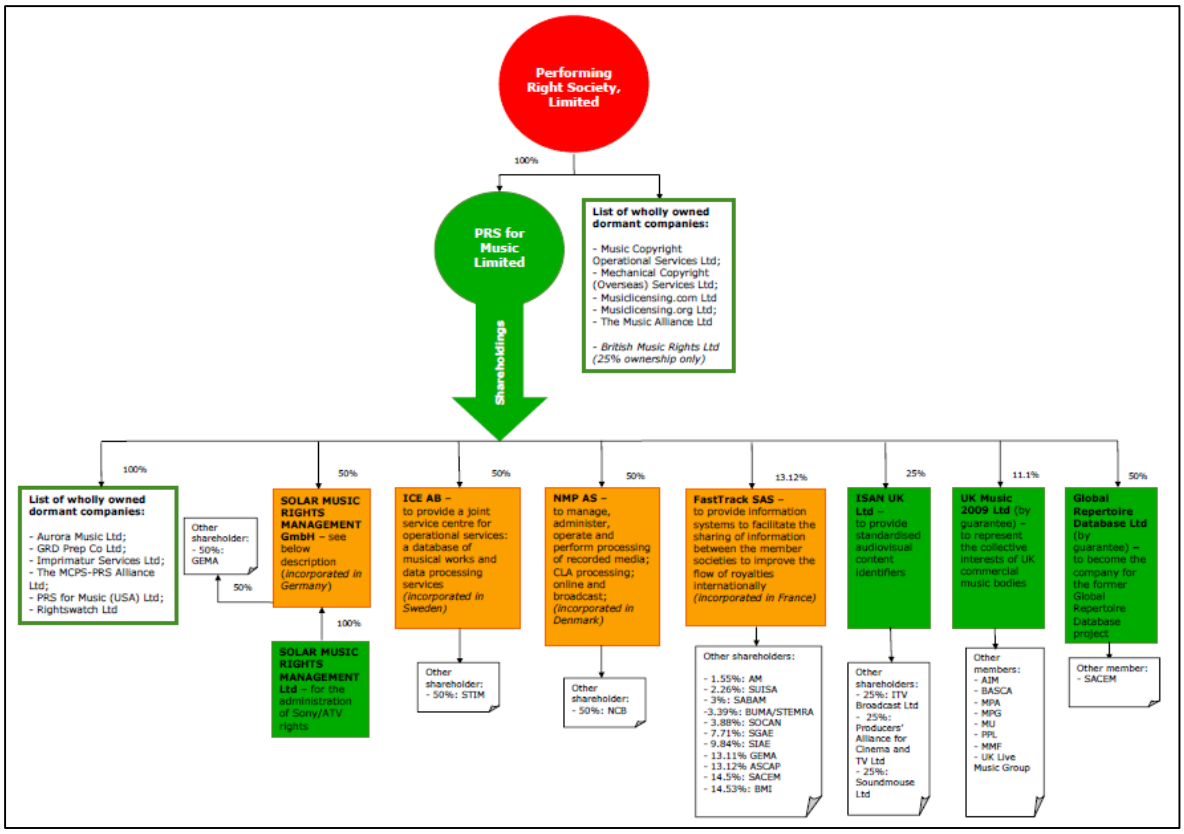
This section of the Consultation and this Question 6 assume that it is clear which organisations are IMEs. We consider the definition of "independent management entity" in Article 3(b) of the Directive to be hard to apply in practice and so we request that the Government clarify further the type of organisation it expects to qualify as an IME and to publish a list of organisations which qualify as IMEs in the UK[1].

7. Do you have subsidiaries? Which of the Directive's provisions do you think would apply to them, and why? Please set out your structure clearly.

PRS directly and indirectly owns a number of wholly or partly-owned subsidiaries, as set out below in Figure 1:

[1] The Christian Copyright Licensing International ("**CCLI**") has informed us that it considers itself to be an IME. PRS, as a CMO rightholder, mandates CCLI to license PRS rights in Christian organisations such as churches, schools or bookshops, thereby providing a "one-stop shop" to license PRS (and other) rights to those Christian organisations.

Figure 1
Corporate Structure Showing Related Companies and Shareholdings as of March 2015



Source: *PRS.*

As the purpose of Article 2(3) of the Directive is to ensure that CMOs do not circumvent the Directive, our view is that a CMO should be directly responsible for its subsidiaries' compliance with the relevant provisions of the Directive. Compliance would be delivered by and enforceable at the level of the relevant parent CMO.

Our view is that the only provisions of the Directive which will be relevant to a subsidiary will be those relevant to the activities carried out by the subsidiary which, if carried out by PRS, would be subject to the Directive – this view is based on Article 2(3) of the Directive. For example, where a subsidiary is carrying out licensing activities, then it should comply with Article 16 of the Directive and, where it is carrying out multi-territory online licensing, Title III of the Directive. On the same basis, where a subsidiary does not have any rightholder members, then the provisions relating to membership governance, such as Articles 8 and 9 of the Directive, would not be relevant. This approach is aligned with Article 2(3) of the Directive.

8. Who do you understand the "rightholders" in Article 3(c) to be?

We understand that, in relation to PRS, the definition of "rightholder" in Article 3(c) of the Directive would include the following persons:

(i) any composer, lyricist, arranger or other author (e.g. of a computer-generated musical work), who by virtue of having created a musical or literary work, is the first owner of any copyright in that work;

(ii) any publisher (i.e. any person who by virtue of a publishing agreement with an individual listed in (i) above is or may become the owner or exclusive licensee of the copyright and/or is entitled to a share of the rights revenue arising from the exploitation of the performing right in the work);

(iii) any other third party who holds the performing right as a result of copyright assignment or testamentary disposition, or a copyright reversion statutory or otherwise (e.g. the estate of deceased composer); or by operation of law (e.g. a person for whom the composer may have written works in the course of an employment contract; a trustee in bankruptcy; the Crown under bona vacantia rules);

(iv) any other third party who is entitled to a share of the rights revenue by way of assignment (e.g. depending on existing agreements, this may be co-writers, performers or managers); or by operation of law (e.g. the executors of a deceased copyright holder's estate; liquidators of insolvent corporations); and

(v) in the context of an application being made for authorisation to operate an Extended Collective Licensing Scheme, a right holder as defined in Regulation 3(3) of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014.

As the definition of "rightholder" in the Directive is very wide, the above is a list of non-exhaustive examples. Clearly, there will be many persons or entities who will "hold a copyright or related right" or "under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue" as per the Directive.

9. If you are a CMO, what are the practical effects of a relatively broad definition of "rightholder" for you?

The definition of "rightholder" in Article 3(c) of the Directive in relation to rights in musical works includes a wide range of individuals and entities, as illustrated in reply to Question 8 above.

PRS will have to give effect to the mandatory provision in Article 7(1) of the Directive in relation to all of those rightholders, even if they are not members. It is inevitable that additional cost and administration will be involved in giving effect to Articles 6(4), 20, 29(2) and 33 of the Directive to rightholders who are not members. If the Government chose to exercise its discretion in Article 7(2) of the Directive, then there would be an even more significant impact (see further the reply to Question 16 below).

10. What do you consider falls in the scope of "non-commercial"?

The Directive deliberately does not provide a definition of "non-commercial uses". Its meaning will depend on the context, including the rights, the type of work, the market, the context, the specific uses, and so forth. All rights assigned to PRS by the members are collectively licensable for value, and all licensing by PRS is therefore commercial from the members' perspective.

We consider that it is the member's and the CMO's perspective of what is a "non-commercial use" that should be the defining principle (and not that of the user), the interpretation and the specific implementation of this conditional right should be set by each individual CMO based on its own rights and membership, and the overall principles should be agreed by the members in AGM (see further reply to Question 11 below).

The interpretation of "non-commercial uses" in this Directive on the rights of rightholders must be seen in the context of the mandate between the member and the CMO and not in the context of the meaning of the term "non-commercial" in copyright law. PRS members have expressed concern that any other implementation would expose them to users trying to put pressure on them to contract to work on what users deem to be "non-commercial projects", outside the protection of the collective. They would face working for zero remuneration: this would undermine the very purpose of the collective, which is to protect individual members from such exploitation.

One example, depending on the facts of the case, which members might consider to meet the objective of this provision is the distribution of works through an alternative royalty-free system such as Creative Commons.

11. If you are a CMO, to what extent do you already allow members scope for non-commercial licensing? Please explain how you do so?

PRS does not specifically allow members scope for non-commercial licensing. However, there is a mechanism that could be used today to give effect to a request from a member to license rights directly, and could be used in future to do the same for non-commercial licensing under Article 5(3) of the Directive. That mechanism is the ability for a member to request to license directly the performing right in their own works under Article 7(f) of PRS's Articles of Association. We do however note that, almost without exception, requests from members for authorisation to undertake direct licensing have been for the purposes of commercial uses.

However, PRS intends to give members the ability to license non-commercial uses in the future. We are planning an amendment of the Articles of Association and Rules and Regulations to expressly acknowledge the right to grant licences for non-commercial uses provided in Article 5(3) of the Directive and to set out the conditions permitted by Article 5(8) of the Directive. The conditions will ensure that, where this right is exercised by a member, it does not compromise our ability to manage and administer collective rights efficiently, effectively and accurately, and enables us to implement such exercise of right operationally. This will also ensure that clear information is provided to our members.

PRS is likely to adopt similar conditions as are already set out in Articles 9(f) and 11C of the Articles of Association. We currently require adequate notice of a member's withdrawal or exclusion of rights in Article 9(f) of the Articles of Association – this is so we can ensure, where relevant, such rights are excluded from the scope of licences (and communicated to licensees) and such withdrawal or exclusion of rights is reflected in the collections and distributions made for and to that member. Additionally, pursuant to Article 11C of the Articles of Association, we have the right to recover the costs of implementing a withdrawal or exclusion of rights by a member from that member specifically, thereby ensuring that there is no cross-subsidy from other members. We would expect these same practical considerations and conditions to be relevant to a member exercising its right to grant licences for non-commercial uses provided in Article 5(3) of the Directive, and they are therefore intended to be reflected in the revised Articles of Association and Rules and Regulations.

12. What will be the impact of allowing rightholders to remove rights or works from the repertoire?

PRS already allows members to remove rights from the repertoire under Articles 7(cc) and 7(cd) of the Articles of Association. This is compatible with the competition law principles that a rightholder should be able to manage the performing right in their

works flexibly, notwithstanding their decision to exclusively appoint a CMO: these principles are reflected in the Directive and have been well established in EU competition law generally (in particular, the *GEMA* decisions[2]).

Notwithstanding the above, it is also recognised by competition law that there is a balance between allowing rightholders to manage their rights flexibly and ensuring that the benefits of collective rights management are not undermined or adversely affected[3]. Were the members able to remove rights on a more granular level from the repertoire than already permitted by the Articles of Association, this would not be in the best interests of the members overall because it would undermine the cost-efficiency and effectiveness of the collective rights management structure. Specifically, it would result in higher administrative costs and diminish the value of the blanket licence: both of which would have a negative impact on the revenue being distributed to members. Therefore, it is important not to allow rightholders to remove rights from the repertoire in such an overly granular or individualised way that it would render collective rights management redundant.

Furthermore, we note that the removal of rights must be achieved by way of an appropriate mechanism to allow us to implement such removal of rights operationally: as detailed in reply to Question 11 above, we do so by requiring reasonable notice from members to withdraw rights or to terminate our appointment – this notice period is no longer than is necessary to allow us to implement the withdrawal or termination operationally and is therefore not unreasonably restrictive on members – and we have the right to recover costs from the relevant member specifically.

13. Under what circumstances would it be appropriate for a CMO to refuse membership to a rightholder i.e. what constitutes "objective, transparent and non-discriminatory behaviour"?

PRS membership requirements are already based on "objective, transparent and non-discriminatory criteria" as per Article 6(2) of the Directive: these criteria are set out in PRS's Articles of Association and on the PRS website. In summary:

(i) the list of persons eligible for admission to membership is wide[4]: any writer, publisher or proprietor; or any spouse, child or other relevant, next of kin, beneficiary in respect of the performing right in the works of a deceased writer, or personal representative or trustee of any deceased writer, publisher or proprietor, or of any deceased member; and

(ii) the joining threshold is low[5]: if a rightholder has written, published or owns rights in music that has been broadcast on TV and/or radio, used online, performed live, or otherwise played in public.

Additionally, we note that there are no restrictions based on nationality, residence or place of establishment of the applicant in the membership requirements set by PRS.

PRS may refuse membership if a rightholder refused to supply documentary evidence confirming their identity and copyright ownership reasonably required as part of their

[2] 71/244/CEE *GEMA I* (IV/26.760 - GEMA) and 72/268/CEE *GEMA II* (IV/26.760 - GEMA).

[3] C-127-123 *BRT v SABAM* (1974).

[4] Article 4 of PRS's Articles of Association.

[5] https://www.prsformusic.com/joinus/Pages/writer-composer.aspx

membership application or refused to comply with the Articles of Association and/or Rules and Regulations.

We would think it would be appropriate to refuse membership if any of the above criteria were not met.

14. What should "fair and balanced" representation in Article 6(3) look like in practice?

Our view is that the representation of the different categories of members – i.e. writers and publishers – in the PRS decision-making process is "fair and balanced" as required by Article 6(3) of the Directive.

There is an equal representation of 11 writers and 11 publishers on the PRS Board pursuant to Article 35(a) of the Articles of Association, which also reflects the 50:50 writer/publisher share in Rule 2 of the Rules and Regulations. There are also further checks in Articles 56(b) and 56(d) of the Articles of Association to ensure that there are no director conflicts (e.g. where there are user-owned publisher directors, or where a director is the director of more than one company in the same group).

Members have the right to vote on matters at the AGM provided they are associate or full members, as set out in Article 6(b) of the Articles of Association: promotion to associate or full membership is based on fair and proportionate criteria – namely, the duration of membership and the earnings of a member – as may be permitted by the Government under the discretionary provision in Article 9 of the Directive (see further the reply to Question 17 below). Our view is that this voting structure is a fairer way of allowing members to be represented in the decision-making process at the AGM, as it results in a diffuse distribution of voting power which accurately reflects the financial stake held in the company by different members.

15. What do you consider to be an appropriate "regular" timeframe for updating members' records?

It is unclear why this information is relevant to the legislative phase. PRS regularly updates members' records, both automatically and manually in accordance with Article 6(5) of the Directive. Automatic updates are instantaneous, whereas manual updates usually occur within 14 days and, at latest, within 21 days. We consider that these timeframes are appropriate as they are timely and regular, as required by Article 6(5) of the Directive.

16. Is there a case for extending any additional provisions in the Directive to rightholders who are not members of the CMO? If so, which are these, why would you extend them and to whom (i.e. non-members in ECL schemes, mandating rightholders who are not members, or any other category of rightholder you have identified in answer to question 7)? What would be the likely costs involved? What would be the impact on existing members?

We think there are several reasons why the Government should not use the option set out in Article 7(2) of the Directive to apply any other provisions of the Directive to rightholders who are not members.

There is no case for extending additional provisions in the Directive to rightholders who are not members of a CMO and to whom no duties are otherwise already owed by a CMO. Were a CMO required to provide services or honour obligations to "rightholders" as defined (i.e. a wider class than PRS members and non-member rightholders to whom PRS already owes duties), this would have a negative impact on the members of a CMO. Any extra resource used by PRS to provide services or honour obligations owed to such rightholders would be at the expense of the members without any corresponding benefit to them, which is clearly to their detriment.

Moreover, extending similar or equal rights to "rightholders" as are owed to members would be a disincentive to becoming or remaining a member, and it would ultimately undermine the purpose and benefit of a CMO. PRS is currently able to offer a collective rights management service which is cost-efficient and effective for PRS and the members as a whole. There is a risk that its ability to do so would be compromised if PRS owed similar or the same obligations to rightholders as it does to its members.

There are non-member rightholders who have rights by operation of law, such as personal representatives, trustees in bankruptcy and liquidators, who are not owed those rights in themselves, but because of their inherent connection to the rightholder in question (e.g. the deceased, bankrupt or liquidated rightholder). PRS already recognises and gives effect to the rights of such non-member rightholders in the Articles of Association and Rules and Regulations and, in practice, these contractual provisions are already sufficient to ensure that PRS is accountable to the correct person in lieu of the member personally (e.g. the personal representative of a deceased member, or the trustee in bankruptcy or liquidator of a bankrupt or insolvent member). These rules apply in any case and do not need to be supplemented by the Directive.

We also note there are already existing UK Regulations in respect of Extended Collective Licensing which deal with those specific rightholders.

17. Which of the discretionary provisions of Article 8 do you think should be adopted?

PRS is a private company limited by guarantee, incorporated under UK law, to which the provisions of the Companies Act 2006 ("**CA 2006**") and related legislation are applicable.

<u>Voting rights (Article 8(9))</u>

We do want the Government to permit restrictions on voting rights for members as permitted by Article 8(9) of the Directive and general company law in the UK. As a principle, we think that it should be up to the members of a CMO, who own the CMO and assign their rights to it, to determine the way in which the CMO is organised. The permission to restrict voting is an important part of that freedom and was clearly envisaged as such by the legislator when adopting the Directive.

Both of the criteria (for votes to be based on duration of membership and amounts received in a previous financial period) are features of the current PRS governance system for the reasons further detailed in reply to Question 14 above, and are compatible with UK company law. In the absence of any permission from the Government, PRS would have to change its governance and there would be substantial impacts, both in terms of cost and structure for the following reasons. The decisions to

restrict voting rights have been taken by members in order to structure PRS appropriately. Those with the greatest financial stake in the CMO have more control. It also allows PRS to maintain an open door policy for membership – maintaining only a low threshold for criteria and a low joining fee – and to operate a transparent actual-usage based distribution policy, which enables newcomers and provisional members to meet earnings criteria for promotion through the exploitation of their works by licensees. As a result, membership has grown rapidly over the last decade. Finally, very practically, we have over 100,000 members and if there were no restrictions on attending the AGM or voting the costs would be enormous. If an 'all member, all vote' requirement became a default system, and in effect a mandatory result of the Directive, there would be substantial impact in terms of cost and structure by effectively increasing fourfold the number of members that could vote at AGM (see Table 1 below). Unintended consequences could include the introduction of membership criteria to restrict membership growth. **For all of the above reasons, we request that the Government implement the discretion in Article 8(9) of the Directive.**

Table 1
PRS Membership Structure

Number of members by category	
Provisional	[*confidential*]
Associate	[*confidential*]
Full	[*confidential*] (of which [*confidential*]are supervoters)
Total	[*confidential*]
Eligible to vote at AGM	[*confidential*] (c. 25% of the membership)

Source: PRS.

Proxy votes (Article 8(10))

PRS currently requires proxies to be granted only to other members and those whom are deemed fit to act as representative of the relevant member or with whom the member has a fiduciary relationship – these restrictions are found in Articles 30, 34 and 34A of our Articles of Association. These restrictions have been adopted by the members, as being appropriate for a company limited by guarantee and owned and controlled by its members, and are compatible with UK company law.

The Directive grants members the right to nominate "any other person or entity" as proxy. PRS does not intend at this stage to adapt its proxy provisions and considers them broad enough already not to prejudice the participation of members in the meeting. **For all of the above reasons, we request the Government make provision to operate current restrictions on the appointment of a proxy, in accordance with Article 8(10) of the Directive.**

For completeness, PRS does not support the implementation of the following discretionary powers, for the reasons given:

More detailed AGM powers (Article 8(7))

We do not think it is necessary for the Government to require the AGM to determine more detailed conditions for the use of the rights revenue and the income arising from the investment of rights revenue in Article 8(7) of the Directive. The AGM already has the power to approve the investment policy and the use of revenue. The appropriate body to supervise and control these detailed conditions is the Board of the CMO which is comprised of directors appointed by the members in AGM and in whom the members have vested power to determine detailed conditions. The UK has clearly codified the fiduciary and common duties of directors, which apply to PRS's directors and in our view provide a very strong governance template for CMOs: these duties include section 171 CA 2006 (duty to act constitutionally and only exercise powers for the purposes for which they were conferred); section 172 CA 2006 (duty to promote the success of the company for the benefit of its members as a whole, which includes a non-exhaustive list of matters to which directors must have regard in making, inter alia, distribution, investment and rights revenue decisions); and section 174 CA 2006 (duty to exercise reasonable care, skill and diligence (which, where appropriate, require obtaining expert opinion and advice on, for example, investment decisions)) (see further reply to Question 19 below).

Alternative modalities for auditors (Article 8(8))

We do not think it is necessary for the Government to allow alternative systems for the removal and appointment of the auditor, as set out in Article 8(8) of the Directive. There is no evidence to show that such intervention is needed, or that there is a need to supplement or supersede the UK company law provisions that require auditor removals or appointments to be made by members (see further the reply to Question 19 below).

Others

The discretionary provisions in Articles 8(11), 8(12) and 8(13) of the Directive cover provisions relating to an assembly of delegates, CMOs with a different legal form and no general assembly of members, or with members who are entities representing rightholders. Since none of these situations apply to PRS, we do not express a view on the exercise of these discretionary powers by the Government.

18. Do you have an existing supervisory function that complies with the requirements in Article 9? If not, can you give an estimate of the likely costs of compliance?

Yes. The Board of Directors of PRS fulfils the supervisory function referred to in Article 9 of the Directive and is compliant with Article 9 of the Directive. The only gap in compliance is that the individual conflicts statements are currently not disclosed to the AGM. PRS will be making those available at the 2016 AGM and thereafter, and the cost of doing so per annum is estimated at just over [*confidential*].

We do however note that: in accordance with section 175 CA 2006, members have permitted independent directors to authorise direct and indirect conflicts of interest (Article 43A of PRS's Articles of Association); and directors standing for election for

appointment or re-appointment to the Board are required to disclose any directorship held currently in the preceding five years (Regulation (3) of PRS's Regulations for a ballot under Article 59(b(ii)).

19. Which of the Directive's provisions are existing requirements under UK company law?

We assume the Government's lawyers will have done a comprehensive comparison of the Directive against UK company law.

PRS is compliant fully with UK company law in terms of member governance and supervision and is therefore also compliant with the provisions of the Directive, where relevant. For example:

(i) PRS's Articles of Association may only be amended by special resolution per section 21 CA 2006, which aligns with Article 8(3) of the Directive;
(ii) members review the performance of directors by way of the annual report required by section 423 CA 2006, which aligns with Article 8(4) of the Directive;
(iii) members decide the appointment and removal of auditors per sections 486 and 510 CA 2006, which aligns with Article 8(8) of the Directive;
(iv) we comply with the provisions regarding conflicts of interests in section 175 CA 2006, which aligns with Article 10(2) of the Directive; and
(v) we refer also to the replies to Questions 15, 17 and 18 above.

There may be parallel or overlapping reporting requirements between the Directive and UK company law. It would be helpful to have guidance from the Government to ensure that CMOs do not duplicate any reporting efforts (and therefore costs – see further the reply to Question 30 below) which would be to the detriment of members as a whole. Such guidance should be made available to members, auditors and CMOs.

20. If you do not already have a distribution system that complies with the provisions of Article 13, can you say what the cost of implementing the requirements will be?

PRS has a distribution system and policy that is mostly compliant with the provisions of Article 13 of the Directive: comprehensive information about our distribution policy can be found on the PRS website[6]. However, we will be implementing certain business and systems changes in order to comply fully with the process to identify and locate the rightholders for which we hold rights revenue, as set out in Article 13(3) of the Directive: in particular, the new requirement to make available the necessary information to the public.

PRS already makes relevant information available to members, rightholders and affiliate CMOs. In principle, since we only license the rights in our repertoire there should be no member of the public with an interest in that undistributed revenue. In fact, making information available to the public increases the risk of fraudulent claims, so we will need to put in place appropriate measures to mitigate this risk and any related costs (which would have a negative impact on our members). The estimated costs of making

[6] http://www.prsformusic.com/creators/memberresources/prsformusicroyalties/distributions/pages/prsdistributionpolicy.aspx

the various business and systems changes in respect of Article 13 of the Directive are currently around [*confidential*] (of which only around [*confidential*] is allocable to the business changes). As mentioned in reply to Question 3 above, the systems changes are not necessitated by the Directive, but are advisable to ensure that we can continue to comply in the most cost-efficient and effective way with the Directive.

21. What are your organisation's current levels of undistributed and non-distributable funds, as defined in Article 13?

We understand "undistributed" funds to be rights revenue that PRS currently holds and has not been distributed within the nine-month deadline in Article 13(1) of the Directive because there are objective reasons that have prevented us from meeting that deadline as per Article 13(1) of the Directive. As at 31 December 2014, PRS held around [*confidential*] of "undistributed funds" (i.e. less than 5% of the total rights revenue collected by PRS as at 31 December 2014): essentially, for objective reasons of administration (i.e. incorrect bank details, attempt to establish rightful payee (e.g. in case of deceased member), litigation (i.e. where there is an ongoing dispute), data (i.e. where inaccurate or missing data is being resolved), or policy (i.e. where payment is subject to a minima threshold). We aim to rectify these issues before distributing the rights revenue so that there is an accurate and, where relevant, properly timed distribution to the relevant members.

We understand "non-distributable" funds to be rights revenue that PRS currently holds and has not been distributed within the nine-month deadline in Article 13(1) of the Directive because we are unable to identify or locate the relevant rightholders per Article 13(2) of the Directive. As at 31 December 2014, PRS held around [*confidential*] of "non-distributable" funds (i.e. only around 1% of the total rights revenue collected by PRS as at 31 December 2014): essentially, because we do not have the necessary copyright ownership information to make the distribution. As referred to in reply to Question 20 above, we will be putting in place certain business and systems changes to comply fully with the process set out in Article 13(3) of the Directive and any decisions about how to use these monies after the three year period has passed per Article 13(4) of the Directive will be approved by the members at AGM per Article 13(5) of the Directive.

22. What is your estimate of the current size and scale of non-distributable amounts that are used to fund social, cultural and educational activities in the UK and elsewhere in the EU?

We are not in a position to estimate the size and scale of non-distributable amounts used to fund social, cultural and educational activities by other CMOs in the UK or elsewhere in the EU. Although we can estimate that the total amount of social and cultural ("**S&C**") deductions taken from PRS members' royalties by affiliate CMOs in the EU was just over [*confidential*][7] in 2013, we have very little insight as to how much of or whether these S&C deductions were taken from the non-distributable funds of affiliate

[7] This estimate should be treated with appropriate caution: it is based on annual reports and distribution statements from affiliate CMOs, which may have missing information, or the information is not clearly evident, or the information has been reported in different ways.

CMOs. Whilst the majority of affiliate CMOs claim that they distribute unidentified monies after three years, none of the affiliate CMOs report the amount of S&C deductions taken, let alone from where the S&C deductions are taken, in the statements sent to PRS or in their Annual Reports. We are aware that SGAE (Spain) did use unidentified monies for their real estate projects, but this will no longer be permitted under Spanish law; and we think that SIAE (Italy) and HDS ZAMP (Croatia) may have allocated a proportion of their unidentified monies to S&C deductions based on our own investigations in 2009. However, without any proper reporting, we have no certain way of knowing for certain whether affiliate CMOs in the EU do allocate some or all of their non-distributable amounts to S&C deductions. This is why we support the level of reporting required by the Annual Transparency Report.

We note that this Question 22 is not relevant to PRS directly: the only deductions made by PRS for social, cultural and/or educational activities is a [*confidential*] per annum payment to the PRS for Music Foundation and a [*confidential*] per annum payment to the PRS for Music Members Benevolent Fund, neither of which is deducted from the non-distributable amounts held by PRS or, generally, from monies distributable to affiliate CMOs. PRS does not make any deductions out of non-distributable amounts generally or specifically to fund social, cultural and educational activities in the UK or the EU: our view is that these monies should be used for the direct benefit of members and the members of affiliate CMOs (see further the reply to Question 25 below).

23. Do you collect for rightholders who are not members of your CMO? If so, how much of that rights revenue is undistributed and/or non-distributable? If you collect for mandating rightholders who are not members of your CMO, to what extent do those rightholders have a say in the distribution of non-distributable amounts, and what do you think of the Government exercising its discretion in relation to those amounts?

Yes - as referred to in reply to Question 16 above, PRS collects for certain non-member rightholders - namely, personal representatives, trustees-in-bankruptcy and liquidators – in circumstances where we are accountable to that non-member rightholder in lieu of the member personally by operation of law and as reflected in our Articles of Association and Rules and Regulations (i.e. where a member is deceased or bankrupt or insolvent). We note that this collection is inherently linked to the relevant member's membership or retention of rights for limited periods following death or cessation of business of that member (see Articles, 9, 10 and 11A of PRS's Articles of Association), rather than a separate activity of collection for non-member rightholders. It is therefore not correct to distinguish between monies collected for these non-member rightholders and for members, as alluded to by this Question 23.

PRS also collects for the members of affiliate CMOs. PRS has representation agreements with around 170 international CMOs who, in total, have around 2 million members - these rightholders are not members of PRS, but are members of the affiliate CMOs. We do not make a distinction between monies collected for or our own members and for the members of affiliate CMOs, as alluded to by this Question 23.

We also note that, as a matter of law[8], rightholders may only exercise the rights to authorise or prohibit the cable retransmission of a broadcast via a collecting society: PRS may therefore also be obliged to collect for non-member rightholders in this respect, but we are not, to date, aware of any such claims from non-member rightholders.

PRS's general distribution policy is approved by members at AGM with the more detailed rules on distribution being approved by the Distribution Committee, a delegate committee of the PRS Board. Although the non-member rightholders and members of affiliate CMOs referred to above do not have a say in the PRS distribution policy and rules, we do support the need to be transparent about the PRS distribution policy and rules to such non-member rightholders and members of affiliate CMOs, which is why we publish comprehensive information about the PRS distribution policy and rules on the PRS website (see the link provided in reply to Question 20 above).

View on the exercise of the discretion in Article 13(6) of the Directive

We urge the Government to take care over the statement in the Consultation that they are minded to exercise the discretion in respect of "non-members" (see further the reply to Questions 9 and 16 above).

We know the Government wants to retain a specific rule in respect of Extended Collective Licensing, where there is a defined category of non-member rightholders (i.e. rightholders who are not a member of any CMO) in advance and the rationale for such rule is clear. However, in respect of voluntary collective rights management, there is no valid argument for treating members of CMOs differently from mandating rightholders who are not direct members but are represented via PRS's representation agreements with affiliate CMOs. In fact, any intervention by the Government on that basis could be discriminatory and lead to restrictions on us distributing the accurate and proportionate share of monies to composers and songwriters across the EU, the US or on a global basis.

We do not support the Government exercising their discretion to determine uses of non-distributable amounts, whether for PRS members or members of other CMOs, for the following reasons:

(i) PRS intends to amend the Articles of Association and Rules and Regulations to expressly deal with the use of non-distributable amounts as required by Article 13(5) of the Directive;

(ii) in practice, PRS allocates non-distributable amounts to specific distribution pots and non-distributable amounts are paid out across that usage data – which is an efficient way to distribute money to active rightholders at a low transactional cost - or PRS allocates and pays non-distributable amounts to identified or located rightholders;

(iii) as a principle, non-distributable amounts have been collected on behalf of rightholders whose works were actively exploited but whom we have not identified, and the best proxy for distributing those non-distributable amounts are rightholders whose works have been actively exploited and whom we have identified;

[8] Section 144A of the Copyright, Designs and Patents Act 1988 (implementing Council Directive 98/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission).

(iv) any restriction on the use of non-distributable amounts by the Government would interfere with such overarching principle and have discriminatory effects by directing money to rightholders whose works were not exploited or to broader societal or other purposes;

(v) we consider best practice for non-distributable amounts is to be paid out as a distribution to rightholders: this can help safeguard the principle that monies are paid out to rightholders whose works have been exploited. In that way, our members can expect to participate in distributions of non-distributable amounts from other CMOs and, similarly, members of affiliate CMOs would be able to participate in distributions of non-distributable amounts by PRS. We note this is a principle of law in Belgian regulation of CMOs; and

(vi) any action by the Government could be a precedent for a similar exercise of discretion by other Member States.

24. What should be the criteria for determining whether deductions are 'unreasonable'?

We understand this to be a question about the interpretation of Article 12(2) of the Directive. Deductions should be reasonable in relation to the services provided to the members and CMOs and management fees should not exceed the justified and documented costs incurred by a CMO as per Articles 12(2) and 12(3) of the Directive.

25. Are there any pros and cons to be particularly aware of in case the Government exercises the discretion?

Please see the reply given to Questions 22 and 23 above.

26. Is there currently a problem with discrimination in relation to rights managed under representation agreements? If so, what measures should be in place to guard against this?

PRS applies exactly the same tariffs, methods of collection and deductions to all repertoire in a non-discriminatory way. This is a principle of operation of all CMOs managing rights in musical works (according to the terms of membership of CISAC, the international organisation which adopts Professional Rules and Binding Resolutions), it is in line with competition law, and it is a matter of agreed contract with affiliate CMOs.

Notwithstanding the above protections in law, we are aware of practices that may be discriminatory in relation to PRS rights managed by other CMOs. For example:

[*confidential*]

We also think that there are practices which may not, on the face of it, appear discriminatory towards PRS rights but could result in better treatment for members of other CMOs. For example:

[*confidential*]

Given the examples above, we think that Article 14 of the Directive will be useful to PRS in addressing such issues with affiliate CMOs.

27. What do you consider should be the "necessary information" CMOs and users respectively should provide for in licensing negotiations (Article 16(1))?

Our view is that it is difficult to provide a single definitive answer to this Question 27 as the data that each party – the user or the CMO – should provide will depend on a number of factors, such as:

(i) size and type of user;
(ii) type of exploitation involved;
(iii) whether there is a published tariff for the type of exploitation; and
(iv) if there is a published tariff, what that tariff requires the user to provide (a) in order to calculate licence fees; and (b) in terms of music usage information.

Depending on the above, the types of information that should be shared could include:

CMOs

- tariff details (where there is a tariff);
- basis of and principles for setting licence fees (where there is no tariff);
- reporting requirements (music usage, revenue (where relevant));
- details of rights controlled in terms of type of repertoire, rights, territories; and
- details of exclusions – rights not covered by the licence;

Users

- description of the service for which a licence is sought;
- expected extent of usage of repertoire (in terms of amount of music used and consumption, i.e. audience) and, where relevant to the tariff / licence fee calculation, revenues;
- user information (e.g. company history, location, directors, company/group structure);
- financial information (e.g. creditworthiness, investment capital, bank details); and
- territories of operation of the service.

28. What format do you think the user obligation should take and how might it be enforced? What is "relevant information" for the purpose of user reporting?

PRS overall response in principle to Article 17 of the Directive

- The importance of data to rights management cannot be underestimated.
- Richard Hooper's report on *Copyright Works* (2012)[9] focussed on it[10]; the Copyright Hub has a working group on data; and the US Copyright Office report on *Copyright and the Music Marketplace* (2015)[11] makes many recommendations on data.
- In a world where the catalogue of available commercial sound recordings through the major streaming music services is in the tens of millions and the royalty fees from each stream are fractions of a penny, any sustainable administration

[9] http://www.copyrighthub.co.uk/Documents/dce-report-phase2.aspx.
[10] See also: https://www.cla.co.uk/data/pdfs/general/charlesclark2013_transcript.pdf.
[11] http://copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf.

solution relies heavily on automated processing and matching to ensure that the right people are paid correctly for the use of their work.

- In order for this automation to be possible at the level of musical works, digital service providers ("**DSPs**") need to report sufficient information about the musical work (as opposed to information limited to the sound recording).
- If reporting is limited to sound recording information the only information provided about the musical work itself is a title. Song titles are very rarely unique so a title is not at all sufficient for a positive automatic match and in addition titles can be changed from the original title of the composition.
- Information about the sound recording can certainly assist where the sound recording has been previously positively identified and matched to a particular musical work but in an environment where the majority of music is first released digitally and the majority of music is not consumed in quantities that justify any manual matching, the only viable solution is for the stakeholders in the ecosystem to act responsibly and collect the appropriate data from the point of inception of the sound recording all the way through the distribution and reporting chain so that DSPs report as a matter of course the data required to drive an automated solution.
- For an ecosystem to function correctly, the sequence of events should be as follows:
    - information relating to a sound recording should be captured accurately at the time of recording is made. This information should include details about the composition recorded (including the relevant songwriters / composers / publishers) as well as the owner of the sound recording, the artist and the performers. This is the most accurate and earliest point at which this information can be captured and should be the most cost effective. Sourcing this information at a later date is considerably more complex and expensive. The practice previously was the record companies would collate this information (so called "label copy") so it is clearly not impossible for this to take place;
    - all parties in the distribution chain should be under an obligation to capture, record and pass on all the relevant metadata and not to strip any data provided out. It is notable that the amount and quality of data reported by many DSPs varies substantially despite the fact that most of the DSPs obtain sound recordings from the same and are therefore in a position to achieve the same coverage in terms of data as each other but clearly do not always elect to either capture or report the metadata already available;
    - standard identifiers (including ISRC and ISWC) should be used as a matter of course; and
    - if DSPs develop their own content identification system they should have a responsibility to map it to the standard identifiers provided and to also capture and report all relevant musical works data.
- PRS is continuously investing in the improvement of data required for the accurate identification and processing of musical works in its repertoire. This includes representation on working groups on standards, investment in ICE, and previous contribution to the Global Repertoire Database project while it was previously ongoing (i.e. until Summer 2014).
- For the purposes of implementation, the users' obligations in Article 17 of the Directive should be directly included in the implementing regulations as an enforceable obligation, copied out from the Directive. The obligations will then need supporting with more practical information to outline best practice, minimum standards, and codes of practice that help the stakeholders – rightholders, users and CMOs – manage the issue on an ongoing basis.

- Enforcement should include a range of measures including direct rights between the CMO and the user, rights of complaint to the National Competent Authority, and full audit rights on data quality and accuracy. Implementation tools could include a Data Standards Working Group to set metrics for the delivery of data quality meeting the standards and to assess progress against the standards for each sector, which is tasked with producing an annual report.
- We think the implementation of these users' obligations will require a working group to be set up from spring 2015 to develop the processes and enforcement mechanisms required by the Directive from 10 April 2016. PRS would like to be part of this group.
- Current practice on data provision and data standards is not sufficient. Incomplete / unsuitable data returns leads to significant cost increases by inhibiting automation of processing that in turn delays the payment of a significant amount of royalties to members. It directly contributes to the level of non-distributable revenue.
- Therefore, whilst we respond to this Question 28 below and provide the current reporting obligations in Annex 1 below - the information should illustrate how important core data management and reporting is to collective management in general and how important it is that improvements are made overall in many respects.
- We will supplement the information given here.

Current practices:

A. International Standards

Adopting industry standards for identification and description, and for reporting usage, simplifies the exchange of information, enables data to be reported consistently and accurately, and allows data to be processed in a highly automated and cost efficient way – this is particularly important in online exploitation where the volume of data that must be processed is extensive. Clearly, the quicker the data can be processed, and the more accurate the data are, then the better and faster the distributions will be to our members.

PRS requires users to comply with the use of agreed industry identification and description standards and music usage reporting formats as part of the terms of their licences. Specifically:

(i) the following standards of identification and description:
- ISWC (International Standard Musical Work Code) – established by ISO;
- ISRC (International Standard Recording Code) – established by ISO;
- ISAN (International Standard Audiovisual Number) – established by ISO; and
- EIDR (Entertainment ID Registry) for audiovisual works – part ISO, part film industry; and

(ii) the following standard formats for reporting usage:
- DDEX Digital Sales Report (DSR) message (or similar messages approved by us).

B. Usage Reporting

Please refer to Annex 1 below.

29. What is the scale of costs incurred in administering data returns that are incomplete and/or not in a suitable format?

We estimate that PRS's operating costs are around 20% higher per annum (over [*confidential*] higher) due to time spent administering data returns that are incomplete and/or not in a suitable format: in 2014, this resulted in a delay in the payment of royalties to members and affiliate CMOs amounting to nearly [*confidential*]. Clearly, the consequences of users providing incomplete / unsuitable data returns has a direct and significant negative impact on PRS members, which must be addressed. For this reason, the users' obligations in Article 17 of the Directive are a positive development provided they are implemented and enforceable in law (see further the reply to Question 28 above).

30. Which of the Transparency and Reporting obligations differ from current practice, and what will be the cost of complying with them?

PRS is mostly compliant with Chapter 5 of the Directive, although we will be making certain business and systems changes to fully comply with certain provisions (e.g. to provide more granular detail in distribution statements to members and CMOs, and to audit, and where necessary, update or keep updated the PRS website). We estimate that the costs of these business and systems changes will be around [*confidential*] (of which around [*confidential*] of that cost is allocable to business changes). As mentioned in reply to Question 3 above, the systems changes are not necessitated by the Directive, but are advisable to ensure that we can continue to comply in the most cost-efficient and effective way with the Directive.

PRS does not currently produce an Annual Transparency Report to all of the level of detail required by the Directive (e.g. in respect of costs breakdowns, undistributed and non-distributable funds, and reporting by affiliate CMO). We will be producing a trial Annual Transparency Report for the financial year ending 2015 and subsequently thereafter as required by Article 22(1) of the Directive: the estimated cost per annum is just over [*confidential*] (i.e. comprising the majority of the cost of business changes identified above).

31. What do you think qualifies as a "duly justified" request for the purposes of Article 20?

We support the need for transparency to members, licensees and affiliate CMOs. We expect there will be positive gains from the obligations on CMOs to disclose information to members and affiliate CMOs generally and, in particular, by way of the Annual Transparency Report, which should mean a reduction in the need for ad hoc requests for information from rightholders, users and CMOs that would fall within Article 20 of the Directive.

What is meant by "duly justified" will vary on a case-by-case basis depending, in particular, on the person making the request, the purpose of the request and the scope of the request – for example, "duly justified" is likely to be interpreted more restrictively when a request has no legitimate business reason, is unjustifiably wide in scope and/or is received from a user (rather than a member). Our view is that a restrictive interpretation of "duly justified" best serves the interests of our members so that unnecessary resource is not spent responding to unjustified or spurious requests for information, the cost of which would ultimately negatively impact our members.

We note this reply to Question 31 is also relevant to the obligation in Article 25(1) of the Directive.

32. What factors help determine whether a CMO is able to identify musical works, rights and rightholders accurately (Article 24(2))?

Please refer to the reply to Question 28 above.

33. What standards are currently used for unique identifiers to identify rightholders and musical works? Which of these are voluntary industry standards?

Please refer to the reply to Question 28 above: the unique identifiers provided are all voluntary industry standards.

34. What would you consider to be a "duly justified request for information" (Article 25(1))? What is not?

Please refer to the reply to Question 31 above.

35. What would you consider to be "reasonable measures" for a CMO to take to protect data (Article 25(2))? What would be an unreasonable ground to withhold information on repertoires?

PRS takes its confidentiality, data protection and competition law obligations seriously. The key ways in which we would protect data under Article 25(2) of the Directive are to disclose any data subject to confidentiality agreements and to restrict the disclosure of data only to that which is necessary to achieve the "duly justified" purpose and which is compliant with confidentiality, data protection and competition law obligations (i.e. by redacting, anonymising or aggregating information, where appropriate).

36. What period of time would you consider would constitute "without undue delay" for the purposes of correcting data in Article 26(1) and for invoicing in Article 27(4)?

We acknowledge that the Directive does not define "without undue delay" or "without delay", and we think that both of these terms should be determined on a case-by-case basis by each individual CMO because it is the CMO which is best placed to make this assessment.

Our view is that the appropriate time frame for correcting data under Article 26(1) of the Directive will vary on a case-by-case basis and will depend on a number of factors such as:

(i) the source of the error – from where the error originates and who was responsible for the error, as this will likely dictate who has the ability to remedy it and at whose cost; and

(ii) the materiality of the error – 'materiality' can take a number of forms such as: (a) the number of works affected and the effect this has on payments made; (b) whether the nature of the error in the data affects the details of which works have been exploited (e.g. the error might be in respect of ancillary data that does not itself affect the correctness of the works

exploited); (c) the error might not affect payments due to the various rightholders involved; and (d) the error might only affect the works of one particular right holder and in a way that does not affect the overall amount that right holder is due from the exploitation. We would prioritise rectifying errors according to their materiality.

Our view is that it would not be appropriate to have a fixed time frame for invoicing online service providers under Article 27(4) of the Directive for a number of reasons such as:

(iii) the ability to invoice quickly will depend on the type of licence involved and, in particular, whether it is a blanket licence for all repertoire or a transactional licence for specified limited repertoire. For blanket licences, invoicing can be very quick (e.g. within about one week) but transactional licences may vary due to the further factors described below;

(iv) to the extent processing capacity is limited[12], it would make sense to prioritise invoicing by value, so that "larger" licensees are invoiced more quickly than the "smaller" ones, partly because smaller service providers may struggle with the formats of reports and so it may be beneficial to them to 'batch' their reports together for processing purposes;

(v) there can be a trade-off between the speed and accuracy in invoicing which therefore means that it is not in the best interest of parties to invoice too quickly. Some musical works are used and reported before work registrations have been completed. This means that processing and invoicing too quickly can result in more unidentified uses than would otherwise be the case, which may itself therefore lead to a greater level of subsequent back-claim invoices. Based on a detailed assessment of major pan-European DSPs, PRS has in certain cases extended the time in which invoices must sent to online service providers to maximise the accuracy of processing: the extended deadline ensures that invoices are still sent within a reasonable period (i.e. without delay) and means that there are also more completed work registrations, thereby minimising the number of unidentified uses;

(vi) the quality, extent and type of data provided by the online service provider can affect how much work is involved in processing the data; and

(vii) the ability to invoice quickly may be affected by whether other rightholders have themselves entered into licences with that same service provider and if we are (or will be) responsible for carrying out the back-office processing of the reporting data: the question is whether it is more efficient to wait until

[12] We note that this issue of is one of the key reasons why PRS is engaged with developing a hub (see further, for example, https://www.prsformusic.com/aboutus/policyandresearch/ourpolicyareas/Documents/Input%20to%20the%20Commissions%20work%20on%20an%20Impact%20Assessment%20for%20a%20Framework%20Directive%20-%20Hubs.pdf)

all rightholders have entered into such licences and process once, or process more than once[13].

37. How many licensees do you have in total? Of these, are you able to say how many are small and medium enterprises and how many have a bigger turnover than you do?

PRS has around [*confidential*] licensees in total. We do not have any data on how many of these licensees are small and medium enterprises or how many of them have a bigger turnover than PRS. However, if we were pushed to provide estimates, then we would expect that around [*confidential*] of these licensees are small or medium enterprises and around [*confidential*] of our licensees would have a higher turnover than PRS. We note that these estimates are not based on any known data and therefore should be viewed with appropriate caution.

38. What do you think are the most appropriate complaints procedures for handling disputes and complaints between CMOs, users and licensees, including for multi-territorial disputes? Please say why.

There are currently a variety of procedures for disputes and complaints between PRS, users, licensees and CMOs, as set out in Table 2 below. For completeness, we have also included the procedures available for disputes and complaints between PRS and members, given that members and rightholders are also referred to in Articles 33 and 34 of the Directive.

Table 2
Summary of Complaints, Alternative Dispute Resolution, and Dispute Resolution Procedures

Type	Dispute Mechanisms	Type of dispute
Members	Ombudsman Services	Compliance with Code and service levels; escalation from PRS Complaints Process
	Negotiation	General
	Mediation	General
	Arbitration	General
	Courts	General
	UK Competition and Markets Authority (CMA) / European Commission (DG Competition)	Competition law issues
Users	Ombudsman Services	Compliance with Code and Service levels
	Negotiation	General
	Mediation	General
	Arbitration	General
	Courts	General
	UK Competition and Markets Authority (CMA) / European Commission (DG Competition)	Competition law issues

[13] We note that this question is one that will be addressed through PRS's hubs strategy (see above footnote).

Type	Dispute Mechanisms	Type of dispute
	Copyright Tribunal	Licence terms and tariffs
	Stakeholder group "Technical Online Working Group for Europe" (TOWGE)[14]	Operational issues, such as duplicate claims, invoices for multi-territory online licences, developing standards, and specific dispute resolution processes[15].
Other CMOs	Negotiation	General
	Mediation	General
	Arbitration	General - may be referred to as an option in representation agreements
	Courts	General
	International Confederation of Authors and Composers Societies (CISAC)	All CMOs in CISAC membership (managing authors' rights musical works and audio-visual works) must comply with CISAC Professional Rules and Binding Resolutions. PRS was subject to CISAC Audit in 2014. http://www.cisac.org/What-We-Do/Governance

Source: PRS.

This range of dispute resolution and alternative dispute resolution procedures is appropriate, and will remain relevant mechanisms for dispute resolution within the framework of Articles 34 and 35 of the Directive. We see no reason for Government to prescribe specific dispute resolution or alternative dispute resolution procedures for CMOs.

The nature of disputes between licensees, publishers, PRS and other CMOs in Europe in relation to multi-territory licensing mean that a stakeholder process (known as "the London Group") has been developed to deal with repertoire and invoicing queries. It is possible for disputes arising in relation to multi-territorial online licensing to be resolved via the courts or the Copyright Tribunal (as applicable), and also for negotiation and mediation to be used as forms of alternative dispute resolution. We think it is unlikely that the Ombudsman Services will be used for complaint resolution in relation to multi-territory licensing, given the nature of the issues arising.

Our interpretation of Article 35 is that it must be implemented by giving a right of both CMO and user to access the court or independent and impartial dispute resolution body. It is therefore necessary for there to be a change to the Copyright Tribunal Rules to enable CMOs to refer disputes to the Copyright Tribunal. Currently, only licensees or prospective licensees can refer disputes to the Copyright Tribunal.

39. What is your preferred option for the national competent authority? Please give reasons why.

We consider that the following criteria will be needed to set up the National Competent Authority ("**NCA**"):

(i) familiarity with copyright and copyright licensing;

[14] The TOWGE is made up of a group of CMOs and engages with DSPs.

[15] For example, a specific dispute resolution process has been developed by the [*confidential*].

(ii) independence from policy-making on copyright, licensing and rights management;
(iii) independence from the Copyright Tribunal (though links to the Secretariat would be assumed); and
(iv) proportionality in size.

We are interested to know: Would the NCA be the body that attended EU experts meetings? Will the NCA be tasked with policy and enforcement simultaneously?

40. Bearing in mind the scope of its ongoing responsibilities, what would you consider to be an appropriate level of staffing and resources needed? Please give and upper and lower estimate.

We consider that the following would be an appropriate level of staffing and resources for the NCA:

(i) a small team initially of only two staff maximum;
(ii) they should be experts with legal and practical understanding of copyright and collective rights management;
(iii) experience in role of copyright to creative industries; and
(iv) a team should have access to lawyers, accountants and economists.

The NCA should outsource certain work, such as the report on multi-territory online licensing required by Article 38 of the Directive. Furthermore, certain activities should be excluded from the scope of the NCA's responsibilities, such as other CMO regulatory activities (e.g. Extended Collective Licensing, which is a UK policy issue, not a requirement of the Directive). Lastly, for reasons of double jeopardy, the NCA should not involve itself in any disputes that are also being brought before another competent body (e.g. the CMA in the UK or DG Competition in the EU or the Copyright Tribunal).

41. How should the costs of the NCA be met?

We refer back to the reply to Question 3 above. PRS is a CMO owned by its members and its members have chosen to run PRS in such a way as to collect all royalties due to the members, to deduct costs and to distribute all the distributable revenue to members and to other CMOs. Members retain no profit in PRS. It therefore follows that if there are new regulatory costs (including PRS' own compliance costs) this new cost will be included in the operating budget taken to and approved by the Board.

It also follows that if Government were to pass on the costs of the NCA to CMOs then those Government costs would increase the annual operating costs of CMOs, including PRS. These regulatory costs would be added to the total costs and the administration fees deducted by PRS from the royalties due to the members. PRS would have to pass on the costs: there is no option for the members to absorb costs in their CMO – they bear all costs.

We think the Government should absorb the costs of the NCA at the outset. It is too early to anticipate whether the Directive will generate a low, medium or high level of activity, whether the source of active investigations will come from members, licensees or CMOs, and whether the exchange between NCAs in relation to CMOs established in their territory will have an impact. If there were a significant increase in the resources

required by the NCA to operate then it would be relevant to look at various mechanisms for meeting those costs in future. Even then certain safeguards would be needed to ensure that the burden of regulation falls fairly and proportionately.

Annex 1

List of Reporting Obligations Owed by PRS for Music Licensees (in respect of PRS and MCPS Licences)

Broadcasting	
TV	Broadcasters We require the following key usage reporting data from all TV broadcasters (in electronic format): • Production details for both programming and non-programming material (e.g. trailers and station promotions). These include at least: production title, production name and number, and date of broadcast ("**Production Details**"). • The information necessary to identify each musical work used in each broadcast of each production, including the title, composer, publisher, performer, Tunecode number, and duration of use in the production ("**Musical Work Details**"). For PRS-only licences, the level of reporting will depend on the broadcaster's licence fee: • For broadcasters whose fee exceeds £250,000, we require 'full census' reporting for each day of the year normally on a quarterly basis in arrears (but more frequently in the case of some of the larger broadcasters). • For smaller broadcasters, we require reporting to be carried out on a 'sample day' basis, where we identify a number of days in each quarter for which we will require usage reports. The number of sample days varies (between 10 and 35) depending on the value of the licence fee. For licences where MCPS rights are granted, we require full census reporting from all broadcasters. However, in practice, for smaller broadcasters we may accept reporting to be carried out on a sample day basis if processing full reporting would be disproportionate for both us and the broadcaster given the value of the licence fee. With technological advancements being achieved in music reporting (such as automatic reporting through sound recognition platforms), we expect that we will move towards full reporting for all broadcasters. Multi-territory Broadcasters For licensees broadcasting from the UK to other countries, in addition to the standard reporting obligations above, we would also normally require on an annual basis details of viewing and level of subscribers. Independent Production Companies ("**IPCs**")

	Where IPCs are responsible for clearing mechanical rights from MCPS, we require them to report the Production Details and Musical Work Details for every production they produce on a full census basis within 14 days of delivery of the production to the commissioning broadcaster. Programme Distributors Programme Distributors sell UK-produced programmes internationally. We require them to report on an annual basis the Production Details and Musical Work Details for every programme sold.
Radio	Commercial Radio / BBC For commercial radio stations regardless of size and BBC radio stations, we require full census reporting for the Musical Work Details for each broadcast of the work, normally on a quarterly basis but more frequently in some cases. For some of the larger commercial radio stations, we have introduced sound recognition reporting in conjunction with traditional electronic reports with a view to phasing out the latter over time. Community Radio For community radio stations, we do not currently require usage reporting given the low value of these licences. However, we may require this in the future with the gradual introduction of sound recognition reporting.
Online	
Music services	Multi-territory DSPs Large, multi-territory music DSPs report their music usage to us, as well as to the other major European collection societies and publishers' special purpose licensing vehicles, through the DDEX standard electronic format. DDEX is a complex and comprehensive format that allows DSPs to feed a great deal of information back to licensors. Set out below are key examples of the information required as part of DDEX. It is worth emphasising that simply because a DSP uses the DDEX format, it does not necessarily mean that we receive all the necessary information. DSPs often omit certain fields from their reports, which can result in further administrative costs and delay to the distribution process. Before the submission of data, it is important that the each DSP specifies the types of services and usages that it provides (e.g. download, subscription, etc.) and usages it offers (e.g. permanent/limited download, streaming, etc.). If a DSP offers more than one service and/or usage type, each type needs to be reported separately, as different tariffs apply to different services/usages. The information we require as part of DDEX is set out below. Unless otherwise indicated, the information is mandatory

	(although, once again, we note that this does not necessarily mean that it is always provided on time or at all). If not mandatory, the information may be optional or conditional (i.e. the DSP must provide it only if they have it).
	
	• Trading name of service tier (e.g. Spotify has different tiers: Premium, Unlimited, Free, Mobile).
	• Start and end date of reporting period: we require reporting to be carried out on a monthly or quarterly basis, depending on our agreement with the specific DSP.
	• The Territory Code for the period that the data applies.
	• Information relating to each 'Release' (i.e. singles, albums, etc.), including a 'Release ID' (a unique reference to each Release that ensures that the data supplied can be matched correctly to existing and previously supplied data), the original issue date of the release (optional), and the release duration (optional).
	• Number of subscribers (only applicable to streaming services).
	• Uses for that Release, i.e. how many times it was downloaded or streamed during the relevant period.
	• The Release price and currency (only applicable to downloads).
	• Net Revenue (depending on type of service reported, we would need to have information on whether there is additional advertising revenue, subscription revenue, direct revenue).
	• Information relating to each work contained in each Release, as follows:
	  ○ The title of each work;
	  ○ The International Standard Recording Code (although strictly speaking optional we would normally insist on it);
	  ○ The International Standard Work Code;
	  ○ Details of the composer/author;
	  ○ Details of the publisher; and
	  ○ Details of the performer.
	
	<u>Smaller UK-only DSPs</u>
	
	For smaller, UK-only DSPs, we use our own electronic reporting format. The types of information we require is broadly similar to that required under DDEX and, as with DDEX, we also classify the information as mandatory, optional or conditional. The main difference from the DDEX standard is that our format is much simpler and is cheaper and easier to process, which is why we use it for the smaller DSPs who may not have sufficient systems or resources to process the more complex DDEX format.

Non-music Services	We use our own reporting format for DSPs offering audio-visual content and user-generated content ("**UGC**") (which again classifies information as mandatory, optional, or conditional). In the case of some DSPs (such as YouTube), we adopt the DSP's own reporting format. For DSPs offering audio-visual content (such as Netflix or the catch-up and on-demand services by major broadcasters), we require information similar to the Production and Musical Work Details summarised in the TV section above. In addition, we also

	require mandatory usage information such as usage type (permanent download, limited download, stream, etc.), territory, release price and other revenue (if any), and number of uses/subscribers. For DSPs carrying UGC, we also require mandatory information identifying the video (such as title, URL, keywords, duration, upload date). In our experience, we have found that reporting by DSPs for UGC is generally very poor. We note that DDEX is developing an audio-visual version of its standard format which is due to be implemented later in the year and we may begin using it for some of the larger audio-visual DSPs.
Recorded Media	
	Set out below is the information we require from licensees in relation to our main recorded media licensing schemes. Generally, we require information relating to the product and the musical works contained in the product to be provided prior to manufacture. Depending on the type of scheme and licensee, we require information relating to the number of units manufactured or sold and relating to pricing to be provided either prior to manufacture (generally for lower value schemes and smaller licensees) or on a quarterly basis in arrears (generally for higher value schemes and larger licensees). In practice, even when required to provide the information prior to manufacture, licensees often delay the provision of this information until after the products have been pressed and shipped. **AP1 Scheme (our main audio-only scheme for larger licensees)** • Information to be provided prior to manufacture: o The title and catalogue number of the product o The title of each track o The name of composer(s) of each track o The duration of each track and of the product (important if the product contains a mixture of music and non-music content) • Information to be provided on a quarterly basis in arrears: o Net shipments o Dealer and retail price **Other audio-only products** • All information to be provided prior to manufacture: o The title and catalogue number of the product o The title of each track o The name of composer(s) of each track o The duration of each track and of the product (important if the product contains a mixture of music and non-music content) o The number of units to be manufactured o The number of promotional units (which is capped and for which licensees do not pay royalties) o The dealer and the retail price of the product, or if the product is sold in conjunction with a newspaper or magazine, the cover price of the publication **Audio-video products**

	• Information to be provided prior to manufacture:
	  o The title and catalogue number of the product
	  o The title of each track
	  o The name of the composer(s) of each track
	  o The duration of: feature and extras, each track, and aggregate musical works
	  o Confirmation of whether any of the tracks include 'commissioned music' (for which different royalty rates are applied)
	• Depending on licensee and specific scheme, information to be provided on manufacture or on a quarterly basis in arrears:
	  o Units to be manufactured/shipped
	  o Pricing information
	
	Synchronisation Licences (e.g. for theatrical film releases and commercials)
	
	• All information to be provided prior to manufacture:
	  o The title of the product
	  o The title of each track
	  o The duration of each track
	  o The name of the composer(s) of each track
	  o Details of the publisher for each composer
	  o Specific usage details, including, medium of exploitation, territory of exploitation, film budget, etc.
	
	Other Schemes
	• For certain schemes (such as our Limited Manufacture licence and our music promos products), due to the low value and level of usage, we do not require details of the composer or track title but only, prior to manufacture, the title of the product, the number of units to be manufactured and, in some instances, the number of tracks.

Public Performance	
Featured/Live Music	We require specific music reporting to be provided for licences for featured or live music. The frequency of the reporting would depend on the frequency of invoicing agreed with the customer (which ranges from monthly to annually, unless it is a 'one-off' event). We would expect the reports to include, for each performance, at least: information relating to the artist, whether they were the headline act or supporting act, and information relating the repertoire performed, including, in relation to each work, the title, names of the composers and publishers, and the duration.
Other Public Performance	For the majority of our other public performance licences (which include licences for premises to play recorded music), given the often low value of the licences and the disproportionate resources that would be required from both our and the licensee's perspective to process detailed reports, we do not require specific music reporting to be provided. Instead, when a licensee obtains a licence from us (and once a year thereafter), we ask them to complete a review form that sets out some basic information relating to, among other things, the means of performance of the music (for instance, what device they use to play the music on

	their premises, what radio stations or TV channels they play or show, the genre(s) of music they play, etc.). The specific contents of the review form will vary greatly depending on the type of tariffs. We then use this information to allocate royalties, often by using proxies (so, for instance, if in their review form a customer indicates that they play BBC Radio One, we will allocate part of the licence fee in accordance with our distributions for BBC Radio One).

Source: PRS.