

2005-22 Intellectual Property (Copyright and Related Rights)

Subsidiary Legislation made under s.279.

Collective Management of Copyright Regulations 2016.

LN.2016/107

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Transposing:
Directive 2014/26/EU

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In exercise of the powers conferred upon it by section 279 of the Intellectual Property (Copyright and Related Rights) Act 2005 and section 23(g) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar, Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, the Government has made the following Regulations-

PART 1
Introduction

Title.

1. These Regulations may be cited as the Collective Management of Copyright Regulations 2016.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3.(1) In these Regulations–

“collective management organisation” means an organisation which–

- (a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose; and
- (b) is either owned or controlled by its members or is organized on a not for profit basis or both;

“director” means-

- (a) a member of the administrative board of the collective management organisation;
or
- (b) where a dual board is permitted under Gibraltar law and provided for in the statute of the collective management organisation, a member of the management board or supervisory board.

“general assembly of members” means the body in the collective management organisation wherein members participate and exercise their voting rights, regardless of the legal form of the organisation;

“Gibraltar Regulatory Authority” means the Gibraltar Regulatory Authority established under the Gibraltar Regulatory Authority Act 2000;

“independent management entity” means an organisation which–

- (a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the the collective benefit of those right holders, as its sole or main purpose;
- (b) is neither owned nor controlled, directly or indirectly, wholly or in part, by right holders; and
- (c) is organised on a for profit basis;

“management fees” means the amount charged, deducted or offset by a collective management organisation from rights revenue or from any income arising from the investment of rights revenue in order to cover the costs of its management of copyright or related rights;

“member” means a right holder or an entity representing right holders, including other collective management organisations and associations of right holders, fulfilling the membership requirements of the collective management organisation and admitted by it;

“Member State” means a Member State of the European Union;

“multi-territorial licence” means a licence which covers the territory of–

- (a) Gibraltar and a Member State;
- (b) Gibraltar and the United Kingdom; or
- (c) Gibraltar, the United Kingdom and at least one Member State;

“online rights in musical works” means any of the rights of an author in a musical work provided for under Articles 2 and 3 of Directive 2001/29/EC which are required for the provision of an online service;

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“repertoire” means the works in respect of which a collective management organisation manages rights;

“representation agreement” means an agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to manage the rights it represents, including an agreement concluded under regulations 30 and 31;

“right holder” means any person or entity, other than a collective management organisation that–

- (a) holds a copyright or related right; or
- (b) under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue;

“rights revenue” means income collected by the collective management organisation on behalf of right holders, whether deriving from an exclusive right, a right to remuneration or a right to compensation;

“statute” means the memorandum and articles of association, the statute, the rules or documents of constitution of a collective management organisation;

“user” means a person or entity who–

- (a) is carrying out acts subject to the authorisation of right holders, remuneration of right holders or payment of compensation to right holders; and
- (b) is not acting in the capacity of a consumer;

(2) These Regulations apply to the European Economic Area as they apply to the European Union and references to the European Union and references to the European Union or a Member State of the European Union shall be construed accordingly.

Scope.

4.(1) The obligations of a collective management organisation in Part 2 and 4 of these Regulations apply to a collective management organisation established in Gibraltar.

(2) The obligations of a collective management organisation in Part 3 of these Regulations apply to a collective management organisation in accordance with regulation 24.

(3) Where an entity which is directly or indirectly owned or controlled, wholly or in part, by a collective management organisation carries on an activity which, if carried on by the collective management organisation would be subject to the provisions of these Regulations then those provisions apply to that entity.

(4) The following regulations apply to an independent management entity established in Gibraltar–

- (a) regulation 17(2);
- (b) regulation 19;
- (c) regulation 21;
- (d) regulation 22(2);
- (e) regulations 36 to 41;
- (f) regulation 34.

PART 2

Collective Management Organisations

General obligations of collective management organisations in relation to right holders.

5. A collective management organisation–

- (a) must act in the best interest of right holders whose rights it represents; and
- (b) must not impose on such right holders any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights.

Particular obligations of collective management organisations in relation to right holders.

6. A collective management organisation must ensure that–

- (a) right holders have the right to authorise a collective management organisation of their choice to manage–
 - (i) the rights,

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- (ii) categories of rights,
- (iii) types of works, and
- (iv) other subject matter,

of their choice, for the territory of their choice irrespective of the country of nationality, place of residence or establishment of either the collective management organisation or the right holder;

- (b) it manages the matters referred to in paragraph (a)(i) to (iv) provided that the management of these matters falls within the scope of its activity or unless it has objectively justified reasons to refuse management;
- (c) right holders have the right to grant licences for non-commercial uses of any of the matters referred to in paragraph (a)(i) to (iv) that they may choose;

- (d) right holders have the right–

- (i) to terminate the authorisation to manage the matters referred to in paragraph (a)(i) to (iv) granted by them to a collective management organisation, or
- (ii) to withdraw from a collective management organisation the matters of their choice referred to in paragraph (a)(i) to (iv) for the territory of their choice,

upon serving reasonable notice not exceeding six months unless the collective management organisation decides that such termination or withdrawal is to take effect at the end of the financial year;

- (a) if there are amounts due to a right holder for acts of exploitation which occurred, or under a licence granted, before the termination or withdrawal under paragraph (d) took effect, the right holder retains the rights under regulations 13, 14, 19, 21, 29 and 31;
- (b) it does not restrict the exercise of rights referred to in paragraphs (d) and (e) by requiring, as a condition for the exercise of those rights, that the management of the matters referred to in paragraph (a)(i) to (iv) which are subject to the termination or the withdrawal are entrusted to another collective management organisation;
- (c) where a right holder authorises a collective management organisation to manage that right holder's rights–

- (i) the right holder gives consent specifically for each of the matters referred to in paragraph (a)(i) to (iv) which the right holder authorises the collective management organisation to manage; and
 - (ii) that consent is evidenced in documentary form;
- (a) it informs a right holder of their rights under paragraph (a) to (g) and any conditions attached to the right in paragraph (c) before obtaining the right holder's consent to its managing the matters set out in paragraphs (a)(i) to (iv);
 - (b) by 10 October 2016 it informs right holders who authorised it on or before 9 April 2016 of their rights under paragraph (a) to (g) as well as any conditions attached to the right set out in paragraph (c); and
 - (c) the rights under paragraphs (a) to (i) are set out in the statute or membership terms of the collective management organisation.

Membership rules of collective management organisations.

7.(1) A collective management organisation must—

- (a) accept as members-
 - (i) right holders, and
 - (ii) entities representing right holders, including other collective management organisations and associations of right holders,if they fulfil the membership requirements; and
- (b) in cases where it refuses to accept a request for membership, provide the right holder with a clear explanation of the reasons for its decision.

(2) A collective management organisation must ensure that its membership requirements—

- (a) are based on objective, transparent and non-discriminatory criteria;
- (b) are included in its statute or membership terms; and
- (c) are made publicly available.

Collective management organisations and their members.

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8. A collective management organisation must—

- (a) ensure that its statute provides for appropriate and effective mechanisms for the participation of its members in the decision-making process of that organisation;
- (b) ensure that the representation of the different categories of members in the decision-making process is fair and balanced;
- (c) allow—
 - (i) its members, and
 - (ii) right holders who are not members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,

to communicate with it by electronic means including, in the case of its members, for the purposes of exercising members' rights; and

- (d) keep records of its members and regularly update those records.

General assembly of members of collective management organisations.

9.(1) A collective management organisation must ensure that—

- (a) the general assembly of members is convened at least once a year;
- (b) the general assembly of members decides on any amendments to the statute and the membership terms of the collective management organisation, where those terms are not regulated by the statute;
- (c) the general assembly of members decides on the appointment and dismissal of the directors, reviews their general performance and approves their remuneration and other benefits such as—
 - (i) monetary and non-monetary benefits;
 - (ii) pension awards and entitlements;
 - (iii) rights to other awards; and
 - (iv) rights to severance pay;

- (d) in accordance with regulations 12 to 14 the general assembly of members decides on at least-
 - (i) the general policy on the distribution of amounts due to right holders;
 - (ii) the general policy on the use of non-distributable amounts;
 - (iii) the general investment policy with regards to rights revenue and to any income arising from the investment of right revenue;
 - (iv) the general policy of deductions from rights revenue and from any income arising from the investment of rights revenue;
 - (v) the use of non-distributable amounts;
 - (vi) the risk management policy;
 - (vii) the approval of any acquisition, sale or hypothecation of immovable property;
 - (viii) the approval of–
 - (aa) merges and alliances;
 - (bb) the setting up of subsidiaries;
 - (cc) the acquisition of other entities or shares or rights in other entities; and
 - (ix) the approval of taking out loans, granting loans or providing security for loans;
- (e) the general assembly of members controls the activities of the collective management organisation by at least–
 - (i) deciding on the appointment and removal of the auditor; and
 - (ii) approving the annual transparency report referred to in regulation 23;
- (f) all members of the collective management organisation have the right to participate in, and the right to vote at the general assembly of members;

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(g) every member of the collective management organisation has a right to appoint another person or entity as a proxy holder to participate and vote at, the general assembly of members on the member's behalf provided that the appointment does not result in a conflict of interest; and

(h) in relation to the right in paragraph (g)–

- (i) each proxy is valid for a single general assembly of members;
- (ii) the proxy holder enjoys the same rights in the general assembly as those to which the appointing member would be entitled;
- (iii) the proxy holder casts votes in accordance with the instructions issued by the appointing member.

(2) The general assembly of members may–

- (a) by resolution; or
- (b) by provision in its statute;

delegate the powers listed in subregulation (1)(d)(vi) to (ix) to the body exercising the supervisory function referred to in regulation 10.

(3) The requirements in subregulation (1)(e)(i) may be satisfied where an auditor is appointed in accordance with the Companies Act 2014.

(4) The requirements in subregulation (1)(f) may be satisfied–

(a) where a collective management organisation restricts the rights of members referred to in that subregulation on the basis of either or both of the following criteria–

- (i) duration of membership, or
- (ii) amounts received or due to a member; and

(b) where these criteria–

- (i) are determined and applied in a manner which is fair and proportionate; and

- (ii) are included in the statute or the membership terms of the collective management organisation and are made publicly available in accordance with regulations 20 and 22.

(5) The requirements in subregulation (1)(g) may be satisfied—

(a) where the collective management organisation restricts—

- (i) the appointment of proxy holders; or
- (ii) the exercise of the voting rights of the members the proxy holder represents; and

(b) where the restriction—

- (i) is permitted under the Companies Act 2014;
- (ii) does not prejudice the appropriate and effective participation of members in the decision-making process of a collective management organisation.

(6) Where a collective management organisation, by reason of its legal form, does not have a general assembly of members—

(a) the collective management organisation must ensure that the powers of the general assembly of members referred to in this regulation are exercised by the body exercising the supervisory function referred to in regulation 10; and

(b) subregulation (1) (a), (b), (c), (d) and (e) applies as if the references to “general assembly of members” were reference to “body exercising the supervisory function referred to in regulation 10”.

(7) Where—

(a) a collective management organisation decides that the powers of the general assembly of members under this regulation are to be exercised by an assembly of delegates elected at least every four years by the members of the collective management organisation;

(b) appropriate and effective participation of members in the collective management organisation’s decision-making process is ensured; and

(c) the representation of the different categories of members in the assembly of delegates is fair and balanced;

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this regulation shall apply to the assembly of delegates with the necessary modification.

(8) Where—

- (a) a collective management organisation has members who represent right holders; and
- (b) the collective management organisation decides that one or more of the powers of the general assembly of members referred to in subregulation (1)(a) to (e) are to be exercised by an assembly of those right holders;

this regulation shall apply to the assembly of right holders with the necessary modification.

(9) Where, in accordance with the law of Gibraltar, the statute of a collective management organisation may provide for a dual board, the collective management organisation must ensure that the general assembly of members does not—

- (a) decide on the appointment and dismissal of members of the management board, or
- (b) approve their remuneration and other benefits,

where the power to take such decisions are delegated to the supervisory board.

Supervisory function of collective management organisations.

10.(1) A collective management organisation must ensure that it has in place a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation which satisfies the requirements of this regulation.

(2) The requirements of this regulation are—

- (a) there is a fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function;
- (b) each person exercising the supervisory function makes an annual individual statement to the general assembly of members on conflicts of interest, containing the information referred in regulation 11(3);
- (c) the body exercising the supervisory function meets regularly and has at least the following powers—

- (i) to exercise the powers delegated to it by the general assembly of members, including the delegation of powers referred to in regulation 9(2) and (11); and
 - (ii) to monitor the activities and the performance of the duties of persons referred to in regulation 11, including the implementation of the decisions of the general assembly of members and, in particular, of the general policies referred to in regulation 9(1); and;
- (d) the body exercising the supervisory function reports on the exercise of its powers to the general assembly of members at least once a year.

Management of collective management organisations.

11.(1) A collective management organisation must ensure that persons who manage its business do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

(2) A collective management organisation must put in place and apply procedures—

- (a) to avoid conflicts of interest; and
- (b) where such conflicts cannot be avoided, to identify, manage, monitor and disclose actual or potential conflicts of interest in such a way as to prevent them from adversely affecting the collective interests of the right holders whom the organisation represents.

(3) The procedures referred to in subregulation (2) include an annual individual statement by each of the persons referred to in subregulation (1) to the general assembly of members, containing the following information—

- (a) any interests in the collective management organisation;
- (b) any remuneration received in the preceding financial year from the collective management organisation, including in the form of pension schemes, benefits in kind and other types of benefits;
- (c) any amount received in the preceding financial year as a right holder from the collective management organisation; and
- (d) a declaration concerning any actual or potential conflict between—

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- (i) any personal interests and those of the collective management organisation; and
- (ii) any obligations owed to the collective management organisation and any duty owed to any other person.

Collection and use of rights revenue.

12. A collective management organisation must ensure—

- (a) that it is diligent in the collection and management of rights revenue;
- (b) that it keeps separate in its accounts-
 - (i) rights revenue and any income arising from the investment of rights revenue; and
 - (ii) any own assets it may have and income arising from such assets, from management fees or from other activities;
- (c) that it does not use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to right holders, except where it is allowed-
 - (i) to deduct or offset its management fees in compliance with a decision taken in accordance with regulation 9 (1)(d)(iv); or
 - (ii) to use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with regulation 9(1)(d); and;
- (d) that where it invests rights revenue, or any income arising from the investment of rights revenue, it does so-
 - (i) in the best interests of the right holders whose rights it represents;
 - (ii) in accordance with the general investment and risk management policy referred to in regulation 9 (1)(d)(iii) and (vi); and
 - (iii) having regard to the following-

- (aa) where there is any potential conflict of interest, the collective management organisation must ensure that the investment is made in the sole interest of those right holders;
- (bb) the assets are invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole; and
- (cc) the assets are properly diversified in order to avoid excessive reliance on any particular asset and accumulation of risks in the portfolio as a whole.

Deductions.

13.(1) A collective management organisation must ensure that where a right holder authorises it to manage his rights, the collective management organisation provides the right holder with information on—

- (a) management fees; and
- (b) other deductions from the rights revenue and from any income arising from the investment of the rights revenue;

before obtaining the right holder's consent to manage the right holder's rights.

(2) A collective management organisation must ensure that deductions—

- (a) are reasonable in relation to the services provided by the collective management organisation to right holders including, where appropriate, the services referred to in subregulation (5); and
- (b) are established on the basis of objective criteria.

(3) A collective management organisation must ensure that management fees do not exceed the justified and documented costs incurred by the collective management organisation in managing copyright and related rights.

(4) A collective management organisation must ensure that the requirements in these Regulations relating to the use, and the transparency of the use, of amounts deducted or offset in respect of management fees apply to any other deductions made in order to cover the costs of managing copyright and related rights.

(5) A collective management organisation must ensure that where it provides social, cultural or educational services funded through deductions from rights revenue or from any income

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arising from the investment of rights revenue, such services are provided on the basis of fair criteria, in particular in relation to access to, and the extent of, those services.

Distributions of amounts to right holders.

14.(1) A collective management organisation must regularly, diligently and accurately distribute and pay amounts due to right holders in accordance with the general policy on distribution referred to in regulation 9(1)(d)(i), subject to regulation 16(3) and regulation 29.

(2) A collective management organisation or, a member of it which is an entity representing right holders, must distribute and pay the amounts referred to in subregulation (1) to right holders as soon as possible but no later than 9 months from the end of the financial year in which the rights revenue was collected unless subregulation (3) applies.

(3) This subregulation applies where there are objective reasons which prevent the collective management organisation or its member referred to in subregulation (2) from distributing or paying the amounts within the time specified in that subregulation.

(4) The objective reasons referred to in subregulation (3) may relate in particular to—

- (a) reporting by users;
- (b) identification of rights or right holders; or
- (c) matching of information on works and other subject matter with right holders.

(5) A collective management organisation must ensure that amounts due to right holders are kept separate in the accounts of the collective management organisation where—

- (a) those amounts cannot be distributed within the time specified in subregulation (2) because the relevant right holders cannot be identified or located; and
- (b) subregulation (3) does not apply.

(6) A collective management organisation must take all necessary measures to identify and locate right holders consistent with the requirements of subregulation (1).

(7) The measures referred to in subregulation (6) include in particular—

- (a) the collective management organisation making available, at the latest 3 months after the expiry of the deadline set in subregulation (2), information on works and other subject matter for which a right holder has not been identified or located to—

- (i) the right holders that the collective management organisation represents or entities which are its members and which represent right holders; and
 - (ii) the collective management organisations with which it has concluded representation agreements;
 - (b) the collective management organisation-
 - (i) verifying the records referred to in regulation 8(d) and other readily available records; and
 - (ii) where right holders remain unidentified or not located, making the information referred to in paragraph (a) available to the public no later than one year after the end of the 3 month period referred to in that paragraph.
- (8) The information referred to in subregulation (7) includes, where available—
- (a) the title of the work or other subject matter;
 - (b) the name of the right holder;
 - (c) the name of the relevant publisher or producer; and
 - (d) any other relevant information available which could assist in identifying the right holder.
- (9) Amounts due to right holders are non-distributable for the purposes of these Regulations where—
- (a) they cannot be distributed before the end of the period of 3 years from the end of the financial year in which collection of the rights revenue occurred; and
 - (b) the collective management organisation has taken all necessary measures to identify and locate the right holders referred to in subregulation (6).
- (10) The decision on the use of non-distributable amounts referred to in regulation 9(1)(d) is without prejudice to the right of a right holder to claim such amounts from the collective management organisation in accordance with the law providing for a limitation period applicable to the bringing of proceedings.

Rights managed under representation agreements.

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15. A collective management organisation must not discriminate against any right holder whose rights it manages under a representation agreement in particular with respect to–

- (a) applicable tariffs;
- (b) management fees; and
- (c) the conditions for-
 - (i) the collection of rights revenue; and
 - (ii) distribution of amounts due to right holders.

Deductions and payments in representation agreements.

16.(1) A collective management organisation must not make deductions other than in respect of management fees–

- (a) from the rights revenue derived from the rights it manages on the basis of a representation agreement; or
- (b) from any income arising from the investment of that rights revenue,

unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.

(2) A collective management organisation must regularly, diligently and accurately distribute and pay amounts due to other collective management organisations.

(3) A collective management organisation must carry out the distribution and payments referred to in subregulation (2) as soon as possible but no later than 9 months from the end of the financial year in which the rights revenue was collected unless subregulation (4) applies.

(4) This subregulation applies where there are objective reasons which prevent the collective management organisation from distributing or paying the amounts within the time specified in subregulation (3).

(5) The objective reasons referred to in subregulation (4) may, in particular, relate to–

- (a) reporting by users;
- (b) identification of rights or right holders; or

(c) matching of information on works and other subject matter with right holders.

(6) The other collective management organisation referred to in subregulation (1) or, where it has a member which is an entity representing right holders, that member must ensure that it distributes and pays the amounts due to right holders as soon as possible but no later than 6 months from the receipt of those amounts unless subregulation (7) applies.

(7) This subregulation applies where there are objective reasons which prevent the collective management organisation or its member referred to in subregulation (6) from distributing and paying the amounts within the time specified in subregulation (6).

(8) The objective reasons referred to in subregulation (6) may, in particular, relate to—

- (a) reporting by users;
- (b) identification of rights or right holders; or
- (c) matching of information on works and other subject matter with right holders.

Licensing.

17.(1) A collective management organisation and a user must—

- (a) conduct negotiations for the licensing of rights in good faith; and
- (b) provide each other with all necessary information.

(2) An independent management entity and a user must—

- (a) conduct negotiations for the licensing of rights in good faith; and
- (b) provide each other with all necessary information.

(3) A collective management organisation must ensure that licensing terms are based on objective and non-discriminatory criteria.

(4) Subregulation (3) does not require a collective management organisation to use as a precedent for other online services licensing terms agreed with a user where the user is providing a new type of online service which has been available to the public in the Gibraltar or the United Kingdom for less than 3 years.

(5) A collective management organisation must ensure that—

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- (a) right holders receive appropriate remuneration for the use of their rights;
 - (b) tariffs it determines for exclusive rights and rights to remuneration are reasonable in relation to matters such as-
 - (i) the economic value of the use of the rights in trade taking into account the nature and scope of the use of the work and other subject matter; and
 - (ii) the economic value of the service provided by the collective management organisation; and
 - (c) it informs the user concerned of the criteria used for the setting of those tariffs.
- (6) A collective management organisation must—
- (a) reply without undue delay to requests from users indicating, amongst other things, the information needed in order for the collective management organisation to offer a licence;
 - (b) upon receipt of all relevant information without undue delay either—
 - (i) offer a licence; or
 - (ii) provide the user with a reasoned statement explaining why it does not intend to license a particular service; and
 - (c) allow users to communicate with it by electronic means, including, where appropriate, for the purpose of reporting on the use of the licence.

Users' obligations.

18.(1) A user must provide a collective management organisation within an agreed or pre-established time and in an agreed or pre-established format with such relevant information at its disposal on the use of the rights represented by the collective management organisation as is necessary for—

- (a) the collection of rights revenue; and
- (b) the distribution and payment of amounts due to right holders.

(2) A collective management organisation and a user must ensure that they take into account, as far as possible, voluntary industry standards in deciding on the format for the information referred to in subregulation (1).

Information provided to right holders.

19.(1) Without prejudice to subregulations (3) and (4), and regulations 20 and 29(2), a collective management organisation and an independent management entity must make available not less than once a year to each right holder to whom–

- (a) it has attributed rights revenue, or
- (b) made payments,

in the period to which the information relates, at least the information specified in subregulation (2).

(2) The information specified in this subregulation is–

- (a) contact details which the right holder has authorised the collective management organisation or the independent management entity to use in order to identify and locate the right holder;
- (b) the rights revenue attributed to the right holder;
- (c) the amount paid by the collective management organisation or the independent management entity to the right holder for each category of right managed and for each type of use;
- (d) the period during which the use took place for which amounts were attributed and paid to the right holder unless objective reasons relating to reporting by users prevent the collective management organisation or the independent management entity from providing this information;
- (e) deductions made in respect of management fees;
- (f) deductions made for any other purpose other than in respect of management fees, including those that may be legally required for the provision of social, cultural or educational services; and
- (g) rights revenue attributed to the right holder which is outstanding for a period.

(3) A collective management organisation and an independent management entity must provide the information specified in subregulation (2) to the member referred to in paragraph (b) where–

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- (a) it attributes rights revenue to right holders;
- (b) it has as a member an entity responsible for the distribution of rights revenue to right holders; and
- (c) that member does not have that information in their possession.

(4) The member to whom information is supplied under subregulation (3) must make available not less than once a year the information specified in subregulation (2) to each right holder to whom the member has attributed rights revenue or made payments in the period to which the information relates.

Information provided to other collective management organisations.

20.(1) A collective management organisation must make available at least the information specified in subregulation (2) by electronic means no less than once a year to collective management organisations on whose behalf it manages rights under a representation agreement for the period to which the information relates.

- (2) The information specified in this subregulation is–
 - (a) the rights revenue attributed for the rights it manages under the representation agreement;
 - (b) the amounts paid by the collective management organisation–
 - (i) for each category of rights managed, and
 - (ii) for each type of use,for the rights it manages under the representation agreement;
 - (c) rights revenue attributed which is outstanding for any period;
 - (d) deductions made in respect of management fees;
 - (e) deductions made for a purpose other than in respect of management fees referred to in regulation 16;
 - (f) information on any licences granted or refused with regard to works and other subject matter covered by the representation agreement; and

- (g) resolutions adopted by the general assembly of members in so far as those resolutions are relevant to the management of the rights under the representation agreement.

Information provided to right holders, other collective management organisations and users on request.

21.(1) Subject to regulation 26, a collective management organisation and an independent management entity must make the information specified in subregulation (2) or, where it applies, subregulation (4) available by electronic means and without undue delay, in response to a duly justified request, to—

- (a) a collective management organisation on whose behalf it manages rights under a representation agreement;
- (b) a right holder, including a rightholder who is not a member of the collective management organisation but who has a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangements; or
- (c) a user.

(2) The information specified in this subregulation is—

- (a) the works or other subject matter the collective management organisation or the independent management entity represents;
- (b) the rights the collective management organisation or the independent management entity manages directly or under representation agreements; and
- (c) the territories covered.

(3) Subregulation (4) applies where, due to the scope of the activity of the collective management organisation or the independent management entity, the work or other subject matter which it represents cannot be determined.

(4) The information specified in this subregulation is—

- (a) the types of works or of other subject matter the collective management organisation or the independent management entity represents;
- (b) the rights the collective management organisation or the independent management entity manages; and

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- (c) the territories covered.

Disclosure of information to the public.

22.(1) A collective management organisation must–

- (a) make public the information specified in subregulation (3); and
- (b) publish and keep up to date on its public website the information specified in that subregulation.

(2) An independent management entity must make public the information specified in subregulation (3)(a), (b), (c), (e), (f) and (g).

(3) The information specified in this subregulation is–

- (a) its statute;
- (b) its membership terms and the terms of termination of authorisation to manage rights, if these are not included in the statute;
- (c) standard licensing contracts and standard applicable tariffs including discounts;
- (d) the list of persons referred to in regulation 11;
- (e) its general policy on distribution of amounts due to right holders;
- (f) its general policy on management fees;
- (g) its general policy on deductions, other than in respect of management fees, from–
 - (i) rights revenue; and
 - (ii) income arising from the investment of rights revenue including deductions for the purposes of social, cultural and educational services;
- (h) a list of–
 - (i) the representation agreements it has entered into; and
 - (ii) the names of the collective management organisations with which those representation agreements have been concluded;

- (i) the general policy on the use of non-distributable amounts; and
- (j) the complaint handling and dispute resolution procedures available in accordance with regulations 33 and 35 and under the Intellectual Property (Copyright and Related Rights) Act 2005.

Annual transparency report.

23.(1) Irrespective of its legal form, a collective management organisation must–

- (a) draw up and make public an annual transparency report, including the special report referred to in subregulation (3), for each financial year no later than 8 months following the end of that financial year;
- (b) publish on its website the annual transparency report; and
- (c) ensure that the annual transparency report remains available on its website for at least 5 years.

(2) The annual transparency report referred to in subregulation (1) must–

- (a) contain at least the information specified in subregulation (4);
- (b) be audited by a person who is eligible for appointment as a statutory auditor under the Financial Services (Auditors) Act 2009 in respect of the accounting information referred to in subregulation (4)(a), (g), (h), (i), (j) and (k) included in the report; and
- (c) reproduce in full the audit report including any qualifications to that report.

(3) The special report referred to in subregulation (1)(a) must address the use of the amounts deducted for the purposes of social, cultural and educational services and must contain at least the information specified in subregulation (5).

(4) The information specified in this subregulation is–

- (a) financial statements comprising a balance sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash flow statement;
- (b) a report on the activities in the financial year;
- (c) information on refusals to grant a licence pursuant to regulation 17(6)(b)(ii);

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- (d) a description of the legal and governance structure of the collective management organisation;
- (e) information on entities directly or indirectly owned or controlled, wholly or in part, by the collective management organisation;
- (f) information on the total amount of remuneration paid to the persons referred to in regulation 10(2)(b) and regulation 11 in the previous year and on other benefits granted to them;
- (g) a special report on the use of any amounts deducted for the purposes of social, cultural and educational services containing the information referred to in subregulation (5);
- (h) financial information on rights revenue for each category of rights managed and for each type of use (for example broadcasting, online and public performance), including information on–
 - (i) the income arising from the investment of rights revenue; and
 - (ii) use of such income (whether it is distributed to right holders or other collective management organisations or otherwise used);
- (i) financial information on the cost of rights management and other services provided by the collective management organisation to right holders with a comprehensive description of at least the following–
 - (i) all operating and financial costs, with a breakdown for each category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;
 - (ii) operating and financial costs with a breakdown for each category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs, only with regard to the management of rights, including management fees deducted from or offset against–
 - (aa) rights revenue, or
 - (bb) income arising from the investment of rights revenue in accordance with regulation 12(c) and regulation 13(1) to (3);

- (iii) operating and financial costs with regard to services other than the management of rights but including social, cultural and educational services;
 - (iv) resources used to cover costs;
 - (v) deductions made from rights revenue with a breakdown for each category of rights managed and for each type of use and the purpose of the deduction such as costs relating to the management of rights or to social, cultural or educational services;
 - (vi) the percentages that the cost of the rights management and other services provided by the collective management organisation to right holders represents compared to the rights revenue in the relevant financial year for each category of rights managed; and
 - (vii) where the costs in subparagraph (vi) are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;
- (j) financial information on amounts due to right holders with a comprehensive description of at least the following–
- (i) the total amount attributed to right holders with a breakdown for each category of rights managed and type of use;
 - (ii) the total amount paid to right holders, with a breakdown for each category of rights managed and type of use;
 - (iii) the frequency of payments with a breakdown for each category of rights managed and type of use;
 - (iv) the total amount collected but not yet attributed to right holders with a breakdown for each category of rights managed and type of use and indicating the financial year in which those amounts were collected;
 - (v) the total amount attributed to, but not yet distributed to right holders with a breakdown for each category of rights managed and type of use and indicating the financial year in which those amounts were collected;

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- (vi) where a collective management organisation has not carried out the distribution and payments within the period provided for in regulation 14(2), the reason for the delay; and
 - (vii) the total non-distributable amounts along with an explanation of the use to which those amounts have been put; and
 - (k) information on relationships with other collective management organisations, with a description of at least the following–
 - (i) amounts received from and paid to other collective management organisations with a breakdown for each category of rights, for each type of use and for each organisation;
 - (ii) management fees and other deductions from the rights revenue due to other collective management organisations with a breakdown for each category of rights, for each type of use and for each organisation;
 - (iii) management fees and other deductions from the amounts paid by other collective management organisations with a breakdown for each category of rights and for each organisation; and
 - (iv) amounts distributed directly to right holders originating from other collective management organisations with a breakdown for each category of rights and for each organisation.
- (5) The information specified in this subregulation is–
- (a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown for each type of purpose and, for each type of purpose, with a breakdown for each category of rights managed and for each type of use; and
 - (b) an explanation of the use of those amounts with a breakdown for each type of purpose including costs of managing amounts deducted to fund social, cultural and educational services and of the separate amounts used for social, cultural and educational services.

PART 3

Multi-territorial Licensing and Collective Management Organisations

Application.

24.(1) The obligations of a collective management organisation in this Part apply to a collective management organisation established in Gibraltar managing authors' rights in musical works for online use on a multi-territorial basis.

(2) The obligations of a collective management organisation in this Part do not apply to a collective management organisation when it grants, on the basis of the voluntary aggregation of the required rights, a multi-territorial licence for-

- (a) the online rights in musical works required by a broadcaster to communicate or make available to the public its radio or television programmes simultaneously with or after their initial broadcast; and
- (b) any online material, including previews, produced by or for the broadcaster which is ancillary to the initial broadcast of its radio or television programmes.

Capacity to process multi-territorial licences.

25.(1) A collective management organisation which grants multi-territorial licences for online rights in musical works must ensure that it has sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of a multi-territorial licence for online rights in musical works.

(2) For the purposes of subregulation (1) "sufficient capacity" includes sufficient capacity for the purposes of-

- (a) identifying the repertoire and monitoring its use;
- (b) invoicing users;
- (c) collecting rights revenue; and
- (d) distributing amounts due to right holders.

(3) For the purposes of subregulation (1) a collective management organisation must-

- (a) have the ability to identify accurately the musical works, wholly or in part, which the collective management organisation is authorised to represent;
- (b) have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding right holders for each musical work, or share in such work, which the collective management organisation is authorised to represent;

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- (c) make use of unique identifiers in order to identify right holders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international level or at the level of the European Union; and
- (d) make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

Transparency of multi-territorial repertoire information.

26.(1) In response to a duly justified request a collective management organisation which grants multi-territorial licences for online rights in musical works must provide, by electronic means, to—

- (a) online service providers,
- (b) right holders whose rights it represents, and
- (c) other collective management organisations,

up-to-date information allowing the identification of the online music repertoire it represents.

(2) The information referred to in subregulation (1) includes—

- (a) the musical works represented;
- (b) the rights represented wholly or in part; and
- (c) the territories covered.

(3) In complying with regulation (1) a collective management organisation may take reasonable measures, where necessary, to—

- (a) protect the accuracy and integrity of the data;
- (b) control their reuse; and
- (c) protect commercially sensitive information.

Accuracy of multi-territorial repertoire information.

27.(1) A collective management organisation which grants multi-territorial licences for online rights in musical works must have in place arrangements to enable—

- (a) a right holder,
- (b) another collective management organisation, and
- (c) an online service provider,

to request a correction of the data referred to in regulation 25(3) or the information provided under regulation 26 where a person referred to in paragraphs (a) to (c) believes on the basis of reasonable evidence that the information or data is inaccurate in respect of their online rights in musical works.

(2) Where a claim under subregulation (1) is sufficiently substantiated the collective management organisation must correct the data or information without undue delay.

(3) A collective management organisation must provide–

- (a) right holders whose musical works are included in its own music repertoire, and
- (b) right holders who have entrusted the management of their online rights in musical works to it in accordance with regulation 32,

with the means of submitting to it in electronic form information concerning their musical works, their rights in those works and the territories in respect of which the right holders authorise the organisation.

(4) When information is submitted in accordance with subregulation (3), the collective management organisation and the right holder must take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data developed at international level or at the level of the European Union allowing right holders to specify–

- (a) the musical work, wholly or in part;
- (b) the online rights, wholly or in part; and
- (c) the territories in respect of which they authorise the organisation.

(5) A collective management organisation which has been mandated by another collective management organisation to grant multi-territorial licences for online rights in musical works under regulations 30 or 31 must comply with subregulation (3) with respect to the right holders whose musical works are included in the repertoire of the mandating collective management organisation, unless the collective management organisations agree otherwise.

Reporting and invoicing.

28.(1) A collective management organisation must monitor the use of online rights in musical works which it represents, wholly or in part, by online service providers to which it has granted a multi-territorial licence for those rights.

(2) A collective management organisation must offer online service providers the possibility of reporting by electronic means the actual use of online rights in musical works.

(3) A collective management organisation must offer the use of at least one method of reporting the matters referred to in subregulation (2) which takes account of voluntary industry standards or practices developed at international level or at the level of the European Union for the electronic exchange of such data.

(4) A collective management organisation may refuse to accept reporting by the online service provider in a proprietary format if the organisation allows for reporting using an industry standard for the electronic exchange of data.

(5) An online service provider must accurately report the use of the works referred to in subregulation (2).

(6) A collective management organisation must invoice the online service provider by electronic means in accordance with subregulations (7) and (8).

(7) The collective management organisation must offer the use of at least one format which takes into account voluntary industry standards or practices developed at international level or at the level of the European Union.

(8) The invoice must identify–

- (a) the works and rights which are licensed, wholly or in part, on the basis of the data referred to in regulation 25(3); and
- (b) the corresponding actual uses, to the extent this is possible on the basis of the information provided by the online service provider and the format used to provide that information.

(9) The online service provider may not refuse to accept the invoice because of its format if the collective management organisation is using an industry standard.

(10) The collective management organisation must invoice the online service provider accurately and without delay after the actual use of the online rights in that musical work is reported except where this is not possible for reasons attributable to the online service provider.

(11) The collective management organisation must have in place adequate arrangements enabling the online service provider to challenge the accuracy of the invoice including when the online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

Payment to right holders.

29.(1) Without prejudice to subregulation (3), a collective management organisation which grants multi-territorial licences for online rights in musical works must distribute amounts due to a right holder accruing from multi-territorial licences for online rights in musical works accurately and without delay after the actual use of the work is reported unless this is not possible for reasons attributable to the online service provider.

(2) Without prejudice to subregulation (3), a collective management organisation must provide at least the following information to a right holder together with each payment it makes under subregulation (1)–

- (a) the period during which the uses took place for which amounts are due to the right holder and the territories in which the uses took place;
- (b) the amounts collected, deductions made and amounts distributed by the collective management organisation for each online right in any musical work which the right holder has authorised the collective management organisation to represent wholly or in part; and
- (c) the amounts collected for the right holder, deductions made and amounts distributed by the collective management organisation in respect of each online service provider.

(3) Where a collective management organisation (“the mandating collective management organisation”) mandates another collective management organisation (“the mandated collective management organisation”) to grant multi-territorial licences for online rights in musical works under regulations 30 and 31 then–

- (a) the mandated collective management organisation must–
 - (i) distribute the amounts referred to in subregulation (1) accurately and without delay to the mandating collective organisation; and
 - (ii) provide the information referred to in subregulation (2) to the mandating collective management organisation; and;

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- (b) the mandating collective management organisation has responsibility for–
 - (i) the subsequent distribution of the amounts referred to in paragraph (a)(i) to right holders, and
 - (ii) the subsequent provision of the information referred to in paragraph (a)(ii) to right holders,unless the mandating and mandated collective management organisations agree otherwise.

Agreements between collective management organisations for multi-territorial licensing.

30.(1) A collective management organisation (“the mandating collective management organisation”) must–

- (a) ensure that a representation agreement under which the organisation mandates another collective management organisation (“the mandated collective management organisation”) to grant multi-territorial licences for the online rights in musical works in its musical repertoire is of a non-exclusive nature; and
- (b) inform–
 - (i) its members, and
 - (ii) right holders who are not its members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,

of the main terms of that agreement including its duration and the costs of the services provided by the mandated collective management organisation.

(2) The mandated collective management organisation must–

- (a) manage the online rights referred to in subregulation (1) on a non-discriminatory basis; and
- (b) inform the mandating collective management organisation of the main terms according to which the mandating collective management organisation’s online rights are to be licensed including–
 - (i) the nature of the exploitation;

- (ii) all provisions which relate to or affect the licence fee;
- (iii) the duration of the licence;
- (iv) the accounting periods; and
- (v) the territories covered.

Representation of other collective management organisations in relation to multi-territorial licensing.

31.(1) This regulation applies where a collective management organisation (“the requesting collective management organisation”)–

- (a) does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire; and
- (b) requests another collective management organisation (“the requested collective management organisation”) to enter into a representation agreement to represent the rights referred to in paragraph (a).

(2) Where this regulation applies–

- (a) the requested collective management organisation must agree to the request referred to in subregulation (1)(b) if that organisation is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations;
- (b) the requested collective management organisation must respond to the requesting collective management organisation in writing without undue delay;
- (c) without prejudice to paragraphs (e) and (f) and subregulation (3), the requested collective management organisation must manage the represented repertoire of the requesting collective management organisation on the same conditions as those which it applies to the management of its own repertoire;
- (d) the requested collective management organisation must include the represented repertoire of the requesting collective management organisation in all offers it addresses to online service providers;
- (e) the requested collective management organisation must ensure that the management fee for the service provided by the requested collective management

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organisation to the requesting management organisation does not exceed the costs reasonably incurred by the requested collective management organisation; and

- (f) the requesting collective management organisation must make available to the requested collective management organisation information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works.

(3) Where the information provided under subregulation (2)(f) is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Part, subregulation (2) does not prevent the requested collective management organisation from—

- (a) charging for the costs reasonably incurred in meeting the requirements of this Part; or
- (b) excluding the online rights in musical works for which information is insufficient or cannot be used.

Access to multi-territorial licensing.

32.(1) This regulation applies to a collective management organisation established in Gibraltar which by 10th April 2017—

- (a) does not grant or offer to grant multi-territorial licences for online rights in musical works; or
- (b) does not allow another collective management organisation to represent those rights for such purpose.

(2) A collective management organisation to which this regulation applies must ensure that a right holder who has authorised that collective management organisation to represent their online rights in musical works can withdraw from that collective management organisation the online rights in musical works under the conditions provided in subregulation (3).

(3) The conditions provided in this subregulation are—

- (a) the withdrawal referred to in subregulation (2) is for the purpose of multi-territorial licensing in respect of all territories in order to—
 - (i) grant multi-territorial licenses for the right holder's online rights in musical works by that right holder; or

- (ii) grant multi-territorial licences for those works through any other person the right holder authorises or through any collective management organisation complying with the provisions of this Part; and;
- (b) the withdrawal does not require withdrawal of online rights in musical works for the purposes of mono-territorial licensing.

PART 4
Dispute Resolution, Enforcement and Miscellaneous

Complaints procedure.

33.(1) A collective management organisation must make available to—

- (a) its members,
- (b) right holders who are not its members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement, and
- (c) collective management organisations on whose behalf it manages rights under representation agreement,

effective and timely procedures for dealing with complaints.

(2) The matters covered by the procedures for dealing with complaints referred to in subregulation (1) relate in particular to—

- (a) authorisation to manage rights;
- (b) termination or withdrawal of rights;
- (c) membership terms;
- (d) the collection of amounts due to right holders; and
- (e) deductions and distributions.

(3) A collective management organisation must—

- (a) respond in writing to complaints; and
- (b) give reasons where it rejects a complaint.

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Data Protection.

34. The processing of personal data carried out within the framework of these Regulations is subject to the Data Protection Act 2004.

Alternative dispute resolution procedures.

35.(1) A collective management organisation must ensure that disputes between–

- (a) a collective management organisation and one of its members, a right holder, a user or another collective management organisation concerning compliance with these Regulations; and
- (b) a collective management organisation to which Part 3 of these Regulations applies which grants or offers to grant multi-territorial licences for online rights in musical works with–
 - (i) an actual or potential online service provider regarding compliance with regulation 17, 26, 27 and 28;
 - (ii) a right holder regarding compliance with regulation 26, 27, 28, 29, 30, 31 and 32; and
 - (iii) another collective management organisation regarding compliance with regulation 26, 27, 28, 29, 30 and 31;

can be submitted to an independent and impartial alternative dispute resolution procedure.

Monitoring of compliance.

36. The Gibraltar Regulatory Authority must monitor compliance with these Regulations.

Evidence of non-compliance.

37.(1) The Gibraltar Regulatory Authority must ensure that procedures exist enabling–

- (a) a member of a collective management organisation,
- (b) a right holder,
- (c) a user,
- (d) a collective management organisation,

- (f) an independent management entity; or
- (e) another interested party,

to notify it of activities or circumstances which constitute a breach of these Regulations.

(2) The Gibraltar Regulatory Authority must have regard to evidence notified under subregulation (1).

Information notice.

38.(1) The Gibraltar Regulatory Authority may give notice to—

- (a) a collective management organisation;
- (b) a member;
- (c) a right holder or a body representing the interest of right holders;
- (d) a user or a body representing the interest of users;
- (e) an entity to which a provision of these Regulations applies under regulation 4(3);
or
- (f) an independent management entity;

requiring it to supply to the Gibraltar Regulatory Authority such information or document as may be specified or described in the notice for the purposes of ascertaining whether these Regulations have been complied with.

(2) The notice may require the person to whom it is addressed to supply the information or document at a time and a place and in a form and manner specified in the notice.

(3) The person to whom the notice is addressed shall supply the Gibraltar Regulatory Authority the information or document which is specified or described in the notice under subregulation (1) in accordance with the requirements specified under subregulation (2).

(3) The Gibraltar Regulatory Authority may, for the purpose described in subregulation (1), copy any document or information provided.

(4) A notice given under this regulation—

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- (a) must be in writing;
- (b) must state that the person to whom it is addressed may appeal to the Magistrates Court under regulation 40 against any requirement therein within 21 days;
- (c) must give notice of the offence under subregulation (8);
- (d) need not be complied with before the end of the period during which an appeal may be brought under regulation 40; and
- (e) need not be complied with before the determination of an appeal brought under regulation 40.

(5) The Gibraltar Regulatory Authority may, for the purpose described in subregulation (1), copy any document or information provided.

(6) A reference in this regulation to the supply of a document is a reference to the supply of a legible and intelligible copy.

(7) The Gibraltar Regulatory Authority may not require a person to supply information or a document that is privileged from disclosure in court proceedings.

(8) A person commits an offence if he, without reasonable excuse—

- (a) fails or refuses to comply with a requirement specified in a notice under this regulation; or
- (b) in purported compliance with such a requirement furnishes information knowing it to be false or misleading in a material respect.

Enforcement notice.

39.(1) Where the Gibraltar Regulatory Authority considers that—

- (a) a collective management organisation;
- (b) a member;
- (c) a right holder or a body representing the interests of right holders;
- (d) a user or a body representing the interest of users;

- (e) an entity to which a provision of these Regulations applies under regulation 4(3);
or
- (f) an independent management entity;

has failed to comply with its obligations under these Regulations, it may give a notice to that person.

(2) A notice given under this regulation-

- (a) must be in writing;
- (b) must specify the provision of these Regulations that, in the opinion of the Gibraltar Regulatory Authority, has been or is being contravened and the reasons for having formed this opinion;
- (c) must specify the action which must be taken to rectify the contravention and the time period in which this action must be taken;
- (d) must give notice of the offence under subregulation (4);
- (e) must state that the person to whom it is addressed may appeal to the Magistrates Court under regulation 40 against any requirement therein within 21 days.
- (f) need not be complied with before the end of the period during which an appeal may be brought under regulation 40; and
- (g) need not be complied with before the determination of an appeal brought under regulation 40.

(3) The Gibraltar Regulatory Authority may rescind a notice given to a person under subregulation (1) and where doing so must give the person notice of the rescission.

(4) A person who, without reasonable excuse, fails or refuses to comply with a requirement specified in an enforcement notice shall be guilty of an offence.

Appeals.

40.(1) An appeal may be made to and determined by the Magistrate's Court against a requirement specified in a notice under regulations 38 or 39, and such appeal shall be brought within 21 days from the service on the person concerned of the relevant notice.

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(2) A decision of the Magistrates' Court on an appeal made under subregulation (1) is final save that an appeal may be brought to the Supreme Court on a point of law against such a decision and references in these Regulations to the determination of an appeal shall be construed as including references to the determination of an appeal to the Supreme Court and any appeal from the decision of that Court.

Offences.

41.(1) A person responsible for an act or omission contrary to the provisions of these Regulations without reasonable excuse, is guilty of an offence.

(2) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction to a fine not exceeding level 4 on the standard scale; or
- (b) on conviction on indictment to a fine not exceeding level 5 on the standard scale.

(2) Where an offence under these Regulations has been committed by a corporate body and it is proved—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer as well as the corporate body commits the offence and is liable to be proceeded against.

(3) In subregulation (2), “officer” means—

- (a) a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity; and
- (b) if the affairs of the corporate body are managed by its members, a member when acting in connection with his functions of management of the body.

42. *Deleted.*

Power to issue guidance.

43. The Gibraltar Regulatory Authority may issue guidance with respect to the operation of these Regulations.

44. *Deleted.*

Amendment.

45. In section 137(2) of the Intellectual Property (Copyright and Related Rights) Act 2005–

(a) the words after “a “licensing body” means” becomes paragraph (a);

(b) delete the full stop at the end of paragraph (a); and

(c) after that paragraph insert–

“; or,

(b) any other organisation which is a collective management organisation or independent management entity as defined by regulation 3 of the Collective Management of Copyright Regulations 2016.”.