

# Public Consultation on Proposed Licence Conditions and Code of Conduct for Collective Management Organisations

Prepared by the Ministry of Law (“**MinLaw**”) and the Intellectual Property Office of Singapore (“**IPOS**”)

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## PART I: INTRODUCTION

- 1.1 MinLaw and IPOS are conducting a public consultation on the proposed licence conditions and Code of Conduct for collective management organisations (“**CMOs**”). The public consultation period is from **3 June 2020 to 30 June 2020**.
- 1.2 On 17 January 2019, MinLaw and IPOS published the [Singapore Copyright Review Report](#), outlining proposed changes to Singapore’s copyright regime. One of the key proposals is the introduction of a class licensing scheme for CMOs (the “**Proposed Licensing Scheme**”), with the following features:
  - 1.2.1 Any entity that carries out collective licensing activities in Singapore will be automatically subject to and have to comply with all licence conditions.
  - 1.2.2 The class licence will reference a mandatory Code of Conduct to set standards for transparency, governance, accountability and efficiency. It will require CMOs to have dispute resolution mechanisms in place for creators.
  - 1.2.3 The onus for implementation and adherence to the Code of Conduct will be on the management and governing board of the CMO.
  - 1.2.4 As the regulator and the authority overseeing the implementation of the Proposed Licensing Scheme, IPOS will have certain supervisory powers.
- 1.3 The objective of this consultation is to ensure that the Proposed Licensing Scheme fosters a well-functioning collective management ecosystem, while being practical in that it does not impose overly burdensome compliance effort and cost.
- 1.4 The Proposed Licensing Scheme is set out in Part III of this consultation paper. It has taken into consideration feedback from the Public Consultation on the Copyright Collective Rights Management Ecosystem in Singapore conducted in 2017 (“**2017 Consultation**”), discussions with various stakeholders, as well as legislation and regulations from other jurisdictions and codes of conduct of national and international CMOs.
- 1.5 We invite interested persons to comment on the issues highlighted in this consultation paper.<sup>1</sup>

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<sup>1</sup> As mentioned in Conclusion 15 of the [Singapore Copyright Review Report](#), IPOS will not intervene to set rates or approve licence fees. Besides the proposals in Topic 8 enhancing the Copyright Tribunal to deal with CMO

## **PART II: BACKGROUND**

### **A. Collective Management of Copyrighted Works**

- 2.1 In 2017, the creative sector in Singapore employed a total of 12,400 people and had revenues of around S\$2.8 billion.<sup>2</sup> The copyright collective management ecosystem is a small part of this. The turnover of the three major CMOs in Singapore came up to approximately S\$26.7 million in 2014.<sup>3</sup> However, this small sector is important for local creators and has far-reaching impact on our broader economy. It is important that the use of local creators' works are properly compensated, so as to reward them and enable them to reinvest to create new works to enrich our society. Copyrighted works are widely used by all the other sectors of our economy, such as education, technology, hospitality, retail, food & beverage and entertainment. Their businesses would be severely impacted if they could not use literary works, music, or film and video.
- 2.2 A well-functioning collective management system for copyrighted works that is transparent, accountable and efficient is therefore crucial for rights-holders as well as the overall functioning of the broader economy. Collective management reduces transaction effort, and therefore transaction costs, of licensing. This gives users simple, cost-effective access to a broad range of works, and offers rights-holders broad access to markets without having to individually negotiate and license their works. CMOs are therefore a vital link between rights-holders and users.
- 2.3 However, we must safeguard and intervene against any monopolistic, and other undesirable behaviours, which actually impede or hamper the use of works. Part III below sets out the Proposed Licensing Scheme which is aimed at minimising undesirable behaviour and promoting behaviour that benefits the rights-holders and users.

### **B. Current CMO Ecosystem in Singapore**

- 2.4 CMOs are currently not regulated in Singapore; there is no independent oversight over the governance and management of CMOs. There is therefore no minimum standard which they adhere to, in particular in their dealings with members and users. Further, the public is unable to find an exhaustive list of all the CMOs operating in Singapore and the rights each CMO administers.

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competition issues, IPOS will also separately look into the procedural details of proceedings before the Copyright Tribunal to facilitate the use of this forum by CMOs and users.

<sup>2</sup> Singapore Cultural Statistics 2019, released by the Ministry of Culture, Community and Youth. Creative sector in this case refers to the sub-sectors of Film & Video, Recorded Music, and Literary Arts.

<sup>3</sup> "Collecting Societies Managing Digital Rights" by Edmund Lam for the World Intellectual Property Organization's Regional Seminar on Building Awareness of the Principles and Functions of Copyright in Today's Changing Environment held in April 2016. The three CMOs are the Composers and Authors Society of Singapore Ltd, the Copyright Licensing and Administration Society of Singapore, and the then-Recording Industry Performance Singapore Pte Ltd (now known as Music Rights (Singapore) Public Limited).

- 2.5 In the past, CMOs had attempted self-regulation through a voluntary code of conduct. However, such attempts proved unsuccessful. This voluntary code has since been discontinued and CMOs no longer consider themselves bound by it.
- 2.6 However, as CMOs handle voluminous transactions involving a multitude of rights-holders and users, it is imperative that they operate with high standards of transparency and governance, and are able to adapt to the digital environment in which works are largely now created, consumed and distributed. Global developments such as the COVID-19 pandemic has further catalysed digital transformation and disrupted the traditional patterns of content creation and consumption. It has become especially important for rights-holders to capture the digital economy's emerging opportunities for distributing their works, while users adapt to the integration of technology in their daily activities. For example, in the first quarter of 2020, Netflix experienced a surge in subscribers, almost double the previous quarter,<sup>4</sup> and Spotify's new subscriber numbers came in at the higher end of their forecast.<sup>5</sup> Therefore, the market needs, now more than ever, to be refreshed and reinvigorated to ensure that it remains efficient and relevant to all stakeholders.
- 2.7 While the Copyright Tribunal exists as a forum for resolving licensing disputes between CMOs and users, it merely serves a dispute resolution function. The Copyright Tribunal does not have jurisdiction to resolve issues beyond licensing disputes, such as the governance and management of CMOs, as well as disputes between CMOs and their members. It does not exercise supervisory oversight over the collective management ecosystem, nor does it regulate the conduct of CMOs.

## **C. Feedback from the 2017 Consultation and Our Policy Approach**

### *The need for a Proposed Licensing Scheme*

- 2.8 From the feedback received in the 2017 Consultation, it is clear that deficiencies persist in the current collective management ecosystem where CMOs are not regulated, particularly for rights-holders and users.<sup>6</sup> While CMOs generally expressed that self-regulation was best for the industry, we note that the previous attempt at self-regulation through a voluntary code has since been abandoned by the CMOs involved.
- 2.9 Therefore, we are of the view that there is need for external oversight of CMOs. The relevant legislation should create a transparent and efficient system for parties to operate in without being unduly prescriptive.

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<sup>4</sup> "Netflix gets 16 million new sign-ups thanks to lockdown", 22 Apr 2020, <https://www.bbc.com/news/business-52376022>.

<sup>5</sup> "Spotify hits 130 million subscribers amid Covid-19", 29 Apr 2020, <https://www.bbc.com/news/technology-52478708>.

<sup>6</sup> The key challenges in our collective management ecosystem are set out in paragraphs 2.15.1 – 2.15.5 of the [Singapore Copyright Review Report](#).

- 2.10 In developing the Proposed Licensing Scheme, we considered the experience of other countries,<sup>7</sup> and took reference from the [\*WIPO Good Practice Toolkit for CMOs\*](#) (“**WIPO Toolkit**”). Published in October 2018 by the World Intellectual Property Organization (“**WIPO**”) and based on the input received from WIPO member states and other stakeholders, the WIPO Toolkit is a working document that compiles examples of legislation, regulation and codes of conduct in the area of collective management of copyright and related rights from around the world. These are then distilled into examples of good practices.

*Objectives and principles of the Proposed Licensing Scheme*

- 2.11 The Proposed Licensing Scheme will address a wide range of issues relating to collective management in Singapore, while being “**light-touch**” in nature. This approach will focus on key areas which would help promote better market efficiency but without unnecessarily increasing compliance effort. This will keep compliance costs to a minimum.
- 2.12 The Proposed Licensing Scheme will hold all CMOs to certain minimum standards in areas relating to:
- 2.12.1 **Transparency** – ensuring that sufficient information is made available for stakeholders to make considered decisions in their interactions with CMOs;
  - 2.12.2 **Governance** – inspiring public confidence in the management of the CMOs;
  - 2.12.3 **Accountability** – making available to members all relevant information regarding the CMO’s activities, while bearing in mind the voluminous transactions in which CMOs collect and distribute monies; and
  - 2.12.4 **Efficiency** – improving ease of access to works administered by CMOs, which would in turn encourage users to take up collective licensing solutions and incentivise rights-holders to have their works managed by CMOs.

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<sup>7</sup> Specific details have been set out in Part IV of the consultation paper of the 2017 Consultation.

### PART III: PROPOSED LICENSING SCHEME

- 3.1 Our proposals on the Proposed Licensing Scheme are categorised by the topics below:

S/N	Topics	Page
1.	Application and Scope of the Proposed Licensing Scheme	6
2.	Definition of a CMO	8
3.	Rights of Members	13
4.	Distribution of licence fees	17
5.	Information to be provided by a CMO to Users	21
6.	Dispute resolution	25
7.	Governance and management of a CMO	27
8.	Facilitating an efficient market	30
9.	Supervisory powers of the Authority	36
10.	Appointment of Code Reviewers	40

- 3.2 The proposed areas will affect rights-holders, users and CMOs to different extents:

3.2.1 If you are an owner of copyrighted materials (whether as an author, a composer, a lyric writer, a photographer, a record company, a publisher, etc), the **topics 1 to 6 and 8 may be most relevant to you.**

3.2.2 If you use copyrighted materials via a copyright licence, the **topics 1, 2, 4 to 6 and 8 may be most relevant to you.**

3.2.3 If you are a CMO, **all the topics would be relevant to you.**

- 3.3 Regardless of the above recommended relevant areas, views and comments from any interested party on any of the topics are welcome.

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## **Topic 1: Application and Scope of the Proposed Licensing Scheme**

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### **A. Application of the Proposed Licensing Scheme**

- 3.4 We will not require CMOs to apply to or register with IPOS before carrying out collective licensing activities. Any entity that carries out such activities in Singapore that fall within the prescribed definition (see Topic 2) will be automatically subject to the class licence. It will therefore have to comply with the licence conditions.
- 3.5 Nonetheless, to facilitate the oversight of the Proposed Licensing Scheme and enable access for users, it is proposed that the licence conditions will require CMOs to provide their contact details to IPOS within a specified time period after they commence operations. These details will be published on IPOS' website for general information.
- 3.6 Further, the licence conditions and Code of Conduct will be published on the IPOS website for accessibility.

### **B. Scope of the Proposed Licensing Scheme**

- 3.7 The Proposed Licensing Scheme is developed in response to specific feedback we had received following the 2017 Consultation, and is therefore not intended to be comprehensive and exhaustive in its scope.<sup>8</sup> It is intentionally scoped to target critical areas where problems continue to persist, following the unsuccessful attempt at self-regulation. Accordingly, the licence conditions will set out the broad principles and general obligations which CMOs must comply with in the various aspects of their operation. The licence conditions will then reference a mandatory Code of Conduct which gives further details and specific guidance on how these principles should be operationalised.
- 3.8 Given that the Proposed Licensing Scheme will apply across the board to all CMOs, regardless of the size of operations of the CMO and its level of experience in the industry, we are mindful that it should not create unnecessary entry barriers for potential new CMOs, nor should it result in undue compliance cost. The Proposed Licensing Scheme should therefore set a minimum standard for the conduct and operation of CMOs, but no more than necessary. MinLaw and IPOS will review the licence conditions and Code of Conduct from time to time, and engage the industry as appropriate, so as to respond to the evolving needs and challenges in the collective management scene. Where appropriate and necessary, we can also work with industries and stakeholders to develop specific Codes depending on (i) the categories of rights which CMOs manage; or (ii) the sector in which CMOs are engaged.
- 3.9 For a start, the Proposed Licensing Scheme will cover the following areas:

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<sup>8</sup> The WIPO Toolkit has compiled examples of legislation, regulation and codes of conduct in 27 areas. We do not intend to propose regulations for all areas.

Topic 3	Rights of Members
Topic 4	Distribution of licence fees
Topic 5	Information to be provided by a CMO to Users
Topic 6	Dispute resolution
Topic 7	Governance and management of a CMO
Topic 8	Facilitating efficient market conduct
Topic 9	Supervisory powers of the Authority
Topic 10	Appointment of Code Reviewers

**Question 1(a):** Are there any additional concerns or challenges faced in areas which are not listed in the proposed scope? If your answer is “Yes”, please provide a brief description of the problem, your proposed regulation which would help to resolve this problem, and its potential impact on compliance cost.

**Question 1(b):** Should there be different Codes of Conduct depending on the different categories of the CMOs and the sectors they operate in? If your answer is “Yes”, please provide a brief description of what these differences might be.

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**Topic 2: Definition of a CMO**

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- 3.10 CMOs are automatically subject to the Proposed Licensing Scheme so long as they fall within the prescribed definition. It is therefore important that the definition of a CMO is clear and precise, to avoid being under-inclusive or over-inclusive, and so that entities are clear whether or not they fall within the Proposed Licensing Scheme.
- 3.11 Currently, there is no definition of CMO in the Copyright Act (Cap. 63) (“**CA**”). There is a definition of “licensor” under section 149(1) of the CA which is to be read in conjunction with section 149(3), as follows:

**Section 149(1)**

“**licensor**” means any association, body or organisation (whether incorporated or unincorporated) which —

(a) carries on the business of negotiating, granting or otherwise collectively administering licences in relation to a repertoire of works or other subject-matter by different authors, makers or publishers who are not affiliated with that association, body or organisation within the meaning of subsection (3); and

(b) negotiates, grants or otherwise collectively administers such licences either as the owner or prospective owner of the copyrights in such works or other subject-matter or as the agent or representative of the owners or prospective owners of the copyrights in such works or other subject-matter;

**Section 149(3)**

For the purposes of the definition of “licensor” in subsection (1), the author, maker or publisher of any work or other subject-matter is affiliated with the association, body or organisation which carries on the business of negotiating, granting or otherwise collectively administering licences in relation to that work or other subject-matter if such author, maker or publisher produced or published that work or other subject-matter in the course of his employment with, or under a commission from —

(a) that association, body or organisation; or

(b) any other association, body or organisation which is related, in such manner as may be prescribed, to the first-mentioned association, body or organisation.

- 3.12 In our review of the definitions used in other jurisdictions, we note that the definition of CMOs generally make a reference to their function, their organisational structure, the manner in which they obtain their mandate from their members, and whether they are organised on a for-profit or not-for-profit basis. In some jurisdictions, the regulations also make a distinction between CMOs based on the above categories. A selection of some of these definitions are compiled in the table below:



JURISDICTION	DEFINITION
<p><b>Canada</b></p> <p>Section 2, Copyright Act</p>	<p><b><i>collective society</i></b> means a society, association or corporation that carries on the business of collective administration of copyright or of the remuneration right conferred by section 19 or 81 for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration, and</p> <p>(a) operates a licensing scheme, applicable in relation to a repertoire of works, performer's performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster, pursuant to which the society, association or corporation sets out classes of uses that it agrees to authorize under this Act, and the royalties and terms and conditions on which it agrees to authorize those classes of uses, or</p> <p>(b) carries on the business of collecting and distributing royalties or levies payable under this Act in relation to a repertoire of works, performer's performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster;</p>
<p><b>European Union (EU)</b></p> <p>Article 3, Collective Rights Management Directive 2014/26/EU</p>	<p>'collective management organisation' means any organisation which 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 rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria:</p> <p>(i) it is owned or controlled by its members;</p> <p>(ii) it is organised on a not-for-profit basis;</p> <p>'independent management entity' means any organisation which 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 rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which is:</p> <p>(i) neither owned nor controlled, directly or indirectly, wholly or in part, by rightholders; and</p>

	(ii) organised on a for-profit basis;
<b>Hong Kong</b>  Section 145(4), Copyright Ordinance	<p><b>“licensing body”</b> (特許機構) means a society or other organization, whether registered under section 149 or not, which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author;</p>
<b>United Kingdom (UK)</b>  Regulation 2(1), Collective Management of Copyright (EU Directive) Regulations 2016	<p><b>“collective management organisation”</b> means an organisation which—</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) is either owned or controlled by its members or is organised on a not for profit basis, or both;</li> </ul> <p><b>“independent management entity”</b> means an organisation which—</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) is neither owned nor controlled, directly or indirectly, wholly or in part, by right holders; and</li> <li>(c) is organised on a for profit basis;</li> </ul>

3.13 Having considered the above, our specific considerations in determining what falls within the definition of a CMO are as follows:

(i) Function of CMO

3.13.1 As the name suggests, a CMO is an organisation which aggregates the rights of all its members and license them collectively to users. Therefore, we propose to include all entities which negotiate, grant or otherwise collectively

administer licences in relation to a repertoire of works; and which collect and distribute the royalties.

3.13.2 In contrast, there may be organisations which carry out individual licensing instead of collective licensing. Individual licensing occurs when the licence granted to a user covers only specific works out of the organisation's suite of repertoire, or covers only the works by particular individuals. If an organisation carries out both collective licensing and individual licensing activities, we propose that the organisation would still be subject to the Proposed Licensing Scheme in respect of its collective licensing activities.

3.13.3 Further, it is not necessary for the CMO to carry out collective licensing activities as its main business or as its sole or main purpose. CMOs often carry out education and outreach efforts in promoting the local creative industries. They are not precluded from doing so, nor would doing so bring them out of the Proposed Licensing Scheme.

(ii) Structure of CMO

3.13.4 We do not distinguish whether the CMO is an incorporated or unincorporated body. If the CMO is an incorporated body, it does not matter what form of incorporation it assumes. CMOs have the freedom to decide the manner of establishment which best suits their needs, depending on their operational considerations.

3.13.5 We do not distinguish whether the CMO is owned or controlled by its members or otherwise. We also do not distinguish whether the CMO is a for-profit or not-for-profit organisation. This prevents a CMO from falling outside the scope of the Proposed Licensing Scheme simply because of its organisational structure, even though it is carrying out a collective licensing function which has a significant impact on the public. In this regard, we note the experience of the UK Intellectual Property Office ("**UKIPO**") with the Mechanical Copyright Protection Society Limited ("**MCPS**"). UKIPO entered into a Memorandum of Understanding with MCPS in 2017, committing MCPS to voluntarily comply with the UK's Regulations, because MCPS was a for-profit company which was not owned or controlled by its members, thus falling outside the definition of a CMO in the UK's Regulations.<sup>9</sup>

(iii) Mandate from members

3.13.6 There is a written mandate from each member authorising the CMO to act on its behalf for that collective licensing scheme and which clearly states the nature and type of rights that the CMO is to administer on behalf of the member.

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<sup>9</sup> Further details are available on the [UKIPO's website](https://ukipo.gov.uk), and a copy of the MOU is available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583488/MCPS-understanding.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583488/MCPS-understanding.pdf).

**Question 2(a):** What are your views on the considerations for defining a CMO that we have set out above?

**Question 2(b):** Are there any further considerations that you wish to propose?

**Question 2(c):** Do you have a definition for a CMO to propose?

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### Topic 3: Rights of Members

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- 3.14 Members form the basis for the existence of CMOs, from whom CMOs derive the requisite rights to manage. Members entrust their rights to a CMO and in many cases, become wholly dependent on them for an efficient transaction of these rights. Therefore, a CMO owes its primary responsibility towards the members it represents.
- 3.15 To this end, CMOs should treat their members fairly and without discrimination. While these members are not part of the CMO's corporate structure,<sup>10</sup> CMOs should also provide appropriate and effective mechanisms for members to participate in the management and key decision-making processes of the CMO.
- 3.16 Further, a member should also have the freedom to determine what rights are managed by the CMO and whether to continue granting these rights to the CMO. Nonetheless, this would have to be balanced against the CMO's need to have a meaningful repertoire of rights to manage and license to users.
- 3.17 It is not our intention to stipulate an exhaustive list of rights which CMOs must grant to its members. Instead, we propose the following which form the minimum standard that CMOs must provide their members:<sup>11</sup>

(i) Membership Agreement

- 3.17.1 CMOs must have a membership agreement which they enter into with their prospective members. The agreement must provide clearly the applicable rights, obligations and other essential information relating to the membership with the CMO. The agreement must, at a minimum, explain:
- a. the nature and type of the rights granted to the CMO, e.g. whether the rights are public performance and/or reproduction rights etc.;
  - b. the scope of the rights of administration granted by the members to the CMO under the agreement, e.g. whether the CMO has the authority to sue on behalf of the member, whether the CMO can waive collection of licence fees etc.;
  - c. the arrangements for terminating membership;

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<sup>10</sup> The members referred to in this paper are the rights-holders of copyrighted materials who enter into a collective licensing agreement with CMOs to manage their rights. These members usually do not form part of the corporate structure – for example, the shareholders of a company are also known as “members” of the company. These shareholders are part of the corporate structure of the CMO, and have certain rights under the Companies Act (Cap. 50).

<sup>11</sup> These proposals reflect international best practices. They are derived from the WIPO Toolkit (see items 9, 18 to 20, 24 to 26, 31, 48, and 50 of the good practice tools). In addition, they reflect the established standards in various jurisdictions such as the UK (see the British Copyright Council's Principles of Good Practice for Collective Management Organisations (“**BCC Principles**”), Lists 1 and 2) and the EU (see Articles 5, 6, 8, and 18 of EU Directive 2014/26/EU).

- d. the frequency of distribution of royalties to the members; and
- e. the rights that members have in the CMO, including those set out in the following sub-paragraphs.

3.17.2 Members must be given a copy of the membership agreement entered into. This ensures there is transparency to the members, and members have a clear idea about their rights and obligations upon joining the CMO.

(ii) Corporate Governance and Transparency

3.17.3 CMOs must convene a General Meeting of its members<sup>12</sup> at least once a year ("**Annual General Meeting**"). The Annual General Meeting must, at a minimum:

- a. approve the policy (including any proposed amendments) on distribution of collected monies;
- b. approve the policy (including any proposed amendments) on undistributed monies;<sup>13</sup>
- c. approve any amendments to the membership terms of the CMO;
- d. have the power to remove from office a member of the governing board;<sup>14</sup> and
- e. be presented with the annual report and financial statements of the CMO, and have the opportunity to ask questions and seek clarifications.

3.17.4 Aside from the Annual General Meeting, members must have the right to call for an Extraordinary General Meeting of members, if certain conditions are met. There may be times where members have an urgent or serious issue to raise, requiring the input and decision of all the members, but which cannot be deferred until the next Annual General Meeting. In such circumstances, members should be allowed to call for an Extraordinary General Meeting, although CMOs may stipulate certain conditions which must be met, such as requiring a minimum percentage of members supporting the calling of the meeting, and that there must be a minimum notice period given to all members.

3.17.5 Members must have the right to attend and vote at Annual and Extraordinary General Meetings of members, including by proxy. Members should have the right to participate in these General Meetings.

<sup>12</sup> This General Meeting is separate from the meetings convened as part of the CMO's corporate structure.

<sup>13</sup> For more information on the distribution policies, see Topic 4 below.

<sup>14</sup> For more information on the governing board, see Topic 7 below.

Members should also have the right to appoint a proxy to attend and vote at such General Meetings. This ensures that all members have a part to play in the CMO's decision-making process and have an opportunity to be heard. The information governing the process and format of such General Meetings must also be provided to members.

- 3.17.6 Members must be informed of changes to the CMO's management appointments, governance structure, and class licence status. Such changes have a direct and significant impact on the operations and management of a CMO, which in turn affect the administration of the members' rights. Therefore, members should be informed of such changes so that they can reassess, if necessary, whether they intend to continue giving their mandate to the CMO to administer their rights.

(iii) Control over Rights Granted

- 3.17.7 Right to vary and terminate the scope of rights granted to the CMO, upon serving reasonable notice not exceeding six months. As members voluntarily entrust their rights to the CMO to manage, so too should members be able to vary and terminate their mandate if they so wish. That said, it is crucial to strike a fair balance between a member's freedom to determine how his rights are managed and the CMO's legitimate need to have sufficient time to make adjustments to its fee collection and distribution processes. Therefore, CMOs may stipulate a minimum notice period which their members should give before such variation or termination take effect, but such a period should not exceed six months. This affords sufficient lead time for CMOs to respond to such variations and terminations, given that they may have an impact on the licences already granted.
- 3.17.8 Notwithstanding the variation or termination, members are entitled to their share in the revenue collected during the period before such variation and termination. Given that the licences granted prior to such variation or termination would include the members' works, it is only right that these members should still receive their fair share of the revenue generated during that period.
- 3.17.9 Members are entitled to deal with their works either via a non-exclusive arrangement with the CMO, or in specific scenarios. During the 2017 Consultation, a large percentage of members reflected that they wanted more flexibility or some control in how their rights were handled, citing specific restrictions.<sup>15</sup> CMOs should respect the freedom of their members to determine the rights to be administered by them, and should lay down specific circumstances under which their members can deal with their own rights or waive collection of licence fees, such as when the

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<sup>15</sup> See paragraph 2.15.2(b) of the [Singapore Copyright Review Report](#).

members perform their own works or use of their works for a charitable cause.

- 3.18 In addition to the membership agreement, CMOs should also have a policy on how they manage their relationship with their members, which is made known to members. This policy should include how the CMO deals with members' requests for information, as well as a dispute resolution process (see Topic 6 below).

**Question 3(a):** Are there additional information which CMOs should provide in their membership agreements?

**Question 3(b):** Do you foresee any difficulties or challenges in implementing the above proposals? If so, please also suggest possible measures how these difficulties or challenges could be mitigated.

**Question 3(c):** Bearing in mind the light-touch nature of the Proposed Licensing Scheme, do you agree that the rights to be granted to members identified are sufficient? If your answer is no, please state what additional rights should be included and describe its potential impact on compliance cost, if any.



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#### Topic 4: Distribution of licence fees

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- 3.19 One of the core functions of CMOs is to issue licences and collect fees for the use of copyrighted materials. The CMOs subsequently distribute the monies to its members, based on the usage of the copyrighted materials. There are many different ways in which fees can be calculated and distributed, and these practices vary between CMOs and across licence types. While we will not be intervening in the setting of the licence fees, we will regulate the distribution of the fees collected.
- 3.20 The issue of licence fees has been a recurrent and prevalent concern particularly in the music sector – it was a common issue amongst all groups of respondents in the 2017 Consultation.<sup>16</sup> Both members and users expressed doubts over whether the distribution accurately reflected the usage of the copyrighted materials. CMOs in turn raised the difficulties faced in obtaining accurate usage records from users, resulting in the reliance on sampling methods to determine distribution of fees, instead of actual usage of the copyrighted materials.
- 3.21 We recognise that one key issue is the members' perception that the fees received do not directly correlate to the actual usage of their copyrighted materials. While using a sampling method to determine actual usage makes licensing easier and cheaper for CMOs to administer, and reduces the burden on users to provide accurate and comprehensive usage records, a lack of information on the sampling method and the prevalence of its use contributes to the distrust in its reliability. Coupled with members' lack of information or knowledge regarding how the distribution of licence fees are calculated, this has engendered suspicion and distrust in the industry. Therefore, we propose that there be greater transparency about the sampling methodology and process, and the distribution process, in order to (i) allay members' concerns that the distributed fees are inaccurate; (ii) assure users that the licence fees paid do indeed compensate the relevant rights-holders; and (iii) attenuate the pressure that CMOs face in the determination of the distribution.
- 3.22 Given that this issue is a central concern raised during the 2017 Consultation, we propose to be more prescriptive in this area compared to the others. CMOs process large volumes of data, such as the usage reports from users, the portfolio of rights managed (including foreign rights-holders pursuant to reciprocal agreements with foreign CMOs) and royalties due to members. While CMOs may have constraints in their manpower resources, they should proactively adopt technology to assist in their operations, supporting the accurate collection and distribution of royalties.<sup>17</sup> We elaborate on the proposed provisions below:<sup>18</sup>

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<sup>16</sup> See paragraphs 2.15.2(a), 2.15.3(a), and 2.15.4(a) of the [Singapore Copyright Review Report](#).

<sup>17</sup> In our engagements with rights-holders, they had shared about technology systems used by foreign CMOs for contract management and tracking of collections and distributions of royalties. We further understand that umbrella organisations such as the International Confederation of Societies of Authors and Composers (CISAC) also offer technical and business infrastructure systems for use by member CMOs.

<sup>18</sup> These proposals reflect international best practices. They are derived from the WIPO Toolkit (see items 61 to 64 of the good practice tools). In addition, they reflect the established standards in various jurisdictions such as the EU (see Article 13(1), EU Directive 2014/26/EU) and Switzerland (see Article 51(1), Copyright Act).

- 3.22.1 CMOs must maintain and make available to members a distribution policy, with certain prescribed minimum features. Making available such information engenders understanding and transparency, allowing members to evaluate the accuracy of the fees distributed to them. Members can also hold the CMOs accountable by ensuring that CMOs adhere to their own distribution policy. Further, not only should the information be made available, it should also be communicated in a manner which can be easily understood by members. Where possible, CMOs should provide suitable illustrations and examples, to aid understanding. To ensure a minimum level of parity across all CMOs, we will prescribe some features which must be explained in each distribution policy. These are set out in the following sub-paragraphs.
- 3.22.2 The distribution policy must, at a minimum, clearly set out (i) the basis for calculating the quantum of licence fees due to members; (ii) the manner and frequency of payments to members; and (iii) the general nature of amounts that will be deducted before distribution. In the spirit of accountability and transparency, members must know what the basis for calculating the quantum is, when such distributions will take place, and how such distributions will be made. These are elements fundamental in every distribution made, which members will need to know in order to assess whether they have been compensated fairly and accurately.
- 3.22.3 CMOs should also state clearly their policy on undistributed monies. The policy must, at a minimum, clearly set out: (i) what will be considered undistributed monies; (ii) the measures which will be taken to identify and locate the relevant rights-holders before the monies are deemed to be undistributed; (iii) the manner in which all members will be notified of the amount of undistributed monies at the end of each financial year; and (iv) the manner in which all members will be notified of what the CMO intends to do with these monies.
- 3.22.4 CMOs must make diligent effort to collect accurate and timely information on the usage of works, and must make available to members information on their data collection effort. We recognise that CMOs are dependent on the users to provide accurate usage data. CMOs should proactively work with users to ensure that accurate usage data is obtained. They can include in their licences a requirement for users to provide accurate and timely usage information, and should make diligent effort to ensure compliance. CMOs should also explore technological solutions that can automate the monitoring, reporting and transmission of such usage data. Information on the collection of usage data should be made available to members.
- 3.22.5 CMOs must base their distributions on actual usage of works or, if not practicable, on the basis of a statistically valid sample approximating actual usage of works; all this information must be made available to members. As a best practice, CMOs should distribute the licence fees

based on the actual usage of the copyrighted materials, thereby ensuring that there is no discrepancy between the distribution and the usage. However, on an exceptional basis, we recognise that this may not be possible in every situation, due to a myriad of factors. Where CMOs choose to rely on sampling, or on a mixture of actual usage and sampling, CMOs must explain to their members the basis for and reliability of such a sampling method.

- 3.22.6 CMOs must regularly, diligently and accurately distribute and pay amounts due to their members in accordance with their distribution policy.
- 3.22.7 Such payments must be made no later than six months after the end of the financial year in which the licence fee was collected, unless there are objective reasons which prevents the CMO from meeting this deadline, such as: (i) the inability to identify the rights-holders; or (ii) insufficient reporting by users. CMOs should distribute the licence fees in a timely fashion, ensuring that their members are compensated fairly for the use of their works. In particular, CMOs should strive to make distributions as soon as practicable, but should in any case not exceed six months after the end of the financial year in which the licence fee was collected. This is to take into account the administrative matters that CMOs have to process in order to make such distributions. The countervailing consideration to this would be that the longer the delay between the collection and distribution, the more difficult it would be for members to verify and raise any inaccuracies. Similarly, the longer the delay, the more the inconvenience to CMOs in producing the relevant records for verification.
- 3.22.8 For each distribution, CMOs must provide sufficient information for their members to understand the source of the revenue and the calculations done to arrive at the distribution amount. For example, this information could be set out in the notice sent to the members informing them of the payment, or the information could be centralised in an online database where members can access on their own. In the feedback received from the 2017 Consultation, members had cited discrepancies between their own experience of how often their works were used and the final amount that they received. It would be in the interest of both the CMO and its member to be very clear how the amount distributed was arrived at – which copyrighted material was used, the frequency and manner of use, and the eventual determination of the amount due to the member. This objective and unambiguous presentation of the background would promote trust and transparency, while giving parties a common basis to engage in meaningful discussions should there be any perceived discrepancy.
- 3.22.9 After each distribution has been made, CMOs must give their members an opportunity to point out any error or raise queries for each distribution cycle. The CMOs may stipulate a timeframe within which their members

may dispute the accuracy of the distribution due to them, and attempt to resolve such disputes through their internal dispute resolution mechanisms.<sup>19</sup>

**Question 4(a):** Are there additional information which CMOs should provide in their distribution policy?

**Question 4(b):** How can CMOs and users work together in order to achieve a higher reporting rate of actual usage records of copyrighted materials?

**Question 4(c):** Is six months a reasonable and feasible timeframe for CMOs to distribute the licence fees collected within the financial year? If no, please explain why it is not reasonable and feasible, and propose an alternative timeframe.

**Question 4(d):** Should the Code of Conduct prescribe the information which CMOs must provide members during each distribution to achieve the purpose stated at paragraph 3.22.8? If so, what might some of these information be?

**Question 4(e):** Are the proposals sufficient to engender greater transparency, trust and accountability in the distribution of licence fees?

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<sup>19</sup> We have proposed further measures relating to a CMO's dispute resolution mechanisms – more in Topic 6 below.

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**Topic 5: Information to be provided by a CMO to Users**

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- 3.23 To foster a relationship of mutual trust, it is crucial for all stakeholders to have easy access to accurate information about CMOs, including the rights they manage, the way they are organised, as well as their policies and processes. Where such information is not made known to the general public on the CMO's website, CMOs should respond to requests for information within a reasonable time.
- 3.24 In this section, we propose that CMOs will have to make available certain types of information, which stakeholders would generally have a keen interest in.

**A. Portfolio of Copyrighted materials Managed by the CMO**

- 3.25 In the previous topic, we made several proposals to improve the CMO-Member relationship in terms of the distribution of licence fees. An important parallel relationship to this would be the CMO-User relationship, whereby the user pays the licence fees to use copyrighted materials. In order for potential and current users to make a meaningful assessment whether to obtain or renew a licence with the CMO, the user must know the portfolio of copyrighted materials he is entitled to use upon the grant of the licence. The asymmetry of information would give rise to a general perceived lack of accountability and in more severe cases, may cause users to use the copyrighted materials without obtaining a licence or simply forego using the copyrighted materials entirely. This would not contribute to a vibrant copyright ecosystem where rights are efficiently transacted. In particular, the lack of transparency on the CMO's portfolio of works was also an issue raised in the 2017 Consultation by many stakeholders, which raised concerns about the governance and operations of CMOs.<sup>20</sup> We therefore propose that CMOs make public the portfolio of copyrighted materials they manage, allowing users to assess whether a copyright licence is required from the particular CMO. For example, this could be achieved by providing the public a searchable, updated database of the CMO's full portfolio of copyrighted materials. The disclosure of a CMO's portfolio of copyrighted materials has already become an established norm in other jurisdictions.<sup>21</sup> To date, we are unaware of any local-based CMO which provides such information.
- 3.26 We also considered that even when the information has been provided to the public, there may be further queries and clarifications sought from the CMOs. In such an instance, CMOs should respond in writing within a reasonable timeframe. As CMOs represent and manage the rights of their members, a lack of response to a potential user (which eventually impacts on the user's decision on whether there is a need to

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<sup>20</sup> See paragraphs 2.15.3(b) of the [Singapore Copyright Review Report](#).

<sup>21</sup> These include the EU (see Article 20, EU Directive 2014/26/EU), Germany (see Section 55, Collecting Societies Act), Japan (see Article 17, Law on Management Business of Copyright and Neighboring Rights), China (Articles 24 and 39, Regulations on Copyright Collective Administration), the UK (see section 19, The Collective Management of Copyright (EU Directive) Regulations 2016 and section 8.8 of Part 2 of the Guidance on the UK Regulations implementing the Collective Rights Management (CRM) Directive). Even in jurisdictions that may not prescribe such requirements, many CMOs already voluntarily provide the public with a searchable, updated database of their portfolio of copyrighted materials (see, for example, the Composers and Authors Society of Hong Kong Ltd (Hong Kong), SOCAN (Canada), ASCAP (United States), BMI (United States), The Harry Fox Agency (United States), and SESAC (United States)).

obtain a licence or not) would have an impact on the economic interests of the member. The requirement of responding within a specified timeframe would therefore also promote the accountability of CMOs towards their members.

3.27 Taking into account the above, we propose the following:<sup>22</sup>

3.27.1 CMOs must allow the public to determine from their websites the portfolio of copyrighted materials they manage and administer. The information on the CMO's portfolio must be accurate and provide sufficient clarity for a potential user to determine whether a work the user intends to use is managed by the CMO.

3.27.2 Where a CMO receives a request regarding:

- a. information on the copyrighted materials it administers, including whether a particular work is part of the CMO's portfolio; or
- b. the rights it manages directly or under representation agreements;

it must give a written reply providing an answer to the content of the request no later than three weeks after the request has been received.

**Question 5(a):** Do you foresee any difficulties or challenges with implementing the above proposals? If so, please also suggest possible measures how these difficulties or challenges could be mitigated.

**Question 5(b):** Are there any other information required regarding the portfolio of copyrighted materials managed by a CMO?

## **B. Other Information Relating to the CMO**

3.28 While the CMO's rights of administration was raised as an area of concern in the 2017 Consultation, we considered that the heart of this issue was the transparency of how CMOs organised themselves and operated. Therefore, we believe that it would strengthen the public's trust and confidence in CMOs if certain basic information about a CMO's rights, operations and processes could be made available as well. The openness and transparency would be a step towards the creation of a more positive perception of CMOs.

3.29 These information relate to the core functions of the CMOs, such as how the CMO acquires the portfolio of copyrighted materials from its members, the type and nature of the rights administered, and how it licenses these materials to users. Where the

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<sup>22</sup> These proposals reflect international best practices. They are derived from the WIPO Toolkit (see item 39 of the good practice tools). In addition, they reflect the established standards in various jurisdictions such as Belgium (see Belgian Code of Economic Law, Book XI, Title 5) and the EU (see Article 12, EU Directive 2014/26/EU).

CMO has entered into representation agreements with other CMOs, these should also be made known as well.

3.30 Further, to inspire greater confidence in how the CMO is governed, CMOs should provide information about the persons managing the CMO. This also allows the public to hold these persons accountable for the running of the organisation, ensuring that the CMOs comply with the relevant government regulations, where applicable.

3.31 Finally, CMOs should also set out their general policies relating to the distribution of licence fees. These need not be as extensive nor detailed as those provided to their members, but should at least give the general public a sense of how the licence fees paid are being managed. CMOs should also provide the details and processes for the management of any dispute.

3.32 Taking into account the above, we propose the following:

3.32.1 Each CMO must publish and keep up to date on its public website the following information:

- a. the membership terms and details of the application process, including the relevant forms and expected timelines for each stage of the process;
- b. the type and nature of rights being administered (for e.g. whether the rights are for public performance rights, reproduction rights and/or communication to the public; whether the rights are exclusive or non-exclusive);
- c. the full range of licences available (including licences for individual works) and the relevant licence fees;
- d. the list of CMOs which the CMO has entered into a representation agreement with, together with either the information on the portfolio of copyrighted materials covered by the representation agreements or a link to the public website of the other CMO where the said information can be found;
- e. the names of the persons involved in the management of the CMO;
- f. the CMO's general policy on distribution of amounts due to members, including the manner and frequency of such payments;
- g. the CMO's general policy on the amounts that will be deducted from the licence fees collected before distribution;
- h. the CMO's general policy on the use of non-distributable amounts; and

- i. the complaint handling and dispute resolution procedures available.<sup>23</sup>

3.32.2 Where possible, the CMO must provide appropriate examples and illustrations to assist the public in its understanding.

**Question 5(c):** Do you foresee any difficulties or challenges with implementing the above proposal? If so, please also suggest possible measures how these difficulties or challenges could be mitigated.

**Question 5(d):** Are there any other information which would be necessary for a CMO to provide to ensure transparency and accountability to users?

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<sup>23</sup> We have proposed further measures relating to a CMO's dispute resolution mechanisms – more in Topic 6 below.



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**Topic 6: Dispute resolution**

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- 3.33 As CMOs regularly engage with various stakeholders, including its members, users and other CMOs, it may be inevitable that there will be disagreements and differences of opinions on a variety of matters such as the governance and management of the CMO and/or adherence to the eventual licence terms or Code of Conduct.<sup>24</sup> Some of these may be resolved through open communication between the parties, while some may require further measures before a resolution can be reached. In either scenario, it would be in the interests of all parties to resolve the dispute in an expedient and low-cost manner, while upholding the principles of fairness and transparency. Therefore, it is imperative that CMOs have in place an effective and cost-efficient dispute resolution mechanism. Further, such mechanisms should be publicised to the CMO's stakeholders.<sup>25</sup>
- 3.34 In this regard, we propose that CMOs should develop its own internal complaint handling and dispute resolution procedures. As parties should have maximum flexibility to decide on the set of processes which would most suit their needs, we do not intend to prescribe what these processes should be and their associated timelines, but to instead set out the key features such processes should have.
- 3.35 Where parties are unable to resolve their dispute after going through the CMO's internal procedures, it is inevitable that external parties would need to be involved. Given that the quantum of the dispute may not be very large, it may not be preferable to resort to litigation. Therefore, we propose to mandate that parties attempt mediation in the spirit of seeking an amicable and mutually acceptable outcome. This is also in line with the feedback received from CMOs in the 2017 Consultation.<sup>26</sup>
- 3.36 As IPOS will have supervisory oversight of all CMOs, we also recognise that some disputes would benefit from IPOS intervening and determining whether there has been a breach of the licence conditions. We will therefore allow parties an avenue to make a formal complaint to IPOS, if there is an alleged breach and parties are unable to resolve the dispute. However, we will require parties to have attempted mediation before asking IPOS to exercise its supervisory powers.<sup>27</sup>
- 3.37 We propose the following features which CMOs must have in their complaint handling and dispute resolution mechanisms:<sup>28</sup>

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<sup>24</sup> These disputes relate to matters other than quantum of licence fees for which the Copyright Tribunal is the appropriate forum. Please see paragraph 2.6 above.

<sup>25</sup> See paragraph 2.15.3(c) of the [Singapore Copyright Review Report](#), where users were either not aware of the available mechanisms or have not used them before.

<sup>26</sup> See paragraph 2.15.4(b) of the [Singapore Copyright Review Report](#).

<sup>27</sup> IPOS will provide on its website relating to CMOs, available avenues for mediation. For example, the WIPO Arbitration and Mediation Center is offering reduced rates to parties who opt for mediation to resolve copyright disputes. More information is available in the press release [here](#).

<sup>28</sup> These proposals reflect international best practices. They are derived from the WIPO Toolkit (see items 76 to 77 of the good practice tools). In addition, they reflect the established standards in various jurisdictions such as the EU (see Articles 33 to 35, EU Directive 2014/26/EU).

- 3.37.1 CMOs must make available to its members, rights-holders, and users, information on its complaint handling and dispute resolution procedures. Such information must clearly describe:
- a. the categories of complaints and disputes covered and the way in which each will be dealt with;
  - b. to whom the complaint should be addressed;
  - c. at which address (or e-mail address) the complaint should be addressed to;
  - d. the timeframes for the handling of such complaints and disputes; and
  - e. stages of appeal, if any.
- 3.37.2 Where a CMO has received a complaint in accordance with its complaint handling and dispute resolution procedures, it must respond in writing. Where the CMO rejects the complaint, it must give its reasons in writing for doing so.
- 3.37.3 Where parties to the dispute are unable to achieve a resolution after exhausting the CMO's complaint handling and dispute resolution procedures, parties must attempt mediation in good faith with a view to resolving the dispute.
- 3.37.4 Where parties to the dispute are unable to achieve a resolution after exhausting the CMO's complaint handling and dispute resolution procedures, and after attempting mediation, parties may lodge a complaint with IPOS, in the prescribed manner and form.

**Question 6(a):** Are there any other information about a CMO's complaint handling and dispute resolution procedures which CMOs should make available?

**Question 6(b):** Are the features sufficient to maintain a low-cost but effective dispute resolution mechanism? If your answer is "No", please suggest which additional features should be included, and describe its potential impact on compliance cost.

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## Topic 7: Governance and Management of a CMO

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- 3.38 CMOs will have a good standing and position in the marketplace if the members and users have a high level of trust in the governance and administration of the CMO. This in turn inspires confidence in the collective management ecosystem and encourages a vibrant collective licensing landscape.
- 3.39 Measures that would engender such trust would include ensuring sufficient transparency in the selection of the CMO's governing board, and accountability of the management to the CMO's members. Additionally, the onus will be on the management and governing board of a CMO to implement and adhere to the Proposed Licensing Scheme, failing which IPOS can impose sanctions for non-compliance. This ensures that the management and governing board will ultimately be subject to regulatory oversight by IPOS.<sup>29</sup>
- 3.40 In line with the light-touch approach for the Proposed Licensing Scheme, CMOs are not required to submit an annual audit report or its financial statements to IPOS on a regular basis, but will only have to do so when specifically requested. We additionally propose the following safeguards which would enhance the accountability of CMOs to their stakeholders, thereby instilling public confidence.<sup>30</sup>
- 3.40.1 CMOs must establish a governing board which is responsible for monitoring the activities of the CMO and for its compliance with the Proposed Licensing Scheme. Where CMOs have a board of directors established in their corporate structure, this board can act as the governing board.
- 3.40.2 Fair and balanced representation of different categories of members on the governing board. Given that the CMO may represent different categories of members, the composition of the governing board should reflect the interests of its members proportionately. This ensures that no one category of members is neglected or under-represented. Where there is a change in the board members, the CMO must explain to its members how the composition of the board remains fair and balanced.
- 3.40.3 There should be a cap on number of years a board member can serve on the governing board. In the interests of transparency and good governance, restricting the number of years (or terms) each board member can serve will ensure that other members will have the opportunity to serve on the governing board, if they meet the requisite preconditions set by the CMOs, and brings in new insights and skills. Further, while there is a need for continuity to ensure that insights and

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<sup>29</sup> The governance and management of CMOs was identified as an area for improvement following from the 2017 Consultation. In particular, key issues were raised by members, as set out in paragraph 2.15.2(c) of the [Singapore Copyright Review Report](#).

<sup>30</sup> These proposals reflect international best practices. They are derived from the WIPO Toolkit (see item 52 of the good practice tools). In addition, they reflect the established standards in various jurisdictions such as the EU (see Article 9, EU Directive 2014/26/EU).

experienced gained are not lost, there is also the risk of long-serving directors' reduced ability to exercise independent and objective judgement as a result of long-standing familiarity with management. Therefore, every CMO should have a framework where all board members are required to stand for nomination and reappointment once every three years and non-executive board members may not serve more than three consecutive three-year terms.<sup>31</sup>

- 3.40.4 Management and the governing board will have the responsibility of ensuring compliance with the Proposed Licensing Scheme. The onus is on the management and the governing board to ensure compliance, failing which sanctions will apply (see Topic 9.B. below).
- 3.40.5 Certain persons are disqualified from holding office. Where a person has been removed by IPOS pursuant to paragraphs 3.65 - 3.66 below, or was involved in the management or the governing board of a CMO whose licence has been revoked, the person cannot be appointed to the board of, or employed by, a CMO for a period of three years from the date of such removal or revocation. This ensures that persons with a negative track record of management are unable to perpetuate their behaviour in a different CMO, to the detriment of all members and users.
- 3.40.6 CMOs will have to keep and maintain proper financial records, including the sums received in the form of licence fees, the relevant deductions, and the subsequent distribution of the royalties to its members. Members give the mandate to CMOs to administer their rights, with the expectation that they receive the appropriate remuneration due to them. Therefore, in order for CMOs to be able to account for all the monies collected and paid out, it is imperative that CMOs maintain proper financial records. Without such records, it would not be possible for CMOs to properly discharge their obligations to their members. Such records would also be beneficial to CMOs in the event that members dispute the amount that is due to them, as they serve as a point of reference.
- 3.40.7 Members must be allowed to inspect the financial records, upon request. This ensures transparency in the financial matters of the CMO, and that the CMO remains accountable at all times to its members.

**Question 7(a):** Is the proposed limit of three consecutive three-year terms for the tenure of a non-executive board member reasonable? If not, please give reasons and suggest an alternative duration?

**Question 7(b):** Should there be any requirements imposed before members are allowed to inspect the financial records of a CMO?

<sup>31</sup> Reference is taken from the Board Guide and Nominating Committee Guide issued by the Singapore Institute of Directors.

**Question 7(c):** Are there any other safeguards required for the proper governance and management of a CMO?

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## Topic 8: Facilitating an Efficient Market

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- 3.41 The proposed safeguards and requirements in Topics 3 to 7 help to ensure the CMOs maintain minimum standards, engendering more trust from members and users. However, they do not fully incentivise CMOs to perform better and be more responsive to their members or to their users. CMOs bring together rights-holders who would otherwise be competitors in their respective markets. This diminishes the natural competition which would arise between these rights-holders, while CMOs gain a significant market power with the repertoire of works they control. Without a viable alternative to obtaining a licence for these works, there is a potential for CMOs to use their market power to impose higher prices or less favourable conditions on users. Competition, where both rights-holders and users have a choice of CMOs, may be able to encourage more responsive, proactive behaviour. Anecdotally, we are aware of situations that reflect problems related to a lack of competition.
- 3.41.1 Users can end up with sub-optimal licences. An example of a sub-optimal licence could be one that is much broader and covers more than the user needs. In the realm of licences for use of musical works, a blanket licence for all musical works would be relevant to certain users, but other types of users might only require a specific subset of musical works, such as jazz music or religious music. Recently, as religious institutions moved their services online due to the COVID-19 pandemic, they needed a licence that would allow them to live-stream their services, which included the live-stream of performance of religious songs, as well as subsequently stream a recording of the service. One CMO could offer them a blanket licence for songs (religious as well as non-religious, which was a broader catalogue than they needed) for such live-streaming purposes on certain terms. However, because the rights managed by this CMO was not exclusive, another CMO was able to offer a licence for just religious songs for both live-streaming and streaming of a recording of the service. This latter licence was more appropriate to their needs.
- 3.41.2 Members might find the CMO unresponsive to their needs, but be unable to switch to a different CMO since none exists. Members will also suffer if the CMOs are not incentivised to provide better services to users, as it then affects take-up of collective licences. As mentioned earlier in the document, a large percentage of members had reflected that they wanted more flexibility or some control in how their rights were handled during the 2017 Consultation, citing specific restrictions.<sup>32</sup> A responsive CMO could have allowed their members more flexibility or control in dealing with their own rights, such as when members perform their own works or wish to waive fees for the use of their works for charitable causes.
- 3.42 However, in facilitating competition, we need to be mindful not to create a fragmented market. From a user's perspective, a non-fragmented market is ideally one where any CMO that he approaches should potentially be able to meet all his needs to use

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<sup>32</sup> See paragraph 2.15.2(b) of the [Singapore Copyright Review Report](#).

the work(s). He then chooses the CMO that is able to offer the most suitable product. CMOs would be motivated to be responsive to users' needs, so users would not end up paying for unnecessarily broad licences or having to approach different CMOs for different rights for the same work. From a rights-holder's perspective, a non-fragmented market is ideally one where he is not limited to only one CMO to represent him, or have to approach different CMOs for the administration of different rights. The ideal non-fragmented market for the rights-holder is when it can allow more than one CMO to manage all his works, and even directly manage his own works in certain situations. This potentially increases the reach into different segments of the market and increases the use of his works.

- 3.43 Even as we consider how to provide a conducive environment for such competition amongst CMOs, we appreciate that Singapore's small market size may have limited appeal to new CMOs. However, apart from potentially attracting another CMO to set up operations, providing such an environment can also foster innovative business models leveraging technology to meet user needs. For example, an enterprise can integrate a CMO business into a larger turnkey solution for users, comprising the hardware and software to deliver the music or audio-visual content, the copyright licensing, and the automatic recordal and reporting of actual usage for distribution of licensing fees to the rights-holders. While these situations may or may not happen, we should at least create the environment to allow for its possibility.

#### **A. Nature of Rights Administered by CMOs**

- 3.44 In light of our local experiences, we have identified a key feature of encouraging competition here whilst seeking to minimise the possibility of a fragmented market – that members grant their rights to a CMO to manage on a non-exclusive basis. The situation in paragraph 3.41.1 occurred because fortuitously, the first CMO held the rights on a non-exclusive basis. Another advantage of rights being managed on a non-exclusive basis is the lower barrier of entry into the market for new entrants. If a first CMO holds exclusive management rights, the new entrant faces the proverbial “chicken and egg” problem – it needs rights-holders to join as members before it has rights to licence out; however rights-holders would be reluctant to leave the first CMO to join the new entrant because it has no users and therefore no revenue; and if rights-holders do not join, it will continue to have no revenue. However, if the first CMO held non-exclusive management rights, a rights-holder who is dissatisfied with the service he is receiving from the first CMO can concurrently grant the new entrant non-exclusive rights to manage his works too. In so doing, he does not lose out on his current revenue stream while the new entrant has the opportunity to build up its catalogue and prove itself to its new members.
- 3.45 We therefore propose that members contract with CMOs on a non-exclusive basis. This can be done in one of the following two ways:
- 3.45.1 Option A: All contracts between CMOs and members must only be on a non-exclusive basis. CMOs will be given a transition period (e.g. six months) to convert all existing contractual arrangements to non-exclusive ones.

- 3.45.2 Option B: CMOs must offer members the option of granting the CMO the right to manage on a non-exclusive basis – new members can sign up for the CMO to manage their rights on a non-exclusive basis, and existing members with an exclusive arrangement have the right to switch to a non-exclusive arrangement by giving advance written notice of at most six months, similar to the requirements in paragraph 3.17.7.
- 3.46 The above applies to contractual arrangements between CMOs and local rights-holders, as well as any foreign rights-holders or foreign CMOs.
- 3.47 One concern with Option B is that, inevitably, CMOs would end up administering a mix of exclusive and non-exclusive management rights, which is the current situation in some instances. This gives rise to a potential for confusion, for example, where some layman members may forget that they had granted exclusive management rights and seek to do something with their work that they have no right to do. On the other hand, Option A, although more prescriptive, makes for a clearer situation. This is an attractive feature in an ecosystem where there are numerous rights-holders, with many of them unfamiliar with the intricacies of copyright law and licensing terms.
- 3.48 We recognise that one possible reason for CMOs to require their members to entrust their rights to them on an exclusive basis, is that under the CA today, exclusive licensees have their own separate right to bring enforcement actions against potential infringers<sup>33</sup>, whereas non-exclusive licensees can only do so if the licensor agrees to join the suit. The ability to enforce the rights against infringers, without having to involve the right-holder, is particularly useful for CMOs as they would likely have to deal with infringers who infringe many different right-holders' rights, for example, where a recalcitrant user refuses to pay for the blanket licence required for his use. With the proposals above, we are aware that this will cause CMOs to lose their standing to sue, and are looking at the possibility of allowing CMOs to sue in their own name.

**Question 8(a):** Do you agree that members should be given the choice to grant their rights to a different CMO at any point of time?

**Question 8(b):** Between options A and B, which option is preferable, and why? Do you foresee any difficulties or challenges in implementing arising from the above proposals? Please also suggest possible measures how these difficulties or challenges could be mitigated?

**Question 8(c):** Where the Singapore market is concerned, what are the difficulties or challenges that prevent potential CMOs from entering the market or members from engaging a competing CMO to administer their rights? How could the proposals address these difficulties or challenges?

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<sup>33</sup> Section 123 of the CA.



**Question 8(d):** Do you agree that CMOs should be allowed to commence proceedings for copyright infringement even if they are not exclusive licensees?

**Question 8(e):** Are there any restrictions in representation agreements or existing practices which would prevent the granting of non-exclusive licences?

**Question 8(f):** Are there any further other considerations or suggestions that you wish to propose to promote efficient market conduct in the CMO ecosystem?

## **B. Enhancing Copyright Tribunal Proceedings**

- 3.49 Ensuring that there is a check on the reasonableness of a CMO's licence tariffs and conditions is an important component of an efficient, competitive collective licensing market. This is particularly important in a small market such as Singapore where by the virtue of a CMO's market power and absence of viable competing offerings, there is a greater risk of CMOs imposing unreasonable licence fees or conditions on users, who generally lack bargaining power. In the absence of any regulatory controls, this would take the form of a cost-effective forum for resolving licensing disputes between CMOs and users.<sup>34</sup>
- 3.50 The Copyright Tribunal was established as a cost-effective tribunal where proceedings are conducted expeditiously and with as little formality as possible.<sup>35</sup> In cases brought before the Copyright Tribunal, the tribunal is empowered to determine whether a CMO's licence scheme or licence fees are reasonable, and to vary a scheme or substitute it with such other scheme that the tribunal considers reasonable.<sup>36</sup> Such a determination in a particular case may have broader market implications: while individual circumstances may differ, an application made by one user may involve a licence scheme that also applies to other users in similar circumstances. In addition, the Copyright Tribunal's reasoning and methodology in assessing the reasonableness of a licence scheme or remuneration could guide how other CMOs devise their licence schemes.
- 3.51 Amendments were made to the CA in 2009, expanding the jurisdiction of the Copyright Tribunal to cover all types of copyright works and empowering the Copyright Tribunal to vary the terms of any licence scheme, to the extent of substituting the licence scheme, as deemed reasonable. The structure of the Copyright Tribunal panel was also enhanced, in order to cope with the possible increase in cases. Following these amendments, we have only had five cases. The feedback from our 2017 Consultation indicated that the vast majority of respondents has not utilised the Copyright Tribunal before. Since then, further engagement with stakeholders has revealed that as a mechanism for resolving licensing disputes between CMOs and users, the Copyright Tribunal may not be sufficiently equipped

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<sup>34</sup> See Footnote 1.

<sup>35</sup> The only applicable filing fee is for the filing of the initial application or reference, which costs \$200: see regulation 6(3) of the Copyright Tribunals (Procedure) Regulations. The proceedings before the CT shall be conducted with as little formality, and with as much expedition, as possible: see section 173(c) of the CA.

<sup>36</sup> Division 3 – Inquiries by, and Applications and References to, Tribunal under Part VI of the CA.

to take into account certain practical and/or commercial realities of such disputes. In particular, negotiations between users and CMOs can be protracted, with parties unable to reach a mutually acceptable outcome even after an extended period of time. However, as users require a licence from the CMO before they can proceed without risking copyright infringement, they may find themselves having no choice but to accept the CMO's terms or forego the use of the materials administered by the CMO. This problem is compounded in cases where the use of such materials may be time-sensitive and there is no viable alternative to acquiring the necessary licence. Significantly, if the dispute gives rise to larger concerns about anti-competitive conduct, the Copyright Tribunal does not have a formal mechanism to consider such concerns.

- 3.52 In light of the above, we propose to enhance the tribunal's effectiveness as a mechanism for resolving licensing disputes and reviewing the reasonableness of licence schemes and fees, including where relevant, allowing the tribunal to take into account broader systemic concerns regarding anti-competitive conduct by CMOs. This would involve the following amendments to the Copyright Tribunal provisions:

- 3.52.1 Suspension of payment of licence fee pending determination by the Copyright Tribunal. Where parties are unable to reach an agreement on the applicable licence fees, the user can make the necessary application to the Copyright Tribunal. Once this has been filed, the user will be allowed to use the copyrighted materials covered under the CMO's licence scheme and will only need to make payment for such use after the Copyright Tribunal has determined the reasonable licence fees.<sup>37</sup>
- 3.52.2 The Copyright Tribunal must have regard to the relevant guidelines issued by the Competition and Consumer Commission of Singapore ("CCCS") if requested by a party to the application.<sup>38</sup> CCCS administers and enforces the Competition Act (Cap. 50B), and investigates and enforces against practices that have an adverse effect on competition in Singapore. Pursuant to its powers to publish guidelines setting out how it will interpret and give effect to the Competition Act, CCCS has issued Guidelines on the Treatment of Intellectual Property Rights in Competition Cases. Reference to possible anti-competitive behaviour under the guidelines could assist the Copyright Tribunal's determination of the reasonableness of the licence fees and conditions.
- 3.52.3 Allowing CCCS to be a party to any Copyright Tribunal application at its request.<sup>39</sup> In becoming a party to the proceedings, CCCS, as an independent body, would be able to assist the Copyright Tribunal's determination of the reasonableness of the licence fees and conditions by giving its own analysis and expert opinion from the competition angle.

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<sup>37</sup> The current section 164 of the CA requires the user to pay the charges in respect of a licence scheme in order to avoid copyright infringement, where the licence scheme is in operation pending the outcome of the CT application.

<sup>38</sup> This would be similar to the provision in section 157A of Australia's Copyright Act 1968.

<sup>39</sup> This would be similar to the provision in section 157B of Australia's Copyright Act 1968.

**Question 8(g):** As a user, would the proposed measures in para 3.52.1 encourage you to refer licensing disputes to the Copyright Tribunal? If no, please explain why and/or what further measures would encourage you to do so.

**Question 8(h):** Do you foresee any difficulties or challenges by allowing users to make payment only after the CT has determined the reasonableness of the licence fees? If so, please also suggest possible measures how these difficulties or challenges could be mitigated.

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**Topic 9: Supervisory powers of the Authority**

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- 3.53 We propose that IPOS will be the authority accorded certain supervisory powers to ensure that CMOs comply with the Proposed Licensing Scheme. Nonetheless, given the light-touch nature of the Proposed Licensing Scheme, parties to a dispute should attempt to reach a resolution through the CMO's internal complaint handling and dispute resolution procedures as well as mediation. Where the dispute cannot be resolved, parties may lodge a complaint with IPOS pursuant to paragraph 3.37.4 above, and IPOS can intervene by exercising its supervisory powers below.
- 3.54 Where CMOs are found to be in breach of the licence conditions, we propose that IPOS will have the power to impose various sanctions depending on the severity for the breaches. In such cases, the aggrieved parties affected by IPOS's imposition of sanctions will have a right of appeal to the Minister.

**A. General Powers of the Authority**

- 3.55 We propose that IPOS has certain powers to assist in determining whether a CMO complies with the Proposed Licensing Scheme. These are:
- 3.55.1 Power to request for information and documents. For example, IPOS may request for statistics relating to the CMO's dispute resolution mechanism, details of how it calculates the monies to be distributed to its members, and copies of the replies given in response to a written request about the portfolio of copyrighted materials it administers.
- 3.55.2 Right to sit in on members' meetings. IPOS has the right to sit in on meetings that involve members, like Annual General Meetings and Extraordinary General Meetings. This would enable IPOS to have direct knowledge of the issues and concerns that members have with the CMOs.
- 3.55.3 Power to investigate into the operations of the CMO. IPOS may establish an investigative panel to conduct investigations, where a complaint has been lodged with IPOS or on an ex-officio basis. The panel may comprise IPOS officers or external parties engaged by IPOS.
- 3.55.4 Power to audit CMOs for compliance with the licence conditions. IPOS may compel the CMO to appoint one or more Code Reviewers<sup>40</sup> at its own cost or IPOS may appoint Code Reviewer(s) on its own motion to audit the CMOs for compliance with the licence conditions.
- 3.56 For the purposes of maintaining standards in the collective management ecosystem, we also propose that IPOS has the following powers:

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<sup>40</sup> For more information on Code Reviewers, see Topic 10 below.

- 3.56.1 Power to require a performance bond. IPOS may require a CMO to provide a performance bond, if it is of the view that the performance bond is necessary in order to secure compliance with the licence conditions.
- 3.56.2 Power to refer licensing fee related issues to the Copyright Tribunal. IPOS may direct parties to refer such issues to the Copyright Tribunal or attempt mediation. This would facilitate an expedient resolution of the dispute, ensuring that the integrity of the collective management ecosystem is preserved.
- 3.56.3 Power to release/disclose information it receives and publish investigation results. IPOS can publish the information it receives from the CMO and its findings pursuant to the investigation or audit. This instils public confidence in the robustness of the system, and further serves as education to the public in understanding the parameters of the licence conditions.

## **B. Sanctions for Breach of Licence Conditions**

- 3.57 Where IPOS has determined that a CMO is in breach of the licence conditions, IPOS will be able to take action against the CMO. The severity of the sanction imposed will be kept proportionate to the severity of the breach.

### **(i) Issue a Written Direction to Rectify Breach**

- 3.58 As a first step, we propose that IPOS must issue a Written Direction to the CMO informing it that it is in breach of the licence conditions. In some scenarios, the CMO may not realise that it has breached the licence conditions. The Written Direction therefore brings the breach to the CMO's attention and allows the CMO to take corrective action.
- 3.59 The Written Direction may also direct the CMO to take certain actions to comply with the licence conditions within a certain time, failing which IPOS may impose certain penalties. This also gives the CMO notice that there are consequences for the breach of such licence conditions.
- 3.60 Where the CMO has good reasons for the breach of the licence conditions and would require additional time to comply with the directions, the CMO may respond with written representations explaining its circumstances, explaining why penalties should not be imposed for its breach.

### **(ii) Impose a Financial Penalty**

- 3.61 Should a CMO not comply with IPOS's Written Direction, we propose that the imposition of a financial penalty on the CMO will generally be the next step, before the other more severe penalties are imposed.
- 3.62 There may be certain cases where the breach is due to the wilful behaviour attributable to a director, board member, manager, secretary or any other officer of

the CMO. If, after an investigation, IPOS is of the view that such breach is indeed attributable to the particular individual, we propose that IPOS may impose the penalty on such person instead.<sup>41</sup> This ensures that the CMO, and in turn, the members, are not financially prejudiced for the conduct of an individual.

(iii) Suspend or Revoke the Licence

3.63 In the event that the fine is not paid within the prescribed period, or if the CMO continues to be in breach of the licence conditions, or if IPOS is of the view that the CMO is again likely to breach the licence conditions, IPOS may suspend the licence for a period of time, or revoke the licence altogether. In the case of a suspension of the licence, the CMO may not carry out its licensing activities until the suspension period has expired or been lifted (e.g. upon proof of rectification of the breach to IPOS). When a licence is revoked, the CMO may no longer function as a CMO.

3.64 We are cognisant that a break in the CMO's licensing activities will cause disruption in the market, prejudicing the financial interests of the members and affecting the access to works by users. Therefore, we propose the following:

(a) Where IPOS suspends the licence, IPOS may appoint an administrator to manage the collective licensing business affairs of the CMO during the suspension period, in place of the CMO's officers. The CMO may not issue new licences or take on new members, and is obliged to direct queries to other CMOs or the rights-holders as appropriate. However, to minimise disruption, licences already issued shall continue during the suspension period unless terminated by the user. Royalties paid and any royalties collected prior to suspension and not yet distributed, shall be held by the administrator on trust until the suspension period has expired or been lifted.

(b) Where IPOS revokes the licence, it may appoint an administrator to manage the collective licensing business affairs of the CMO for a specified period after the revocation of the licence, in place of the CMO's officers, to ensure a smooth termination of rights and/or transition to another CMO for members and users. Where royalties are collected and not yet distributed, the administrator will be able to manage the distribution to the members.

The cost of appointing such administrators will be borne by the CMO. This ensures that members and users are not caught unprepared and gives sufficient time for them to make alternative arrangements.

(iv) Order the removal or replacement of those who manage the business of a CMO

3.65 In extreme circumstances, a CMO may continue to breach the licence conditions due to the recalcitrant conduct of a particular director, board member, or officer of the CMO. In such a scenario, the continued financial sanction on the CMO may not

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<sup>41</sup> A similar power is provided in the UK's Copyright, Designs and Patents Act, viz. paragraph 5(2) of Schedule A1, as well as in regulation 38(2) of the Collective Management of Copyright (EU Directive) Regulations 2016.

achieve the effect of correcting the behaviour. It may, instead, unfairly prejudice the members' financial interests. The suspension or revocation of the licence would also not serve their interests.

- 3.66 Therefore, it is proposed that in such scenarios, IPOS has the power to order the removal of the person, if IPOS is of the view that such person is directly responsible for the CMO's repeated and/or continued breach of the licence conditions. IPOS may also prescribe a specified person to replace the removed officer or allow the CMO to choose its own replacement.<sup>42</sup>

**Question 9(a):** Do you agree that the general supervisory powers are adequate to monitor compliance with the licence conditions?

**Question 9(b):** Are the proposed sanctions appropriate and sufficiently calibrated?

**Question 9(c):** Do you foresee any problems with the proposed sanctions?

**Question 9(d):** Are there any other supervisory mechanisms which may be appropriate and useful?

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<sup>42</sup> A similar power is provided in section 85(5) of Germany's Collecting Societies Act, where the authority can set a deadline for the collecting society to dismiss a particular person, and can also "prohibit him from continuing his activity until the expiry of this deadline".

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**Topic 10: Appointment of Code Reviewers**

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- 3.67 In line with our intention to establish a light-touch regulatory regime and to reduce unnecessary compliance burden and cost, we will not require CMOs to submit a yearly audit report on its compliance with the licence conditions. However, as part of its supervisory functions, IPOS can appoint one or more Code Reviewers, or compel parties to appoint Code Reviewer(s), to audit a CMO's compliance with the licence conditions.<sup>43</sup>
- 3.68 The key objective of the Code Reviewers will be to evaluate whether the CMO complies with the licence conditions and report their findings to IPOS. In the report, the Code Reviewers may also provide their recommendations on the remedial actions the CMO should take to remedy a breach. To assist the Code Reviewers in their audit, they shall also have the power to request for information and documents, as well as to conduct investigations into the CMO's operations.
- 3.69 Code Reviewers have a significant impact on the CMOs as they will investigate and determine whether the CMO has breached the licence conditions or not. Such a determination may result in certain sanctions imposed on the CMO if they are found to be in breach. Therefore, we seek feedback on what requirements and expertise a Code Reviewer should have.

<p><b>Question 10:</b> What are some of the requirements or expertise a Code Reviewer should have?</p>
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<sup>43</sup> See paragraph 3.55.4 above.



## PART IV: SUBMISSION OF COMMENTS

- 4.1 MinLaw and IPOS are seeking views and comments on the above issues, as well as any related issues that may not have been highlighted.
- 4.2 All submissions should be clearly and concisely written, and should provide a reasoned explanation for any proposed revisions. Where feasible, parties should identify the specific section on which they are commenting and explain the basis for their proposals.
- 4.3 Your views are important and will help us to develop licence conditions and Code of Conduct, which are practical, take into account the interests of all stakeholders, and contribute to the efficient transaction of rights in the copyright marketplace. Comments may be submitted via FormSG [here](#), or via email or in hard copy, with the subject or header “Public Consultation on the Proposed Licence Conditions and Code of Conduct for CMOs”, to:

<b>MinLaw</b>
Intellectual Property Policy Division, Ministry of Law 100 High Street, #08-02, The Treasury Singapore 179434
<b>Email:</b> MLAW_Consultation@mlaw.gov.sg

- 4.4 When providing your responses, please also include your name, contact number and e-mail address, so that you may be contacted for follow-up questions.
- 4.5 We reserve the right to make public all or parts of any written submission and disclose the identity of the source. Commenting parties may request for confidentiality for any part of the submission that is believed to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If we grant confidential treatment, we will consider, but will not publicly disclose, the information. If we reject the request for confidential treatment, the information will be returned to the party that submitted it and not be considered as part of this review. As far as possible, parties should limit any request for confidential treatment of information submitted. We will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.
- 4.6 Please submit your inputs by **30 June 2020**. Thank you.