

## **Our mission**

**To establish and promote process harmonisation, best practice and transparency in the administration of pan-European digital licences to the benefit of all stakeholders.**

## **Our objectives**

1. To improve the general efficiency of the processing and technical aspects of the administration of pan-European digital licences;
2. To reduce associated administrative costs to the benefit of all stakeholders, including rightsholders, DSPs and others;
3. To facilitate the logistical flow of residual royalties from DSPs to rightsholders.

## **Our strategy**

1. To create non-binding guidelines for what constitutes an accurate/authoritative claim;
2. To create non-binding guidelines for best practice in invoicing processes, timeframes and formats;
3. To identify and scope best use of relevant data-analysis tools to support our mission;
4. To identify common causes of disputes and propose administrative approaches that minimise the level of disputes;
5. To create non-binding guidelines for residual calculation best practice;
6. To identify opportunities and initiatives to improve descriptive metadata and identifiers, including links between recordings and works;
7. To delegate appropriate tasks to, consider the recommendations of, and monitor the activity of the TOWGE and any other sub-groups;
8. To provide a forum for individual DSPs to interact with the stakeholders in relation to the above objectives; and
9. To carry out any other activities from time to time in support of our objectives.

### **1. Membership & Representation**

- 1.1. The current list of Steering Committee members is attached as **Annex A**.
- 1.2. Membership of the Steering Committee ("SC") is open to any direct licensor, licensing hub or local publishing collecting society, that has a direct interest in the digital market for compositions in Europe and that contributes an equal share towards the SC's financing.
- 1.3. From time to time, the SC may elect to set a maximum attendance of two representatives per member at an in-person meeting.

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1.4. Each SC member can opt in or out of attending both phone and in-person meetings on an ad hoc basis.

1.5. It is recommended that SC members:

- are fully committed to resolving the issues brought to the SC, and will dedicate the necessary time and resources required to achieve solutions;
- are mandated by their respective organisations to represent its views and make decisions on its behalf at SC meetings;
- ask questions and make clear their views on any agenda item when it is being discussed at a meeting so that they may be minuted;
- maintain continuity of representatives attending SC meetings;
- conduct themselves in a positive, friendly and respectful manner in the SC at all times; and
- do not seek to undermine the SC, its work (if a party is in disagreement with the SC's approach it should flag such to the SC), or seek to pursue or implement alternative goals to the SC's, either within or outside the SC and/or TOWGE, without stating so to the broader group (cf. at all times 5. below).

## **2. Fees & Budget**

2.1. In order to join the SC in any given calendar year, the membership fee must be paid in full within 2 months of receipt of invoice. If a member joins mid-way through a calendar year, they must still pay the full membership fee for that calendar year.

2.2. The annual membership fee covers the running costs of the SC, which include the charges/expenses of a competition lawyer and an external Chair, book-keeping services, catering at in-person meetings and other sundry costs. The SC strives to maintain the running costs as low as possible.

2.3. The annual membership fee is calculated based on the number of members and agreed number of meetings in the relevant calendar year.

2.4. The forecast budget for each year will be circulated to all members by the Chair or Vice-Chairs for approval by the SC.

## **3. Chair and Vice-Chairs**

3.1. The SC employs the services of an external Chair. The Chair's fee and expense budget for the year are pre-approved by the SC. The Chair has no decisional or voting rights in the SC.

The duties of the Chair include:

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- Chairing SC meetings (both conference calls and in-person meetings);
- Minuting SC meetings;
- Preparing and circulating meeting agendas, papers and minutes;
- Being the SC's first point of contact for the TOWGE and other sub-groups, DSPs and other external parties; and
- Communicating decisions and facilitating discussion between SC members and/or between the SC and its sub-groups (including the TOWGE) and external parties.

3.2. There are currently two volunteer SC Vice-Chairs, one a representative of a publisher member, and the other a representative of a society member. The Vice-Chairs commit to carrying out their Vice-Chair duties objectively on behalf of the SC membership and shall not use the role to promote their personal views or those of the organisation they represent.

The duties of the Vice-Chairs include:

- Creating an annual budget for approval by the SC;
- Approving legal, Chair, book-keeping and other budgeted costs on behalf of the SC;
- Helping the Chair to draft meeting agendas and guide the Chair's SC-related communications between meetings;
- Providing occasional administrative support to the book-keeper; and
- Advising the SC of any potential costs arising outside of the approved annual budget and seeking its approval to increase member budget contributions to fund these.

3.3. The annual appointment of the Chair and the Vice-Chairs is made by election of the full SC membership in the final SC meeting of each calendar year.

#### **4. Meeting Guidelines**

4.1. There are 6 days of in-person meetings and 4 two-hour conference call meetings per year, subject to review and confirmation by the SC at the start of each calendar year.

4.2. The quorum for the SC is ten members, including a minimum of three publisher members and three society or other members.

4.3. No later than one week prior to a SC conference call or in-person meeting, the Chair shall circulate an agenda and any relevant papers to all SC members and the Legal Counsel, which shall be adhered to during said calls or meetings.

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4.4. The Chair shall circulate minutes of each meeting to all SC members and the Legal Counsel no later than one week after said calls or meeting.

4.5. The SC is run on a consensus basis only. Consequently, there will be no official voting on any issues. Decisions may be made based on a show of hands provided all members consent to this in each case.

## **5. Legal Counsel and Competition Law Guidelines**

5.1. Participants of the SC acknowledge the following principles:

- According to the ECJ's case law, the Treaty provisions relating to competition law are based on the principle that each economic operator must determine independently the policy which it intends to adopt on the common market. This strictly precludes any direct or indirect contact between market participants which may influence the market conduct of actual or potential competitors or disclose to them its decisions or intentions concerning its own commercially sensitive conduct on the market.
- The European Commission's Horizontal Guidelines clarify that, in light of this case law, an information exchange constitutes a concerted practice if it reduces "strategic uncertainty" on a market, i.e. if the information exchanged or discussed is of strategic relevance.
- In recent case law, the ECJ held that exchange of information among competitors has a restrictive object if it is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market, without limiting this statement to information relevant for the pricing or output policy of the undertakings concerned. If information relevant for the future market conduct is exchanged, it is presumed that the participating undertakings which remain active on the market take account of the information exchanged in determining their conduct on that market.
- Conversely, information exchanges aimed at improving the overall functioning of the market to the benefit of all market participants, cannot be considered as restrictions by object.

5.2. Participants of the SC therefore agree the following compliance procedures:

- The SC conference calls and in-person meetings, as well as SC meeting agendas, papers and minutes must be monitored by a reputable external law firm in order to secure competition law compliance (the "Legal Counsel");

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- The SC shall always seek guidance prior to any discussions of a borderline nature (and similarly, any meeting should be adjourned if the discussion strays into areas of uncertainty); and
- It is particularly noted that there is to be no discussion of: (i) commercially sensitive, strategic or confidential information (which includes without limitation rates, market shares and individual intentions about future conduct regarding commercial or competitive parameters), and (ii) the application of dissimilar conditions to equivalent transactions with rights holders, DSPs or other trading partners.

## 6. SC engagement with DSPs

6.1. The recommended way for the SC to initiate dialogue with a new DSP or a new subject matter with any DSP is to:

- Only act upon a written request from the DSP in question which sets out the subject matter(s) it would like to address with the SC; or
- in lieu of a written request from a given DSP on a given matter, first present the subject matter to the SC's Legal Counsel and then, only after having received the Legal Counsel's advice, act in accordance therewith.

6.2. Where a DSP is engaged with the SC and raises an issue in bilateral discussions with a SC member which is relevant to the SC's scope, the SC member should obtain written approval from the DSP before raising the issue with the SC. Issues of general applicability (e.g. sharing of published repertoire definitions, published mechanical/performing splits) do not need any DSP consent.

## 7. Review

These Terms of Reference were approved by the SC on 25 June 2019 and will be reviewed as necessary but at least on an annual basis.

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