



**Response of The Law Society of Singapore's
Intellectual Property Practice Committee to
the Ministry of Law and Intellectual Property
Office of Singapore's Public Consultation on
draft subsidiary legislation on the regulation
of Collective Management Organisations**

30 December 2022

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30 December 2022

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Dear Sirs

2022 PUBLIC CONSULTATION ON DRAFT REGULATIONS FOR COLLECTIVE MANAGEMENT ORGANISATIONS

1. We refer to the Ministry of Law's public consultation on draft subsidiary legislation for the regulation of Collective Management Organisations ("**the Consultation**").
2. The Law Society of Singapore's Intellectual Property Practice Committee 2022 has considered the Consultation paper and prepared the enclosed submission in response. The submission is supported by the Council of the Law Society of Singapore.
3. If you have any questions or require further assistance on the matter, please contact the Representation and Law Reform Department by email at represent@lawsoc.org.sg.
4. Thank you.

Yours sincerely,

Jonathan Foong

Chairperson, Intellectual Property Practice Committee

30 December 2022

The Law Society of Singapore Intellectual Property Practice Committee’s response to the Publication Consultation on the Draft Regulations for Collective Management Organisations

We have limited our comments (set out below) to the specific areas or details of the Consultation Paper. The first column is the paragraph reference in the Consultation Paper, the second column sets out the particular regulation in the draft Copyright (Collective Management Organisations) Regulations 2023. Our comments and feedback to the relevant questions are set out in column 3. Where the questions posed in the Consultation Paper are not found in the table below, we are either in accord with MinLaw and IPOS or do not have any comments to these questions.

Ref in Consultation Paper	Draft Regulation/Question	Comments
Part 1: Introduction		
[8]	(a) Is there any ambiguity or lack of clarity as to the scope of any provision or how it should operate, including any aspect in which a particular provision may be more prescriptive?	In the definition of a CMO in Section 459(1)(b)(ii), there is a reference to a “prescribed related person”. However, neither the Act nor the Regulations defines who this “prescribed related person” is.
Part 2: Framework of Licensing Scheme		
[24]		<p>Given that this is a technical consultation and the key obligations that a CMO would have to comply with would already be known to CMOs that can start taking active steps, a 6-month transitional period draws an appropriate balance between providing CMOs sufficient time to ensure compliance and ensuring a timely commencement of the licensing scheme.</p> <p>If CMOs require a longer transitional period, rather than delay the commencement of the scheme, IPOS may decide from a regulatory point of view to give a further “grace period” before it exercises its powers to enforce financial penalties for non-compliance, for example.</p>
Part 3: Class Licence Conditions		
[33]	Reg 3: “excluded persons”	<p>The only class of “excluded persons” are persons who provide a “subscription service (<u>commonly known as a streaming service</u>)”</p> <p>However, where streaming services</p>

		<p>are concerned, this would mainly apply to films and sound recordings.</p> <p>Is it the intention to limit subscription services to subscription services for certain types of works only? What about a subscription service to access literary databases (for example, LawNet which offers subscription or pay per use access) or image libraries (for example, Getty Images)?</p>
[33]	Reg 2(1): definition of “key officer”	<p>Under the Copyright Act 2021, “officer” in Part 9 is defined as also including “any person purporting to act in such capacity”.</p> <p>The current definition in the draft Regulations only limits key officers to directors, CEOs or similar officers and partners, which may give rise to a possible loophole where a person does not have hold the appropriate title.</p> <p>We suggest that the definition of “key officer” be amended to include “any person purporting to act in such capacity” for consistency with the Act.</p> <p>Under the proposed definition, if a person who performs a key management role in a CMO but is not a director or partner or does not have the formal title of CEO would not fall under the definition of a “key officer”.</p> <p>Given that the provisions which contain the term “key officers” relate to corporate governance of a CMO, expanding the definition of “key officer” would place the onus on the CMO to disclose the identities of such persons and information of remuneration to these persons and make the management of CMOs more transparent.</p>
[40]	Reg 9 - 16	<p>Reg 9 is intended to grant remedies to persons who are affected by the CMO’s non-compliance with its membership policies. How is this to work in practice, particularly in light of the Contracts (Rights of Third Parties</p>

		<p>Act) 2001? Does this extend to members? What about parties who are non-members and/or users?</p> <p>Would the non-compliance result in the CMO's actions being void – e.g., if the membership is irregular <i>ab initio</i>?</p>
[40]	Reg 13	<p>What if the membership is irregular <i>ab initio</i>?</p> <p>In the situation of Reg 13(2)(b)(i) – given that the notice period in 13(1)(b) is 9 months, we suggest that that period be shortened to 18 months.</p>
[40]	Reg 14	<p>This Reg should set a statutory time frame within which the information should be made available to the members. 6 to 8 weeks would be a reasonable maximum.</p>
[40]	Reg 15	<p>Should this specify timelines for calling of the meeting and the agenda, as well as for the provision of accounts – as with company meetings?</p>
[43]	Reg 20	<p>The calculation of amount should be made available to the member at least 14 to 21 days before the general meeting.</p>
[43]	Reg 24	<p>If the CMO is not able to provide the required information because of the failure of users, the CMO needs to make it clear to members that this is the case in the statement and state the efforts that were made to collect that information.</p>
[43]	Reg 25	<p>There should also be two different periods, one for the request for information, the other for filing the complaint i.e. commencement of dispute.</p> <p>We suggest that:</p> <p>(a) the period to request for information be between 60 and 90 days; and</p> <p>(b) the period for commencement of action in case of dispute be between 90 and 180 days.</p>

		We noticed that there is no specified date from which time is supposed to start running. Therefore, we suggest that this be the date of receipt of the royalty statement.
[47]	Reg 27 - 29	30 days would provide a quick resolution to the matter, although it may cause some constraint on the CMO's part as time might be required to investigate into any particular dispute. A 45-day period might be more reasonable. A broad standard of good faith and reasonableness would provide some flexibility and the usual case law would be able to elucidate how this should be interpreted if there is a dispute.
[47]	Reg 31	It would be difficult to have an exhaustive / limited list of issues that can be excluded from mediation. That would lead to questions as to why a certain scenario qualifies but others do not. Generally, mediation should be encouraged as an effective way to resolve (or at least attempt to resolve) complaints / disputes.
Part 4: Procedures relating to Regulatory Action		
[64]	Reg 42 – 47 generally	Consider standardising notifications from IPOS are “in writing” (Reg 46(2), 47(b)) or by “written notice” (Reg 42).
[64]	Reg 42	We suggest adding the following <i>italicised</i> words to Reg 42(2)(b): “in the case of a financial penalty - the amount of the financial penalty <i>and the date the financial penalty is to be paid.</i> ”
[64]	Reg 43	We suggest adding the following <i>italicised</i> words to Reg 43(2), “IPOS may, <i>on its own volition or upon written application by the affected person</i> , extend the time within which representations may be made...”. This is to ensure that affected persons are aware that they may apply for an extension of time if necessary.

[64]	Reg 44	Consider stating the method of submission (e.g in hard copy via registered post, soft copy via a portal or as prescribed on IPOS' website (see Reg 44(2)) and defining "any relevant document" in Reg 44(3).
[64]	Reg 46	<p>We suggest adding the following <i>italicised</i> words to Reg 46(2), "If IPOS rejects any representations without considering their merits, IPOS must inform the representor in writing of the rejection, <i>and which grounds in regulation 46(1) formed the basis for the rejection</i>".</p> <p>This is so there is greater transparency and accountability (principles for the class licensing scheme) for IPOS' decision for summary rejection. Given that IPOS would have considered why it is rejecting the representations without considering merits, this would not unduly add to costs.</p>
[64]	Reg 47	<p>Consider whether there should be a timeline after representations are submitted to IPOS for IPOS to inform the affected person of its decision on whether it would be taking regulatory action.</p> <p>This is to provide some finality of outcome to the affected person, so that the possibility of regulatory action would not remain as a looming uncertainty such that it would affect its operational business. This is especially since IPOS is empowered to order the complete cessation of the affected person's business for an indefinite or specified period.</p> <p>A possible period may be 3 or more months, following the time for deciding on reconsideration application in Reg 54(1).</p>
[67]	Reg 48 – 56 generally	Consider standardising whether notifications from IPOS are "in writing" (Reg 55(2), 56) or by "written notice" (Reg 49(2), 52).

[67]	Reg 50	As with Reg 43 above, we suggest adding the following <i>italicised</i> words to Reg 50(2), "IPOS may, <i>on its own volition or upon written application by the affected person</i> , extend the time within which a reconsideration application may be made...". This is to ensure that affected persons are aware that they may apply for an extension of time if necessary.
[67]	Reg 51	As with Reg 44 above, consider stating the method of submission to IPOS (e.g. in hard copy via registered post, soft copy via a portal or as prescribed on IPOS' website (see regulation 44(2)) and regulation 51(1) and defining "any relevant document" in Reg 51(3).
[67]	Reg 53	Consider stating when the withdrawal is deemed effective by adding the following <i>italicised</i> words: "..., <i>and the application shall be deemed withdrawn upon [x]</i> " in order to provide the affected person with greater certainty.
[67]	Reg 55	<p>Consider adding the following <i>italicised</i> words to Reg 56(2), "If IPOS confirms a decision without considering the merits of a reconsideration application, IPOS must inform the applicant in writing of the confirmation <i>and which grounds in regulation 56(1) formed the basis for the confirmation, and if the reconsidered decision may be appealed to the Minister under section 467, that an appeal may be made within 14 days after the date of the reconsidered decision.</i>"</p> <p>This is to allow for greater transparency and accountability for affected persons to understand the decision and to decide whether or not to appeal.</p>
[69]	Reg 59	Similar to the comments above on Reg 44 and 51 above, consider stating the method of submission (e.g. in hard copy via registered post, soft copy via a portal or as prescribed on the Ministry of Law website) and

		<p>what it means for the appeal to be submitted to the Minister in Reg 59(1), and defining the phrase “any relevant document” in Reg 59(3).</p> <p>This is to provide greater clarity to the process, especially since under Reg 62(1)(a), the Minister may make a decision summarily if the appeal was not made in accordance with this Division.</p>
[69]	Reg 61	<p>Consider stating when the withdrawal is deemed effective by adding the following <i>italicised</i> words: “..., and the appeal shall be deemed withdrawn upon [x]” in order to provide the appellant with greater certainty.</p>
[69]	Reg 62	<p>In Reg 62(2), if the phrase “cause the appellant to be informed in writing” refers to a written notice from the Minister, consider amending to “<i>inform the appellant by written notice</i>” for consistency with Reg 60. Also consider adding the following <i>italicised</i> words to Reg 62(2), “..., and which grounds in regulation 62(1) formed the basis of the confirmation.”</p>
[69]	Reg 63	<p>If the phrase “cause an appellant to be informed of the Minister’s decision on appeal” refers to a written notice from the Minister, consider amending to “..., by written notice, inform an appellant of the Minister’s decision on appeal” for consistency with Reg 60.</p> <p>Consider adding the following <i>italicised</i> words to Reg 63, “... the Minister must cause an appellant to be informed of the Minister’s decision on appeal, including the reasons for the decision.”</p>