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Mr Michel BARNIER
Commissioner for Internal Market and Services
European Commission
BERL 10/034
BE-1049 Brussels

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Please use edps@edps.europa.eu for all correspondence

Dear Mr Barnier,

On 11 July 2012, the Commission consulted the EDPS on the proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market ('the Proposal').

Prior to the adoption of the Proposal the EDPS was given the opportunity to provide informal comments, which he did on 11 June 2012. The EDPS welcomes that most of his comments have been taken into account and integrated in the Proposal. The following observations will highlight these welcomed improvements and will recall the remaining issues to be addressed in terms of data protection.

The Proposal aims at providing a legal framework that reinforces the governance and transparency of all collecting societies and that facilitates the provision of multi-territory licences for online music services in the EU.

As a general observation, the EDPS first notes that the Proposal does not harmonise the tasks of collecting societies and the modalities of their action as concerns enforcement of copyright and related rights (such as their tasks to institute proceedings and to seek damages or compensation against individuals in case of infringement), which remain areas governed by, and in accordance with, national laws. Therefore, the data protection concerns relating to enforcement actions taken by collecting societies to ensure the respect of copyright and related rights of the right holders they represent will remain an area that must be assessed from the perspective of national laws.

Although not at the heart of the Proposal, data protection has some relevance since processing operations may be undertaken by collecting societies in relation to their members, right holders, users and other individuals. In particular, recital 25 and Article 22 of the Proposal envisage the creation of databases by collecting societies for purpose of managing ownership of rights that are licensed on a multi-territorial basis, allowing for the identification of works, rights, and right holders which a collecting society is authorised to represent.

The EDPS therefore welcomes that a general reference to data protection law and relevant data protection principles has been included in recital 38 and that explicit and specific data protection safeguards are provided in recitals 25, 27, 28, 39, 40, 43 as well as in Articles 16, 23(2), and 24 of the Proposal. These specific safeguards ensure, amongst others, the right to information as set forth in Articles 10 and 11 of Directive 95/46/EC as well as the right for individuals to access and rectify personal data concerning them, as provided in Article 12 a) and b) of Directive 95/46/EC. They also ensure that any outsourcing of a processing operation by a collecting society should respect Article 17 of Directive 95/46/EC.

The EDPS also welcomes the distinction of the types of data that can be shared according to the type of recipients foreseen in Articles 16 to 19. This minimises the amount of personal data that could be disclosed about individuals. The EDPS furthermore welcomes that Article 18(2) contains elements to specify the types of data that could be exchanged with third parties whenever right holders of a work are not identified and that it limits the disclosure of data to only those necessary to identify the right holder. In addition to those elements, the EDPS wishes to emphasise that, although the Proposal does not envisage international transfers to third countries, the sharing of personal data with recipients located outside the EU must respect data protection law, in particular Articles 25 and 26 of Directive 95/46/EC. The EDPS recommends including this reminder in a recital of the Directive.

Finally, recital 27 of the Proposal makes reference to the '*automated monitoring*' of the use of rights by collecting societies. The EDPS notes that the Proposal only aims at regulating business-to-business situations in relation to licence holders and not the relationship of collecting societies with individuals in their capacity of consumers. It could however be clarified in recital 27 that '*automated monitoring*' in such case refers to monitoring the use of a licence for purpose of invoicing. Such a clarification would allow that the measure foreseen in recital 27 of the Proposal is not confused with other forms of monitoring that could be done over the Internet, such as the monitoring of individuals' use of the Internet and of their electronic communications, which would be intrusive of individuals' privacy and would raise specific data protection risks.

Our services remain available, should you need any clarification in relation with this letter.

I have sent the same letter to the European Parliament and to the Council as well.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

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Ms Françoise LE BAIL, Director General - DG JUST
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