SUMMARY OF KEY CHANGES TO DRAFT COPYRIGHT (COLLECTIVE MANAGEMENT ORGANISATIONS) REGULATIONS ISSUED FOR PUBLIC CONSULTATION IN NOVEMBER 2022

Consultation Draft	Changes made	CMO Regulations 2023
Regulation 2(1) "key officer"	The definition of "key officer" has been amended to "an individual who (a) is or purports to be involved in the management of the business of the CMO; or (b) sits or purports to sit on the board of directors, executive committee or any other management committee of the CMO".	Regulation 2(1) "key officer"
Regulation 2(1) "member";	The definition of "member" has been amended to make clear that it does not include a CMO's partner collecting societies, and those authors, makers, publishers, performers and rights owners whose works or performances (or both) are managed by a CMO only by virtue of a representation agreement. New definitions of "representation agreement" and "partner collecting society" have been added: • "representation agreement" means "an agreement under which party X (the authorising party), who is managing the use of copyright works or protected performances on behalf of other persons, authorises party Y (the authorised party) to manage the use of those works and performances"; and • "partner collecting society" means "a person who is in a representation agreement with the CMO (whether as the authorising party or the authorised party)".	Regulation 3(2) "members"; Regulation 3 "representation agreement"; "partner collecting society"
Regulation 2(1) "portfolio"	The definition of "portfolio" in relation to a CMO has been expanded by: • including works and performances that are collectively managed by a CMO under a representation agreement; and • removing the requirement that a work or performance must fall within one or more tariff schemes formulated or operated by a CMO.	Regulation 2(1) "portfolio"
Regulation 2(1) "tariff"	The definition of "tariff" has been expanded to cover any sum paid to a CMO for permission to use the whole or any part of its portfolio, whether under a tariff scheme or otherwise. This clarifies that CMOs are not precluded from granting licences and collecting tariffs that are not pursuant to a tariff scheme, and that such activities are still regulated under the Regulations.	Regulation 2(1) "tariff"
Regulation 2(1) "user"	The definition of "user" has been expanded to cover any person who has been granted permission to use the work or any part of the CMO's portfolio, whether under a tariff scheme or otherwise. This clarifies that persons who obtain	Regulation 2(1) "user"

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	permission from CMOs other than through tariff schemes (e.g. through individually negotiated licences) still fall within the scope of the Regulations.	
Regulation 3	<u>Excluded class for persons who provide subscription services to content on demand</u> The scope of the class of "excluded persons" who provide subscription services has been amended to cover more generally, any entity that "provides a subscription service that primarily provides a subscriber with access to digital content on demand", and to remove the qualification that the subscriber must be accessing the content for personal and non-commercial use. This amendment ensures greater parity in the treatment of persons that provide such services. <u>New excluded class for entities that manage exclusively for other entities in the same group</u> A new class of "excluded persons" has been introduced: any entity that manages works or performances exclusively for entities within its group. Entities are part of a group if all of them are "substantially linked" to one another. A substantial link is established when one entity has control of 75% or more of the voting power in another entity, and the provision illustrates how the concept applies when there are more than 2 entities in the same group: *If X is substantially linked to Y and Y is substantially linked to Z, then X is also substantially linked to Z.* The threshold has been set at 75% to reflect the significant degree of control and ownership in such arrangements. For example, it is the point at which corporate law permits certain crucial acts of control (such as passing special resolutions in companies) and the usual threshold for granting tax reliefs in respect of the acquisition of related entities. This new class ensures that those who manage use of what is effectively their own works (for example, a subsidiary incorporated by a publisher to manage the publisher's repertoire) would not be regulated as CMOs. <u>Other classes of excluded persons</u> There were other requests for excluding further classes of persons in addition to those mentioned above. In all these cases, no exemption was warranted: • In some cases, there was no need for exclusion because the definition of CMO in Section 459(1)(a) – (e) of the	Regulation 4

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	Copyright Act 2021 would not have been satisfied in the first place. • In other cases, exemption was sought purely based on particular labels (e.g. "publisher") but there was a lack of clarity as to what exactly those labels entailed. The relevant question is whether a person would satisfy each paragraph in the definition of a CMO in Section 459(1), and not how a person would describe itself. • There was also a request for exemption of organisations known as Independent Management Entities ("**IMEs**").[1] In this case, the same impetus for regulatory oversight applies given the collective management function performed by this class of persons. There was no compelling justification for them to be held to different standards of transparency, accountability and good governance based on the underlying structure and business model that were cited to us.	
Regulation 5	The provision has been amended to clarify that a CMO must explain the consequences of entering into an exclusive membership agreement with a person before entering into such an agreement with the person, and to require the CMO to give the explanation to the person in writing.	Regulation 6
Regulation 6(3)(b)	If there is any change to the membership agreement, instead of giving the member a copy of the entire membership agreement, the provision is satisfied if a CMO provides the member with a copy of the amended part of the membership agreement.	Regulation 7(4)
Regulation 7(1)	The provision has been amended to focus on the underlying objective of ensuring certainty in a member's portfolio, instead of the specific means by which this objective is to be achieved. As such, the amended provision only requires membership agreements to be clear about the works or performances (or both) that CMOs will manage on behalf of members. CMOs free to determine how to achieve this. Specifying the individual title or description of every work or performance that they will manage is but one way to do so. For example,	Regulation 8(1)

[1] IMEs are generally regarded as entities that (a) are neither owned nor controlled by the rightsholders whose material they manage, and (b) operate on a for-profit basis: Article 3(b), Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84/72, March 20, 2014.

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	CMOs could also satisfy this provision by simply stating that they will manage every work or performance (or both) of a particular member.	
Regulation 13(2)(b)(i)	The time for which the member will be bound by a permission validly given by a CMO after variation or termination of the membership takes effect has been shortened from 3 years to 18 months. This is based on feedback from a majority of stakeholders that the proposed 3-year period would be excessively long.	Regulation 14(2)(b)(i)
Regulation 13(3)(a)	The provision has been amended to make clear that, where a member gives a CMO notice to vary or terminate the rights granted to the CMO: • the CMO is obliged to inform only users who had valid permission to use the member's work or performance as of the date of the member's notice (as opposed to users past and present); and • the CMO's notice to users must also state the nature of the variation or termination.	Regulation 14(3) – (5)(a)
Regulation 20(2)	A non-exhaustive list of factors has been included to provide guidance on when it may be impractical to calculate distributions based on actual use of a member's portfolio. Based on feedback received, the factors are: • whether finding out the actual use imposes a heavy administrative burden on the user; • whether any users are unable or refuse to cooperate with the CMO in finding out the actual use; and • whether the member's portfolio is used by users for private or domestic purposes or in private or domestic settings.	Regulation 21(3)
Regulation 21(2)	The ordinary time frame within which a CMO must distribute a tariff has been amended and simplified – a CMO must either distribute a tariff received during a financial year within 6 months after the end of the financial year, or any longer period that may be specified in the distribution policy.	Regulation 22(2)
Regulation 21(3)	The provision has been amended to make clear that the exception where a CMO is unable to make a distribution due to a user's conduct only applies if the CMO is unable to make the distribution despite the CMO's best efforts.	Regulation 22(3)(a)
Regulation 23	The provision has been amended to support the obligation in Regulation 24 by making clear that the CMO's obligation to collect usage information under this provision extends to	Regulation 24(a)(ii) and (iii)

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	information that Regulation 25 obliges the CMO to give to members when making a distribution, namely, information on the use of every member's portfolio and any other information that the distribution policy requires the CMO to provide to members when making a distribution.	
Regulation 24(1)	The provision has been amended to require CMOs to also provide the following information to a member: • when making a distribution to the member – o general information about the usage of the member's portfolio; and o information about the period of use for each work or performance in the member's portfolio; and • upon the member's request, information about the tariff schemes operated by the CMO.	Regulation 25(1)(a) and (b), (2)
Regulation 24	A catch-all provision has been added to require a CMO to give to a member when making a distribution, any other information required by the CMO's distribution policy.	Regulation 25(3)
Regulation 24(2) and 25(2)	The provisions have been amended to require a CMO to explain to a member its efforts to collect the information dealt with in the respective provisions if it is unable to give the information to the member due to a user's conduct.	Regulation 24(b) and 25(4)(b)
Regulation 25(1)(a)	The provision has been amended in respect of the period within which a member may ask a CMO for information about how a distribution is calculated and dispute the amount. The upper limit of the period has been adjusted from 3 months to 90 days (the lower limit of the period remains at 60 days). The provision has also been amended to clarify that this period starts from the date on which the member is given the relevant information under Regulation 25.	Regulation 26(1)(a)
Regulation 29	A provision has been added to make clear that the matters to be provided for in a dispute resolution policy, including the dispute resolution process under this regulation, only apply to a dispute between the CMO on the one hand, and a member, user or intending user on the other hand (and not, for example, a dispute between members where the CMO is not a party to the dispute).	Regulation 30(1)
Regulation 29(3) and (4)	To promote certainty as to the finality of the CMO's decision-making process in the event of a dispute, the provision has been amended to include an overall timeframe for a CMO to conclusively exhaust its dispute resolution procedure. A CMO must give a final decision on a dispute (after any internal	Regulation 30(6) and (7)

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	recourse) within 60 days after a notice of dispute is given, or any shorter period specified in the dispute resolution policy. Within this period, CMOs are free to manage their own timelines. In this regard, the provision no longer sets a specific timeframe within which a CMO must give its initial decision on a notice of dispute (originally, this was 30 days after the notice of dispute). The provision has also been harmonised such that whenever the CMO gives its decision on a notice of dispute (whether at first instance or under any internal recourse such as an appeal), the CMO must give its decision in writing, and in the case of an adverse decision, with reasons.	
Regulation 35	The term "annual report" has been renamed to "transparency report" to make clear that the document is unique to the CMO regulatory framework, and is not to be confused with reports under other legislation pertaining to corporate governance.	Regulation 36
Regulation 35(2)(c)(iv) and (v)	The provision has been amended to require a CMO to report only aggregated sums in relation to: • the amount attributed and distributed to the CMO's members, and • the amount attributed but not distributed to the CMO's members.	Regulation 36(2)(c)(iv) and (v)
Regulation 35(2)(d)	The provision has been expanded based on feedback to require the transparency report to include information about the total remuneration (including non-monetary benefits) paid to a CMO's officers and employees, instead of just its key officers.	Regulation 36(2)(d)
Regulation 35(2)(e)(iii) – (v)	The provision has been amended to require a CMO to report only aggregated sums in relation to the: • amount paid by the CMO to all its partner collecting societies; • amount paid to the CMO by all its partner collecting societies; and • deductions (if any) made by the CMO's partner collecting societies under their representation agreements with the CMO (for example, deductions for management fees).	Regulation 36(2)(e)(iii) – (v)
Regulation 37(3) and (4)	The provision has been amended to also require the CMO to publish information on any restrictions on the rights managed by the CMO in relation to each work or performance in the CMO's portfolio.	Regulation 38(3)(e) and (4)(e)

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N.A.	This provision introduces an alternative to the CMO's obligation under Regulation 37 to publish on its website, information about every work and performance in its portfolio. This accommodates CMOs' concerns about the burden and practicality of publishing information about every work and performance in their portfolio, while preserving the underlying policy intent of giving users certainty and assurance as to the works and performances that they can obtain permission to use. Under this alternative, a CMO need only publish a list of its members and partner collecting societies (the "**List**") but must provide a contractual indemnity to all its users against any liability incurred for a rights infringement arising from a user's use of a work or performance that is apparently within the CMO's portfolio. The premise and feasibility of this mechanism is supported by stakeholders' feedback that CMOs are able to provide information on their members and that it is not uncommon for CMOs to indemnify their users in Singapore. Further details of this alternative are summarised below: • The List must be kept up to date. What constitutes "up to date" is aligned with Regulation 37. • The provision specifies when a work or performance is "apparently within a CMO's portfolio", taking into account matters such as whether it was made or owned by a member in the List; whether the contract with the user expressly excludes the use of the work or performance; and whether the CMO confirmed with the user that the work or performance is not part of its portfolio. • The user's use of the work or performance must be in accordance with the user agreement for the indemnity to apply. • The indemnity must extend to indemnifying the user against any costs ordered against the user and any costs reasonably incurred by the user in connection with actual or contemplated proceedings for the rights infringement. • CMOs are not precluded from making reasonable provisions as to the: o conditions in relation to the manner in which, and time within which, claims under the indemnity are to be made; o conditions enabling the CMO to take over conduct of any proceedings that affect the amount of the CMO's liability to indemnify the user; and	Regulation 39

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	○ maximum amount covered by the indemnity. However, a CMO will be in breach of its class licence condition if it caps its indemnity at an unreasonable amount. The amount is deemed unreasonable if the CMO's cap is less than the eventual amount of damages and costs ordered by a court against the user.	
Regulation 37(5)(b), (6) and (7)	The provision has been amended to create an exception to the requirement for a CMO to provide, within a prescribed time frame, confirmation about whether a particular work or performance is or is not part of its portfolio, or proof that a work or performance is part of its portfolio. The exception applies where there are exceptional circumstances and the CMO is unable to provide the requested confirmation or proof within the prescribed timeframe despite its best efforts. In such a case, the CMO must nonetheless inform the requestor before the said timeframe expires and provide the requested confirmation or proof within a reasonable time.	Regulation 40(4)
Regulation 38(1)(b)	The provision has been amended to require the CMO to also publish, in respect of information about the process to apply to be a member, information on any membership fees payable by members.	Regulation 41(1)(b)
Regulation 38(1)(d)(ii)	Regarding the information a CMO must publish for each tariff scheme it formulates or operates, the provision has been amended to clarify that it only applies to publishing standard terms on which a CMO is willing to grant, or procure the grant of, permission (including standard applicable tariffs, with or without discounts).	Regulation 41(1)(d)(ii)
Regulation 42(2)(g)	The timeframe within which a person may make representations has been extended from 14 days to 21 days based on feedback.	Regulation 45(2)(g)
Regulation 43(2)	The provision has been amended to make clear that the time within which representations may be made may be extended by IPOS on its own initiative or on a written application by the affected person.	Regulation 46(2)
Regulation 44(3)	For clarity, the phrase "any relevant document" has been replaced with "supporting documents".	Regulation 47(3)

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Regulation 46(2)	The provision has been amended to require IPOS to inform a representor of the statutory basis for summarily rejecting any representations.	Regulation 49(2)(b)
Regulation 49(2)	The timeframe within which a person may apply for reconsideration has been extended from 14 days to 21 days based on feedback.	Regulation 52(2)
Regulation 50(2)	The provision has been amended to make clear that the time within which a reconsideration application may be made may be extended by IPOS on its own initiative or on a written application by the affected person.	Regulation 53(2)
Regulation 51(3)	For clarity, the phrase "any relevant document" has been replaced with "supporting documents".	Regulation 54(3)
Regulation 53	The provision has been amended to make clear that a withdrawal of a reconsideration application takes effect at the time the written withdrawal is submitted to IPOS.	Regulation 54(2)
Regulation 55(2)	In respect of decision that IPOS summarily confirms without considering the merits of a reconsideration application, the provision has been amended to require IPOS to inform the applicant of the reconsideration application: • of IPOS's statutory basis for summarily confirming the original decision; and • that an appeal may be made to the Minister within 21 days after the date of the confirmation, if the confirmation can be so appealed under Section 467 of the Copyright Act 2021.	Regulation 58(2)(b) and (3)
Regulation 56(2), 58	The timeframe within which a person may appeal to the Minister has been extended from 14 days to 21 days based on feedback.	Regulation 58(3) and 59(2)
Regulation 58(2)	The provision has been amended to make clear that the time within which an appeal may be made may be extended by the Minister on his or her own initiative or on a written application by the person who intends to make the appeal.	Regulation 61(2)
Regulation 59(3)	For clarity, the phrase "any relevant document" has been replaced with "supporting documents".	Regulation 62(3)
Regulation 61	The provision has been amended to make clear that a withdrawal of an appeal takes effect at the time the written withdrawal is submitted to the Minister.	Regulation 64(2)

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Regulation 62(2)	The provision has been amended to require the Minister to inform an appellant of the statutory basis for summarily confirming a decision appealed against.	Regulation 65(2)(b)
Regulation 63	The provision has been amended to make clear that the reasons for the Minister's decision must be made known to the appellant.	Regulation 66