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Collective management of copyright and neighbouring rights in Greece

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Introduction

Under the Copyright Law, certain copyright and related rights are subject to mandatory collective management, meaning that they can be exercised only through a collective management organisation (CMO). These rights include:

- the right to fair remuneration for reproduction for private use (known as "blank tape levy"), which is calculated at a percentage of the value of specific devices or materials that are used for private reproduction of protected works (as provided for in article 18 of Law 2121/1993). The levy can be collected only by CMOs;
- the right to grant or refuse authorisation to a cable operator for cable retransmission (provided for in article 3(5) of Law 2121/1993), which may be exercised only through a CMO; and
- the right to an equitable remuneration of performers of sound, visual or audiovisual recordings and producers of sound recordings, for acts of communication to the public as well as for radio or television broadcasting of legally released recordings (provided for in article 49 of Law 2121/1993). Such remuneration is payable only to CMOs.

In relation to the above – particularly the mandatory collective management of the related right to an equitable remuneration for acts of communication to the public and for radio and television broadcasting – there have been disputes in Greece regarding whether the fact that these rights are subject to mandatory collective management means that CMOs are, as some are claiming, entitled to

collect the equitable remuneration not only for their members, who have assigned this right to them, but also for all other rights holders, regardless of whether they are members of the CMO.

Legislative background

Article 12(1) of Law 4481/2017 on collective management of copyright and related rights states as follows:

> *Rightholders*[(1)] *have the right to authorize a collective management organisation of their choice to manage the economic right or the powers deriving therefrom or categories of powers or types of works or objects of protection of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the collective management organisation or of the rightholder (authorization agreement).* ***The authorization may be granted by delegation of the right, or of the relevant powers for the purpose of management, either by power - of - attorney or any other contractual agreement. Authorization shall be made every time in writing and for a certain period of time that cannot be longer than three (3) years.*** *In case of doubt, it is presumed that the authorization concerns all works, including future works, for a period not exceeding three (3) years. The collective management organisation is obliged to manage the economic right, powers or categories of powers or types of works or objects of protection, provided that their management falls within the scope of its activities unless it has objectively justified reasons for refusing management.* (Emphasis added.)

There is no substantial difference between the provisions of Law 4481/2017 and the pre-existing collective management framework of Law 2121/1993 regarding these points. More particularly, article 54(1) of Law 2121/1993 states as follows:

> *Authors (and respectively the rightholders of related rights, according to article 58 of Law 2121/1993)* ***may assign*** *the administration and/or protection of their rights to a collecting society established exclusively to engage in the functions of administering and protecting all or part of the economic rights"*. Also, according to the explicit provision of article 54 par. 3 of Law 2121/1993 *"****The title (of a collecting society) may be established by a transfer of such economic rights for which protection is sought, or by grant of appropriate powers of attorney.*** *The title shall be established* ***in writing*** *and shall be for a specified period which shall never be longer than three years*. (Emphasis added.)

Interpretation

It seems to be clear from the text of the law that rights holders have the right (ie, the discretion), at their free will, to entrust the management and protection of their rights to CMOs. However, it seems that rights holders are never obliged by law to

make such an assignment and the law does not provide for an ex lege assignment to the CMO.

It seems that without the transfer of the relevant right or the provision of special power of attorney or other agreement, the Collective Management Agency is not entitled to collect any remuneration (rule of written assignment). After all, according to the practice regarding all CMOs of copyright and related rights followed globally, including in Greece, authors and rights holders of related rights may, if they so wish, assign the protection and management of their economic rights to CMOs. However, they also have the freedom and the opportunity to:

- not be members of a CMO;
- exercise and manage, whenever permitted by law, their property rights individually;
- be members of a foreign CMO;
- reserve the right to become a member of a CMO that will be established in the future; or
- not exercise a right at all, regardless of whether such right falls under mandatory collective management (meaning that, if they wished to exercise it, this would have to be done through assignment to a CMO).

Under Greek law, it seems that the only case in which a CMO is entitled to represent non-member rights holders (known as an "extended copyright licence") is when this is explicitly stipulated in the law, as is the case for cable retransmission under article 35(5) of Law 2121/1993).[(2)]

On the other hand, the management of the right to collect the "equitable remuneration" provided in article 49 of Law 2121/1993 is mandatorily exercised through the CMOs to which the rights holders have assigned the exercise of this right. It is understood that each rights holder of a related right (eg, performers and phonogram producers) is free to decide whether they wish to participate as a member of a CMO. Further, they have the right to choose whether they will join a Greek or a foreign organisation, and if so, which CMO that will be. If a rights holder is not a member of a CMO, it seems that they will simply not collect the equitable remuneration of article 49 of Law 2121/93.

Therefore, it seems that the correct interpretation of the law, based on the explicit text of the provisions as well as the clear, explicit and true will of the legislature, is that CMOs are entitled to collect remuneration only for those rights holders:

- that they represent;
- with which they have signed written assignment contracts; and
- whose works are transmitted by users.

However, certain CMOs claim that they are allegedly entitled to receive the equitable remuneration provided for in article 49 of Law 2121/1993, "for all rightholders" – that is, even for performers and phonogram producers that are not members of the CMO and have not assigned this specific right thereto. It seems that this is an incorrect interpretation of the applicable legal provisions for the reasons explained above.

Comment

The right to an equitable remuneration of article 49 of Law 2121/1993 can be assigned only to a CMO, but it seems that performers and musicians have the right to abstain, for as long as they wish, from exercising the right in question (and assigning it to a CMO), as well as to entrust its collection to a foreign CMO or a CMO that is to be established in the future. The law allows the assignment of this right only to a CMO and stipulates that the right can be exercised only by a CMO, but does not oblige the rights holder to exercise this right by assigning its exercise and collection mandatorily to an existing Greek CMO. If the rights holder is willing, they may assign this right, but if not, they cannot be forced to do so.

Therefore, all CMOs have the right – self-evidently – to receive equitable remuneration for works and artists that they represent. However, it seems that they do not have this right for anyone else. In other words, it seems that no CMO is entitled to collect remuneration for the transmission of works of rights holders that are not its members and that have not assigned this right to it in writing.

For further information on this topic please contact Kriton Metaxopoulos or Elena Nikolarea at A & K Metaxopoulos & Partners Law Firm by telephone (+30 210 725 7614) or email (k.metaxopoulos@metaxopouloslaw.gr or e.nikolarea@metaxopouloslaw.gr). The A & K Metaxopoulos & Partners Law Firm website can be accessed at www.metaxopouloslaw.gr.

Endnotes

(1) Article 3(1)(d) of Law 4481/2017 defines "rightholder" as:

> *any person or entity, other than a collective management organisation, which holds a copyright or a related right or, under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue.*

(2) Article 35(5) of Law 2121/1993 states that:

> *The right of the author to grant or refuse authorization to a cable operator for retransmission through cable may only be exercised through collective management organisations.* ***Where the author has not entrusted the management of the right to cable retransmission to a collective management organisation, the collective management organisation which has been authorized by the Ministry of Culture and Sports to manage the rights of the same category may manage the right to cable retransmission.*** *Where there is more than one collective management*

organisation authorized to manage rights of the same category, the author shall be free to choose among them the collective management organisation which he authorizes to manage the right of cable retransmission. The author referred to in this paragraph shall have the same rights and obligations as the rightholders who have entrusted the organisation with the management and may claim these rights within three (3) years from the date of the cable retransmission of the work.
(Emphasis added.)