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When must public performance of musical works be reported to CMOs?

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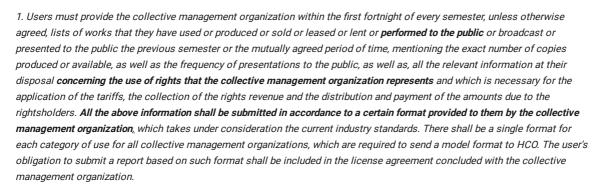
> What is the reporting obligation?

> When does the reporting obligation apply?

The introduction of Law 4481/2017 into the Greek legislation aimed to regulate the collective management of IP and relative rights, thus amending the EU Collective Rights Management Directive. (1) Specifically, in its regulation of the public performance of musical works incorporated in legitimately released sound carriers, stores and undertakings, article 24 of Law 4481/2017 introduced a reporting obligation for users.

What is the reporting obligation?

The reporting obligation entails the delivery of lists of works used by the user to the collective management organisations (CMOs) representing the rights of the specific works. This derives not only from the teleological interpretation of article 24 of Law 4481/2017 (article 17 of the EU Collective Rights Management Directive), but also from the specific grammatical wording of the provision of article 24 itself:



2. In case a user breaches the above obligation, the collective management organization may impose a ten per cent (10%) surcharge on the remuneration due. If the user violates this obligation more than twice, the organization may impose a fifteen per cent (15%) surcharge on the amount due or terminate the agreement. (Emphasis added.)

When does the reporting obligation apply?

Any type of reporting on the user's part towards a specific CMO may only concern the use of rights that the specific CMO represents.

Article 24 does not introduce a general reporting obligation towards each CMO regardless of the works used and the users' relationship therewith. On the contrary, it is legally indisputable that this reporting obligation comes into play only:

- when the user is contractually connected to a specific CMO and has thus obtained a licence to use its works (repertoire); and
- according to the correct and prevailing opinion in the Greek legal theory, when the user made use of the works of a specific CMO without its permission.

There is no reporting obligation if the user has no contractual relationship with the CMO applying for information and has only used works of a different CMO or of, for example, an independent management entity. The CMOs' right to request information should be interpreted narrowly: a CMO is entitled to request information only if the use concerns works that it represents and not if the rights of the works used belong to another CMO and/or are being managed individually by the right holders or their licensee. Moreover, as is clearly stated in the law, the use of the works for which the reporting is requested on the CMO's part must have produced income for the user, which in turn must be distributed to the beneficiaries. This is logically not possible if the works used are not controlled or managed by the CMO requesting information.

In order for a CMO's application for information to be valid, certain legal procedural conditions must also be met. Most importantly, CMOs must provide the users with the specific format required for the provision of information, which is expressly stipulated in article 24. The law, in full compliance with article 17 of the EU Collective Rights Management Directive, even provides for the approval of this format by the Hellenic Copyright Organisation, thus setting the requirements for the activation of the CMOs' right to information. In confirmation of the aforementioned need for a contractual link to exist between the CMO and the user and/or for the occurrence of (unlicensed) use by the latter of CMO's works, article 24 stipulates explicitly that "the licence must include the format". Therefore, the format must be known to the user in advance and be handed over by the requesting CMO.

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