International Law Office

May 15 2023

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

A & K Metaxopoulos & Partners Law Firm | **Intellectual Property - Greece**

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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:

> *1. Users must provide the collective management organization within the first fortnight of every semester, unless otherwise agreed, lists of works that they have used or produced or sold or leased or lent or **performed to the public** or broadcast or presented to the public the previous semester or the mutually agreed period of time, mentioning the exact number of copies produced or available, as well as the frequency of presentations to the public, as well as, all the relevant information at their disposal **concerning the use of rights that the collective management organization represents** and which is necessary for the application of the tariffs, the collection of the rights revenue and the distribution and payment of the amounts due to the rightsholders. **All the above information shall be submitted in accordance to a certain format provided to them by the collective management organization**, which takes under consideration the current industry standards. There shall be a single format for each category of use for all collective management organizations, which are required to send a model format to HCO. The user's obligation to submit a report based on such format shall be included in the license agreement concluded with the collective management organization.*
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> *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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Endnotes

(1) Directive 2014/26 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 use in the internal market.