

New presumptions in favour of CMOs Greek Copyright Law

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Fairly recently, Greek Parliament passed a Bill introducing serious changes to the representation powers of Greek CMOs in an effort to strengthen their position in the Greek market. These changes seriously affect direct licensing in Greece and introduce rules that clearly favor Collective Management Organizations and limit the right of authors to individually exercise their rights.

More specifically:

1. Art. 7A of law 4481/2017 as amended provides the following:

Article 7A: Collective licensing with an extended effect

1. In relation to uses of works or other subject – matters of protection, except from audiovisual works, within the Greek territory, collective management organisations and collective protection organisations may

alternatively, by the means of a statement to the user, **represent also rightholders who had not authorized them accordingly**. The representation provided under this Article applies provided that the following conditions are cumulatively met: a) the organization which makes the statement, is, on the basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject matter of protection in Greece, b) the interests of rightholders are ensured, as they are provided by the law, and in particular the equal treatment of all rightholders, among others in relation to the terms of the license and of their ability to authorize or not different collective management organizations either in whole or in part the management of their certain powers or of certain works or of subject – matters of protection, c) due to the nature of the intended uses of works or other subject – matters of protection, the obtaining of the license from rightholders on an individual basis is typically onerous and impractical, namely it could not cover all rightholders involved, d) the publicity measures provided under sections k), ka) and kb) of paragraph 1 of Article 28 are met.

2. In the case where more organisations meet the above conditions, the legal consequences of the statement provided under paragraph 1 occur when all organisations are making it jointly.

3. Rightholders who have not authorised the organisation granting the licenses under paragraph 1 may at any time exclude from the organisation’s representative power any of their works or other subject – matters of protection or their uses by the means of a written or electronical declaration to him in accordance with section ka) of paragraph 1 of Article 28. In this case, paragraph 2 of Article 12 applies *mutatis mutandis*.

4. Paragraphs 1 to 3 shall not apply to mandatory collective management.

5. In the case where a collective management organisation grants licenses in accordance with paragraphs 1 and 2, rightholders who had not granted him with such an authorization, shall have equal treatment with those who had proceeded to such an authorization.

6. For the legal protection of the works and of the rightholders who are represented by the collective management organisation or by the collection protection organisation, paragraph 2 of Article shall be applicable (as added with Article 14 of the Law 4996/2022 (paragraphs 1 to 5 of Article 12 of the Directive (EU) 2019/790).

In other words, authors are by law deemed to be represented by the competent CMO even if they are not represented by it by virtue of a mandate or on the basis of a bilateral agreement with foreign CMO and are not as a result entitled to direct license their works unless they have personally complied with their obligation to oppose in writing to this mandatory representation. This abolishes the basic principle of direct licensing/right to prohibit or authorize the use of a work which is introduced by both the Berne Convention and the WIPO Treaties in favor of authors. The reason for saying this is that according to Art 7A the CMO is not only presumed to represent but instead actually represents, by virtue of the law, any author who has not authorized the CMO to this effect and it is on the author to cancel this mandatory representation by filing a declaration of opposition to the local CMO.

This provision practically means that at the moment the CMO makes a public declaration on its website that it has “activated” art. 7A for the above ex lege representation (extended copyright license) then the author is deprived practically from his right to direct license his works unless he files an opposition declaration at the site of the CMO. The legal effects of the declaration begin 3 months following the filing of the declaration.

Already both AUTODIA and EDEM/the CMOs of composers and lyrics’ writers (but not GEA which represents producers/singers/musicians) have published in their website that they apply art.7A in relation to the use of music by Radio and TV Stations and subscribers’ TV channels.

(<https://www.autodia.gr/article/29/horhghsh-sylogikon-adeion-dieyrymenhs-isyos>, <https://www.edemrights.gr/el/sylogikes-adeies-dieyrymenis-ischyos/>

2. In addition to this and in a manner that clearly violates EU Law as interpreted by ECJ (Case C-(47/19) a recent (2024) amendment of art. 49 of Greek Copyright Law which provides for an equitable remuneration of performers and producers for inter alia, the TV and Radio Broadcasting of their works, now covers not only “material carriers of sound that have been legally recorded and put into the market” as it was the initial wording and scope of art. 49 but **also music incorporated/synchronized in audiovisual works**. This will obviously increase CMOs’ proceeds from art.49 (equitable remuneration) but, in our view, is not compatible with EU legislative framework and ECJ case law on the matter.

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