

THE ACT ON
AMENDMENTS
TO THE COPYRIGHT
AND RELATED
RIGHTS ACT

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Zagreb, November 2017

ACT ON AMENDMENTS TO THE COPYRIGHT AND RELATED RIGHTS ACT

Article 1

In the Copyright and Related Rights Act («Official Gazette», No. 167/03, 79/07, 80/11, 125/11, 141/13 and 127/14) in Article 1a after subparagraph 11, the full stop shall be replaced by the comma and a new subparagraph (12) shall be added to read:

— 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, 20. 3. 2014).

Article 2

In Article 13, paragraph (3) shall be supplemented with the second sentence to read: »Remuneration shall be determined as the price of use in private law relationship.

Article 3

After In Article 32, after paragraph (5), new paragraphs 6 and 7 shall be added to read:

»(6) The obligation to pay the appropriate remuneration referred to in paragraph (1) of this Article shall arise also when appliances and fixation media referred to in paragraph (5) of this Article are imported in the Republic of Croatia from another Member State of the European Union.

(7) The obligation to pay the appropriate remuneration shall not arise where new appliances for sound and visual recording, new blank audio or video fixation media and new photocopying appliances are brought out of or exported from the Republic of Croatia.«.

Former paragraphs (6) and (7) shall become paragraphs (8) and (9).

The former paragraph (8), which shall become paragraph (10), shall be amended to read:

»(10) An appropriate remuneration referred to in this Article shall be the one that has to be given fairly in a legal transaction, whereby when determining the amount of an appropriate remuneration, in addition to the principles of setting the price of using subject matters of protection under Article 165 paragraph (1) of this Act, the likelihood of damage incurred to the author, where his work is reproduced for private or other personal use without his authorisation, the application of technological protection measures of access to use a work or another subject matter of protection, and other circumstances that may affect a proper decision on the form and amount

of the appropriate remuneration shall be taken into account. The appropriate remuneration cannot unreasonably burden the operation of manufacturers and importers referred to in paragraph 4 of this Article, so that when determining the amount of an appropriate remuneration, the price of technical appliances and blank audio, video or text fixation media, as well as other relevant market circumstances are to be taken into account. Before initiating a procedure to adopt the tariffs under Article 162 of this Act for new technical appliances and blank audio, video or text fixation media, a collective management organisation shall conduct research of these technical appliances and blank audio, video or text fixation media being actually used for reproduction of the subject matters of protection, and the results thereof shall be taken into account when determining the amount of the appropriate remuneration. The results of such research shall be publicly available at the website of a collective management organisation.

After paragraph (10), paragraphs (11) and (12) shall be added to read:

»(11) All collective management organisations entitled to remuneration referred to in paragraphs (1) and (2) of this Article shall authorise one of them by contract in writing to manage the rights to remuneration on equivalent technical appliances and audio, video or text fixation media referred to in paragraphs (1) and (2) of this Article on behalf and for the account of others participating in that contract or on its own behalf, and for the account of these other collective management organisations. If, after the contract in writing was entered into between collective management organisations, there shall come a new collective management organisation entitled to remuneration on equivalent technical appliances and blank audio, video or text fixation media, it shall enter into the current contract between organisations under the same conditions. There exists an obligation to provide the information under Article 161 of this Act only in relation to the collective management organisation managing the rights on behalf of other collective management organisations. The obligation of entering into the contract whereby collective management organisations appoint one organisation to manage their rights, as well as of providing information to only one collective management organisation as referred to in this paragraph, shall not be applied if there are justified reasons to refuse to enter into such contract, which have to be adequately explained.

(12) Until such time as the procedure of setting the tariff of remuneration referred to in paragraph (1) of this Article is completed as provided by Article 162 of this Act, the remuneration shall be paid in accordance with the current tariff. By way of exception from Article 162 paragraph (7) of this

Act, if the current tariff does not comprise an individual technical appliance or an audio, video or text fixation medium, until such time as the procedure of setting the tariff as provided by Article 162 of this Act is completed, the user shall pay the undisputed amount of remuneration as proposed by the tariff, and for the disputed amount a collective management organisation may request from the user to provide adequate quality payment insurance, which the user shall provide within the time limit set by the collective management organisation. If the user fails to provide quality payment insurance of the disputed amount of remuneration within the given time limit as requested by the collective management organisation, the user shall make an advance payment as proposed by the tariff.

Article 4

Above the heading of Article 154, the chapter heading shall be added to read: »Chapter 1 GENERAL PROVISIONS«.

Article 5

The heading above Article 154 shall be amended to read: »DEFINITIONS«.

Article 154 shall be amended to read:

»Individual definitions in terms of this Act shall have the following meaning:

a) »the management of copyright or related rights« shall include in particular:

– giving authorisations for the use of the subject matter of copyright and related rights (subject matters of protection), except in cases where this authorisation is not required by this Act,

– collecting of the price for the use of the subject matters of protection, where used subject to payment of remuneration expressed as the price of usage,

– distributing of collected income from the rights to the rightholders,

– supervising the use of the subject matters of protection,

– initiating and carrying out protection proceedings in the case of infringement of the rights having been managed;

b) »collective management organisation« is any organisation which is authorised by law, power of attorney or by a contract authorised to manage copyright and related rights on behalf of two or more rightholders regardless of whether it acts on its own behalf or on behalf of rightholders, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils the following criteria:

– it is owned or controlled by its members, and

– it is organised on a not-for-profit basis;

c) »specialised legal entity for the management of copyright and related rights« is a company or another legal person having individual management of copyright and related rights as its

main activity and employing minimum one person with an undergraduate or graduate university degree in law;

d) »independent management entity« is any organisation which is authorised by law or a contract to manage copyright or related rights on behalf of two or more rightholders regardless of whether it acts on its own behalf or on behalf of rightholders, for the collective benefit of those rightholders, as its sole or main purpose, and which is:

– neither owned nor controlled, directly or indirectly, wholly or in part, by its members, and

– organised on a for-profit basis, whereby neither producers, broadcasters and publishers who manage their own rights and other holders' rights transferred to them on the basis of individually negotiated agreements and who act in their own interest, nor rightholders' managers and agents acting as intermediaries and representing rightholders in their relations with collective management organisations, shall not be regarded as independent management entities;

e) »rightholder« is any person or entity, other than a collective management organisation, that holds a copyright or related right or, under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue;

f) »member« is a rightholder or an entity representing rightholders (including other collective management organisations and associations of rightholders), fulfilling the membership requirements of the collective management organisation and admitted by it;

g) »statute« is the fundamental general act containing the rules of constitution and operation of a collective management organisation in terms of regulations governing status issues of legal persons;

h) »general assembly of members« is the body of the collective management organisation wherein members participate and exercise their voting rights, regardless of the legal form of the collective management organisation;

i) »board member« is:

a. any member of the management board where the law or the statute of the collective management organisation provides for a unitary board,

b. any member of the management board or the supervisory board where the law or the statute of the collective management organisation provides for a dual board;

j) »rights revenue« is income collected by a collective management organisation on behalf of rightholders, whether deriving from an exclusive right or a right to remuneration;

k) »management fee« is the amount charged, deducted or offset by a collective management organisation from rights revenue or from any income arising from the investment of rights

revenue in order to cover the costs of its management of copyright or related rights;

l) »representation agreement« is any agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to manage the rights it represents, including an agreement concluded under Articles 168k and 168l of this Act;

m) »user« is any person or entity that is carrying out acts subject to the authorisation of rightholders or payment of compensation expressed as a price of use to rightholders, and is not acting in the capacity of a consumer;

n) »repertoire« is a set of copyright works or subject matters of related rights in respect of which a collective management organisation manages rights;

o) »multi-territorial licence« is a licence which covers the territory of more than one Member State of the European Union;

p) »online rights in musical works« are the rights of an author in musical works provided for under Articles 19 and 21 including the right under Article 30 of this Act, which need to be regulated for the provision of online services.«

Article 6

Article 155, paragraph (2), the words: »an association referred to in Article 157 of this Act« shall be replaced by the words: »a collective management organisation«.

Paragraph (3) shall be deleted.

Article 7

In Article 156, a new paragraph (1) shall be added to read:

»(1) The collective management organisation shall act in the best interests of the rightholders whose rights they represent. The collective management organisation cannot impose any obligations on them which are not objectively necessary for the protection of their rights and interests and for the effective management of their rights.«.

In the former paragraph (1), which becomes paragraph (2), after the word: »include« the word: »the following« shall be deleted and the words: »in particular the following rights« added.

In the former paragraph (2), which becomes paragraph (3), the words: »paragraph (1)« shall be replaced by the words: »paragraph (2)«, and the word: »association« shall be replaced by the word: »organisation«.

In the former paragraph (3), which becomes paragraph (4), the number: »2« shall be replaced by the number: »3«, and the words: »of copyright and related rights« shall be deleted.

Article 8

The heading above Article 157 shall be amended to read: »REQUIREMENTS FOR COLLECTIVE

MANAGEMENT OF RIGHTS BY COLLECTIVE MANAGEMENT ORGANISATIONS«.

Article 157 shall be amended to read:

»(1) Collective management of rights on the territory of the Republic of Croatia may be carried out by a collective management organisation which has the authorisation granted by the State Intellectual Property Office (hereinafter: the Office) for performing such activity.

(2) the authorisation referred to in paragraph (1) of this Article shall be granted by the Office to an association or another collective management organisation on request which fulfils the following requirements:

a) has its principle place of establishment in the European Union,

b) has adequate material and human resources to perform the activity of collective management, whereby minimum resources are represented by adequate premises, equipment and technical service with at least one employee with an undergraduate and graduate university degree in law, and

c) is engaged in the collective management of rights as its sole or main activity.

(3) The collective management organisation shall manage the rights in its own name or on behalf of the rightholders, and for the account of the rightholder.

(4) For collective management of rights, the Office can grant an authorisation to only one collective management organisation for a particular category of rights and a particular category of rightholders, taking into account the number of members based on powers of attorney received, the number of joint representation agreements with collective management organisations in other states as well as other circumstances indicating that this collective management organisation would be the most efficient one in collective management of rights.

(5) It shall be presumed that the collective management organisation referred to in paragraph (4) of this Article has powers of attorney for collective management of rights for which it is authorised for all domestic and foreign holders of such rights, except for that rightholder who has notified the collective management organisation explicitly in writing not to manage his rights.

(6) The decision passed by the Office in the procedure of granting the authorisation referred to in paragraph (1) of this Article cannot be appealed, but an administrative dispute can be initiated.

(7) The collective management organisation shall inform a user on his request of the rightholders whose rights it does not manage based on the notification referred to in paragraph (5) of this Article.«

Article 9

The heading above Article 158 shall be amended to read: »MANAGEMENT OF RIGHTS AND MUTUAL REPRESENTATION«.

Article 158 shall be amended to read:

»(1) A collective management organisation may manage, one, two or more types of rights that usually relate to a particular category of rightholders.

(2) The collective management organisation may entrust certain kind of tasks regarding the management of rights to another collective management organisation in the form of a written contract. The entrusted collective management organisation shall manage the rights on behalf and for the account of the entrusting collective management organisation, or on its own behalf and for the account of the entrusting collective management organisation.

(3) The collective management organisation may entrust certain administrative, technical or accessory works (for example, invoicing of users or distributing amounts due to rightholders) under its control to another natural or legal person, in the form of a written contract. Such contract shall not influence the duty of the collective management organisation to fulfil all the obligations pursuant to this Act.

(4) The collective management organisation established by this Act may enter into a joint representation agreement with another such collective management organisation established by the act of another Member State of the European Union or by the act of any other state for the management of the same kind of rights. In this case, the collective management organisation cannot discriminate the rightholders whose rights it manages, particularly in relation to applicable prices, management fee and the conditions of collecting the rights revenue and distributing amounts due to rightholders.«.

Article 10

The heading above Above the heading of Article 159, the chapter heading shall be added to read: »Chapter 2 RELATIONSHIP BETWEEN THE COLLECTIVE MANAGEMENT ORGANISATION AND A RIGHTHOLDER«.

Article 11

The heading above Article 159 shall be amended to read: »RIGHTHOLDER'S RIGHTS«.

Article 159 shall be amended to read:

»(1) The rightholder shall have the right to freely choose and to authorise a collective management organisation in any Member State of the European Union for the management of the rights, categories of rights or types of works or subject matter of related rights of his own choice, for the states of his own choice, irrespective of the Member State of nationality, residence or place of

establishment. The chosen collective management organisation resident or established in the Republic of Croatia shall accept the management of such rights, categories of rights or types of works or subject matters of related rights where such management falls within the scope of its activity, unless it has objectively justified reasons to refuse such authorisation.

(2) The rightholder shall have the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject matter that he may choose, and a collective management organisation shall inform the rightholders whose rights it manages of the conditions under which rightholders may grant licences for non-commercial uses of their rights or subject matter of the related rights which they authorised this collective management organisation to manage. Non-commercial use is considered to be the use with no economic benefit provided either directly or indirectly.

(3) The rightholder may terminate the authorisation to manage rights granted by him to a collective management organisation entirely or in relation to a particular right, a category of rights or a type of works or subject matter of related rights of his choice, for the territories of his choice, upon serving notice not exceeding six months, regardless of whether at the same time he authorised another collective management organisation to manage his rights. The collective management organisation may decide that such termination is to take effect at the end of the financial year.

(4) The rightholder shall retain all the rights against a collective management organisation in relation to the uses which occurred and the licences for the use granted by a collective management organisation before the termination as referred to in paragraph (3) of this Article took effect.

(5) Any authorisation to manage rights and the termination of such authorisation shall be evidenced in writing, documenting specific rights, categories of rights or types of works or subject matter of related rights covered thereby.

(6) A collective management organisation shall provide in its statute and/or membership rules that rightholders shall at least have the rights as referred to in this Article, publish it on its website, and inform rightholders of these rights before their granting licences for management.«.

Article 12

After Article 159, Articles 159a and 159b and headings above them shall be added, Chapter 3 with Articles 159c, 159d and 159e and headings above them to read:

»Membership Rules of a Collective Management Organisation

Article 159 a

(1) A collective management organisation shall accept all rightholders and entities representing rightholders, including other collective management organisations and associations of rightholders, as members if they fulfil the membership requirements, which shall be based on objective, transparent and non-discriminatory criteria. Those membership requirements shall be included in the statute or another act to set out membership terms of the collective management organisation and shall be made publicly available. In cases where a collective management organisation refuses to accept a request for membership, it shall provide the rightholder with a clear explanation of the reasons for its decision.

(2) The statute of a collective management organisation shall provide for appropriate and effective mechanisms for the participation of its members in the organisation's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.

(3) A collective management organisation shall ensure that its members communicate with it by electronic means, including for the purposes of exercising members' rights.

(4) A collective management organisation shall keep records of its members and shall regularly update those records.

Rights of Rightholders Who Are Not Members of the Collective Management Organisation

Article 159 b

A collective management organisation shall accordingly apply all the rights pertaining to its members to the rightholders it represents based on a presumed power of attorney and to the rightholders who are not its members, but it represents them based on a contractual arrangement, except for the rights relating to the management and decision-making in the collective management organisation.

Chapter 3

INTERNAL STRUCTURE OF THE COLLECTIVE MANAGEMENT ORGANISATION

General Assembly of Members of the Collective Management Organisation

Article 159 c

(1) A general assembly of members shall be convened at least once a year.

(2) The general assembly of members shall decide at least on the following issues:

– adopting of the statute, its amendments and deciding on presumptions for membership in the collective management organisation unless regulated by the statute;

– the appointment or dismissal of board members, review of their general performance and approval of their remuneration and other benefits, such as monetary and non-monetary benefits, voluntary pension funds, rights to awards and severance pay;

– the general policy on the distribution of amounts due to rightholders;

– the general policy on the use of non-distributable amounts and deciding on the use of non-distributable amounts, exclusively for the purpose of managing social, cultural and educational activities to the benefit of rightholders;

– the general investment policy with regard to rights revenue and to any income arising from the investment of rights revenue;

– the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;

– the risk management policy;

– the approval of any acquisition, sale or mortgage of immovable property owned by the collective management organisation;

– the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;

– the approval of taking out loans, granting loans or providing security for loans.

(3) In a collective management organisation with a dual board system, the general assembly of members shall not decide on the appointment or dismissal of members of the management board or approve their remuneration and other benefits where the power to take such decisions is delegated to the supervisory board.

(4) The general assembly of members may delegate the powers listed in paragraph (2) subparagraphs (7) – (10) of this Article, by a resolution or by a provision in the statute, to the body exercising the supervisory function of the management of a collective management organisation.

(5) The general assembly of members shall be authorised to supervise the operation of a collective management organisation, in particular:

– to decide on the appointment and dismissal of auditors, and

– to approve of the annual transparency report as referred to in Article 168d of this Act.

(6) All members of the collective management organisation shall have the right to participate in, and the right to vote at, the general assembly of members. In its statute or membership terms, the collective management organisation may restrict on the right of the members of the collective management organisation to participate in, and to exercise voting rights at, the general assembly of members, on the basis of one or both of the following criteria, provided that such criteria are determined and applied in a manner that is fair and proportionate:

- duration of membership,
- amounts received or due to a member.

(7) Every member of a collective management organisation shall have the right to appoint any other natural person or legal entity as a proxy holder by a notarised special power of attorney to participate in, and vote at, the general assembly of members on his behalf, provided that such appointment does not result in a conflict of interest which might occur (for example, where the appointing member and the proxy holder belong to different categories of rightholders within the collective management organisation). The proxy holder's appointment shall be valid for a single general assembly of members. The proxy holder shall enjoy the same rights in the general assembly of members as those to which the appointing member would be entitled and the shall participate in, and cast votes in accordance with the instructions issued by the appointing member, which are included in the power of attorney. Statute or another act of the collective management organisation can provide detailed restrictions regarding the appointment of proxy holders and their voting rights on behalf of the appointing members.

(8) The collective management organisation may set out in its statute that the powers of the general assembly of members may be exercised by an assembly of delegates elected at least every four years at the general assembly of members, provided that:

- appropriate and effective participation of members in the collective management organisation's decision-making process is ensured; and
- the representation of the different categories of members in the assembly of delegates is fair and balanced.

(9) Paragraph (8) of this Article shall apply to the assembly of delegates *mutatis mutandis*.

(10) Where a collective management organisation, by reason of its legal form, does not have a general assembly of members, the powers of that assembly are to be exercised by the body exercising the supervisory function as referred to in Article 159d of this Act. In this case, the rules laid down in this Article, except for paragraphs (3) and (4) of this Article, shall apply *mutatis mutandis* to such body exercising the supervisory function.

(11) Where a collective management organisation has members who are only entities representing rightholders, all or some of the powers of the general assembly of members under this Article may be transferred to a general assembly of those entities. In this case, the rules laid down in this Article, except for paragraphs (8) to (10) shall apply *mutatis mutandis* to the general assembly of those entities.

Supervisory Function

Article 159 d

(1) A collective management organisation shall have a body to exercise a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation management organisation.

(2) There shall be fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function.

(3) Each member of the body exercising the supervisory function shall make an individual statement on conflicts of interest, containing the information referred to in paragraph (3) of Article 159e of this Act, to the general assembly of members.

(4) The body exercising the supervisory function shall meet regularly and shall have at least the following powers:

- to exercise the powers delegated to it by the general assembly of members, including the powers under Article 159c paragraph (2) subparagraph 2 and paragraph (4) of this Act, and
- to monitor the activities and the performance of the duties of the persons referred to in Article 159e of this Act, including the implementation of the decisions of the general assembly of members and, in particular, of the general policies listed in Article 159c paragraph (2) subparagraphs 3 to 6 of this Act.

(5) The body exercising the supervisory function shall report on the exercise of its powers to the general assembly of members at least once a year.

Obligations of the Persons Who Manage the Business of the Collective Management Organisation

Article 159 e

(1) The persons who manage the business of the collective management organisation shall do so in an extra attentive, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

(2) A collective management organisation shall put in place and apply procedures to avoid conflicts of interest, and where such conflicts cannot be avoided, it shall identify, manage, monitor and disclose any actual or potential conflicts of interest in such a way as to prevent them from adversely affecting the collective interests of the rightholders whom the organisation represents.

(3) The procedures referred to in paragraph (2) of this Article shall include the obligation of an individual statement by each of the persons who

manage the business of the collective management organisation to the general assembly of members, containing the following information:

- any interests in the collective management organisation;
- any remuneration received in the preceding financial year from the collective management organisation, including in the form of pension schemes, benefits in kind and other types of benefits;
- any amounts received in the preceding financial year as a rightholder from the collective management organisation; and
- a declaration concerning any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations owed to the collective management organisation and any duty owed to any other natural or legal person.«.

Article 13

Above Article 160, the chapter heading shall be added to read: »Chapter 4 RELATIONSHIP WITH THE USERS OF SUBJECT MATTER OF PROTECTION«.

Article 160 shall be amended to read:

»(1) Prior to starting to use a particular subject matter of protection, a legal or a natural person shall submit a request for the authorisation of such use to a relevant collective management organisation. The request shall include information on the type and circumstances of the use (such as manner, place and time of the use, and other information required for establishing the amount of remuneration).

(2) The collective management organisation shall respond to the request for the authorisation of such use within an appropriate time-limit, indicating in particular the information needed for the authorisation to be granted. Upon receipt of all the relevant information, the organisation shall grant the authorisation to a user or provide a reasoned reply why the authorisation cannot be granted. The authorisation shall include the indication of the types of rights to which it applies, conditions of use in terms of manner, place and time, and the amount of remuneration for the use, where the use is subject to payment of remuneration. The requirements for the authorisation of such use shall be based on objective and non-discriminatory criteria.

(3) A user shall submit to a collective management organisation, without delay, the information relating to any change of circumstances of such use or of its termination, in order to change accordingly the conditions under which the authorisation has been granted or to withdraw the authorisation.

(4) A collective management organisation shall allow the users to submit the request for the

authorisation of such use and to communicate with it in connection with the authorisation by electronic means.

(5) A legal or natural person which or who allows the use of its or his/her premises to another person who uses subject matters of protection in such space, shall check whether that person has adequate authorisation for the use of the subject matter of protection. Where a legal or a natural person has allowed the use of its or his/her premises to a person not having such authorisation, although knowing or having reasons to know that subject matters of protection will be used in such premises, shall be jointly and severally liable to pay a corresponding remuneration for the use of the subject matter of protection..«.

Article 14

The heading above Article 161 shall be amended to read: »USER'S OBLIGATIONS«.

Article 161 shall be amended to read:

»(1) Users shall provide a collective management organisation within an agreed or pre-established time and in an agreed or pre-established format, with such relevant information at their disposal, as is necessary for the collection of rights revenue and/or for the distribution of amounts due to rightholders. When deciding on the format for the provision of such information, a collective management organisation and users shall take into account, as far as possible, the standards voluntarily applied in the related area (voluntary industry standards).

(2) a collective management organisation shall, as far as possible, allow users to provide the information as referred to in paragraph (1) of this Article by electronic means.

(3) In case of insufficient information on or an unauthorised use of the subject matter of protection, the competent state administration bodies or other natural and legal persons having such information at their disposal, shall submit to the collective management organisation at its request the information that relate to the management of rights under this Act, except in cases when such provision of the information would be contrary to special regulations.«.

Article 15

The heading above Article 162 shall be amended to read: »PRICE FOR THE USE OF SUBJECT MATTERS OF PROTECTION«.

Article 162 shall be amended to read:

»(1) A price and other requirements for the use of the subject matter of protection shall be regulated primarily by a contract between a collective management organisation and a user of the subject matter of protection or by a contract between a collective management organisation and a chamber of users of the subject matter of

protection. If users are not organised through a chamber or it results from the circumstances that users' interest will be better represented through another association of users of the subject matter of protection, a collective management organisation may enter into a contract with another association of users. Collective management organisations and users or their chambers or associations shall conduct negotiations for entering into such contracts in good faith and provide each other with all the information necessary to reach an agreement.

(2) If the price for such use is not set in compliance with paragraph (1) of this Article, it shall be paid according to the tariffs of a collective management organisation.

(3) Prior to setting the tariffs as referred to in paragraph (2) of this Article, a collective management organisation shall submit the proposal thereof for the declaration by a chamber or another association of users.

(4) If a chamber or another association of users fail to furnish a written declaration to a collective management organisation within 30 days upon receipt of the tariff proposal, it shall be deemed that they do not oppose to the proposed tariffs.

(5) If a chamber or another association of users does not accept the tariffs wholly or partly in a written declaration, it can agree on arbitration with a collective management organisation in order to determine the related tariffs, within 60 days upon receipt of the tariff proposal at the latest. A collective management organisation and users can agree on arbitration in advance, establishing to settle any dispute in the procedure of setting the tariffs in arbitration. Arbitration shall be conducted in compliance with the provisions as referred to in Article 162a of this Act.

(6) If a collective management organisation and a chamber or another association of users do not agree on arbitration within the time-limit as referred to in paragraph (5) of this Article, the collective management organisation shall request the Council of Experts Dealing with Remunerations for Copyright and Related Rights (hereinafter referred to as: the Council of Experts) for its opinion on the subject matter of disagreement within further 15 days. The Council of Experts shall render its opinion within 60 days upon receipt of the request. The Council of Experts may prolong the time-limit for rendering its opinion maximum by another 30 days, which shall be notified to the parties in the procedure of rendering the opinion prior to the expiry of the first time-limit of 60 days.

(7) Until the procedure for adopting the tariffs referred to in paragraphs (3), (4) and (5) of this Article is completed, the price shall be paid in accordance with the approved tariffs or as an advance payment according to the proposed tariffs if the tariffs for a particular type of using the subject matter of protection are not approved.

(8) The opinion of the Council of Experts referred to in paragraph (6) of this Article shall contain its evaluation of whether the tariffs relate to the rights for management of which a collective management organisation has the authorisation granted by the Office, and whether the prices conform to the principles referred to in Article 165 of this Act. If the Council of Experts fails to give its opinion within the period referred to in paragraph (6) of this Article, it shall be deemed that it agrees with the proposed tariffs.

(9) After the completion of the procedures referred to in this Article, the tariffs shall be published on the website of a collective management organisation, and they shall apply to all users who use the subject matters of protection as provided by the tariffs, starting from the day of initiating a procedure to set the tariffs pursuant to the provisions as referred to in paragraph (3) of this Article.«.

Article 16

After Article 162, Article 162a and the heading above it shall be added to read:

»Setting the tariffs before the arbitration court

Article 162a

(1) In compliance with the provisions as referred to in Article 162 paragraph (5) of this Act, the parties may enter into an agreement to finally settle their dispute over the tariffs in arbitration according to the valid Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Commerce (Zagreb Rules), unless provided otherwise by this Act.

(2) Arbitration on the tariffs shall be conducted pursuant to the provisions on the accelerated arbitration process in terms of the Zagreb Rules as referred to in paragraph (1) of this Article, regardless of the value of the subject matter in dispute, and to other applicable provisions of the Zagreb Rules. An accelerated arbitration process on the tariffs can take no longer than three months as a rule, counting from the date of the arbitration court being constituted in line with the provisions under Article 164a of this Act. Time-limits provided by the Zagreb Rules in relation to an accelerated arbitration process for the parties to undertake certain actions can be reduced by the arbitration court if it assesses this to be in the interest of the process efficiency, observing thereby the principle of equal treatment of the parties.

(3) If the tariffs are proposed by two or more collective management organisations, they are all together deemed to be one party to the arbitration process. If the interests of users whom the tariffs in arbitration process shall be applied to are represented by several chambers and/or other associations of users, they are all together deemed to be one party to the arbitration process.

(4) The tariffs of a collective management

organisation shall be determined by arbitration award in compliance with the principles as referred to in Article 165 of this Act.

(5) The tariffs determined by arbitration award as referred to in paragraph (4) of this Article, pursuant to Article 168c of this Act, shall be published on a website of the concerned collective management organisation and shall apply to all users who use the subject matters of protection as provided by the tariffs, starting from the day of initiating a procedure to set the tariffs pursuant to the provisions as referred to in Article 162 paragraph (3) of this Act.«.

Article 17

After Article 164, Article 164a and the heading above it shall be added to read:

»Structure and responsibilities of the arbitration court

Article 164a

Arbitration court has three arbitrators who are appointed from the List of Arbitrators in proceedings without international elements before the Permanent Arbitration Court at the Croatian Chamber of Commerce and who need to be experts in the field of copyright and related rights. President of the arbitration court needs to be a judge or an ex-judge of the High Commercial Court of the Republic of Croatia. Each party shall appoint one arbitrator in an arbitration agreement as referred to in Article 162 paragraph (5) of this Act. Thus appointed arbitrators shall appoint a president of the arbitration court no later than within 15 days upon conclusion of the arbitration agreement. If arbitrators appointed by the parties cannot agree on the president of the arbitration court, he will be appointed by the president of the Permanent Arbitration Court at the Croatian Chamber of Commerce.«.

Article 18

The heading above Article 165 shall be amended to read: »PRINCIPLES FOR SETTING THE PRICES FOR USING SUBJECT MATTERS OF PROTECTION«.

Article 165 shall be amended to read:

»(1) The price for the use of the subject matters of protection must be appropriate, regardless of whether it is a matter of exclusive rights or rights to remuneration. Tariffs must be reasonable in relation to, *inter alia*, the economic value of the use of the rights on the market, taking into account the nature and scope of the use of the subject matters of protection, the economic value of the service provided by a collective management organisation and accordingly the tariffs applicable in other Member States of the European Union for the same kind and form of the use and the same kind of the right.

(2) With setting the price as referred to in paragraph (1) of this Article, religious, social and

cultural needs of users who belong to sensitive social groups of pensioners, children and people with disabilities, shall be taken into account to an appropriate extent.

(3) A collective management organisation shall notify the user concerned of the criteria it has taken into account with setting the tariffs.

(4) With setting the price for using subject matters of protection online, a collective management organisation shall not be required to use the tariffs as a role model already determined for other kinds and forms of online services if it is a matter of the use in a new type of online service which has been available in the European Union for less than three years.

(5) If the use of the subject matter of protection is essential for the activity of a user in a way that its activity depends on such use, as it is in cases of broadcastings, concert, dance or other uses of the subject matter against payment, the price shall be fixed in principle as a percentage of the income, or earning from such use.

(6) The price can be fixed as a percentage of the costs necessary for the use of the subject matter of protection, such as fees or salaries of performing artists, or the costs of using the facilities for the use of the subject matter of protection or another corresponding costs, if the costs necessary for the use of the subject matter of protection are disproportionate in relation to the income from such use.

(7) In addition to the prices fixed as a percentage, the minimum amounts of the prices shall be specified.

(8) If the use of the subject matter of protection is not essential for a user, but is useful or enjoyable (for example, in case of accommodation facilities, exposition places, transport means and certain catering objects), as a rule the tariff shall be set as a lump sum for permanent and occasional uses.

(9) When setting the price as a lump sum as referred to in paragraph (8) of this Article and the minimum amounts of the prices as referred to in paragraph (7) of this Article, circumstances of the use of the subject matter of protection shall be taken into account, such as the type of the use, place and geographical location, category and size of the facilities for the use of the subject matter of protection, duration and number of the uses, and difference in prices regarding a user's business.

(10) If a user fails to submit the information required for setting the price for the use of the subject matter of protection, a collective management organisation may establish itself this information according to information collected in compliance with Article 161 or 165a of this Act, or in another appropriate way.«.

Article 19

After Article 165, Article 165a and the heading above it, the heading of chapter 5 and Article 165b and the heading above it shall be added to read:

»Monitoring the use of subject matters of protection

Article 165a

(1) A collective management organisation may, in compliance with the authorisation of a rightholder as referred to in Article 159 of this Act, monitor the use of the subject matter of protection for which it has authorisation for collective management of rights granted by the Office.

(2) Users of subject matters of protection shall provide a collective management organisation with information relevant for such management and enable the inspection of relevant documentation.

(3) At a request of collective management organisations, the state administration bodies responsible for monitoring and inspections in the internal market, and the customs services, as well as competent police administrations and police stations shall provide assistance to the collective management organisations in exercising monitoring as referred to in paragraph (1) of this Article regarding the use of the subject matter of protection.

(4) At a request of an author, or a collective management organisation, the competent police administration or a police station shall prohibit a performance at which subject matters of protection are used, if its organiser does not have the authorisation of the author, that is, of a collective management organisation.

Chapter 5

MANAGEMENT OF RIGHTS REVENUE

Collection and use of rights revenue

Article 165b

(1) A collective management organisation shall be diligent in the collection and management of rights revenue.

(2) A collective management organisation shall keep separate in its accounts:

- a) rights revenue and any income arising from the investment of rights revenue; and
- b) any own assets it may have and income arising from such assets, from management fees or from other activities.

(3) A collective management organisation shall not be permitted to use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rightholders, except where it is allowed to deduct or offset its management fees in compliance with Article 159c paragraph (2) subparagraph 6 or where it is allowed in compliance with a decision

taken in accordance with Article 159c paragraph (2) of this Act.

(4) Where a collective management organisation invests rights revenue or any income arising from the investment of rights revenue, it shall do so in the best interests of the rightholders whose rights it represents, in accordance with the general investment and risk management policy with regard to rights revenue and to any income arising from the investment of rights revenue referred to in Article 159c paragraph (2) subparagraphs 5 and 7 of this Act and having regard to the following rules:

- where there is any potential conflict of interest, the collective management organisation shall ensure that the investment is made in the sole interest of those rightholders;
- the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole; and
- the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.«.

Article 20

The heading above Article 166 shall be amended to read: »DISTRIBUTION OF RIGHTS REVENUE«.

Article 21

In Article 166 paragraph (1) the words: »collected remunerations« shall be replaced by: »rights revenue«.

In paragraph (2) the words: »collected remunerations« shall be replaced by: »rights revenue«.

Article 22

The heading above Article 167 shall be amended to read: »GENERAL POLICY ON DISTRIBUTION OF AMOUNTS DUE TO Rightholders«.

Article 167 shall be amended to read:

»(1) A collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to rightholders in accordance with the general policy on distribution referred to in Article 159c paragraph (2) subparagraph 3 of this Act.

(2) The general policy on distribution of amounts due to rightholders referred to in Article 159c paragraph (2) subparagraph 3 of this Act shall contain in particular provisions concerning:

- subject matter of protection and rightholders which the general policy on distribution of amounts due to rightholders applies to,
- determination of a share of a particular rightholder in collected rights revenue, which may stimulate the subject matters of protection of a particular value for culture and national creativity,
- determination of amounts to be paid after the

deduction of cost incurred in managing of the right, the allocation for funds envisaged by law, the statute of the organisation or by international contracts on mutual representation of collective management organisations, and

– terms of accounting and payment of distributed amounts due to rightholders.

(3) Contracts on distribution concluded between the rightholders of the same work shall override the general policy on distribution of amounts due to rightholders.

(4) A collective management organisation or its members who are entities representing rightholders shall pay due amounts to rightholders as soon as possible but no later than nine months from the end of this financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matters of related rights with rightholders prevent that deadline from being met.

(5) Where the due amounts cannot be distributed within the deadline set in paragraph (4) of this Article because the relevant rightholders cannot be identified or located, the exception to that deadline referred to in paragraph (4) of this Article shall not apply, and those amounts shall be kept separate in the accounts of the collective management organisation.

(6) The collective management organisation shall take all necessary measures to identify and locate the rightholders. In particular, at the latest three months upon expiry of the deadline set in paragraph (4) of this Article, the collective management organisation shall make available information on works and subject matters of related rights for which one or more rightholders have not been identified or located to:

- the rightholders that it represents or the entities representing rightholders, who are members of the collective management organisation; and
- all collective management organisations with which it has concluded representation agreements.

The information shall include, where available, in particular:

- the title of the work or the subject matter of related rights;
- the name of the rightholder;
- the name of the relevant publisher or producer; and
- any other relevant information available which could assist in identifying the rightholder.

The collective management organisation shall also verify the records referred to in Article 159a paragraph (4) of this Act and other available records. If the abovementioned measures fail to produce results, the collective management organisation shall make the information on the failure of identifying and locating the rightholder available to the public at the latest one year upon

expiry of the three-month period.

(7) Where the amounts due to rightholders cannot be distributed after three years from the end of the financial year in which the collection of the rights revenue occurred, and provided that all necessary measures to identify and locate the rightholder have been taken, those amounts shall be deemed non-distributable.

(8) The general assembly of members of a collective management organisation shall decide on the use of the non-distributable amounts in accordance with the policy referred to in Article 159c paragraph (2) subparagraph 4 of this Act, without prejudice to the right of rightholders to claim due amounts in accordance with the statute of limitations of three years.

(9) General statement of account regarding distribution shall be established by a competent body of a collective management organisation, and audited and evaluated by an authorised auditor.

(10) A collective management organisation shall deliver its statement of account regarding distribution referred to in paragraph (9) of this Article to the Office within 15 days upon receipt of the audit report.«

Article 23

The heading above Article 167a shall be amended to read: »MANAGEMENT FEES AND OTHER DEDUCTIONS AND PROMOTION OF CREATIVITY AND CULTURAL DIVERSITY«.

Article 167a shall be amended to read:

»(1) A collective management organisation shall provide the rightholder with information on management fees and other deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his consent to its managing his rights.

(2) Management fees shall not exceed the actual and justified costs incurred by managing the rights. Management fees shall be documented in compliance with the best accounting standards.

(3) A collective management organisation may decide, in addition to management fees in total provided by paragraph (2) of this Article, to spend maximum 3% of the rights revenue in total on measures against piracy and counterfeiting and other measures intended to raise awareness of the value of copyright and related rights.

(4) A collective management organisation shall provide for, in the powers of attorney for representation given by their members, and in international reciprocity agreements, allocations to the fund intended to enhance the respective artistic and cultural creativity of predominantly non-commercial nature and cultural diversity in the respective artistic and cultural fields. The revenues of the fund shall not be used for other purposes. Allocations to the aforementioned fund cannot exceed 10% of the rights revenue in total,

unless it is a matter of the rights revenue collected from remunerations for reproduction for private or other personal use referred to in Article 32, Article 128, paragraph (1), Article 136, Article 141 and Article 145 paragraph (1) of this Act, in which case the allocations to the aforementioned fund cannot exceed 30% of the remunerations in total.

(5) All deductions from the rights revenue to the funds prescribed by this Act or the statute of a collective management organisation shall be reasonable in relation to the services provided by the collective management organisation to rightholders, including the services referred to in paragraph (6) of this Article, and shall be established on the basis of objective criteria.

(6) Where a collective management organisation provides social, cultural or educational services funded through deductions from rights revenue or from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria, in particular as regards access to, and the extent of, those services.«.

Article 24

After Article 167a, Article 167b and the heading above it shall be added to read:

»Distribution, management fees and deductions under representation agreements

Article 167b

(1) The collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to other collective management organisations it represents under representation agreements.

(2) A collective management organisation shall not make deductions, other than in respect of management fees, from the rights revenue derived from the rights it manages on the basis of a representation agreement, or from any income arising from the investment of that rights revenue, unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.

(3) The collective management organisation shall carry out such distribution and payments to the other collective management organisation it represents under representation agreements as soon as possible but not later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and subject matters of related rights with rightholders prevent the collective management organisation from meeting that deadline.

(4) A collective management organisation or its members who are entities representing rightholders shall pay due amounts they received

from another collective management organisation under representation agreement to rightholders as soon as possible but no later than six months from the end of this financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matters of related rights with rightholders prevent that deadline from being met.«.

Article 25

Above the heading of Article 168, the heading of chapter shall be added to read: »Chapter 6 TRANSPARENCY AND REPORTING«.

The heading above Article 168 shall be amended to read: »INFORMATION PROVIDED TO Rightholders ON THE MANAGEMENT OF THEIR RIGHTS«.

Article 168 shall be amended to read:

(1) A collective management organisation shall make available, not less than once a year, to rightholders to whom it has attributed rights revenue or made payments in the period to which the information relates, at least the following information:

- a) any contact details which the rightholder has authorised the collective management organisation to use in order to identify and locate the rightholder;
- b) the rights revenue attributed to the rightholder;
- c) the amounts paid by the collective management organisation to the rightholder per category of rights managed and per type of use;
- d) the period during which the use took place for which amounts were due to be attributed and paid to the rightholder, unless objective reasons relating to reporting by users prevent the collective management organisation from doing so;
- e) deductions made in respect of management fees;
- f) deductions made for any purpose other than in respect of management fees, including those for the provision of any cultural, social and educational services, and
- g) any rights revenue attributed to the rightholder which is outstanding for any period.

(2) Where a collective management organisation has as members entities which are responsible for the distribution of rights revenue to rightholders, the collective management organisation shall provide the information listed in paragraph (1) of this Article to those entities, if they do not have that information in their possession. In this case, these entities shall make this information available, not less than once a year, to rightholders to whom they have attributed rights revenue or made payments in the period to which the information relates.«.

Article 26

After Article 168, Articles 168a, 168b, 168c and 168d and headings above them, Chapter 7 with Articles 168e, 168f, 168g, 168h, 168i, 168j, 168k, 168l, 168m, 168n and 168o and headings above them, Chapter 8 with Articles 168p, 168r, 168s, and 168t and headings above them shall be added to read:

»Information provided to other collective management organisations on the management of rights under representation agreements

Article 168a

A collective management organisation shall make at least the following information available, not less than once a year and by electronic means, to collective management organisations on whose behalf it manages rights under a representation agreement, for the period to which the information relates:

- a) the rights revenue attributed, the amounts paid by the collective management organisation per category of rights managed, and per type of use, for the rights it manages under the representation agreement, and any rights revenue attributed which is outstanding for any period;
- b) deductions made in respect of management fees;
- c) deductions made for any purpose other than in respect of management fees, including those for the provision of any cultural, social or educational services;
- d) information on any licences granted or refused with regard to works and other subject matter covered by the representation agreement, and
- e) resolutions adopted by the general assembly of members of the collective management organisation in so far as those resolutions are relevant to the management of the rights under the representation agreement.

Information provided to rightholders, other collective management organisations and users on request

Article 168b

In response to a duly justified request by any rightholder, any other collective management organisation on whose behalf it manages rights under a representation agreement or any user, a collective management organisation shall make at least the following information available by electronic means and without undue delay:

- a) the works or other subject matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or
- b) where, due to the scope of activity of the collective management organisation, such works or other subject matter cannot be determined, the types of works or of other subject matter it represents, the rights it manages and the

territories covered.

Disclosure of information to the public

Article 168c

A collective management organisation shall make public on its website and continuously update at least the following information:

- a) its statute;
- b) its membership terms and the terms of termination of authorisation to manage rights, if these are not included in the statute;
- c) standard licensing contracts;
- d) standard applicable tariffs, including discounts;
- e) the list of the persons referred to in Article 159e of this Act;
- f) its general policy on distribution of amounts due to rightholders;
- g) its general policy on management fees;
- h) its general policy on deductions, other than in respect of management fees, from rights revenue and from any income arising from the investment of rights revenue, including deductions for the purposes of social, cultural and educational services;
- i) a list of the representation agreements it has entered into, and the names of the collective management organisations with which those representation agreements have been concluded;
- j) the general policy on the use of non-distributable amounts; and
- k) the complaint handling and dispute resolution procedures available in accordance with Articles 168p, 168r and 168s of this Act.

Annual transparency report

Article 168d

(1) A collective management organisation shall draw up and make public an annual transparency report on its website, including the special report referred to in paragraph (3) of this Article, for each financial year no later than eight months following the end of that financial year. The annual transparency report published on the website shall remain available to the public on that website for at least five years.

(2) The annual transparency report shall contain at least the following information:

- a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash-flow statement;
- b) a report on the activities in the financial year;
- c) information on refusals to grant a licence pursuant to Article 160 paragraph (2) of this Act;
- d) a description of the legal and governance structure of the collective management organisation;
- e) information on any entities directly or indirectly

owned or controlled, wholly or in part, by the collective management organisation;

f) information on the total amount of remuneration paid to the persons referred in Article 159d paragraph (3) and Article 159e of this Act in the financial year reported, and on other benefits granted to them;

g) the financial information referred to in paragraph (3) of this Article; and

h) a special report on the use of any amounts deducted for the purposes of social, cultural and educational services, containing the information referred to in paragraph (4) of this Article.

(3) At least the following financial information is provided in the annual transparency report:

a) financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance), including information on the income arising from the investment of rights revenue and the use of such income (whether it is distributed to rightholders or other collective management organisations, or otherwise used);

b) financial information on the cost of rights management and other services provided by the collective management organisation to rightholders, with a comprehensive description of at least the following items:

- all operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs;

- operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs and only with regard to the management of rights, including management fees deducted from or offset against rights revenue or any income arising from the investment of rights revenue in accordance with Article 165b paragraph (3) and Article 167a paragraphs (1), (2) and (3) of this Act;

- operating and financial costs with regard to services other than the management of rights, but including social, cultural and educational services;

- resources used to cover costs of rights management;

- deductions made from rights revenues, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs relating to the management of rights or to social, cultural or educational services; and

- the percentages that the cost of the rights management and other services provided by the collective management organisation to rightholders represents compared to the rights revenue in the relevant financial year, per category of rights managed, and, where costs are indirect and cannot be attributed to one or more

categories of rights, an explanation of the method used to allocate such indirect costs;

c) financial information on amounts due to rightholders, with a comprehensive description of at least the following items:

- the total amount attributed to rightholders, with a breakdown per category of rights managed and type of use;

- the total amount paid to rightholders, with a breakdown per category of rights managed and type of use;

- the frequency of payments, with a breakdown per category of rights managed and per type of use;

- the total amount collected but not yet attributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;

- the total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and type of use, and indicating the financial year in which those amounts were collected;

- the reasons for the delay where a collective management organisation has not carried out the distribution and payments within the deadline set in Article 167 paragraph (4) of this Act;

- the total non-distributable amounts, along with an explanation of the use to which those amounts have been put;

d) financial information on relationships with other collective management organisations, with a description of at least the following items:

- amounts received from and paid to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;

- management fees and other deductions from the rights revenue due to other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;

- management fees and other deductions from the amounts paid by other collective management organisations, with a breakdown per category of rights, per type of use and per organisation;

- amounts distributed directly to rightholders originating from other collective management organisations, with a breakdown per category of rights and per organisation.

(4) A special report of the collective management organisation shall provide at least the following information on the use of the amounts deducted for the purposes of social, cultural and educational services:

a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown per type of purpose and, for each type of purpose, with a breakdown per category of rights managed and

per type of use;

b) an explanation of the use of those amounts, with a breakdown per type of purpose including the costs of managing amounts deducted to fund social, cultural and educational services and of the separate amounts used for social, cultural and educational services; and

c) the amounts as referred in Article 167a paragraph (3) of this Act.

(5) The accounting information included in the annual transparency report shall be audited by one or more persons empowered by the Audit Act. The audit report, including any qualifications thereto, shall be reproduced in full in the annual transparency report. Accounting information shall comprise the financial statements referred to in paragraph (2) point a) of this Article, financial information referred to in paragraph (2) points g) and h) of this Article, and financial information referred to in paragraph (3) of this Article.

Chapter 7

MULTI-TERRITORIAL LICENSING OF ONLINE RIGHTS IN MUSICAL WORKS

Multi-territorial licensing in the internal market of the European Union

Article 168e

Collective management organisations established in the Republic of Croatia shall comply with the requirements of this Chapter of this Act when granting multi-territorial licences for online rights in musical works within the European Union (hereinafter: multi-territorial licences).

Capacity to process multi-territorial licences

Article 168f

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall have sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of such licences, including for the purposes of identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.

(2) For the purposes of paragraph (1) of this Article, a collective management organisation shall comply, at least, with the following conditions:

- to have the ability to identify accurately the musical works, wholly or in part, which the collective management organisation is authorised to represent;
- to have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding rightholders;

– to make use of unique identifiers in order to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or the European Union level; and

– to make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

Transparency of multi-territorial repertoire information

Article 168f

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall provide to online service providers, to rightholders whose rights it represents and to other collective management organisations, by electronic means, in response to a duly justified request, up-to-date information allowing the identification of the online music repertoire it represents. This shall include:

- the musical works represented;
- the rights represented wholly or in part; and
- the territories covered.

(2) where necessary, The collective management organisation may take reasonable measures protect the accuracy and integrity of the data, to control their reuse and to protect commercially sensitive information.

Accuracy of multi-territorial repertoire information

Article 168h

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall have in place arrangements to enable rightholders, other collective management organisations and online service providers to request a correction of the data referred to in Article 168f paragraph (2) and Article 168g of this Act, where such data, on the basis of reasonable evidence submitted with a request, prove to be inaccurate. Where the claims are sufficiently substantiated, the collective management organisation shall ensure that such data are corrected without undue delay.

(2) The collective management organisation shall provide rightholders whose musical works are included in its own music repertoire and rightholders who have entrusted the management of their online rights in musical works to it in accordance with Article 168m of this Act with the means of submitting to it in electronic form information concerning their musical works, their rights in those works and the territories in respect of which the rightholders authorise the organisation. When doing so, the collective management organisation and the rightholders

shall take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data developed at international or Union level, allowing rightholders to specify the musical work, wholly or in part, the online rights, wholly or in part, and the territories in respect of which they authorise a collective management organisation.

(3) Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under Articles 168k and 168l of this Act, the mandated collective management organisation shall also apply provisions under paragraph 2 of this Article with respect to the rightholders whose musical works are included in the repertoire of the mandating collective management organisation, unless the collective management organisations agree otherwise.

Accurate and timely reporting and invoicing

Article 168i

(1) A collective management organisation shall monitor the use of online rights in musical works which it represents, wholly or in part, by online service providers to which it has granted a multi-territorial licence for those rights.

(2) The collective management organisation shall offer online service providers the possibility of reporting by electronic means the actual use of online rights in musical works and online service providers shall accurately report the actual use of those works. The collective management organisation shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The collective management organisation may refuse to accept reporting by the online service provider in a proprietary format if the organisation allows for reporting using an industry standard for the electronic exchange of data.

(3) The collective management organisation shall invoice the online service provider by electronic means. The collective management organisation shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level. The invoice shall identify the works and rights which are licensed, wholly or in part, on the basis of the data referred to in the list of conditions under Article 168f paragraph (2) of this Act and the corresponding actual uses, to the extent that this is possible on the basis of the information provided by the online service provider and the format used to provide that information. The online service provider may not refuse to accept the invoice because of its format if the collective

management organisation is using an industry standard.

(4) The collective management organisation shall invoice the online service provider accurately and without delay after the actual use of the online rights in that musical work is reported, except where this is not possible for reasons attributable to the online service provider.

(5) The collective management organisation shall have in place adequate arrangements enabling the online service provider to challenge the accuracy of the invoice, including when the online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

Accurate and timely payment to rightholders

Article 168j

(1) A collective management organisation which grants multi-territorial licences for online rights in musical works shall distribute amounts due to rightholders accruing from such licences accurately and without delay after the actual use of the work is reported, except where this is not possible for reasons attributable to the user (the online service provider).

(2) Together with each payment it makes under paragraph (1) of this Article, the collective management organisation shall provide at least the following information to the rightholder:

- the period during which the uses took place for which amounts are due to rightholders and the territories in which the uses took place;
- the amounts collected, deductions made and amounts distributed by the collective management organisation for each online right in any musical work which the rightholder has authorised such collective management organisation, wholly or in part, to represent, and
- the rights revenue collected for such rightholder, deductions made, and amounts distributed by the collective management organisation in respect of each user (online service provider).

(3) Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works on its behalf and for its account under Articles 168k and 168l of this Act, mandated collective management organisation shall distribute the amounts referred to in paragraph (1) of this Article accurately and without delay, and shall provide the information referred to in paragraph (2) of this Article to the mandating collective management organisation. In this case, the mandating collective management organisation shall be responsible for the subsequent distribution of such amounts and the provision of such information to rightholders, unless the collective management organisations agree otherwise.

Agreements between collective management organisations for multi-territorial licensing

Article 168k

(1) Representation agreements between collective management organisations whereby a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works in its own music repertoire is of a non-exclusive nature. The mandated collective management organisation shall manage those online rights on a non-discriminatory basis.

(2) The mandating collective management organisation as referred to in paragraph (1) of this Article shall inform its members of the main terms of the agreement, including its duration and the costs of the services provided by the mandated collective management organisation.

(3) The mandated collective management organisation as referred to in paragraph (1) of this Article shall inform the mandating collective management organisation of the main terms according to which the latter's online rights are to be licensed, including the nature of the exploitation, all provisions which relate to or affect the licence fee, the duration of the licence, the accounting periods and the territories covered.

Obligation to represent another collective management organisation for multi-territorial licensing

Article 168l

Where a collective management organisation which does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire requests another collective management organisation to enter into a representation agreement to represent those rights, the requested collective management organisation is required to agree to such a request if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations.

Article 168m

(1) The requested collective management organisation as referred to in Article 168l of this Act shall respond to the requesting collective management organisation in writing and without undue delay.

(2) The requested collective management organisation as referred to in Article 168l of this Act shall manage the represented repertoire of the requesting collective management organisation on the same conditions as those which it applies to the management of its own repertoire and include the represented repertoire of the requesting collective management organisation in all offers it

addresses to online service providers.

(3) The management fee for the service provided by the requested collective management organisation to the requesting organisation as referred to in Article 168l of this Act shall not exceed the costs reasonably incurred by the requested collective management organisation.

(4) The requesting collective management organisation as referred to in Article 168l of this Act shall make available to the requested collective management organisation all information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Chapter, the requested collective management organisation shall be entitled to charge for the costs reasonably incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

Access to multi-territorial licensing

Article 168n

Where a collective management organisation does not grant or offer to grant multi-territorial licences for online rights in musical works or does not allow another collective management organisation to represent those rights for such purpose by 31 December 2017, rightholders who have authorised that collective management organisation to represent their online rights in musical works can withdraw from that collective management organisation the online rights in musical works for the purposes of multi-territorial licensing in respect of all territories without having to withdraw the online rights in musical works for the purposes of mono-territorial licensing on the territory of the Republic of Croatia, so as to grant multi-territorial licences for their online rights in musical works themselves individually (personally), through a specialised legal person or through another collective management organisation.

Derogation for online music rights required for radio and television programmes

Article 168o

The requirements under this Chapter of this Act shall not apply to collective management organisations when they grant, on the basis of the voluntary aggregation of the required rights, in compliance with the competition rules under Articles 101 and 102 TFEU, a multi-territorial licence for the online rights in musical works required by a broadcaster to communicate or make available to the public its radio or television

programmes simultaneously with or after their initial broadcast as well as any online material, including previews, produced by or for the broadcaster which is ancillary to the initial broadcast of its radio or television programme.

Chapter 8

ENFORCEMENT MEASURES

Complaints procedures

Article 168p

(1) Collective management organisations shall lay down for their members, and for collective management organisations on whose behalf they manage rights under a representation agreement, effective and timely procedures for dealing with complaints, particularly in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.

(2) A collective management organisation shall respond in writing to complaints by members or by collective management organisations on whose behalf they manage rights under a representation agreement as referred to in paragraph (1) of this Article and in case of rejecting a complaint, it shall give reasons.

Dispute resolution between a collective management organisation and users

Article 168r

Disputes between a collective management organisation and a user concerning their relationship, and in particular existing and proposed licensing conditions or a breach of contract, can be submitted to an arbitration court with expertise in intellectual property law in compliance with arbitration regulations or to a competent court in compliance with civil procedure.

Alternative dispute resolution procedures concerning multi-territorial licensing of rights in musical works for online use

Article 168s

(1) For the purposes of implementing the provisions under Chapter 7 of this Act (Multi-territorial licensing of online rights in musical works), the following disputes relating to a collective management organisation which grants multi-territorial licences for online rights in musical works, established in the Republic of Croatia, can be submitted to an arbitration court in compliance with arbitration regulations:

a) disputes with an actual or potential online service provider regarding the application of Articles 160, 168g, 168h and 168i of this Act;

b) disputes with one or more rightholders regarding the application of Articles 168g, 168h, 168i, 168j, 168k, 168l and 168m of this Act;

c) disputes with another collective management organisation regarding the application of Articles 168g, 168h, 168i, 168j, 168k and 168m of this Act.

(2) The parties in dispute as referred to in paragraph (1) of this Article may request the Council of Experts for the opinion on the subject matter of disagreement. The provision of the opinion shall be appropriately subject to the provisions as referred to in Article 162 paragraph (6) of this Act.

Protection of personal data

Article 168t

The processing of personal data carried out within the framework of this Act shall be subject to the application of the act providing for personal data protection.«.

Article 27

Article 169 shall be amended to read:

»(1) The Office shall grant authorisations to the organisations referred to in Article 157 of this Act.

(2) The Office shall keep the records of the collective management organisations on the territory of the Republic of Croatia.

(3) The Office conducts inspection of the work of the collective management organisations established in the Republic of Croatia in terms of performing the activity in compliance with this Act.

(4) As to the operation of collective management organisations managing the rights on the territory of the Republic of Croatia, but established in other Member States of the European Union, the Office conducts inspection of their work in compliance with corresponding regulations of that Member State having incorporated the Directive 2014/26/EU. Inspection is conducted pursuant to Article 170 paragraph (2) b) of this Act and as provided by Article 171a of this Act.

(5) The Office shall revoke the authorisation referred to in paragraph (1) of this Article by a decision, if a collective management organisation established in the Republic of Croatia ceased to comply with the prescribed criteria of managing the rights or if it seriously and repeatedly violated the provisions of this Act. In such case, prior notice in writing shall be given to the collective management organisation by the Office, and the Office shall set an appropriate time limit for the collective management organisation to eliminate the found irregularities. This provision shall be accordingly applied in compliance with the provisions of Article 171a to the collective management organisations established in another Member State of the European Union, and collectively managing the rights on the territory of the Republic of Croatia.

(6) The decision as referred to in paragraph (5) of this Article cannot be appealed, but it can be submitted to an administrative dispute resolution.

(7) A decision on the grant of the authorisation for collective management of rights to a collective management organisation as referred to in paragraph (1) of this Article and a decision of revocation of such authorisation shall be published in the Official Gazette of the State Intellectual Property Office.

(8) The Minister responsible for the operation of the Office shall enact the Regulations on Professional Criteria and Procedure of Granting Authorisations for Collective Management of Rights and Remunerations for Operation of the Council of Experts.«.

Article 28

Above Article 170, the heading of chapter shall be added to read: »Chapter 9 SUPERVISION OF COLLECTIVE MANAGEMENT OF RIGHTS«.

Article 170 shall be amended to read:

»(1) When conducting the inspection, an employer of the Office responsible for carrying out inspection procedure (hereinafter: the inspector) shall be authorised to require insight in the documents and business records regarding the collective management of rights.

(2) Inspection of the operation of collective management organisations can be regular and special, whereby:

a) regular inspection shall be conducted periodically, usually once a year;

b) special inspection can be conducted upon a duly justified request by members of a collective management organisation, users, another collective management organisation or another person legally interested in such inspection in order to warn of the actions or circumstances that represent, in the opinion of the requester, violation of this Act concerning collective management of rights, or it can be conducted *ex officio* if the Office in any way becomes aware of potential irregularities in the operation of a collective management organisation.

(3) If during the inspection the inspector finds that a collective management organisation established in the Republic of Croatia manages the rights contrary to the issued decision or contrary to the provisions of this Act, he shall order such deficiencies and irregularities to be eliminated within a certain time limit.

(4) If the deficiencies and irregularities are not eliminated within the prescribed time limit as referred to in paragraph (3) of this Article and if a collective management organisation established in the Republic of Croatia keeps managing the rights contrary to the requirements as prescribed or if it seriously and repeatedly violates the provisions of this Act, the inspector shall pass a decision on revoking the authorisation referred to in Article

169 paragraph (1) of this Act.

(5) The decision as referred to in paragraphs (3) and (4) of this Article cannot be appealed, but it can be submitted to an administrative dispute resolution.

(6) The provision referred to in paragraph (3) of this Article shall be accordingly applied in compliance with the provisions of Article 171a to the collective management organisations established in another Member State of the European Union, and collectively managing the rights on the territory of the Republic of Croatia.

(7) Where a collective management organisation is registered as an association, the inspector shall inform the state administration office keeping the registration records of associations about the measures undertaken as referred to in paragraphs (3) and (4) of this Article.

(8) The inspector has the right to participate in the general assembly as referred to in Article 159c of this Act with no voting right. The collective management organisation shall timely notify the Office about the place and time of the general assembly to be held.«.

Article 29

Article 171 shall be amended to read:

»The Office shall perform professional, technical and administrative activities related to the establishment and operation of the Council of Experts and other activities within its competence in this field.«.

Article 30

After Article 171, Article 171a and the heading above it and Chapter 10 and Articles 171b, 171c and 171d as well as headings above them shall be added to read:

»Cooperation with competent authorities in other Member States of the European Union and the European Commission

Article 171a

(1) The Office shall provide a reply within an appropriate time limit to the request for delivery of information on the application of Directive 2014/26/EU, including in particular the information on the activities of collective management organisations established in the Republic of Croatia, received from the authorities of a Member State of the European Union designated by a corresponding regulation of that State to supervise the operation of collective management organisations. The Office shall not reply to insufficiently justified requests.

(2) Where the Office considers that a collective management organisation established in another Member State of the European Union but acting within the territory of the Republic of Croatia may not be complying with the provisions of the national law of that Member State which have

been adopted pursuant to the requirements laid down in Directive 2014/26/EU, it may transmit all relevant information to the competent authority of the Member State designated by a corresponding regulation of that State to supervise the operation of collective management organisations. Where appropriate, the Office may accompany the information by a request to that authority to take appropriate action within its competence.

(3) Where the Office received the request referred to in paragraph (2) of this Article from the authority designated by a corresponding regulation of a Member State of the European Union to supervise the operation of collective management organisations, it shall provide a reply within three months upon receipt of the request.

(4) The request as referred to in paragraph (2) of this Article may also be referred by the Office to the expert group composed of representatives of the competent authorities of the Member States of the European Union, chaired by a representative of the European Commission.

(5) The Office shall provide a reply within an appropriate time limit to all the requests of the European Commission and cooperate with the European Commission for the development of multi-territorial licensing of online rights in musical works and fostering a regular exchange of all the relevant information between the European Commission and the Office, providing the European Commission with reports on the situation and development of multi-territorial licensing in the Republic of Croatia by 10 October 2017, regular reporting on changes to the list of the collective management organisations established in the Republic of Croatia and for the needs of the tasks to be performed by the expert group as referred to in paragraph 4 of this Article.

Chapter 10

INDEPENDENT MANAGEMENT ENTITIES

Notification of collective management organisations

Article 171b

(1) An independent management entity intending to collectively manage the rights on the territory of the Republic of Croatia shall notify this intention to the Office, regardless of its place of establishment. The written notification to the Office shall contain all the information on the types of rights and the category and the number of rightholders on behalf of whom it intends to manage the rights based on the authorisations granted. The Office may request such entity to provide other information as well (e.g. individual authorisations, identification of the rightholders and the subject matters of protection under license).

(2) During its performance of collective management of rights, an independent

management entity shall regularly notify the Office of all the changes to the information referred to in paragraph (1) of this Article.

(3) The complete correspondence between the Office and independent management entities collectively managing or intending to collectively manage copyright and related rights on the territory of the Republic of Croatia shall be in Croatian and Latin transcription.

(4) The Office shall keep records of independent management entities that collectively manage the rights on the territory of the Republic of Croatia.

(5) Where the Office receives a justified request from any person having legal interest therein or it becomes aware *ex officio* of the fact that an independent management entity collectively manages rights on the territory of the Republic of Croatia without prior notification to the Office as referred to in paragraph (1) of this Article, the Office may request this entity to provide information and documentation in order to determine if the collective management of rights is performed in compliance with the provisions of this Act.

Supervision of the operation of independent management entities and measures taken by the Office

Article 171c

(1) Authorised inspectors of the Office conduct the inspection of the operation of independent management entities established on the territory of the Republic of Croatia, in terms of activities performed in compliance with this Act.

(2) The provision referred to in paragraph (1) of this Article shall be accordingly applied in compliance with the provisions of paragraph (3) b) of this Article and Article 171a of this Act to the independent management entities established in another Member State of the European Union, and collectively managing the rights on the territory of the Republic of Croatia.

(3) Inspection of the operation of independent management entities can be regular and special, whereby:

a) regular inspection shall be conducted periodically, usually once a year:

b) special inspection can be conducted upon a duly justified request by a proxy of an independent management entity, users, another collective management organisation or another person legally interested in such inspection in order to warn of the actions or circumstances that represent, in the opinion of the requester, violation of this Act concerning collective management of rights, or it can be conducted *ex officio* if the Office in any way becomes aware of potential irregularities in the operation of an independent management entity.

(4) When conducting the inspection, an employer

of the Office responsible for carrying out inspection procedure shall be authorised to require insight in the documents and business records regarding the collective management of rights.

(5) If during the inspection the inspector finds that an independent management entity established in the Republic of Croatia manages the rights contrary to the provisions of this Act, he shall order such deficiencies and irregularities to be eliminated within a certain time limit. This decision cannot be appealed, but it can be submitted to an administrative dispute resolution.

(6) If the deficiencies and irregularities are not eliminated within the prescribed time limit as referred to in paragraph (5) of this Article, the inspector shall pass a decision on banning the operation of an independent management entity on the territory of the Republic of Croatia. This decision cannot be appealed, but it can be submitted to an administrative dispute resolution.

Application of other provisions of this Act

Article 171d

The provisions referred to in Article 162 paragraph (1), Articles 168 and 168b, Article 168c points a), b), c), f), g) and h), Article 168t and Article 171a of this Act shall be accordingly applied to the independent management entities. «.

Article 31

In Article 179 paragraph (1) the word: »remuneration« shall be replaced by the word: »price«.

Article 32

After Article 192a, Article 192b and the heading above it shall be added to read:

»Failure to provide information on request of a collective management organisation

Article 192b

(1) Any legal person which does not submit the information at its disposal upon request of a collective management organisation, regarding the management of rights under this Act, as referred to in Article 161 paragraph (3), shall be punished for a misdemeanour by a fine amounting from HRK 5,000.00 up to 50,000.00.

(2) A responsible person in a legal person shall be punished for the misdemeanour referred to in paragraph (1) of this Article by a fine amounting from HRK 1,000.00 up to 5,000.00.

(3) A natural shall be punished for the misdemeanour referred to in paragraph (1) of this Article by a fine amounting from HRK 1,000.00 up to 5,000.00. «.

TRANSITIONAL AND FINAL PROVISIONS

Article 33

A collective management association authorised by the rightholders to manage their rights, categories of rights and types of works or subject matters of related rights up until this Act has entered into force, shall appropriately provide these rightholders with the information on their rights as referred to in Article 159 amended by Article 11 of this Act no later than within eight days upon the Regulations referred to in Article 35 paragraph (1) point 1 of this Act have entered into force.

Article 34

(1) Any collective management association established in the Republic of Croatia shall coordinate its acts, internal organisation and its business with the provisions of this Act no later than within four months upon the Regulations referred to in Article 35 paragraph (1) point 1 of this Act have entered into force.

(2) Within four months upon the Regulations referred to in Article 35 paragraph (1) point 1 of this Act have entered into force, all collective management associations shall submit a request for authorisation with the State Intellectual Property Office as referred to in Article 8 of this Act and accompany it with all the documents and other business records as evidence of their meeting the requirements for collective management of copyright and related rights as referred to under this Act.

(3) All the authorisations granted by the State Intellectual Property Office for collective management of rights effective on the day of this Act entering into force shall remain in force up until the decision by the Office on the request referred to in paragraph (2) of this Article has become enforceable if the request was submitted within a given time limit. In case that the request was not submitted within a given time limit, authorisations shall cease to be valid, which shall be specifically decided on by the Office within thirty days upon expiry of the time limit referred to in paragraph (2) of this Article.

(4) Any tariff of a collective management association valid on the day of this Act entering into force shall remain in force.

Article 35

(1) Within 60 days upon this Act entering into force, the Minister whose scope of activity includes the supervision of the operation of the State Intellectual Property Office shall coordinate the following regulations with the provisions of this Act:

1. Regulations on Professional Criteria and Procedure of Granting Authorisations for Collective Management of Rights and on

Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 72/04, 151/08 and 90/13) and

2. Regulations on Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 24/06 and 148/08).

(2) Regulations on Professional Criteria and Procedure of Granting Authorisations for Collective Management of Rights and on Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 72/04, 151/08 and 90/13) and Regulations on Remunerations for Operation of the Council of Experts (»Official Gazette«, No. 24/06 and 148/08) shall remain effective up until the regulations coordinated as referred to in paragraph (1) of this Article have entered into force.

Article 36

This Act shall enter into force on the eighth day following the day of its publication in the »Official Gazette«.