

Law amending the Law on Copyrights and Related Rights

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Article 1

In the Law on Copyright and Related Rights (Official Gazette of Montenegro 37/11) in Article 1, the words: "publishers and makers of databases (hereinafter: related rights)" shall be replaced with words: "and publishers (hereinafter: related rights), sui generis rights of makers of databases", while after the words: "related rights" the following words shall be added: "and sui generis rights of makers of databases".

Article 2

Article 20 shall be replaced by the following:

"Types of economic rights of the author

Article 20

The author shall have the exclusive right to allow or prohibit:

- 1) the right of reproduction;
- 2) the right of distribution;
- 3) the rental right;
- 4) the lending right;
- 5) the right of public performance;
- 6) the right of public communication by phonograms or videograms;
- 7) the right of public presentation;
- 8) the right of broadcasting;
- 9) the right of rebroadcasting;
- 10) the right of cable retransmission;
- 11) the right of public communication of a broadcast work;
- 12) the right of any other communication to the public;
- 13) the right of making available of the work to the public;
- 14) the right of adaptation of the work;
- 15) the right of audio-visual adaptation."

Article 3

In Article 28 after paragraph 4 two new paragraphs shall be added as follows:

“Satellite referred to in paragraph 3 of this Article, means a satellite operating on frequency bands which, under the regulations governing electronic communications, are reserved for the broadcast of signals for reception by the public or for closed point-to-point communication.

The conditions under which individual reception of the signals reserved for closed point-to-point communication takes place must be comparable to the conditions under which reception of the signal reserved for reception by the public takes place.”

Article 4

Article 29 shall be replaced by the following:

“The right of rebroadcasting and the right of cable retransmission

Article 29

The author shall have the exclusive right to authorise or prohibit simultaneous, unaltered and unabridged broadcasting of a broadcast of his work:

- 1) by wireless means by another broadcasting organisation (the right of rebroadcasting);
- 2) by a cable or microwave system or if the work is initially broadcast from another state (the right of cable retransmission).”

Article 5

After Article 30 a new article shall be added as follows:

“The right of any other communication to the public

Article 30a

In addition to the rights referred to in Articles 28, 29 and 30 of this Law, the author shall have the exclusive right to authorise or prohibit any other communication to the public of his work by wire or wireless means.”

Article 6

In Article 36 paragraphs 2 and 3, the word “of new” shall be deleted.

Article 7

In Article 42 after paragraph 1 a new paragraph shall be added as follows:

“The right of distribution shall be exhausted for the territory of the European Union or members of the European Economic Area in respect of the original and copies of the work if the first sale or other transfer of ownership on that object in the European Union or members of the European Economic Area is effected by the right holder or with his consent.”

Article 8

In Article 49 item 3, the words “the purpose”, shall be replaced by words: “the sole purpose”, and after the word “intermediary” the words: “or other lawful use” shall be added.

In item 4, the word “special” shall be replaced by the word “independent”.

Article 9

In Article 52 paragraph 1, in the introductory sentence, the words: “in not more than three copies,” shall be deleted.

Paragraph 2 shall be replaced by the following:

“Reproduction referred to in paragraph 1 of this Article shall be prohibited with respect to entire book, sheet music, electronic databases, computer programs as well as to the construction of architectural objects according to the design and on the basis of the copies unlawfully made or unlawfully made available to the public”.

Article 10

In Article 61 after paragraph 2 a new paragraph shall be added as follows:

“Any contractual provision contrary to paragraphs 1 and 2 of this Article shall be null and void.”

Article 11

In Article 63 paragraph 3 shall be replaced by the following:

“The protection of copyrights of co-authors of musical works with lyrics, that is the author of the lyrics and the composer of the music, shall run until the expiry of 70 years from the death of the last of the co-authors, irrespective of whether or not their contributions merge in such works as inseparable wholes pursuant to Article 11 of this Law, provided that contributions of the co-authors were specifically created for that musical work.”

Article 12

After Article 69, a new section shall be added with eight new Articles worded as follows:

“SECTION F USE OF WORK OR PHONOGRAM WHICH AUTHOR OR RIGHTHOLDER IS NOT IDENTIFIED OR LOCATED

Orphan works Article 69a

A work or phonogram which author or rightholder is not identified or located (hereinafter: the orphan work) shall be the work or phonogram in which the rightholder of that work or phonogram is not identified or, if one or more of rightholders are identified, none is located in the diligent search, carried out in accordance with Article 69e of this Law and recorded in accordance with article 69f of this Law.

Where there is more than one rightholder in a work or phonogram, and not all of them have been identified or, even they have been identified, but have not been located despite the diligent search carried out in accordance with Article 69e of this Law and recorded in accordance with Article 69f of this Law, the work or phonogram may be used for reproduction in accordance with Article 21 and 127 item 1 of this Law and made available to the public in accordance with Article 31 and 127 item 4 of this Law, provided that the organisation referred to in paragraph 4 of this Article was given authorisation for such use by the rightholders of that work or phonogram, who have been identified and located.

Giving of authorisation referred to in paragraph 2 of this Article shall be without prejudice to the rights in the work or phonogram of rightholders that have been identified and located.

The works and phonograms referred to in paragraphs 1 and 2 of this Article may be used by publicly accessible libraries, educational establishments and museums, archives, film and audio heritage institutions and public-service broadcasting organisations established in Montenegro in order to carry out the work of public interests.

The works and phonograms referred to in paragraphs 1 and 2 of this Article may be used by publicly accessible libraries, educational establishments and museums, archives, film and audio heritage institutions and public-service broadcasting organisations established in the European Union Member States or members of the European Economic Area in order to carry out the work of public interest.

Provisions of paragraphs 1 to 5 of this Article and Articles 69b to 69h of this Law

shall be without prejudice to the provisions of this Law on anonymous or pseudonymous works and arrangements concerning collective management of rights.

Scope of application

Article 69b

Provisions of Article 69a and Articles 69c to 69h of this Law shall apply to works and phonograms which are protected by copyright and phonograms protected by related rights that are first published in Montenegro and on unpublished works and phonograms that are first broadcasted in Montenegro as follows:

- 1) works published in the form of books, journals, newspapers, magazines or other writings making an integral part of the collections publicly accessible libraries, educational establishments or museums as well as in the collections of archives or film or audio heritage institutions;
- 2) cinematographic or audiovisual works and phonograms making an integral part of the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions, and
- 3) cinematographic or audiovisual works and phonograms produced by public-service broadcasting organisations by 31 December 2002 and contained in their archives.

Provisions of Article 69a and Articles 69c to 69h of this Law shall apply to works and phonograms which are protected by copyright and phonograms protected by related rights that are first published in a Member State of the European Union or a member of the European Economic Area and on unpublished works and phonograms that are first broadcasted in a Member State of the European Union or member of the European Economic Area as follows:

- 1) works published in the form of books, journals, newspapers, magazines or other writings making a part of the collections publicly accessible libraries, educational establishments or museums as well as in the collections of archives or film or audio heritage institutions;
- 2) cinematographic or audiovisual works and phonograms making an integral part of the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions, and
- 3) cinematographic or audiovisual works and phonograms produced by public-service broadcasting organisations by 31 December 2002 and contained in their archives.

Provisions of Article 69a and Articles 69c to 69h of this Law shall also apply to:

- 1) works and phonograms referred to in paragraph 1 of this Article which have never been published or broadcast, but which have been made publicly accessible by the organisations referred to in Article 69a paragraph 4 of this Law with the consent of the rightholders, provided that it is reasonable to assume that the rightholders would not oppose the uses referred to in Article 69c of this Law;
- 2) works and other protected subject-matter that are embedded, or incorporated in or constitute an integral part of the works or phonograms referred to in paragraph 1 of this Article and item 1 of this paragraph.

Permitted use of orphan works
Article 69c

The organisations referred to in Article 69a paragraph 4 of this Law may use orphan works contained in their collections in the following ways:

- 1) by making the orphan works available to the public;
- 2) by acts of reproduction, pursuant to Article 21 of this Law, for the purposes of digitisation, making available to the public, indexing, cataloguing, preservation or restoration of the work concerned.

The use of orphan works pursuant to paragraph 1 of this Article shall be permitted for the purpose of carrying out their public-interest missions, in particular the preservation and restoration of the works and phonograms contained in their collection and ensuring their accessibility for cultural and educational needs.

The organisations referred to in Article 69a paragraph 4 of this Law may generate revenues from use of the orphan works for the exclusive purpose of covering their costs of digitizing orphan works and making them available to the public.

The organisations referred to in Article 69a paragraph 4 of this Law shall indicate the name of identified authors and other rightholders in any use of an orphan works.

Provisions of Articles 69a, 69b, paragraphs 1 to 4 of this Article and 69d to 69h of this Law shall be without prejudice to the freedom of contract of organisations referred to in Article 69a paragraph 4 of this Law in carrying out the public-interest missions, particularly in respect of concluding public-private partnership agreements.

Recognition of the status of an orphan work established in the European Union
Article 69d

In terms of this Law, a work or phonogram considered an orphan work in a Member State of the European Union shall be considered an orphan work also in Montenegro.

The provision of paragraph 1 of this Article shall apply also in the case of existence of several rightholders in a work or a phonogram, of which not all have been identified or located, to the rights of those rightholders who have not been identified or located.

Diligent search
Article 69e

The organisations referred to in Article 69a paragraph 4 of this Law shall, in order to establish whether a work or phonogram is an orphan work, prior to their use, ensure that a diligent search is carried out in respect of each work or other protected subject-matter, by consulting the appropriate sources of data for the specific category of works and other protected subject matters.

The sources of diligent search that are appropriate for specific categories of works or phonograms shall be laid down by the Ministry, with previous consultations with rightholders and users of that particular category of work or phonogram.

The diligent search shall be carried out:

- 1) by consulting the sources determined by the regulation referred to in paragraph 2 of this Article, which are available in Montenegro;
- 2) by consulting the publicly accessible online database, established and managed by the Office for Harmonisation in the Internal Market of the European Union;
- 3) where it is not possible to identify or locate the rightholders by consulting the sources referred to in items 1 and 2 of this paragraph, and when there is evidence to suggest that relevant information on rightholders may be found in other countries, by consulting the sources of information available in those countries.

Diligent search shall be carried out in the Member State of the European Union of the first publications of the work or phonogram or where the work or phonogram concerned has not been published in the Member State of the European Union, the diligent search shall be carried out in the Member State of the European Union of the first broadcast, and in the case of cinematographic or audio-visual works in a Member State of the European Union in which the producer has his headquarters or habitual residence, if the

producer of such works has his headquarters or habitual residence in another Member State of the European Union.

In the case referred to in Article 69b paragraph 3 item 1 of this Law, diligent search shall be carried out in the Member State of the European Union where the organisation that made the work or phonogram publicly accessible with the consent from the rightholder is established.

Records on diligent searches

Article 69f

The organisation referred to in Article 69a paragraph 4 of this Law shall maintain records on diligent searches carried out and provide the competent authority with the following information:

- 1) the results of the diligent searches that it carried out and which have led to the conclusion that a work or a phonogram is considered an orphan work;
- 2) the use of the orphan work pursuant to provisions of Articles 69a to 69e, Articles 69g and 69h of this Law;
- 3) any changes of the orphan work status of works or phonograms that the organisations use, pursuant to Article 69g of this Law;
- 4) the contact information of the organisation concerned (name, address, telephone number, fax number, e-mail address).

The informations referred to in paragraph 1 of this Article, except the informations available in the Office for Harmonisation in the Internal Market of the European Union, shall be recorded in the publicly accessible online database.

The database referred to in paragraph 2 of this Article shall be established, managed and published on its web page by the competent authority.

Upon receiving the informations referred to in paragraph 1 of this Article, the competent authority shall without delay forward those informations to the Office for Harmonisation in the Internal Market of the European Union.

End of orphan work status

Article 69g

A rightholder in a work or phonogram considered to be an orphan work may, at any time, put an end to the orphan work status.

Provisions of Articles 69a to 69c and Articles 69e to 69f of this Law shall not apply to the work or phonogram whose orphan work status has ended.

Provisions of paragraphs 1 and 2 of this Article shall apply also in the case of existence of several rightholders in a work or phonogram, of which not all have been identified or located.

Fair compensation

Article 69h

The rightholder referred to in Article 69g of this Law, shall be entitled to a fair compensation for the use of works and other protected subject-matter pursuant to Article 69c paragraph 1 of this Law by the end of the orphan work status.

The compensation referred to in paragraph 1 of this Article shall be paid by the organisation referred to in Article 69a paragraph 4 of this Law, at request of the rightholder in a work or phonogram.

The amount of the compensation referred to in paragraph 1 of this Article, shall be agreed by the rightholder referred to in Article 69g of this Law and the organisation referred to in Article 69a paragraph 4 of this Law.

Where the amount of the compensation cannot be agreed, the compensation amount shall be set by the competent court, taking into account in particular the category of the orphan work, the period of use, the objectives of Montenegro in terms of promotion of culture, use for non-commercial purposes by the organisations referred to in Article 69a paragraph 4 of this Law and their carrying out of public-interest missions, such as promotion of education and culture, as well as possible damage caused to the rightholder.

The fair compensation shall be paid for a retroactive period of no more than three years, counting from the day of the end of the orphan work status.

The limitation period for the right to a fair compensation referred to in paragraph 1 of this Article, shall expire in one year from the day of end of the orphan work status.”

Article 13

In Article 110, the words: “do not relate” shall be replaced with words: “shall be without prejudice”.

Article 14

In Article 116, the words: “Articles 117 to 145” shall be replaced with words: “Articles 117 to 138”.

Article 15

In Article 123 paragraphs 1 and 2 shall be amended as follows:

“By concluding a contract on inclusion of his performance into a film production or a phonogram, the performer shall be presumed to have assigned to the film producer or the producer of phonogram, exclusively and without limitations, his economic rights in the performance and to the photographs made in connection to this performance, unless otherwise provided by the contract.

The performer referred to in paragraph 1 of this Article shall have the right to a remuneration from the film producer for each single economic right referred to in paragraph 1 of this Article, as well as from the producer of phonogram for his right of rental.”

Article 16

In Article 125 paragraph 1, after the word “performer” the following words shall be added: “with the exceptions referred to in paragraphs 2 and 3 of this Article”.

In paragraph 2, after the word “performance”, a comma and the following words shall be added: “otherwise than in a phonogram”.

After paragraph 2 a new paragraph shall be added as follows:

“If a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within the period referred to in paragraph 1 of this Article, the protection of economic rights of the performer shall expire 70 years from the date of the first publication or the first communication to the public, whichever is the earlier.”

Current paragraph 3 shall become paragraph 4.

Article 17

In Article 130 paragraphs 1 and 2, the words: “50 years” shall be replaced with words: “70 years”.

In paragraph 3 the words: “paragraph 2” shall be replaced with words: “paragraph 1”, and the words: “50 years” shall be replaced with words: “70 years”.

Article 18

After Article 130, three new Articles shall be added as follows:

“Consequences of not exploiting the phonogram by the producer of phonogram

Article 130a

If 50 years after the phonogram was lawfully published, or where a phonogram was not published, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, the performer may terminate the contract by which the performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter: contract on transfer or assignment).

The performer may terminate the contract on transfer or assignment if phonogram producer, within a year from the notification by the performer of his intention to terminate the contract on transfer or assignment, does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public.

The provision of the contract on transfer or assignment waiving the right of the performer to terminate the contract on transfer or assignment shall be null and void.

Where a phonogram contains the fixation of the performances of several performers, the performers may terminate their contracts on transfer or assignment in accordance with the law governing contractual relations.

Where the contract on transfer or assignment is terminated in accordance with the paragraphs 1 do 4 of this Article, the rights of the phonogram producer in the phonogram shall expire.

Annual supplementary remuneration

Article 130b

The performer who, based on a contract on transfer or assignment of rights has right to claim a non-recurring remuneration, shall also have right to a supplementary remuneration from the phonogram producer for each year following the 50th year after the phonogram was lawfully published, or lawfully communicated to the public if the phonogram was not published.

The performer may not waive the right to annual supplementary remuneration referred to in paragraph 1 of this Article.

The phonogram producer shall pay the performer the remuneration referred to in paragraph 1 of this Article in the amount corresponding to 20% of the revenue which the phonogram producer generated from the reproduction, distribution and making available of the phonogram concerned during the year preceding that for which the said remuneration is paid, following the 50th year after it was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

The phonogram producer shall be required, at request of the performer who is entitled to the remuneration referred to in paragraph 1 of this Article, to provide information which are necessary to establish the amount and for the payment of that remuneration.

End of application of deductions from recurring payments to the performers

Article 130c

The phonogram producer may not, following the 50th year after the phonogram was lawfully published or if the phonogram was not published after it was lawfully communicated to the public, deduct advance payments or other contractually defined deductions from the recurring payments made to the performer.

Article 19

In Article 135 item 6, the word “broadcasts“, shall be replaced with the word: “broadcast fixation”.

Article 20

In Chapter V after Article 138, the title “SECTION F – RIGHTS OF MAKERS OF DATABASES” shall be replaced by the following:

“Chapter Va

SPECIAL (*SUI GENERIS*) RIGHTS OF MAKERS OF DATABASES”

Article 21

Article 139 shall be replaced by the following:

“Sui generis right

Article 139

A maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in obtaining, verification or presentation of the contents of the database shall have the right to prohibit extraction and/or re-utilisation of the database contents, in whole or its qualitatively and/or quantitatively substantial part.

The extraction referred to in paragraph 1 of this Article shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form.

The re-utilisation referred to in paragraph 1 of this Article shall mean making available to the public of all or a substantial part of the contents of a database by the distribution of copies, by renting, on-line or other forms of transmission.

The repeated and systematic extraction and/or re-utilisation of insubstantial parts of the contents of the database contrary to the normal exploitation of that database or which unreasonable prejudice the legitimate interests of the maker of that database shall be prohibited.

Public lending is not an act of extraction or re-utilization of the database contents.

The provision of paragraph 1 of this Article shall not apply to computer programs used in the making or operation of electronic databases”.

Article 22

Article 140 shall be replaced by the following:

“Scope of application of the sui generis right Article 140

The right provided for in Article 139 paragraph 1 of this Law shall apply irrespective of the eligibility of that database and its contents for protection by copyright or by other rights.

The protection of databases referred to in Article 139 paragraph 1 of this Law shall be without prejudice to rights existing in respect of their contents.”

Article 23

Article 141 shall be replaced by the following:

“Exercise of the sui generis right Article 141

The sui generis right referred to in Article 139 paragraph 1 of this Law, may be transferred, assigned or granted under the contractual licence.

Provisions of Articles 70 to 85 of this Law shall apply to the transfer and assigning of the sui generis right of makers of databases.

Where the database was made within employment relations or on the basis of a temporary service contract, all economic rights on that database are exclusively and without

limitations shall be deemed assigned to the employer or the ordering party, unless otherwise provided by the contract.”

Article 24

Article 142 shall be replaced by the following:

”Exhaustion of the control of resale of copies of a databases

Article 142

The first sale of a copy of a database on the territory of Montenegro by the rightholder or with his content shall exhaust the right of the rightholder to control the resale of that copy in Montenegro.

The first sale of a copy of a database on the territory of the European Union or countries of the European Economic Area by the rightholder or with his content shall exhaust the right of the rightholder to control the resale of that copy in the European Union.”

Article 25

Article 143 shall be replaced by the following:

“Rights and obligations of lawful users of database

Article 143

The maker of a database which is made available to the public shall be prohibited to prevent a lawful user of the database or its part to extract and/or re-utilise insubstantial parts of its contents, evaluated qualitatively and/or quantitatively.

The lawful user of a database which is made available to the public or its copy shall be prohibited to perform acts which conflict with a normal exploitation of the database and which cause unreasonable prejudice to the legitimate interests of the makers of the database.

The lawful user of a database which is made available to the public or its copy shall be prohibited to infringe copyright or related rights in respect of the work or subject matter which forms part of that database.

The provisions of a contract which allows derogations from the paragraphs 1 to 3 of this Article shall be null and void”.

Article 26

Article 144 shall be replaced by the following:

“Restrictions to the sui generis rights

Article 144

Lawful user of a database which is made available to the public may, without the authorisation of its maker, extract or re-utilise a substantial part of contents of that database in the cases of extraction:

- 1) of the contents of a non-electronic database for private purposes;
- 2) for the purposes of illustration for teaching or scientific research, if the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- 3) and/or re-utilisation for the purposes of public security or administrative or judicial procedure.”

Article 27

In Article 145 paragraph 1 shall be replaced by the following:

“The protection of the rights of makers of database shall last from the date of making of the database until 1 January of the year following the expiration of 15 years from the date of making of the database.”

Paragraph 2 shall be replaced by the following:

“If a database is made available to the public within the period referred to in paragraph 1 of this Article, the protection of rights of the makers of databases shall last until 1 January of the year following the expiration of 15 years from the date when the database was first made available to the public.”

Article 28

After Article 145 a new article shall be added as follows:

“Beneficiaries of protection under the sui generis right

Article 145a

The sui generis right referred to in article 139 of this Law shall apply to database whose makers or rightholders are nationals of a Montenegro or who have their habitual residence in the territory of the Montenegro.

The sui generis right referred to in article 139 of this Law shall also apply to database whose makers or rightholders are companies and firms formed in accordance with the law of a Montenegro and having their registered office or principal place of business within the Montenegro.

Where the company or firm referred to in paragraph 2 of this Article has only its registered office in the territory of the Montenegro, its operations must be genuinely linked on an ongoing basis with the economy of a Montenegro.

The sui generis right referred to in article 139 of this Law shall apply to database whose makers or rightholders are nationals of a Member State of the European Union or who have their habitual residence in the territory of the European Union.

The sui generis right referred to in article 139 of this Law shall also apply to database whose makers or rightholders are companies and firms formed in accordance with the law of a Member State of the European Union and having their registered office, central administration or principal place of business within the European Union.

Where the company or firm referred to in paragraph 5 of this Article has only its registered office in the territory of the European Union, its operations must be genuinely linked on an ongoing basis with the economy of a Member State of the European Union.”

Article 29

After Article 148 a new article shall be added as follows:

“Forms of collective management of rights

Article 148a

The authorisation for the exercise of the activities of collective management of copyright and related rights may be issued to the Society for:

- 1) collective management on voluntary basis;
- 2) collective management on voluntary basis with extended effect referred to in Article 167 of this Law, or
- 3) mandatory collective management of rights referred to in Article 155 of this Law.

In the case referred to in paragraph 1 item 1 of this Article, the Society may exercise only the rights on the subject matter for which the rightholders assigned management of their rights to the Society.”

Article 30

In Article 150 paragraph 2 shall be replaced by the following:

“The authorisation referred to in paragraph 1 of this Article, may be issued only to one Society for a certain type of rights.”

After paragraph 2, four new paragraphs shall be added as follows:

“The authorisation referred to in paragraph 1 of this Article, may be issued only to one Society for a certain type of protected matter.

The authorisation referred to in paragraph 1 of this Article may be issued to one Society for management of several different types of rights and several different types of protected matters.

The Society referred to in paragraph 4 of this Article, shall ensure, in its statute, the proportional representation of rightholders of different types of rights in different types of protected matters in organs of the Society.

The provisions of paragraphs 2 and 3 of this Article shall not apply to authorisation for multi-territorial collective management of online rights in musical works.”

Article 31

In Article 155 paragraph 1, after the item 5 a new item shall be added as follows:

“6) the annual supplementary remuneration for performers referred to in Article 130b of this Law.”

Article 32

Article 167 shall be replaced by the following:

“Collective management on voluntary basis with extended effect

Article 167

The activity of the Society established on voluntary basis shall, in accordance with this Article, be extended also to management of rights on protected matters of those rightholders who have not assigned the management of their rights to the Society.

The Society referred to in paragraph 1 of this Article shall perform the activity of collective management of copyright and related rights of all rightholders with regard to protected matters which are included in its activity, provided that:

1) individual management of right is complex or impracticable, and therefore, the right is normally managed collectively;

2) the Society represents, in addition to rightholders from Montenegro, also the foreign rightholders on the basis of bilateral agreements with foreign Societies.

The rightholder who decides to exercise his rights individually shall notify the Society referred to in paragraph 1 of this Article of his decision no later than three months before the end of the current year.

In the case referred to in paragraph 3 of this Article, the Society shall cease the collective management of the rights of the rightholder who submitted the notification as of 1 January of the following year.

The Society referred to in paragraph 1 of this Article shall inform the users with whom it concluded the contracts about the decision referred to in paragraph 3 of this Article by 1 January of the year in which it ceases the collective management of rights of the rightholder who submitted the notification.

The Society referred to in paragraph 1 of this Article shall, when distributing the entire amount of revenues generated, fulfil its obligations to the rightholders who have not submitted the notification referred to in paragraph 3 of this Article, under the same conditions under which it fulfil its obligations to its members.

The provision of paragraph 6 of this Article shall apply also to rightholders who submit the notification referred to in paragraph 3 of this Article by the end of the year in which the notification was submitted.”

Article 33

After Article 180, a new Section and eleven new Articles shall be added, worded as follows:

“SECTION F GRANTING OF MULTI-TERRITORIAL LICENCES FOR COLLECTIVE MANAGEMENT OF INTERNET RIGHTS IN MUSICAL WORKS

Multi-territorial licences

Article 180a

The collective management organisation complying with the conditions referred to in Articles 180b to 180k of this Law may grant multi-territorial licences for online rights in musical works.

Provisions of Article 150 paragraphs 2 and 3 and Article 167 of this Law shall not apply to collective management organisations referred to in paragraph 1 of this Article.

In terms of paragraph 1 of this Article and Articles 180b to 180k of this Law, the license is considered as non-exclusive assignment of right of use of protected matter referred to in Article 165 paragraph 1 of this Law.

Capacity to process multi-territorial licences

Article 180b

The license may be granted by a collective management organisation complying with the conditions for:

- 1) an efficient and transparent electronically processing of data needed for the administration of such licences;
- 2) identification of the repertoire and monitoring of its use;
- 3) invoicing users;
- 4) collecting the revenues from the rights assigned, and
- 5) distribution of amounts due to rightholders.

For the purpose of complying with the requirements provided for in paragraph 1 of this Article, the collective management organisation shall in particular:

- 1) ensure that it accurately identifies the musical works, wholly or in part, which the collective management organisation is authorised to represent;
- 2) ensure that it accurately identifies, wholly or in part, with respect to each relevant territory, the rights on each musical work or its part and their corresponding rightholders that the collective management organisation is authorised to represent;
- 3) use unique identifiers for identifying the rightholders and musical works, taking into account the voluntary industry standards and practices;
- 4) use adequate means 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 180c

The collective management organisation referred to in Article 180a of this Law, shall, at a duly justified request, provide to online service providers, to rightholders

whose rights it represents and to other collective management organisations, by electronic means, accurate and up-to-date information needed for identification of the online music repertoire it represents.

Information referred to in paragraph 1 of this Article shall include in particular the information on:

- 1) the musical works that the organisation represents;
- 2) the rights represented wholly or in part, and
- 3) the territories covered.

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

Accuracy of multi-territorial repertoire information

Article 180d

The collective management organisation referred to in Article 180a of this Law shall ensure implementation of procedure upon request filed by the rightholder, the collective management organisation and/or online service provider, for correction of the data and informations referred to in Article 180b paragraph 2 and 180c of this Law where they consider, on the basis of evidence, that such data or information are inaccurate.

Where the claim referred to in paragraph 1 of this Article is justified, the collective management organisation shall, without delay, make the correction of the data.

The collective management organisation shall provide rightholders in musical works included in its musical repertoire and rightholders referred to in Article 180j of this Law who have entrusted it the management of their online rights in musical works, in electronic form, with information concerning their musical works (title of the work, etc.), the rights in those works and the territories in respect of which rightholders authorise the organisation and 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, 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 the organisation.

The provision of paragraph 3 of this Article shall also apply to the collective management organisation that the organisation referred to in paragraph 1 of this Article mandated for granting the multi-territorial licences for online rights in musical works in

accordance with Articles 180h and 180i of this Law, unless the collective management organisations agree otherwise.

Accurate and timely reporting **Article 180e**

The collective management organisation referred to in Article 180a paragraph 1 of this Law 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 the license.

The collective management organisation shall offer online service providers the possibility of reporting by electronic means on the use of online rights in musical works.

The online service providers shall accurately report the collective management organisation on the use of works referred to in paragraphs 1 and 2 of this Article.

The collective management organisation referred to in paragraph 2 of this Article, shall offer to the online service providers the use of at least one method of reporting which takes into account the voluntary industry standards or practices for the electronic exchange of such data.

The collective management organisation is not obliged to accept the reporting by the online service providers in their format if it for reporting provided the possibility of using an industry standard for the electronic exchange of data.

Invoicing and payments **Article 180f**

The collective management organisation shall provide the online service providers with an invoice in electronic form, using at least one format which takes into account voluntary industry standards or practice.

The invoice referred to in paragraph 1 of this Article shall include the information on:

- 1) the works and rights for which the license is granted, wholly or in part, on the basis of the data referred to in Article 180b paragraph 2 of this Law, and
- 2) use, on the basis of the information provided by the online service provider and the format used to provide that information.

The online service provider must accept the invoice if the collective management organisation issued it in the format which uses an industry standard.

Where the online service provider reports on use of online rights in a musical work, the collective management organisation shall, without delay, issue an accurate invoice, except where invoicing is not possible for reasons attributable to the online service provider.

The collective management organisation shall, at the request of online service provider, ensure implementation of a procedure addressing the complaint to the accuracy of the invoice, as well as in cases when online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

Payments to rightholders

Article 180g

The organisation referred to in Article 180a paragraph 1 of this Law shall distribute revenues which belong to the rightholders, accrued from licences granted, accurately and without delay after the use of the online rights in a musical work is reported, except where distribution of revenue is not possible for reasons attributable to the online service provider.

The collective management organisation shall, during distribution of revenues referred to in paragraph 1 of this Article, provide the rightholder in particular with the following information:

- 1) the period during which the work was used for which amounts are due to the rightholders, as well as the territories of the countries where the use of the work took place;
- 2) the amounts collected by the collective management organisation, deductions made and amounts distributed for each online right in a musical work for which rightholders authorised the collective management organisation to represent them, wholly or in part;
- 3) the amounts collected for rightholders, deductions made and amounts that the collective management organisation distributed in respect of each online service provider.

The collective management organisation which is, pursuant to Articles 180h and 180i of this Law mandated by the organisation referred to in Article 180a paragraph 1 of this Law to grant multi-territorial licenses for online rights in musical works shall distribute the revenues referred to in paragraph 1 of this Article accurately and without delay, and provide the information referred to in paragraph 2 of this Article to the mandating collective management organisation.

The mandating collective management organisation in accordance with Articles 180h

and 180i of this Law shall be responsible for subsequent distribution of revenues and provision of information to rightholders, unless agreed otherwise.

Agreements between collective management organisations in respect of granting multi-territorial licences

Article 180h

A representation agreement 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 shall be non-exclusive.

In the case of a non-exclusive representation agreement referred to in paragraph 1 of this Article it shall be considered that, in addition to the mandated organisation, the multi-territorial licences for online rights in musical works may be granted also by mandating collective management organisation, as well as any other organisation mandated for that in accordance with paragraphs 1 and 3 to 6 of this Article and Article 180i of this Law.

The mandated collective management organisation shall manage the online rights referred to in paragraph 1 of this Article on a non-discriminatory basis, that is, under the same condition it applies for managing its own repertoire.

The mandating collective management organisation shall within 30 days from the day of signing the representation agreement 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.

The mandated collective management organisation shall inform the mandating collective management organisation of the main terms according to which it grants the license for its online rights.

The notification referred to in paragraph 5 of this Article shall include in particular the information on the nature of the exploitation, fees for the license, the duration of the license, accounting periods and the territory covered.

Obligation to represent another collective management organisation in respect of granting multi-territorial license

Article 180i

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 sign a representation agreement in respect of

those rights, the requested collective management organisation shall accept that request under the terms under which it is 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.

The requested collective management organisation shall, without delay, respond to the request in writing.

The requested collective management organisation shall manage the represented repertoire of the requesting collective management organisation under the same conditions it applies to the management of its own repertoire in case the agreement is concluded.

The requested collective management organisation shall include the represented repertoire of the requesting collective management organisation in all offers it addresses to online service providers.

The fee for the service that the requested collective management organisation provides to the requesting collective management organisation shall not exceed the amount of justified costs (costs for needed and reasonable investments) of the requested collective management organisation.

The requesting collective management organisation shall make available to the requested collective management organisation the information relating to its own music repertoire, required for granting the multi-territorial license for online rights in musical works.

Where the informations referred to in paragraph 6 of this Article, are insufficient or are provided in a form that does not allow the requested collective management organisation to meet the requirements referred to in Articles 180b to 180h paragraphs 1 to 6 of this Article and Articles 180j and 180k of this Law, 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 the informations are insufficient or cannot be used.

Access to multi-territorial licensing **Article 180j**

Where a collective management organisation does not grant or does not 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 1 January 2020, the 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 granting multi-territorial licenses in respect of all territories.

In the case referred to in paragraph 1 of this Article the right holders are not obliged to withdraw the online rights in musical works for the purposes of mono-territorial licensing in order to grant the multi-territorial licences for their online rights in musical works themselves, or through any other party they authorize or through any other collective management organisation carrying out that activity in accordance with provisions of Articles 180a to 180k of this Law.

Derogations in respect of online rights in musical works for radio and television programmes
Article 180k

The provisions of Articles 180a to 180j of this Law shall not apply to collective management organisations when they, on the basis of voluntary aggregation of the required rights, in compliance with the law governing the protection of competition, grant multi-territorial licences for the online rights in musical works where the broadcaster which is broadcasting the work requests those online rights in order to communicate or make available to the public:

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

Article 34

In Article 186 paragraph 2 shall be replaced by the following:

"Circumvention of efficient technological measures designed to protect the protected matter shall be treated as an infringement of copyright, related rights and sui generis right of maker of database, if the circumvention of efficient technological measures is carried out by a person with the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective."

Article 35

After Article 192 a new article shall be added as follows:

"Injunctions against intermediaries
Article 192a

When his copyright or related right is infringed, the rightholder may file a claim requesting an injunction against an intermediary whose service was used by a third party to infringe his right.”

Article 36

After Article 206, five new Articles shall be added worded as follows:

“Application deadlines

Article 206a

The provision of Article 63 paragraph 3 of this Law shall apply to musical works with words of which at least the rights of the composer of music or those of the author of the lyrics were protected on 1 November 2013 and to musical works with words which came into being after that date.

As of the day of Montenegro’s accession to the European Union, the provision of Article 63 paragraph 3 of this Law shall apply to musical works with words of which at least the rights of the composer of music or those of the author of the lyrics were protected in European Union on 1 November 2013 and to musical works with words which came into being after that date.

Paragraphs 1 and 2 of this Article shall be without prejudice to any act of exploitation performed before 1 November 2013.

Application to fixations of performances and phonograms

Article 206b

Article 125 paragraphs 1, 2 and 3, Article 130 and Articles 130a to 130c of this Law shall apply to fixations of performances and phonograms in regard to which the rights of performers and phonogram producers were protected on 30 October 2011 as well as to all fixations of performances and phonograms which have come into being after 30 October 2011.

The persons that made copies of musical works with lyrics before 1 November 2013, which were not protected at the time when they came into being, may distribute such copies by 30 June 2017.

Complying of operations

Article 206c

The collective management Society shall comply its organisation, operations and activities with this Law no later than one year from the day of entry into force of this Law.

The competent authority shall revoke the authorisation for collective management of rights to the Society referred to in paragraph 1 of this Article if it fails to comply its organisation, operations and activities within a period referred to in paragraph 1 of this Article.

Deferred application
Article 206d

Provisions of Article 42 paragraph 2, Article 69a paragraph 5, Article 69b paragraph 2, Article 69d, Article 69e paragraphs 4 and 5, Article 69f paragraph 4, Article 69i, Article 142 paragraph 2 and Article 145a paragraphs 4, 5 and 6 of this Law shall apply as of the date of Montenegro's accession to the European Union.

Provisions of Articles 180a to 180k of this Law shall apply as of 1 January 2019.

Ongoing procedures
Article 206e

The procedures for obtaining of authorisation for collective management of rights, initiated prior to entry of this Law into force, shall be completed in accordance with provisions of this Law.”

Article 37

After Article 207 a new article shall be added as follows:

“Deadline for adoption of implementing regulation
Article 207a

Implementing regulation referred to in Article 69e paragraph 2 of this Law shall be adopted within one year from the day of entry of this Law into force.”

Entry into force
Article 38

This Law shall enter into force on the eighth day from the day of its publishing in the Official Gazette of Montenegro”.