

COLLECTIVE MANAGEMENT ORGANISATIONS- Open discussion between stakeholders

30 November 2023

On 29th November 2023 a much needed, open discussion took place in Nicosia, Cyprus on the challenges and prospects of the use of copyrighted works by undertakings and shops in Cyprus. **KYRIACOU PAPATHOMA** attended the event which was organized by a number of local and overseas collective management organisations ('CMOs') and an independent management entity, namely, GRAMMO, APOLLON, DIONYSOS, ERATO and CNR. These organizations, between them, manage neighboring rights of audiovisual producers, Greek musicians, Greek actors and of Greek as well as foreign singers/performers.

The open discussion aimed at bringing under one roof all interested stakeholders to discuss the issue of the use of copyrighted works by undertakings and shops and the organization, the collection and distribution of an equitable remuneration to the beneficiaries.

The relevant law governing the collective management of copyright and neighboring rights is the Law on the Collective Management of Copyright and Neighboring Rights as well as the grant of multi-territory licenses for the online use of musical works of 2017, Law 65(I)/2017 (the 'Law').

The open discussion aimed at touching upon three issues, namely (1) the Copyright Authority and Authority for Organisations of Collective Management, (2) Applicable tariffs as between the CMOs and the users and (3) Methods of collecting the tariffs for use of the copyrighted works and means of negotiations between the parties in the event of disagreement on the level of applicable tariffs.

In spite of the fact that both the CMOs and the representatives of users of copyrighted works seemed to agree that they are not opposing parties but rather parties who should work together for their mutual benefit, the three questions under discussion proved to be thorny.

One major source of contention, by general consensus, seemed to be the an apparent inertia by the House of Representatives to enact a set of regulations (the 'Regulations') which are to govern the operation of the Copyright Authority and Authority for Organisations of Collective Management ('Authority') which was enacted by the Law in 2017. Per Article 51(1) of the Law, that the Ministerial Council has the power to issue such regulations.

Initial draft regulations for the functioning of the Authority as well as for the collective management of copyright and neighboring rights as well as for the grant of multi-territory licenses for online uses of musical works had been approved by the Ministerial Council since 31 August 2022 and had been forwarded to the House of Representatives for approval since 5 September 2022. However, neither of the said draft sets of regulations have been approved till today.

In a further development and despite the fact that no regulations have been enacted thus far, a legislative amendment has been tabled since early April 2023 aimed at introducing amendments to the Law. The explanatory memorandum accompanying the proposed amendments states that the proposed changes are deemed 'necessary' in order to improve the effective implementation of the provisions of the Law and to implement clear and regulated procedures by the CMOs and the independent management entities. It is interesting to note that the representatives of the CMOs have expressed their concern that parts of these new legislative amendments could be considered unconstitutional as well as be deemed to be contrary to Union law.

By mid- September 2023, the Parliamentary Committee on Energy, Commerce, Industry and Tourism had completed the discussion on the proposed legislative amendments as well as on the pending regulations and was yet to discuss with all relevant stakeholders the issues concerning the collection of tariffs. On 28th November 2023, the said committee resumed its discussion on the imposition and collection of tariffs by CMOs and independent management entities, as well as on issues concerning supervision and investigations to be carried out by the Authority.

The lacuna which has been created from the absence of any functioning authority contrary to the provisions of the Law, seems to stall the proper functioning of the statutory system of remuneration of beneficiaries for their copyright and neighboring rights as well as the operation of CMOs in this process.

During the open discussion, the CMOs' representatives in no unclear terms, expressed their frustration at what they perceive as constituting 'blatant snubbing' during all these years, as they deem that despite the Law being clear in recognising the right of beneficiaries to be rewarded for their neighboring rights, the users hide behind the non-existence of the Authority in as much as currently there is no functioning authority in place as provided by the Law.

In the face of this disheartening and non-functional setting, the users raise concerns which apparently prevent some of them from paying the equitable remuneration (some or all) which they are obliged to pay to beneficiaries. They cite an alleged lack of transparency of CMOs as a reason for not paying their dues claiming that they do not know where the money will end up; they complain that they have no way in knowing the exact beneficiaries that each CMO represents; they complain that there are too many CMOs, when there should only be one in order to simplify the procedure, avoid the escalation of costs and enhance financial certainty.

However, as numerous delegates pointed out during the open discussion, the absence of a functioning Authority in no way affects the obligation of users to accord equitable remuneration to beneficiaries, either directly or via the CMOs. Any attempt to refrain from duly fulfilling this duty in accordance with the existing legal framework would only expose them to a bigger legal risk as time goes by, as beneficiaries would have the right to claim their dues retroactively and most probably than not, with interest.

It appears that CMOs as well as members of the Authority are losing their patience with this shambolic and irregular state of affairs and have all called for the due enactment of the Regulations as soon as possible in order to set the scene right and restore rights fairly in accordance with the provisions of the Law. Notably, one member of the Authority expressed his exasperation with the fact that till today no Regulations have been enacted and revealed that if no regulations are passed within short, he shall be resigning from the position in a sign of protest.

It is thus clearly understood and accepted by all parties concerned that it is of utmost importance that Regulations are enacted as a matter of urgency in order to bring order to this crucial area and thereby fairly remunerate artists for the use of their works in commerce. Official representatives were present at the open discussion and it is hoped that they will take it up upon themselves to mobilize the right parliamentary clogs in order to bring about the desired results.