

# **Act XCIII of 2016**

## **on collective management of copyright and related rights<sup>1</sup>**

### ***PART ONE***

### ***GENERAL RULES OF COLLECTIVE MANAGEMENT***

#### **CHAPTER I**

#### **GENERAL PROVISIONS**

#### **1. Purpose of the Act**

##### **Section 1**

The aim of this Act is to ensure, by defining the basic rules for the collective management of copyright and related rights, the exercise and enforcement of economic rights derived from copyright and related rights which, either due to the type or circumstances of use cannot be exercised efficiently on an individual basis, as well as to ensure the transparent and predictable operation of organisations and entities managing copyright and related rights, while bearing in mind the interests of the rightholders and users.

#### **2. Scope**

##### **Section 2**

(1) This Act shall apply:

*a)* to the collective management of rights performed by collective management organisations established in Hungary,

*b)* to the collective management of rights performed by collective management organisations established abroad and directed to the territory of Hungary, unless otherwise provided for in this Act, and

*c)* to the rights and obligations of rightholders and users related to collective management of rights.

(2) This Act shall apply to independent management entities:

*a)* which are established in Hungary, or

*b)* which are established abroad and perform collective management activity to cover the territory of Hungary,

as well as to their collective management activities, if expressly so provided for in this Act.

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<sup>1</sup> Promulgated on 27 June 2016

(3) This Act shall also apply to the procedures related to the collective management activities of the organisations and entities referred to in paragraphs (1) and (2) regulated in Part Four herein.

(4) For the purposes of this Act, the collective management services of a collective management organisation or an independent management entity shall be considered to be directed to the territory of Hungary if such activity of the foreign entity relates to exploitation in the territory of Hungary.

### Section 3

(1) In respect of matters not regulated in this Act and pertaining to the content and scope of protection of copyright and related rights, as well as the rights deriving from the protection, and furthermore to the exploitation of copyright works and subject matter of related rights, the provisions of Act LXXVI of 1999 on Copyright (hereinafter "Copyright Act") shall apply.

(2) In respect of matters not regulated herein, the foundation, operation, organisation and financial management of domestic collective management organisations and independent management entities shall be governed by the provisions laid down in the Civil Code (hereinafter "Civil Code"), while domestic collective management organisations shall also be governed by the provisions set forth in the Act on the Freedom of association, non-profit status and the operation and funding of civil society organisations (hereinafter "NGO Act").

## 3. Interpretative provisions

### Section 4

For the purposes of this Act:

1. "*decision-making body*" means the general assembly or assembly of delegates designated as the decision-making body in the statute of the collective management organisation pursuant to Section 22 f);

2. "*EEA States*" mean the Member States of the European Union and the states that are signatories to the Agreement on the European Economic Area (EEA),

3. "*case falling within the scope of collective management of rights prescribed by law*" means the type of use, whereby, pursuant to the provisions of the Copyright Act, the rightholder is only permitted to exercise his rights through a collective management organisation, until the prior notice of objection lawfully made pursuant to Section 18(1) enters into effect;

4. "*independent management entity*" means an organisation the purpose or main activity of which is to manage copyright or rights related to copyright on behalf of, and for the collective benefit of several rightholders, under a law, contract or other legal relationship, and which is:

a) neither owned nor controlled by rightholders; and

b) organised on a for-profit basis;

5. "*rightholder*" means any person or organisation other than a collective management organisation or independent management entity, that holds a right in a copyright or related right in respect of a work or subject matter of related right and is entitled to a part or the entirety of the economic rights deriving therefrom;

6. "*case falling within the scope of mandatory collective management of rights*" means the type of use where the right to licensing or the right to remuneration without a licensing right may only be enforced by way of collective management pursuant to the provisions of the Copyright Act;

7. "*collective management*" means the exercise and enforcement of certain economic rights deriving from copyright and related rights by the collective management organisation on behalf of several rightholders, for the collective benefit of those rightholders, regardless of whether it is prescribed by an Act or based on the decision of the rightholders, and covers the following:

- a) licensing the use of copyright works and subject matters of related rights and enforcing the right to remuneration,
- b) determining the amount of remuneration and other conditions of use, or participating therein,
- c) monitoring the use,
- d) collecting royalties,
- e) distributing and paying rights revenues due to rightholders, or transferring the same to another organisation or entity for distribution,
- f) taking action in the event of an infringement of a copyright or related right, including the referral of the matter to the court or the authority, as well as making a statement, an observation or motion and taking procedural steps;

8. “*collective management organisation*” means an organisation which is authorised by the applicable Act or by way of a contract or any other legal relationship to collectively manage rights as its purpose or main activity, and which fulfils at least one or both of the following criteria:

a) has rightholders or entities representing rightholders as their members – including other collective management organisations and associations of rightholders –, or is controlled by the latter,

b) it is organised on a not-for-profit basis.

9. “*assembly of delegates*” means the body comprising the delegates elected by the members from among themselves according to Section 28;

10. “*representative collective management organisation*” means a collective management organisation which meets the requirements set forth in Section 34 concerning the managed copyright or related right, and holds an authority permit required for the collective management of that copyright or related right as a representative collective management organisation;

11. “*person entitled to a share*” means a person or organisation other than a rightholder, a collective management organisation or an independent management entity, which, by law or under an agreement – including an agreement concluded pursuant to Section 12(3) below – is entitled to a share of the rights revenue derived from licensing the use of copyright work or subject matter of related right, or from the enforcement of his or its right to remuneration without a licensing right.

## CHAPTER II

### BASIC RULES OF COLLECTIVE MANAGEMENT

#### **4. Principles of collective management**

##### **Section 5**

(1) In cases falling within the scope of mandatory collective management or collective management of rights prescribed by law, collective management may only be performed by a representative collective management organisation.

(2) The provision in paragraph (1) shall not apply to collective management performed in connection with granting multi-territorial licence for the purpose specified in Section 62(1).

##### **Section 6**

(1) Collective management organisations shall act in the best collective interests of the rightholders whose rights they represent, without making any unjustified distinction between them.

(2) Collective management organisations may only impose obligations on rightholders which are necessary for the protection of their rights and interests or for the management of their rights.

(3) In respect of the copyright and related rights managed, the collective management organisation shall carry out at least the following collective management activities directly:

*a)* determining the amount of remuneration and other conditions of use, or participating therein, and

*b)* distributing rights revenues due to the individual rightholders, or collecting and transferring the same to another organisation or entity for distribution,

(4) The activity specified in paragraph (3)(*b*) may also be performed by the collective management organisation via its entity defined in Section 7.

### **Section 7**

(1) In justified cases, in the interest of rationality and economy, the collective management organisation may have certain of its collective management activities carried out by a wholly-owned legal entity.

(2) The provisions in this Act that would be applicable if the relevant activity were carried out directly by the owner collective management organisation, shall be equally applicable to the legal entity referred to in paragraph (1) as well as to its financial management, operation and collective management activities (including the reporting obligations stipulated in this Act), providing however that this legal entity

*a)* may only carry out those collective management activities and only to the extent as the owner collective management organisation is entitled to,

*b)* may only be owned by a collective management organisation entitled to perform the relevant collective management activities,

*c)* may not make decisions concerning the determination of the amount of remuneration and the use of the rights revenues collected – in particular regarding distribution, deductions and investments –, and shall carry out its activities in compliance with the distribution policy and tariff of the owner collective management organisation adopted in line with the requirements herein, and also in adherence to the ad hoc decisions adopted by the decision-making body the collective management organisation, and

*d)* shall not be bound by the requirement stipulated in Section 21 regarding the organisational form.

(3) The legal entity and the owner collective management organisation shall bear joint and several liability for claims enforced by the rightholders against the legal entity referred to in paragraph (1).

### **Section 8**

With the exception of the case specified in Section 11, any royalty payment to, or an agreement with, any persons or organisations other than the collective management organisation carrying out collective management in respect of the copyright work or subject matter of related right shall be ineffective against the collective management organisation and the rightholder it represents, and shall not provide exemption from the legal consequences of infringement of copyright and related rights.

### **Section 9**

(1) For the purposes of exercising the copyright and related right managed by the collective management organisation, and enforcing such rights before the courts, the collective management

organisation shall be regarded as the rightholder of the copyright or related right. No other rightholder needs to be involved in a lawsuit for the collective management organisation to enforce its claim before a court.

(2) The rights to remuneration enforced by way of collective management of rights and the collected rights revenues shall be disposed over by the collective management organisation up to the time of their distribution among the rightholders.

### **Section 10**

(1) For the purposes of collective management of rights – with the exception of licensing mechanical reproduction – the used works or subject matters of related rights shall be presumed to be protected until proven otherwise.

(2) In the scope of its management activities the collective management organisation shall, upon the written request of a user – and against payment of a fee – provide written information on whether the work or subject matter of related right specified by the user is protected.

## **5. Licensing non-commercial use**

### **Section 11**

(1) Rightholders shall have the right to grant individual licences for non-commercial uses of any of their copyright work or other subject matters of related rights even if such use is licensed by a collective management organisation under an authorisation to manage rights or pursuant to Section 17.

(2) The detailed conditions of licensing the non-commercial use of copyright works or subject matter of related rights shall be specified in the statute of the collective management organisation.

(3) For the purposes of paragraphs (1) and (2) only those uses shall be considered as uses for non-commercial purposes which do not generate or enhance income either directly or indirectly, and further, in respect of which the rightholder does not claim remuneration.

## **6. Rules pertaining to persons entitled to a share**

### **Section 12**

(1) The rights granted herein to the person entitled to a share under a contract concluded with the rightholder may be exercised in compliance with the written contract concluded with the rightholder, if there is an express provision therein to this effect, and in line with the provisions of the statute and the distribution policy of the collective management organisation.

(2) The contract concerning the share in remuneration concluded between the rightholder and the person entitled to a share may not validly stipulate a share exceeding 50 percent of the royalty due to the rightholder.

(3) The contract on the share in the remuneration defined in Section 21(1) of the Copyright Act and referred to in paragraph (2) above, may be concluded by and between the representative collective management organisations representing the authors entitled to such a share and the representative collective management organisations representing – in connection with their right to a share in remuneration – the publishers of works reproduced as photocopies or in a similar manner, on paper or other similar medium, providing however, that the contract shall only enter into effect if it is approved by the decision-making body of all representative collective management organisations involved. If the authors and the publishers referred to in this paragraph are represented by the same representative collective management organisation, the contract

concerning the share in remuneration may also be concluded by the representatives of the relevant rightholders' categories providing however that the members of the decision-making body belonging to the relevant categories of rightholders shall vote on the approval of the contract separately.

(4) For the purposes of this Act, the term "rightholder" within the meaning of paragraphs (1) to (3) shall also include the person entitled to a share.

## CHAPTER III

### LEGAL BASIS FOR COLLECTIVE MANAGEMENT

#### 7. Authorisation to manage rights

##### Section 13

(1) The rightholder may freely choose a collective management organisation for the management of his copyrights or related rights as regulated in this Act, provided that the management of such rights falls within the scope of activity of the collective management organisation intended to be authorised.

(2) The collective management organisation shall be obliged to accept the authorisation meeting the criteria set forth in paragraph (1).

(3) A rightholder may only authorise a single collective management organisation to manage his copyright or related right deriving from the same type of works or subject matters of related rights in the same country. This provision shall not apply when, pursuant to Part Two of this Act, the author of a musical work authorises a collective management organisation meeting the relevant requirements to collectively manage the rights related to licencing the use of his musical works, according to Section 62 in the territory of more than one EEA State.

(4) A rights management authorisation may only be granted in respect of the entirety of a given type of the rightholder's works or subject matters of related rights. This provision shall not apply when, pursuant to Part Two of this Act, the author of a musical work authorises a collective management organisation to manage the rights related to the multi-territorial licencing of their musical works according to Section 62.

(5) If a rightholder, already represented by a representative collective management organisation pursuant to Section 17(1) mandates another collective management organisation to manage the already represented copyright or related right deriving from his works or subject matter of related rights, the latter authorisation to manage rights shall enter into effect on the first day of next calendar year after its acceptance, provided that

*a)* the authorisation to manage rights was given by the rightholder to the other collective management organisation before the deadline indicated in point *b)* in the calendar year in which it was accepted, and

*b)* the collective management organisation accepting the authorisation granted under this paragraph informs the collective management organisation acting pursuant to Section 17(1) in writing of the acceptance of the authorisation, the name of the rightholder having given the authorisation, as well as the type of work or subject matter designated and economic rights involved in the authorisation to manage rights, by September 30 in the calendar year in which the authorisation was accepted.

(6) Rightholders entitled to royalties due to a licence granted or right to remuneration enforced by the collective management organisation acting pursuant to Section 17(1) before the authorisation to manage rights given according to paragraph (5) took effect, shall retain their rights hereunder vis-à-vis the said collective management organisation in respect of the rights revenues already distributed to them but still outstanding at the time when such authorisation took effect.

#### **Section 14**

(1) Prior to the acceptance of the authorisation to manage rights, the collective management organisation shall inform the rightholder, in a verifiable manner, of the material conditions of collective management of rights.

(2) The mandatory contents of the information under paragraph (1) shall be specified in a Government decree.

#### **Section 15**

(1) The authorisation to manage rights shall be given to the collective management organisation in writing.

(2) The mandatory contents of the authorisation to manage rights shall be specified in a Government decree.

#### **Section 16**

(1) The rightholder may terminate his authorisation to manage rights granted to the collective management organisation in a statement made in a private deed with full probative value, served with reasonable notice not exceeding six months, as specified in the authorisation.

(2) Instead of termination, the rightholder may choose to unilaterally restrict – by way of a statement made in a private deed with full probative value – the authorisation to manage rights as regards countries, types of works and other subject matters of related rights, and copyrights or related rights of their choice. The restriction of the authorisation to manage rights may only pertain to the entirety of the specified type of rightholder's works or subject matters of related rights.

(3) If the statute of the collective management organisation provides so, the termination of the authorisation to manage rights shall only take effect on the first day of the year following the end of the financial year in which it was notified. Collective management organisations may not restrict the right to terminate such authorisation in any other respect.

(4) In cases falling within the scope of mandatory collective management of rights, the termination of the authorisation to manage rights shall not affect the extended collective management of rights performed according to Section 17.

(5) Rightholders entitled to royalties due to a licence granted or right to remuneration enforced by the collective management organisation before the termination of the authorisation to manage rights took effect, shall retain their rights hereunder vis-à-vis the said collective management organisation in respect of the rights revenues already distributed to them but still outstanding at the time when such termination took effect.

(6) The provisions stipulated in paragraphs (3) to (5) shall also apply mutatis mutandis to the restriction of the authorisation to manage rights pursuant to paragraph (2).

## **8. Extended collective management of rights**

#### **Section 17**

(1) When a representative collective management organisation – in the scope specified in the

relevant authority permit – grants a licence to, or collects rights revenues from, a user, the user shall be entitled to use the entirety of the copyright works or subject matters of related rights of the same type of all rightholders whose rights are managed collectively by the representative collective management organisation – whether managed collectively by law or the choice of the rightholder – on the same royalty payment conditions, regardless of whether the rightholder had given the representative collective management organisation an authorisation to manage rights involved.

(2) Rightholders for whom collective management activities are performed by a representative collective management organisation pursuant to paragraph (1) but did not specifically give an authorisation to manage rights in the scope of the extended collective management, shall enjoy the same rights in respect of the matters that would otherwise be clarified in the authorisation to manage rights as those who have given an authorisation to manage their rights. The provisions in the statute and other policies of the representative collective management organisation pertaining to collective management activities – including the conditions regarding the rightholders and licensing for non-commercial uses under Section 11 – shall also apply to rightholders represented in line with paragraph (1).

(3) A representative collective management organisation engaged in extended collective management of rights shall make the information referred to in Section 14(1) available to the rightholders specified in paragraph (2) on its website in a publicly accessible form. The rightholder specified in paragraph (2) shall also receive the information in writing at the time of the first royalty payment.

### **Section 18**

(1) The rightholder specified in Section 17(2) – with the exception of cases falling within the scope of mandatory collective management of rights – may object against the authorisation for the use of its copyright works or subject matters of related rights for the purpose of collective management under Section 17 by way of a prior notice made in a private deed with full probative value and addressed to the representative collective management organisation performing extended collective management. The objection may be made at any time, with the notice of objection taking effect on the fifth day following the day of receipt. For licensing contracts already concluded which are the subject of an objection, the objection shall, unless otherwise agreed, take effect on the last day of the calendar half-year to which the objection relates, provided that the objection is lodged by the last day of the first three months of the half-year concerned. An objection lodged after the last day of the first three months of the calendar half-year may take effect at the latest on the last day of the following calendar half-year. Any provision of the statute of the representative collective management organisation contrary to this paragraph shall be null and void. The representative collective management organisation shall act according to the notice and may not impose any other restriction on the right to object.

(2) The notice of objection under paragraph (1) may be given only with effect in respect of all the specified type of rightholder's works or subject-matters of related rights.

(3) Regardless of the objection, rightholders entitled to remuneration for acts of exploitation or licences granted before their notice of objection concerning the collective management of rights took effect, shall retain their rights hereunder vis-à-vis the said collective management organisation in respect of the rights revenues due.

## **9. Collective management of rights performed on behalf of other collective management organisations**



### **Section 19**

(1) A collective management organisation may, by a representation agreement, authorise another collective management organisation to perform its collective management activities also in respect of the rightholders it represents.

(2) If a collective management organisation, either pursuant to paragraph (1) or the Copyright Act, performs collective management activities for rightholders represented by another collective management organisation, it shall perform its collective management activities without any discrimination against such rightholders.

## **CHAPTER IV**

### **ORGANISATIONAL RULES OF COLLECTIVE MANAGEMENT ORGANISATIONS**

#### **Section 20**

The provisions in this Chapter shall not apply to collective management organisations established in another EEA State and performing their collective management activity to cover the territory of Hungary.

### **10. Organisational form**

#### **Section 21**

Collective management organisations may only be established and operate in the form of an association.

### **11. Instrument of constitution of the collective management organisation**

#### **Section 22**

In addition to the mandatory provisions stipulated in the Civil Code, the statute of the collective management organisation shall specify

- a)* whether it performs collective management of rights as its purpose or main activity,
- b)* the definition of the collective management activities performed by the collective management organisation, indicating the copyrights or related rights, the types of collective management activities, the types of works and subject matters of related rights and the categories of rightholders under its collective management,
- c)* the rights rightholders are entitled to under this Act,
- d)* the rules pertaining to the licensing of non-commercial uses of copyright works and subject matters of related rights,
- e)* the requirements regarding operation and financial management specified in Chapter VI, and compliance therewith,
- f)* whether it is the general assembly of the rightholder members or the assembly of delegates that acts as the decision-making body of the organisation,
- g)* that the decision-making body has exclusive and non-transferrable powers to adopt decisions concerning the cases listed in points *a)* to *j)* of Section 26(1),
- h)* the detailed rules of electronic communication under Section 47.

## **12. Membership rules of the collective management organisation**

### **Section 23**

(1) A collective management organisation shall accept rightholders interested in its collective management services, and entities representing rightholders, including other collective management organisations and associations representing the rightholders in such matters, as members if they fulfil the membership requirements.

(2) Membership requirements shall be defined in an objective, transparent manner and be based on non-discriminatory criteria. The membership requirements shall be included in the statute or membership rules of the collective management organisation and shall be made publicly available.

(3) The collective management organisation shall clearly state the reason for refusing an application for membership, with reference to the specific membership requirement stated as the reason for refusal.

(4) A collective management organisation shall keep up-to-date records of its members.

### **Section 24**

(1) The members of the collective management organisation shall have equal rights and obligations. A collective management organisation may define special membership status only in a manner that does not affect the rights deriving from collective management of rights.

(2) A collective management organisation shall ensure that its members be able to communicate with it by electronic means as well, including for the purposes of exercising members' rights.

(3) A member of a collective management organisation shall not be held liable for the debts of the collective management organisation, regardless of the existence of a membership fee payment obligation, even if the member has not made a financial contribution to the collective management organisation at the time of the establishment thereof, or on any occasions when membership rights were granted, or at any other time whatsoever.

### **Section 25**

Any provision of the statute and the membership rules of the collective management organisation contrary to the stipulations in Sections 23 and 24 shall be null and void.

## **13. The decision-making body**

### **Section 26**

(1) The general assembly of the collective management organisation shall have exclusive and – with the exception of the cases listed in paragraph (2) – non-transferable powers to decide on the following:

- a)* the amendment to the statute of the collective management organisation,
- b)* the approval of or amendment to the distribution policy,
- c)* the investment policy regarding the investment of the revenues,
- d)* approval of or amendment to the organisational and operational rules, and – unless the membership requirements are specified in the statute – the membership rules,
- e)* establishment of the annual budget and adoption the annual report, as well as of the annual transparency report drawn up pursuant to Section 55,
- f)* the election and recall of the managers, and the setting of their remuneration, and further, to review their general performance and exercise the employer's rights if the manager is an employee of the collective management organisation,

- g) the election and recall of the auditor, and the setting of the remuneration of the auditor,
- h) when appropriate, on the use of the rights revenues deemed unpayable under the distribution policy, because the rightholder cannot be identified or located in line with the provisions in Section 42, as well as on the use of revenues for community objectives, in particular, for social or cultural purposes (Sections 43 to 45),
- i) when appropriate, on the investment of rights revenues in a manner specified in Section 37 and in line with the investment policy,
- j) the termination or de-merger of the collective management organisation,
- k) the approval of any acquisition, sale or hypothecation of immovable property,
- l) the risk management policy,
- m) mergers with another association, foundation or an alliance or other organisation, and further approval of the acquisition of ownership or membership rights in other entities,
- n) the approval of taking out loans, granting loans or providing security for loans.

(2) The statute of the collective management organisation may stipulate that the powers of the general assembly listed under paragraph (1) *k*) to *n*) shall be exercised by the supervisory board in line with Section 31, or the general assembly may delegate these powers to the supervisory board with a two-thirds majority vote of the members.

### **Section 27**

(1) Every member shall be entitled to participate in, and exercise their voting rights at, the general assembly of the collective management organisation, as well as to address the general assembly of members in line with the rules thereof, ask questions and make proposals or comments there, either personally or through a proxy.

(2) If a collective management organisation performs collective management activities for different categories of rightholders, the statute of the collective management organisation shall ensure the adequate and proportional representation of the different categories of rightholders in the decision-making process.

(3) The proxy for attending or voting at a general assembly of members shall be made in the form of a public or private deed with full probative value. The proxy holder shall act in accordance with the instructions issued by the appointing member. A member may not validly appoint another member belonging to another category of rightholders as a proxy. Unless the statute of the collective management organisation provides otherwise, one proxy may only act on behalf of a single appointing member. Each proxy shall be valid for a specified single general assembly of members only.

### **Section 28**

(1) The statute of the collective management organisation may also stipulate that the powers of the general assembly shall be exercised by an assembly of delegates elected at least every four years by the members of the collective management organisation from among themselves.

(2) If the collective management organisation performs collective management activities for different categories of rightholders, the delegates shall be elected so as to ensure the proportional representation of the different categories of rightholders in the assembly of delegates.

(3) In other respects, the assembly of delegates shall be governed by the rules pertaining to the general assembly, except that a delegate may exercise the rights specified in Section 27(1) only in person.

### **Section 29**

Any provision of the statute of the collective management organisation contrary to the stipulations in Sections 26 to 28 shall be null and void.

## **14. Managers**

### **Section 30**

(1) The collective management organisation shall take all necessary measures so that the persons who manage its business do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

(2) Besides the cases of conflicts of interest specified in the Civil Code, any person who – or whose close relative as defined in the Civil Code – is a manager of an entity considered a user in respect of any licence collectively managed by the collective management organisation, or has a direct or indirect share in a collective management organisation may only be elected a manager of a collective management organisation upon the explicit decision and approval of the decision-making body, which also notes this fact.

(3) The manager shall forthwith notify the decision-making body in writing of the prevalence or occurrence of the circumstance specified in paragraph (2) both prior to his election and thereafter.

(4) All managers of the collective management organisation shall make an annual personal statement, addressed to the decision-making body of the collective management organisation, prior to the approval of the annual report for the previous financial year. The detailed contents of the personal statement will be specified in detail in a Government decree.

(5) The rules provided for in paragraphs (1) to (4) shall also apply to persons other than managers, if they have a general power of representation in the organisation and participate in the management of the operation of the collective management organisation.

(6) Any provision of the statute of the collective management organisation contrary to the stipulations in paragraphs (1) to (5) shall be null and void.

## **15. Supervisory board**

### **Section 31**

(1) A collective management organisation shall set up a supervisory board.

(2) The supervisory board shall be composed of members of the collective management organisation. If the collective management organisation performs collective management activities for different categories of rightholders, the members of the supervisory board shall be elected in a manner that ensures the proportional representation of the different categories of rightholders therein. The supervisory board shall elect its chairperson from among its own members and it shall determine its own rules of procedure.

(3) No one may be a member of the supervisory board who is disqualified on the grounds referred to in the case of the managers of the collective management, or who – or whose close relative, as defined in the Civil Code – is a manager of the collective management organisation. Each member of the supervisory board shall make an annual statement to the general assembly of members that they have no conflicts of interest. The statement shall also include the data and information specified in Section 30(4).

(4) The supervisory board shall, in particular,

*a)* monitor the activity of the managers,  
*b)* oversee the implementation of the decisions adopted by the general assembly of members, as well as of the rules and policies referred to in points *b)* to *c)* of Section 26(1),

*c)* perform the tasks listed in points *k)* to *n)* of Section 26(1) if the case mentioned in Section 26(2) applies.

(5) The supervisory board shall have the right to inspect the documents, accounting records and books of the collective management organisation, to request information from the managers and the employees of the collective management organisation, and to examine – or assign an expert to examine – the payment account, the cash on hand, the securities portfolio, the goods inventory and contracts of the collective management organisation.

(6) The chairperson of the supervisory board shall report on its activities and findings to the general assembly of members at least once a year.

(7) Any provision of the statute of the collective management organisation contrary to the stipulations in paragraphs (1) to (6) shall be null and void.

## CHAPTER V

### REQUIREMENTS OF STARTING COLLECTIVE MANAGEMENT OF RIGHTS

#### **16. General conditions of starting collective management of rights**

##### **Section 32**

(1) In order to get engaged in collective management of rights, the collective management organisation shall

*a)* have employees with appropriate professional expertise and experience required for collective management of rights and maintaining international relations, and

*b)* have sufficient capacity to process data related to collective management of rights.

(2) The collective management organisation shall be considered to have the capacity to process data related to collective management of rights if it has the capacity to maintain a database on the rightholders and works or subject matters of related rights it represents as a collective management organisation, as well as on the various licences that allow the distribution and payment of royalties due to the rightholders.

##### **Section 33**

(1) Before starting its collective management activities, the collective management organisation shall register with the Hungarian Intellectual Property Office (hereinafter “HIPO”).

(2) Collective management of rights as a representative collective management organisation shall be subject to the permit of HIPO.

#### **17. Conditions for obtaining a permit for collective management activities as a representative collective management organisation**

##### **Section 34**

(1) HIPO shall grant a permit for the performance of collective management activities as a representative collective management organisation only to a collective management organisation which

*a)* fulfils the criteria set forth in Chapter IV and Section 32 and

*b)* it is significantly representative of rightholders affected by its collective management activities, providing evidence that

*ba)* such rightholders are, or intend to become its members, or such rightholders have granted it an authorisation for the collective management of their rights, and

*bb)* it has signed representation agreements with organisations abroad performing collective management services to the rightholders and playing an important role in licensing use in Hungary and abroad, or have obtained letters of intent from them in respect of concluding such agreements.

(2) With the exception of cases falling within the scope of mandatory collective management or collective management of rights prescribed by law, the permit to perform collective management activities as a representative collective management organisation may only be granted, if the relevant copyright or related right could not be exploited efficiently on an individual basis.

(3) In order to establish whether the collective management organisation is significantly representative of affected rightholders or which one of several collective management organisations represent the majority of the affected rightholders, the number of rightholders, the licensing ratio of their works or subject matters of related rights and their share in rights revenues shall be taken equally into account.

(4) A collective management organisation which concluded a representation agreement, as specified in Section 19(1), with another representative collective management organisation already holding a permit for the same collective management activity are not required to verify the fulfilment of the criteria stipulated in paragraph (1) *b)*. In such cases the provisions laid out in Section 35 and Sections 89 to 93 shall not be applied, and – provided that other statutory criteria have been met – the authorised collective management organisation shall obtain a permit identical in scope to that of the authorising collective management organisation; however, the authorising collective management organisation may not pursue the collective management activities specified in the permit – with the exception of participating in the determination of the amount of remuneration – until the termination of the representation agreement. The authorising collective management organisation shall report the termination of the representation agreement to HIPO without delay, and in turn, HIPO shall *ex officio* revoke the permit granted hereunder. In such a case the rules stipulated in Section 97 shall be applied to the revocation of the permit, except that the authorising collective management organisation – without any appointment or permit modification – shall become entitled to pursue the collective management activities in its permit affected by the terminated representation agreement through the authorised collective management organisation, based on the last tariff applied prior to the revocation.

(5) A collective management organisation established in other EEA States shall be granted a permit to perform collective management activities as a representative collective management organisation without verifying the fulfilment of the criteria in paragraph (1) *a)* if it fulfils the requirements set forth in paragraph (1) *b)* and according to the laws of the EEA State in which it is established it meets the requirements pertaining to the foundation, organisation, financial management and operation of a collective management organisation, and this fact is properly verified in a document issued by the authority exercising supervisory powers over such organisations in the relevant EEA State.

### **Section 35**

(1) In cases falling within the scope of mandatory collective management of rights or collective management of rights prescribed by law, if more than one or a new applicant collective management organisation – otherwise meeting the criteria for obtaining a permit – applies for a permit under Section 33(2) for performing the same type of collective management activities

concerning the same type of copyright or related rights deriving from the same type of work or subject matter of related rights of the same category of rightholders, multiple collective management organisations or the new applicant collective management organisation may be granted a permit to pursue the collective management activities – as specified in their application for the permit – as a representative collective management organisation if this does not jeopardise the operability and efficiency of collective management of rights, either on the part of rightholders or users or those obliged to pay royalty.

(2) If the requirement set forth in paragraph (1) is not met, in the cases falling within the scope of mandatory collective management of rights or collective management of rights prescribed by law, the permit for performing the same type of collective management activities concerning the same type of copyright or related rights deriving from the same type of work or subject matter of related rights of the same category of rightholders shall be granted as follows:

*a)* if more than one collective management organisation applied, the permit under Section 33(2) shall be granted to the collective management organisation which, considered as a whole, can best fulfil the criteria stipulated in Section 34(1);

*b)* the permit under Section 33(2) shall be granted to the new applicant collective management organisation and the previously granted permit of the representative collective management organisation revoked in respect of the relevant activity, if it is the new applicant collective management organisation which, considered as a whole, can better fulfil the criteria stipulated in Section 34(1).

(3) The fulfilment of the criteria stipulated in paragraph (1) may be verified – among others – with the agreement among the relevant representative collective management organisations specified in Section 89(1) or Section 90(1).

## CHAPTER VI

### OPERATION AND FINANCIAL MANAGEMENT OF THE COLLECTIVE MANAGEMENT ORGANISATION

#### **18. Management of revenues generated by collective management of rights**

##### **Section 36**

(1) In collecting and administering rights revenues, the collective management organisation shall act with due diligence, bearing in mind the rights and interests of the rightholders.

(2) A collective management organisation shall distribute the rights revenue – after the deduction of the justified administrative costs specified in Section 39 – generated by collective management in line with its distribution policy, to the rightholders represented by it and affected by the relevant licence, regardless of whether such rightholders are its members or not.

(3) Unless otherwise provided for in this Act, a collective management organisation shall not be permitted to use the revenues generated by collective management of rights for purposes other than those stipulated in paragraph (2); no other deductions shall be allowed from the royalties to be distributed to the rightholders, except those due to payment obligations imposed by law, a court order or the decision of an authority.

(4) From the rights revenues collected on behalf of other collective management organisations pursuant to the Copyright Act – including the income arising from the investment of such rights

revenues – only the justified administrative costs may be deducted which were incurred by the collective management organisation in connection with collecting the royalties. The amount remaining from the rights revenues collected on behalf of another collective management organisation represented pursuant to the Copyright Act or a representation agreement after the deduction of the justified administrative costs shall not be permitted to be used for any other purpose, including their use for community objectives (Sections 43 to 45), than transferring it to the represented collective management organisation —, unless the represented collective management organisation gave its express consent thereto in advance.

(5) In addition to the rules of distributing rights revenue, the distribution policy of the collective management organisation shall stipulate

*a)* the upper limit of the administrative cost deducted from the royalties, or the rules concerning the method of establishing the administrative cost,

*b)* the support policy, containing detailed rules of deductions from the revenues for community objectives (Sections 43 to 45) and the use of such revenues for community objectives, and

*c)* the rules for using rights revenues deemed unpayable because the rightholder cannot be identified or located (Section 42).

### **Section 37**

(1) Based on the ad hoc decision of the decision-making body – adopted in line with the investment policy approved according to the provisions in Section 26(1) *c)* – the collective management organisation may also invest rights revenues.

(2) During the investment of rights revenues, the collective management organisation shall act in compliance with its investment policy and risk management policy, and ensure that

*a)* the investment is made in the sole interest of the rightholders,

*b)* the investment is made in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole, and

*c)* an appropriate risk diversification of the amount invested avoids excessive reliance on any particular asset and accumulation of risk in the portfolio as a whole.

### **Section 38**

(1) Unless otherwise provided for in this Act, if the collective management organisation pursues auxiliary business activities, any the revenues generated therefrom may only be used

*a)* for the reduction of the cost of collective management of rights,

*b)* for investments made according to the provisions of Section 37,

*c)* for distribution and payment to the rightholders, or

*d)* for the community objectives of the rightholders specified in Section 43.

(2) The provisions in paragraph (1) shall also apply to the use of income arising from the investment of rights revenues, including the income from financial operations with rights revenues.

## **19. Administrative costs**

### **Section 39**

Justified administrative costs may be deducted from the rights revenue generated by collective management of rights. The administrative cost is justified if it is reasonably necessary for performing the collective management activities, it is useful for the affected rightholders and incurred in the course of verifiably sound and prudent financial management.



## **20. Distribution and payment of royalties**

### **Section 40**

(1) The collective management organisation shall distribute and pay the collected rights revenues to the represented rightholders according to its distribution policy, or transfer the same to the represented other collective management organisation as soon as possible but no later than by the end of the third quarter of the year following the year in which the rights revenue was collected, unless there are reasons beyond its control, which prevent it from distributing or paying such amounts, or transferring them to another collective management organisation within that deadline.

(2) Rights revenues collected and transferred by another collective management organisation shall be distributed by the transferee collective management organisation according to its distribution policy (unless they were already distributed by the transferor collective management organisation) and paid to the represented rightholders as soon as possible, but no later than within six months from the receipt of the rights revenues, unless there are reasons beyond the control of the transferee collective management organisation, which prevent it from distributing and paying the amounts within that deadline.

(3) For the purposes of paragraphs (1) and (2), a reason beyond the control of the collective management organisation may be considered to be, in particular, a reason relating to the provision of information by users, the identification or contact details of rightholders, or the matching of information on copyright works and other subject matter of related rights with rightholders.

## **21. Management of royalties due to non-identified or non-located rightholders**

### **Section 41**

(1) Where the royalty cannot be paid to the rightholder within the deadline stipulated in Section 40(1) or (2) because the rightholder cannot be identified or located, the collective management organisation shall deposit such royalties in a separate account and take all measures that could reasonably be expected from collective management organisations under the circumstances – considering the affected type of work or subject matter and the type of use – to identify and locate the rightholder.

(2) In the case specified in paragraph (1), the collective management organisation shall publish on its website – at the latest three months after the expiry of the deadline set in Section 40(1) or (2) – information on copyright works and other subject matters of related rights for which the rightholders cannot be identified or located. The above information shall also be made available to the members of the collective management organisation and the collective management organisations with which it has concluded representation agreements.

(3) Provided that the necessary information is available for the collective management organisation, the information pursuant to paragraph (2) shall contain:

*a)* the title of the copyright work or subject matter of related right or other data suitable for its identification,

*b)* the name of the rightholder,

*c)* if relevant, the name of the publisher or the producer of the phonogram or cinematographic work, and

*d)* any other relevant information available which could assist in identifying the rightholder.

(4) When a collective management organisation seeking to locate a rightholder requests information from another collective management organisation representing the affected category

of rightholders, the requested collective management organisation – based on the data available to it – shall provide the requested information no later than within 30 days of receiving the request. The requesting collective management organisation shall refund the justified costs incurred by the requested collective management organisation in connection with providing the information at the request of latter.

(5) If the measures taken to identify and locate the rightholder fail to produce results, no later than after the expiry of one year following the publication of the information referred to in paragraph (2) the collective management organisation shall also publish this fact on its website and keep it available until the rightholder is identified or located, but at least for three consecutive years.

### **Section 42**

(1) Where the royalties due to rightholders cannot be distributed after three years from the end of the year in which the collection of the rights revenue occurred, even though the collective management organisation has met its obligation referred to in Section 41 to identify and locate the rightholders, those royalties shall be deemed unpayable. The collective management organisation shall transfer 90 percent of the rights revenue deemed unpayable to the National Cultural Fund according to the provisions in Section 45(3).

(2) Using the rights revenue deemed unpayable because the rightholder cannot be identified or located is without prejudice to the right of a rightholder to claim such amounts from the collective management organisation within the limitation period. If the amount of royalties paid hereunder by the collective management organisation to rightholders identified after the expiry of the deadline stipulated in paragraph (1) in any given year exceeds 10 percent of the royalties deemed unpayable in the same year, the excess amount may be deducted by the collective management organisation from the sum to be transferred to the National Cultural Fund pursuant to Section 45(3) in the next year.

(3) Pursuant to its statute or distribution policy, a collective management organisation may set aside an appropriate reserve from its rights revenues in order to cover the claims made by rightholders within the limitation period according to the provisions of paragraph (2).

(4) Any royalty which, as a result of information relating to a particular copyright work or subject-matter of related rights, is to be transferred to another collective management organisation pursuant to the Copyright Act or a relevant representation agreement may not be used by the collective management organisation required to make the transfer for the purpose specified in paragraph (1).

## **22. Use of revenues for community objectives**

### **Section 43**

(1) In line with its support policy, the collective management organisation may decide to use the proportion of rights revenue – including the income arising from the investment of rights revenues – specified in its support policy, as well as its revenues derived from membership fees and activities other than collective management of rights for the community – in particular social and cultural – objectives (hereinafter “community objectives”) of the rightholders under the conditions set forth in this Act.

(2) A collective management organisation shall ensure that where it uses the revenues specified in paragraph (1) for community objectives, the rightholders benefit from the revenue used or the services financed therefrom on the basis of fair and non-discriminatory terms.

#### **Section 44**

(1) Twenty-five percent of the revenues arising from the royalties specified in Sections 20 and 21 of the Copyright Act – reduced by the administrative costs stipulated in Section 39 – shall be used for providing cultural services to the rightholders.

(2) The application of paragraph (1) and the obligation to use revenues stipulated therein shall be without prejudice to the application of the provisions in Section 43 (1) to the rights revenues specified in Sections 20 and 21 of the Copyright Act by the collective management organisation.

#### **Section 45**

(1) The collective management organisation can use its revenue for cultural services by transferring it to the National Cultural Fund. The provisions of its support policy concerning use for cultural purposes shall be consistent with the support objectives stipulated in the Act on the National Cultural Fund. Revenue allocated for cultural purposes shall be transferred to the National Cultural Fund within 60 days following the approval of the annual report for the year when the allocation was made.

(2) The collective management organisation establishing the royalties specified in Sections 20 and 21 of the Copyright Act shall transfer the amount under Section 44(1) for cultural purposes to the National Cultural Fund within 60 days following the approval of its annual report. The National Cultural Fund shall use the amount received for the benefit of the categories of rightholders specified in Section 20(4) and (5) and Section 21(6) of the Copyright Act for the support purposes stipulated in the Act on the National Cultural Fund.

(3) The collective management organisation shall transfer, within 60 days following the approval of the annual report, ninety percent of the rights revenues deemed unpayable pursuant to Section 42 to the National Fund for cultural purposes. The National Cultural Fund shall use the amount received from the collective management organisation for the benefit of the category of rightholders represented by the collective management organisation for the support purposes stipulated in the Act on the National Cultural Fund.

(4) The requirements set forth in Section 43(2) shall also apply to the use of the revenues by the National Cultural Fund received pursuant to this Section.

### **23. Accounting and financial reporting obligations**

#### **Section 46**

(1) A collective management organisation shall keep the following separately in its accounts:

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

(2) A collective management organisation shall have a double-entry accounting system and prepare annual reports in compliance with the Act on Accounting, to be audited by an auditor.

(3) The special rules of the accounting and financial reporting obligations of collective management organisations shall be defined in a Government decree.

### **24. Relations with rightholders**

#### **Section 47**

(1) A collective management organisation shall ensure that the rightholders they represent can communicate with it by electronic means, including for the purposes of exercising their rights under

this Act.

(2) Collective management organisations shall make available to their members, as well as to other represented rightholders and collective management organisations on whose behalf they manage rights under a representation agreement, effective and timely procedures for dealing with complaints. This obligation shall apply in particular to complaints concerning authorisation to manage rights and termination of the authorisation or objection under Section 18, membership rules, the collection of amounts due to rightholders, deductions and distributions. Collective management organisations shall respond in writing to complaints filed according to this paragraph, and shall give reasons for rejecting a complaint.

## **25. Protection of personal data**

### **Section 48**

(1) A collective management organisation shall maintain a database – complying with the requirements set forth in paragraph (2) – on the domestic and foreign works and subject matters of related rights within the scope of its collective management activities and the rightholders it represents and, to the extent necessary for the performance of its collective management activities, shall join databases maintained by non-governmental international organisations.

(2) For the purpose of performing the collective management activities in compliance with the legal regulations pertaining to collective management of rights, the collective management organisation shall be authorised to process – to the extent, in the manner and for the time necessary and inasmuch as it is indispensable to achieve the objective defined in this paragraph, and also in adherence to the requirements stipulated in the Act on Informational self-determination and on freedom of information – data regarding the name of rightholders and users affected by its collective management activities, other data required for their identification, their place of residence, place of stay, or financial or other data required for the collection or distribution of rights revenue (thus, in particular, their payment account number, tax number), other data pertaining to the works or subject matters of related rights of the rightholders, as well as other personal data of the rightholders and users affected by its collective management activities, as well as other personal data which are indispensable for the purpose of achieving the aim set out in this paragraph.

(3) The collective management organisation shall disclose the name and place of residence or place of stay of the represented rightholder to the person carrying out a search for the rightholder pursuant to Section 41/A (1) of the Copyright Act and the Government decree on the detailed rules of the permitted uses of orphan works. The personal data thus transmitted may only be used for the search for the rightholder, in a manner, to the extent and for the time required therefor.

(4) For the purpose of complying with a request pursuant to Section 41(4), for the purpose of authorising the use of copyright works and subject-matter of related rights in Hungary and abroad or for the purpose of enforcing a claim for royalties, and for the purpose of distributing royalties among rightholders, paying royalties or transferring royalties to another collective management organisation under the Copyright Act or a representation contract, the collective management organisation shall be authorised to transfer the personal data necessary to comply with the request, to identify the works and subject-matter for the purposes of authorising the use of the works and subject-matter, whether for national or foreign use, or for the purposes of claiming royalties, or the personal data necessary for the distribution or payment of the royalty to the organisation requesting or authorising the use or enforcing the royalty, to the national or foreign collective management organisation receiving the royalty, or to the person or organisation maintaining or providing a database for the identification of works and subject-matter of related rights or rightholders. The

recipient collective management organisation shall only process the received personal data for the purpose of, and in the manner required for, the performance of its collective management activities according to the provisions in paragraph (2).

## **26. Special rules applicable to the termination of a collective management organisation without succession**

### **Section 49**

(1) Upon the termination of the collective management organisation without succession or the establishment of its termination, the royalties already collected but not distributed by the collective management organisation shall be distributed to the rightholders according to its distribution policy.

(2) Rightholders may claim the already distributed but still unpaid royalties from the collective management organisation as creditors, according to the rules applicable to termination without succession.

### **Section 50**

That part of the assets remaining after satisfying the claims of creditors which originated from royalties or investment of rights revenues (including the income from financial operations) shall be used according to the rules in the distribution policy of the collective management organisation pertaining to rights revenues deemed unpayable because the rightholder could not be located.

### **Section 51**

(1) The assets – other than the rights revenues defined in Section 50 – remaining after satisfying the claims of creditors (and in particular, the tangible assets required for the operation of the collective management organisation) shall be transferred to the collective management organisation established in Hungary specified in the statute.

(2) In the event that no recipient collective management organisation is designated in the statute, the assets pursuant to paragraph (1) shall be distributed among the rightholders represented by the terminated collective management organisation – in proportion to the royalties they received – to whom royalty payments were made in the five-year period before the termination.

## **27. Rules applicable to collective management organisations established in other EEA States**

### **Section 52**

The provisions in Sections 43 to 46 and Sections 49 to 51 shall not apply to collective management organisations established in an EEA State other than Hungary.

## **CHAPTER VII**

### **REPORTING AND TRANSPARENCY**

## **28. Regular information provided to the rightholders represented by the**

## **collective management organisation and other collective management organisations**

### **Section 53**

(1) A collective management organisation shall make available, not less than once a year, to each rightholder to whom it has attributed rights revenue or made other payments in the period to which the information relates, detailed information concerning the collective management activities it performed.

(2) Where a collective management organisation has as members entities which are responsible for the distribution of rights revenues to rightholders, the collective management organisation shall provide the information referred to in paragraph (1) to those entities, provided that they do not have that information in their possession. Entities responsible for distribution shall make the information referred to in this paragraph available, not less than once a year, to each rightholder to whom they have attributed rights revenue or made other payments in the period to which the information relates.

(3) If the collective management organisation – pursuant to the Copyright Act or a representation agreement – is required to transfer rights revenues to another collective management organisation, it shall make available detailed information to the represented collective management organisation on whose behalf it manages rights, not less than once a year and by electronic means, concerning the collective management activities it performed in the period to which the information relates.

(4) The mandatory contents of the information to be provided under paragraphs (1) to (3) shall be established in a Government decree.

## **29. Regular provision of information to the public**

### **Section 54**

(1) A collective management organisation shall publish on its website:

- a)* its statute,
- b)* its organisational and operational rules,
- c)* its membership rules,
- d)* the detailed rules on the termination of the management authorisation for the management of rights and on objections to the collective management of rights, if these are not included in the other policies to be published on the website,
- e)* the tariff applied,
- f)* its distribution policy,
- g)* its report,
- h)* the list of its members and the rightholders it represents, and the names of the organisations with which it has concluded a representation agreement,
- i)* the name of rightholders who lawfully objected to the collective management of their rights under Section 18(1), indicating the effective date of the notice of objection and the designation, according to the Copyright Act, of the economic rights affected thereby,
- j)* the name of all managers, including those specified in Section 30(5),
- k)* its agreements in force referred to in Section 12(3), further in Section 20(4) to (5), Section 21(7), and Section 28(4) of the Copyright Act,
- l)* its agreements in force referred to in Section 34(4),
- m)* information on the proceedings to resolve disputes with users or rightholders, and
- n)* its investment policy.

(2) The collective management organisation shall regularly update the documents and data published pursuant to paragraph (1).

### **30. Annual transparency report**

#### **Section 55**

(1) In addition to the annual report prepared according to the Act on Accounting, the collective management organisation shall also draw up an annual transparency report presenting its activities in that year and containing the information specified in Annex 1.

(2) The annual transparency report shall be prepared for each financial year no later than eight months following the end of that financial year, and the collective management organisation shall make it available to the public on its website for at least five years.

(3) The financial data presented in the annual transparency report shall be verified by an auditor and the related auditor's report, together with the annual transparency report shall be made available to the public in full on the website of the collective management organisation for the period indicated in paragraph (2).

(4) Those financial data in the annual transparency report which were already included in the annual report prepared according to the Act on Accounting and had thus been audited prior to the preparation of the annual transparency report need not be audited. In this latter case, the auditor's report drawn up in respect of the previous audit shall also be made available to the public in the manner specified in paragraph (3).

(5) For the purposes of paragraphs (3) and (4) "financial data" shall mean the financial statements referred to in point 1.1 of Annex 1, and the financial data referred to points 1.7, 1.8 and 2 of Annex 1.

### **31. Ad hoc data provision to rightholders, users and other collective management organisations on request**

#### **Section 56**

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

- a)* the copyright works and subject matters of related rights it represents,
- b)* the copyrights and related rights it manages either under authorisation to manage rights or Section 17(1) of the Copyright Act or a representation agreement on behalf of another collective management organisation, and
- c)* the geographical territories covered by its collective management activities.

(2) Where the collective management organisation, due to the circumstances of the collective management activity performed, is unable to provide the data in paragraph (1) *a)*, then instead of the data prescribed above, it shall provide at least the information concerning the type of the copyright works or subject matters of related rights covered by its collective management activities.

## **CHAPTER VIII**

## LICENSING, OBLIGATIONS OF THE USERS

### **32. Establishment and application of the tariffs applicable to the collective management of rights**

#### **Section 57**

(1) The collective management organisation shall establish, for the scope of activities where it performs collective management of rights, the royalties and other licensing terms for each type of use (hereinafter jointly “tariff”).

(2) The tariff for the type of use covered by the collective management activities of a representative collective management organisation – unless otherwise provided for in this Act – shall be established once in each calendar year. The tariff set under this paragraph may be applied after its approval according to Section 153 and its publication in the Official Notices published as an annex to the Magyar Közlöny (hereinafter “Hungarian Official Gazette”)

#### **Section 58**

(1) The tariff shall be determined and applied in accordance with the requirements of equal treatment, without any unjustified distinction between the users. A collective management organisation may deviate from its licensing terms pertaining to other online services in its tariff in the case of a new type of online service which has been available to the consumers in the EEA States for less than three years.

(2) When establishing the royalties included in the tariff, the nature, the scope and other relevant circumstances of the use shall be taken into account. The tariffs shall be reasonable, in particular in relation to matters such as the use concerned and the economic value of the service provided by the collective management organisation. At the request of the user concerned, the collective management organisation shall provide information on the criteria applied for setting its tariffs.

(3) In setting the tariff and in the proceedings for approving the tariff, account shall be taken of the agreement between the parties on the remuneration and other conditions of use reached in the proceedings of the conciliation board, as specified in Section 102 of the Copyright Act.

#### **Section 59**

(1) In its tariffs, the collective management organisation may require the user, as a precondition for the commencement of the use, to pay the royalty as well as to provide data on the works and subject matters of related rights used. In the case of public performance this provision may only be applied to live performance as defined in Section 24(2) *a*) of the Copyright Act.

(2) The collective management organisation shall reply without undue delay to requests from users for a licence, indicating the tariff applicable to the relevant use, and, if necessary, requests additional information needed in order for the collective management organisation to grant a licence. If the collective management organisation has all information required for granting a licence, it shall make an offer to the user without undue delay based on the tariff applicable to the given use. If there is an obstacle to making an offer, the collective management organisation shall provide the user with a statement explaining the reasons therefor in detail.

(3) The provisions in paragraph (2) shall also apply as appropriate if the collective management organisation enforces a right to remuneration without a licensing right related to the relevant use pursuant to the Copyright Act.



### **33. Users' obligations**

#### **Section 60**

(1) Unless otherwise provided for in this Act or the Copyright Act, users shall provide, at the pre-established time and in the pre-established format specified in the tariff, the collective management organisation with such relevant information at their disposal as is necessary for the calculation of the royalty to be paid, the collection of rights revenues and for the distribution and payment of amounts due to rightholders.

(2) Inasmuch as the data necessary for the distribution and payment of rights revenues are concerned, the obligation to provide information under paragraph (1) to the collective management organisation distributing and paying rights revenues collected pursuant to Section 20 of the Copyright Act shall also apply to radio and television broadcasters, organisations communicating their own program to the public, as well as organisations marketing the works or subject matter of related rights on image or sound carriers. The detailed rules of providing information according to the provisions of this paragraph shall be laid out in the agreement between the collective management organisation distributing and paying the rights revenues and the user that is required to provide information.

(3) When deciding on the format for the provision of the information to be provided pursuant to paragraphs (1) and (2), collective management organisations and users shall take into account, as far as possible, voluntary industry standards.

(4) The provisions in paragraphs (1) to (3) shall not apply to persons qualifying as consumers under the Civil Code.

### **34. Relations with users**

#### **Section 61**

A collective management organisation shall allow users to communicate with it by electronic means, including for the purpose of meeting their obligation to provide information pursuant to Section 60.

## ***PART TWO***

## ***MULTI-TERRITORIAL LICENSING OF ONLINE USE OF MUSICAL WORKS BY COLLECTIVE MANAGEMENT ORGANISATIONS***

### **CHAPTER IX**

## **SPECIAL REQUIREMENTS CONCERNING OPERATION OF COLLECTIVE MANAGEMENT ORGANISATIONS GRANTING MULTI-TERRITORIAL LICENCES**

### **35. Application of the special requirements concerning the operation of**

## **collective management organisations granting multi-territorial licences**

### **Section 62**

(1) If a collective management organisation established in Hungary

*a)* is engaged in collective management activities covering musical works to be made available to the public by cable or any other means or in any other manner in a way that the members of the public can choose the place and time of access individually, as well as the reproduction of musical works required therefor (for the purposes of this Part jointly “online use of musical works”), and

*b)* representing the authors of musical works, may grant licences covering the territory of more than one EEA State (multi-territorial EEA license) for online use of musical works, (hereinafter “collective management organisations granting multi-territorial licences”) it shall, in respect of such activities, also fulfil the special requirements stipulated in this Part.

(2) The provisions in paragraph (1) shall not apply to licences providing access to musical works in sheet music form only.

(3) The provisions in paragraph (1) shall not apply if the collective management organisation grants multi-territorial licence for the online use of musical works required by the radio or television broadcaster to communicate or make available to the public its radio or television programmes simultaneously with or otherwise, after their initial broadcast, or to make the same available for the public for downloading, 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, or to make the same available for the public for downloading. In such a case the exception specified in Section 5(2) shall not apply either.

(4) For the purposes of this Part, “rightholder” means the person holding rights in the musical works affected by the multi-territorial licence specified in paragraph (1).

(5) Collective management organisations granting multi-territorial licences may also fulfil the special requirements set forth in Sections 63 to 68 through the legal entity specified in Section 7. Collective management organisations granting multi-territorial licences may also use other contributors to meet the criteria specified in Sections 63 to 67.

## **36. Capacity to process multi-territorial licences**

### **Section 63**

(1) A collective management organisation granting multi-territorial licences shall have sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of such licences, to identify the licensed musical works and monitor their use, especially for the purposes of invoicing users, collecting rights revenues and distributing amounts due to rightholders.

(2) For the purposes of paragraph (1) the collective management organisation granting multi-territorial licences shall comply, at least, with the following conditions:

*a)* to have the ability to identify accurately the musical works, wholly or in part, which it is authorised to represent;

*b)* to have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding rightholders for each musical work or share therein which the it is authorised to represent;

*c)* 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 European Union level;

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

## **37. Transparency and accuracy of information concerning multi-territorial musical works**

### **Section 64**

(1) The collective management organisation granting multi-territorial licences for online use of musical works shall provide to the users affected, to rightholders in licences for online use of musical works and to other collective management organisations, by electronic means, in response to a duly justified request, up-to-date information allowing, in respect of multi-territorial licences, the identification of

- a)* the represented musical works,
- b)* the rights managed in full or in part, and
- c)* the territories covered.

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

### **Section 65**

(1) Other collective management organisations and the affected users shall have the right to request the collective management organisation granting multi-territorial licences to correct the data referred to in the list of conditions under Section 63(2) or the information provided under Section 64(1), where such rightholders, collective management organisations or affected users, on the basis of reasonable evidence, believe that the data or the information are inaccurate.

(2) Where the claims under paragraph (1) are sufficiently substantiated, the collective management organisation granting multi-territorial licences shall ensure that the data or the information are corrected without undue delay.

(3) The collective management organisation granting multi-territorial licences shall provide rightholders represented in the course of such activities 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 granting multi-territorial licences 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 European Union level, allowing rightholders to specify

- a)* the musical work, wholly or in part,
- b)* those rights, or the part of those rights, relating to the online use of musical works, and
- c)* the countries,

in respect of which they authorise the organisation to perform collective management activities involving multi-territorial licencing.

(4) Where a collective management organisation authorises another collective management organisation to grant multi-territorial licences for the online use of musical works under Sections 69 and 70, the authorised organisation shall also apply paragraph (3) of this Section with respect to the rightholders whom it was authorised to represent, unless otherwise agreed by the collective management organisations concerned.

## **38. Report on online use of musical works, collection of royalties**

### **Section 66**

(1) The collective management organisation granting multi-territorial licences monitors the online use of musical works for which it has granted a multi-territorial licence.

(2) The affected users shall regularly report accurate data on the actual online use of musical works to collective management organisations granting multi-territorial licences.

(3) The collective management organisation granting multi-territorial licences shall offer the users concerned the possibility of submitting by electronic means the report on the online use of musical works specified in paragraph (2) and offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or European Union level for the electronic exchange of such data. If the collective management organisation granting multi-territorial licences allows for reporting using an industry standard for the electronic exchange of data, it may refuse to accept reporting by the online service provider in a proprietary format.

### **Section 67**

(1) The collective management organisation granting multi-territorial licences shall invoice the user concerned by electronic means and – inasmuch as it is allowed by the applicable laws – it shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level.

(2) 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 Section 63 (2), and the corresponding actual uses of the musical works, to the extent that this is possible on the basis of the information provided by the user concerned and the format used to provide that information. The user concerned may not refuse to accept the invoice because of its format if the collective management organisation granting multi-territorial licences issues it in line with the applicable laws and the industry standards.

(3) The collective management organisation granting multi-territorial licences shall invoice the user concerned accurately and without delay after the actual online use of that musical work is reported according to Section 66, except where this is not possible for reasons attributable to the user concerned.

(4) The collective management organisation granting multi-territorial licences shall have in place adequate arrangements enabling the user concerned to challenge the accuracy of the invoice, including when the user erroneously receives more than one invoice from one or more collective management organisations for the same right relative to the same online use of the same musical work.

(5) For the purposes of this Section “invoice” shall also mean documents containing data required for the payment of the royalty.

## **39. Payment of royalties to rightholders**

### **Section 68**

(1) The collective management organisation granting multi-territorial licences shall distribute – according to its distribution policy – and pay the 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 concerned.

(2) The collective management organisation granting multi-territorial licences shall provide detailed information to rightholders together with each royalty payment it makes under paragraph (1). The mandatory contents of such information shall be specified in a Government decree.

(3) Where a collective management organisation authorises another collective management organisation to grant multi-territorial licences for online use of musical works under Sections 69 and 70, the authorised collective management organisation granting multi-territorial licences shall pay the royalties referred to in paragraph (1) accurately and without delay, and shall provide the information referred to in paragraph (2) to the authorising collective management organisation. The authorising collective management organisation shall be responsible for the subsequent distribution of such royalties and the provision of such information to rightholders, unless the collective management organisations agree otherwise.

## CHAPTER X

### SPECIAL REQUIREMENTS CONCERNING THE AGREEMENTS BETWEEN COLLECTIVE MANAGEMENT ORGANISATIONS GRANTING MULTI- TERRITORIAL LICENCES

#### **40. Agreements between collective management organisations on multi- territorial licensing**

##### **Section 69**

(1) The representation agreements between collective management organisations whereby a collective management organisation authorises another collective management organisation to grant multi-territorial licences for the online use of musical works of the rightholders it represents shall be of a non-exclusive nature. The authorised organisation shall manage those online rights on a non-discriminatory basis.

(2) The authorising collective management organisation shall inform its members and other rightholders it represents of the main terms of the representation agreement referred to in paragraph (1), including its duration and the costs of the services provided by the authorised collective management organisation.

(3) The authorised collective management organisation shall inform the authorising collective management organisation of the main terms according to which it licenses the online use of the musical works of the rightholders represented by the authorising organisation, in particular the nature, manner and scope of the use, the territories covered by, and the duration of, the licence, all provisions which relate to or affect the licence fee, including the periods prescribed for the fulfilment of the reporting obligation of the user.

#### **41. Obligation to represent another collective management organisation for multi-territorial licensing**

##### **Section 70**

(1) If a collective management organisation which does not grant or offer to grant multi-territorial licences for the online rights in respect of the use of musical works of the represented rightholders

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 and enter into the representation agreement if it is already granting or offering to grant multi-territorial licences for the same category of online rights in respect of the use of musical works of rightholders represented by one or more other collective management organisations.

(2) The requested collective management organisation shall respond to the requesting collective management organisation in writing and without undue delay.

(3) The collective management organisation authorised in the representation agreement under paragraph (1) shall manage the rights in the musical works of the rightholders it was authorised to represent by the authorising collective management organisation on the same conditions as those which it applies to the ones it had already represented.

(4) The authorised collective management organisation shall always offer to the users concerned the musical works of the rightholders represented under the authorisation of the authorising collective management organisation together with other musical works it already represents.

(5) The fee for the service provided by the authorised collective management organisation to the authorising collective management organisation shall not exceed the costs reasonably incurred by the authorised collective management organisation.

(6) The authorising collective management organisation shall make available to the authorised collective management organisation information relating to the musical works of the rightholders it represents, required for the provision of multi-territorial licences of rights in musical works for online use. Where information is insufficient or provided in a form that does not allow the authorised collective management organisation to meet the requirements of this Part, the authorised 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.

## ***PART THREE***

### ***RULES APPLICABLE TO INDEPENDENT MANAGEMENT ENTITIES***

#### **42. Registration of collective management activities**

##### **Section 71**

The registration obligation stipulated in Section 33(1) shall also apply to the independent management entity.

#### **43. Reporting, transparency**

##### **Section 72**

The reporting obligations stipulated in Section 53(1), points *a)-c), e), f), h)* and *j)* of Section 54(1) and Section 56 shall also apply to the independent management entity, provided that for the purposes of Section 54(1) *a)* “statute” shall mean the instrument of constitution of the independent management entity.

#### **44. Establishment and application of the tariffs applicable to management of rights**

### **Section 73**

The provisions in Section 57(1) shall also apply to the independent management entity.

## ***PART FOUR***

# ***RULES ON PROCEDURES FOR COLLECTIVE MANAGEMENT ORGANISATIONS AND INDEPENDENT MANAGEMENT ENTITIES***

## **CHAPTER XI**

### **GENERAL RULES OF AUTHORITY PROCEDURES RELATED TO MANAGEMENT OF RIGHTS**

#### **45. Competence**

##### **Section 74**

HIPO shall proceed in the following authority cases related to management of rights:

- a)* registration of the collective management activity of the collective management organisation and the independent management entity;
- b)* granting, modifying and revoking the permit authorising the performance of collective management activities as a representative collective management organisation authorisation;
- c)* keeping the register of collective management organisations and independent management entities;
- d)* supervising the collective management activities of collective management organisations and independent management entities.

#### **46. Application of the general rules of administrative authority procedures**

##### **Section 75**

HIPO shall proceed in authority cases relating to management of rights falling within its material competence in accordance with the provisions of Act CL of 2016 on the Code of General Administrative Procedure (hereinafter “the Code of General Administrative Procedure”), subject to the derogations and additions laid down in this Act.

##### **Section 76**

(1) In authority cases relating to the management of rights the following provisions of the Code of General Administrative Procedure shall not be applied:

- a)* the rules on the guardian *ad litem*,
- b)* the rules on cost exemption,
- c)* Section 26, and
- d)* Section 64.

(2) In authority cases relating to the management of rights no summary proceedings shall be conducted and the request may not be submitted at a government window.

## **47. Participation of the party in the proceedings**

### **Section 77**

No additional party may participate in the proceedings beyond the time limit of six months from the date on which the decision of HIPO closing the proceedings has become final and binding. In such a case no application for excuse may be lodged if the deadline is missed.

## **48. Suspension of the proceedings**

### **Section 78**

(1) The HIPO shall suspend the proceedings if the preliminary question falls within the competence of a court or if a foreign body has to be requested in the case.

(2) The HIPO shall suspend the proceedings if the preliminary question falls within the competence of another body or if it cannot be reasonably decided without another authority decision of HIPO which is closely related to the case in question.

(3) If the party has the right to bring proceedings before a court or other body, he shall be invited to do so within a reasonable time limit fixed therefor. If the party fails to comply with the invitation, the HIPO shall terminate the proceedings.

## **49. Deadlines**

### **Section 79**

The decision closing the proceedings shall be adopted and communicated

*a)* within six months in proceedings for the grant of a permit under Section 33(2), and for the modification and revocation of the permit (Chapter XIII), and

*b)* within four months in a supervisory procedure instituted pursuant to the provisions in Chapter XV.

### **Section 80**

The party may be invited on multiple occasions to remedy a deficiency or to submit a statement.

## **50. Use of languages**

### **Section 81**

In authority cases related to management of rights – unless otherwise provided for in this Act – foreign language documents may also be submitted, however, HIPO may require that a translation into Hungarian be filed. In such a case the submission of a certified translation may only be required if there is reasonable doubt as to the accuracy of the translation.

## **51. Legal remedies**

### **Section 82**

(1) Appeals, supervisory proceedings, or reminders or actions by the prosecutor under the Act on the Prosecution Service shall not be admissible with regard to the decisions of HIPO in authority cases related to the management of rights.

(2) The decisions adopted by HIPO in authority cases related to management of rights shall be reviewed by the court in non-contentious procedure regulated in Chapter XVI.



- (3) HIPO may amend or withdraw its decisions – closing the proceedings – taken in the following matters only if a request for review is made and only until such request is transmitted to the court:
- a) decisions authorising the performance of collective management activities as a representative collective management organisation;
  - b) modification of permits granted for the performance of collective management activities as a representative collective management organisation;
  - c) revocation of permits granted for the performance of collective management activities as a representative collective management organisation;
  - d) decisions concerning supervisory actions regulated in Section 117.

## **52. Electronic administration and services by the authority**

### **Section 83**

- (1) In authority cases related to management of rights, HIPO and the party shall communicate by electronic means.
- (2) Submissions shall be filed electronically using the standard electronic forms of HIPO. The submission shall contain the following:
- a) the place, date of birth and mother's name of the natural person requesting party and/or representative,
  - b) the name and tax number of the non-natural person requesting party and/or representative
- (3) Upon receiving the submissions filed electronically HIPO – in a manner specified by a law – shall send an automatically generated message to the party, containing an electronic receipt number.
- (4) After receiving the submissions filed electronically HIPO shall verify without delay whether they fulfil the statutory requirements pertaining to electronic administration.
- (5) The submission shall be deemed to have been filed by sending the automatically generated confirmation on the electronic receipt to the party, unless HIPO establishes that the received submission is unintelligible and notifies the party thereof by electronic mail.
- (6) The party having filed the unintelligible submission shall confirm the notification sent under paragraph (5). If the party fails to confirm the receipt of the notification within fifteen days after it was transmitted, HIPO sends the document to the party by post.
- (7) The detailed rules of communication by electronic means in authority cases related to management of rights shall be specified in a Government decree.
- (8) In authority cases related to management of rights short text messages may not be used for requesting and giving information.

## **CHAPTER XII**

### **REGISTRATION OF THE ACTIVITY OF THE COLLECTIVE MANAGEMENT ORGANISATION AND THE INDEPENDENT MANAGEMENT ENTITY**

## **53. Contents of the notification**

### **Section 84**

The notification filed under Section 33(1) or Section 71 shall contain the following:

- a)* the name and address, as well as the name of the representative of the collective management organisation or independent management entity,
- b)* other contact details of the collective management organisation or independent management entity (telephone number, e-mail address, website),
- c)* the specification of the collective management activities performed by the collective management organisation or independent management entity, indicating the type of the copyright or related right affected and the type of collective management activities,
- d)* the specification of the type of works and subject matters of related rights and the category of rightholders to be covered by the collective management activities of the collective management organisation or independent management entity,
- e)* in the case of a collective management organisation, the representation agreement signed pursuant to Section 19(1),
- f)* in the case of collective management organisations granting multi-territorial licences, the territories covered by such activity,
- g)* other details specified in a Government decree.

## **54. Examination and acknowledgement of the notification**

### **Section 85**

(1) If based on the notification HIPO ascertains that the collective management activities indicated therein are subject to a permit – in whole in part – pursuant to Section 33(2) and no application was submitted for that permit, HIPO shall acknowledge the notification with a warning that the notified collective management activities – or the part of it subject to a permit – may not be pursued until the permit is obtained.

(2) HIPO shall inform the notifier collective management organisation or independent management entity of the acknowledgement of the notification in an order.

(3) After acknowledging the notification, HIPO shall arrange without delay the registration of the collective management organisation or independent management entity, as well as the collective management activities performed thereby as specified in notification. If the specified collective management activities are subject to a permit pursuant to Section 33(2), the registration under this paragraph may take place after the grant of the permit.

## **55. Notification of changes**

### **Section 86**

(1) The collective management organisation or the independent management entity shall notify HIPO without delay of any change in its data referred to in Section 84.

(2) To the examination and acknowledgement of the notification of changes the provisions in Section 85 shall apply as appropriate.

## **CHAPTER XIII**

# **RULES CONCERNING THE AUTHORISATION TO PERFORM COLLECTIVE MANAGEMENT ACTIVITIES AS A REPRESENTATIVE**

## COLLECTIVE MANAGEMENT ORGANISATION

### **56. Application for a permit**

#### **Section 87**

(1) The proceedings for the authorisation to perform collective management activities as a representative collective management organisation shall start upon an application to this effect.

(2) The application shall indicate the copyright or related right, the type of work or subject matter of related rights, as well as the category of rightholders and the type of collective management activities to be covered by the collective management activities intended to be performed as a representative collective management organisation.

(3) For the purposes of authorisation, it shall be considered separate collective management activity – and thus, require separate permits – if the collective management of rights covers different

- a) copyrights or related rights,
- b) types of work or subject matter of related rights,
- c) categories of rightholder, or
- d) types of collective management activities.

#### **Section 88**

(1) The authorisation for the performance of the different collective management activities, as specified in Section 87(3), sought to be performed as a representative collective management organisation may also be requested in a single application.

(2) The application shall be accompanied by the documents verifying the fulfilment of the criteria for issuing the permit. The documents shall list the name, the address or registered seat of the members of the collective management organisation as well as of rightholders wishing to join or having concluded an individual agreement with the collective management organisation, by category of rightholders, and indicate whether the collective management organisation has concluded representation agreements as specified in Section 34(4).

(3) The application of a collective management organisation established in another EEA State shall be accompanied by the public deed verifying the fulfilment of the criteria stipulated in Section 34(5).

(4) Collective management organisations not yet listed in the register of collective management organisations and independent management entities (hereinafter “register”) shall also attach the notification under Section 33(1) to their application.

(5) The detailed content of the application for a permit shall be specified in a Government decree.

### **57. Authorisation of more than one collective management organisation for the same collective management activity**

#### **Section 89**

(1) If – on the basis of the concurrence of criteria under paragraph (3) of Article 87(3) – more than one or a newer collective management organisations – otherwise meeting the criteria for obtaining a permit – intend to perform a collective management activity considered as the same activity, as a representative collective management organisation, prior to filing the application for a permit the affected representative collective management organisations shall agree in writing as

to which one of them will grant – in the scope of an extended collective management of rights – licences to users or enforce the right to remuneration on behalf of those rightholders that have not granted an authorisation to manage their rights to any of the organisations. The agreement shall be submitted together with the application for a permit. The entry into effect of the agreement shall require the approval of HIPO; this shall be provided for in the decision on issuing the permit. In such a case the provisions in Sections 17 and 18 shall be applied to those rightholders that have not granted an authorisation to manage their rights to any of the organisation in accordance with the above agreement.

(2) In the event that the affected representative collective management organisations could not conclude the agreement referred to in paragraph (1), in its decision on the permit HIPO shall designate the representative collective management organisation to perform extended collective management of rights which can, on the whole, most efficiently meet the criteria stipulated in Section 34(1).

### **Section 90**

(1) If more than one or new applicant collective management organisation intends to enforce the same right to remuneration without licensing right or the right deriving from Section 28(2) of the Copyright Act for the same category of rightholders as a representative collective management organisation, prior to filing the application for a permit, the representative collective management organisations shall agree in writing on the manner of their cooperation in establishing their common tariff and designate the representative collective management organisation which will collect the royalties. The entry into effect of the agreement shall require the approval of HIPO; this shall be provided for in the decision on issuing the permit.

(2) In the event that the affected representative collective management organisations could not conclude the agreement referred to in paragraph (1), HIPO – by applying the provisions in Section 89(2) as appropriate – shall designate the representative collective management organisation to establish and collect the royalties. Even in such a case the other representative collective management organisation(s) may also participate in the establishment of the royalties.

### **Section 91**

The agreements under Section 89(1) and Section 90(1) and the designations under Section 89(2) and Section 90(2) may be applied after the expiry of the term of the tariff in effect at the time when the decision approving the agreement or establishing the designation becomes final and binding.

### **Section 92**

HIPO shall provide information of the content of the agreements under Section 89(1) and Section 90(1) and the designations under Section 89(2) and Section 90(2) in the Official Notices annexed to the Hungarian Official Gazette, and further, if necessary, shall ex officio modify the permit granted formerly to the other affected collective management organisation in a procedure specified in Section 94 and shall also arrange for the modification of the data in its register if necessary.

### **Section 93**

Upon the request of the affected representative collective management organisation, HIPO shall review the designations made under Section 89(2) and Section 90(2), and depending on the result of the review, shall modify the permit granted formerly to the other affected collective management organisation in a procedure specified in Section 95 and shall also arrange for the modification of the data in its register if necessary.

## **58. Modification of the permit**

### **Section 94**

- (1) HIPO shall modify an existing permit ex officio if this is necessary
- a)* for the approval of the agreement under Section 89(1) or Section 90(1), or
  - b)* for the designation under Section 89(2) or Section 90(2).

(2) The approval of the agreement under Section 89(1) or Section 90(1) or the designation under Section 89(2) or Section 90(2) may not be appealed in a petition filed against the decision on the modification of the permit. If the decision on the approval of the agreement or the designation is set aside – either in whole or inasmuch as the approval of the agreement or the designation is concerned – by a final and binding decision based on a judicial review, HIPO shall ex officio withdraw the decision on the modification and provide information thereof in the Official Notices annexed to the Hungarian Official Gazette and shall also arrange for the modification of the data in its register if necessary.

(3) The collective management organisation shall publish an announcement on its website on the modification of the permit under this Section.

### **Section 95**

(1) HIPO may also modify the existing permit at the request of the affected collective management organisations

- a)* if the affected collective management organisations jointly request the modification of the approval of the agreement under Section 89(1) or Section 90(1), or
- b)* if any of the affected collective management organisations request the modification of the designation under Section 89(2) or Section 90(2).

(2) In the cases regulated in paragraph (1) the provisions in Section 91 shall also be applied as appropriate.

(3) In the cases regulated in paragraph (1) HIPO shall provide information concerning the modification of the permit in the Official Notices annexed to the Hungarian Official Gazette , and shall also arrange for the modification of the data in its register if necessary.

(4) The collective management organisation shall publish an announcement on its website on the modification of the permit under paragraph (1).

## **59. Revocation of the permit**

### **Section 96**

(1) HIPO shall revoke the permit granted for performing collective management activities as a representative collective management organisation at the request of the representative collective management organisation or – in the cases specified in this Act – ex officio.

(2) HIPO shall revoke the permit granted for performing collective management activities as a representative collective management organisation ex officio if

- a)* a supervisory procedure conducted against the representative collective management organisation finds it necessary and the statutory conditions for the revocation set forth in Section 119 are fulfilled, or

- b)* the representative collective management organisation – despite the notice of HIPO to this effect – fails to start the collective management activity specified in the permit after one year following the granting thereof, or suspends the collective management activity specified in the permit for a period exceeding one year and at the invitation of HIPO fails to provide sufficient

proof that the above was attributable to reasons beyond its control.

(3) Regardless of the revocation of the permit, the collective management organisation shall ensure – in line with its distribution policy in effect at the time of the revocation of the permit – that the rights revenues having been collected before the revocation of the permit are used in compliance with this Act.

(4) The revocation of the permit shall not affect the effect of the licences granted prior to the revocation, and such licences shall remain valid as long as the tariff effective at the time of the revocation applies.

### **Section 97**

(1) If HIPO revokes a permit granted to a representative collective management organisation for the performance of extended collective management of rights specified in Section 17 in cases falling within the scope of mandatory collective management of rights or collective management of rights prescribed by law, and there is a collective management organisation in its register which – due to the concordance of the criteria set forth in Section 87(3) – holds a permit to perform the given collective management activities as a representative collective management organisation, HIPO shall designate ex officio this latter representative collective management organisation to perform extended collective management of rights. If there is more than one representative collective management organisation HIPO shall designate the organisation to perform extended collective management of rights by applying the rules set forth in Section 89(2) as appropriate.

(2) HIPO shall provide information of the designation made pursuant to paragraph (1) in the Official Notices annexed to the Hungarian Official Gazette; and it shall modify the permit of the affected representative collective management organisation by applying the rules in Section 94 as appropriate, and shall also arrange for the modification of the data in its register.

(3) The representative collective management organisation designated pursuant to paragraph (1) shall use the last tariff established by the previous representative collective management organisation prior to the revocation during the application period thereof, and collect the rights revenues due to the rightholders represented by the previous representative collective management organisation based on this tariff. After the revocation of the permit of the previous representative collective management organisation, the rights revenues collected according to this paragraph

*a)* shall be administered in a separate account of the designated representative collective management organisation, and

*b)* shall be distributed to the rightholders in line with the distribution policy of the previous representative collective management organisation in effect at the time when its permit was revoked.

(4) If the revocation of the permit affects extended collective management of rights falling outside the scope of mandatory collective management or collective management of rights prescribed by law, the rules set forth in paragraphs (1) to (3) shall be applied with the derogation that the portion of the rights revenues collected in line with paragraph (3) which is due to the rightholders represented by the previous representative collective management organisation under an authorisation to manage rights, shall be transferred by the representative collective management organisation designated to collect the royalties to the authorised collective management organisation for distribution.

### **Section 98**

(1) If HIPO revokes a permit granted to a representative collective management organisation in cases falling within the scope of mandatory collective management of rights or collective

management of rights prescribed by law, and its register lists no representative collective management organisations which – due to the concordance of the criteria set forth in Section 87(3) – would be entitled to perform the given collective management activity, HIPO shall request the affected rightholders in an announcement published on its website and at least in two national daily newspapers to initiate the procedure under Section 87 within the specified deadline, but no later than within one year.

(2) Until the expiration of the deadline referred to in paragraph (1) the royalties shall be paid based on the last tariff applied by the previous representative collective management organisation before its permit was revoked, in a manner specified by HIPO in its announcement. If the procedure under Section 87 is initiated before the set deadline and HIPO authorises the applicant to perform the relevant collective management activity as a representative collective management organisation, the royalties thus paid shall be distributed by the new representative collective management organisation to the affected rightholders. In other cases HIPO shall designate the collective management organisation to distribute – based on the distribution policy of the previous collective management organisation in effect at the time when its permit was revoked and after deducting its justified administrative costs incurred in connection with the distribution – the collected rights revenues to the affected rightholders after the expiration of the deadline.

(3) HIPO shall notify the expiration without result of the deadline referred to in paragraph (1) in an announcement published in the Official Notices annexed to the Hungarian Official Gazette. During the time period between the publication of this announcement and the grant of a permit to a new collective management organisation for performing the relevant collective management activity as a representative collective management organisation the affected rightholders may grant licences on an individual basis.

(4) If the revocation of the permit affects collective management of rights falling outside the scope of mandatory collective management or collective management of rights prescribed by law, the royalties shall continue to be payable to this organisation, based on the tariff of the previous representative collective management organisation valid at the time of the revocation, until the end of the application period of the tariff. The previous representative collective management organisation shall distribute – based on its distribution policy in effect at the time when its permit was revoked and after deducting its justified administrative costs incurred in connection with the distribution – the collected rights revenues to the affected rightholders.

### **Section 99**

(1) In the cases specified in Sections 97 to 98 the previous representative collective management organisation shall cooperate with the collective management organisation distributing the rights revenues and make available thereto all information at its disposal without delay.

(2) The collective management organisation shall publish an announcement on its website on the revocation of its permit.

## **60. Administrative service fee**

### **Section 100**

The notifications under Section 33(1) and Section 71 (including the notification on a change under Section 86), the application for a permit for performing collective management activities as a representative collective management organisation, and the request for the modification of the permit shall be subject to the payment of an administrative service fee specified in a ministerial decree, which shall be the revenue of HIPO.

## CHAPTER XIV

### RULES FOR KEEPING THE REGISTER OF COLLECTIVE MANAGEMENT ORGANISATIONS AND INDEPENDENT MANAGEMENT ENTITIES

#### **61. Contents of the register, obligations of collective management organisations and independent management entities related to the register**

##### **Section 101**

(1) Using the data in the notification filed under Section 33(1), and in the permits granted in procedures conducted under Section 87 and the modifications thereof, HIPO shall enter into a register and make publicly available

- a)* the data listed in Section 84,
- b)* an indication as to whether the collective management organisation performs the given collective management activity as a representative collective management organisation,
- c)* an indication as to whether the representative collective management organisation performs extended collective management of rights,
- d)* the name and registered seat of other collective management organisations with which the collective management organisation has concluded a representation agreement, including the agreements signed pursuant to Sections 69 and 70,
- e)* other details required for the attainment of the objectives of the management of rights, as specified in a Government decree.

(2) In respect of the data listed under Section 84 *c)* and *d)* and paragraph (1) *b)* and *c)* the register shall be deemed to be an authentic public register.

##### **Section 102**

- (1) As part of the register, HIPO shall allow access to
- a)* the instrument of constitution,
  - b)* the organisational and operational rules,
  - c)* the membership rules,
  - d)* the distribution policy,
  - e)* the agreements concluded pursuant to Section 12(3) and Section 34(4) herein, and Section 20(4) and (5), Section 21(7) and Section 28(4) of the Copyright Act,
  - f)* the tariff and
  - g)* the annual report

of the collective management organisation or the independent management entity.

(2) The collective management organisation and the independent management entity shall submit to HIPO its documents in effect listed in paragraph (1) for publication in the register.

(3) The collective management organisation shall submit its representation agreements concluded with other collective management organisations – including those concluded pursuant to Sections 69 and 70 – to HIPO.

(4) The register may be viewed by the general public via the electronic access provided by HIPO on its website. The data recorded in and deleted from the register are public. Anyone may take notes of the data or request – against a fee – a certified excerpt thereof.



## **62. Modification of the data in the register**

### **Section 103**

At request or if necessary, HIPO shall modify the data listed in Section 101(1) ex officio, and also ensure that upon a change in the in the documents listed in Section 102(1) their version in effect is published.

## **63. Deletion from the register, list of organisations banned from managing rights**

### **Section 104**

(1) HIPO shall delete from the register ex officio

*a)* the collective management organisation whose permit under Section 33(2) it revoked, if it performs no other collective management activity than the one authorised in the revoked permit according to the register,

*b)* the collective management organisation or independent management entity which it banned from managing rights pursuant to Section 120, and

*c)* the collective management organisation or independent management entity which had terminated its operation without succession.

(2) In the case of deleting from the register a collective management organisation which had terminated its operation without succession, the rules stipulated in Section 120 shall be applied as appropriate.

### **Section 105**

(1) HIPO shall delete the collective management organisation or independent management entity from the register at their request, if the organisation making the request no longer wishes to perform collective management activities.

(2) In the case specified in paragraph (1) the provisions in Section 120(5) and (6) shall apply, except that the collective management organisation or independent management entity banned from managing rights shall be construed as a deleted collective management organisation or independent management entity.

### **Section 106**

Deletion from the register shall not affect the rights that the rightholders otherwise have pursuant to this Act vis-à-vis the deleted collective management organisation or the independent management entity.

### **Section 107**

(1) HIPO shall keep a separate record listing the organisations which it banned from managing rights under Section 120.

(2) The list of organisations banned from managing rights shall qualify as an authentic public register and shall contain

*a)* the name of the banned organisation,

*b)* its registered seat, and

*c)* the date when the decision on the ban became final and binding.

## CHAPTER XV

### SUPERVISION OF COLLECTIVE MANAGEMENT OF RIGHTS

#### **64. Scope of the supervision**

##### **Section 108**

The supervisory procedure conducted by HIPO – which does not qualify as an authority inspection – shall, in particular entail the examination of the following:

- a)* whether the operation, financial management and the documents of the collective management organisation and the independent management entity listed in Section 102(1) comply with the requirements stipulated in the laws applicable to management of rights,
- b)* whether the conditions set forth in Section 32 for starting the collective management of rights are continuously met,
- c)* in the case of a representative collective management organisation, whether the criteria for obtaining a permit stipulated in Section 34 are continuously met,
- d)* in the case of a collective management organisation granting multi-territorial licences, whether it complies with the requirements stipulated in Part Two.

#### **65. Obligations of the collective management organisation and the independent management entity related to supervision, supervisory fee**

##### **Section 109**

(1) The collective management organisation shall notify HIPO – concurrently with the notification of the members – in writing of the convocation of its decision-making body, by sending HIPO in advance the agenda and the documents related to the items on the agenda concerning the performance of supervisory functions; the representative of HIPO may attend the meeting and participate in the discussion of the items on the agenda concerning the performance of supervisory functions.

(2) The collective management organisation shall submit the minutes taken at the meeting of its decision-making body, together with the decisions adopted, to HIPO within 30 days of the meeting.

##### **Section 110**

The collective management organisation shall submit semi-annual reports on its collective management activities to HIPO. The contents of the report and the manner of reporting shall be specified in a Government decree.

##### **Section 111**

(1) In order to cover the costs incurred by HIPO in connection with exercising its supervisory powers, collective management organisations and independent management entities shall be required to pay an annual supervisory fee to HIPO.

(2) The amount of the supervisory fee shall be

*a)* in the case of a representative collective management organisation: 0.5 percent of its previous year's rights revenue generated by its collective management activity as a representative collective management organisation, including the income derived from the financial operations with such

rights revenues (including the investment of rights revenues) in the previous year,

*b)* in the case of a collective management organisation: 0.3 percent of its previous year's income, including capitalised own performance – decreased by any income referred to in point *a)*,

*c)* in the case of an independent management entity: 0.1 percent of its previous year's rights revenue generated by its collective management activity and the financial operations made with rights revenues (including the investment of rights revenues).

(3) The supervisory fee shall be paid by the last day of the second calendar quarter each year.

(4) The supervisory fee for the year of commencing the activity shall be the percentage rate of the rights revenue planned for that year applicable under paragraph (2). In such a case, supervisory fee shall be paid by the last day of the second calendar quarter following the relevant year.

(5) The late payment of the supervisory fee shall be subject to a late-payment penalty at a rate specified in the Act on Taxation.

(6) The amount of the supervisory fee not paid in due time shall be determined by a decision of HIPO and the person liable to pay the fee shall be ordered to pay it.

(7) For the purposes of paragraphs (2) and (4) "income" shall mean income without value added tax.

(8) The detailed rules of establishing and paying the supervisory fee shall be specified in a Government decree.

## **66. Opening a supervisory procedure**

### **Section 112**

(1) HIPO shall examine the operation of representative collective management organisations, and other collective management organisations established in Hungary and entered in its register on an annual basis, within the framework of a supervisory procedure started *ex officio*.

(2) HIPO shall examine the operation of independent management entities established in Hungary and entered in its register on an annual basis, within the framework of a supervisory procedure started *ex officio*.

(3) In addition to the cases specified in paragraphs (1) and (2) HIPO may also start *ex officio* supervisory procedures as necessary to inspect the operation of collective management organisations and independent management entities.

### **Section 113**

(1). (1) If the minister responsible for justice finds that the laws applicable to the management of rights have been violated, he shall initiate a supervisory procedure with HIPO.

(2) If during the performance of their task related to the use of rights revenues and other incomes of collective management organisations for cultural purposes (Sections 43 to 45) the president or vice-president of the National Cultural Fund finds that the laws applicable to the management of rights have been violated, they may request HIPO to institute a supervisory procedure.

## **67. Conduct of the supervisory procedure**

### **Section 114**

(1) If HIPO establishes during its supervisory procedure that the documents required for exercising its supervisory function are not available, it may invite the organisation subject to the procedure to submit them and to make statements.

(2) During the examination of whether a representative collective management organisation is

significantly representative of the rightholders affected by its collective management activity, after the expiration of one year following the grant of the permit specified in Section 33(2), the statements of intended memberships and the letters of intent concerning the conclusion of a representation agreement with foreign organisations shall be disregarded.

#### **Section 115**

HIPO may request an expert opinion or hear an expert in the course of its supervisory procedure.

#### **Section 116**

The detailed rules of the supervisory procedures shall be specified in a Government decree.

### **68. The decision of HIPO**

#### **Section 117**

(1) If, as a result of its supervisory procedure HIPO concludes that the laws applicable to the management of rights have been violated or the requirements therein are not met, in its decision it may take the following supervisory actions:

*a)* it may require the organisation to discontinue the unlawful situation and restore lawful operations, or impose another obligation – so, in particular, the fulfilment of the criteria required for obtaining the permit under Section 33(2) –, setting an appropriate deadline,

*b)* it may impose a supervisory fine,

*c)* it may contact the prosecutor's office in order to take the actions that may be implemented within the framework of the review of legality of the association,

*d)* it may revoke the permit referred to in Section 33(2),

*e)* it may ban the organisation from managing rights.

(2) HIPO shall examine the proper performance of the requirement imposed in the measure under paragraph (1) *a)* in a supervisory procedure instituted ex officio pursuant to Section 112(3).

#### **Section 118**

(1) The amount of the supervisory fine shall be established taking into consideration all circumstances of the case, especially the gravity and recurrence of the unlawful conduct, the duration of the unlawful situation, as well as the requirement of efficiency and the principle of proportionality. The amount of the supervisory fine may not exceed five times the supervisory fee calculated for the previous year.

(2) The supervisory fine may be imposed in addition to and concurrently with, the other measures specified in Section 117(1) and repeatedly.

(3) The supervisory fine shall be payable within fifteen days of the communication of the decision imposing the fine.

(4) The late payment of the supervisory fine shall be subject to a late-payment penalty at a rate specified in the Act on Taxation.

(5) *[repealed]*

#### **Section 119**

The permit referred to in Section 33(2) may be revoked if

*a)* as a result of its supervisory procedure HIPO concludes that the criteria for granting a permit are not fulfilled by the given representative collective management organisation, or that the collective management activity performed as a representative collective management organisation

otherwise fails to comply with the laws applicable to the management of rights,

*b)* the representative collective management organisation failed to obey the invitation stipulated in the supervisory action taken according to Section 117(1) *a)* by the deadline set by HIPO despite having been warned of the legal consequences thereof, and

*c)* the imposition of a supervisory fine is not expected to yield results.

### **Section 120**

(1) HIPO may ban the collective management organisation or independent management entity from managing rights if

*a)* the action taken pursuant to Section 117(1) *c)* has failed to yield results or cannot be expected to yield results, or

*b)* in the case of grave or repeated breach of the laws applicable to the management of rights, if the organisation failed to obey the invitation stipulated in the supervisory action taken according to Section 117(1) *a)* by the deadline set by HIPO despite having been warned of the legal consequences thereof, and the imposition of a supervisory fine is not expected to yield results.

(2) The collective management organisation or independent management entity which was banned from managing rights may not manage rights until the ban is revoked pursuant to Section 121, and any licence granted by the banned organisation during the term of the ban shall be ineffective.

(3) The ban from managing rights shall not affect the effect and validity of the licences granted before the decision on the ban became final and binding.

(4) Regardless of the ban, the collective management organisation or the independent management entity shall ensure – in line with its distribution policy in effect at the time of the ban – that the rights revenues having been collected before the ban are used in compliance with this Act.

(5) When the decision on the ban from managing rights becomes final and binding, all permits granted pursuant to Section 33(2) shall become invalid without any further measures. In such a case the rules stipulated in Sections 97 to 99 shall be applied, provided that in the cases specified in Section 97(4) and Section 98(4) the collective management organisation designated by HIPO shall collect and distribute the rights revenues to the affected rightholders.

(6) In the other cases not mentioned in paragraph (5) HIPO shall designate the collective management organisation which shall be entitled to collect and distribute the rights revenues arising from the licences granted prior to the ban. The rights revenues thus collected shall be distributed by the designated collective management organisation – based on the distribution policy of the banned organisation in effect at the time of the ban, and after deducting its justified administrative costs incurred in connection with the distribution – to the affected rightholders.

(7) HIPO shall notify the ban from managing rights and the designation referred to in paragraph (6) in an announcement published in the Official Notices published as an annex to the Hungarian Official Gazette.

### **Section 121**

(1) HIPO shall remove the ban under Section 120 at the request of the collective management organisation or the independent management entity if it proves that the reason for the ban no longer exists.

(2) The removal of the ban may not be requested earlier than on the first day of the calendar year following the year when the decision on the ban became final and binding, and with effect from the first day of the calendar year following the submission of the request.

## **69. Complaints concerning the operation of a collective management organisation or independent management entity**

### **Section 122**

(1) Rightholders, users, representative organisations of user interests, other collective management organisations or independent management entities may file a complaint with HIPO due to the activity or operation of a collective management organisation or independent management entity established in Hungary, or due to other circumstances relating to them, which they believe violates the laws applicable to the management of rights.

(2) Investigating the complaint under paragraph (1) shall not form part of the supervisory procedure and shall not be deemed an administrative authority procedure relating to the management of rights. The rules of the Code of General Administrative Procedure need not be applied to the investigation of the complaint.

(3) For the purposes of paragraph (1) “representative organisation of users” means a legal entity with registered membership which, according to its instrument of constitution is active nationwide, and its scope of activity covers the representation of the interests of the users concerned during complaint procedures related to the operation of collective management organisations or independent management entities.

### **Section 123**

(1) HIPO shall investigate the complaint under Section 122 after receipt without delay, and if necessary hear both the complainant and the party against whom the complaint was filed, and may also request further information from them.

(2) Within sixty days of receiving the complaint, HIPO shall decide based on the available data, whether the complaint necessitates the start of an ex officio supervisory procedure pursuant to Section 112(3) against the affected collective management organisation or independent management entity.

(3) Repeated complaints of the same complainant with the same content, obviously unfounded or anonymous complaints need not be investigated.

(4) If another authority has the right to investigate the conduct indicated in the complaint, HIPO shall transfer the complaint within eight days of receipt to the authority having competence and jurisdiction to proceed in the case.

(5) HIPO shall notify the complainant of the institution of a supervisory procedure or the omission thereof, or of the transfer of the complaint pursuant to paragraph (4).

## **70. Differing rules pertaining to collective management organisations and independent management entities established in other EEA States, cooperation with the authority of another EEA State**

### **Section 124**

The rules stipulated in Chapter XV shall be applied to the supervision of collective management organisations and independent management entities established in another EEA State and performing services directed to the territory of Hungary with the derogations specified in Sections 125 to 127.

### **Section 125**

(1) In cases relevant to the application of 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 (hereinafter “Directive 2014/26/EU”) and in particular, in connection with the activity of collective management organisations established in other EEA States, HIPO may send a duly justified request for information to the designated competent authority of the relevant EEA State.

(2) In particular, if HIPO – in connection with its supervisory activities over a collective management organisation established in another EEA State – gains cognisance of a circumstance suggesting that the supervised organisation may not be complying with the provisions of the applicable laws of the EEA State in which it is established, as required under Directive 2014/26/EU, it shall notify the designated competent authority of the relevant EEA State thereof. The notification may be accompanied where appropriate by a request of HIPO to that authority that it take appropriate action within its competence against the said organisation.

(3) Matters pursuant in paragraph (2) may also be referred by HIPO to the expert group set up pursuant to Section 41 of Directive 2014/26/EU.

### **Section 126**

(1) In the case of collective management organisations and independent management entities established in another EEA State and performing their collective management services directed to the territory of Hungary, the provisions in Section 108 *a)* and *b)*, Sections 109 and 110, Section 111(2) *b)* and *c)*, Section 117(1) *c)* and *e)* and Sections 120 and 121 shall not apply; while in the supervisory procedure conducted pursuant to Section 112(1), HIPO shall verify continuous compliance with the criteria required for granting a permit referred to in Section 33(2).

(2) The permit referred to in Section 33(2) of a representative collective management organisation established in another EEA State and performing collective management services directed to the territory of Hungary may be revoked if

*a)* as a result of the supervisory procedure HIPO concludes that the criteria for granting a permit are not fulfilled by the given representative collective management organisation,

*b)* the representative collective management organisation failed to meet the invitation stipulated in the supervisory action taken according to Section 117(1) *a)* aimed at meeting the criteria for obtaining a permit by the deadline set by HIPO despite having been warned of the legal consequences thereof, and

*c)* the imposition of a supervisory fine is not expected to yield results, either.

### **Section 127**

(1) Upon the receipt of a duly justified request for information from the designated competent authority of another EEA State in a case relevant to the application of Directive 2014/26/EU – and in particular, in connection with the activity of a collective management organisation established in Hungary – HIPO, based on the available data, shall send the requested information to the requesting authority without undue delay.

(2) If an authority in another EEA State concludes, based on its supervision exercised over a collective management organisation or independent management entity established in Hungary, that the supervised organisation does not comply with the provisions of Hungarian laws which have been adopted pursuant to the requirements laid down in Directive 2014/26/EU, it may notify HIPO thereof. The notification may be accompanied by a request to HIPO that it take appropriate action within its competence against the said organisation.

(3) Where appropriate, HIPO shall examine the circumstances referred to in the request received

pursuant to paragraph (2) within the framework of a supervisory procedure conducted according to Section 112(3). HIPO shall provide a reasoned reply to the requesting authority regarding the institution or omission of a supervisory procedure within three months of receiving the request.

## CHAPTER XVI

### JUDICIAL REVIEW OF THE DECISION OF HIPO

#### 71. Request for review

##### Section 128

- (1) Upon request, the court shall review HIPO's
- a) decision adopted in an authority case related to management of rights, and
  - b) procedural decision – adopted in an authority case related to management of rights – concerning the refusal to grant persons the legal status of a party to a party other than those who submitted the request for the commencement of the proceedings, suspension of the proceedings, imposition of a procedural fine, and prohibition or restriction of the right to access documents, against which an independent legal remedy shall be available pursuant to the Code of General Administrative Procedure.
- (2) The request for the judicial review of the decision of HIPO shall not have a suspensory effect and shall not prevent it from becoming final and binding.
- (3) An order of HIPO not referred to under paragraph (1) may only be appealed in a request for the judicial review of the decisions listed in paragraph (1).

##### Section 129

- (1) The request for the judicial review of a decision may be lodged:
- a) by a person who participated in authority proceedings before HIPO as a party;
  - b) by a person whose right of access to documents was denied or restricted;
  - c) by a person to whom the status of party to the proceedings was denied.
- (2) The persons specified in Section 113(1) and (2) may also request the review of the decision adopted in a supervisory procedure that they initiated.

##### Section 130

- (1) The deadline for submitting a request for review shall – with the exception of the cases in paragraphs (2) and (3) – be thirty days from the day when the decision was communicated to the party or other participant in the proceedings. To the submission of the request the provisions stipulated in Section 83 shall apply as appropriate.
- (2) The thirty-day time limit for submitting a request for a judicial review shall be calculated from the communication of the order rejecting the application for excuse or considering the same not to have been filed if
- a) this occurs later than the day when the decision was communicated under paragraph (1) and
  - b) the application for excuse was filed to excuse an omission which served directly as a basis for the decision referred to in paragraph (1).
- (3) *[repealed]*



### **Section 131**

(1) The request for judicial review may be submitted to HIPO, which shall then - with the exception of the case regulated in paragraph (2) – forward it to the court together with the documents of the authority case related to management of rights within fifteen days. If an opposing party also participated in the proceedings, concurrently, HIPO shall also notify such opposing party of the forwarding of the request for judicial review.

(2) If the request for judicial review raises a question of law of fundamental importance, HIPO may make a written statement on that question and forward it, together with the request for judicial review and the documents of the authority case related to management of rights, to the court within thirty days.

### **Section 132**

(1) The following data shall be indicated in the introductory part of the request for judicial review:

(a) the name of the court seized,

(b) the identification details of the requesting party specified in section 45(5) to (6), and, if there is a party with opposing interests, the known identification details of that party, and

(c) the identification details of the legal representative of the requesting party specified in section 45(5) to (6) and his secure delivery service address.

(11a) The following data shall be indicated in the substantive part of the request for review:

(a) the number of the decision whose review is sought, and, where necessary and available, the registration number, as well as the provision or part of the decision whose review is sought,

(b) the explicit request that the court review the decision, and

(c) the grounds demonstrating the necessity of reviewing the decision, together with the supporting evidence and a reference to the legal basis.

(11b) The following shall be indicated in the closing part of the request for review:

(a) the facts and a reference to the legal provisions establishing the material and territorial jurisdiction of the court,

(b) the amount paid as a procedural fee and the method of payment, or, if a partial procedural fee was paid, the request for legal aid, or, if the law provides for an exemption from paying procedural fees, the facts and a reference to the legal provisions serving as a basis for the exemption,

(c) the facts and a reference to the legal provisions establishing the power of representation of the agent,

(d) the supporting evidence for the facts referred to in the closing part.

(2) If the request for judicial review was submitted late, the court shall decide on the application for excuse.

## **72. Material and territorial jurisdiction**

### **Section 133**

(1) The Budapest-Capital Regional Court (Fővárosi Törvényszék) shall have exclusive jurisdiction to conduct proceedings for the judicial review of decisions taken by HIPO.

(2) The Budapest-Capital Regional Court shall proceed in a panel consisting of three professional judges.

## **73. Rules governing the proceedings related to requests for judicial review**

#### **Section 134**

The court shall adjudicate the requests for the judicial review of the decisions of HIPO according to the rules pertaining to a non-contentious procedure, subject to the derogations laid down in this Act. To procedural matters not regulated otherwise by this Act, the provisions of Act CXXX of 2016 on the Code of Civil Procedure (hereinafter "Code of Civil Procedure") shall apply with the derogations arising from the specificities of non-contentious proceedings, together with the general provisions of the Act on the rules applicable in non-contentious civil court procedures and on certain non-contentious court procedures.

### **74. Disqualification**

#### **Section 135**

(1) In addition to the cases defined in the general provisions of the Code of Civil Procedure, the following persons shall be disqualified from proceeding in the case and from acting therein as judges:

- a)* those who participated in the taking of the decision of HIPO;
- b)* relatives, as defined in the Civil Code, of a person referred to in point *a*).

(2) The provisions in paragraph (1) shall also apply to the disqualification of the persons drawing up the minutes and the experts.

### **75. The parties and other participants to the proceedings**

#### **Section 136**

(1) The person who filed the request shall be a party to the court proceedings.

(2) Where an opposing party has also taken part in the proceedings before HIPO, the court proceedings shall be brought against that party.

#### **Section 136/A**

Legal representation shall be mandatory in court proceedings, including in appeal proceedings.

#### **Section 137**

(1) Any person who has a legal interest in the outcome of the proceedings for judicial review of the decision of HIPO may intervene in the proceedings, in favour of the party with the same interest, until such time as the court decision becomes final and binding.

(2) Save for admission of claims and waiver of rights, the intervener shall be entitled to perform any act, which the party he supports may perform, however, such acts shall have effect only inasmuch as they do not conflict with the acts of the party concerned.

(3) Legal disputes between the intervener and the party may not be adjudicated in the course of the proceedings.

### **76. Procedural costs**

#### **Section 138**

(1) If an opposing party also takes part in the court proceedings, the provisions on litigation costs shall apply, as appropriate, to the advance payment and the bearing of the procedural costs.

(2) In the absence of an opposing party, the requesting party shall advance and bear the costs.

## **77. Omission**

### **Section 139**

If the requesting party or neither party attend the hearing, or any of the parties fail to meet an invitation of the court by the deadline set, the court shall decide on the request based on the information at its disposal.

## **78. Action taken on the request**

### **Section 140**

If HIPO has made a written statement concerning the request for judicial review [Section 131(2)], the president of the panel proceeding in the case shall communicate this statement to the party or parties in writing.

## **79. Hearing and evidence**

### **Section 141**

(1) The court of first instance shall take evidence in accordance with the rules of the Code of Civil Procedure and it shall hold hearings in accordance with the rules on the main hearing stage of the Code of Civil Procedure.

(1a) The court proceedings may not be stayed.

(2) If no opposing party takes part in the proceedings and the case can be adjudicated based on documentary evidence, the court may also take a decision without a hearing; nevertheless, the party shall be heard at his request.

(3) If the court adjudicates the case without a hearing, but in the course of the proceedings finds that it is necessary to hold a hearing, it may set a date for a hearing at any time. If, however, the court adjudicates the case at a hearing or has set a date for a hearing, it may not then return to the deliberation of the case without hearing.

(4) No settlement may be agreed during the court proceedings.

## **80. Decision of the court**

### **Section 142**

(1) The court shall decide, both on the merits of the case and otherwise, by way of an order.

(2) Upon finding that a law was breached – with the exception of the breach of a procedural rule not affecting the merits of the case – the court shall set aside the decision of HIPO and if necessary oblige HIPO to conduct new proceedings.

(3) The court shall disregard that statement, allegation or evidence submitted by the party in the request for the judicial review or after the submission thereof, which was lawfully disregarded by HIPO in the course of its own proceedings.

(4) If HIPO withdrew its decision after the submission of the request for judicial review, the court shall terminate the proceedings. If HIPO amended its decision, the court proceedings may only be continued in respect of the issues still in dispute.

### **Section 143**

The court order on the merits of the case shall be communicated by way of service; it shall not be regarded as communicated by the mere pronouncement thereof. If the court adjudicates the

request for judicial review at a hearing, the order on the merits of the case shall be pronounced on the very day of the hearing. The pronouncement of the order may be postponed – by a maximum eight days – only if it is absolutely necessary due to the complexity of the case. In such a case the due date for the pronouncement shall be set forthwith and the order shall also be put in writing by the date of pronouncement.

#### **Section 144**

In the course of adjudicating the appeal against the order of the Budapest-Capital Regional Court, the provisions of Sections 389 to 391 of the Code of Civil Procedure shall be applied as appropriate, provided that upon a request to that effect the court of second instance shall also hear the parties orally, except if the appeal was filed against an order on a request for the review of any of the decisions of HIPO referred to in Section 128(1) *b*).

## **CHAPTER XVII**

### **APPROVAL OF TARIFFS APPLIED BY THE REPRESENTATIVE COLLECTIVE MANAGEMENT ORGANISATION TO ITS COLLECTIVE MANAGEMENT OF RIGHTS**

#### **81. Submission of the tariff**

##### **Section 145**

(1) HIPO shall be responsible for the preparation of the tariffs applied by the representative collective management organisation to its collective management of rights to the minister for approval.

(2) The tariff applied by the representative collective management organisation to its collective management of rights shall be approved by the minister responsible for justice.

(3) The procedure for the approval of the tariffs applied by the representative collective management organisation to its collective management of rights – including the opinion procedure thereof – shall not be deemed an administrative authority case, however, Section 25 of the Code of General Administrative Procedure shall apply to the request for administrative assistance.

##### **Section 146**

(1) The representative collective management organisation shall submit to HIPO, by 1 September each year at the latest, the tariff set annually for the various types of use falling within the scope of collective management activities it is authorised to pursue as a representative collective management organisation in the permit granted pursuant to Section 33(2), for the purpose of conducting the approval procedure pursuant to this Section.

(2) The planned starting date for the application of the tariff submitted according to paragraph (1) shall be 1 January in the next year.

(3) The representative collective management organisation – in the case of a tariff submitted jointly by several representative collective management organisations, all the representative collective management organisations together – may amend or withdraw the tariff submitted pursuant to paragraph 1 until 20 days before the end of the administrative time limit open to the minister responsible for justice.

(4) In the event of withdrawal pursuant to paragraph 3, the minister responsible for justice shall

not take a decision on the tariff. The representative collective management organisation shall immediately notify the major user and the representative organisation of users referred to in Section 151(3) to (4) and Section 151(7) of the fact of withdrawal.

(5) Paragraph (3) shall not affect amendments of a technical nature made in connection with the publication in the Official Notices annexed to the Hungarian Official Gazette in consultation with the representative collective management organisation.

#### **Section 147**

(1) Following the decision of HIPO on the grant of the permit pursuant to Section 33(2) became final and binding, the representative collective management organisation may also submit to the HIPO the tariff specified in Section 146(1) at a time different from that defined in Section 146(1), but not later than within four months after the decision on granting the permit became final and binding, for the approval procedure, unless the application period of the tariff thus filed would be less than six months when calculated with the method in paragraph (2).

(2) In the case specified in paragraph (1) the planned start of the application period shall not be earlier than the first day of the fourth month after the month when the tariff was submitted, and the application period of the tariff shall end on the last day of the same calendar year.

#### **Section 148**

(1) The tariff submitted for the approval procedure shall be accompanied with an explanation of the reasons and documents supporting the explanation.

(2) The representative collective management organisation shall attach, as an annex to the tariff submitted for the purposes of the approval procedure

(a) an impact assessment assessing the likely economic impact on users and right-holders (hereinafter the “impact assessment”); and

(b) a justification of the compliance of the tariff with the copyright laws.

(3) Where a tariff submitted for the purposes of the approval procedure is intended to fix for a new period a tariff already in force, the representative collective management organisation shall only be required to attach the annexes referred to in paragraph 2, if it submits a tariff

(a) establishing a significantly different tariff structure from the tariff in force,

(b) containing an increase in royalties per user group in excess of the consumer price index for the previous calendar year as determined by the Central Statistical Office for the previous calendar year for the royalties included in the tariff, or

(c) expanding the scope of users liable to pay the same royalty.

(4) The representative collective management organisation shall not be required to attach an impact assessment pursuant to paragraph (2)(a) to the tariff if, concerning the content and application of the tariff submitted for approval, it attaches

(a) an agreement concluded with all affected major users and representative organisations of user interests referred to in paragraphs (3) to (4) of Article 151, or

(b) a statement by all affected major users and representative organisations of user interests in support of the tariff referred to in paragraph (7) of Article 151.

(5) In order to determine the methodology on the basis of which the impact assessment under paragraph (2)(a) is to be carried out, the representative collective management organisation shall, no later than the last day of the third month preceding the submission of the tariff, request the opinion of

(a) the HIPO, and

(b) the major users and representative organisations of user interests referred to in paragraphs (3)

to (4) of Section 151 and Section 151(7).

(6) Major users and representative organisations of user interests within the meaning of paragraphs (3) to (4) of Article 151 or paragraph (7) of Article 151, if they wish to express an opinion pursuant to paragraph (5)(b), shall send their opinion to the representative collective management organisation no later than 20 days after the request for an opinion.

(7) The HIPO shall send its reasoned opinion pursuant to paragraph (5)(a) to the representative collective management organisation no later than 30 days from the date of its request for an opinion.

(8) The President of the HIPO shall not include as an expert in the opinion procedure pursuant to Article 150 a major user or representative organisation of user interests pursuant to Section 151 (3) to (4) or Section 151 (7) which did not participate in the preparation of the impact assessment pursuant to paragraph (2) a) despite the request of the collective management organisation or which refused to provide the data required for the preparation of the impact assessment in whole or in part without legal basis.

(9) In connection with the impact assessment pursuant to paragraph (2)(a), the representative collective management organisation, the HIPO and the minister responsible for justice may use the user data obtained in the course of the approval procedure only, and may not disclose or transfer them to third parties.

(10) Authors of works broadcast by radio and television organisations, works included in the programmes of those who transmit their own programmes to the public by wire, and works made available on video or audio media, performers of performances, and producers of films and sound recordings, performers or producers of films and sound recordings for the private copying of their performances, shall be accompanied by a survey which is representative of the extent of private copying, instead of an impact assessment. In order to determine the methodology of the survey, the views of representative organisations representing major users and user interests should be sought. The results of the survey shall be made available to the participants in the tariff approval procedure.

### **Section 149**

In the course of the procedure for the approval of the tariff, the minister responsible for culture, the minister responsible for trade, tourism and catering, the minister responsible for justice, HIPO and the other participants of the procedure shall communicate with one another by electronic means. HIPO shall communicate with the representative collective management organisations as well as with the users and the representative organisation of user interests by electronic means.

## **82. Opinion procedure regarding the tariff**

### **Section 150**

(1) After receiving the tariff submitted for the approval procedure HIPO shall, without delay, request major users and representative organisations of user interests, as well as the minister responsible for culture and – in respect of tariffs applicable to public performance – the minister responsible for trade, tourism and catering – to give an opinion thereon. In respect of the fee specified in Sections 20 and 21 of the Copyright Act, those obliged to pay the fee and their representative organisations shall be considered “users” and “representative organisations of user interests”.

(2) The opinion procedure under paragraph (1) for the approval of the tariff shall be carried out within sixty days of the submission of the tariff to HIPO. In justified cases the president of HIPO may extend the deadline herein before its expiry by an additional thirty days.

(3) When submitting the tariff to the minister responsible for justice, the HIPO shall at the same

time inform the representative collective management organisation of the fact of the submission and of the deadline for exercising the right of amendment and withdrawal pursuant to paragraph (3) of Article 146.

### **Section 151**

(1) During the opinion procedure of the procedure for the approval of the tariff, HIPO may request the opinion of any users and representative organisations of user interests.

(2) HIPO shall be obliged to request the opinion of those major users and representative organisations of user interests which notify in writing their intent to give an opinion in response to the notice published on the website of HIPO immediately after the submission of the tariff in the relevant year specifically for this purpose, within fifteen days of the publication of the notice, and concurrently submit a statement pursuant to paragraph (3) or (4), as well as – in the case of representative organisations of user interests – their instrument of constitution in effect.

(3) “Major user” shall mean the person which verifies – by the statement issued by the affected representative collective management organisation in response to its request – that in the calendar year preceding the year of the submission, the royalties it paid reached 5 percent of the total royalties paid based on the relevant tariff or by the user category defined therein.

(4) “Representative organisation of user interests” shall mean a legal entity with registered membership which, according to its instrument of constitution is active nationwide, and its scope of activity covers the representation of the interests of the users concerned during the opinion procedure related to the tariff, and further which verifies – by the statement issued by the representative collective management organisation in response to its request – that the membership of the representative organisation comprises users affected by the relevant tariff and, in the calendar year preceding the year of the report, have paid at least 10 percent of the total royalties paid based on the relevant tariff or by the user category defined therein.

(5) After receiving the request of the user or the representative organisation of users, the representative collective management organisation shall forthwith issue the statement under paragraph (3) or (4) and forward it to the requesting user or representative organisation as well as to HIPO.

(6) In the event that HIPO granted a permit to more than one representative collective management organisation, in the procedure for the first-time approval of the tariff of the representative collective management organisation having obtained a permit later, major users and representative organisations of user interests shall mean those considered as major users or representative organisations of user interests by the previously authorised representative collective management organisation considering the tariffs applied in the previous year. The first time when the procedure for the approval of the tariff of the newer rights management organisation is conducted, the statement under paragraph (3) or (4) needs not be submitted.

(7) If during the calendar year prior to the submission there was no tariff based on which the users could have paid royalties in accordance with the tariff filed for approval, that person or organisation which is likely to fulfil the criteria in paragraphs (3) and/or (4) during the application period of the new tariff shall also be considered a major user or representative organisation of users.

(8) At the same time as the request for an opinion pursuant to Section 150(1) or (1) and (2), HIPO shall send to the opinion provider

- a) the draft tariff,
- (b) the justification for the tariff,
- (c) the impact assessment pursuant to point (a) of Section 148(2); or
- d) the assessment pursuant to Section 148(9).

(9) The President of HIPO shall suspend the opinion procedure for a maximum period of three months at the joint request of

- a) the representative collective management organisation, and
- (b) the major user and/or representative organisation of users.

(10) The opinion procedure shall continue if

- (a) this is requested by any of the parties who participates in the procedure for approval, or
- (b) three months have passed since the suspension was ordered.

(11) In the case of suspension of the opinion procedure, the representative collective management organisation may specify a date other than the date laid down in Article 146(2) as the date of application of the tariff, provided that the period of application of the tariff

- (a) cannot be less than six months, and
- (b) lasts until the last day of the calendar year in which the tariff starts.

(12) The time limit for the opinion procedure shall not include the period of suspension.

### **83. Decision on the approval of the tariff**

#### **Section 152**

(1) The tariff applied in the course of collective management of rights by the representative collective management organisation shall be approved by the minister responsible for justice at the proposal of HIPO after the opinion procedure pursuant to Section 150. Approval shall be a necessary condition for the application of the tariff and its publication in the Official Notices annexed to the Hungarian Official Gazette.

(2) The approval of the tariff in accordance with paragraph (1) shall not preclude or affect the enforcement of other laws in respect of the tariff.

#### **Section 153**

(1) The minister responsible for justice shall approve the tariff applied to the collective management of rights performed as a representative collective management organisation if it is consistent with the laws pertaining to copyright.

(1a) When examining the conformity with copyright laws, the minister responsible for justice shall decide on the basis of the copyright laws and the documents available to him in connection with the approval procedure, without taking any specific evidence.

(2) The minister shall approve a tariff containing royalty increases by user category in excess of the consumer price index calculated by the Central Statistical Office for the previous calendar year, or extends the scope of users who are obliged to pay the same royalty, only based on the decision of the Government – initiated by the minister.

(2a) Where paragraph 2 applies, the administrative time limit available to the minister responsible for justice shall be extended by 30 days.

(3) If the submitted tariff contains the increase in a fee which had been higher earlier, compared to the tariff in effect at the time of the submittal, in the course of applying the provisions in paragraph (2) the rate of increase shall be determined based the tariff which had been the highest previously, provided that the application period of the tariff that had established this highest fee has not expired for more than three years.

(4) The provisions in paragraph (2) need not be applied if the scope of users affected by the tariff is extended based on a law.

(5) The minister responsible for justice shall make its decision in the form of a decision within thirty days following the receipt of the proposal of HIPO.



(6) The decision adopted by the minister responsible for justice shall contain:

*a)* the name of the minister responsible for justice, the case number and the name of the administrator,

*b)* the name and registered seat of the collective management organisation,

*c)* the tariff affected by the decision,

*d)* in the operative part:

*da)* the decision of the minister responsible for justice, and information regarding the possibility of remedy, the place and deadline for submitting an appeal, and the remedy procedure,

*db)* the amount of the procedural costs,

*dc)* the decision on the payment of the procedural costs,

*e)* in the reasoning:

*ea)* the facts ascertained, including the presentation of the results of the opinion procedure conducted according to Sections 150 and 151,

*eb)* the proposal made by HIPO regarding the approval of the tariff and the presentation of the reasons for the proposal,

*ec)* the findings of the minister responsible for justice concerning the tariff's compliance with copyright-related laws and the reasons for them, which differ from the position taken by HIPO at the opinion procedure or are not affected by the position taken by HIPO at the opinion procedure,

*ed)* reference to the laws underlying the decision of the minister responsible for justice,

*ee)* reference to the law establishing the competence of the minister responsible for justice,

*ef)* if the approval of the tariff is subject to a Government decision pursuant to paragraph (2), the presentation of the decision of the Government and the reasons therefor,

*f)* the date and place of the decision taken, the name and position of the person exercising the competence, as well as the name and position of the issuer of the decision if it is not the same as the above,

*g)* signature of the issuer of the decision and the stamp of the authority.

(7) The decision of the minister responsible for justice shall be communicated

*a)* to the representative collective management organisation having submitted the tariff,

*b)* to HIPO,

*c)* to the minister responsible for culture and – inasmuch as tariffs for public performance are concerned – the minister responsible for trade, tourism and catering,

*d)* to those major users and representative organisations of user interests which submitted their opinion regarding the tariff pursuant to Section 151.

(8) The decision of the minister responsible for justice shall not be subject to appeal, and shall become final and binding upon its communication.

(9) If the decision of the minister responsible for justice on the approval of the tariff of the representative collective management organisation contains a typing error in respect of a name or number or otherwise, or there is calculation error, the minister shall correct it – if necessary, after hearing the representative collective management organisation having submitted the tariff – provided that the error has no bearing on the substance of the case, the amount of the procedural costs or the obligation to bear costs. The minister responsible for justice shall correct the error

*a)* by making a note on the original copy and – if available – the additional authentic copies of the decision,

*b)* by replacing the decision after withdrawing the erroneous one, or

*c)* by adopting a corrective decision.

(10) The correction of the decision pursuant to paragraph (9) shall be communicated to those who had been notified of the decision to be corrected. The correction of the decision is not subject

to an appeal.

(11) If the decision of the minister responsible for justice on the approval of the tariff of the representative collective management organisation omitted any statutory content element stipulated in paragraph (6) or failed to address any matter of substance, the minister responsible for justice shall supplement the decision.

(12) The decision may not be supplemented pursuant to paragraph (11) if

- a) one month has already elapsed since the decision became final and binding, or
- b) if this would compromise any right that was acquired and exercised in good faith.

(13) The minister responsible for justice may supplement the decision

- a) by way of issuing a separate supplementing decision and – if possible – making a note of this fact on the original copy and the additional authentic copies of the decision, or
- b) by withdrawing the incomplete decision and replacing it with a decision containing the original decision and the supplementing decision in consolidated structure.

(14) The supplement to the decision shall be communicated to those who had been notified of the decision that needed to be supplemented. The supplement to the decision shall be subject to the same legal remedies as the original decision.

#### **Section 154**

(1) The decision of the minister responsible for justice on the approval of the tariff may be contested by any organisation which is entitled to give an opinion on the tariff and the relevant representative collective management organisation before the Budapest-Capital Regional Court in administrative court action.

(2) No interim relief shall be allowed in the proceedings pursuant to paragraph (1).

(3) The difference between the fees payable according to the decision of the court adopted in the new proceedings and pursuant to the annulled decision shall be set off.

(4) If the decision is contested, the court may oblige the requesting party who would have to pay fees under the tariff pursuant to the decision to lodge security. The amount of the security shall be equal to the sum of the fees payable based on the tariff approved in the contested decision, or the disputed or unpaid portion thereof, unless the court, considering all circumstances of the case, decides to reduce it.

#### **Section 155**

(1) For the purposes of contesting them on grounds of unfair contracting terms, tariffs shall not be deemed to have been established by a law or having been specified in accordance with the provision of a law.

(2) In the event that the tariff is contested in court under paragraph (1) at the request of the collective management organisation the court may oblige the opposing party to lodge security. To the amount of the security, the rules stipulated in Section 154(4) shall apply as appropriate.

### **84. Publication of the tariff**

#### **Section 156**

(1) The minister responsible for justice shall publish the tariff, if approved, in the Official Notices annexed to the Hungarian Official Gazette.

(2) Until the publication of the tariff in line with the provisions in paragraph (1), the tariff established and approved for the previous period – and published earlier in the Official Notices annexed to the Hungarian Official Gazette – shall apply even if its application period has

meanwhile expired.

(3) The rules in paragraph (2) shall also apply if the court – pursuant to Section 154 – sets aside the decision of the minister responsible for justice on the approval in a final and binding decision.

(4) The rules referred to in paragraph 2 shall also apply in the event that the representative collective management organisation withdraws the tariff submitted for approval.

## ***PART FIVE***

### ***CLOSING PROVISIONS***

#### **CHAPTER XVIII**

#### **AUTHORISATIONS**

##### **Section 157**

(1) The Government shall be authorised to regulate in a decree:<sup>2</sup>

*a)* the mandatory contents of the information to be provided before the acceptance of an authorisation to manage rights and of the authorisation to manage rights;

*b)* the mandatory contents of the individual statement to be made by the managers and the supervisory board members in detail;

*c)* the special rules of keeping of accounts and financial reporting of collective management organisations;

*d)* the detailed rules of the information to be provided by the collective management organisation in order to locate non-identified or non-located rightholders;

*e)* the mandatory contents of the regular report to be provided by the collective management organisation and the independent management entity to the rightholders they represent, as well as of the regular report to be provided by the collective management organisation to the other collective management organisations it represents;

*f)* the mandatory contents of the detailed information to be provided by the collective management organisation granting multi-territorial licences to the rightholders together with each royalty payment;

*g)* the detailed rules of communication by electronic means in authority procedures related to management of rights;

*h)* other data required for the registration of the activity of collective management organisations and independent management entities but not specified in this Act;

*i)* the detailed rules for issuing a permit for the performance of collective management activities as a representative collective management organisation and for the modification of the permit;

*j)* the detailed rules of keeping the register of collective management organisations and independent management entities;

*k)* the content of the compulsory semi-annual report to be filed by the collective management organisation with HIPO and the method of reporting;

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<sup>2</sup> See Government Decree No. 216/2016 (VII. 22.)

*l)* the detailed rules of establishing and paying the supervisory fee;  
*m)* the detailed rules of the supervisory procedure;  
*n)* the detailed rules of electronic communication in a procedure for the approval of the tariffs of representative collective management organisations.

(2) The minister responsible for justice shall be authorised to regulate in a decree the amount of the administrative service fee payable for the registration under Section 33(1) and Section 71 (including the notification of changes as specified in Section 86), as well as the amount of the administrative service fee payable for issuing the permit for the performance of collective management activities as a representative collective management organisation and the application for the modification of such permit, and further, the method of collecting and refunding such fees, in agreement with the minister responsible for tax policy, the minister responsible for culture and the minister exercising supervision over HIPO, after consultation with the president of HIPO.<sup>3</sup>

## CHAPTER XIX

### RULES ON THE ENTRY INTO FORCE OF THE ACT

#### **Section 158**

(1) This Act shall enter into force, with the exceptions specified in paragraphs (2) and (3), on the eighth day after its promulgation.

(2) Sections 1 to 157, Sections 159 to 164, Section 166 and Sections 173 to 194 shall enter into force on the thirty-first day after promulgation.

(3) Section 171 shall enter into force on 1 October 2017.

## CHAPTER XX

### TRANSITIONAL PROVISIONS

#### **Section 159**

(1) The provisions in this Act pertaining to

- a)* the distribution and payment of rights revenues,
- b)* the use of rights revenues for community objectives,
- c)* the management of rights revenues due to rightholders who could not be identified or located

shall be applied to rights revenues collected after the entry into force of this Act.

(2) The decision-making body of the collective management organisation may decide that the provisions of this Act referred to in paragraph (1) are to be applied to rights revenues collected after 1 January 2016.

(3) The rules stipulated in this Act with respect to procedures related to collective management organisations and independent management entities shall be applied to procedures commenced after the entry into force of this Act.

(4) The provisions in this Act pertaining to the annual transparency report (Section 55) shall first be applied to the financial year starting on 1 January 2017.

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<sup>3</sup> See Decree No. 19/2016 (IX. 5.) of the Ministry of Justice

### **Section 159/A**

The provisions of this Act as established by Act L of 2017 amending certain Acts in respect of the entry into force of the Act on the Code of General Administrative Procedure and the Act on the Code of Administrative Court Procedure (hereinafter “Act L of 2017”) shall apply to proceedings commenced or repeated after the entry into force of Act L of 2017.

### **Section 159/B**

If, in the 2023 approval procedure, the representative collective management organisation is required to include an impact assessment pursuant to Article 148(2)(a) with its tariff, it shall,

- (a) notwithstanding Article 146(1), send the tariff to the HIPO for the tariff approval procedure by 1 November 2023, and,
- (b) notwithstanding Article 146(2), the planned date of application of the submitted tariff shall be 1 March 2024.

## **85. Compliance with information obligations under previously granted authorisations to manage rights**

### **Section 160**

(1) The collective management organisation shall be required to meet its obligation to provide information under Section 14(1) to those rightholders who had granted an authorisation to manage rights to the collective management organisation before the entry into force of this Act by 10 October 2016 at the latest.

(2) The collective management organisation shall meet its obligation under Section 17(3) – to make available information on its website – to rightholders already represented at the time when this Act enters into force, as specified in Section 17, by 10 October 2016. The rightholders shall receive the information in writing at the time of the first royalty payment after the entry into force of this Act.

## **86. Transitional provisions for collective management organisations registered in a procedure commenced prior to the entry into force of the Act**

### **Section 161**

(1) Collective management organisations entered into the register by HIPO based on a procedure which started prior to the entry into force of this Act shall be considered to hold the permit under Section 33(2) for the collective management activities in the register.

(2) The collective management organisations in paragraph (1) shall report to HIPO those data listed in Section 84, which have not been entered in the HIPO register, within 60 days following the entry into force of this Act, or within 60 days after the decision on the registration becomes final and binding, whichever is later.

### **Section 162**

(1) The organisations specified in Section 161(1) shall make their statute and other rules and policies referred to in Section 26 *b) to d)* compliant with the provisions of this Act, during their first amendment after the entry into force of this Act, but no later than within six months after the entry into force of this Act, or within 30 days after the decision on the registration becomes final

and binding, whichever is later.

(2) The collective management organisation specified in Section 161(1) shall fulfil its reporting obligation under Section 54(1) within 30 days months after the entry into force of this Act, or within 30 days after the decision on the registration becomes final and binding, whichever is later.

(3) The collective management organisation specified in Section 161(1) shall have in place the conditions for communications with rightholders, users and other collective management organisations by electronic means as stipulated in this Act no later than within six months after the entry into force of this Act, or within 30 days after the decision on the registration becomes final and binding, whichever is later.

(4) The organisation shall be deemed to fulfil its obligations under paragraphs (1) and (3) if its decision-making body decides to make the necessary amendments to its rules and policies by stipulating a date for entry into force within the deadline set there at the latest.

## **87. Access to multi-territorial licencing**

**Section 163<sup>4</sup>** *[repealed]*

### CHAPTER XXI

#### COMPLIANCE WITH EUROPEAN UNION LAW

##### **Section 164**

Sections 1 to 163 and Sections 173 to 194 of this Act serve to comply with 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 musical works for online use in the internal market.

##### **Section 165**

Sections 168 to 172 of this Act contain provisions necessary for the implementation of Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs).

### CHAPTER XXII

#### AMENDING PROVISIONS

## **88. Amendment of Act XXXIII of 1995 on the protection of by patents**

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<sup>4</sup> Repealed by Section 12 of Act CXXX of 2010. Ineffective from 29 July 2016.

**Section 166<sup>5</sup>** Section 18 serves to comply with Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC

**Section 167<sup>6</sup>** *[repealed]*

## **89. Amendment of Act XI of 1997 on the Protection of trademarks and geographical indications**

**Sections 168 to 170<sup>7</sup>** *[repealed]*

**Section 171<sup>8</sup>** *[repealed]*

**Section 172<sup>9</sup>** *[repealed]*

## **90. Amendment of certain provisions in the Copyright Act**

**Sections 173 to 193<sup>10</sup>** *[repealed]*

## **91. Amendment of Act XXIII of 1993 on the National Cultural Fund**

**Section 194<sup>11</sup>** *[repealed]*

### *Annex 1 to Act XCIII of 2016*

#### ***Annual transparency report***

1. Information to be provided in the annual transparency report referred to in Section 55 of the Act in respect of the activities performed by the collective management organisation in any given year:

1.1. A balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and financial statements comprising a cash-flow statement.

1.2. A report on the activities of the collective management organisation.

1.3. Information on cases when the collective management organisation was prevented from making an offer in response to the user's call for an offer.

1.4. A description of the legal and governance structure of the collective management organisation.

1.5. Information on any entities directly or indirectly owned or controlled, wholly or in part, by the collective management organisation.

1.6. Information on the total amount of remuneration paid to the members of the supervisory

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<sup>6</sup> Repealed by Section 12 of Act CXXX of 2010. Ineffective from 6 July 2016.

<sup>7</sup> Repealed by Section 12 of Act CXXX of 2010. Ineffective from 6 July 2016.

<sup>8</sup> Effective from 1 October 2017.

<sup>9</sup> Repealed by Section 12 of Act CXXX of 2010. Ineffective from 6 July 2016.

<sup>10</sup> Repealed by Section 12 of Act CXXX of 2010. Ineffective from 29 July 2016.

<sup>11</sup> Repealed by Section 12 of Act CXXX of 2010. Ineffective from 29 July 2016.

board and managers [including persons referred in Section 30(5) herein] of the collective management organisation in the previous year, and on other benefits granted to them.

1.7. The financial information referred to in point 2 of this Annex;

1.8. A special report on the use of any amounts deducted for community objectives of rightholders, containing the information referred to in point 3 of this Annex.

2. Financial information to be provided in the annual transparency report:

2.1. Financial information on rights revenue, per category of economic rights managed (e.g. communication to the public) and per type of use (e.g. television or radio broadcasting, making works available for the public in downloadable mode or otherwise, public performance of background music), 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).

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

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

2.2.2. Operating and financial costs, with a breakdown per category of economic rights managed and, where costs are indirect and cannot be attributed to one or more categories of economic rights, an explanation of the method used to allocate such indirect costs, only with regard to the collective management of rights, including management fees deducted from or offset against rights revenue or any income arising from the investment of rights revenue;

2.2.3. Operating and financial costs with regard to services other than the collective management of rights, including services for community objectives provided to rightholders;

2.2.4. Resources used to cover costs;

2.2.5. Deductions made from rights revenues, with a breakdown per category of economic rights managed, per type of use and the purpose of the deduction (such as costs relating to the collective management of rights or to services for community objectives);

2.2.6. The percentages that the cost of the collective rights management and other services provided by the collective management organisation to rightholders represents compared to the rights revenue, per category of economic rights managed, and, where costs are indirect and cannot be attributed to one or more categories of economic rights, an explanation of the method used to allocate such indirect costs;

2.3. Financial information on amounts due to rightholders, with a comprehensive description of at least the following items:

2.3.1. The total amount attributed to rightholders, with a breakdown per category of economic rights managed and type of use;

2.3.2. The total amount paid to rightholders, with a breakdown per category of economic rights managed and type of use;

2.3.3. The frequency of payments, with a breakdown per category of rights managed and per type of use;

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

2.3.5. The total amount attributed to but not yet distributed to rightholders, with a breakdown per



category of economic rights managed and type of use, and indicating the financial year in which those amounts were collected;

2.3.6. Where a collective management organisation has not carried out the distribution and payments within the deadline set in Section 40(1) and (2) herein, the reasons for the delay;

2.3.7. The total value of the amounts deemed unpayable pursuant to Section 42(1) herein, along with an explanation of their use.

2.4. Information on relationships with other collective management organisations, with a description of at least the following items:

2.4.1. Amounts received from other collective management organisations and amounts paid to other collective management organisations, with a breakdown per category of economic rights managed, per type of use and per organisation;

2.4.2. Administrative costs and other deductions from the revenue due to other collective management organisations, with a breakdown per category of economic rights managed, per type of use and per organisation;

2.4.3. Administrative costs and other deductions from the amounts paid by other collective management organisations, with a breakdown per category of economic rights managed and per organisation;

2.4.4. Amounts distributed directly to rightholders originating from other collective management organisations, with a breakdown per category of economic rights managed and per organisation.

3. Information to be provided in the special report referred to in point 1.8 above:

3.1. The amounts deducted for the community objectives of the rightholders, with a breakdown per type of purpose and, for each type of purpose, with a breakdown per category of economic rights managed and per type of use;

3.2. An explanation of the use of the amounts specified in point 3.1 above, with a breakdown per type of purpose including the costs of managing amounts deducted for the community objectives of the rightholders, and of the amounts used or set aside for community objectives.