

Ministry of Culture
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Copyright association of sound engineers
Lipová alej 747/16
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Your letter file No.

Our file No.

Authorised officer/phone line

In Prague on

10145/2003

15.11.2006

DECISION

Ministry of Culture decided under Section 98 of the Act No. 121/2000 Coll., about copyright, rights connected with copyright and about amendments to certain laws (the Copyright Act), as amended, in proceedings conducted on petition of Sound engineers - Authors' Protective Association, Company ID: 266 30 192, registered by the Ministry of Interior on 5. 5. 2003, under file No.: VS/1-1/53797/03-R, with its seat at Lipová alej 747/16, Prague 5, 154 00, filed on 12. 6. 2003,

as follows:

Ministry of Culture, under Section 98 subs. 6 and 7 of the Copyright Act, grants to the Protective Copyright association of sound engineers - Authors the license to collective management of the authors and other rights holders economic copyright, under Section 95 of the copyright Act, to the works of the sound engineers (so called sound mixer), in the following extent:

1. Rights subjected to compulsory collective rights management

a) right for remuneration for making of a reproduction for personal use on the basis of an audio or audiovisual fixation or any other fixation by the transfer of its content by means of a technical device to a blank carrier of such fixation under Section 96 (1) let. a) point 3 of the Copyright Act; this entitlement includes only division of the remunerations which collects, on the basis of the granted license, the collective management organization OSA – Protective union of the authors for rights to musical works, with its seat at Čs. armády 20, Prague 6, to rights holders mentioned in this sentence;

b) right to an equitable remuneration for the rental of the original or a copy of the work fixed in an audio or audiovisual fixation under Section 96 (1) let. b) of the Copyright Act; this entitlement includes only division of the remunerations which collects, on the basis of the granted license, the collective management organization OSA – Protective union of the authors for rights to musical works, with its seat at Čs. armády 20, Prague 6, to right holders mentioned in this sentence;

c) the right to use by cable retransmission of the works under Section 96 (1) let. c) of the Copyright Act.

2. Rights subjected to voluntary collective rights management

a) right for reproduction of the work under Section 12 (4) let. a) and Section 13 of the Copyright Act;

b) right for communication of the original or reproduction of the work under Section 12 (4) let. b) and Section 14 of the Copyright Act;

c) right for communication of the work to the public in such way, that anyone can access it at a place and time at their own discretion, especially by computer or similar network, under Section 12 (4) let. f) and Section 18 (2) of the Copyright Act;

d) right for non-theatrical performing of the work, live or from the record, and right to retransmission of the performance under Section 12 (4) let. f) point 1 and Sections 19 and 20 of the Copyright Act,

e) right for broadcasting of the work by radio or TV under Section 12 (4) let. f) point 2 and Section 21 of the Copyright Act;

f) right for performing radio or television broadcast of the work under Section 12 (4) let. f) point 4 and Section 23 of the Copyright Act.

Reasoning

The Sound engineers – Authors’ Protective Association (hereafter only “OAZA”) filed, on 12. 6. 2003, a petition for granting license to collective management of economic copyright of the authors and other right holders to the Ministry of Culture, as to the date none of the collective management organizations in the Czech Republic had not had license for execution for collective management for authors – sound engineers, though under Section 96 of the Copyright Act the execution of certain rights through collective management organization was mandatory.

In their petition OAZA further outlined the process of creative activity of those sound engineers– authors (so called sound mixers) with conclusion that the result of this creation meets Section 2 of the Copyright Act and enjoyed protection under the Copyright Act.

For this reason, OAZA considered collective management for authors – sound engineers purposeful and fully meeting requirements of the Copyright Act, and asked for granting license to execution of mandatory and voluntarily collectively managed rights, in the extent mentioned in the verdict.

On 8. 9. 2003, the Ministry of Culture issued decision file No.: 10145/2003 by which it dismissed the OAZA’s petition, especially because of the ineffectiveness of the collective management and non-securing reciprocity of execution of these collectively managed rights for foreign authors in the Czech Republic and for Czech authors abroad.

On 23. 9.2003, OAZA filed objections against the denial decision. By the Minister of Culture's decision dated 15. 1. 2004, file No.: 10145/2003, the affected decision was upheld.

On 1. 3. 2004, OAZA filed court action against the decision of the Minister of Culture and the preceding decision of the first instance and subsequently, on 28. 2. 2005, amended the action.

On 14. 10. 2005, the Municipal court in Prague issued under file No.: 5 Ca 39/2004-75 a sentence by which it cancelled the Minister of Culture's decision and returned the case for further proceedings. In the reasoning the Municipal court came to conclusion that the administrative body had not sufficiently considered to which extent and whether the sound engineer's activity could be a subject to copyright protection, whether the result of the sound engineer's activity could meet requirements of the work under the Copyright Act only in connection with other author's work, and whether sound engineer's work could be identified with musical work. In the reasoning of the sentence the court further found error of the administrative body in considering purposefulness of the collective management, when the administrative body took into account only Section 98 (6) and it failed to assess fulfilment of attributes of purposefulness under Section 98 (5) of the Copyright Act as well. The court noted that the ministry admitted that in certain cases the result of the sound engineer's activity could be an author's work and, in view of the fact that certain economic copyright or connected economic rights might be executed only through collective management organization, it concluded that without existence of a collective management organization these rights could not be executed at all. It did not accept the argument of the ministry that protection of sound engineers – authors' rights could be secured through already existing collective management organizations – in this respect it found both affected decisions unreviewable for lack of reasoning. The court sided with the opinion of the Claimant and the Defendant that to the foundations of the administrative body's decision there should be added expert evaluation or expert statement which making should be provided by the administrative body.

On 6. 3. 2006, the Minister of Culture issued decision file No.: 3525/2006 (which came into legal force on 9. 3. 2006) by which he cancelled the affected decision and returned the case to the administrative body of first instance for further proceedings and ruling.

The administrative body of first instance, being bound by the legal opinion of the court and the decision of the minister of culture, ordered at the Academy of Musical Arts, Film and Television faculty, with its seat at Smetanovo nábřeží 2, Prague 1, an expert evaluation of creative aspects of the sound engineers' profession works. Expert evaluation No.: 032006 which was delivered to the Ministry on 18. 5. 2006 confirmed the opinion that the result of creative activity in the profession of sound engineer (sound mixer/sound designer) could form creations with parameters of the author's work.

Considering all newly established facts, especially on the basis of the above-mentioned expert evaluation and in connection with requested additional information and written materials, especially regarding dividing order, prerequisites for personal and operating resources for execution of collective management and completion of works of the authors and right holders which had manifested their will to be represented by collective management organization

OAZA, the administrative body repeatedly reviewed the petitioner's petition for license for collective management. The administrative body evaluated all documents obtained during proceedings in such way that the petitioner had met at filing their petition and its subsequent amendment all requirements which were imposed to them by the Copyright Act in sections 98 subs. 2 and 3, including fulfilment of purposefulness' requirement for execution of mandatory collective management, which the petitioner had demanded. The administrative body then came to the conclusion that all requirements stated in Section 98 (6) of the Copyright Act necessary for license for collective management had been met. The administrative body therefore granted the license in the demanded extent save for narrowing the right for remuneration for making of a reproduction for personal use on the basis of an audio or audiovisual fixation and the right to an equitable remuneration for the rental of the original or a copy of the work fixed in an audio or audiovisual fixation. In the case of both those rights the license for collecting the concerned remunerations for all authors and other right holders is held by OSA - Protective union of the authors for rights to musical works, and therefore it was unavoidable to restrict the demanded rights only to dividing of the collected remunerations to the respective authors in the manner ensuing from Section 98 (7), the sentence after semicolon.

By written statement dated 14. 11. 2006 the participant withdrew his right to comment the documents which were foundation to the decision under Section 36 (3) of the Administrative Procedures Code.

Instruction

Objections against this decision can be filed to the Ministry of Culture within 15 days after notification of this decision. The Minister of culture shall decide on the objections.

JUDr. Pavel Zeman
director of the copyright department

Confirming the correctness: unreadable signature
Mgr. Jitka Meklešová