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ACT
of 21 January 2005,
which amends Act No. 121/2000 Coll., on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws (Copyright Act)

The Parliament has adopted the following law of the Czech Republic:

Section I

Act No. 121/2000 Coll. on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws (Copyright Act) shall be amended as follows:

1. In Article 14, paragraph 2, the words "on the territory of the Czech Republic" shall be replaced with the words: "in the territory of a member state of the European Union or any other party to the European Economic Area Agreement", and the words "for the territory of the Czech Republic" shall be replaced with the words: "for the territory of a member state of the European Union or any other party to the European Economic Area Agreement".

2. In Article 22, paragraph 3 shall be added with the following wording:

"(3) Enabling the reception of the simultaneus, unabridged and unaltered radio or television broadcast on receivers of the same building, or a complex of buildings spatially or functionally pertaining to one another, by means of common block aerials shall not be deemed to be use of the work under the condition that it is cnly receiving terrestrial and non-encoded broadcasting that is enabled and the common receiving is not commercially utilised.".

3. At the end of Article 23, the following sentences shall be added: "Making the work available by means of devices technically capable of receiving the radio and television broadcast to the persons accommodated within providing services connected with the accommodation if such devices are located in the spaces designed for the private use of the accommodated persons shall not be under Article 18 paragraph 3 deemed to be the performing of the radio and television broadcast. Likewise making the work available to patients in providing healthcare in the healthcare facilities shall not be under Article 18 paragraph 3 deemed to be the performing of the radio and television broadcast."

4. In Article 98, at the end of paragraph 3, the full stop shall be replaced with the comma, and new Subparagraph f) shall be added with the following wording:
"f) proposal for the amount of the remuneration for the individual manner of the use of the items of protection.".

5. In Article 100, paragraph 1 h) shall have the following wording:
"h) to conclude, on reasonable and equal terms, with the users of items of protection, or with bodies authorised to protect the interests of users associated in such bodies who use the items of protection in the same or similar manner, or with persons obliged to pay remuneration in compliance with this Act, agreements by which :

1. the user is granted authorisation to exercise the right to use the item of protection for which the collective administrator administers such right collectively,
2. the amount and manner of payment of remuneration is set for the user pursuant to Article 96 paragraph (1) a) items 1 and 2, and clause b) and its disbursement monitored,
3. the amount and manner of payment of remuneration is set for the user pursuant to Article 19, paragraphs 1 and 2, and all that based on the number of persons to whom the work is communicated;
4. the manner of payment of remuneration by the user, provided for by this Act, is determined,"

6. In Article 100, paragraph 1 s) shall have the following wording:

"s) publish, in a suitable manner enabling also remote access, a proposal for the amount of remuneration or a manner of its determination for the individual manners of the use of the items of protection."

7. In Article 100, paragraphs 5 and 6 shall have the following wording:

"(5) The owner or tenant of the facility or other spaces who provides such facility or other spaces for producing a non-theatrically performed musical work, with or without text, or an artistic performance (hereinafter referred to as "public musical performance"), shall be obliged to provide the relevant collective administrator with data and cooperation necessary for identification of the producer of the public musical performance.

(6) The provider of a live public musical performance shall be obliged to submit to the producer of the live public musical performance the performance programme, specifying the names of the authors and the titles of the works to be performed, and all that no later than 20 days prior to the performance date. The producer of the live public musical performance shall be obliged to notify such a performance programme, specifying the names of the authors and the titles of the works to be produced, to the relevant collective administrator, and all that no later than 10 days prior to the performance date, unless agreed otherwise upon in an agreement between the producer and the collective administrator.".

8. In Article 100, new paragraphs 7 and 8 shall be added with the following wording:

"(7) When concluding the agreements under paragraph 1 h), the following shall particularly be taken into account:

a) whether the use of the item of protection occurs in the conduct of business or any other economic activity;

b) direct or indirect economic or commercial advantage gained by the user using the item of protection or in connection therewith;

c) characteristics and specifics of the location or region where the use of the item of protection occurs;

d) purpose, manner, scope and circumstances of the use of the item of protection.

(8) In making a proposal for the remuneration amounts or proposal for the manner of determination thereof, the collective administrator shall be obliged to seek opinions of legal entities associating the relevant users of the items of protection if such persons have registered themselves with the collective administrator for this purpose and have proved that they associate a number of the users higher than negligible.".

9. After Article 100, new Article 100a shall be added, which shall have, together with Footnote No. 6a, the following wording:

"Article 100a

(1) The collective administrator, or, as the case may be, a rightholder, represented by him, cannot exercise the dilatory entitlement [Article 40, paragraph 1 b)] or the entitlement to the surrender of unjust enrichment under the special provision of this Act (Article 40, paragraph 3) from an infringement of the collectively administered right or threat to such right if the user or the person authorised to defend the interests of the users associated in such a person conducts, duly and without unreasonable delay, with the relevant collective administrator in connection with such an infringement or threat to the right, negotiations aimed at concluding the agreement required by this Act, or if he agrees, in this connection, with using the mediator pursuant to this Act (Article 102).

(2) The provision of paragraph 1 shall not affect the entitlement to the surrender of unjust enrichment in the amount of a customary remuneration pursuant to the special legal regulations[6a)].

(3) The obstacle to the exercise of the dilatory entitlement under paragraph 1 shall not arise or shall be cancelled provided that the non-exercise of the dilatory entitlement is inconsistent with the legitimate common interests of the rightholders, particularly due to the fact that the acts of the user or the person authorised to defend interests of the users associated in such a person indicate an evident intention not to conclude the agreement, mentioned in paragraph 1, or the satisfaction of the entitlement to the surrender of unjust enrichment pursuant to the special regulations[6a)] is jeopardised.

6a) Article 451 et seq. of Act No. 40/1964 Coll., Civil Code, as later amended."

10. In Article 101, paragraph 11 shall be added with the following wording:

"(11) In the event that the user of the item of protection concludes an agreement with no fewer than three collective administrators, the user or their associations shall be entitled to require that the relevant collective administrators shall authorize their joint representative to conclude the agreement with the user on their behalf.".

11. Article 103, including the title and Footnote No. 9, shall have the following wording:

"Article 103
Supervision by the Ministry

(1) The Ministry shall be entitled to

a) require from the collective administrator information and the submission of documentation necessary for the execution of supervision,

b) investigate whether any breach of duties imposed by this Part of the Act, particularly by the provisions of Article 100, paragraph 7, has occurred,

c) impose, in the event of establishing defects in the compliance with this Part of the Act, the obligation to remedy such a defect, while setting an adequate time limit therefor, and to impose fines.

(2) Where the Ministry finds out on the part of the collective administrator a breach of the obligation ensuing from this Part of the Act, it shall impose on the collective administrator the obligation to remedy such a breach and shall set an adequate time limit for the implementation of such a remedy. The Ministry may also impose on the collective administrator a fine of up to the amount of CZK 500,000. The fine may also be imposed repeatedly. The fine may be imposed no later than one year from the day on which the Ministry finds out that the breach of the obligation has occurred, however no later than three years from the day on which the obligation has been breached. When stipulating the amount of the fine, the Ministry shall take into account the severity of the breach of the obligation and its consequences. The fines shall become a revenue of the State Fund of Culture of the Czech Republic; the Ministry shall enforce them pursuant the special legal regulations [9)].

[9)] Act No. 337/19992 Coll., on the administration of taxes and fees, as amended.

Article II

This Act shall come into effect at the date of its promulgation.

Zaorálek, autograph

Klaus, autograph

Gross, autograph