[PL] Copyright Commission and Procedure of Establishing the Additional Remuneration

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On 5 March 2007 a *Rządowy projekt ustawy o zmianie ustawy o prawie autorskim i prawach pokrewnych* (draft Amendment to the Act on Copyright and Related Rights of 4 February 1994) was sent to the Parliament. It refers to the functioning of the Copyright Commission and the procedure with which the scope of additional remuneration (royalties) tables for the use of works or performances covered by collective management shall be established. The amendment follows from the need to achieve conformity with the Constitution, as required by a Constitutional Tribunal's judgement of 24 January 2006 regarding Article 108 paragraph 3 Copyright and Related Rights Act.

The draft concerns the procedure for the establishment of additional remuneration tables for the use of works or performances covered by collective management. The remuneration tables are to be adopted by the Copyright Commission, the members of which are appointed by the Minister of Culture and National Heritage. The Copyright Commission is to be composed of forty arbiters chosen for a term of three years. Half of them are to be appointed from among the candidates proposed by the collective rights management institutions, associations of authors, performers and producers, while the other half is to be appointed from among candidates proposed by organisations grouping entities whose professional activity is based on the use of works and subjects protected by neighbouring rights.

Cases referring to the approval of additional remuneration tables are considered by four arbiters (two from the list of arbiters recommended by rightsholders and two from the list of arbiters recommended by the users) and a chairperson to be chosen by these four arbiters from the arbiters' list of the Copyright Commission. If within one month these four arbiters are unable to establish the chairperson by voting, he is to be designated by the Minister of Culture and National Heritage.

The application for the approval of additional remuneration tables is to be submitted by a collective rights management organisation. Parties in these proceedings embrace: relevant collecting societies, other interested collective rights management organisations and entities grouping users of protected subjects. A new item in this process is the obligation for the collecting society to lead the negotiations with the users before applying to the Copyright Commission

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for the approval of a remuneration table. These consultations are described in the draft amendment. First, the organisation of collective rights management announces the beginning of negotiations, aimed at achieving agreement on the relevant remuneration table, in at least two print journals of national coverage. In this announcements information is to be given on established fields of exploitation covered by the remuneration table, the proposed remuneration table of the collective rights management organisation's or the information on the access to such table by electronic means, as well as on the invitation to provide comments or present counterproposals.

Subsequent negotiations include the presentation of proposals for remuneration tables by the participants of the negotiations, the conduct of the negotiations' meetings by the collective rights management organisation, and finally the preparation of protocols from these meetings.

If during such negotiations the remuneration table is agreed on, the collecting society has to approach the Copyright Commission with motion to approve the agreed remuneration tables. But, if within three months the collective rights management organisation cannot achieve agreement with the participants of the negotiations, it has to approach the Copyright Commission with motion to approve its proposed remuneration table with documentation from the negotiations.

The task of the Copyright Commission at the phase of adopting the remuneration tables is limited to the approval or the rejection of the approval. It is possible to appeal against the arbiters' decision to the Minister of Culture and National Heritage.

Further, the draft amendment to the Act describes proceedings before the Copyright Commission regarding matters connected with the application of the approved remuneration tables and the way of establishing the competent collective rights management organisation.

The proposed amendment has been sent after a first reading to the Parliamentary Commission, that held on 17 April 2007 a public hearing on this draft. In the public hearing collecting societies and representatives of users took part. The hearing showed great differences of opinion regarding the model of adopting remuneration tables. The parliamentary works on the proposed amendment are still proceeding.

Rządowy projekt ustawy o zmianie ustawy o prawie autorskim i prawach pokrewnych, 1489

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