[BE] New Legislation on Collecting Societies in Belgium

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It was nothing new for Belgium - the legislator and a number of users have felt for some time that some collecting societies were not operating in a transparent fashion and were abusing their dominant position. A number of bills have been tabled over the past ten years and more, aimed at reinforcing the supervision of collecting societies, but none has ever been adopted. The Act of 10 December 2009 was gazetted (published in the *Moniteur Belge*) on 23 December 2009, and came into force on 1 April 2010.

The new Act confirms that collecting societies are required to manage the rights recognised by copyright legislation if the rightsholder so requests and inasmuch as this is in compliance with the societies's object and articles of association. The management must be carried out fairly and without discrimination.

The new Act on the supervision of collecting societies imposes clear conditions on the managers of these societies. Henceforth the societies must keep detailed accounts in accordance with specific rules; this arrangement replaces the concise accounting schedule that had been in force. There is also provision for separate accounts, making it possible to distinguish clearly between the collecting society's own funds and the royalties received. The collecting societies will now have to redistribute the funds received within 24 months. Their internal organisation will have to combat all forms of conflicting interests (for example, a performer being a member of the distribution committee and being entitled to receive money).

Regarding financial movements for social, cultural or educational purposes, the new Act is aimed at clarifying the final destination of such funds. Thus in future the collecting societies will not be able to allocate more than 10% of the amount of the royalties received to social, cultural or educational projects, and will have to do so out of their own funds.

Lastly, supervision by the Ministry of the Economy will be reinforced. It has the power to fine any collecting society not fulfilling its statutory obligations. It may also report to the courts, which may intervene more rapidly and firmly using the specific provisions of the new Act.

This supervision is financed by the collecting societies, with the contribution from each society being calculated on the basis of a percentage of the royalties

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received (up to a maximum of 0.4%). An “organic” fund has been created for the supervision of collecting societies.

Each year, the supervision service must publish a report on its activities. This report will list for each category of work and exploitation method the enquiries and complaints made by debtors and beneficiaries, and the intervention initiated by the supervision service, together with their results. Justified complaints are to be published by the collecting societies.

The report must present a faithful picture of the collective management sector and report on the specific role and the financial situation of the collecting societies and on recent developments in the sector.

Loi du 10 décembre 2009 modifiant, en ce qui concerne le statut et le contrôle des sociétés de gestion des droits, la loi du 30 juin 1994 relative au droit d'auteur et aux droits voisins, Moniteur Belge 23 décembre 2009, p. 80461

http://www.ejustice.just.fgov.be/cgi/article_body.pl?numac=2009011553&caller=list&article_lang=F&row_id=1&numero=16&pub_date=2009-12-23&set3=set+character_variant+%27french.ftl%27&dt=LOI&language=fr&fr=f&choix1=ET&a

Act of 10 December 2009 amending the part of the Act of 30 June 1994 on copyright and neighbouring rights concerning the status and the supervision of collecting societies, gazetted (published in the Moniteur Belge) on 23 December 2009, p. 80461

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