

REPORT
on
UG „Kvantum” BIJELJINA
Association for the protection of phonographic works
for the period 2005 – 2010

I. Legal Basis

The Institute of standardization, metrology, and intellectual property of Bosnia and Herzegovina (predecessor of the Institute for Intellectual Property of B&H), granted to UG Kvantum Bijeljina, Association for the protection of phonographic works, by the decision No. IP-5333/05-04VL of 10/10/2005, authorization for the management of the rights of phonogram producers (hereinafter: the Association).

The Association was entered in the Register of Associations maintained by the Ministry of Justice of B&H on 12/04/2005. According to the Statute, the aims and activities of the Association are:

- *protection of members from unauthorized reproduction of materials (phonograms and sound recording media),*
- *protection of phonographic works from unauthorized broadcasting by public broadcasters, cooperation and exchange of experience among members within their respective activities,*
- *connecting to and exchange of experiences with foreign record companies,*
- *exerting influence on state institutions vis a vis enactment of legislation regulating the protection of phonographic works,*
- *protection of phonogram producers,*
- *collection of remunerations for the use of phonograms from public broadcasters and other activities in accordance with the Statute and acts of the Association.*

The authorized persons of the Association are: Siniša Kajmaković, President of the Association, Suad Jukić, Chair of the Governing Board, and Marko Zelić, Vice-Chair of the Governing Board.

II. Statute and organization

According to the Statute the Association is a non-governmental, nonprofit organization and it operates within the entire territory of Bosnia and Herzegovina. The members of the Association are natural persons and legal entities in B&H dealing with production of phonograms, as well as persons directly linked to phonogram production who accept the aims and activities of the Association.

The bodies of the Association are: the Assembly and the Governing Board.

The Assembly is the highest authority of the Association and it is composed of all members. The Assembly passes the Statute, adopts the financial plan or financial report for each year, adopts operating plan and programme, and annual financial report, adopts operating report and other reports made by the Board, decides on mergers, demergers, transformation, winding up and a stoppage of work, and other status changes of the Association, appoints and releases of duty members of the Governing Board and Supervisory Board, and Chairman of the Assembly, and decides on all other issues that another body is not responsible for.

The Board of Directors is the executive authority, and it coordinates and organizes the implementation of the adopted operating plan and decisions of the Assembly.

III. Property acquisition and management

The property is acquired through membership fees, voluntary contributions and gifts from public institutions, natural persons and legal entities in cash, services or property of any kind, subsidies and contracts with public institutions, natural persons and legal entities, national and foreign, income from royalties and other sources of passive income and other income generated in lawful manner.

The Association expends and allocates the funds generated in one of said ways on the basis of the adopted financial plan. The final distribution is carried out on the basis of the annual account. The Governing Board supervises the authorized spending and management of the Association's funds.

Financial and operating reports are drafted by the Governing Board and submitted to the Assembly for adoption. Reports are submitted semiannually and annually, and are adopted by the Assembly by quality majority voting.

IV. Operating report for the period 2005 – 2010

Within its responsibility for supervising the work of collective organizations, the Institute for Intellectual Property of B&H requested the Association to produce the operating report for the period 2005-2010, and instructed it to furnish:

- information on the right/rights it manages;
- copies of powers of attorney granted by authors and authors' associations to the association for the management of their rights;
- copies of contracts concluded with users per year;
- income derived from users from B&H per year;
- income derived abroad on the basis of contracts on reciprocal representation;
- amounts distributed to authors and related right holders per year;
- amounts distributed to the authors from other countries through foreign collective organizations;
- operating expenses per year;
- operating plans per year;
- decisions of the responsible body of the association on adoption of operating plans per year;
- financial reports per year adopted by the responsible body;
- audit reports along with the assessment of a licensed auditor of the correctness of operations of the association and harmonization thereof with laws, acts of the association, and contracts concluded with third parties per year;
- copies of judicial and administrative decisions involving the association as a party to proceedings.

For the purpose of obtaining full information on the amounts paid to collective organizations, the Institute received information from some users (28 users) on the amounts of remuneration paid for the use of copyright and related rights, of which 3 stated that they had paid **KM 3.300,00** to Kvantum in the reporting period.

The report with accompanying documents was received on 28/02/2011. The Association submitted only the information for 2010. The copies of contracts with users (18 radio stations) and 18 powers of attorney granted by record companies were enclosed with the report.

Due to the failure of users to provide the requested information, it was impossible to make comparison with the information provided by the Association, and the report was prepared on the basis of the information provided by the Association.

V. Financial operations

According to the report, the Association did not derive any income from users in the period of 2006 to 2009. The reasons have not been explained. For the purpose of the collection of outstanding receivables, the Association Kvantum sued RTV BN d.o.o. Bijeljina, in the reporting period, for the repayment of debt of **KM 188.150,17**.

Taking into account that the enclosed judgment nisi relates to the period of 2005 to 2009, this statement was impossible to check, and it is doubtful whether the received information are accurate and objective.

The reported revenue for 2010 was generated on the basis of the decision by the Governing Board to collect flat fee/rate from radio stations that they accepted and subsequently entered into contracts with the Association.

Table 1. Financial operations of UG Kvantum

COLLECTIVE ORGANIZATION	YEAR	OUTSTANDING RECEIVABLES	REVENUE	OPERATING EXPENSES	%	DISTRIBUTED FUNDS	%	BALANCE (INCOME-EXPENDITURE)
UG „Kvantum” - Association for the protection of phonographic works Bijeljina	2005.							
	2006.							
	2007.							
	2008.							
	2009.							
	2010.	20.500	15.800	20.500	130%	0		-4.700,00
Total			15.800	20.500	130%	0		-4.700,00

According to the foregoing figures, outstanding receivables were **KM 20.500,00**, income derived from users in B&H amounted to **KM 15.800,00**, and operating expenses of the Association as reported were **KM 20.500,00**, of which only rental was **KM 15.135,04**. The Association **failed to distribute funds** to right holders due to, as reported, **a rather modest revenue** in 2010 and a small number of contracts concluded with users.

The Association **failed to generate revenue from outside the country** on the basis of the contracts on reciprocal representation.

Having examined the report of the Association, the Institute established that it is incomplete, and it invited the Association on 12/04/2011 to amend the report by including in it relevant information on the reasons for failure to generate revenue in the period of 2006 to 2009.

The Association submitted, on 13/05/2011, the audit report for the period 2006 –2010 to the Institute, but it failed to submit other documents and explanation for the failure to generate revenue in the period 2006–2009.

For the purpose of the collection of outstanding receivables, the Association Kvantum sued RTV «BN» d.o.o. Bijeljina, in the reporting period, for the repayment of debt of **KM 188.150,17**. Judicial proceedings are ongoing.

Conclusion

By the analysis of the information received from the Association Kvantum from Bijeljina, the following was established:

1. The Association did not operate in accordance with the internal acts regulating the organization of the Association, first of all with the Statute. The Assembly did not convene regularly, and the management of the Association has not been reappointed since 2007.
2. Report on financial operations for the period 2005–2010 reveals that the Association failed to generate revenue in the period of 2006–2009, meaning that the Association did not meet its aims and objectives.
3. The 2010 revenue was expended on regular operating costs, without distribution to right holders. Taking into consideration that the purpose of the collective management of copyright and related rights is collecting the funds for the account of right holders and that, according to the international practice, operating expenses of an organization should not exceed 20-30% of the revenue, and that the rest should be distributed to right holders, it is obvious that the Association Kvantum has not met the aims of its existence.
4. When appraising the performance of the Association Kvantum, it should be taken into account that the reporting period covers the period of application of the Law on Copyright and Related Rights of 2002 (the old Law) that regulated the collective management of copyright and related rights only in rudimentary way. As the Law on the Collective Management of Copyright and Related Rights, which entered into force in 2010, precisely regulates this matter in accordance with the standards of comparative law, it needs to be noted that the work of Kvantum does not meet the standards of transparency and democratic approach to the work of the collective organization, of the manner of determining remuneration rates and distribution of revenue, and of efficiency in meeting the aims and objectives of its existence regulated by law.

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