



Number: IP-03-47-5-07382/12VT  
In Banja Luka, on 13/08/2012

Pursuant to Article 11 of the Law on the Collective Management of Copyright and Related Rights (OG of BiH volume 63/10), and in connection with Article 44 of the same Law, Articles 114 and 193(1) of the Law on Administrative Procedure (OG of BiH volumes 29/02, 12/04, 88/07, and 93/09), the Institute for Intellectual Property of Bosnia and Herzegovina (hereinafter: the Institute), acting *ex officio*, passed

### **DECISION** **to revoke the authorization to manage the rights of phonogram producers**

1. **The authorization** to the Association for the protection of phonographic works «Kvantum» Bijeljina, registered office: Ulica Loznička 5, issued by the Institute for Standardization, Metrology, and Intellectual Property of Bosnia and Herzegovina by the Decision N<sup>o</sup> IP-5333/05-04 VL of 10/10/2005 **for the management of the rights of phonogram producers is revoked.**
2. The Authorization for the management of the rights of phonogram producers is revoked as of **11/08/2012.**
3. The Association for the protection of phonographic works «Kvantum» Bijeljina shall submit to the Institute a report on its business operations, fund distribution and expenditure to the expiry date of the authorization, within legal deadline.
4. The Association for the protection of phonographic works «Kvantum» Bijeljina shall handover all the relevant documents necessary for carrying out this activity to the organization that will be granted the authorization for the collective management of the rights of phonogram producers, within 30 days from the date of the authorization.
5. This Decision shall be published in the respective Official Gazettes of BiH and the Institute.

### **Statement of Grounds**

By the Decision N<sup>o</sup> IP 5333/05-04 VL of 10/10/2005, the Institute for Standardization, Metrology, and Intellectual Property of Bosnia and Herzegovina, a predecessor of the Institute for Intellectual Property of Bosnia and Herzegovina, granted to the Association for the protection of phonographic works «Kvantum» Bijeljina the authorization to manage the rights of phonogram producers.

The Law on the Collective Management of Copyright and Related Rights (OG of BiH volume 63/10), which entered into force on 11/08/2010, permitted the existing collective organizations to continue their work on the conditions stipulated by Article 44. However, said Article of the Law stipulates in paragraph (1) that the organizations of authors and of other copyright holders, and other legal entities specialized in the management of copyright which dealt with the collective management of copyright prior to the entry of this Law into force,

in accordance with the provision of Article 87 of the Law on Copyright and Related Rights in BiH (OG of BiH volume 7/02 and 76/06), shall continue to work after the entry of this Law into force. Paragraph (2) of the same Article stipulates that all the entities referred to in paragraph (1) shall harmonize their respective legal forms and business activities with the provisions of the new law, and that they shall apply for a new authorization for the collective management of copyright and related rights within two years from the entry of this Law into force.

An analysis of the work of the Association for the protection of phonographic works «Kvantum» Bijeljina was given in the Report on the System of the Collective Management of Copyright and Related Rights in Bosnia and Herzegovina for the period 2005 – 2010 that was adopted at the session of the House of Representatives held on 19/04/2012 and at the session of the House of Peoples held on 15/05/2012. The Report states that the Association failed to abide by the internal acts regulating its organization, that it failed to achieve the goals for which it was incorporated, that in fact it did not operate at all for three years, that the entire revenue in 2010 was spent on operating costs instead of being distributed to the right holders, that by doing so «Kvantum» violated the main purpose of the collective management of copyright and related rights, and that «Kvantum» does not meet the standards as to transparency and democratic approach to the work of the collective organization, the manner of tariff determination, the manner in which it distributes revenue, and the effective goal achievement regulated by law.

The Association for the protection of phonographic works «Kvantum» Bijeljina filed the application for the authorization for the collective management of the rights of phonogram producers, or for the renewal of the authorization, which the Institute received on 19/07/2012 under the number IP-03-47-5-07694/12. Article 208 of the Law on Administrative Procedure stipulates that in cases in which the procedure is initiated by a party, and a special examination procedure must be conducted prior to the passing of a decision, a competent authority is obligated to pass a decision within 60 days. The Law on the Collective Management of Copyright and Related Rights (OG of BiH volume 63/10) obligates the Institute for Intellectual Property of BiH, by Articles 10(3) and 47, to enact the regulations concerning procedure for the grant of the authorization for the collective management of copyright and related rights. The manner and form of fulfilling the conditions for the grant of the authorization for the collective management of copyright and related rights to legal entities are regulated by the Regulations Concerning the Manner and Form of Fulfilling the Conditions for the Grant of the Authorization for the Collective Management of Copyright and Related Rights to Legal Entities (OG of BiH volume 44/11). Article 18 of the Regulations Concerning the Manner and Form of Fulfilling the Conditions for the Grant of the Authorization for the Collective Management of Copyright and Related Rights to Legal Entities stipulates that upon the receipt of an application, the Institute shall conduct the procedure for the authorization grant within 6 months. If the data and documents are not complete, the deadline shall start to run when a legal entity, acting in compliance with the Institute's invitation, corrects the application. Further, if the Institute decides to obtain an expert opinion from the Copyright and Related Rights Council or from an independent expert or from a professional institution or organization, the deadline for decision passing shall be 30 days from the day of receipt of such expert opinion.

Taking into account that this is a complex administrative case, that the application for the authorization was filed on 19/07/2012, that the valid authorization expires on 11/08/2012, and considering said deadlines for a decision passing, it is evident that the application was filed untimely, and that due to untimely filing, it could not be processed before the expiry date of the authorization.

It is undisputed that the Association «Kvantum» is obligated to pay the collected remunerations to all the holders whose rights it managed while it had a valid authorization, and that it is obligated to handover all the relevant data and documents necessary for carrying out this activity to a new collective organization that will manage such rights.

According to Article 13(4) of the Law on the Collective Management of Copyright and Related Rights, a decision to revoke an authorization shall be published in the respective Official Gazettes of BiH and the Institute, and therefore it was decided as in item 5 of this Decision.

**Legal Remedy:** This Decision is final in the administrative procedure. An administrative dispute may be initiated against this Decision by starting an action before the Court of Bosnia and Herzegovina within 60 days from the day of receipt of this Decision.

Director  
Institute for Intellectual Property  
of Bosnia and Herzegovina  
Lidija Vignjević