



Number: IP-03-47-5-12-06059/12VT
Banja Luka, June 21, 2012

Pursuant to Article 11, and in connection with paragraph (4) of Article 44 of the Law on the Collective Management of Copyright and Related Rights (OJ of B&H volume 63/10, hereinafter: the Law), Article 18 of the Regulations Concerning the Manner and Form of Fulfilling the Conditions for Granting Authorization for the Collective Management of Rights to a Legal Entity (OJ of B&H volume 44/11, hereinafter: the Regulations), and paragraph (1) of Article 193 of the Law on Administrative Procedure (OJ of B&H volumes 29/02, 12/04, 88/07, and 93/09), and at the request of **AMUS – Association of Composers – Music Makers of Bosnia and Herzegovina, Obala Kulina bana 22/II Sarajevo**, to grant an authorization for the collective management of rights of the authors of musical works, following the examination of the conditions for granting the authorization, The Institute for Intellectual Property of Bosnia and Herzegovina (hereinafter: the Institute) passes a

DECISION

to grant the authorization for the collective management of the rights of authors of musical works

1. A request of the Association of Composers – Music Makers of Bosnia and Herzegovina (AMUS), Obala Kulina bana 22/II Sarajevo, **is accepted and the authorization for the collective management of rights of authors of musical works is granted.**
2. The authorization granted to «Sine Qua Non» d.o.o., Agency for Representation and Protection of Copyright, Ulica Branilaca Sarajeva 21, by the Institute of Standardization, Metrology, and Intellectual Property of Bosnia and Herzegovina by the Decision number IP-5694/02SŽ of June 4, 2002, **is revoked** in the part thereof relating to the management of author's rights by virtue of the power of attorney granted by the author, by the association of authors or other copyright holders.
3. The authorization granted to «Elta-kabel» d.o.o. Dobož, the Company for Cable Transmission of Sound, Picture, and Other Information, Ulica svetog Save 26 Dobož, by the Institute of Standardization, Metrology, and Intellectual Property of Bosnia and Herzegovina by the Decision number IP-3905/06-04VL of May 6, 2006, **is revoked** in the part thereof relating to the management of copyright.
4. The Association of Composers – Music Makers of Bosnia and Herzegovina (AMUS) and «Sine Qua Non» d.o.o., Agency for Representation and Protection of Copyright, shall regulate a handover of the relevant documents necessary for the collective management of rights of the authors of musical works within 30 days from the date of this Decision by a special agreement .
5. This Decision enters into force on the day of its passing.
6. This Decision shall be published in the Institute Official Gazette.

Statement of Grounds

COURSE OF PROCEDURE

A request to grant authorization for the collective management of rights of the authors of musical works

The Association of Composers – Music Makers of Bosnia and Herzegovina (AMUS), Obala Kulina bana 22/II, Sarajevo, (hereinafter: AMUS) filed a request to grant authorization for the collective management of rights of the authors of musical works with the Institute for Intellectual Property of Bosnia and Herzegovina. The request was received on April 26, 2012 under the number UP-01-47-04858/12. Additional documents were furnished subsequently as part of the submission received on May 8, 2012 under the number UP-03-47-5-05155/12. The request was accompanied by the following supporting documentation: Decision on Entry of AMUS in the Register of Associations maintained by the Ministry of Justice of B&H, number 01/6-67-RS/02 of January 12, 2012, the Statute of AMUS adopted by the Assembly of AMUS on October 21, 2011, contracts on the exclusive transfer of economic rights concluded by AMUS with 227 authors, information on 4.645 published works forming the repertoire of AMUS, Lease Agreement concluded with the Association of Stage Performers on June 24, 2011, a list of office equipment and means of communicating, a certified copy of the degree certificate for the Director of Administrative and Technical Service Mirza Hajrić, Certificate of the Foreign Language Centre on the completion of English Proficiency Test (advanced level) for Mirza Hajrić, AMUS business plan, Decision of the Assembly of AMUS on accepting the business plan, number 01-S/12 of April 19, 2012, bank verifications, and declarations on the readiness to enter into reciprocal contracts of foreign collective organizations (Serbian SOKOJ, Croatian HDSZAMP, and Montenegrin PEM).

The Institute considered the request filed by AMUS in the procedure for the formal examination of the conditions for granting authorization for the collective management of the rights of authors of musical works and it found that the request was not correct in whole, and it invited the applicant by the letter number IP-03-47-5-14980/12VT of May 11, 2012 to correct the request within 30 days of the receipt of invitation.

Complying with the invitation of the Institute, the applicant submitted on May 23, 2012, within the time limit, the following documentation: indication to the effect that the authorization is sought for the collective management of rights of the authors of musical works, the Statute of AMUS as amended and adopted by the Assembly of AMUS on May 21, 2012, Lease Agreement for office premises certified by the competent authority, employment contract of indefinite duration for Mirza Hajrić concluded on March 2, 2012, certified application form for Mirza Hajrić in the Tax Administration of FB&H (Form JS3100), proof of possession of web page and e-mail address (invoice of the company LEFTOR WEB apps&hosting of December 25, 2011 for the domain www.amus-sarajevo.com registration that expires on December 24, 2012).

Having examined the documentation accompanying the request, the Institute established that the applicant submitted all relevant information and documentation in accordance with paragraph (2) of Article 10 of the Law on the Collective Management of Copyright and Related Rights, and Articles 3,4,5,6,and 7 of the Regulations Concerning the Manner and Form of the Fulfillment of Conditions for Granting Authorization for the Collective Management of Copyright and Related Rights to Legal Entities, namely:

- 1) **A Decision on entry of the Association of Composers – Music Makers of B&H (AMUS) in the Register of Associations maintained by the Ministry of Justice of B&H, number 01/6-67-RS/02 of January 12, 2012**, being a legal entity having the status of an association operating in the entire territory of Bosnia and Herzegovina within the meaning of paragraph (1) of Article 8 of the Law on the Collective Management of Copyright and Related Rights,.
- 2) **The Statute of the Association of Composers – Music Makers of B&H (AMUS)** adopted by the Assembly of the Association at the session held on May 21, 2012, establishing the Association bodies and their responsibilities.
- 3) **Information concerning persons authorized to represent the collective organization.** Complying with item b) of paragraph (2) of Article 10 of the Law on the Collective Management of Copyright and Related Rights, the applicant notified that the person authorized to represent AMUS is Edin Dervišhalilović (Dino Merlin), chairman of the Assembly.
- 4) **Information concerning authors who authorized the legal entity for the management of rights in their works.** The applicant submitted, in accordance with Article 3 of the Regulations, copies of contracts concluded with **234 authors** from B&H, less than 6 months old, containing the following information: surname and given name of the author, indication of his/her domicile or residence, date of contract. The contracts were signed by the following authors:

Alma Hadžijahić, **Mirsad Abdagić**, Lejla Abdilović-Terović, **Bojan Ahac**, Almir Ajanović, **Irfan Ajanović**, Sinan Alimanović, **Munib Alić Mak**, Aksoj Atilla, **Acis Aljić**, Goran Antunović, **Ismet Arnautalić**, Damir Arslanagić Arsla, **Izeta Avdić**, Mensura Bajraktarević, **Nedim Babović**, Sejo Bajraktarević, **Admir Beganović**, Eldin Bihorac, **Amir Bjelanović Tula**, Denis Bjelošević, Ognjen Bomoštar, **Goran Bregović**, **Emir Bukovica**, Adnan Hamidović Frenkie, **Armin Bušatlić**, Berin Buturović, **Almir Buza**, Semir Cerić Koke, **Verena Cerovina**, Damir Čardžić, **Alma Čardžić**, Adnan Čaušević Dado, **Kemal Čebo**, Edib Čengić, **Samir Čeramida Čera I**, Amar Češljarić, **Arel Češljarić**, Mirsad Čomaga Mirso, **Slobodan Čosić Bobo**, Dragan Danilović, **Kenan Dedić**, Nermin Dedić Fićo, **Haris Dedić**, Edin Dervišhalilović - **Dino Merlin**, Dragan Divjak, **Sejfulah Duratović Sejfo**, Suada Džanković Suki, **Osman Džihović**, Branko Đurić **Đuro**, Milan Đajić, **Davor Ebner**, Dilvad Felić Dado, **Kenan Ferhatović**, Nazif Glijiva, **Kenan Hadžifežović**, Mirza Golo, **Admira Grahović Ada**, Mirza Hadžiahmetović, **Adnan Hadžibegić Hera**, Fikret Hadžihalilović Miki, **Munevera Halebić Muna**, Rizo Hamidović, **Almir Hasanbegović**, Semir Hasić, **Zlata Hećo**, Dženan Hodrić, **Armin Hodžić**, Ismet Horo, **Asim Hokozić**, Almir Hukelić Aka, **Zijad Hurić Zike**, Edhem Huseinbegović, **Eldin Huseinbegović**, Avdo Huseinović, **Mirsad Ibrić**, Nedžad Imamović, **Zaim Nedžad Imamović**, Hasan Ireiz Hase, **Mugdim Isović Dudo**, Benjamin (Safet) Isović, **Safet Jaganjac**, Brano Jakubović, **Mladen Jeličić Troka**, Boris Jovanović, **Emir Jugo**, Suad Jukić Šule, **Lejla Jusić**, Samir Kadrić Cajo, **Dragana Kajtazović**, Amir Karahasanović, **Tarik Karačić**, Eldin Karača, **Amra Karamešić-Šehić Dacca**, Haris Karapuzović, **Mario Katović**, Adnan Kazaferović, **Mario Knezović**, Azra Kolaković - **Donna Ares**, **Izudin Kolečić**, Nihad Krečo, **Aldin Kurić - Al'Dino**, Husein Kurtagić (Fatima), **Elvir Laković Laka**, Amil Lojo, **Džemal Latić**, Rizah Lukačević - **Rizzo Ruža**, Džavid Ljubović, **Alen Lemešević**, Kemal Malovčić, **Jasmin Mangafić**, Ibrahim Mangafić, **Dino Mangafić**, Senada Mangafić, **Adis Mahmutović**, Amira Medunjanin, **Elvedin Marjanović**, Nardin Mašić, **Almir Medija**, Nedžad Merdžanović Nečko, **Maja Milinković**, Miro Milković, **Maid Mirojević**, Emina Muftić Minka, **Adnan Mušanović**, Kemal Monteno, Selma Muhedinović, Vezira Mrehić, **Merima Buljubašić**, Samir Musagić, **Vedran Mujagić**, Jasmin Mujanović, **Muhamed Mujkanović**, Nedžad Murić Neno, **Alen Mustafić**, Edo Mulahalilović,

Muhidin Muharemović Dino, Asmir Orman, **Amir Orman**, Amar Osmančaušević, **Mirko Pavić**, Fahrudin **Peca** Pecikoza, **Đani Pervan**, Azra Pleše, **Vladimir Podany**, Ismet Polovina, **Zaim Poturić**, Vahidin Nino Pršeš, **Sanela Pršeš**, Esed Purić, **Nermin Puškar**, Gordan Radić, **Elvira Rahić**, Safet Ramić, **Igor Ražnatović**, Zijo Rizvanbegović **Valentino**, Dragan Rokvić, **Sanel Sabitović**, Medih Sakić, **Abid Omerović**, Goran Rebac, **Senad Rožajac**, Mirza Salković, **Hamdija Salihbegović Hamo**, Indira Salihović, **Maja Sarihodžić - Maya Sar**, Mahir Sarihodžić, **Dženan Selmanagić**, Sanela Sijerčić, **Zijad Sipović**, Almas Smajlović, Ismet Suljić, Nudžeim Smajić, **Mirsad Sarajlić**, Mirsad Smajović, **Damir Sinanović**, Danijel Slavuljica, **Nedim Srnja**, Elvir Stroil, **Adam Subašić Cupi**, Rafid Subašić, **Mahir Sulejmanović**, Enver Šadinlija, **Zenan Šahinović**, Armin Šaković, **Edin Šaran Dino**, Adnan Šeran, **Amir Šehić**, Mirko Šenkovski **Geronimo**, **Dinko Šimunović**, Željko Škarić **Pancho**, Armen Škobalj, **Zlata Pobrić-Šojko**, Dino Šukalo, **Dušan Štaka**, Senad Šuta, **Edin Tahirović**, Samir Toskić, **Muhamed Trnka Muki**, Hajrudin **Hari** Varešanović, **Nurudin Vatrenjak**, Mladen Vojičić **Tifa**, Nihad Voloder **Nodivo**, Muharem Vražalica Hare, **Milić Vukašinić**, Ivan Vrhunc, **Aleksandar Vuca**, Igor Vukojević, **Enes Zlatar**, Samir Zavlan, **Nedim Zlatar**, Sead Zubanović Sejo, **Ismar Žalica**, Davor Sučić, **Edin Pandur**, Irina Kapetanović, **Aleksandar Krstić**, Goran Pršić, **Muhamed Milić**, Danijel Bajraktarević, **Dženan Jahić**, Ranko Rihtman, **Slaviša Guja**, Igor Kasapović, **Reuf Sipović** i Ljubiša Maletić.

Subsequently, prior to passing this Decision, additional seven contracts were submitted, executed by: Vladimir Andan, **Serif Konjević**, Perica Grujić, **Franjo Valentić**, Adisa Zvekić, **Hajra Bojadžija**, and Semka Torlak.

5) **A list of works forming the repertoire of the collective organization.** The applicant submitted to the Institute, in accordance with Article 4 of the Regulations, information concerning the works that will form the repertoire of the collective organization. The total of 4.654 published works were submitted with the following information: title and type of a work, information concerning the author (authors), year of the first disclosure, scope and duration of the work, and the international code for the majority of works.

6) **Proof of fulfillment of technical preconditions for the effective collective management of rights.** The applicant submitted to the Institute, in accordance with Article 5 of the Regulations, the following proofs: Lease Agreement for the office premises measuring 20 m², concluded with the Association of Stage Performers on June 24, 2011 and certified by the competent authority, a list of office equipment and means of communicating, proof of possession of web page and e-mail address (invoice of the company LEFTOR WEB apps&hosting of December 25, 2011 for the domain www.amus-sarajevo.com registration that expires on December 24, 2012).

7) **Proof of fulfillment of personnel preconditions for the effective collective management of rights.** The applicant submitted to the Institute, in accordance with Article 6 of the Regulations, relevant proofs of fulfillment of the conditions pertaining to the Administrative and Technical Service of the Association, i.e. employment contract of indefinite duration for the Director Mirza Hajrić, concluded on March 2, 2012, application form for Mirza Hajrić certified by the Tax Administration of FB&H (Form JS3100), a certified copy of the degree certificate for Mirza Hajrić, Certificate of the Foreign Language Centre on the completion of English Proficiency Test (advanced level) for Mirza Hajrić.

8) **Business plan of AMUS.** Pursuant to Article 7 of the Regulations, the applicant submitted to the Institute the business plan containing:

- indications concerning the entity (its legal status, persons authorized to represent it, historical information on the Association and the beginnings of copyright protection in B&H),
- an analysis of copyright protection in the post-war B&H, reasons for the failure of «Sine Qua Non» d.o.o. Sarajevo to adequately represent authors in the last ten years (analysis of the current situation in the field of protection of economic rights of the authors of musical works),
- reasons for reactivation of the Association and its objectives;
- a plan for the establishment of solidarity fund and fund for cultural purposes;
- information concerning the Technical and Administrative Service and personnel;
- a description of the envisaged manner of carrying out the activity and the strategy of its implementation;
- funds forecast for carrying out the activity;
- estimated amount of remunerations collected from users;
- estimated operating expenses;
- estimation and sources of funds necessary to commence the business activity.

Business plan covers the following fields of use of rights of the authors of musical works:

- electronic media;
- cable operators;
- public performance and restaurants;
- sound producers and distribution of sound and picture media;
- collection of remunerations abroad.

Business plan gives a detailed analysis of the current situation in every mentioned field, and it describes the manner of carrying out the activity as forecast and the strategy of its implementation. The strategy specifies the manners of addressing the various issues encountered in certain categories of use of musical works. The applicant submitted to the Institute, in accordance with paragraph (6) of Article 7 of the Regulations, official bank verification of the account balance of KM 6.000.00 (UniCredit Bank of April 26, 2012), as well as the statement of Mirza Hajrić on his readiness to lend to AMUS up to KM 50.000,00 for the purposes of securing business operations and strengthening the existing economic basis of the entity whose objective is the management of copyright and related rights, certified by the notary on December 26, 2011.

9) **A decision of the Assembly of AMUS to adopt business plan.** The applicant submitted to the Institute, within the meaning of paragraph (2) of the Regulations, a decision of the Assembly of AMUS to adopt business plan number 01-S/12 of April 19, 2012.

10) **Statements on readiness to enter into reciprocal contracts.** The application was accompanied by statements on the readiness of foreign collective organizations to enter into reciprocal contracts, provided that AMUS is granted the authorization to manage the rights of authors. The following organizations' statements were submitted: HDSZAMP of Croatia, SOKOJ of Serbia, and PEM of Montenegro.

COLLECTIVE MANAGEMENT OF COPYRIGHT

The Law on the Collective Management of Copyright and Related Rights (OJ of B&H number 63/10) regulates the system of the management of the rights of authors and related right holders in Bosnia and Herzegovina. The collective management of copyright and related rights means the management of such rights for several works, of several authors jointly, through legal entities specializing only in that activity, which fulfill all the conditions stipulated by law and which have the authorization of the Institute for Intellectual Property of Bosnia and Herzegovina. It means that the management of copyright and related rights is possible only if the following conditions are met cumulatively: a legal entity specializes only in that activity; it fulfills all the conditions prescribed by law; it has the authorization of the Institute for Intellectual Property of Bosnia and Herzegovina for carrying out such activities. Given that the collective organization is founded by authors, it is in the mandate relationship with authors and it performs its duties on its behalf and for the account of all authors, which is one of the most essential characteristics of the entire system of the collective management of rights.

Article 3 of the Law limits the activities that the collective organization may carry out and at the same time it determines what a collective organization *must* do. The legal form of the collective organization is specified in paragraph (1) of Article 8 of the Law, whereas the procedure for granting the authorization is laid down in Articles 10 and 11 of the Law. A specificity of the collective management of rights is giving legal monopoly to a single organization for the collective management of rights relating to the same type of rights in the same category of works. According to this decision, only one organization may be granted the authorization for the same type of rights in the same category of works (paragraph (3) of Article 6 of the Law).

The law regulates in detail the relation of collective organization to authors. Paragraph (1) of Article 15 of the Law stipulates that a collective organization may not refuse a request for the conclusion of contract for the collective management of rights in the field of its activity, and Article 16 of the Law stipulates that the authors who have entrusted the management of their rights to a collective organization are its members. Giving legal monopoly to a collective organization obligates the organization to act, within the framework of the type of rights and the category of works in which it specializes, for the account of all authors (members, those who have signed the contract, and those who have not signed the contract). The presumption of the collective management of the rights of all authors, as regulated by paragraph (1) of Article 18 of the Law, allows the authors who do not wish their rights to be managed collectively to exclude themselves in writing from the collective management of rights.

The main characteristics of the modern system of the collective management of rights are: non-profit character of the organization, specialization of the organization in the collective management of certain rights in certain categories of subject matters of protection, *de iure* or *de facto* monopoly position of the organization (*as the practice of the collective management of rights showed that, considering the reduction of transaction costs and legal safety of users, competition among organizations does not yield good results, one of the first issues regulated by special regulations on the collective management of rights is giving monopoly to an organization*), democratic approach to managing the organization, transparency, prohibition of discriminatory practice of the organization towards some right holders and some users, equitable distribution of collected remunerations to right holders, efficiency, and state supervision of the organization's performance.

The collective organization does not have its own funds and it generates income exclusively by using the rights of its members, and thus it manages somebody else's money. As far as distribution of collected remunerations is concerned, the international standard is that the collective organization sets aside only the amount of funds sufficient to cover operating expenses from the total generated income, and it is supposed to distribute the rest of the generated income to its members, according to the rules laid down beforehand.

The international standard applied to the calculation of economic sustainability of the collective organization is applied to the estimation of the amount needed to cover operating expenses, as follows:

- up to 30% of the income generated through the management of copyright and performance rights;
- up to 25% from the management of reprographic rights;

Only exceptionally, the Statute of the collective organization may stipulate that up to 10% of net income of the collective organization may be set aside for two purposes:

- cultural needs;
- improving its members' retirement, health, and social status.

REASONS FOR GRANTING THE AUTHORIZATION

In dealing with the request, the Institute applied the provisions on the conditions for granting the authorization for the collective management of rights of the Law on the Collective Management of Copyright and Related Rights (OJ of B&H volume 63/10), the provisions of the Regulations Concerning the Manner and Form of Fulfilling the Conditions for Granting the Authorization for the Collective Management of Copyright and Related Rights to Legal Entities (OJ of B&H volume 44/11), and the principles of the Law on Administrative Procedure (OJ of B&H volume 29/02, 12/04, 88/07, and 93/09).

In examining the conditions under which the authorization is granted, the Institute established that:

1) The Association of Composers – Music Makers of Bosnia and Herzegovina – AMUS is registered in the Register of Associations maintained by the Ministry of Justice of Bosnia and Herzegovina for carrying out activities of the collective management of copyright, in accordance with Article 3 of the Law, as the association that operates, within the meaning of Article 8 of the Law on the Collective Management of Copyright and Related Rights and the Law on Associations and Foundations of Bosnia and Herzegovina, in the entire territory of Bosnia and Herzegovina;

2) The Statute of AMUS is in compliance with the provisions of the Law on the Collective Management of Copyright and Related Rights, and it contains all essential elements such as: name and registered office of the Association, objectives guaranteeing that AMUS shall respect internationally recognized principles of the distribution of income generated through the collection of remunerations, including the principles of conscientiousness and honesty, equity, objectivity, thrift, and transparency that are stipulated as operating standards in Article 7 of the Law; membership in the Association is regulated in accordance with Article 16 of the Law, bodies of the Association are in accordance with the Law on Associations and Foundations of B&H and the Law on the Collective Management of Copyright and Related Rights; supervision is ensured within the meaning of Article 19 of the Law on the Collective Management of Copyright and Related Rights. Article 18 of the Statute of AMUS stipulates that the Assembly has the following responsibilities: it passes, amends, and interprets the Statute and other acts of the Association; it decides on merger, demerger, transformation,

dissolution, and winding up, as well as on status changes; it appoints and dismisses members of the Governing Board, adopts reports prepared by the Governing Board, lays down general guidelines for the operation of the Association, approves annual financial statements adopted by the Governing Board, decides on merger with other associations, and decides on all other issues that are not within the competence of other bodies. The responsibilities of the Governing Board are specified in Article 25 of the Statute of AMUS, i.e. preparing Assembly sessions, drafting the Statute and other acts to be enacted by the Assembly; implementing policy, conclusions, and other decisions of the Assembly, managing funds and assets, submitting annual or periodical reports on its work to the Assembly for adoption, appointing the chairman, nominating and appointing the secretary of the Association among its members, implementing decisions and conclusions of the Assembly, adopting annual financial statements and interim statements of accounts of the Association to be submitted to the Assembly, establishing boards, commissions, and other bodies to address issues within its competence, submitting reports on its work to the Assembly, calculating remuneration, supervising the work of Secretary and Technical and Administrative Service of the Association, giving instructions and guidelines for their work, and performing other essential tasks assigned to the Governing Board by the Statute or any other general act of the Association.

3) The person authorized to represent is Edin Dervišhalilović – Dino Merlin, chairman of the Assembly of AMUS, residing at Čeljigovići 25, Sarajevo, and he is entered in the Register of the Ministry of Justice of B&H as the representative of the Association.

4) AMUS entered into contracts on the exclusive transfer of economic rights with 234 authors from Bosnia and Herzegovina, for 4.645 works that are going to form the repertoire of the collective organization; such agreements were signed within six months prior to filing the request in accordance with paragraph (3) of Article 3 of the Regulations. On the basis of the authorization referred to in Articles 10 and 11 of the Regulation, the Institute made a search in the IPI international database of authors and WID international database of works, and it established the following: at the time of filing the request, 494 authors were entered, as registered by the company "Sine Qua Non" d.o.o., under the code (216); for at least 41 of them, information on the same author appear two or more times (e.g. given name and surname, and then surname and given name, and then pseudonym for the same author and the like); 94 authors, of the total of 494 authors, had already signed contracts with AMUS; 141 authors who used to be members are registered as the members of AMUS, but have not signed contracts yet; meanwhile, some authors died, e.g. Nasiha Kapidžić-Hadžić who died on September 22, 1995, Himzo Polovina who died on August 5, 1986. For 20 authors in the IPI database there are not any single work registered, namely for: Aida Begić, Dženana Buturović, Merita Dalilović, Esad Duraković, Gavriilo Grahovac, Zdravko Grebo, Amela Hadrović-Hasanefendić, Vefik Hadžismajlović, Goran Hasanefendić, Nedeljko Kovačević, Strajo Krsmanović, Iza Razija Mešević, Aida Pilav, Vladimir Premec, Alma Sofo, Samir Sofo, Nenad Vanis, Selma Vanis-Vatrenjak, Nenad Veličković i Miodrag Živanović. Among the mentioned authors are some of the managers and employees of the company «Sine Qua Non» d.o.o.

Furthermore, there are 3.111 works in the WID database forming the repertoire of «Sine Qua Non» d.o.o., among which there are a large number of works of the authors who have already signed contracts on the exclusive transfer of economic rights with AMUS.

It is obvious that there is a disproportion between the number of authors and the repertoire represented by «Sine Qua Non» d.o.o., as a result of a large number of authors having a small number of works, and some of them having no single work.

These and other information raise doubt as to the real number of authors represented by «Sine Qua Non» d.o.o.

Taking into account the total number of authors and the repertoire of AMUS, the opinion of the Institute is that AMUS gathers the majority of B&H authors with the largest number of works, most of which are registered in the international database; the members of AMUS are the most popular authors in Bosnia and Herzegovina whose works are most often broadcast in the country and abroad. The authors/members of AMUS are: Edin Dervišhalidović – Dino Merlin, Hajrudin Varešanović – Hari Mata Hari, Goran Bregović, Kemal Monteno, Fahrudin Pecikoza Peca, Vladimir Podany, Elvir Laković Laka, Milić Vukašinić, Ranko Rihtman, Dino Šaran, Maya Sar, and many other popular authors. Furthermore, of 21 authors who represented Bosnia and Herzegovina at the Eurovision Song Contest, 13 are members of AMUS, whereas most of the remaining ones are members of the collective organizations in neighbouring countries.

5) AMUS meets technical requirements, within the meaning of Article 5 of the Regulations, as to office premises and equipment, means of communicating, web page, and e-mail address.

6) AMUS meets the requirements as to personnel and Technical and Administrative Service in view of the persons currently employed therein, and the person employed in the Service fulfils the conditions referred to in item d) of paragraph (2) of Article 10 of the Law and Article 6 of the Regulations.

7) AMUS timely submitted its business plan and a decision of the Assembly of AMUS to adopt the business plan in accordance with Article 7 of the Regulations, proving that the economic basis of AMUS is sufficient to allow for unhindered work and effective management of rights, considering, in particular, the number of authors having BiH citizenship or having a domicile or a principal place of business in Bosnia and Herzegovina, who authorized AMUS to manage their rights, the number of their works forming the repertoire of AMUS, the presumed scope of use of such works or the potential number of their users, the manner and means of carrying out the activity of the collective organization, its capability to manage the foreign authors' rights, its capability to manage the rights of national authors abroad, and estimated remunerations to be collected and operating expenses.

The business plan envisages 10% revenue increase compared to the former collective organization. The estimated amount of remunerations to be collected from users is about KM 2,5 mil. The estimation was made on the basis of a study of the potential number of users and consultation with the Association of Restaurant Owners and representatives of the association of entrepreneurs. As planned, the distribution of collected remunerations will be carried out according to the distribution plan adopted by the Assembly or more exactly, 70% will be distributed to authors, which is in compliance with the international standards applied by the collective organizations managing authors' rights. Operating expenses will be covered from the remunerations collected for the use of musical works forming the repertoire of the collective organization. It has been planned that at the very beginning the percentage for operating expenses will be less than 30%, and even lesser in the years to come.

8) Some foreign collective organizations, namely HDSZAMP of Croatia, SOKOJ of Serbia, and PEM of Montenegro, expressed their readiness to conclude reciprocal contracts with AMUS should it obtain authorization for the collective management of rights of the authors of musical works.

9) Copyright and Related Rights Council

Article 17 of the Regulations stipulates that the Institute may seek opinion on the existence of sufficient economic basis of the applicant or on the correctness of results and effects to be proved by the applicant, according to the provisions of the Law and the Regulations. Considering the fact that the authorization was granted for the same rights in 2002 to «Sine Qua Non» d.o.o. – Agency for Representation and Protection of Copyright, Sarajevo, and in 2006 to «Elta-kabel» d.o.o. – Company for Cable Transmission of Sound, Picture, and other Information, Dobož, the Institute passed on June 5, 2012 a decision, number IP-03-47-5-056787/12VT, to further discuss economic basis at the session of the Copyright and Related Rights Council, and it specified June 12, 2012 as the date of the session in the holding of the Decision.

The Copyright and Related Rights Council is an advisory and consulting body providing assistance to the Institute. Its opinions may help the Institute, but they are not binding. The session of the Copyright and Related Rights Council was held in Sarajevo on June 12, 2012. Besides the Council members, it was attended by a number of AMUS members, user representatives, and the representatives of the existing collective organizations. Following the discussion participated by almost all Council members and many guests, the following opinion was adopted: «The Copyright and Related Rights Council considers that there is sufficient economic basis and that AMUS is capable of managing the rights of the authors of musical works, and it supports granting the authorization for the collective management of said rights to AMUS».

Revocation of Authorization to «Sine Qua Non» d.o.o. Sarajevo and «Elta –kabel» d.o.o. Dobož

Paragraph (3) of Article 6 of the Law on the Collective Management of Copyright and Related Rights stipulates that there may be only one collective organization for the collective management of rights relating to the same type of rights in the same category of works. Paragraph (4) of Article 11 of the same law stipulates that in the case of granting the authorization to a new collective organization, a decision to that effect must contain a declaration on the revocation of authorization to the former collective organization.

Further, paragraph (1) of Article 44 of the Law stipulates that the organizations of authors and of other copyright holders, as well as other legal entities specialized in the management of copyright, which, according to the provision of Article 87 of the Copyright and Related Rights Law in B&H (OJ of B&H volume 7/02 and 76/06), dealt with the collective management of copyright prior to the entry of this Law into force, shall continue to operate after the entry of this Law into force. Paragraph (2) of the same Article obligates each entity referred to in the foregoing paragraph to harmonize its legal status and activity with the provisions of this Law and to file an application for granting the authorization within two years from the entry of this Law into force (the Law entered into force on August 11, 2010). Paragraph (4) of the same Article stipulates that this provision shall apply until such time as the Institute issues the authorization for the collective management of copyright pursuant to Article 11 of the Law.

Due to problems and vagueness in the functioning of the system of the collective management of copyright and related rights in Bosnia and Herzegovina in the past, the Parliamentary Assembly of Bosnia and Herzegovina and the Council of Ministers of Bosnia and Herzegovina requested the Institute to provide full information on the system of the collective management of copyright and related rights and on the existing organizations,

inter alia «Sine Qua Non» d.o.o. Sarajevo and «Elta-kabel» d.o.o. Dobož. At the session of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, held on April 19, 2012, and the session of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, held on May 15, 2012, the Parliamentary Assembly of B&H adopted the Report on the System of the Collective Management of Copyright and Related Rights in Bosnia and Herzegovina for the period 2005 – 2010. Both Houses of the Parliamentary Assembly of B&H adopted the following conclusions:

1. Report on the System of the Collective Management of Copyright and Related Rights in Bosnia and Herzegovina for the period 2005 – 2010 is adopted.
2. Authors and holders of copyright and related rights are invited to intensify their activities in order to fulfil requirements for the grant of the authorization for the collective management of their rights.
3. It is necessary to engage all relevant institutions in Bosnia and Herzegovina to look into the financial transactions of the existing collective organizations.
4. The Council of Ministers of B&H and the Institute for Intellectual Property of B&H shall submit to the Parliamentary Assembly of B&H annual reports on the system of the collective management of copyright and related rights in B&H, until such time when the Law on the Collective Management of Copyright and Related Rights will be fully implemented.

An integral part of the foregoing information was the analysis of business operations of «Sine Qua Non» d.o.o. – Agency for Representation and Protection of Copyright, Sarajevo and «Elta-kabel» d.o.o. Dobož. As far as business operations of «Sine Qua Non» d.o.o. Sarajevo are concerned, it was concluded, *inter alia*, that it cannot continue to operate in such a manner, for the reason that it fails to meet the standards as to transparency and democratic approach that should be nurtured by the collective organization, the manner of distribution of revenue, and efficiency in meeting its objectives as regulated by law.

For the company «Elta-kabel» d.o.o. Dobož, it was concluded, *inter alia*, that the company failed to carry out the activity pertaining to the collective management of copyright for which it was granted the authorization by the Institute, and that it is necessary to reexamine if there is a need for the company to deal with the collective management of rights at all.

Considering that until the filing of the application by AMUS, «Sine Qua Non» d.o.o. Sarajevo and «Elta-kabel» d.o.o. Dobož did not adapt their legal status to the new Law on the Collective Management of Copyright and Related Rights, and that both of them failed to file an application for the renewal of authorization, by which they would have proved the fulfillment of the requirements prescribed by law, it was decided as in the holding of this Decision.

Mutual Relations of the Former Collective Organization and the New One

The holding of the Decision stipulates that the relations of «Sine Qua Non» d.o.o. as the former collective organization, and AMUS, as the new collective organizations, on handover of the relevant documentation necessary for carrying out the activity of the collective management of copyright and related rights shall be regulated by a separate agreement within 30 days from the date of this decision.

It is undisputed that «Sine Qua Non» d.o.o. is obliged to pay to all the authors in the country and abroad remunerations collected during the validity of its authorization for the management of their rights, and that it is obliged to provide relevant information and documentation that AMUS, as the new collective organization, will need in carrying out the activity of the collective management of rights.

According to paragraph (6) of Article 11 of the Law on the Collective Management of Copyright and Related Rights, the notification on a decision to grant the authorization is published in the Official Gazette of B&H and the Official Gazette of the Institute, therefore it was decided as stated in the holding of this Decision.

Considering the circumstances, and on the basis of a careful and conscientious evaluation of evidence, and the results of the whole procedure, and taking into account the conclusions of the Parliamentary Assembly of Bosnia and Herzegovina, the Institute decided as stated in the holding.

Legal Remedy: This Decision is final in the administrative procedure. An administrative dispute may be initiated against this Decision by bringing an action before the Court of Bosnia and Herzegovina, within 30 days from the date of receipt.

Lidija Vignjević
Director
Institute for Intellectual Property
of Bosnia and Herzegovina