

*The translation of BiH legislation has no legal force and should be used solely for informational purposes. Only legislation published in the Official Gazettes in BiH is legally binding.*

Pursuant to Article IV.4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the 80 th session of the House of Representatives, held on June 30, 2010, and at the 48th session of the House of Peoples, held on July 13, adopted the

## **LAW ON THE COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS**

***Official Gazette of BiH, no. 63/10***

### **PART ONE – GENERAL PROVISIONS**

#### **Article 1**

##### **(Subject Matter of the Law)**

- (1) This Law governs:
  - a) contents and manner of the collective management of copyright and related rights,
  - b) organizations for the collective management of copyright and related rights,
  - c) conditions and procedure for granting authorizations for the collective management of rights,
  - d) tariffs and tariff agreements on the rates of remunerations for the use of the works and subject matters of related rights,
  - e) supervision over collective organizations by a competent State authority,
  - f) appointment, composition, competence and work of the Copyright Council.
- (2) This Law shall apply in conjunction with the law governing copyright and related rights in Bosnia and Herzegovina. The provisions of this Law shall in no way prejudice the rights granted under the law governing copyright and related rights in Bosnia and Herzegovina.
- (3) All the provisions of this Law relating to copyright and the works of authorship (works) shall include and apply mutatis mutandis to related rights and subject matters of protection of such rights.
- (4) All the provisions of this Law relating to the author and the holder of a related right shall also apply to their legal successors.

## **Article 2**

### **(Collective Management of Copyright)**

(1) Collective management of copyright shall mean the management of copyright for a number of works of a larger number of authors collectively through legal entities specialized in such activity only, who fulfill all the conditions under the provisions of this Law and have the authorization granted by the Institute for Intellectual Protection of BiH (hereinafter referred to as the Institute) for carrying out such activity (hereinafter referred to as the collective organizations).

(2) Collective organizations shall carry out the activity involving the collective management of copyright in their name, and for the account of the author.

(3) Collective management of copyright shall be possible only with respect to disclosed works.

## **Article 3**

### **(Tasks Relating to the Collective Management of Copyright)**

(1) The activities performed by collective organizations in the copyright management include the following tasks:

a) entering into contracts involving transfer of non-exclusive rights to users for the use of works from the repertoire of a collective organization under the terms which shall be equal for the same category of users, for the same types of works and for the same manners of use,

b) concluding collective agreements with representative associations of users on the terms of use of the works,

c) publishing the agreed tariff on remuneration rates for the use of the works and informing the users of the rates of such remunerations,

d) collecting remunerations for the use of the works,

e) distributing collected or received remunerations to authors according to pre-determined distribution rules,

f) controlling the use of the works forming part of the repertoire of a collective organization,

g) initiating and carrying out enforcement procedures before courts and other State authorities in the case of the infringement of rights managed by a collective organization,

h) entering into contracts with foreign collective organizations and their associations,

i) other activities which are related to collective rights management and which may reasonably be considered as operational expenses of a collective organization (educational and promotional activities for the purpose of raising awareness of the need

for respect of copyright, its protection and the like). All radio and television stations registered with the Communications Regulatory Agency of Bosnia and Herzegovina (CRA) shall be included in the promotional activities of a collective management organization, for the purpose of ensuring equality of the users.

(2) A collective management organization may entrust another collective organization or a business with administrative and technical tasks related to the collective copyright management by written contract.

#### **Article 4**

##### **(Mandatory Collective Management of Rights)**

(1) Copyright management may be carried out collectively with respect to all the rights granted according to the provisions of the law governing copyright and related rights, provided that the conditions specified in this Law are met.

(2) Copyright management shall be carried out only collectively in the case of:

- a) resale of original works of fine arts (resale right),
- b) collection of remuneration for private and other internal use of the works,
- c) cable retransmission of the works, unless the own broadcasts of broadcasting organizations are concerned, irrespective of whether such rights of broadcasting organizations are their own rights or the rights transferred to them by another right holders,
- d) right to reproduction of actual newspaper and similar articles on current issues in such press reviews (clipping).

(3) The rights referred to in paragraph (2) of this Article shall be managed by a competent collective organization without a contract with the author.

#### **Article 5**

##### **(Individual Management of Rights in Exceptional Cases)**

The rights which may be managed only collectively under Article 4 of this Law may be managed individually until such time as the Institute grants an authorization for the collective management thereof to a particular legal entity.

## **PART TWO – COLLECTIVE ORGANIZATION**

### **CHAPTER I. FORM OF COLLECTIVE ORGANIZATION**

## **Article 6**

### **(Collective Organization)**

- (1) A collective organization shall be a legal entity which, having the authorization granted by the Institute, shall carry out the tasks referred to in Article 3 of this Law as its only and non-profit activity, on the basis of a contract with the author or by virtue of this Law.
- (2) By way of derogation from paragraph (1) of this Article, a collective organization may carry out administrative and technical tasks for another collective organization on the basis of the written contract.
- (3) There may be only one collective organization for the collective management of copyright relating to the same type of rights in the same category of works.

## **Article 7**

### **(Operational Standards of Collective Organizations)**

- (1) A collective organization shall carry out all the tasks within the scope of its activity in such a manner as to ensure the achievement of the maximum possible level of effectiveness, good business practice, economic efficiency and transparency.
- (2) A collective organization shall deduct from its total revenue only the funds for covering the expenses of its own operation, and it shall distribute all other funds to its members. Exceptionally, the Statute of a collective organization may explicitly stipulate that a particular portion of such funds shall be allocated for cultural purposes and for the improvement of the pension, health and social status of its members. The amount of funds allocated for such purposes shall not exceed 10% of the net income of the collective organization.
- (3) A collective organization shall adhere to the international and generally accepted rules, standards and principles which apply to collective rights management in practice, in particular to those which relate to professional support service, determination of remuneration rate for the use of works, documentation and the international exchange thereof, as well as to the calculation and distribution of remunerations to the domestic and foreign authors.

## **Article 8**

### **(Legal Form of a Collective Organization)**

- (1) A collective organization shall be a legal entity having the status of an association operating within the entire territory of Bosnia and Herzegovina.
- (2) In the case of conflict between the provisions of this Law and the law governing incorporation and operation of associations, the provisions of this Law shall apply.

## **Article 9**

### **(Legal Basis for the Collective Rights Management)**

- (1) A collective organization may manage copyright on the basis of a contract with the author, unless this Law explicitly stipulates the possibility of collective rights management only on the basis of the law itself (paragraph (3) of Article 4 of this Law).
- (2) The contract referred to in paragraph (1) of this Article shall contain in particular:
  - a) the provision on the exclusive transfer of a respective economic right of the author to a collective organization,
  - b) the instruction by the author to a collective organization to manage the rights as transferred in its name and for the account of the author,
  - c) the type of a work and rights managed by a collective organization for the account of the author,
  - d) term of a contract which may not exceed five years; upon expiration, the contract may be extended indefinitely for equal terms.
- (3) If a collective organization manages the rights on the basis of the law, items b), c) and d) of paragraph (2) of this Article shall apply mutatis mutandis.
- (4) If the management of rights has been transferred to a collective organization under the law or contract, the author may not manage such rights individually by himself, except in the case referred to in Article 5 of this Law.

## **CHAPTER II. PROCEDURE FOR THE GRANT OF AUTHORIZATION AND CONTROL OVER THE OPERATIONS OF COLLECTIVE ORGANIZATIONS**

### **Article 10**

#### **(Application for the Grant of Authorization)**

- (1) A legal entity may operate as a collective organization only on the basis of the authorization granted by the Institute.
- (2) The procedure for the grant of the authorization to carry out the tasks related to the collective copyright management shall be initiated by the written request of a legal entity filed with the Institute. With such request, the legal entity shall file:
  - a) the Statute under which the bodies and the authority thereof in carrying out the tasks of the collective organization referred to in paragraph (1) of Article 2 of this Law are constituted,
  - b) names, surnames and addresses of the persons authorized to represent the collective organization,

- c) indication of the number of authors who have authorized a legal entity to manage the rights in their works, as well as a list of works included in the repertoire of the collective organization,
- d) proofs to the effect that the legal entity disposes with appropriate premises, equipment and professional support service for the effective collective rights management,
- e) business plan giving a real evaluation of the scope of the total economic effect of the collective management of rights, as well as a conclusion based on authentic documents that such legal entity will be able to carry out the activities of a collective organization in an effective and economical manner, applying all the standards referred to in Article 7 of this Law,
- f) decision on entry in the Register of Associations maintained by the Ministry of Justice of Bosnia and Herzegovina.

3. More detailed regulations on the implementation of items c), d) and e) of paragraph (2) of this Article shall be enacted by the Institute.

## **Article 11**

### **(Grant of Authorization)**

(1) The Institute shall grant an authorization for carrying out the collective management of copyright to a legal entity which filed an application in accordance with Article 10 of this Law if it establishes that:

- a) the Statute of the collective organization complies with the provisions of this Law and with the law governing copyright and related rights,
- b) economic circumstances of the legal entity are sufficient to allow for smooth operation of the collective organization and effective rights management,
- c) the legal entity meets the conditions referred to in item d) of paragraph (2) of Article 10 of this Law,
- d) no other collective organization exists for the same category of works and management of the same rights, unless the legal entity filing a request proves that it will offer to the users a more comprehensive repertoire of protected works than the already existing collective organization, as well as that it may ensure more effective and more economical management of rights.

(2) When assessing the sufficiency of economic circumstances of a legal entity or assessing the provision of more efficient and more economical rights management referred to in paragraph (1) of this Article, the Institute shall take into account in particular: the number of authors who are nationals of Bosnia and Herzegovina or who have residence or principal place of business in Bosnia and Herzegovina and who authorized the collective organization to manage their rights, the total number of their works to be included in the repertoire of the collective organization, the presumed extent of the use of such works or the possible number of their users, the ways and means by

which the collective organization intends to carry out its activities, its ability to manage the rights of foreign authors, its ability to manage the rights of domestic authors abroad, and the assessment of the expected amount of collected remunerations and operating expenses.

(3) More detailed regulations on the implementation of paragraph (2) of this Article shall be enacted by the Institute.

(4) In the case of granting an authorization to a new collective organization, a decision to that effect shall also contain a declaration on the revocation of the authorization for carrying out such tasks from the former collective organization.

(5) The provisions of the law governing general administrative procedure shall apply in the procedure for the grant of an authorization. There shall be no appeal against the Institute's decision, however, an administrative dispute may be initiated before the Court of Bosnia and Herzegovina.

(6) A notification of the final decision on the grant of an authorization shall be published in the Official Gazette of BiH and the Official Gazette of the Institute.

## **Article 12**

### **(Supervision of the Operation of a Collective Organization by the Institute)**

(1) The Institute shall supervise the operation of a collective organization and check whether it carries out its tasks in compliance with the provisions of this Law.

(2) The Institute may request from the collective organization at any time a report on the conduct of business, and inspection of its books and other business documents of the collective organization to the extent necessary and justified by the decision taken on the basis of a reasoned written request clearly specifying the subject matter of the inspection.

(3) A collective organization shall inform the Institute without delay on any change concerning the persons authorized by law or the Statute to represent it.

(4) A collective organization shall inform the Institute without delay, submitting at the same time all the relevant documentation, in particular of:

- a) any amendments to the Statute,
- b) collective agreements with associations of users,
- c) tariffs and any amendments thereto,
- d) agreements with foreign collective organizations and the associations thereof,
- e) decisions of the Assembly of the collective organization,
- f) annual reports and reports of auditing organizations, together with the opinion of an authorized auditor on the regularity of operation of the collective organization and its compliance with the provisions of this Law, acts of the collective organization and agreements concluded with third parties,

g) judicial and administrative decisions involving the collective organization as a party therein,

(5) A collective organization shall duly notify the Institute and the users on Assembly and other bodies' sessions and it shall allow the authorized representatives of the Institute and the users to attend such sessions. At the sessions of the collective organization bodies, the representatives of the Institute and the users shall have the right to express their views on all issues relating to the collective copyright management, but they shall not have the right to vote.

### **Article 13**

#### **(Measures Taken by the Institute in the Case of Irregularities in the Operation of a Collective Organization)**

(1) If the Institute finds irregularities in the operation of a collective organization, it shall order the collective organization, by its decision, to remove such irregularities and specify an adequate time limit for the removal thereof which may be neither shorter than 30 days nor longer than six months.

(2) The Institute shall, by its decision, revoke an authorization granted for the operation of a collective organization if:

a) the collective organization filed with the Institute incorrect data on the basis of which the authorization was granted,

b) the circumstances arise which would constitute grounds for the refusal of the application for the grant of an authorization,

c) the collective organization does not carry out its activities in accordance with the provisions of Article 3 of this Law,

d) the collective organization seriously violates the provisions of this Law.

(3) The Institute shall not make a decision pursuant to items c) and d) of paragraph

(2) of this Article if, prior to that, it failed to order the collective organization to correct the violation as found.

(4) A decision on the revocation of an authorization shall be published in the Official Gazette of BiH and in the Official Gazette of the Institute.

### **Article 14**

#### **(Conditional Revocation of Authorization)**

(1) The Institute may, by its decision on the revocation of authorization, order at the same time that such revocation shall not occur on condition that the collective organization removes all irregularities and corrects all violations within a specified time limit, which shall neither be shorter than six months nor longer than two years (trial

period), and that within such time limit it does not commit a new violation which constitutes the grounds for the revocation of authorization.

(2) The Institute shall rescind a decision on the conditional revocation of authorization if the collective organization fails to correct, within trial period, the irregularities and violations as found or if it commits new violation which constitutes the grounds for the revocation of authorization.

(3) The provisions of the law governing general administrative procedure shall apply mutatis mutandis in the procedures carried out in accordance with the provisions of Articles 13 and 14 of this Law. A decision issued by the Institute shall not be subject to appeal, but an administrative dispute may be initiated before the Court of Bosnia and Herzegovina.

### **PART THREE – RELATION BETWEEN A COLLECTIVE ORGANIZATION AND AUTHORS**

#### **Article 15**

##### **(Obligation to Accept Collective Management of Rights)**

(1) A collective organization may not refuse a request for the conclusion of contract for the collective management of rights in the area of its activity.

(2) The provision of paragraph (1) of this Article shall not apply if the author has already concluded a contract for the collective management of his rights in Bosnia and Herzegovina with a foreign collective organization.

#### **Article 16**

##### **(Membership in a Collective Organization)**

The authors who have entrusted the management of their rights to a collective organization shall be the members thereof. The types of membership and the rights in connection therewith shall be determined by the Statute of the collective organization.

#### **Article 17**

##### **(Prohibition to Exempt Works)**

The member of a collective organization may not exempt from the collective management of rights its particular rights or particular forms of the use of such works, except in the case when it is stipulated in the contract between him and the collective organization.

## **Article 18**

### **(Presumption of Collective Management of Rights)**

- (1) It shall be presumed that a collective organization is authorized to act for the account of all authors, within the framework of the type of rights and category of works for which it is specialized.
- (2) The author who does not wish his rights to be managed collectively shall notify the relevant collective organization of that in writing.
- (3) A collective organization shall treat the authors who failed to communicate a notification to the effect that they would manage their rights individually on equal terms with the authors who have concluded with it the contract referred to in article 9 of this Law.

## **Article 19**

### **(Supervision by Members)**

- (1) Each member of a collective organization may request from it the annual financial report and the report of the supervisory board within the time limit specified by the Statute. If such time limit is not specified, it shall be 15 days from receipt of the request of a member.
- (2) At least 10% of the regular members of a collective organization may demand that one or more independent experts carry out inspection and audit of its operation, at the expense of the collective organization, unless such inspection has already been carried out under this provision within the same calendar year.

## **Article 20**

### **(Annual Report and Audit)**

- (1) Within six months following the end of each financial year, a collective organization shall adopt or obtain:
  - a) annual reports of administrative and supervisory bodies on the amount of remunerations collected, the distribution thereof, operation of the collective organization, implementation of the collective agreements referred to in Article 24 of this Law and implementation of the agreements concluded with foreign collective organizations;
  - b) report of an auditing firm on the audit of financial and accounting documentation, together with the findings of an authorized auditor on the regularity and conformity of the operation of a collective organization with the provisions of this Law, acts of the collective organization and agreements entered into;
  - c) opinions of administrative and supervisory bodies on the report and findings referred to in item b) of this paragraph,

d) measures taken if the authorized auditor found irregularities in the operation of the collective organization,

e) proposal for the financial plan of the collective organization for the following year which shall include the plan of its operating costs.

(2) The provisions of this Article shall not prejudice liabilities of the collective organization under other regulations with respect to its financial operations, reports and audit.

## **Article 21**

### **(Rules Pertaining to Distribution of Revenue of a Collective Organization)**

(1) Taking into account the provision of paragraph (2) of Article 7 of this Law, a collective organization shall distribute the entire revenue derived from its activity to the authors who concluded with it the contract referred to in Article 9 of this Law, as well as to those who manage their rights in Bosnia and Herzegovina on the basis of the contract concluded between that collective organization and a foreign collective organization, in accordance with the annual plan adopted by the Assembly of the collective organization.

(2) A collective organization shall distribute the funds derived from the royalties of its members according to the distribution rules as adopted.

(3) The basic principles and rules of the distribution of revenue shall be specified by the Statute of the collective organization, they shall ensure that the distribution is proportional, appropriate and equitable, and they shall effectively prevent any arbitrariness.

## **Article 22**

### **(Special Cases of the Distribution of Remunerations)**

(1) The remuneration received on the basis of the right to remuneration for private and other internal use which is paid, according to the law governing copyright and related rights, at the first sale or importation of new technical devices for sound and visual recording and new blank sound, picture or text fixation media, shall be divided among authors, performers and phonogram producers or film producers in the ratio of 40:30:30.

(2) The remuneration received on the basis of the right to remuneration for private and other internal use which is paid, according to the law governing copyright and related rights, at the first sale or importation of new photocopying devices and on made photocopies intended for sale, shall be divided among authors and publishers in the ratio of 50:50.

(3) The remuneration received on the basis of statutory license for the reproduction of newspaper and similar articles in press reviews (clipping) shall be divided between authors and publishers in the ratio of 30:70.

## **PART FOUR – RELATION BETWEEN COLLECTIVE ORGANIZATION AND USERS**

### **CHAPTER I. TARIFF AND COLLECTIVE AGREEMENT**

#### **Article 23**

##### **(Tariff)**

(1) The amount and method of calculation of remunerations payable by each user to a collective organization for the use of a work from its repertoire shall be fixed by the tariff. The amount of remuneration shall be appropriate as to the category of the work and the manner of the use thereof.

(2) The tariff shall be fixed by a collective agreement concluded between a collective organization and a representative association of users or, if it is impossible, by an agreement with an individual user or by a decision of the Copyright Council. The tariffs fixed in the mentioned agreements shall be considered as appropriate until such time as the Copyright Council issues a different final decision.

(3) When determining an appropriate tariff, the following shall be taken into account, in particular:

- a) total gross income derived from the use of a work or, if it is impossible, total gross costs related to such use;
- b) importance of the use of works for the activity of a user;
- c) ratio between protected and non-protected works used;
- d) ratio between the rights managed collectively and individually;
- e) particular complexity of the collective management of rights due to certain use of the works;
- f) comparability of the proposed tariff with the tariffs of similar collective organizations in other neighboring states and the states which may be compared with Bosnia and Herzegovina according to the relevant criteria, and in particular with respect to GDP per capita and purchasing power.

(4) By way of derogation from the provision of paragraph (3) of this Article, the basis for determining an appropriate tariff for electronic media shall be net income derived from sponsoring musical broadcasts, income derived from regular advertising during television or radio commercial breaks. The basis shall not include income derived from sponsoring broadcasts of investigative journalism or informative broadcasts, weather forecasts and sport, educational broadcasts, donations, sponsoring non-musical parts of a program.

## **Article 24**

### **(Collective Agreement)**

(1) A collective organization shall enter into collective agreement with a representative association of users of the works from the repertoire of the collective organization on the basis of previously held negotiations. A representative association of users shall be an association which, within the territory of Bosnia and Herzegovina, represents the majority of users in the field of certain activity or an association whose representative capacity has been recognized by virtue of other regulations.

(2) In the absence of the representative association within the meaning of paragraph

(1) of this Article, the representative capacity shall be established on the basis of the number of users represented by the association, the activity of the association, the level of organization of the association and the like.

(3) The agreement entered into by and between a collective organization and an individual user of the works from its repertoire shall also be considered as collective agreement if such individual user is, due to the nature of his activity, the only one performing such an activity. The provisions of this Law relating to the representative associations of users shall apply *mutatis mutandis* to the individual user referred to in this paragraph.

4. A collective agreement shall stipulate in particular:

- a) the tariff, the basis for calculation and a manner of application of the tariff,
- b) conditions of use of the works from the repertoire of a collective organization,
- c) circumstances of use due to which the rate of particular remuneration fixed by the tariff shall be increased, reduced or exempted from payment,
- d) the due date and the method of payment of remuneration,
- e) the method of payment of remuneration for the use of the works and the method of calculation of collected remunerations in the case of existence of the provisional tariff, referred to in Article 26 of this Law, for the use of such works until the time of conclusion of the collective agreement if the tariff for certain category of use of the works is fixed for the first time by such agreement.

## **Article 25**

### **(Procedure Relating to the Conclusion of a Collective Agreement)**

(1) A collective organization shall publish an invitation for negotiations concerning the conclusion of a collective agreement in the Official Gazette of BiH. The time limit set for the commencement of negotiations shall be neither less than 30 days from the day of publication nor more than 180 days from the day of publication of the invitation.

(2) A collective organization shall publish the collective agreement as concluded in the Official Gazette of BiH. The collective agreement shall enter into effect on the 15th day

from its publication in the Official Gazette of BiH for all the users of the same category of the works from the repertoire of the collective organization, irrespective of whether such users took part in the negotiations or not.

(3) The users of the works from the repertoire of a collective organization shall conclude contracts with the collective organization in accordance with the collective agreement as in force.

(4) When deciding on requests for the payment of remunerations made by a collective organization, courts shall be bound by collective agreements as in force.

(5) The provisions of Articles 24 and 25 of this Law shall apply mutatis mutandis to the amendments to or terminations of collective agreements.

## **CHAPTER II. OBLIGATIONS OF USERS**

### **Article 26**

#### **(Obligation to Conclude Contract on the Use of a Work)**

(1) The user of the works from the repertoire of a collective organization may at any time request the conclusion of contract on the non-exclusive transfer of rights for the use of such works, in accordance with the effective collective agreement or effective provisional tariff if such tariff exists at such time.

(2) If a contract on the non-exclusive transfer of rights for the use of protected works failed to be concluded, a respective right shall be considered as having been transferred if the user transfers to the account of the collective organization or to the special account of a court or notary the amount that would be collected by the collective organization according to the current tariff.

### **Article 27**

#### **Obligation of a User to Provide Information to a Collective Organization)**

(1) The organizers of cultural, artistic and entertainment events and other users of protected works shall, in the cases where it is required under the provisions of this Law, previously acquire the rights of communication of such works to the public and shall send a list of all the works used to the relevant collective organization within 15 days following such communication.

(2) The competent authority for internal affairs shall, at the request of the author or of the collective organization, prohibit the event or the use of the protected work if the organizer failed to acquire previously the rights referred to in paragraph (1) of this Article.

(3) A collective organization shall make available to the electronic media, at its expense, a computer program which shall automatically record the broadcast works which may be sent to the collective organization by electronic mail.

(4) The users of protected works who use such works without the non-exclusive transfer of rights shall, under the law governing copyright and related rights (publishers of teaching and examination materials, publishers of periodicals and persons dealing with clipping activity), at least once a month, communicate information on the use thereof to a relevant collective organization, unless different period for providing information has been agreed upon in a special agreement between a collective organization and a user.

## **Article 28**

### **(Obligations of Persons Paying Remuneration on the Basis of Other Rights of the Author)**

(1) Manufacturers of devices for sound and visual recording, manufacturers of devices for photocopying, manufacturers of blank sound, picture or text fixation media, and importers of such devices and media shall, at the end of each quarter, communicate to the relevant collective organization in writing the information on the number and type of the devices and media sold or imported, as necessary for the calculation of the remuneration due.

(2) Natural persons or legal entities providing photocopying services against payment shall, at the end of each month, communicate to the relevant collective organization in writing the information on the number of photocopies made for sale, as necessary for the calculation of the remuneration due, unless different period has been agreed upon in a special agreement between the collective organization and such persons or entities.

(3) Sellers, buyers or intermediaries who are art market professionals shall communicate to the relevant collective organization in writing the information as necessary for the calculation of the remuneration due from sale of the original works of fine art (resale right, regulated by the provisions of the law governing copyright and related rights) within 30 days from such sale.

(4) Natural persons or legal entities who deal with lending of such originals or copies of works and who, according to the provisions of the law governing copyright and related rights, pay remuneration to the author shall communicate to the relevant collective organization in writing the information as necessary for the calculation of the remuneration due, within 15 days from the receipt of its request.

## **CHAPTER III. OBLIGATIONS OF COLLECTIVE ORGANIZATIONS**

### **Article 29**

#### **(Nondiscrimination of Users)**

A collective organization shall conclude a contract for the non-exclusive transfer of rights with any interested user or association of users, without discrimination.

### **Article 30**

#### **(Obligation to Provide Information for Inspection)**

A collective organization shall allow any user, as well as another person having legal interest, to inspect its repertoire of the works and it shall provide, at the request of any user, all necessary information on the conditions under which it manages copyright in particular works.

### **Article 31**

#### **(Informing the Users on the Exemption of an Author)**

A collective organization shall transmit the notification referred to in Article 18 of this Law to each user of the works included in its repertoire.

## **PART FIVE. – SETTLEMENT OF TARIFF DISPUTES BETWEEN COLLECTIVE ORGANIZATIONS AND USERS**

### **CHAPTER I. COPYRIGHT COUNCIL**

### **Article 32**

#### **(Copyright Council)**

(1) The Copyright Council (hereinafter referred to as the Council) shall be an expert, independent and unbiased body empowered, in the area of the management of copyright, to:

- a) fix the appropriate tariff for the use of the works,
- b) decide on other disputed issues related to the conclusion of collective agreements,
- c) check whether a published collective agreement complies with the law governing copyright and related rights and this Law.

(2) If the parties have concluded an arbitration agreement or have agreed upon arbitration competence with respect to some of the issues referred to in paragraph (1) of this Article, such an agreement or contractual provision shall be null and void.

(3) The disputes which fall within the competence of the Council may not be brought before the Council of Competition of Bosnia and Herzegovina.

## **Article 33**

### **(Composition of the Council)**

(1) The Council shall consist of the President and four members.

(2) The President and the members of the Council, as well as their respective alternates, shall hold university degrees and at least five years of work experience in the profession concerned. All the persons constituting the Council shall have knowledge in the area of copyright.

## **Article 34**

### **(Appointment of the Council)**

(1) The President and the members of the Council shall be appointed by the Council of Ministers of Bosnia and Herzegovina (hereinafter referred to as the Council of Ministers of BiH) upon the proposal of the Institute. Besides the President and the members of the Council, a Deputy President and two alternate members of the Council shall be appointed.

(2) The Institute shall prepare the proposal referred to in paragraph (1) of this Article on the basis of the proposal for a candidate received from a collective organization and a representative association of users, based on public invitation published in the Official Gazette of Bosnia and Herzegovina. A collective organization and a representative association of users shall propose two members of the Council and one alternate member each. The President of the Council and his/her Deputy shall be proposed by the Institute.

(3) If a collective organization and a representative association of users fail to propose their candidates for the members and alternate members of the Council within three months following the publication of public invitation, or if they propose candidates who do not meet the conditions referred to in paragraph (2) of Article 33 of this Law, such members and alternate members of the Council shall be proposed by the Institute.

(4) The Council of Ministers of BiH may refuse the appointment of a proposed person if it considers that such person does not meet the conditions referred to in paragraph (2) of Article 33 of this Law.

(5) The Deputy President and alternate members of the Council shall assume an active role in the work of the Council in case that the President or a member of the Council is prevented from participating in the work of the Council due to serious illness or is otherwise prevented from participating for a longer period.

(6) The term of appointment of the President and members of the Council, as well as of Deputy President and alternate members shall be five years. After the expiry of appointment, the Institute shall repeat the appointment procedure in accordance with the provisions of this Article. The President and the members of the Council, as well as a Deputy President and alternate members thereof, whose appointments have expired, may be reappointed.

(7) The President or a member of the Council may be relieved of his/her duty if he/she:

- a) fails to perform his/her duty consciously or impartially,
- b) becomes permanently incapable of performing his/her duty,
- c) requests to be relieved of duty for other justified reasons.

(8) A proposal for the relief of his/her duty of the President and a member of the Council shall be made by the Institute on its own initiative or on the initiative of a collective organization or an association of users. The Council of Ministers of BiH shall decide on the proposal for the relief of duty.

## **Article 35**

### **(Procedure before the Council)**

(1) A collective organization or a representative association of users may, at any time after the publication of the provisional tariff referred to in Article 26 of this Law or if it fails to conclude a collective agreement within six months from the beginning of negotiations, request the Council to fix an appropriate tariff by its decision or to decide on another disputed issue with respect to the collective agreement.

(2) Any person having legal interest in it may request the Council to assess whether a published collective agreement complies with the law governing copyright and related rights and this Law, and whether the tariff fixed by such agreement is appropriate, unless the Council has already decided on the same issue.

(3) The procedure before the Council shall be initiated by a written request which shall contain, in particular:

- (a) information on the applicant,
- (b) explanation of all disputed issues,
- (c) statements concerning the course and results of negotiations for the conclusion of a collective agreement thus far, including the evidence on the date of the commencement thereof,
- (d) proposal of the tariff to be fixed by the Council or a proposal of the solution to another disputed issue to be decided by the Council.

(4) The Council shall send the request referred to in paragraph (3) of this Article to the opposite party or, in the case referred to in paragraph (2) of this Article, to the collective organization and the representative association of users which have concluded the contested agreement and shall invite them to file their observations regarding the same in a specified time limit.

(5) Each party shall state the facts and provide evidence on which it founds its request or by which it contests the allegations and evidence of the opposite party. The Council shall not be bound by the evidence and claims presented by the parties.

(6) The Council may at any time impose on the parties to present additional evidence which they consider would be beneficial for the procedure, and in particular to prepare relevant reports, present expert or court expert opinions and the like. Taking into consideration all the circumstances of the case, the Council shall evaluate the weight of a party's refraining from complying with the provisions of this paragraph.

(7) Unless otherwise provided by this Law, the provisions of the law governing general administrative procedure, with the exception of the provisions on legal remedies and execution, shall apply *mutatis mutandis* in the procedure before the Council.

## **Article 36**

### **(Decision of the Council)**

(1) The Council shall fix an appropriate tariff or decide on another disputed issue by its decision. The Council may approve a contested collective agreement in whole or in part or amend or annul it.

(2) If necessary, depending on all the circumstances of the case, the Council may, during the procedure and upon the request of a party, issue a decision fixing the amount of tariff to be applied for the duration of the procedure before the Council. The Council shall issue such temporary decision on the basis of information as known at the time of decision making. Such a decision shall be effective until the issuance of the decision referred to in paragraph (1) of this Article. The judicial protection provided by Article 38 of this Law shall not be allowed, under the provisions of this paragraph, against the temporary decision.

(3) The Council shall issue the decision referred to in paragraph (1) of this Article within six months from receipt of the request referred to in paragraph (3) of Article 35 of this Law.

(4) The final decision of the Council shall constitute the integral part of a collective agreement or shall substitute a collective agreement if it amends or annuls the contested collective agreement or if the collective agreement has not been concluded.

(5) The final decision of the Council shall be published in the Official Gazette of Bosnia and Herzegovina and in the official Gazette of the Institute.

## **Article 37**

### **(Costs of the Procedure before the Council)**

(1) The costs of the procedure before the Council shall be the costs incurred by the parties and the costs incurred by the Council.

(2) Each party shall bear its own costs of the procedure before the Council.

(3) The parties shall share, in equal parts, the following costs of the Council:

a) remunerations of members of the Council,

- b) travel and other reasonable expenses of the members of the Council,
- c) costs arising from the presentation of evidence,
- d) administrative costs.

(4) The party initiating the procedure before the Council shall advance the funds for covering the operating costs of the Council, within a time limit fixed by the Council which shall not be less than 15 days; otherwise the Council shall reject a request for the initiation of the procedure.

(5) The amount of remuneration for the work of the members of the Council shall be 25% of the basic monthly salary of a cantonal or a municipal court judge for each month of the procedure as commenced, and the amount of remuneration for the work of the President of the Council shall be the remuneration of a member increased by 15%.

(6) The Council shall decide by a separate decision on the costs of the Council and as to whether any party shall reimburse to the other party an appropriate part of the costs incurred, taking into consideration the advances paid.

## **Article 38**

### **(Judicial Protection Against the Decision of the Council)**

(1) The instigation of an administrative dispute before the Court of Bosnia and Herzegovina shall be allowed against a decision of the Council within 30 days from receipt of the decision. A panel consisting of three judges of the Court of Bosnia and Herzegovina shall decide on the claim.

(2) The Court of Bosnia and Herzegovina shall examine a decision of the Council within the limits of the particulars of the claim as filed and within the limits of the grounds stated in the petition, paying attention, *ex officio*, to material breaches of the procedure with respect to the question whether the party was given an opportunity to make a statement on the facts and circumstances important for the contested decision.

(3) In the procedure for judicial protection, the plaintiff may not state new facts and propose the presentation of new evidence.

(4) The Court of Bosnia and Herzegovina shall pass its decision without a main hearing.

(5) There shall be neither an appeal against a judgment or a decision of the Court nor a review thereof.

(6) Under the provisions of this Article, the provisions of the law governing administrative disputes shall apply *mutatis mutandis* to the procedure for judicial protection, unless otherwise provided by this Law. The Council shall be exempted from the payment of court fees in the administrative dispute.

## **Article 39**

### **(Auxiliary tasks and Administrative Assistance)**

(1) The seat of the Council shall be in the Institute headquarters. The Institute shall provide to the Council administrative and technical assistance as necessary which is required for ensuring an efficient and unhindered operation of the Council, and it shall bear the costs of such assistance.

(2) The Institute shall receive at its account all the sums paid by the parties for the purpose of covering operating costs of the Council in accordance with paragraph (3) of Article 37 of this Law, and it shall carry out all the accounting tasks relating to the payment of remunerations and reimbursement of costs incurred by the members of the Council.

## **CHAPTER II. MEDIATION**

## **Article 40**

### **(Mediator)**

(1) A collective organization and a representative association of users may propose, on the basis of a mediation agreement, the engagement of a mediator for the purpose of conclusion of the collective agreement on the cable retransmission of broadcasts (broadcast works).

(2) A mediator shall be independent, impartial, and not bound by any instructions. Secrecy in the mediation procedure shall be guaranteed.

(3) A mediator's duty shall be to do everything necessary for the parties to negotiate in good faith and not protract negotiations without justified reasons. The mediator may recommend to the parties a method of dispute resolution. It shall be considered that the parties have accepted the mediator's recommendation if, within three months after the receipt thereof, none of the parties files its written opposition.

(4) The parties shall jointly choose a mediator from the list of mediators made by the Institute.

(5) A mediator shall be entitled to remuneration for the mediation as conducted. The remuneration shall be paid by the parties. More detailed regulations for the implementation of this Article, including the amount of remuneration, shall be brought by the Institute.

(6) The Institute shall provide a mediator with the administrative assistance as necessary for the smooth conduct of the mediation procedure. The provision of Article 39 of this Law shall also apply mutatis mutandis to mediation.

## **PART SIX – PENAL PROVISIONS**

### **Article 41**

#### **(Misdemeanors)**

(1) A legal entity shall be punished by fine in the amount from KM 1.000 to KM 100.000 for misdemeanor, and an entrepreneur shall be punished by fine in the amount from KM 1.000 to KM 10.000 for misdemeanor if it or he:

(a) fails to send to a relevant collective organization, within prescribed time limit, a list of the works used (paragraphs 1, 3 and 4 of Article 27 of this Law);

(b) fails to send to a relevant collective organization, within prescribed time limit, information on the type and number of sold or imported devices for sound and visual recording, photocopying devices, blank audio and video media, and information on photocopies sold, necessary for the calculation of the amount of remuneration due for private and other internal use of works, in accordance with the provisions of the law governing copyright and related rights (paragraphs 1 and 2 of Article 28 of this Law);

(c) fails to send to a relevant collective organization, within prescribed time limit, information necessary for calculating the amount of remuneration due from the sale of the originals of the works of fine art (paragraph 3 of Article 28 of this Law);

(d) fails to send to a relevant collective organization, within prescribed time limit, information necessary for the calculation of the amount of remuneration due for making available for use the originals or copies of the works (paragraph 4 of Article 28 of this Law).

(2) A responsible person in a legal entity, or with an entrepreneur, shall also be punished for the misdemeanor referred to in paragraph 1 of this Article by fine in the amount from KM 3.000 to KM 20.000.

(3) A natural person shall be punished for the misdemeanor referred to in paragraph 1 of this Article by fine in the amount from KM 3.000 to KM 10.000.

(4) Paragraphs 1, 2 and 3 of this Article shall also apply in the case where a list of works or information provided is incorrect.

(5) The misdemeanor procedure based on the provisions of this Article shall be expeditious.

### **Article 42**

#### **(Repeated Misdemeanors)**

A legal entity or an entrepreneur, who repeats the misdemeanor referred to in paragraph 1 of Article 41 of this Law, may be imposed upon a protective measure involving the prohibition of business activity or parts thereof infringing copyright or related rights for one year if misdemeanor committed is exceptionally serious in view of the manner in

which it was committed, the consequences of the act or other circumstances of the misdemeanor as committed.

### **Article 43**

#### **(Inspection Control)**

The inspection control in relation to misdemeanors sanctioned under Article 41 of this Law shall be carried out by the inspection office in charge of market control in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina.

## **PART SEVEN - TRANSITIONAL AND FINAL PROVISIONS**

### **Article 44**

#### **(Harmonization of the Status and Activity of Existing Organizations)**

(1) 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 before the entry of this Law into force, in accordance with the provision of Article 87 of the Copyright and Related Rights Law in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, volumes 7/02 and 76/06), shall continue to operate after the entry of this Law into force.

(2) Every entity referred to in paragraph 1 of this Article shall harmonize its status and activity with the provisions of this Law, and shall apply for a new authorization for the collective management of copyright in accordance with Article 10 of this Law, within two years from its entry into force.

(3) The provisions of paragraphs 1 and 2 of this Article shall also apply to such entities whose authorizations expire during the period referred to in paragraph 2 of this Article.

(4) The provisions of paragraph 1 of this Article shall apply to the entities referred to in paragraph 2 of this Article until such time as the Institute issues an authorization for the collective management of copyright according to Article 11 of this Law.

(5) The tariffs of the organizations of authors and other copyright holders and of other legal entities specialized in the management of copyright according to paragraph 1 of this Article, which applied until the entry of this Law into force, shall be considered as valid collective agreements on tariffs, according to the provisions of Article 24 of this Law.

(6) The procedures for the grant of authorizations for the collective management of copyright still pending on the date of entry of this Law into force shall continue in accordance with the provisions of this Law.

(7) The procedures for the approval of tariffs pending on the date of entry of this Law into force shall be discontinued.

## **Article 45**

### **(Provisional License until the Establishment of Relevant Collective Organization)**

(1) If, within a period of one year from the day of entry of this Law into force, the establishment of relevant collective organizations for the management of the right to remuneration due for the reproduction of works for private and other internal use, and remuneration due for the resale of the originals of works of fine art according to the provisions of the law governing copyright and related rights, have not taken place, the Institute shall have the right to grant provisional license for the collective management of such rights to a legal entity not fulfilling the conditions set forth in Article 8, Article 9 and items (a), (c) and (e) of paragraph 2 of Article 10 of this Law, if it estimates, taking into consideration all the circumstances of the case, that it is appropriate.

(2) A provisional license may be granted for a fixed time-limit which shall not be less than one year, or without a time-limit, until the revocation thereof. In the provisional license, the Institute shall determine the conditions for a legal entity for the collective management of certain copyrights.

(3) Provisional license granted to the legal entity referred to in paragraph 1 of this Article shall, in any case, cease to have effect upon the grant of the license to a relevant collective organization according to Article 11 of this Law.

## **Article 46**

### **(Appointment of the Council)**

(1) The Institute shall initiate a procedure for the appointment of the Council within one month from the date of entry of this Law into force.

(2) The Council of Ministers of Bosnia and Herzegovina shall appoint the President and the members of the Council not later than six months from the date of entry of this Law into force.

## **Article 47**

### **(Implementing Regulations)**

The Institute shall enact the regulations provided for in paragraph 3 of Article 10, paragraph (3) of Article 11 and paragraph (5) of Article 40 of this Law within six months from the date of entry of this Law into force.

## **Article 48**

### **(Expiration of Other Provisions)**

Upon the entry of this Law into force, the provisions of Articles 86, 87, 88, 89, 90, 91, 105, 106, 107, 108, 120, 121, 122, 123, 124,130, 131, 132, 134 and 135 of the Copyright and Related Rights Law in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, volumes 7/02 and 76/06) shall cease to have effect.

## **Article 49**

### **(Entering of This Law into Force)**

This Law shall enter into force on the eighth day after its publication in the Official Gazette of Bosnia and Herzegovina.