



REPUBLIKA SLOVENIJA  
**MINISTRSTVO ZA GOSPODARSKI RAZVOJ IN TEHNOLOGIJO**  
URAD RS ZA INTELEKTUALNO LASTNINO

Kotnikova ulica 6, 1000 Ljubljana

T: +386 1 620 31 00  
F: +386 1 620 31 11  
E: [sipo@uil-sipo.si](mailto:sipo@uil-sipo.si)  
[www.uil-sipo.si](http://www.uil-sipo.si)

# **RECOMMENDATIONS FOR MANAGING THE COLLECTIVE MANAGEMENT ORGANISATIONS IN THE REPUBLIC OF SLOVENIA**

The Slovenian Intellectual Property Office (hereinafter: the Office) prepared the following recommendations for managing the business of collective management organisations in the Republic of Slovenia to provide guidance and encourage social and cultural development by facilitating the implementation of the provisions of the Copyright and Related Rights Act (hereinafter: the recommendations).

These recommendations shall be understood as guidelines for collective management organisations and as such are not legally binding.

Before adopting the recommendations, the Office carried out non-binding consultations with collective management organisations.

Copyright is an essential part of intellectual freedom. As such, it is inseparable from individual creation. Copyright represents an economic encouragement for creation and dissemination of results of creative effort and an important constituent of the cultural identity of a society.

Collective management organisations are a key pillar of the legal system of copyright and protection of intellectual property in general. Existence of collective management organisations is thus of national importance. However, only those collective management organisations will survive that are managed in a transparent way, that are most successful in distributing the collected rights revenue from the usage of rights to right-holders, and that understand that they are there not for themselves but to serve and protect the interests of all creators and holders of copyright and related rights.

The Office considers that better and more transparent managing the business of collective management organisations will provide a strong basis for enhancing awareness in Slovenia not only of the significance of copyright and related rights but also of the importance and value of creative effort in general. With these recommendations, the Office aims to establish new standards for the managing the business of collective management organisations and provide an interpretation (albeit non-binding) of the provisions of the Copyright and Related Rights Act. These recommendations summarise the expectations of the Office concerning the supervising of the legality of managing the business of collective management organisations, which will facilitate understanding and communication between the Office and collective management organisations.

In Slovenia, collective management organisations are legal persons which are authorised by the Office to manage copyright and related rights on a not-for-profit basis. Management of these rights enables authors and other right-holders to manage their rights in a simple and effective way in conditions of mass and widespread use of their work and affords users easy access to legitimate use of a large number of works covered by copyright and related rights.

Collective management organisations are complex institutions, due to the complexity associated with the rights they manage. Tariffs applied by collective management organisations and rules for the distribution of amounts due to right-holders are not always understandable or logical at first sight.

Since in Slovenia collective management of certain exclusive rights is mandatory and by nature monopolistic, good management and transparency of managing the business of collective management organisations are crucial for protecting copyright and related rights associated with creative effort that are guaranteed by Slovenia's Constitution.

A transparent, logical, open and understandable manner of managing the business of collective management organisations is a prerequisite which enhances the confidence of authors and holders of copyright and related rights, of users, and of the general public in the system of collective management of these rights.

In drawing up these recommendations, the Office took into consideration Slovenia's legislation, guidelines and recommendations in force in the European Union, the principles of business ethics, and cases of good practice for responsible and effective managing of the business of collective management organisations, confirmed on numerous occasions by Slovenia's Supreme and Constitutional Courts in their decisions.

## **GENERAL**

1. The basic purpose of a collective management organisation is collective management of copyright and related rights in compliance with the Copyright and Related Rights Act. This activity shall be carried out by the collective management organisation as a sole activity on a not-for-profit basis, on its own behalf, and in the name of authors and right-holders.
2. The collective management organisation shall exercise its competences and fulfil its obligations in a manner which is consistent with its purpose and which enables all authors and right-holders to obtain long-term benefits.
3. In relation to its stakeholders, a collective management organisation shall take care to provide for appropriate communication and maintenance of good relations and shall act in compliance with best business practice.

## **THE RELATIONSHIP BETWEEN THE COLLECTIVE MANAGEMENT ORGANISATION AND ITS MEMBERS AND RIGHT-HOLDERS ENTITLED TO FEES AND REMUNERATION**

4. The managing of the business of a collective management organisation, expressed in various legal and organisational forms, shall adhere to the principle of equal treatment of its members, shall provide for responsible implementation of the rights thereof and shall provide a transparent system for all right-holders represented by the collective management organisation.
5. The collective management organisation shall endeavour to recruit as many authors and right-holders as possible and encourage all members to exercise their membership rights in an active and responsible way and to engage in a constructive dialogue.
6. The collective management organisation shall encourage and enable active exercising of the voting right by providing timely and adequate information on the convening and holding of general assemblies and by adequate organisation thereof. The collective organisation shall circulate to its members the agenda for the general assembly and the relevant documents at least 21 days before the date of the meeting. To enable all members to exercise their right to be informed, it shall provide reliable information on all agenda items of the general assembly to enable discussion thereon. Every member shall have the opportunity to participate in the general assembly, to propose items for the agenda, to discuss matters on the agenda, to ask questions on agenda items and give proposals, and to be equitably informed of decisions adopted by the general assembly.
7. It is recommended that the collective management organisation provide conditions for smooth and transparent holding of the general assembly by ensuring the presence at the general assembly of competent persons and experts who will provide necessary explications and answer questions in relation to proposed decisions of the general assembly.
8. The collective management organisation shall make the information on the person that collects powers of attorney for the exercise of voting rights at the general assembly publicly available via its website. Any collecting of powers of attorney by a person who actively engages in this activity shall be considered organised collecting of powers of attorney irrespective of the number of collected powers of attorney. The collected powers of attorney shall be available for inspection by all members of the collective management organisation.
9. The collective management organisation shall provide all members with understandable information on the consequences of proposed decisions at the time of convening the general assembly at the latest.
10. When the general assembly decides on the appointment of persons to the various management or supervisory bodies of the collective management organisation, the person making the proposal or the person nominated for appointment to a managerial or supervisory position shall disclose all information on whether the proposed candidate is independent in relation to the collective management organisation (or is directly or indirectly connected to the collective management organisation or its management or

supervisory bodies in any economic, personal or other manner). The right to receive fees for independent work covered by copyright or related rights shall not be considered as dependence in relation to the collective management organisation.

11. If the discussion at the general assembly concerns the adoption or the taking note of annual financial statements, it is recommended that the certified auditor that carried out the audit be invited to attend.
12. Decisions adopted by the general assembly shall be made available to members and right-holders on the collective management organisation's website within five days of the conclusion of the general assembly.
13. A collective management organisation shall not revoke the membership status of any author or right-holder whose rights the collective management organisation manages in compliance with the provisions of mandatory collective management.

### **SUPERVISORY BODIES**

14. Supervisory bodies of collective management organisations shall be composed in such a way as to guarantee responsible supervising and adopting of decisions for the benefit of all authors and right-holders whose rights are being managed collectively by the organisation. When performing their tasks, the members of the supervisory bodies shall act with the due diligence of a conscientious and honest manager to the benefit of the collective organisation and in particular to the benefit of its members and of the right-holders represented by the organisation. The supervisory body shall establish its rules of procedure. The president of the supervisory body shall convene a meeting at the request of any member of the supervisory body, who shall give the reasons for the convening of the meeting. The meeting so convened shall be held within two weeks from the request at the latest.
15. Supervisory bodies shall ensure that the management is fully liable for efficient, lawful and transparent managing of the business of the collective management organisation and for ensuring compliance with the regulations in force in the Republic of Slovenia.
16. The procedure of selection of candidates for supervisory bodies shall be transparent and defined in advance.
17. Candidates for supervisory bodies shall meet the following requirements: they shall have appropriate personal integrity and business ethics, the capacity to consider, in acting and decision-making, the long-term interests of authors and right-holders, and the capacity to subordinate their potentially conflicting personal or individual interests to the interests of authors and right-holders. At least one member of the supervisory body shall have adequate work experience in leadership and management and appropriate knowledge of financial management. It is desirable that a member holds the Slovenian Directors' Association certificate.
18. Supervisory bodies shall supervise the managing of the business of the collective management organisation throughout the financial year and not only at the time of adoption of the annual report. Minutes of meetings of the supervisory body shall be kept and shall contain a record of decisions adopted by the supervisory body.
19. At the initiative of its chairman, the supervisory body shall carry out an annual scrutiny of its overall performance and the adequacy of its composition (i.e. whether it has adequate competence and knowledge necessary for the responsible carrying out of its supervisory function and analysis of potential conflicts of interest of individual members) and the attitude towards and cooperation with the management. The report on its findings shall be presented at the general assembly during the discussion of the annual report.
20. The rules on remuneration for members of the supervisory body shall be adopted in compliance with a procedure defined in advance by the general assembly (not the management) and shall be made available to all members and right-holders via the collective management organisation's website.

## **MANAGEMENT**

21. A collective management organisation shall be managed by its management, which through its actions, knowledge and experience shall aim to achieve the long-term success of the collective management organisation by ensuring optimum leadership and management of risk. The management shall define the values and the strategy of the managing the business of the collective management organisations and shall be organised in a way that ensures efficient carrying out of its tasks. The agreement on performing management services shall define the duration of the term of office of the management and contain all the usual provisions applicable to managerial staff.
22. The management shall be constituted in such a way as to ensure that decisions are adopted to the benefit of authors and right-holders. In performing their tasks, the director and the members of the collective management shall act with the due diligence of a conscientious and honest manager to the benefit of the collective organisation.
23. The director and members of the collective management shall have leadership and work organisation capacities and shall enjoy a good reputation in the broader social environment. Besides meeting the requirements applicable for members of supervisory bodies (point 17 of these recommendations), the director or at least one member of the collective management shall also meet the specific requirement of knowledge of copyright law (familiarity with the fundamental postulates of copyright law, kinds of rights, Slovenia's legislation on copyright and relative rights, and the competences of the Slovenian Intellectual Property Office). Prior to appointing the management, the bodies responsible for such appointing shall request candidates to present their vision for managing the business of the collective management organisation.
24. If the collective management organisation takes out liability insurance on behalf of the director or a member of the management, it shall report on this to its members.
25. If management is ensured by a management board, the articles of agreement or separate rules shall lay down the manner of adopting decisions and convening meetings. Minutes shall be taken of any meeting.

## **AUDIT, INTERNAL CONTROL SYSTEM AND ANNUAL REPORT**

26. In compliance with a transparent and prudent procedure of selection of a certified auditor and auditing company, the collective management organisation shall ensure an independent and unbiased audit of financial statements of the collective management organisation in compliance with auditing standards and other auditing rules and an independent review of compliance of the management of the organisation with the Copyright and Related Rights Act, the internal acts of the collective management organisation and any agreements the organisation has concluded with other parties.
27. The auditing company and the auditor shall be appointed by the general assembly of the collective management organisation and not by its management. This is to prevent the management from exercising any influence on the auditor.
28. The collective management organisation shall put in place an adequate, efficient and comprehensive system enabling high-quality management of any risk of conflict of interests and put in place a system of internal control and measures to assess the suitability of holders of key functions in the collective management organisation. The collective management organisation shall ensure that all legal and natural persons to which the collective management organisation outsources certain business processes (i.e. administrative and technical services) also have such a system of internal control. The management shall report to the general assembly in the annual report on the carrying out of administrative and technical services, on the supervision exercised over legal persons that carry out such services, and on expenses incurred in this respect for each legal person separately.
29. Any direct or indirect connection or conflict of interest between the management and the supervisory or technical body on the one hand and the legal persons that carry out

administrative and technical services on the other shall be disclosed in the annual report.

30. The collective management organisation shall ensure adequate due diligence in contracting, implementing and termination of agreements on outsourcing administrative and technical services, in particular:
  - a. it shall ensure that the independent contractor has the capacity and the authorisations required by the law to carry out the services for the collective management organisation with reliability and expertise;
  - b. the independent contractor shall provide efficient services; the collective management organisation shall put in place a method of assessment of the efficiency level of services provided;
  - c. the independent contractor shall supervise the fulfilment of its functions and adequately manage risks associated with the provision of administrative and technical services to the collective management organisation;
  - d. the collective management organisation shall have in place adequate procedures for cases when it finds out that the independent contractor is unable to provide services effectively and in compliance with the legislation in force;
  - e. the collective management organisation must have adequate capacities to carry out effective supervision of outsourced services and to manage risks associated with outsourcing;
  - f. the independent contractor shall disclose any events that could substantially affect its capacity to provide services effectively and in compliance with the legislation in force;
  - g. the collective management organisation may, when the need arises, terminate the agreement on provision of administrative and technical services and transfer the work to another entity, while protecting the continuity and the quality of the provision of services;
  - h. the independent contractor shall comply with the instructions given by the collective management organisation;
  - i. access to data referring to outsourced services and to the premises of the independent contractor shall only be allowed to the collective management organisation, its auditor and the Office in its capacity of supervisor of the collective management organisation's managing of business in compliance with the Copyright and Related Rights Act;
  - j. the independent contractor shall keep safe all personal and confidential information relating to the collective management organisation, the authors and other right-holders;
  - k. the collective management organisation and the independent contractor shall have in place a crisis plan including measures to be implemented in the event of a crisis event; they must provide for regular testing of safety equipment if this is necessary in relation to the function, services or activity the independent contractor is carrying out.
31. The collective management organisation shall publish the annual report and the auditor's report on its website and make it available to at least all its members and all right-holders.
32. The collective management organisation and its supervisory bodies shall pay special attention to the management of the risk of damage to the collective organisation's reputation due to any negative opinions that members, right-holders, business partners, users or members of the general public may have of the collective management organisation.
33. The collective management organisation shall organise its managing of its business and regularly keep books of account, business documents, and other administrative or business records in such a way that it may be verified at any time whether it is performing its tasks in accordance with the provisions of the Copyright and Related Rights Act.

34. The **annual report** of the collective management organisation shall contain at least the following elements:
- a. a balance sheet (the balance sheet shows the state of assets and liabilities at the end of the financial year);
  - b. a statement of profit and loss (an income and expenditure account for the financial year and a cash-flow statement);
  - c. notes to financial statements;
  - d. an audit report on financial statements;
  - e. an opinion of an authorised auditor on the conformity of the managing of the business of the collective management organisation with the Copyright and Related Rights Act, internal acts of the organisation and the agreements the organisation concluded with third parties;
  - f. a description of the methodology of asset impairment, of the policy of creating provisions and of the policy of management of claims;
  - g. a business report which contains least the following:
    - i. a true presentation of the development and business results of the collective management organisation and its financial status, including a description of basic risks and uncertainties the collective management organisation is exposed to;
    - ii. all important business events which occurred after the end of the financial year, the expected development of the collective management organisation and its business orientation, risk management measures put in place, and other information and indicators considered necessary by the organisation in compliance with these recommendations;
    - iii. information on management and supervisory bodies and a description of the organisational structure and number of staff of the collective management organisation;
    - iv. a report on the carrying out of administrative and technical services, on the supervision exercised over legal persons that carry out such services, and on expenses incurred in this respect separately for each legal or natural person which carries out such services for the collective management organisation;
    - v. a list of all final decisions issued by the Office in procedures of supervision in compliance with the Copyright and Related Rights Act and of activities undertaken by the collective management organisation to implement the requested measures;
    - vi. annual reports of administrative and supervisory bodies on collected remunerations and distribution thereof, management of the business of the collective management organisation and implementation of agreements between the collective management organisation and the representative association of users, and agreements with foreign collective management organisations;
    - vii. an opinion of the management and supervisory bodies on the report referred to in points d. and e. of these recommendations;
    - viii. measures taken in the event that the auditor found irregularities in the operation of the collective management organisation;
    - ix. a draft financial plan, including the planned operational costs, of the collective management organisation for the coming year;
    - x. information on any refusals to grant a licence for use of rights to users;
    - xi. information on the total amount of remuneration paid to members of management and supervisory bodies of the collective management organisation in the previous year and on other benefits granted to them; such information shall also be disclosed for the chairmen of the general assembly and of ad hoc commissions and bodies of the collective management organisation;

- xii. a special report on any special funds created by the collective management organisation for the purpose of carrying out social, cultural and educational services shall provide the following information:
  - a) the amounts deducted for the purposes of creating special funds in the financial year, with a breakdown per type of purpose of the fund and per source of funds per category of rights managed and per type of use;
  - b) an explanation of the use of these amounts, with a breakdown per type of purpose including the costs of managing amounts deducted to fund social, cultural and educational services and of separate amounts used for social, cultural and educational services.

### **TRANSPARENCY OF MANAGING THE BUSINESS**

- 35. The management shall propose that the general assembly adopts a communication strategy including high-quality standards of preparation and publication of accounting, financial and non-financial information on the managing the business of the collective management organisation. The communication strategy shall define the information to be provided to members, right-holders and the general public.
- 36. The collective management organisation shall establish such a system of communication as will ensure members and right-holders access to all important information in an equitable, timely and economical manner.
- 37. The collective management organisation shall disclose in its annual report the gross income amounts (salaries, bonuses, meeting fees, travel expenses, severance pays, day allowances, and other income or reimbursements of expenses) of the director and of each member of the collective management, of the supervisory body members, of expert councils, of other ad hoc commissions and committees, and of the chairman of the general assembly.
- 38. The collective management organisation shall select any legal or natural person that is to carry out administrative and technical services for the organisation by way of a public competition (not a public procurement procedure). The criteria for the selection of independent contractors shall be their expertise and efficiency and the cost-effectiveness of the provision of services. The agreements concluded shall protect the long-term interests of the collective management organisation and its members. Agreements shall be concluded in writing and shall be drawn up in compliance with the provisions laid down in recommendation 30 hereto.
- 39. The information that the collective management organisation is applying these recommendations shall be published in its annual report.

### **COOPERATION WITH OTHER COLLECTIVE MANAGEMENT ORGANISATIONS IN THE REPUBLIC OF SLOVENIA**

- 40. A collective management organisation should cooperate with other collective management organisations in Slovenia in a constructive manner and acting in good faith. Collective management organisations shall provide each other with assistance and respect. In the event of termination of the authorisation to manage copyright and related rights, collective management organisations, acting in good faith, shall agree on such adequate transfer of information and data among them as will allow for efficient protection of authors and right-holders.
- 41. Where relevant circumstances and the nature or the content of relevant authorisations permit, it is recommended that collective management organisations enter into joint negotiations with users.
- 42. Collective management organisations shall strive to reduce the cost of their management by finding synergies in work processes with other collective management organisations and by setting up common technical services.



## **RELATIONSHIP BETWEEN THE COLLECTIVE MANAGEMENT ORGANISATION AND USERS**

43. Collective management organisations shall ensure that common agreements and provisional tariffs are adopted in compliance with the law and according to pre-established procedures. Collective management organisations shall publish on their freely accessible websites all adopted agreements and common agreements and tariffs in force. Collective management organisations shall also publish on their freely accessible websites the information on all revoked or abrogated tariffs and common agreements.
44. A collective management organisation shall ensure equal treatment to all users of the same category.
45. The amount of an author's fee or other remuneration shall be proportionate to the nature and scope of use of the author's work.
46. When carrying out on-site inspections of the use of independent works or items covered by related rights, the collective management organisation shall provide for adequate identification of its staff and ensure that such staff treat users in a professional manner.

## **DISTRIBUTION OF COLLECTED RIGHTS REVENUES**

47. Distribution of collected rights revenues shall be made in accordance with the provisions of the Copyright and Related Rights Act and in compliance with pre-established rules that exclude of any arbitrariness.
48. The system of distribution of amounts due to right-holders shall be fair; it shall be based on the actual use of protected works, where this is possible and cost-effective.
49. The system of distribution of amounts due to right-holders shall be verifiable and shall enable each right-holder to check the correctness of the calculation of his or her remuneration (the right-holder shall be allowed access to at least the following data: total amount of collected rights revenues in the relevant financial year, cost of rights management in the relevant financial year, total amount collected but not yet distributed to right-holders and the reason for non-distribution, the total non-distributed amounts, along with an explanation of the use to which those amounts have been put, and data on the use of his or her work or subject-matter protected by related rights).
50. The system of distribution of fees and remunerations shall ensure that each right-holder receives the amount due as soon as possible.
51. The collective management organisation shall allow each right-holder to file a complaint with the bodies of the collective management organisation if he or she considers that his or her fee for individual work or remuneration was not correctly calculated. The collective management organisation shall establish a just, effective and transparent mechanism for dealing with right-holders' complaints.

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