Multi-territorial Licences for the Online use of Music

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Abstract

This dissertation was written as part of the MA Art Law and Arts Management at the International Hellenic University. In this dissertation are analyzed the collective management organizations, the necessity of the CMOs for the protection of the intellectual rights, their history and the definition of Collective Management Organizations according to the Directive 2014/26/EU. The need to entrust the management of the property rights of the authors to collective management organizations arose, due to the inability of the authors to monitor all cases of use of their works around the world, to negotiate the terms for this use and to collect the relevant fee. Collective management organizations in Greece are under the scope of Law 4481/2017 which is about Collective management of intellectual property and related rights, granting of multi-territorial licences for the use of musical works and other matters within the competence of the Ministry of Culture and Sports.

Furthermore, in this dissertation are analyzed the multi-territorial licences granting for online musical works by the Collective Management Organizations in the light of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market which was incorporated to Greek Law via Law 4481/2017. Articles 23 to 32 of the Directive regulate the conditions needed in order to be licenced a CMO to grant multi-territorial licences, the agreements between the CMOs and the derogation of online musical works incorporated in radio and television programs.

Finally, to complete this thesis is conducted research which was based on foreign and Greek literature or online sources, all these references are mentioned in Bibliography and a part of them was a contribution from the Supervisor Stamatoudi Irini.

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Preface

Music is an integral part of our lives and has significant value for people's everyday life. Music industry is one of the biggest industries and affects the community in a high level, interacts with the people and creates a significant point in our reality. Music, this precious cultural asset, expresses the culture of people all over the world, is influenced by social, economic, and cultural conditions and is transferred -bequeathed to future generations. Music is needed to be protected in order to exist and thrive, that is why intellectual property law created to protect all the intellectual creations from infringements and to demonstrate the rightful owner and the need of protection of the moral right and the property right which the author can use in order to exploit his work and benefit from it.

Contents

Introduction

Music exists in a wide range of our everyday life and in combination with the development of the internet and the rapid growth of the digital world to which we are in touch on a frequent level, it is distinguished the need to be protected as intellectual property work in the online environment. The prevailing digital environment, the digital technology, and mostly the internet with the new platforms arising like spotify, youtube impose the need of a change. The needs are different from the analogue environment. Accessing the music on internet is easy and can be in a non-territorial way. Facing this problem, the European Parliament and the Council of Europe issued the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

The Directive consisting of 58 recitals and 45 Articles was issued on 24 March 2014 and came into force on 9 April 2014. In the directive there is a new set of rules that are not absolutely related to the cross-border management of online rights in musical works. The Directive consists of two parts that could be seen as independent of each other. Part I, including Titles I, II, IV and V stipulates a detailed set of provision related to the management of collecting societies. Furthermore, it establishes well-defined regulations about the information duties and transparency obligations, as it is recommended by the Commission in 2005. For instance, the Directive stipulates the provisions must be set to ensure that CMOs act for the benefit of the rightsholders.1

The multi-territorial licences are a crucial and necessary weapon to the depletion of infringements. CMOs adjust to the new digital world and follow the new rules of the Directive 2014/26/EU which regulates all the points referred to the online system like the need to control the use of the musical works online, the remuneration process and all the technical issues arising from this new situation like the electronic programs needed. Given the fact of the digital growth, it is created new technologies and online tools to protect the copyright of musical works, something that is also dictated by the Directive 2014/26/EU.

This dissertation examines the characteristics of collective management organizations of copyright under the scope of the Directive 2014/26/EU and the history of them. It aims to provide the foundations for the multi-territorial licences for online use of musical works in the light of the Directive 2014/26/EU. It is distinguished that articles 23–32 focus on the processes CMOs shall adapt for multi-territorial licensing for the management of online rights in musical works, to mandate another CMO or manage their own rights. It is analyzed below in a detailed way the articles referred to the multi-territorial licensing.

[1] Mendis, D., 2017. An Analysis of Directive 2014 / 26 / EU on Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online Use in the Internal Market. In: Lodder, A. and Murray, A., eds. EU Regulation of E-Commerce: A Commentary. Cheltenham: Edward Elgar Publishers, pp 297-298

Chapter I: Collective Management Organizations

A Collective management organization manages the copyright of the authors and the related rights. Because it is difficult an author to communicate with every single radio station or television or online sites to negotiate the licences and remuneration it is needed for the use of their works. The economic reward of the authors is crucial in order to continue the significant work they undertake. On the other side, it is not so easy for the providers to have a specific permission from every author for the use of their work. CMOs provide licences and ensure the rights in the interest of both parties. The first collective management organizations in Greece were founded at the beginning of the 20th century in the field of theatrical and musical works is the Hellenic Society for the Protection of Intellectual Property ΑΕΠΙ.

a. The history of Collective Management Organizations

The history of collective organizations begins in the 18thCentury, the country which first creates them is France. In 1777, famous author Beaumarchais decided to call a group of 22 other authors to protect their rights because of the under-remunerated use of their works by the Théâtre-Français and to make a collective response to that. They had already complained about this incident in writing because the theater took advantage of them. The Beaumarchais had complaint on the low remuneration he had for the use of his play "Le Barbier de Séville" and in1791 France after 14 years of trying created the first law in the world referred to authors' rights.

In 1851 created the first collective Management Organization in the music area when the French society SACEM[2] (Society of Authors, Composers and Music Publishers) decided to manage their musical rights in the music society. In1847 the French composer, Ernest Bourget, visited a Paris café where there is live music and he heard one of his own compositions without his permission for their use and he became angry, because he had not consent to that and he had not paid about it. He then filed a lawsuit to the court against the coffee owner to claim his rights either to ban the use of the work or to be paid when his plays are used. The court decided in his favor and was established the principle that authors and composers had a right of their own in their works and they should be paid when their works were performed in public. Because it was difficult to find a way to track where their music was played, they decided to create SACEM two years later.

In 1886 Berne Convention was signed, and for the first time in history was recognized under international law the public performance rights of authors and composers. When the time passed CMOs created in many other countries in Europe in order to protect authors and composers' rights.

[2] The History of Collective Management Organizations,https://www.cisac.org/sites/main/files/files/2020-11/CISACUniversity_The_History_of_Collective_Management_FINAL.pdf (last accessed on 12/01/2022)

It became clear that Collective Management Organizations is an asset and it was so important to be founded because the authors' rights could not protect with any other way. Authors should be paid for their work and the collective administration of rights become necessary in order to survive them.

In the 20th Century there was new works of copyright emerged which is a result of new technologies. These new technologies created the need of new licences and new challenges the collective management organizations was faced. Over the last years the computer world and digital technologies created a new environment in licensing and management of intellectual right, the role of collective organizations became more important.

Although collective management organizations are different in every country, they have a lot of similarities in their protection rights because the most important is to create a world where authors and creators in general can survive and be paid for their works. They are interested in the common protection of their members.

b. The definition of the Collective Management Organization in the light of Directive 2014/26

¨Collective management organization' means any organization which is authorized by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria: (i) it is owned or controlled by its members; (ii) it is organized on a not-for-profit basis¨[3]

The collective management organizations are operated in different kind of legal entities like unions, cooperatives or limited liability companies and controlled by their members, their rightholders. Collective management organization is licenced by the law and has the exclusive purpose of protecting the copyright and related rights copyright on behalf of these members. This organization belongs to its members and controlled by them and is organized on a non-profit purpose. The above-mentioned criteria should be applied cumulatively in order to fulfill the purpose of the law, except the criteria about the control of its members or the non-profit purpose which may be met by one of them.

The explanation (2) of the preamble of Directive 2014/26 which is ¨The dissemination of content which is protected by copyright and related rights, including books, audiovisual productions and recorded music, and services linked thereto, requires the

[3]Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, Article 3

licensing of rights by different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the rightholder to choose between the individual or collective management of his rights, unless Member States provide otherwise, in compliance with Union law and the international obligations of the Union and its Member States. Management of copyright and related rights includes granting of licences to users, auditing of users, monitoring of the use of rights, enforcement of copyright and related rights, collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collective management organizations enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets. ¨ Here It is explained the role and the purpose of the Collective management organizations which is the managements of copyrights and related rights of the members. An organization in order to be considered as a collective management organization should follow all the above-mentioned activities. However, it is not excluded to engage other activities. The management refers either to copyrights or related rights or even simultaneous exercise of these rights.

It is of great importance to follow the criterion of the definition mentioned to the collective benefit. The collective management organization should manage the copyrights of the rightholder for their collective good and not for the benefit of individual members. They are cooperatives and should operate for the collective benefit, this is the meaning of the collective organization to act for a collective purpose. The collective benefit means that all their members have the same benefits, and it has a different meaning of the collective licensing. That is why the payroll for the members is the same for all of them and it is not differentiated accordingly with the popularity of the works.

The main purpose of the Collective management organization should be the management of copyrights and related rights but with the Directive 2014/26 it is not the exclusive purpose, an organization may have and another activity which should be relevant with the administration of collective management rights.
In addition, as mentioned before, an organization may be authorized by the law directive or by transferring or licensing of rights by the rightholders. An organization in order to be called as collective management organization should belong to its members or controlled by the members, however, can be an anonymous company but all the members has the shareholder status.

Also, the directive has a criterion referred to the non-profit organization. It is possible that exists a collective management organization even if it is not controlled by all its members, if it is followed the criterion of the non-profit purpose of the organization which means that this organization have not commercial character.

c. General Principles of the Directive 2014/26/EU on collective management of copyright and related rights

¨General principles Member States shall ensure that collective management organizations act in the best interests of the right holders whose rights they represent and that they do not impose on them any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights. ¨[4]

The principles are applied in the collective management organizations ensure that organizations act in the benefit of rightholders. It is necessary any obligation applied to be in the best interest of author's work and in the basis that is guaranteed the best protection of their rights and the most effective management.

Rightholder, according to the Directive 2014/26/EU means any person or entity, other than a collective management organisation, that holds a copyright or related right or, under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue[5].Rightholder can be not only the author of the work but any person who has transferred a copyright. Rightholders considered not only individuals but legal entities too. Like the publishers who have the right to take a part of the revenue which are managed by the organization.

In the preamble of the Directive 2014/26/EU the explanation (20) referred to publishers ¨who by virtue an agreement on the exploitation of rights are entitled to a share of the income from the rights managed by collective management organizations and to collect such income from the collective management organizations¨.

Authors are often transferred their rights to publishers in exchange the commercial exploitation of their work and the publishers have a right to earn a part of the revenue by an agreement between them.

[4]Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, article 4.
[5]Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, article 3, par. (c)

Chapter II: Multi-territorial Licences of Online Rights in Musical Works

a. Introductory Comments

There are certain rights referred to music according to the Greek Copyright Law 2121/93 for Intellectual Property Rights, in the offline environment are the right of reproduction,[6] scilicet the reproduction of recordings, the fixation direct or indirect, temporary, or permanent reproduction of their works by any means and in any form, in whole or in part and the right of public performance, which can be exercised either by electronic means or by live performances[7]. In the online environment the rights referred to the musical works are the right of reproduction by uploading or downloading on the computer copies of the works, the right of presentation to the public and the right to make the musical works available to the public in a way that everyone can access them in every way he wants.[8]

There are two types of rights, the right of the author, who are the creator of the music composition or the writer of the lyrics and the related rights of the singer and the instrumental players. The rights are moral rights like the publication right which ¨is to decide on the time, place and manner in which the work shall be made accessible to the public,¨[9] the paternity right which is ¨to demand that his status as the author of the work be acknowledged and, in particular, to the extent that it is possible, that his name be indicated on the copies of his work and noted whenever his work is used publicly, or, on the contrary, if he so wishes, that his work be presented anonymously or under a pseudonym¨[10] the integrity right ¨to prohibit any distortion, mutilation or other modification of his work and any offence to the author due to the circumstances of the presentation of the work in public¨[11] and the right ¨to have acc0ess to his work, even when the economic right in the work or the physical embodiment of the work belongs to another person; in those latter cases, the access shall be effected with minimum possible nuisance to the right holder¨[12]. Also, there are economic rights like the abovehead mentioned.

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[6]Article 3 par. 1 a) of Law 2121/93 about Copyright, Related Rights and Cultural Matters refers to the fixation and direct or indirect, temporary or permanent reproduction of their works by any means and in any form, in whole or in part

[7]Article 3 par. 1 f) of Law 2121/93 about Copyright, Related Rights and Cultural Matters

[8] Article 3 par. 1 h) of Law 2121/93 about Copyright, Related Rights and Cultural Matters refers to the communication to the public of their works, by wire or wireless means or by any other means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. These rights shall not be exhausted by any act of communication to the public as set out in this provision

[9]Article 4 par. 1 a) of Law 2121/93 about Copyright, Related Rights and Cultural Matters

[10]Article 4 par. 1 b) of Law 2121/93 about Copyright, Related Rights and Cultural Matters

[11]Article 4 par. 1 c) of Law 2121/93 about Copyright, Related Rights and Cultural Matters

[12]Article 4 par. 1 d) of Law 2121/93 about Copyright, Related Rights and Cultural Matters

The related rights are rights referred to a person who act or perform a work like musicians, singers.[13] ¨The performers or performing artists have the right to authorize or prohibit:
a) the fixation of their performance
b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, concerning the fixation of their performance
c) the distribution to the public of the fixation of their performance, by sale or other means. The distribution right shall not be exhausted within the Community in respect of the fixation of the performance except where the first sale in the Community is made by the rightholder or with his consent
d) the rental and public lending of the fixation of their performance. Such rights are not exhausted by any sale or other act of distribution of the said recordings
e) the radio and television broadcasting of the illegal fixation by any means, such as wireless waves, satellites, or cable as well as the communication to the public of a recording with an illegal fixation of their live performances
f) the radio and television broadcasting by any means, such as wireless waves, satellites, or cable, of their live performance, except where the said broadcasting is rebroadcasting of a legitimate broadcasting
g) the communication to the public of their live performances made by any means other than radio or television transmission
h) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them. This right is not exhausted by any act of making available to the public, in the sense of this provision. ¨[14]

The Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, in articles 23-32 are explained the multi-territorial licences in musical works for online use only and that articles are incorporated in the Greek Law 4481/2017 in articles 33-41[15]. In the analogue environment there is no need to be applied these multi-territorial licences because there was covered by the licences having existed in accordance with the principle of the territoriality and the Collective Management Organizations were based on this principle and operated in a national level having represented the national and international repertoire based on reciprocity agreements.

In the new online environment, there is no place for this principle of territoriality because there is the need to surf in the web and the users to be active in online environment without all these restrains the analogue was set. The massive growth of technology and internet prevailing, with the music platforms, demand a new area for the protection of the musical works online. For example, Youtube uses certain tools to

[13]Article 46 par. 1of Law 2121/93 about Copyright, Related Rights and Cultural Matters
[14]Article 46 par. 2 of Law 2121/93 about Copyright, Related Rights and Cultural Matters
[15] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, p. 559

ensure the protection of the videos that are uploaded. These tools give the control of the content, which is protected by copyright, to the rightholders. The copyright tools are the Copyright Match Tool, which is a tool provided to millions of users and is designed for them and the Content ID, which is a tool, necessary for the businesses that need a wider tool of protecting their rights like record companies or collective management organizations. Providing Youtube with reports, Content ID and Copyright Match Tool users are notified in an automatic way of videos which are uploaded by other users and containing their work which is protected by copyright. Content ID thanks to the different options it provides to rightholders, is not only an anti-piracy tool, but a remuneration tool also. Youtube benefits economically a lot of users, more than 5 billion from advertising revenue which are claimed through the Content ID tool.

In analogue environment there is dependence between the Collective Management Organization and the author. In order to exercise his rights an author should rely on the Collective Management Organization, because the author has not the means and the mechanisms to control the use of his works. The Collective Management Organization aims to collect as many works as possible in order to be powerful and the works to have commercial value. But in online environment is more important the commercial value of the works rather than the quantity of the works the Organization controls.
In analogue environment, as we mentioned before, there are the reciprocity agreements[16], a Collective Management Organization signs these contracts in order to manage the rights of foreign repertoire in its territory. For example, when a foreign Collective Management Organization signs a reciprocity agreement with a Greek Collective Management Organization, has the right to manage the rights o0f the foreign' s Organization repertoire in Greek territory.

The online use of works cannot work with these agreements which complicate the task. Because a Collective Management Organization can control and licensing the work in a foreign territory without the aid of the national Collective Management Organization. Also, the reciprocity agreements impose to take licences for use from every country the Organization wish to exercise author's rights and that is really difficult to happen.
The Collective Management Organizations turn the page and create a new environment in order to allow an easier way to collect and control the rights in online use. They started to make agreements in order to offer multi-territorial licences.

A famous agreement was Santiago agreement[17] signed in 2000, where provided multi-territorial licensing. This agreement included the customer allocation clause which means the licences could be given only by the Collective Management Organization of the country to which the Uniform Resource Locator (URL) belongs or by the Collective

[16] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 543-544
[17] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 548-549

Management Organization of the country where the provider is located. The Committee decided that this agreement is against the competition rules and in 2004 the agreement expired. There was a lot of agreements lead to the Directive 2014/26/EU of the European Parliament for the multi-territorial licences applied on the online environment.

Chapter III: Needed conditions for the multi-territorial licensing of online rights in musical works

In the analogue environment the CMO represents solely the national authors and the national repertoire. Although, the CMOs sign the reciprocity agreements with foreign CMOs in order to manage their repertoire in a foreign country. Given that fact, the CMOs in order to strengthen the system of these agreements, created unions like the CISAC[18], to ensure the licensing system. CISAC the International Confederation of Societies of Authors and Composers is a global network of authors' societies. It includes 228 members in 120 countries. CISAC represents a large number of creators from different countries and different repertoires like music, audiovisual, drama, literature and visual arts. CISAC protects the rights of authors worldwide and ensure the analogue remuneration of the use of their works. It is founded in 1926 and constitutes a non-governmental, non-profit organization the headquarters of the Confederation is in France.

On the other hand, in the online environment the CMOs have the opportunity to develop electronic systems for the licensing process, the control of the use and the remuneration according to the use and the CMOs do not need to enter into reciprocity agreements which is a difficult procedure because it is required the contract to be signed with every country in separate and it is in contrast with the competitiveness rules.

a. Multi-territorial licensing in the internal market (art. 23)

"Member States shall ensure that collective management organizations established in their territory comply with the requirements of this Title when granting multi-territorial licences for online rights in musical works." [19] The Collective Management Organizations in order to exercise the rights of the authors online, they should comply with the requirements multi-territorial licensing required.

The Collective management organizations should follow the rules of the Title III of the Directive 2014/26/EU of the European Parliament for the multi-territorial licences for the use of musical works online. Title III shall cover the uncertainty in the global system for the protection of the music in online environment. It is stipulated the minimum principles are needed in order to have an effective system of online licensing which is necessary so as to keep up with the digital era we are going through.

[18] https://www.cisac.org/about, last accessed on 15/12/2021

[19] Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, article 23

b. Capacity to process multi- territorial licences (art. 24)

In Article 24 "capacity to process multi- territorial licences" referred the conditions required to be granted multi-territorial licensing. In this article referred the technological mechanisms should be applied so as the Collective Management Organizations control the licensing and collect the remuneration according to the use. The licensing should be digital, scilicet the Organization should manage the rights in digital way so as to be more transparent and faster, especially when it makes to licensing for the repertoire characterization, the controlling of the repertoire use, users pricing and the collect of the remuneration.

The paragraph 3 of the Article 24 analyzes the conditions should be followed in order the Organization to grant multi-territorial licensing. These conditions are : "(a) to have the ability to identify accurately the musical works, wholly or in part, which the collective management organisation is authorized to represent; (b) to have the ability to identify accurately, wholly or in part, with respect to each relevant territory, the rights and their corresponding rightholders for each musical work or share therein which the collective management organisation is authorised to represent; (c) to make use of unique identifiers in order to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or Union level; (d) to make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organizations granting multi-territorial licences for online rights in musical works."[20]

The identification data code mentioned above are codes to identify data in accordance with song and in accordance with the authors, the connection between them two is necessary because the code of the song is not always enough for the recognition of the author.

The CISAC for example uses the International Standard Work Code (ISWC)[21] where every musical work consists of an 11-character code and the ISWC recognizes the musical works are used online. The ISWC data consist of: the title of the work, the IPI number of the composer, lyrics writer, and the category of the work based on CIS code. Another system is used for online tracking is IPN[22] (International Performer Number) which recognizes the ownership status of the rights referred to performers based on a serial number given to every performer. Also, the ISRC which is the international

[20]Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, article 24, par. 3

[21] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 565-566

[22] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, p. 566

system recognizes the video clips. The video clip is codified on a digital product and is recognized every time is playing in order to collect the remuneration.

The use of recognizing codes is necessary and there is the need to be created a central data code and everyone use a song is imposed on using these codes. The harmonization of the codes is imposed of the European Union's activities for the fair distribution of the providers' earnings.

The controlling authority which operates in order to answer if the necessary conditions are followed, which are indispensable so as a Collective Management Organization to grant licensing multi-territorial referred to the article 38 of the Directive 2014/26/EU where refers that the Commission shall foster a regular exchange of information between the competent authorities designated for that purpose in Member States, and between those authorities and the Commission, on the situation and development of multi-territorial licensing.

c. Transparency of multi-territorial repertoire information (art. 25)

The purpose of this article is to reassure that Collective Management Organizations will provide with electronic means, information about the repertoire they represent. The information the Organizations should include is about the musical works, the rights and the territories they cover.

"Member States shall ensure that a collective management organization which grants multi-territorial licences for online rights in musical works provides to online service providers,
to rightholders whose rights it represents and to other collective management organizations, by electronic means, in response to a duly justified request, up-to-date information allowing the identification of the online music repertoire it represents. This shall include:
(a) the musical works represented;
(b) the rights represented wholly or in part; and
(c) the territories covered.
2. The collective management organization may take reasonable measures, where necessary, to protect the accuracy and integrity of the data, to control their reuse and to protect commercially sensitive information."[23]

The Article referred to the significance of transparency, scilicet a user has access to information that is necessary like repertoire. As concern the rightholders, there is the provision that the rightholders should be members of the Collective management Organization so as to request a question about the repertoire, the rights and the

[23]Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, article 25

territories. Although it seems right that rightholders can be anyone not only the member of the Collective management organization. Anyone with a legitimate interest may request information and be provided if it is justified.

The obligation of the article is not defined because there are no consequences, if the Collective management organization refuses to answer to a request referred to the information above, there are no effects that are mentioned to the article.

At the second paragraph of this article is mentioned that Organization shall be protected and take measures[24] in order to protect the data integrity, to control their reuse and to protect commercially sensitive information. The measures should be taken they are not defined in this article.

d. Accuracy of multi-territorial repertoire information (art. 26)

The multi-territorial licensing system is based on the existence of certain information referred to the musical works, the rightholders of the works and the territories covered. It is extremely important these data to be accurate and in case of error to be corrected. The availability and accuracy of information on musical works, rightholders rights every collective management organization is represented in a certain territory is really important in order to licence in an effective way, for the processing reports and the invoicing process. "The Collective management organizations granting multi-territorial licences for musical works should be able to process such detailed data quickly and accurately. This requires the use of databases on ownership of rights that are licenced on a multi-territorial basis, containing data that allow for the identification of works, rights and right holders that a collective management organisation is authorized to represent and of the territories covered by the authorization. Any changes to that information should be considered without undue delay and the databases should be continually updated.

Those databases should also help to match information on works with information on phonograms or any other fixation in which the work has been incorporated. It is also important to ensure that prospective users and rightholders, as well as collective management organizations, have access to the information they need in order to identify the repertoire that those organisations are representing. Collective management organisations should be able to take measures to protect the accuracy and integrity of the data, to control their reuse or to protect commercially sensitive information."[25]

Article 26 stipulates the provisions where the providers of online service, the rightholders and other CMOs shall inform the CMO granting multi-territorial licences about data inaccuracies as concerned the works and the rights managing.

[24] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 572-573

[25]Explanatory memorandum 41 of the Preamble of the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

It relegates to the Regulation 2016/79 for the protection of personal data processing and the free movement of these data.[26]Specifically article 16 of the Regulation refers to the principle of accuracy, the right of rectification where a person has the right to obtain from the controller the rectification of inaccurate data without any delay.[27]

In order to be corrected these data, the Directive stipulates procedures where the information is easy to access. These procedures should not deform the data that are applied and not risk the accuracy and integrity of the data.

Article 26 stipulates that the correction of the data could be asked by anyone[28], even the non-members rightholders and not only the rightholder who is a member of the CMO granting the multi-territorial licensing, just like the article 25 where the information about the musical work, the rightholders and the territory can be asked only from members of CMOs granting the multi-territorial licences.

The electronic means of correction the inaccurate data should become known to the third parts by the website of the Collective management Organization. In addition, the CMO should stipulate a person who is responsible to accept these requests and the time needed to respond, as well as the way in which the request is submitted.

The paragraph 2 of the Article 26 stipulates that CMOs granting multi-territorial licences should provide to the rightholders who are members, the electronic means of submitting information about their works, their rights and their territories. The collective management organization and the rightholders shall take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data.

In paragraph 3 of Article 26 refers to the fact when the CMO who does not grant online multi-territorial licences authorized another CMO granting multi- territorial licences, under Articles 29 and 30, the mandated collective management organization shall apply paragraph 2 of the Article 26 with respect to the musical works of the rightholders are included in the repertoire of the mandating collective management organization, unless if there is another agreement between the two collective management organizations.

e. Accurate and timely reporting and invoicing (art. 27)

The collective management organizations are obliged to use technological infrastructures that enable the management of information, the invoicing of users according their use and the final distribution of the amounts to the beneficiaries.

[26] REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
[27]Regulation 2016/79 of the European Parliament and of the council article 16
[28] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 577-578

Article 27 stipulates that CMOs granting multi-territorial licences should provide the suitable technological infrastructures that provide accurate information according to the invoicing of the works based on the use of these works.

The first paragraph of the Article 27 is referred to the CMOs tracking[29] of the online rights in musical works they represent. This monitoring only happens for the invoicing and the distribution of the earnings to the rightholders and does not raise issues about the violation of personal data. The directive 2014/26 taking into account the need of protection of personal data and that spirit is dictated to the explanatory memorandum 43 which refers that in music industry is extremely important the improving efficiency in the exchange of data between collective management organizations and users. The monitoring process should respect fundamental principles, including the right to stipulate the use of your personal data and respect the privacy and family life and the right to protect your personal data."In order to ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, collective management organisations should be required to invoice service providers and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that users provide collective management organisations with accurate and time reports on the use of works. Collective management organisations should not be required to accept users 'reports in proprietary formats when widely used industry standards are available. Collective management organisations should not be prevented from outsourcing services relating to the granting of multi-territorial licences for online rights in musical works. Sharing or consolidation of back-office capabilities should help the organizations to improve management services and rationalize investments in data management tools."[30] In the last sentences the legislator is mentioned to the management assignment of the industrial standards to third parts, CMOs shall accept help for improving the digital data services they use.

It is important to mention that the Directive 2014/26 stipulates that the Member State shall ensure that CMOs following the proper process of monitoring the use of online rights in works that they represent.
The second paragraph of the Article 27 dictates equal obligations for the parts. CMOs are obligated to provide the proper technological infrastructures to the providers of online services in order to report with electronic means the real use of the musical works and the providers from their side are obligated to report the accurate and real use their doing.

[29] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 581-582
[30]Explanatory memorandum 43 of the Preamble of the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

The method of reporting the CMO use should follow the industry standards or practices developing in global or European Union level. In accordance with the industrial standards the most renowned system is the Digital Data Exchange (DDEX)[31] which is a non-profit organization based on membership and is created in 2006. The description of the organization is that is focused on the forming of digital data standards. DDEX was created by media companies, multi-territorial music licensing organizations, rights owners and digital service providers. "The first members of DDEX realized that the legal digital music industry needed to adopt standards related to the way it communicated information about works, tracks and products (including ownership and sales information). Known as metadata, this information needed to be communicated in a common format and then delivered between companies in a common way so that each party receiving the metadata could understand it."

The third paragraph of the Article 27 stipulates the way that invoicing process follows. [32]The CMO invoices the providers of online services with electronic means. As we mentioned before in relation with the method of reports, the CMO should follow a certain system of invoicing in accordance with the industrial standards or practices developed in global or European Union level. The invoicing should include the necessary following provision which are that a. the invoicing includes the elements are related to the licensing like the works, the rights according to the paragraph 3 of the Article 33 b. the real use based on the information the provider of online services gives, and c. the digital method is used for the providing of information.

In accordance with the industrial standards are used for the invoicing process the most renowned is the Claim, Confirmation & Invoice Details (CCID) which constitutes a standard format used for the communication between the CMOs and between the CMO and the providers of online services.

The fourth paragraph of the Article 27 is mentioned to the accuracy and without any delay invoicing of the CMOs granting multi-territorial licensing. The invoicing process should follow the report which is applied by the providers of online services in accordance with the real use of the musical works online. The objective should be the real use of the online rights, the Collective Management Organization should be in a position to monitor the real use of the musical rights online and to avoid the obsolete methods are followed in the analogue environment. It is defined that the invoicing should happen at least two times per year.

In the end, the fifth paragraph mentions that the Collective Management Organization granting multi-territorial licences should provide electronic means which give the opportunity to the providers of online services to question the correctness of the invoicing.

[31] https://ddex.net/about-ddex/, last access on 19/12/2021
[32] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 584-585

f. Accurate and timely payment to rightholders (art. 28)

Article 28 stipulates the financial amounts about the payment of the rightholders and defines the procedure of the payment between the CMOs and the rightholdes.[33] This article completes the above article 27.

The first paragraph defines that the Collective Management Organizations granting multi-territorial licences for online musical works should distribute the financial amounts with accuracy and without any delay. The deposit follows the report for the real use which is applied by the providers of online services. So the deposit depends on the report for the real use. The directive's objective is the monitoring of real use, not the expected, foreseeable use of the online musical works, that's why digital technologies are developed which allow the tracking of the real use.

The second paragraph of Article 28 stipulates information that should be provided as following information for the financial amounts distributed to the rightholders. There is information regarding the territories and the period of use and information in relation to the money that are collected and the money paid out excluding the withholding money which are distinguished in two categories: a. the financial amounts paid out in relation to the online right for the musical work which rightholders authorized CMO to represent them and b. in relation to the provider of online services.

The third paragraph of Article 28 referred to the financial amounts collected by CMO granting multi-territorial licences for online use of music which are authorized by a CMO who cannot grant these licences.[34] In that case the money should distribute with accuracy and without any delay. But in that case there is the question if the administrative amounts of money will be multiplied, given that the two CMOs will keep their administration fee. The responsible for the distribution and the availability of such information are the mandating collective management organization, but there is the option to agree otherwise and the mandated organization to provide such information.

Chapter IV: Collaboration and agreements between the Collective Management Organizations

The agreements between the CMOs are necessary so as the CMOs who cannot develop the proper electronic means because of the high costs required, in order to facilitate the electronic programs needed for remuneration process or the process to control the use of their rights online. The small CMOs mandates the big CMOs to protect their repertoire

[33] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 589-590
[34] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 590-591

which is crucial to be represented online, all repertoires should be accessible to the online market, because it is of high importance to stand out the diversity of cultures in the music industry. The big CMOs as it is regulated in article 30 has the obligation to represent the small one so as to be facilitated the CMOs not granting multi-territorial licensing and not to be excluded from the online music.

a. Agreements between collective management organizations for multi-territorial licensing (art. 29)

Articles 29 and 30 regulate the cooperation between the CMOs in order to grant a CMO multi-territorial licensing for repertoire of another CMO. There is the need to encourage the cooperation either they are a product of free will or they are obligatory. In accordance with the explanatory memorandum 44 of the Directive 2014/26 encourages the CMOs to participate in "voluntary" way. The explanatory memorandum 44 refers to «different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer services. This aggregation of repertoires should facilitate the development of new online services and should also result in a reduction of transaction costs being passed on to consumers. Therefore, collective management organizations that are not willing or not able to grant multi-territorial licences directly in their own music repertoire should be encouraged on a voluntary basis to mandate other collective management organisations to manage their repertoire on a non-discriminatory basis. Exclusivity in agreements on multi-territorial licences would restrict the choices available to users seeking multi-territorial licences and also restrict the choices available to collective management organisations seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between collective management organisations providing for multi-territorial licensing should be concluded on a non-exclusive basis." The voluntary basis is an important step in order to encourage the collaboration of the CMOs. Collecting of repertoire is of great importance in online environments, if there was not that case where a CMO can collect the repertoire of another CMO in order to grant multi-territorial licensing, the process of licensing online would be a difficult situation.

The aggregation of repertoires insists an easy way to reduce the cost of transactions as the provider will ask for a permit to use only of one CMO in order to proceed to online use.

In addition, the aggregation of repertoire promotes a multi-cultural environment, because it gives the opportunity to a non-popular repertoire to be accessible from the users.[35] There is the case where arises the problem that a CMO will not choose to represent a non-popular repertoire because it is not attractive in a financial way, it will not benefit the CMO financial. But with the aggregation of repertoires the attachment of

[35] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, p. 595

unpopular repertoire to the popular gives the opportunity to the unpopular to be accessible, without there is the need to pay for a new licence the provider.

Furthermore, the contract of representation between Collective management organizations is non-exclusive, the mandating providing to the mandated organization the right to represent its repertoire in a non-exclusive way. As it is mentioned to the explanatory memorandum 44 the exclusivity will restrict the choices of the users. But there is another opinion which asserts that the article does not allow the simultaneously licensing of the same repertoire from different CMOs because that is in contrast with the European Court decision about the non-competitive between the CMOs for the same repertoire. According to the paragraph 20 of the Tournier's[36] court decision the non-competitive notion means that the CMO who cannot grant multi-territorial licensing has the ability to allow another CMO to administer its rights and the ability to grant licences for the same repertoire in its territory, despite the authorization to a third CMO to grant multi-territorial licensing for its repertoire. Although, the non-exclusivity is a meaning that is mentioned in the Directive and more close to the spirit of the directive and to the multi-cultural diversity because the unpopular repertoire of a CMO can be granted to another CMO to administer it online and give access to that repertoire because it is aggregating to the popular repertoire.

The paragraph two and three introduce the rules of integrity the CMOs should follow. [37]The mandating CMO should inform its members about the main terms of the agreement, like the cost, the duration of the agreement et cetera. The mandated CMO should inform the mandating about the terms, in accordance with, the licences are granting for online use and the terms referred to the cost for the licensing, the duration of the licence, the territories are covered. The CMO granting multi-territorial licences can withhold administrative fees for the services providing to the mandating CMO, that means the mandating CMOs should reduce their administrative cost in order not to pay for this cost the members of the CMOs or to shoulder that weight their members, but for the CMOs with a non-popular repertoire is really suitable to aggregate their repertoire with most powerful and popular repertoire in order to be more accessible to the users.

b. Obligation to represent another collective management organization for multi-territorial licensing (art. 30)

This article has the intention to protect the organization that cannot grant multi-territorial licences and try to protect the organization granting multi-territorial licensing not to be damaged. For instance, the Greek Collective management organizations belong to that

[36] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, p. 597
[37] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 600-601

category of short-range Collective management organizations and based on other CMOs in order to grant for them multi-territorial licences, so it is of great importance these two articles (29-30).[38]

The purpose of this article is to become accessible at the European Market the collective management organizations that cannot grant multi-territorial licences and no to exclude them for the market. [39]As we mentioned before in order to be licenced a CMO to grant the multi-territorial licences should follow certain necessary procedures and rules, to possess certain technical systems to control the use of the repertoire et cetera, all these means need investments and a satisfying financial background. In order to save the multi-cultural diversity and the short-rang CMOs have access to the market, they should assign a contract of representation, which is assigned by the CMO who cannot grant multi-territorial licences and the CMO granting, who administers the repertoire of another CMO like his one repertoire.

The obligation of one CMO granting multi-territorial licences to accept representing another CMO who cannot grant it is not an absolute right and governed by the principle of proportionality. [40]That means that: a. the request should be restricted to the online right or categories of online rights where the CMO represents, b. the request has been applied to CMOs who aggregate the repertoire granting multi-territorial licences of another CMO, only if the CMO grants multi-territorial licences for another CMOs, should accept the request, c. The CMOs who aggregate rights for the same works in order to grant licences in common either for reproduction rights or communication rights for these works, they are not obliged to assign a contract of representation with another CMO, this is referred to the explanatory memorandum 46 “To ensure that this requirement is not disproportionate and does not go beyond what is necessary, the requested collective management organisation should only be required to accept the representation if the request is limited to the online right or categories of online rights that it represents itself. Moreover, this requirement should only apply to collective management organisations which aggregate repertoire and should not extend to collective management organisations which provide multi-territorial licences for their own repertoire only. Nor should it apply to collective management organisations which merely aggregate rights in the same works for the purpose of being able to licence jointly both the right of reproduction and the right of communication to the public in respect of such works. To protect the interests of the rightholders of the mandating collective management organisation and to ensure that small and less well-known repertoires in Member States can access the internal market on equal terms, it is important that the repertoire of the mandating collective management organisation be

[38] Stamatoudi I. (ed.) (2020) Κατ’ άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 603-604
[39] Stamatoudi I. (ed.) (2020) Κατ’ άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 604-605
[40] Stamatoudi I. (ed.) (2020) Κατ’ άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, p. 605

managed on the same conditions as the repertoire of the mandated collective management organisation and that it is included in offers addressed by the mandated collective management organisation to online service providers. The management fee charged by the mandated collective management organisation should allow that organisation to recoup the necessary and reasonable investments incurred. Any agreement whereby a collective management organisation mandates another organisation or organisations to grant multi-territorial licences in its own music repertoire for online use should not prevent the first-mentioned collective management organisation from continuing to grant licences limited to the territory of the Member State where that organisation is established, in its own repertoire and in any other repertoire it may be authorised to represent in that territory."

Furthermore, in paragraph 2 the CMO who receives that request shall answer to that request in writing and without any unjustified delay.[41] If the CMO do not accept to represent another CMO, then should justify this with accurate arguments. The justification shall rely on the law. As mentioned to the paragraph 4, if the CMO granting multi-territorial licences agreed on administering the repertoire of another CMO, it should be aggregated with its repertoire and to include the whole repertoire in the offers CMO does to the providers. The one exception of this article is that referred to the paragraph 6 (b) where is stipulated that the CMO granting multi-territorial licence can refuse to include the repertoire of another CMO who cannot grant these licences if the information about the works is not accurate.

In paragraph 3 it is stated that the CMO granting multi-territorial licences for another CMO who cannot, should administer these rights in the same way the CMO administers the rights itself. The equal administration of repertoires is of great importance, and it is mentioned also in the paragraph 3 of article 29, this rule bends by paragraphs 5 and 6.

The paragraph 5 is mentioned to the administrative costs. In particular, the cost which are necessary in order to a CMO granting multi-territorial licences manages the rights of a CMO who cannot, should be reasonably costs. But they are not mentioned the prerequisites needed so as to be considered which are the reasonably costs and what the law means about reasonably costs. That fact causes insecurity for the short-range CMOs.

As it is mentioned above, the explanatory memorandum 46 stipulates that the CMO who cannot grant multi-territorial licences has the opportunity to manage the repertoire of its own in the territory where the CMO is established, even if the CMO has assigned a representation contract with another CMO granting multi-territorial licences for managing its repertoire online.

[41] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 606-607

The article 30 is more beneficial to the big CMOs because it allows collecting more profits for managing the repertoire of another CMO, but also sets the framework for the representation process with accuracy.

c. Access to multi-territorial licensing (art. 31)

The purpose of this article is to ensure the objectives of directive related to the multi-territorial licensing, when the CMOs are not willing to collaborate.[42] It is ensured that the national repertoire will not be caged at the national level of the CMO not granting multi-territorial licensing and the rightholders can withdraw only the online rights for the multi-territorial licensing and still be members of the CMO cannot grant multi-territorial licensing for the mono-territorial licences. The part who has the burden of proof is the CMO because the CMO itself knows if grants multi-territorial licensing and has the responsibility to inform the rightholders. The Directive has set the date of 10th October 2017 as the final date in order to develop every CMO the proper technological structures needed for granting multi-territorial licensing.[43]

Furthermore, the article 31 underlines the possibility of individual and dependent management and not in a collective way.[44] It refers to the independent individual management and tries to create competition between the Collective management organizations and other entities/ agents. The rightholder who withdraw his online rights of the CMO's management and give them to other parties or CMOs granting online licensing it is not an exclusive licence. But it is not in the interest of the rightholders to manage at the same time the same online rights two CMOs because the administrative fees will be double and this is not benefits the rightholders.

In addition, it is not clarified if the CMO granting multi-territorial licensing is obligated to accept to manage the repertoire of the rightholders who ask to manage their rights online. It is possible to reject the request of managing the repertoire of rightholders if there is a reasonable justification, but consequently the rightgolder will not have the opportunity to licensing online and is excluded from online environment. Given that fact, the provisions should be stricter and the CMO has not the opportunity to reject the request of managing the rights of rightholders in online environment.

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[42]Explanatory memorandum 47 of the Preamble of the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market «For this reason, it would be important in such circumstances to enable right holders to exercise the right to grant the multi-territorial licences required by online service providers themselves or through another party or parties, by withdrawing from their original collective management organization their rights to the extent necessary for multi-territorial licensing for online uses, and to leave the same rights with their original organisation for the purposes of mono-territorial licensing."

[43] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 611-612

[44] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 613-614

Chapter V: The derogation of online musical works incorporated in radio and television programs (art. 32)

The broadcasting organizations based on a licence granting from a local CMO for broadcasting radio or television programs incorporating musical works.[45] But this licence applies restrictively for broadcasting in analogue environment. As a result, the broadcasting organization cannot use this licence in order to broadcast these programs with musical works online, only if it is granted a multi-territorial licence for online use of music. This online licensing is different from the multi-territorial licensing we mentioned above, the broadcasting organizations can be licenced with different way for the online use of the musical works that are incorporated, they can be licenced for the online broadcasting from local CMOs and not necessary from big CMOs granting multi-territorial licensing. The requirements of the Directive are not applicable in this situation of online broadcasting programs. The Directive stipulates that CMOs can voluntarily aggregate and enter into agreements in order to create "one stop shops" for granting online licensing for radio television broadcasting programs. Although, it is clarified in the Explanatory memorandum 48 that this exception shall not operate in a way that distort the competition with other services which provides to the consumers access to musical oraudiovisual works online nor leads to the breach of the Article 101 or 102 TFEU. The procedure for the use of online rights of musical works in broadcasting radio or television programs is simplified and does not need to request a licence from multi-territorial licensing CMOs but is suitable to request a licence from a local CMO.[46]

Chapter VI: Conclusions

The Directive filled the gap there was in a global level because it is needed to be protected the rights of the authors online. The Directive is more concrete than the previous legislation in copyright protection field and covers in a more detailed way the provisions needed to be covered for the use of musical works online.There was an urgent need to legislate a proper handbook to coordinate the matters related to the online use of musical works. The development of online legal services contributes to the restriction of infringements of the musical rights online.

[45]Explanatory memorandum 48 of the Preamble of the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market "Broadcasting organisations generally rely on a licence from a local collective management organisation for their own broadcasts of television and radio programmes which include musical works. That licence is often limited to broadcasting activities. A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online rights in musical works for the purposes of simultaneous and delayed transmission online of television and radiobroadcasts, it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of online rights in musical works.

[46] Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, pp. 618-619

Although, the Directive as it is mentioned in the explanatory memorandum covers the rights of the rightful authors and do not apply to the related rights of the performers and the phonogram producers, the related rights are a field that is not covered in a detailed way to the Directive and need a further legislation in order to be covered completely. Also, according to the explanatory memorandum 40 of the Directive 2014/26 are covered the musical works which are incorporated in the audiovisual works but are excluded the sheet music.

Nevertheless, articles 23 to 28 of the Directive aim at the development of a system of transparency of the representing repertoire and the accuracy of the invoicing according of the use of the musical works online, aiming to the depletion of the infringements in online environment. Articles 29 to 30 introduce the provision related to the collaboration between the collective management organizations granting multi-territorial licensing and those who are not granting, and they are completed by the article 31 and the access to multi-territorial licensing. The Directive is an integrated system referred to the required provisions in order to cover the protection of musical works online but definitely is needed a further legislation so as to be coved the uncertainty referring the related rights.

The articles referring to multi-territorial licensing regulates the granting of multi-territorial licensing in relation to the composers of the music and the writers of the lyrics. The objective of the law is to facilitate a licensing process for the use of musical works online, the rights concerned the authors are the exclusive reproduction right and the exclusive right of presentation to the public musical works, including the disposal right. According to the Directive 2001/29/EK is required licence for every right involved in the online exploitation of musical works. Although, these rights, the reproduction right and the right of presentation to the public are not managed in the same way from the CMOs, there is a differentiation in the continental Europe the CMOs manage their repertoire with Anglo-Saxon system where CMOs are manage only the executive rights not the mechanical rights. The German court decision in the case MY Video against CELAS[47](created by GEMA) cancelled the division of rights GEMA decided. Some countries accept the division between executive and mechanical rights and some countries not. National legal systems are not harmonized for the licensing of property rights by CMOs. There is legal uncertainty about who the rightholder is. Nevertheless, the European legislator has chosen not to regulate the issue and thus it is difficult to be created coherence. There is the need in the future to be regulated certain issues with a new more coherent legislation, putting light in those uncertainties mentioned above.

[47]Stamatoudi I. (ed.) (2020) Κατ' άρθρο ερμηνεία του νόμου για τη συλλογική διαχείριση (Commentary on the Greek Collective Management Act), Athens, Nomiki Vivliothiki, p. 558

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