**ALAI 2021**
**QUESTIONNAIRE – NATIONAL REPORT OF GREECE**
**(Answers on sections 1 and 3)**

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## 1. INTERNAL ADJUSTMENTS IN COPYRIGHT LAWS

I. Specific provisions in favor of market competition and innovation can be found in national legislation on the protection of technical innovations. This is the case of regulations providing the possibility of a public offer of non exclusive licenses as well as provisions on compulsory licenses for technical inventions (Articles 12A, 13, 14 and 14A of Greek Patent Law – L. 1733/1987).

A compulsory licensing scheme is not provided in Greek Copyright Law. Nevertheless compulsory collective management and "joint-tariffs" schemes are provided in cases of massive, impersonal uses, or in order to facilitate licensing practices. In the case of the cable retransmission right, the exclusive right is subject to a compulsory collective license.
As for the equitable remuneration due for the mechanical rights on phonograms (broadcasting, communication to the public of sound recordings) and the equitable remuneration for reproductions for private use (blank tape levy), they are only paid to the competent CMO. Both remunerations are subject to a centralized management scheme: for the mechanical rights on phonograms article 49 of Copyright Law (L. 2121/93) provides that the user shall pay to the competent CMO a single and equitable remuneration distributed between the performers and the producers of the recordings. Similarly in case of the equitable remuneration for the act of reproduction of works for private use, a joint levy determined by Copyright Law (Art. 18 of L. 2121/93) is paid by the persons named as responsible (manufacturers, importers, sellers of reproduction devices and media). Where more collective management organisations represent the same category or subcategory of rightholders and they have not reached an agreement, the allocation of the rates of the reasonable remuneration to each collective management organisation representing each category or subcategory of rightholders, the collection and payment method, as well as any other relevant detail, shall be determined by a decision issued by HCO (Hellenic copyright Organization).

Furthermore in order to facilitate joint licensing schemes Article 5 of Law 4481/2017 on collective management of copyright and related rights provides for the establishment of a unitary collective management organisation which is empowered to negotiate, grant licenses, conclude remunerations agreements, claim the right to remuneration, proceed to any judicial or extrajudicial action, collect the relevant remuneration from users and distribute it to the respective collective management organizations (paragraph 1).

II. The scope of research and innovation is implied in regulations concerning exceptions and limitations of copyright and sui generis rights. In case of software

Article 43 of Copyright Law (L. 2121/93) provides that the lawful user of a computer program shall be entitled to carry out acts without the authorization of the author and without the payment of a fee when such acts are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs (paragraph 1). In case of the sui generis right of the database producer article 45A of Copyright Law (L. 2121/93) provides that the lawful user of a database may, without the permission of the maker of the database, extract and/or re-utilise a material part of its content: a) when the extraction is made for educational or research purposes, provided that the source is quoted, and to the extent that it is justified by the non commercial purpose pursued, b) when the extraction and/or re-utilisation is made for reasons of public safety or for purposes of administrative or judicial procedure (paragraph 6).

III. As to the licensing practices applied by CMOs, Law 4481/2017 on collective management of copyright and related rights, provides that licensing terms shall be based on objective and non- discriminatory criteria (Article 22 paragraph 3). When determining and applying their tariffs, CMOs must apply objective criteria, never act in an arbitrary way, nor engage in abusive discrimination (article 23 of L. 4481/2017). In case of a dispute between a user and a CMO on the fair nature of licensing prices, the competent Court determines provisionally or definitively the amount of the remuneration due (Article 22 paragraph 7). Apart from that, CMOs and representative associations of users may enter into agreements for the determination of the remuneration payable to each category of rightsholders, as well as with regard to any other issue relating to the relations of the parties(article 23 paragraph 3). Any disputes between collective management organisations and users concerning the amount of the remuneration that the user must pay, may be submitted to arbitration by agreement (article 23 paragraph 4).
Furthermore Article 44 of Law 4481/2017 provides for alternative dispute resolution procedures between CMOs and their members or rightholders or users.

The unfair character of licensing prices has been examined by the competent national Courts which apply correction mechanisms. Following the EU Court's decision of 6/2/2003 in case C-245/00 ("SENA v. NOS"), the national courts have set the necessary criteria for determining whether a remuneration required by a right holder may be deemed as fair (Court of Appeal of Athens, Decision No. 915/2010, Court of Appeal of Thessaloniki, Decision No. 843/2010). The abovementioned criteria are partly repeated in Article 23 of L. 4481/2017 on collective management of copyright and related rights: Tariffs shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade, taking into account the nature and scope of the use of the work and other subject-matter, as well as in relation to the economic value of the service provided to the user by the collective management organization (paragraph 1).

**3. EXTERNAL ADJUSTMENTS: ANTI-TRUST AND BEYOND**

The essential facilities doctrine although legally provided in regulating specific market sectors, such as telecommunication, energy etc, it is not literally provided in law or applied by courts in cases concerning copyright licensing markets (offline and online).

Nevertheless downstream markets have been subject to competition law and applied market practices have been examined by the competent national Competition Authority. In a dispute between an exclusive film distributor company and a company exploiting cinemas the practice of downstream markets in film exploitation has been examined by the Competition Authority (EPANT Decision No. 429/2009). In this case the company involved exclusively represents and distributes for major film producers in the Greek market. Apart from that, it exploits through its filial companies multiplex cinemas. The conflict concerned distribution practices discriminating other companies competing in the exploitation of cinemas (e.g. refusal to distribute blockbuster films). The Competition Authority detected two distinctive relevant markets: a) the market of film distribution and b) the market of exploiting cinemas.

Although CMOs are subject to the specific regulations of Copyright Law and the Law on collective management as to their scope, function, internal and external relations (with rightholders – users), they are undertakings subject to competition Law. Licensing prices and other practices of CMO's are traditionally being examined by the national competition authority and the competent Courts. (e.g. EPANT Decision No. 245/III/2003, Administrative Court of Appeal of Athens, Decision Nos. 67/2003, 2194/2004, 2195/2004, Administrative Supreme Court, Decision Nos. STE 3260/2011, 3262/2011). CMOs hold a monopoly on the provision of collective administration service therefore the abuse of a dominant position might lie in the imposition of excessive prices in relation to the economic value of the service provided, excessive administrative costs charged to rightholders or other unfair terms (refusal to manage rights partially).

Competition Law plays also a significant role in the development of efficient markets through the proactive control of mergers and acquisitions involving undertakings functioning in the creative, cultural, entertaining markets (horizontally or vertically).

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## 4. ONLINE MARKETS: "VALUE GAPS" (ONLINE PLATFORMS)

**4.1** Until today there is no norms and/or relevant caselaw addressing the value gap issue, as applied to UGC platforms, in Greece. However, as an EU Country, Greece and more precisely the Hellenic Ministry of Culture formed a legislative Committee with the task to transpose Directive 2019/790/EE (CDSM) into the Greek legal order. The Committee, consisted mainly by the scientific personnel of HCO (Hellenic Copyright Organization), 3 (three) law professors (myself included), the Minister's legal counselors as well as higher officers etc., has just concluded its work, while the Draft Law is to be uploaded onto the Government's website (www.gov.gr), as soon as the Explanatory Memorandum will be finalized and approved by the Minister of Culture. However, since the Draft Law has not been published yet, it could only be said that, mainly due to the complex and peculiar liability system established by Art. 17 of the CDSM Directive for online content-sharing service providers (OCSSPs), the Committee decided not to adhere significantly from the wording of the Directive.

**4.2.** Until today there are no norms and/or relevant case law or licensing addressing news aggregation. Therefore, it is expected that the transposition of Art. 15 of CDSM, which grants press publishers a new *related right* for the use of their publications online, into the Greek legal system, shall effectively regulate the *value gap* created by the relevant online market. Since the Draft Law has not been published yet, it should only be said that the new publisher's right is to be transposed in the section where the rest of the related rights are contained [Section VIII, Art. 46 et seq. of L. 2121/1993 (Copyright, Related Rights and Cultural Matters)] and, therefore, it will be subject to all the rules applied to them (e.g. to the existing exceptions or limitations), either directly or by analogy, as already provided for in our Copyright Law. In any case, as has also been mentioned above in regard to Art. 17 of the CDSM Directive, it was the Committee's decision not to adhere significantly from the wording of Art. 15 so as ensure that the purposes of the EU legislator are fulfilled.

**4.3. Regarding other value gaps,** it needs to be said that "could storage" has not been addressed by Greek Courts until today, nor a particular legal norm has been enacted. However, **private copying levy (= equitable remuneration)** has been specifically (and extensively) regulated in the context of Art. 18 L. 2121/1993, since the enactment of this Law. Since then, the theoretical discussion regarding the legal nature as well as the *ratio* of this remuneration "right" has never ended, while Courts have encountered a significant number of cases addressing various matters relating to it.

The remuneration right under discussion is subjected to *mandatory collective management* and, as a result, the relevant system is managed by a number of CMOs, representing the various categories (or subcategories) of rightsholders/ "beneficiaries" provided for in Art. 18. Tariffs are set out by law depending on the type of device(s) that is(are) being *used for private copying*, whereas, in cases the law does not provide otherwise, HCO (Hellenic Copyright Organization) plays a significant role as to the allocation/distribution of the parts/ "percentages" of the (equitable) remuneration due amongst the various categories (or subcategories) of beneficiaries/ rightsholders, having to decide in line with the views expressed by the CMOs involved and *in accordance with good faith, fair trading practice and the practices followed at international and Community level* (pursuant to par. 9).

Further, pursuant par. 3 and 4 of Art. 18, *intermediaries* (i.e. importers and producers of machines/devices capable of or used for copying, such as sound and image recording apparatus, computers, smartphones, scanners, printers and paper) are the basic payers of the discussed levy, whereas within thirty (30) days from the end of each calendar quarter they are obliged to declare in writing to HCO the quantity and the total value of the technical means and/or paper suitable for photocopying, which they imported or produced within the immediately preceding calendar quarter; and if they refuse or fail to do so, Courts of First Instance may intervene, at the request of the CMOs that are entitled to collect the remuneration due.

The system is rather complicated and in most-cases there is a *strong opposition from those who need to pay*. Therefore, Court decisions mainly sentence persons ("payers"), who refused to proceed with the immediate submission of the above solemn declaration to HCO, to a penalty to the requesting CMO.

Additionally, there has been a long discussion, regarding the *type of products/ devices on which the private copying levy should be imposed*. Although this levy has not (yet) been extended to any online storage services, it covers not only computers but also portable electronic devices (tablets) and smartphones, whereas the tariff for this category of electronic/ "digital" devices has been set up at 2% of their value and is to be distributed amongst the following categories of rightsholders: authors, performers or performing artists, producers of recorded magnetic tapes or other sound or image or sound and image recording medium, as well as publishers of printed material. Most relevant are the following (recent) court decisions: ΕφΑθ 7196/2017 (Athens Court of Appeal) and ΑΠ 2097/2013 (Supreme Court of Greece/civil cases' department), NOMOS database, while the above devices have been added to Art. 18 L. 2121/1993 as follows: a) **in 2017** Art. 54 par. 2 L. 4481/2017 (ΦΕΚ Α΄/100/20.7.2017) amended the 3rd par. of Art. 18 L. 2121/1993 stipulating that *personal computers* (PCs), to which portable networked devices (*tablets*) with a RAM capacity of more than 4GB are to be included, are subject to an equitable remuneration of 2% of their value and b) **in 2018** Art 37 L. 4540/2018 (ΦΕΚ Α΄/91/22.5.2018) amended again the same provision explicitly stipulating that *smartphones are also subject* to the private copying

levy and setting it at 2% of their value, as already applicable for PCs and tablets. Moreover, the new provision laid down that only *storage media* (e.g. sound and/or image recording apparatus, magnetic tapes etc.) with a capacity of more than 4GB are subject to the above equitable remuneration (copying levy), which, in their case, is set at 6% of their value; whereas it clarified, that the criterium of a certain capacity of RAM *is of no relevance* as to the subjection of PCs, tablets and smartphones to the equitable remuneration of Art. 18 L. 2121/1993.