

SLOVENIAN INTELLECTUAL PROPERTY OFFICE

Number: 31227-1/2008-129
Date: 11 October 2010

On the basis of Articles 148 and 150 of the Copyright and Related Rights Act (Official Gazette of the Republic of Slovenia, No. 16/07, 68/08, hereinafter referred to as: ZASP), and the application for the issue of an authorisation for the collective management of the rights of the co-authors of audiovisual works, the performers of audiovisual works and film producers, which was filed by *Zavod AIPA – Zavod za uveljavljanje pravic avtorjev, izvajalcev in producentov avdiovizualnih del Slovenije*, Šmartinska 152, 1000 Ljubljana, represented by authorised attorney, Borut Bernik Bogataj, Kidričeva cesta 1, 4220 Škofja Loka, the Slovenian Intellectual Property Office (hereinafter referred to as: the Office) hereby issues the following

AUTHORISATION

I. *Zavod za uveljavljanje pravic avtorjev, izvajalcev in producentov avdiovizualnih del Slovenije*, Šmartinska 152, 1000 Ljubljana shall be the authorised collective management:

1. for co-authors of audiovisual works, namely the author of the adaptation, the author of screenplay, the author of the dialogue, the director of photography, the principal director, the composer of film music specifically created for use in the audiovisual work, and the principal animator if animation represents an essential element of the audiovisual work:

- the right to equitable remuneration for making a sound or visual fixation of audiovisual works, completed within the scope of private or other internal use; and
- the right to rebroadcast the cable retransmission of audiovisual works.

2. for performers whose performances have been used in audiovisual works:

- the right to equitable remuneration for making a sound or visual fixation of their performances in audiovisual works, completed within the scope of private or other internal use.

3. for film producers:

- the right to equitable remuneration for making a sound or visual fixation of audiovisual works on videograms, completed within the scope of private or other internal use.

II. The authorisation for the collective management of the rights of the co-authors of audiovisual works, the performers of audiovisual works and film producers in relation to the sound or visual fixation of audiovisual works, completed within the scope of private or other internal use, shall merely refer to the distribution of remuneration among the beneficiaries of rights.

III. No special costs shall be incurred during the course of the proceedings.

Grounds

On 1 July 2008, *Zavod za uveljavljanje pravic avtorjev, izvajalcev in producentov avdiovizualnih del Slovenije*, Šmartinska 152/VI, 1000 Ljubljana (hereinafter referred to as: the applicant) filed an application for the issue of authorisation for the collective management of the rights of the authors, performers and film producers of audiovisual works. To the application, the applicant attached Articles of Association and Rules on the granting of remuneration, both dated 25 April 2008. In the application, the applicant indicated two persons authorised for its representation (President of the Council of the Institute Janko Čretnik and Director of the applicant Gregor Štibernik); regarding the number of persons who authorised the collective organisation, the applicant indicated that in the founding procedure, all important representatives in the field of audiovisual works took part actively, namely *Združenje videogramске industrije Slovenije* (distributors and video-publishers), *Združenje avtorjev avdiovizualnih del Slovenije*, *GIZ Slovenskih filmskih producentov* (hereinafter referred to as: SFP) and *Društvo slovenskih filmskih ustvarjalcev* (hereinafter referred to as: DSFU). Based on indirect data, the applicant gave an indicative assessment of the economic importance of rights for effective management. Upon its estimation, a minimum of EUR 3.5 million will be collected each year from the title of cable retransmission. In 2008, remuneration of approximately EUR 750,000 is supposed to have been collected for private and other internal reproductions, of which at least 30% were to be allocated to beneficiaries in the field of audiovisual works. As well as this, EUR 150,000 collected by the Copyright Agency is kept in a special account. The applicant and Zavod IPF have concluded an agreement on mutual cooperation. The latter will perform administrative technical work for the applicant which will provide for the effectiveness of management as regards the procedures in relation to liable persons and the expediency of costs.

Following a call by the Office No. 31227-1/2008-2 of 18 July 2008, the applicant paid promptly an administrative fee in the amount of EUR 17.73.

The Office called upon the applicant by means of letter no. 31227-1/2008-4 of 25 September 2008, pursuant to the provisions of ZASP, to supplement the application, no later than three months following the service of the call, with: a statement on the number of persons who authorised the collective organisation to manage the rights (point 3 of Article 148 of ZASP), an assessment of the economic importance of rights for the effectiveness of management (point 4 of Article 148 of ZASP), the evidence of a material basis for collective organisation (second paragraph of Article 149 of ZASP) and an explanation of the applicant's plans for providing the continued management of cable retransmission rights.

On 6 November 2008, the applicant responded promptly to the letter and supplemented the application. In the application, with regard to the number of persons who authorised the collective organisation to collectively manage the rights, the applicant explained that it has not yet been obtaining authorisations since, as a collective organisation, it does not yet exist. However, the entire Slovene audiovisual society takes part in the establishment of the applicant as a new collective organisation, indicating in the continuation SFP, *Sekcija filmskih distributerjev* at the CCIS, *Združenje videogramске industrije and Združenje fonogramске industrije Slovenije* which covers approximately 97% of all the works that are used in the territory of the Republic of Slovenia. The copyright part is represented by DSFU through the work of its members, *Društvo slovenskih režiserjev* (hereinafter referred to as: DSR) and *Društvo oblikovalcev Slovenije - Sekcija za scenografijo in kostumografijo*, while the execution part is represented by *Združenje filmskih snemalcev* (hereinafter referred to as: ZFS), *Združenje dramskih umetnikov Slovenije* (hereinafter referred to as: ZDUS) and a part of DSFU members. They provide their members with information on the applicant's founding procedure and will, once the authorisation is obtained and thus formal conditions for signing authorisations are fulfilled, call the members to sign authorisations; this follows from the statements given by the representatives of ZDUS, *Združenje videogramске industrije Slovenije*, *Združenje fonogramске industrije Slovenije*, *Sekcija filmskih distributerjev Slovenije* with the Chamber of Commerce and Industry of Slovenia (as evident from the attachment to the statement, members of the section are representatives of big Hollywood studios and independent producers: A. G. Market (independent producers), BLITZ Film & Video distribution (Warner Bros and independent producers), CENEX d. o. o. (Walt Disney and independent producers), CINEMANIA Group d. o. o. (independent producers), CONTINENTAL FILM d.o.o. (Sony, 20th Century Fox), KARANTANIJA CINEMAS d.o.o. (UIP, Universal, Dreamworks, Paramount, independent producers) and LJUBLJANSKI KINEMATOGRAFI d.o.o. (independent producers)), *Društvo oblikovalcev Slovenije* and *Sekcija za scenografijo in kostumografijo*, DSR, DSFU and SFP, which were attached by the applicant. Considering the assessment of the economic significance for the effectiveness of management, the applicant explained in the application of 6 November 2008 that it will provide, in cooperation with the professional administrative service of Zavod IPF and, within the meaning of the second paragraph of Article 146 of ZASP, an advanced and cost-effective business environment as soon as possible to facilitate proper business cooperation with the users of the applicant's repertoire, and, at the same time, provide for the correct and transparent distribution of the remuneration collected. There is an advantage in the cooperation of two collective organisations (the applicant and Zavod IPF), that entails, in particular, lower costs for the administrative and professional services of both collective organisations, a standardised way of addressing users and a balanced performance in negotiations with users. The applicant will make records of all holders of rights and their repertoires, allocate remuneration in accordance with the programme of audiovisual works performed, forge contacts with umbrella organisations and conclude bilateral contracts with related organisations abroad. The applicant is of the opinion that, so far in Slovenia, we have not yet experienced the basic principles of operation of such a collective organisation in the field of the enforcement of the rights of film producers. The present regulation implies only the performance of provisional authorisation no. 800-3/00-3 of 24 January 2001, which was issued to *Združenje skladateljev, avtorjev in založnikov za zaščito avtorskih pravic Slovenije*, presently

Združenje skladateljev in avtorjev za zaščito glasbene avtorske pravice Slovenije (hereinafter referred to as: Association SAZAS) for the collective enforcement of copyright in the case of the cable retransmission of audiovisual works, and will only stay in force pending the establishment of an appropriate collective organisation. As evident from the reports of the Association SAZAS, the remuneration collected on the basis of provisional authorisation are mostly paid as lump sums to foreign partners (AGICOA, EBU, VG Media – 78% in total), which in the allocation of the remuneration collected in this manner does not take into account all the television programmes present in the Slovene cable retransmission systems. The allocation system of remuneration collected does not include Slovene producers who create the contents of Slovene television programmes present in cable retransmission systems. The remainder of remuneration collected is distributed as lump sums (22%) among the members of Associations SAZAS and ZAMP. Only 3% of the amount is reserved for the eventual claims of other beneficiaries which most probably means that remuneration collected for the account of Slovene film producers and performers have also been misallocated through the entire period of the exercise of the provisional authorisation. In Slovene cable systems, which are managed by 71 cable operators with approximately 370,000 connections, approximately one third of retransmitted programmes are, on average, of Slovene broadcasters, while the share of Slovene audiovisual productions in the programmes of Slovene broadcasters is also not insignificant. In future, an adequate distribution of remuneration will have to be provided which will not be based on lump-sum agreements that unduly exclude a significant part of the repertoires of Slovene beneficiaries. The applicant also finds importance in the fact that Zavod IPF has already concluded an agreement for the use of phonograms with users of audiovisual works in the field of cable retransmission with cable operators, which implies good business relationships that have already been established. Since the applicant and Zavod IPF have concluded a contract on administrative cooperation, only one invoice will be issued for settling the remuneration to several collective organisations. As for the amounts of remuneration for private *and* other internal reproduction the applicant states an assessment of the amount which Zavod IPF, as the holder of provisional authorisation, will collect in 2008, therefore considers that, in 2008, the share of remuneration for performers and film producers will exceed EUR 200,000; in the conclusion of contracts, the rights of the latter were not represented; therefore, they will have to be provided an enhanced role. Considering the material basis, in addition to everything indicated in relation to the authorisations and assessment of economic significance, the applicant also indicates that the funds necessary for the collective organisation to operate already exist since remuneration from the title of rights of film producers and creators have already been collected and are kept with the holders of present provisional authorisations. These funds will be sufficient to cover initial costs which will be, owing to the administrative-technical cooperation with Zavod IPF, significantly lower – much as if these services were managed by themselves. The applicant estimates is of the view that 10% of remuneration collected will be allocated for administrative technical operations, to which the costs of the operation of the applicant's bodies and any eventual legal expenses must be added; however, the total amount should not exceed 12% of the remuneration collected. Among the founders of the applicant are also the representatives of foreign holders of rights, particularly film producers; therefore, most rights for foreign beneficiaries may be settled directly with their representatives in the Republic of Slovenia. Considering the possibility for a continued management of the rights of cable retransmissions, the applicant explains that talks with AGICOA, a relationship they will try to maintain, are underway. The applicant considers that new contracts will have to be concluded with users – cable operators, and that more work will be necessary in settlement of international relations. The applicant attached a copy of the contract on cooperation concluded between the applicant and Zavod IPF which indicates that Zavod IPF will perform administrative technical business for the applicant, particularly administrative secretarial tasks, professional assistance in the conclusion of agreements, the conclusion of individual contracts with users, accountancy tasks, documentation for an audiovisual repertoire and its use to the extent agreed, the realisation of the annual distribution of remuneration collected, cooperation with the applicant's bodies and reporting to the Office. The contract was concluded for the period of the applicant's authorisation, and can be terminated by both parties. The application also attached the amended Articles of Association and Rules on the granting of remuneration, both dated 21 October 2008.

The Office must, *ex officio*, provide throughout the entire administrative procedure that such procedure involves all those whose rights or legal entitlements could be affected by the decision; therefore, the Office informed (within the three-month period for the applicant's reply to the call by the Office No. 31227-1/2008-4 of 25 September 2008) DSFU, ZDUS, DSR and ZFS by means of the letter No. 31223-8/2007-10 that the applicant filed the application for authorisation for the collective management of the rights of authors, performers and producers of audiovisual works (the said associations had, prior to the applicant's filling the application for obtaining authorisation for collective management, provided the Office on 19 March 2008 with a statement concerning the applicant's foundation). The Office gave notice to all associations to communicate within a period of 15 (fifteen) days their legal interest in participating in the procedure. DSFU replied on 4 November 2008, DSR on 6 November 2008 and ZDUS on 17 November 2008, while ZFS did not reply to the Office's letter. In their letters, DSFU, DSR and ZDUS indicated that they actively participate in the procedures associated with the applicant's founding; however, none of them required the position of a third-party participant in the procedure, which is ongoing upon the applicant's request.

On 23 October 2008, the Association SAZAS filed an application through its authorised representative, the company Rojs, Peljhan, Prelesnik in partnerji, o.p., d.o.o., for recognition of the status of a third-party participant in the procedure which is ongoing upon the applicant's request. The Association SAZAS indicates that the issue of the authorisation to the applicant would encroach upon its legal situation since the provisional authorisation no. 800-3/00-3 of 24 January 2001 would terminate. The Office informed the applicant thereof by letter no. 31221-31/2008-6 of 5 January 2009. The applicant contested the right to the Association SAZAS to intervene (letter of 15 January 2009), indicating, among other things, that under ZASP, the beneficiaries have the right to establish their own collective organisation which will result in the termination of the provisional authorisation of the Association SAZAS. However, this will not encroach upon the entitlement of the Association SAZAS but merely terminate the

relationship or arrangement that was established on a provisional basis. By the decision no. 31227-1/2008-33 of 17 March 2009, the Office refused the application filed by the Association SAZAS for recognition of the status of a third-party participant in the procedure which is ongoing upon the applicant's request, as it established that the Association SAZAS has no legal interest to intervene as the third-party participant in the procedure for the issue of authorisation for the collective management of rights in audiovisual works. The Association SAZAS did not show that the issue of the authorisation for collective management of rights in audiovisual works could affect its legal benefit, in other words: directly encroach upon personal benefit, based on law or other regulations.

On 30 October 2008, Tomislav Cegnar, the president of *Društvo avdiovizualnih avtorjev* (hereinafter referred to as: AVA) in the process of being established, opposed the issue of authorisation for the collective management of rights in audiovisual works. The Office called upon the stated association by means of the letter no. 31227-1/2008-8 of 13 November 2008 to clarify within a period of 15 (fifteen) days following the receipt of the letter its legal interest to participate in the procedure (the letter of the Office was served on 19 November 2008). Before the expiry of the time limit (3 December 2008), the Office did not receive any answer; however, after the expiry of the time limit (9 December 2008), it received a letter from Tomislav Cegnar indicating that on 26 November 2008 he had filed an application for the registration of a society. The Office dismissed the request by decision no. 31227-1/2008-20 of 19 January 2009, since it established that AVA had not responded in time to the call by the Office, and since after having examined the Business Register of Slovenia on 19 January 2009 and on the basis of indications in the application filed by Tomislav Cegnar on 30 October 2008 and 9 December 2008, it established that, at the time when a decision on the request was taken, AVA had not yet been founded and therefore had no legal capacity.

The Office called upon the applicant once again by means of the letter no. 31227-1/2008-28 of 28 January 2009 to supplement the application within a period of fifteen (15) days, by indicating the number of authors who authorised the collective organisation, the total number of their works, and an explanation of the legal interest of *Sekcija filmskih distributerjev Slovenije* with the Chamber of Commerce and Industry of Slovenia to participate in the procedure since they are only holders of rights for film distribution in a certain area. The applicant supplemented the application in time, on 17 February 2009, by indicating that, on 17 February 2009, it had 199 members and held 350,000 audiovisual works, and provided a description of the rights of film distributors. The latter were to conclude a distribution contract and thus obtain the right to draw on remuneration for certain films that arise from various modes of use of audiovisual works. The applicant attached seven supporting documents on intentions to settle international relationships between the applicant and foreign collective organisations and certain international umbrella associations (Bild-Kunst, SACD, FILMEX, ZAPRAF, AISGE, AEPO-ARTIS, FERA).

During the procedure, the applicant made several supplements to the application on its own initiative. On 1 April 2009, the applicant supplemented the application by the list of names of its members – the authors, producers and performers, the 2009 business plan, supporting documents regarding intentions to settle international relationships between the applicant and foreign collective organisations, and between the applicant and international umbrella associations. On 17 April 2009, the applicant also attached the list of audiovisual works as of 15 April 2009 and the Rules on distribution of remuneration.

On 8 May 2009, AGICOA Europe filed a request for joining the procedure for the issue of authorisation to the applicant and the procedure for the issue of authorisation to AGICOA-i Europe, and the request for recognition of the status of a third-party participant in the procedure which is ongoing upon the applicant's request, on the subject of which the Office informed the applicant by the letter no. 31227-1/2008-53 of 10 June 2009. On 22 June 2009, the latter contested the right to intervene. The Office dismissed the request by decision no. 31227-1/2008-79 of 22 December 2009 and decision no. 31227-1/2008-80 of 30 December 2009. The Office based its decisions on the fact that, considering the principle of economy and expediency, it would not be reasonable to join the procedures since this would not expedite the taking of decisions on both applications, and that the applicant did not show that the issue of the authorisation for the collective management of rights in audiovisual works would affect its legal benefits, since the applicant has no rights associated with the management of copyright and/or related rights in audiovisual works in cases of cable retransmissions within the territory of the Republic of Slovenia.

On 21 April 2009, the applicant communicated to the Office a letter of the Association AGICOA for information purposes, a follow-up review of the collective enforcement of rights in audiovisual works, and a business plan. By way of letter no. 31227-1/2008-42 of 24 April 2009, the Office called upon the applicant to supplement the application by explicitly indicating which rights in the audiovisual works it intends to manage collectively, and providing an explanation for which groups of the holders of rights in audiovisual works it intends to subject to collective management, whereby the applicant should indicate the rights in respect of each group of holders of rights that it intends to manage, and by another explanation of the legal interest of *Sekcija filmskih distributerjev* (on which rights in audiovisual works they have been conferred). On 13 May 2009, the applicant supplemented the application with an explanation that it will be enforcing audiovisual rights that are subject to the collective management under ZASP, and that the rights that will be transferred to the collective management by the beneficiaries – the authors, performers and producers. Besides the right to reproduce audiovisual works for private or other internal use, and the cable retransmission of audiovisual works, the management will also include all the individual rights of the co-authors and the co-authors regarding contributions to audiovisual works, the right to make videograms available to the public and to rent out videograms to performers and film producers, and the right for film producers to present videograms to the public.

Since the copyright for the broadcasting of audiovisual works may be transferred by means of a contract to a film producer, the applicant does not wish to explicitly pronounce on an individual category of the holders of rights and an individual right to be

enforced in respect of such a category. As regards film distributors, the applicant explained that the film distributors and their members take part in the establishment of the applicant as a section of the holders of rights since, in individual cases, certain producers' rights have been transferred by distribution contracts to distributors for a limited period and in a limited area. The applicant also amended Articles 30 and 41 of the Articles of Association. On 16 June 2009, the applicant made a supplement to the application by way of two letters of intent (EJI, PRISM), on its own initiative.

By means of the letter no. 31227-1/2008-56 of 22 June 2009, the Office made another call upon the applicant to supplement the application by explicitly indicating which rights relating to audiovisual works and which holders of rights it intends to manage collectively; the applicant shall indicate the rights, in respect of each group of holders of rights, it intends to manage; moreover, it shall explain which rights belong to the authors of contributions in the use of audiovisual work, and in which cases they could be entitled to a share of the royalties or remuneration collected, and amend Article 41 of the Articles of Association accordingly.

On 8 July 2009, the applicant supplemented the application. The applicant amended Article 41 of the Articles of Association and provided an additional explanation regarding the distributors that they do not participate in the procedure for obtaining authorisation while film producers do, some of whom are also film producers.

On 25 August 2009, the applicant supplemented the application on its own initiative by way of a notification concerning the membership of *Filmski sklad Republike Slovenije* and *Javni zavod RTV Slovenije*, by a letter of intent to FILMJUS and Filminstruktore on 31 August 2009, and by a letter of intent to SDGI on 2 September 2009.

On 21 September 2009, the applicant supplemented the application by indicating the categories of beneficiaries and rights to be enforced as follows: for the co-authors, the right to remuneration for the reproduction of copyrighted works for private or other internal use and their photocopying beyond the scope of Article 50 of ZASP, the right to remuneration for the cable retransmission of copyrighted works, except in respect of the broadcasters' own transmissions, and the right to remuneration for their individual rights insofar as these will be transferred by the beneficiaries into collective management; for the authors of the contributions, (i.e. scenographers, costumographers, make-up artists, editors, without composers, etc.) the right to remuneration for the reproduction of copyrighted works for private or other internal use and their photocopying beyond the scope of Article 50 of ZASP, the right to remuneration for the cable retransmission of copyrighted works, except in respect of the broadcasters' own transmissions and the right to remuneration for their individual rights insofar as these will be transferred by the beneficiaries into collective management; for performers and film producers, the right to remuneration for the reproduction of copyrighted works for private or other internal use and their photocopying beyond the scope of Article 50 of ZASP, and the right to remuneration for their individual rights insofar as these will be transferred by the beneficiaries into collective management. The applicant also provided a clean copy of the Articles of Association as of 25 April 2008 and a clean copy of the Rules on the distribution of remuneration as of 21 October 2008, which it adjusted to the Office's comments.

On 21 September 2009, the applicant supplemented the application with all the letters of intent that existed at that time (Bild-Kunst, EJI, AEPO-ARTIS, VDFS, DHFR, Screen Directors Guild of Ireland, PRISM, Filmex, Danish Film Directors, FERA, FILMJUS, AISGE, ZAPRAF), emphasising in the size letter that both umbrella organisations (FERA, an amalgamation of 36 European organisations of producers, and AEPO-ARTIS which joins half a million performers in 29 collective organisations), express their support. On 3 December 2009, the applicant supplemented the application by the Articles of Association and the Rules on the distribution of remuneration, both dated 25 November 2009. Moreover, on 14 December 2009, the applicant supplemented the application by indicating the scope of rights in respect of the individual groups of beneficiaries that the applicant wanted to enforce collectively, namely: for the co-authors of audiovisual works, the right to remuneration for the reproduction of copyrighted works for private or other internal use and their photocopying beyond the scope of Article 50 of ZASP, and the right to remuneration for the cable retransmission of copyrighted works, except in respect of the broadcasters' own transmissions; the right to remuneration for the reproduction of copyrighted works for private or other internal use for the authors of contributions, and the right to remuneration for the cable retransmission of copyrighted works, except in respect of the broadcasters' own transmissions, and the right to remuneration for the reproduction of audiovisual works for private or other internal use for performers and film producers.

On 15 February 2010, the Office called upon the applicant by way of letter no. 31227-1/2008-81 to bring the Articles of Association and the Rules on the distribution of remuneration into line with the provisions of ZASP and comments submitted by the Office; in addition, the applicant should communicate the number of persons separately for each category of beneficiaries who have, by the day of service, authorised the applicant to manage their rights and the total number of their works.

On 17 March 2010, the applicant promptly replied to the Office's call by explaining how it had brought certain articles contained within the Articles of Association and the Rules on the distribution of remuneration into line with the comments submitted by the Office and the provisions of ZASP, and indicated that by the date the application had been supplemented, the intent to arrange the authorising relationship had been signed by 83 authors, 55 performers, 65 film producers, all of whom had not yet furnished complete lists of their works since the applicant had no resources available for the establishment of databases. Besides, as indicated by the applicant, the request to become members of the assembly has been signed by a number of beneficiaries who are not yet included in the above groups, and intensive talks with MPA and AGICOA and also underway.

Due to the lack of clarity and deficiencies arising in spite of the supplementations made to the application, the Office once again

called upon the applicant on 9 April 2010 by way of letter no. 31227-1/2008-90 to either eliminate the deficiencies given in the call or furnish explanations and replies to the questions that refer to the Articles of Association and the Rules on the distribution of remuneration, and to communicate, for all holders of rights, separately, the number of persons who, by the day of service of the call, had authorised the applicant to manage their rights, and the total number of their works, since the Office must take decisions on the basis of an actual list. The applicant responded promptly to the Office's call and, on 23 April 2010, supplemented the application with the amended Articles of Association as of 15 April 2010 and the amended Rules on the distribution of remuneration as of 14 April 2010, provided data on the number of persons who, by the day of service of the call, had authorised the applicant to manage their rights (56 authors of screenplays, 51 principal directors, 14 directors of photography, 10 authors of adaptations, 7 composers of film music, 5 authors of dialogue, and 5 principal animators) and explained that, from the last supplement of the application, the total number of works had increased by more than 3,200. In the supplement to the application, the applicant explained that, at the moment, it does not intend to enforce the rights of the authors of contributions, and has thus amended the application for granting the authorisation, and proposed only the enforcement of the rights of co-authors of audiovisual works (the right to equitable remuneration for making a sound or visual fixation, completed within the scope of private or other internal use, the right of rebroadcasting audiovisual works in the case of the cable retransmission of audiovisual works, except in respect of the broadcasters' own transmissions), the rights of performers in audiovisual works (the right to equitable remuneration for making a sound or visual fixation completed within the scope of private or other internal use), and the rights of film producers (the right to equitable remuneration for making a sound or visual fixation completed within the scope of private or other internal use).

On 19 April 2010, Tomislav Cegnar filed an application for the recognition of the position of a third-party participant in the procedure, which is ongoing upon the applicant's application, in which the Office informed the applicant by way of letter no. 31227-1/2008-97 of 9 June 2010; in the letter no. 31227-1/2008-101 of 18 June 2010, the applicant contested the right to intervene. The Office established that the applicant did not demonstrate a legal interest; therefore, on 21 June 2010, it refused the request by way of decision no. 31227-1/2008-99.

On 10 May 2010, the applicant supplemented the applications with a written list of co-authors (67), performers (67), film producers (66), and a list of the film works worked on by different producers (1,038). The applicant attached lists of foreign film works (short music-videos made by different producers) in electronic form on a compact disc.

After having examined the supplemented application, the Office established that some provisions of the Articles of Association of 15 April 2010 and the Rules on the distribution of remuneration of 14 April 2010 were still not in line with the provisions of ZASP; therefore, it called upon the applicant, by way of letter no. 31227-1/2008-95 of 21 May 2010, to eliminate the deficiencies indicated in the call, or to provide explanations and respond to the questions posed. On 7 June 2010, the applicant promptly replied to the Office's call by submitting a clean copy of the Articles of Association of 2 June 2010, the Rules on the distribution of remuneration and royalties of 2 June 2010, Minutes of the regular session of the Assembly of film producers of 14 April 2010, Minutes of the regular session of the Assembly of performers of 14 April 2010, Minutes of the regular session of the Assembly of co-authors of 14 April 2010, Minutes of the constitutive session of the council of Zavod AIPA of 24 May 2010, letters of intent with foreign collective organisations and associations (13), the list of audiovisual works of Triglav film, Viba film and Vesna film (844), Cebram - Rado Likon (2), Maya Art (2), producer Janez Pirc (7), Fabula (7), Peter Pan Film production (3), BELA FILM (14), Casablanca/Igor Pediček (22), ARS MEDIA (48), Danijel Hočevar – Produkcijski hiši Vertigo and Emotionafilm (64) and Stara garda (5). In the supplement, the applicant indicated that it had followed the comments made by the Office and made corresponding amendments or supplements to both the legal acts, and submitted a list with the names of persons who, by 4 June 2010, had authorised the applicant to enforce their rights.

On 22 July 2010, the Association SAZAS filed another application for the recognition of the position of a third-party participant in the procedure, which was ongoing upon the applicant's application, on which the Office informed the applicant of by way of letter no. 31227-1/2008-__ of ____; in letter no. 31227-1/2008-__ of _____, the applicant contested the right to intervene. By way of decision no. 31227-1/2008-125 of 8 October 2010, the Office refused the application made by Association SAZAS for recognition of the position of a third-party participant in the procedure which was ongoing upon the applicant's application, since it had established that Association SAZAS had no legal interest in intervening as a third-party participant in the procedure for the issue of the authorisation for the collective management of rights in audiovisual works. Association SAZAS did not demonstrate that the issue of the authorisation for the collective management of rights in audiovisual works could affect its legal benefit, in other words directly encroach upon its personal benefit based on the Law or other regulations.

On 29 October 2010, AGICOA Europe filed an application for the suspension of the procedure for the issue of the authorisation for the collective management of copyright and related rights in the case of the cable retransmission of audiovisual works, which was ongoing upon the applicant's application, and the procedure for the issue of the authorisation for the collective management of the neighbouring rights of film producers, and copyrights that have been transferred to them, in the case of the cable retransmission of audiovisual works which is ongoing upon the request made by AGICOA Europe. Since AGICOA Europe cannot be party to the proceeding for the issue of authorisation for the collective management of copyright and related rights in the case of the cable retransmission of audiovisual works, which was ongoing upon the applicant's application (the suspension of which it proposes), the Office dismissed the proposal on 8 October 2010 by way of decision no. 31227-1/2008-126 on the basis of point 2 of the first paragraph of Article 129 of ZUP.

The request for the issue of the authorisation shall be granted.

In accordance with Article 148 of ZASP, the competent authority shall issue the authorisation for the collective management of rights on the basis of a written application submitted by the interested legal entity. The following documents should be enclosed with the application: 1. the Articles of Association that stipulate the bodies and their authorisations for the performance of the tasks of a collective society, referred to in Article 146 of ZASP; 2. an indication of the persons authorised to represent the collecting society; 3. a statement regarding the number of persons who entrusted the collecting society with the management of copyrights in their repertoire of works; and 4. an assessment of the economic importance of such rights for effective management.

According to Article 149 of ZASP, the competent body shall not issue the authorisation if:

1. the Articles of Association do not comply with provisions of ZASP;
2. the material basis of the collecting society does not ensure the forecasted efficiency of management of copyrights; or
3. an authorisation for the collective management of copyrights has already been issued for the same category of copyright works to another collecting society, unless the legal entity demonstrates that it could provide more efficient and a more economical management of the copyrights, and that it could, based on contracts with the authors, manage a more comprehensive repertoire of protected works than the existing collecting society. The earlier authorisation shall terminate with the issuance of an authorisation to the new collecting society.

When assessing the material basis of the collecting society, the following shall be considered in particular: the number of authors who have authorised the collecting society to manage their rights, the total number of their works, the extent of the exploitation of works or the number of potential users of such works, the ways and means by which the collecting society intends to carry out its activities, its capability to manage the rights of foreign rights holders, an estimate of the anticipated amount of collected remuneration, and the costs for the operation of the collecting society.

I. The Office establishes that the applicant's application, last supplemented on 7 June 2010, fulfils all the conditions laid down by ZASP concerning the obtaining of the authorisation for the collective management of rights to the extent required for the co-authors of audiovisual works, (i.e. the author of the adaptation, the author of the screenplay, the author of the dialogue, the director of photography, the principal director, the composer of the film music specifically created for use in the audiovisual work, and the principal animator – if animation represents an essential element of the audiovisual work): enforcement of the right to equitable remuneration for the making of a sound or visual fixation of audiovisual works, completed within the scope of private or other internal use, and the right for the rebroadcasting of the cable retransmission of audiovisual works; for performers whose performances are used in audiovisual works: the enforcement of the right to equitable remuneration for making a sound or visual fixation of audiovisual works, completed within the scope of private or other internal use; and for film producers: enforcement of the right to equitable remuneration for the making of a sound or visual fixation of audiovisual works on videograms, completed within the scope of private or other internal use.

The applicant submitted all the attachments required and indicated in the application all the data required under Article 148 of ZASP. On 7 June 2010, the applicant submitted the Articles of Association of Zavod AIPA, dated 2 June 2010, which was adopted by the Council of Zavod AIPA and signed by Metod Pevec who is, as evident from the Minutes of the constitutive session of the Council of Zavod AIPA of 24 May 2010, the actual president of the Council of Zavod AIPA. Moreover, the applicant also submitted the Minutes of the constitutive session of the Assembly of co-authors, the Minutes of the regular session of the Assembly of performers and the Minutes of the regular session of the Assembly of film producers, all dated 14 April 2010. The applicant has authorised Gregor Štibernik, director, as its representative, and members of the applicant are co-authors of audiovisual works, which are: the authors of the screenplay, the principal directors, the directors of photography, the authors of the adaptation, the composers of film music specifically created for use in the audiovisual work, the authors of dialogue, the principal animators, the performers in audiovisual works, and the film producers. On 7 June 2010, the applicant included in the application a list containing the names of persons who, by 4 June 2010, had authorised the applicant to represent their rights, from which it derives that the applicant has been authorised by: 57 authors of screenplay, 50 principal directors, 12 directors of photography, 10 authors of the adaptation, 5 composers of film music, 3 authors of dialogue and 3 principal animators. The applicant thereby explained that directors and scenarists may work on a small number of projects at one time and that there are more of them as a result, whereas the directors of photography may participate in several projects in one year and that, as a result, there are less of these in Slovenia. Several directors are also scenarists, whereas there are less composers of film music due to the small number of projects that require this type of music. There are only a few authors of dialogue in Slovenia; usually, they are also the authors of screenplays or adaptations. The production of animated audiovisual works is also limited in Slovenia. By 4 June 2010, the applicant has been authorised by 68 performers and 48 film producers. The applicant submitted 13 letters of intent for the purpose of the settlement of international relations between the applicant and foreign collecting societies, and between the applicant international umbrella associations, namely: Bild-Kunst, EJI, AEPO-ARTIS, VDFS, DHFR, the Screen Directors Guild of Ireland, PRISM, Filmex, Danish Film Directors, FERA, FILMJUS, AISGE, and ZAPRAF. It submitted the list of audiovisual works. Part of the list was presented in printed form, but the second part which was too large for printing and so was presented in electronic form. The applicant indicated that it disposes of a corresponding repertoire and an appropriate number of holders of rights, since all Slovene professional associations engaged in cinema expressed their support, including RTV Slovenia and the National Film Fund, which are the biggest holders or managers of rights, as well as foreign collecting societies and professional associations. Also among the applicant's members are well-known names from Slovene cinematography and television, respected creators and performers of audiovisual works in Slovenia, persons who have received the highest awards for their creativeness in the audiovisual field, and all those whose audiovisual works are regularly broadcast in Slovene and foreign

television programmes.

According to an estimate made by the applicant, the amount to be collected by the cable retransmission of audiovisual works is forecast to be a minimum of EUR 3.5 million per year, and the beneficiaries in the field of audiovisual works should, in 2008, be allocated at least 30% of the remuneration amount of EUR 750,000, collected from the title of private and other internal use. Besides, EUR 150,000 already collected by the Copyright Agency is kept in a special account.

As evident from the court register, the applicant has been registered therein as of 31 December 2007, under registration number 2346907000.

After having reviewed the Articles of Association of 2 June 2010, the Office established that this complies with the provisions of ZASP, since it provides for an appropriate determination of bodies and their authorisation for the performing of the tasks of collective society referred to in Article 146 of ZASP and the distribution principle which excludes any possibility of arbitrariness. According to the Articles of Association, the applicant's bodies are: the Council of the Institution, the Director, the Assembly of co-authors of audiovisual works, the Assembly of performers whose performances are used in audiovisual works, the Assembly of film producers, and the Expert Council. The determination of these bodies and their composition facilitate an appropriate representation of all the holders of rights, and their influence on the operation and the taking of decisions by the applicant. The composition of bodies also provides that individual categories of the holders of rights also decide on all matters that refer exclusively to their rights and obligations. The Articles of Association also ensure the openness of the applicant to all the holders of rights whose rights the applicant intends to manage collectively, to become members, an equal treatment of the holders of rights as members of the collecting society, and the management of the rights of holders under the same conditions, including those holders of rights who are not members of the applicant, but will nevertheless be represented by the applicant under the third paragraph of Article 151 of ZASP. The Rules on the granting of remuneration to which the Articles of Association make reference regarding the distribution of collected author's royalties and remuneration among the eligible holders of rights, is also in line with ZASP, since it clearly provides for the distribution principles and excludes any possibility of arbitrariness. Further, the Office established that the material basis of the applicant as a collecting society, ensures the forecast efficiency of the management of copyrights.

According to Article 105 of ZASP, the original holders of rights in audiovisual works are: the author of the adaptation, the author of screenplay, the author of the dialogue, the director of photography, the principal director, the composer of film music specifically created for use in the audiovisual work, and the principal animator – if animation represents an essential element of the audiovisual work. Under the first paragraph of Article 107 of ZASP, the relationships between the film producer and the authors of an audiovisual work and authors of contributions, as well as the relationships between the authors themselves, shall be regulated by a film production contract, which, according to this Act, shall be made in writing. According to the second paragraph of Article 107 of ZASP, it shall be deemed that the co-authors, by entering into a film production contract, have assigned to the film producer, exclusively and without limitations, all their material copyrights and other rights of the author to an audiovisual work, its translation, its audiovisual transformations, and photographs made in connection with this work, unless otherwise provided by the contract. Under the third paragraph of Article 107 of ZASP, it shall be deemed that, by entering into a film production contract, the authors of contributions have assigned to the film producer, exclusively and without limitations, the right to use their contributions for the purpose of the completion of the audiovisual work. Holders of copyrights to audiovisual works are, therefore, the co-authors of the audiovisual works (Article 105 of ZASP) as original holders of the rights or film producers to which the co-authors of audiovisual works have transferred their copyrights.

The applicant has been authorised to manage the rights of 140 co-authors of audiovisual works, 68 performers and 48 film producers. Based on these data, the Office estimates that the applicant enjoys the confidence of an appropriate number of the holders of rights for audiovisual works or performances and videograms, as well as for all individual categories of the holders of rights whose rights it intends to manage collectively. The Office establishes that, besides the number of holders of rights, the fact that the applicant's representation is focused on those holders of rights who are well-known names from Slovene cinematography and television or respected creators and performers of audiovisual works is also important. The total number of their works also represents a sufficient number of copyrighted works in the audiovisual field. The Office considers that it is important that the repertoire is constituted by various genres of audiovisual works, for example: full-length live-action films, short documentaries, animated films, television series, all of which provide for the management of rights in various genres of audiovisual work. Thereby, the repertoire includes audiovisual works that have been granted various awards, both at home and abroad. The Office further establishes that, on the basis of the attached letters of intent with foreign collecting societies, the applicant will also be able to provide for the management of the rights of foreign holders of rights in audiovisual works, performances and videograms, and will therefore represent a significant global repertoire of audiovisual works, performances and videograms. The applicant intends to perform its activity with the assistance of Zavod IPF, which would take the role of performing the necessary administrative technical work. The Office estimates that, from financial point of view, such a decision is reasonable, since the repertoire of the works will be gathered in one place, which should lower the costs of data processing, while Zavod IPF already possesses the know-how and experience necessary for the performance of such services as it already performs the role of a collecting society for the management of the rights of producers of phonograms and performers of music works (the Office's authorisation no. 800-9/96 of 7 November 2000). The Office estimates that the applicant will also be capable of managing the rights of foreign holders since it has signed numerous letters of intent for the purpose of the settlement of international relations between the applicant and foreign collecting societies, and between the applicant international umbrella associations. On the basis of the large number of the

holders of rights who have authorised the applicant to manage their rights, and the total number of their works, modes and resources intended to be used for the execution of the activity, the estimated collected remuneration and the capability to manage the rights of foreign holders, the Office establishes that the material basis of the applicant ensures the anticipated effectiveness of the management of rights.

The Office establishes that, in respect of the same type of works, (i.e. audiovisual works, performances in audiovisual works and videograms with audiovisual works recorded) and in respect of the same rights, (i.e. the right to rebroadcast the cable retransmission of audiovisual works and the right to equitable remuneration for the making of a sound or visual fixation of audiovisual works, performances in audiovisual works and videograms, completed within the scope of private or other internal use), a permanent authorisation for the collective management of the rights has not yet been issued to another collecting society, since such holders of rights have not founded a corresponding collecting organisation. Therefore, since no collecting society had been established which would combine authors and holders of rights in audiovisual works, the Office issued to Association SAZAS a provisional authorisation no. 800-3/00-3 for the collective management of copyright in the case of the cable retransmission of audiovisual works on 24 January 2001. In the provisional authorisation no. 800-3/00-3 of 24 January 2001, the Office also decided that such provisional authorisation would only be valid pending the establishment of a collecting society for the holders of the rights in audiovisual works. Since the Office's authorisation for the collecting society is of a constitutional nature, it is deemed that the applicant, as a collecting society, has been founded on the day of issue or on the finality of this authorisation or decision. When the decision is final, the applicant may start executing the right unless otherwise stipulated by the act (the first paragraph of Article 224 of the General Administrative Procedure Act, Official Gazette of the Republic of Slovenia, No. 24/06 – official consolidated text, 105/06 - ZUS-1, 126/07, 65/08 and 8/10; hereinafter referred to as: ZUP). This implies that, by the day of issue of the authorisation or the finality of this authorisation or this decision, the provisional authorisation no. 800-3/00-3 of 24 January 2001 issued to the Association SAZAS will also be terminated.

Since the applicant's supplemented application was established to be complete and since the Articles of Association and the Rules on the granting of remuneration to which reference is made by the Articles of Association are in accordance with the provisions of ZASP, and since the material basis of the applicant ensures the anticipated effectiveness of the management of rights, and since in respect of the same type of works and the same rights an authorisation for the collective management of the rights has not yet been issued to another collecting society, the Office decided as stated in the operative part of this authorisation. Thus, the applicant is authorised to collectively manage the rights: (i) of co-authors of audiovisual works (the author of the adaptation, the author of the screenplay, the author of the dialogue, the director of photography, the principal director, the composer of film music specifically created for use in the audiovisual work, and the principal animator), namely the right to equitable remuneration for making a sound or visual fixation for audiovisual works, completed within the scope of private or other internal use, and the right to rebroadcast the cable retransmission of audiovisual works; (ii) of performers whose performances have been used in audiovisual works, namely the right to equitable remuneration for making a sound or visual fixation of their performances in audiovisual works, completed within the scope of private or other internal use; (iii) of film producers, namely the right to equitable remuneration for making a sound or visual fixation of audiovisual works on videograms, completed within the scope of private or other internal use.

II. The authorisation for the collective management of the rights of the co-authors of audiovisual works, the performers of audiovisual works and film producers in relation to the sound or visual fixation of audiovisual works, completed within the scope of private or other internal use, shall merely refer to the distribution of remuneration among the beneficiaries of rights. According to the first paragraph of Article 39 of ZASP, the equitable remuneration for reproduction for private or other internal use, which also includes, besides the equitable remuneration for making a sound or visual fixation (the second paragraph of Article 37 of ZASP), equitable remuneration for photocopying (the third paragraph of Article 37 of ZASP), shall be granted to all beneficiaries under ZASP; therefore, the collection of such remuneration may be performed by only one collecting organisation in respect of all the beneficiaries under Article 154 of ZASP, instead of each collecting society separately or only in respect of their members. Besides, the first paragraph of Article 154 of ZASP provides only for the most basic distribution of the remuneration collected, based on the second paragraph of Article 37 of ZASP – the equitable remuneration for making a sound or visual fixation, completed within the scope of private or other internal use, referred to in Article 50 of ZASP, according to which 40% of the collected funds shall be distributed among all the authors of various copyright works (besides the authors of audiovisual works, also, for example, the authors of musical works, the authors of literal works, photographers, artists), 30% among various performers (besides actors, also singers, musicians, dancers, directors of theatrical presentations, etc.), and 30% among the producers of phonograms and film producers. The distribution key that would enable distribution among individual categories of beneficiaries within the basic shares laid down by the first paragraph of Article 154 of ZASP, shall have to be agreed by the beneficiaries within the scope of the joint collecting society, which will collect remuneration under the second and/or third paragraphs of Article 37 of ZASP. The funds that will belong, according to the key agreed by the beneficiaries, to the co-authors of audiovisual works, performers whose performances have been used in audiovisual works, and film producers, will be distributed among the lawful holders of rights by the applicant in accordance with distribution rules that have been agreed by the co-authors of audiovisual works, performers and film producers.

Administrative fees under tariff numbers 1 and 3 of the tax tariff of the Administrative Fees Act (Official Gazette of the Republic of Slovenia, No. 42/07 and 126/07) in the total amount of EUR 17.73 have been paid. No special costs have been incurred during the course of the proceedings.

Legal caution:

This authorisation shall be deemed final in the administrative procedure. There shall be no appeal against the authorisation; however, suits filed in an administrative dispute are possible; these are to be filed with the Administrative Court no later than thirty (30) days following the service of this decision.

Stamp
Republic of Slovenia
Ministry of Commerce
Ljubljana

Slovenian Intellectual Property Office
Coat-of-Arms
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Dr Jurij Žurej
Director

To be served on:

- the representative of the applicant, by personal delivery
- to be archived