

The Hungarian Competition Authority takes action in the interest for domestic consumers and artists

The Hungarian Competition Authority (GVH) fined the domestic collective management organisations (CMOs) for more than 210 million HUF for not complying with their commitments on private copying levy

5 May 2023, Budapest – The five domestic CMOs were fined more than a total 210 million HUF for not complying with their obligations under the reformation of the determination of private copying levy (PCL)¹. The associations, despite having committed to do so, haven't mapped the changing usage patterns, thus collected indirectly from the consumers more than 11,4 billion HUF just in a year (in 2018) based on an erroneous and incomplete analysis. The GVH also draws the consumers' attention to the possibility to reclaim levies that was established in Hungary in former competition supervision proceedings.

The Hungarian Competition Authority required the five domestic copyright societies (the Artisjus, the Előadóművészi Jogvédő Iroda (EJI), the Filmjus, the HUNGART Association and the MAHASZ) [at the end of 2016](#) to apply a more accurate method when determining the so-called private copy levies – that is the lump sum remuneration included in the price of for example mobile phones, memory cards, hard drives, and every product listed in the Royalty Notice. The associations despite the dynamically changing market, where there is a strong presence of streaming providers too, haven't monitored closely the changing usage patterns, and their market research were inaccurate and of concern on several points. The distortion of the levy-calculation method may has impaired the interests of the consumers, ultimately paying the levies, and the authorised artists who are beneficiaries.

The follow-up investigation revealed that the copyright societies haven't complied with their obligations imposed on supporting the method of calculating the private coping levy more precisely. The underpinning research of the private coping levy by the copyright societies is proved to be flawed and incomplete and has not remedied the problems previously explicitly flagged by the GVH, inter alia, the incompleteness of representativity and sampling and the alignment of the range of video or audio carrier media to the dynamically changing usage patterns. By failing to ensure the representativeness of the survey, the associations not only

¹ Blank carrier media remuneration or private copying levy (PCL) is to be paid by the one who first places the blank video or audio carrier media on the Hungarian market. This is to be applied on all products that has a built-in data storage, not exclusively on external data storage devices. A hologram sticker placed on the video or audio carrier media issued by the Artisjus proves the payment of the PCL. The undertakings include the PCL in the retail price of the given video or audio carrier media, so ultimately it is the consumer who pays its price. The amount paid as PCL to the CMO is to be divided among its members (musicians, film makers, performers) having regard the method defined by them; or to cover their own operating costs.

infringed their obligations to the GVH, but also the law on collective rights management², which requires CMOs to carry out a representative and transparent study annually to determine private copying levies.

When imposing its fine due to the infringement the Competition Council of the GVH considered that the CMOs, albeit didn't act with due care, basically tried to comply with the requirements. The authority has taken into account as a mitigating circumstance the passage of time (due to several factors, including that the organisations concerned in the follow-up investigation 26 times, the experts called upon on further six occasions asked for extension of deadline during the proceeding; so, the GVH waited for more than 1200(!) days in total for different disclosure of data). Given all the above considerations, the Artisjus was fined for 167 million HUF, the EJI for 22 million HUF, the MAHASZ for 16 million HUF, the Filmjus for 5 million HUF and the HUNGART for 0,4 million HUF for the infringement (in most cases with the possibility to pay in instalments). Important to note that the sanction of the competition authority is not reducing the royalties of the artists and performers, but it is at the expense of the CMOs' own operating costs. This represents more than 15% of their income i.e., more than 3,3 billion HUF annually from various payments. The decision of the GVH's Competition Council protects the domestic consumers and artists since the more precise definition of the methodology on how to calculate the PCL is a fundamental interest of all interested parties, even of the undertakings marketing the video or audio carrier media.

At the same time, the GVH draws attention to the possibility to reclaim the PCL, that was established in 2016 following the commitments offered by the five copyright societies, second after the Netherlands in the European Union. Consumers, who don't copy arts concerned with private copying levy but exclusively store only their private content on the purchased blank carriers may apply for refunding. For further information on the refunding of levies, please visit the dedicated website <https://maganmasolasidij.hu/> created by the organisations as determined by the proceedings of the GVH.

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² Act XCIII of 2016 on the collective management of copyright and related rights Section 148 (2)