

The case of copyright collection societies has been settled with the acceptance of commitments that grant consumers the possibility to reclaim the blank carrier media remuneration

The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) has accepted the commitments of ARTISJUS Magyar Szerzői Jogvédő Iroda Egyesület, Előadóművészi Jogvédő Iroda Egyesület, Filmjus Filmszerzők és Előállítók Szerzői Jogvédő Egyesülete, Hungart Vizuális Művészek Közös Jogkezelő Társasága Egyesület and Magyar Hangfelvétel-kiadók Szövetsége Közös Jogkezelő Egyesület (hereinafter jointly referred to as ‘collection societies’) according to which the blank carrier media remuneration will be more precisely determined for both its obligors and its obligees and consumers will be given the opportunity to reclaim the blank carrier media copying remuneration.

The copying of copyrighted music, films, images and literary works is permitted for free for private purposes. However, ‘fair compensation’ must be paid for this freedom in the form of a lump-sum remuneration which is payable on the sale of blank video and audio carrier media. This remuneration is called the blank carrier media remuneration. The collection societies – authorised by law – determine the blank carrier media remuneration every year in their tariff announcements. The distributors of blank video and audio carrier media are obliged to pay the blank carrier media remuneration to Artisjus (which acts as the enforcer of this remuneration among the collection societies), which divides the received amount among the authorised authors. The fee that must be paid for the blank carrier media remuneration is based on the type of content copied (for example, whether it is music, film, literary work, etc.), with each type of content subject to a different rate to be paid to the actors. When determining the amount of the lump-sum fee to be paid for the blank carrier media remuneration, a mix of the copied content is taken into account and the calculation is based on the market researches and analyses made by the collection societies.

During its inspection, the GVH found that the collection societies – authorised by law and having a legal monopoly to determine, collect and divide the blank carrier media remuneration – had not, since 2007, made any adjustments to reflect the changes to content consumption habits (e.g. when specifying the fee, copying for music purposes remained well overrated), with the result that the determination of the blank carrier media remuneration may have been distorted due to deficiencies in the methods of their market researches and economic analyses; consequently, this may have damaged the interests of both the obligors and the obligees of the remuneration, and ultimately those of the consumers as well. According to the GVH the way the collection societies set the blank carrier media remuneration is abusive, the undertakings concerned are abusing their collective dominant position.

The parties offered commitments to remedy the GVH’s concerns. The GVH accepted these commitments in its decision and requested the parties to remedy the deficiencies present in their market researches and economic analyses, so that when they are determining the blank

carrier media remuneration that is to be paid they can take into account the changes to content consumption patterns, even if this necessitates abandoning obsolete methods and employing new content consumption technologies.

Through the acceptance of the commitments, the possibility of reclaiming blank carrier media remuneration that has been paid has been established in Hungary. In the European Union, following the Netherlands, Hungary is the second Member State to provide this opportunity to those consumers who exclusively copy their own, professional contents to the blank data carriers. The legal right to claim a refund has been inserted into their 2017 publication on royalties. Furthermore, the collection societies have undertaken in the event of a legal dispute between a consumer requesting a refund and the concerned collection society, to participate in the proceeding of the Consultative Body operating under the Hungarian Intellectual Property Office in order to settle the dispute. The collection societies have also undertaken to finance the fees of the proceedings of the Consultative Body so that consumers may use the dispute settlement forum for free.

Additionally, the collection societies have undertaken to commission an education campaign lasting 3 years for a budget of 45 million HUF (around 150,000 EUR) to publicise the refund opportunity. The targeted campaign, which will be repeated annually, will run online and also on printed media, both of which are independent from the collection societies.