

SUBSIDIARY LEGISLATION 415.01

**CONTROL OF THE ESTABLISHMENT AND
OPERATION OF SOCIETIES FOR THE
COLLECTIVE ADMINISTRATION OF COPYRIGHT
REGULATIONS**

1st January, 2004

LEGAL NOTICE 425 of 2003, as amended by Legal Notice 80 of 2010.

- 1.** The title of these regulations is the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations. Citation.
- 2.** In these regulations, unless the context otherwise requires - Definition.
"Act" means the Copyright Act; Cap. 415.
"Board" means the Copyright Board established under article 45 of the Act,
and other words and phrases used shall have the same meaning as assigned to them in the Copyright Act.
- 3.** The economic rights related to copyright and neighbouring rights shall be administered by the owners of the rights, by collecting societies as authorised by the right holders, or by mandatories representing the right holders. Administration of rights.
- 4.** (1) A collecting society shall not operate in Malta unless it submits a request to the Board to operate as a collecting society and is approved as a collecting society in accordance with the provisions of the Act: Approval of collecting societies.
Amended by:
L.N. 80 of 2010.
- Provided that a request for incorporation of a collecting society made at the Ministry responsible for the protection of Copyrights and Neighbouring Rights and still pending prior to the commencement of these regulations, shall be considered as having never been made.
- (2) A request for approval of a collecting society, which may also be submitted to the Board by electronic means, shall include:
- (a) a copy of the statutes of the collecting society;
 - (b) the regulations of the collecting society concerning the system of collection and distribution of fees and equitable remuneration;
 - (c) a proposed tariff of all royalties to be collected by the collecting society;
 - (d) a declaration stating the number of persons who have entrusted or undertaken to entrust the collecting society with the administration of their economic rights at the time of the said declaration;
 - (e) a list of contracts with other foreign or local collecting

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societies regarding the administration of rights;

- (f) the contact details, including a postal address, fax number or e-mail address, telephone number and the legal address if this is not the same as the postal address, for the purpose of receiving complaints or requests for information; and
- (g) the prescribed fee for a request for approval of a collecting society.

(3) The Board shall approve the collecting society unless:

- (a) the statutes or regulations mentioned in subregulation (2) do not conform to the relevant provisions of the Act, these regulations or of any other law;
- (b) there is factual evidence indicating that a physical person who may lawfully represent the collecting society under the statutes of the organisation does not possess the abilities or reliability necessary for the exercise of such activity;
- (c) there is factual evidence indicating that the collecting society is not able to fulfil its functions for any reason including the absence of economic and technical means, or of appropriate staff;
- (d) another collecting society has already been approved in the same field of administration, provided that the Board is satisfied that the existence of more than one organisation in that particular field of administration would not be beneficial to the interests of the authors and other owners of copyright and of neighbouring rights and the users;
- (e) it considers that the proposed tariffs are unacceptable:

Provided that if the collecting society has different sets of tariffs, it may still be allowed to operate in those areas for which the Board has approved the tariffs.

(4) In determining whether a collecting society has the economic and technical means to fulfil its functions as specified in subregulation (3)(c), the Board may consider the following:

- (a) the number of authors who have undertaken to entrust the collecting society with the administration of their economic rights, as well as any plan or strategy by means of which the collecting society intends to increase this number;
- (b) any bilateral or multilateral contracts concerning the administration of rights of foreign authors and other foreign owners of copyright and of neighbouring rights, as well as any such contracts or agreements which the collecting society is in the process of implementing;
- (c) the extent of the exploitation of works which fall under

the administration of that collecting society or the volume of potential users of such works;

- (d) the capability of the collecting society to administer the rights of its members in other countries; and
- (e) the ways and means whereby the collecting society proposes to achieve its aims:

Provided that for the purpose of carrying out its functions under this subregulation the Board may request from a collecting society any related or incidental information as it deems appropriate.

(5) The basis for calculating the tariffs shall normally be the monetary advantages obtained from exploitation of the protected work, as well as the proportion of the utilisation of the work in the total exploitation. Other considerations to be made when calculating the prospective tariffs should include the category and nature of the user involved, including the type of business in the case of a commercial venture, as well as any religious, cultural and social elements involved.

5. (1) As soon as practicable after the receipt of a request for the approval of a collecting society, the Board shall:

- (a) issue an acknowledgement of receipt of the request to the applicant indicating therein a reasonable time period for the processing of the application:

Provided that such period shall apply if all the required documentation has been submitted and no written objection is received following the publication of the request and the tariffs;

- (b) in the event that the required documentation or information is not submitted with the application, the Board shall issue a notification to the applicant requesting the submission of the missing documentation and information. The Board shall inform the applicant that the time period communicated in the acknowledgement issued in terms of the preceding paragraph will have to be reviewed and that the new time period will be notified to the applicant upon receipt of the missing documentation;
- (c) in the event that the missing documentation is received by the Board, which documentation is to be submitted with the prescribed fee, the Board shall issue an acknowledgement to the applicant indicating therein a reasonable time period for the continued consideration of the application subject to there not being any written objections following the publication of the request and the tariffs;
- (d) following the receipt of all the required documentation, as soon as practicable, the Board shall publish the request together with the proposed tariffs

Publication of
request.
*Amended by:
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in the Gazette and shall give notice that, within sixty days after publication, prospective users or their representatives may file written objections, to the request or the tariffs, with the Board. These objections shall be accompanied by the prescribed fee and shall be submitted on the basis of the provisions of regulation 4(3);

- (e) the Board shall publish a notice in two local newspapers thereby referring to the publication of the request and tariffs in the Gazette; and
- (f) all publication costs in the Gazette and the local newspapers shall be borne by the applicant.

(2) Following the lapse of sixty days as specified in sub-regulation (1):

- (a) in the event that no objections to the request and tariffs are made, the Board shall approve or refuse the request for operation of a collecting society within the time period indicated in the acknowledgement issued by the Board in accordance with sub-regulation (1)(a) and (c) as the case may be and taking into consideration regulation 4(3), (4) and (5); and
- (b) in the event that objections to the request and tariffs are made, the Board shall approve or refuse the request for operation of a collecting society within a reasonable time period, taking into consideration regulation 4(3), (4) and (5) and the grounds of the objections received.

(3) In considering any request for operation of a collecting society, the Board may call upon the collecting society and any person who has made an objection under sub-regulation (1)(d) for further representations, and shall provide the collecting society with the opportunity to amend its request as deemed necessary.

(4) In considering any request for the operation of a collecting society the Board may, after granting the applicant a right to be heard, impose such proportionate conditions upon said approval as it may deem appropriate.

(5) On taking its decision, the Board shall as soon as practicable:

- (a) send a copy of its decision to the collecting society that filed the request and to any person who filed an objection; and
- (b) publish its decision in the Gazette.

(6) If the decision is taken to approve the request for the operation of a collecting society, the Board will also:

- (a) send a copy of the approved tariffs, together with the reasons for the Board's decision, to the collecting society that filed the tariff and to any person who filed an objection; and

- (b) publish the approved set of tariffs in the Gazette.

6. (1) An approved tariff shall be effective until such time as a new tariff is approved.

Validity of tariffs.
Amended by:
L.N. 80 of 2010.

(2) Not less than six months and not more than eight months before the lapse of the period of two calendar years from the date when it was published in the Gazette, the collecting society shall submit the tariffs for the next two years to the Board, which will consider them according to the following conditions:

- (a) if the proposed tariff is identical to the previous tariff, it will be approved by the Board:

Provided that if any objections to the tariff have been filed with the Board in the preceding two years, the Board shall permit the collecting society to reply to the objections, and after due consideration of the objections and relevant replies, the Board shall as soon as practicable approve or refuse the proposed tariff;

- (b) if the proposed tariff includes revisions to the previous tariff, the Board shall treat it according to the provisions of regulations 5(1) to (3) relating to tariffs.

7. (1) A collecting society, on behalf of, and on the basis of the authorisation by, the authors and other owners of copyright and of neighbouring rights that are its members or that it otherwise represents on the basis of agreements with local or foreign collecting societies may fulfil the following tasks:

Functions of
collecting
societies.

- (a) to give authorisation to third parties to carry out acts covered by the exclusive economic rights administered;
- (b) to collect fees for authorisation mentioned in paragraph (a) and to collect equitable remuneration where the law provides for such remuneration;
- (c) to distribute the fees and equitable remuneration thus collected among the authors and other owners of copyright and of neighbouring rights concerned;
- (d) to take any legal action necessary for the enforcement of the rights administered by it;
- (e) to carry out any other acts authorised, in keeping with article 24 of the Act, by the authors and other owners of copyright and of neighbouring rights, or by the bodies representing them, whose exclusive economic rights or rights to equitable remuneration are administered.

(2) Companies, business concerns or other organisations which do not conform to the provisions specified in the Act or in these regulations for the operation of collecting societies shall have no right to:

- (a) grant licenses, collect royalties, or in any way administer economic rights arising from the ownership

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of copyright or neighbouring rights; or

- (b) commence any action for the infringement of the rights or the recovery of royalties; or
- (c) otherwise perform any of the functions of a collecting society according to the provisions of the Act or these regulations:

Provided, without prejudice to the provisions of subregulation (3), that nothing in this paragraph shall affect the right of authors and other owners of copyright or neighbouring rights to appoint a direct legal representative to manage or administer their economic rights:

Provided further that said legal representative only collects fees on behalf of his client and passes said fees directly to his clients and not in the form of a redistribution scheme as normally operated by collecting societies.

(3) Companies, business concerns or other organisations which perform the functions of collecting societies according to the provisions of the Act and these regulations, shall be considered collecting societies for the purposes of the Act and these regulations and shall be subject to the relevant provisions thereof.

Distribution of fees.

8. (1) Decisions about the methods and rules of collection and distribution of fees and equitable remuneration and about other aspects of collective administration shall be taken by the authors and other owners of copyright and of neighbouring rights whose rights are administered or by the bodies representing them.

(2) Without the authorisation of the authors and other owners of copyright and of neighbouring rights whose rights are administered or of the bodies representing them, no fees or equitable remuneration collected by a collecting society shall be used for any purposes such as for cultural or social purposes, or for financing promotion activities other than the purposes of covering the actual costs of administration of the rights involved and of distributing the amounts of fees or equitable remuneration that remain after the deduction of such costs, in keeping with subregulation (3).

(3) The amounts of fees and equitable remuneration collected by a collecting society shall, after the deduction of the actual costs of collective administration and other possible deductions that may be authorised in keeping with subregulation (2), be distributed among the authors and other owners of copyright and of neighbouring rights, as much as is possible and practicable, in proportion to the actual use of their works.

Information on collecting societies.
Amended by:
L.N. 80 of 2010.

9. (1) The authors and other owners of copyright and of neighbouring rights whose rights are administered shall have the right to obtain full and detailed information about all the activities of the collecting society that concern the exercise of their rights.

(2) Any collecting society must answer within a reasonable time all reasonable requests from the public for information about -

- (a) its repertoire of works, performer's performances or sound recordings;
- (b) its system of collection and distribution of fees and equitable remuneration; and
- (c) its tariff of all royalties to be collected by the collecting society that are in current use.

(3) A request for information made in terms of sub-regulations (1) and (2) shall be made either to the collecting society directly or together with the payment of the prescribed fee to the competent authority falling within the Ministry responsible for intellectual property. The competent authority will inform the Board of the request. The Board shall consider the request and if found reasonable in terms of sub-regulation (2), the Board shall:

- (a) provide access to the information required if this has already been made available to the Board by the collecting society; or
- (b) request such information from the collecting society and forward the information obtained to the person requesting it.

(4) The competent authority shall cooperate with the designated entity in accordance with article 10(3) of the Services (Internal Market) Act to ensure that general information on the requirements applicable in other Member States relating to access to, and exercise of collecting societies and the means or redress available in the case of a dispute concerning a recipient of the services of a collecting society, is easily accessible to providers and recipients.

Cap. 500.

10. Authors and other owners of copyright and of neighbouring rights who or which are not nationals of, or have their habitual residence or their headquarters outside, Malta and whose rights are administered by a collecting society in Malta, shall enjoy, in respect of the administration of their rights, the same treatment as those authors and other owners of copyright and of neighbouring rights who or which are members of, or are otherwise represented by, the collecting society and who or which are nationals of, or have their habitual residence or their headquarters in, Malta.

National treatment.

11. A collecting society may not, without good reason -

- (a) refuse to authorise the use of works where such use lies within the scope of its administration;
- (b) refuse to manage the economic rights of authors and other owners of copyright and of neighbouring rights in accordance with its statute.

Prohibition of refusal.

12. Those who carry out acts authorised by a collecting society or acts for which, although authorisation is not needed, equitable remuneration is to be paid to a collecting society, shall -

Obligations of users of works.

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- (a) facilitate the monitoring, by the representatives of the collecting society, of the acts authorised or for which equitable remuneration is to be paid;
- (b) if required, give the collecting society all information available to them concerning the acts performed in respect of the works concerned.

Duty to promote documents.
Amended by:
L.N. 80 of 2010.

13. (1) Any collecting society shall immediately furnish the Board with a copy of -

- (a) any amendment to its statutes or regulations mentioned in regulation 4(2);
- (b) any new or additional bilateral or multilateral contract concerning the administration of rights of foreign authors and other foreign owners of copyright and of neighbouring rights and any amendments thereto;
- (c) any new or additional contract with another local collecting society;
- (d) the yearly balance sheet, annual report and auditor's report concerning the operation of the collecting society.

(2) Any collecting society shall immediately inform the Board of any change concerning the physical persons who may lawfully represent it.

(3) Upon the request of the Board a collecting society shall furnish any further information that is necessary to determine whether or not the operation of the collecting society conforms to the statutes of the organisation and to the provisions of the Act and these regulations and whether or not the appropriate fulfilment of the functions of the collecting society is ensured. In requesting such information the Board shall fix a reasonable time limit as it deems appropriate for the collecting society to comply with its request.

Revocation of authorisation.

14. The Board shall revoke the authorisation of companies, business concerns or other organisations to act as a collecting society if any ground for which the approval of the collecting society would have been denied as specified in regulation 4(3) and (4) arises, unless the circumstances giving rise to such grounds are remedied within a reasonable period fixed by the Board, or, if, despite a warning by the Board, the collecting society repeatedly violates its statutes, its regulations mentioned in regulation 4(2) or the provisions of the Act or of these regulations.

SCHEDULE

Fees

*Added by:
L.N. 80 of 2010.*

Fee for a request for approval of a collecting society (Regulation 4)	€200
Fee for submission of objection to the request or the tariffs (Regulation 5(1)(d))	€100
Fee for submission of missing documentation (Regulation 5(1)(c))	€50
Fee for submission of a new set of tariffs (Regulation 6)	€100
Fee for request for information (Regulation 9(3))	€50
