

COPYRIGHT AND RELATED RIGHTS: From history through present... ... to high-story?

by

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*Creativity is the business of the future, but to achieve goals
the present basis needs to be ensured.*

Eduardo Bautista

I. From history through present...

1. LEGISLATION

The field of copyright and related rights is directly or indirectly regulated by several laws, international agreements, and decrees. Slovenia got its legislation in 1995, by then the former SFRY legislation was in force. The translation of the act is available on the web page of the (Slovenian Intellectual Property Office).

1.1. Slovenian legislation

- Article 60 of the Constitution of the Republic of Slovenia
- Copyright and Related Rights Act (as of 1995, before that the act of the SFRY from 1978)
- Penal Code of the Republic of Slovenia
- The Mass Media Act
- Decree on the Blank Tape Levy

Bi- or multilateral agreements with other countries bind us to respect the intellectual property and legislative implementation.

1.2. Multilateral agreements binding the Republic of Slovenia

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- Bern Convention for the Protection of Literary and Artistic Works (1971 – Berne Convention)
- Universal Copyright Convention (1971 – Universal Convention)
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974 - Brussels Satellite Convention)
- Agreement on Trade Related Aspects of Intellectual Property Rights (1994 – TRIPS)
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961 - Rome Convention)
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971 - Phonogram Convention)

1.3. Bilateral agreements binding the Republic of Slovenia

- Italy
- Germany
- etc.
- EEC European Economic Community
- EFTA European Free Trade Association
- CEFTA Central European Free Trade Agreement
- etc.

2. BODIES:

The following bodies are directly or indirectly competent for the implementation and control over the implementation of the legislation in the field of copyright in Slovenia:

- Slovenian Intellectual Property Office (SIPO)
- Ministry of Economy
- Ministry of Culture
- Market Inspectorate of the Republic of Slovenia
- courts (for copyright disputes the District Court in Ljubljana is competent; however breaches of copyrights and related rights are treated by courts all over Slovenia)

3. COLLECTIVE MANAGEMENT

Copyright management on one side can be conducted individually and on the other, fields, where collective administration is obligatory, are established by law. It is managed by the so called collective organizations.

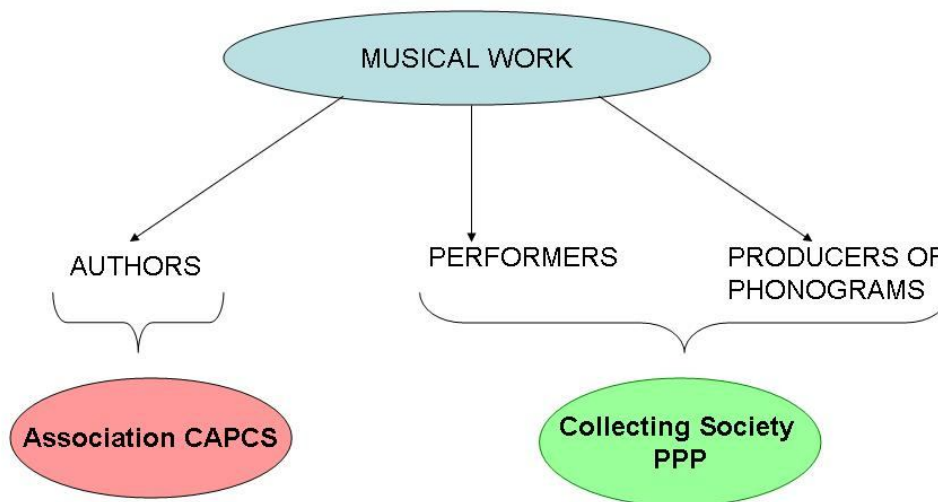
For collective administration of author's right an organization has to have an authorization, which granted by the Slovenian Intellectual Property Office.

By now, the following authorizations in the field of music have been granted:

- Association of Composers, Authors and Publishers for Copyright Protection of Slovenia – **Association CAPCS** – for collective administration of copyright – founded in 1993, the license granted in 1998.

- Collecting Society for Asserting Rights of Performers and Producers of Phonograms of Slovenia – **Collecting Society PPP** – for collective administration of rights of performers and producers of phonograms – founded in 1997, the license from 2000, and tariffs confirmed from 2004.

The initiative for the foundation of the above stated collective organizations was given by authors, and performers and producers of phonograms.



Since appropriate collective organizations have not yet been founded, the Slovenian Intellectual Property Office granted two provisional licenses:

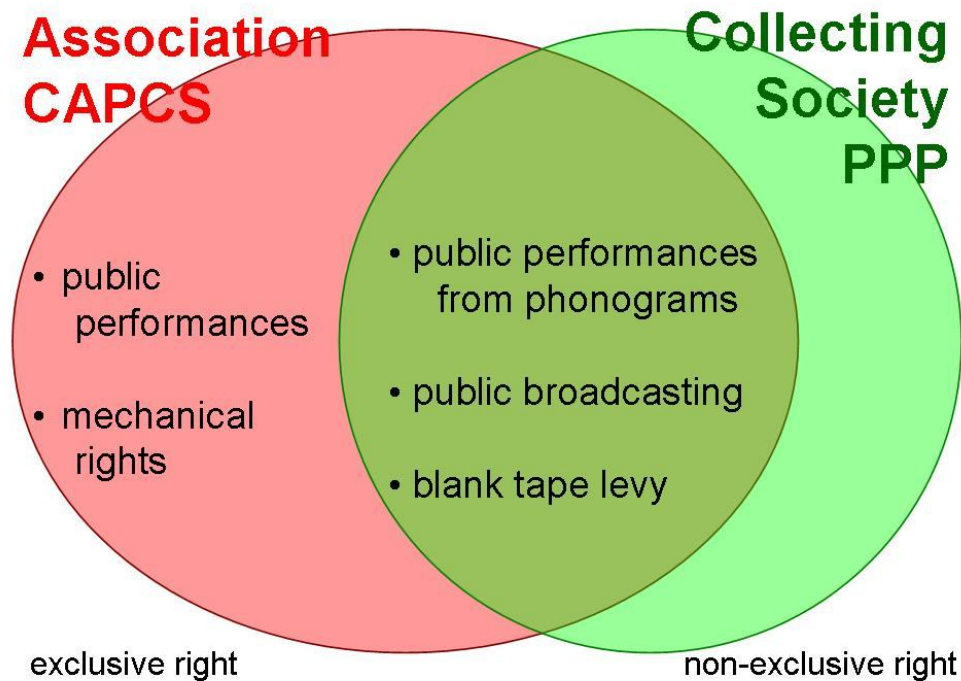
- Copyright Agency of Slovenia – for collective administration of copyright and related rights in case of private and other reproduction (the license expired in June 2006, the new has not yet been granted)
- Association of Composers, Authors and Publishers for Copyright Protection of Slovenia – CAPCS – for collective administration of rights of cable retransmission of audiovisual works. The license is valid until a collective organization in the field of audiovisual works is founded.

4. THEORY AND PRACTICE – right holders, users and tariffs

Fields of collective administration of copyright and related musical rights could be roughly divided as follows:

- The communication of non-stage musical works to the public (small rights):
 - public performances (only copyright)
 - public performances from phonograms
- Public transmission (grand rights)
- Mechanical rights (not an obligatory collective administration)
- Private and other own reproduction.

In practice, this means the exercise of rights in a wide field that covers live performances, sale of CDs, TV and radio broadcasting as well as broadcasting, public performances from phonograms music in beauty salons, bars, lifts, hotels, on planes as well as the sale of CDs and DVDs.



We have to admit that hereby many problems occurred which can be mostly attributed to the state of awareness of users. We must be aware of the fact that we as well for fifty years lived in a country, where emphasizing of individualism and private property was not a very smart thing to do. And even much less any obtaining of remunerations from the property.

You could observe from the said that collective organizations got their tariffs confirmed years after they were founded. Why?

Until 2004 and in compliance with the Copyright and Related Rights Act the tariffs were confirmed by the SIPO.

Only in 2004 the law changed and from then a collective organization determines the remuneration for the use of copyright works; however the instrument of mediation is introduced. The mediator does not decide instead of a client but in case of dispute about the amount of the remuneration helps the clients to come to a solution. Last year the instrument of arbitration was introduced on the basis of the agreement of arbitration.

In the beginning of 2007 the law changed again. The existing remunerations were accepted; however, the tariff can now be reached only through an agreement with users of copyright works. Therefore the owners of the rights cannot determine the

remuneration by themselves, but reach an agreement with users and the said remuneration is considered as a tariff.

If this is not possible, under the new law, they can contact the so called Copyright Council that definitely sets an appropriate tariff.

An administrative dispute can be initiated against the decision of the Council, but only at the Supreme Court of the Republic of Slovenia. As we will see later, the procedure of determination of the remuneration can in this case take several years. In the meantime, no one prevents users from using the copy protected works.

In the first years of implementation, for many users in Slovenia it was a great shock that they had to pay for something that for years or decades could be used for free. They were shocked twice actually, as CAPCS had its tariff confirmed a few years before Collecting Society PPP. The resistance that followed was expected. As if by the book, agreements with broadcast organizations were concluded in the first place: from the national through non-profit to commercial.

After that, the field of small users followed. I estimate this one as the most demanding from several perspectives.

Why?

We have over 40,000 business entities in Slovenia and all of them are potential users. In 90% of cases these are small companies with only few employees. Contrary to radio-diffusive organizations, they do not have any employees that are acquainted with the copyright legislation. This is the reason why at exerting the rights in the field of small users it was necessary to explain everything to each and every one of thousands of users from the beginning through promotional brochures and telephone calls; from they are obliged to pay for the remuneration to what is the difference between the producer, author and performer.

Even though a great step was made in the last years in the field of awareness, today there are still several 1,000 owners of bars and other objects that do not respect the legislation. Since CAPCS has the exclusive right, they can simply forbid the use of works; Collecting Society PPP does not have that right. Consequently, it is left only with proceedings before courts. Many users take advantage of the fact, as on one side the remunerations are relatively low (a few ten euros per month in most cases), and on the other side it can take several years before the user, who does not pay, is brought to justice.

In Slovenia the judicial mills do grind slowly – an individual case can take four years and there is no indication that things are going better. The number of cases connected with intellectual property in the court of first instance increased significantly; 40% only in the last year, while the number of other cases that are not connected with intellectual property increased by 25%.

There were more than 1,000 pending cases last year. On 1st January 2007 cases concerning intellectual rights represented approximately 25% of all pending cases.

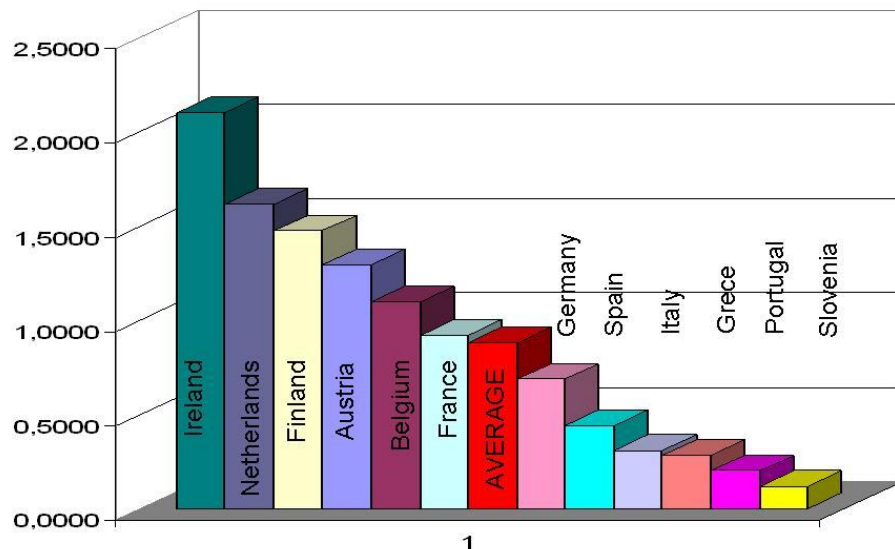
II. ... to high-story?

Blank tape levy will certainly be the field we, the authors, performers and producers will pay special attention to. Currently, in Slovenia despite of (or because) the import of e.g. over 20.000.000 blank CDs and 5.000.000 blank DVDs, not to mention devices, such as MP3 players and telephones, there is no such organization that collects levy. The last granted license expired a year and a half ago, the new one has not yet been granted. As known, persons liable to pay are intensively pressuring to change the Decree to decrease levy they are not even paying yet.

Allow me to draw attention to another paradox; for blank CDs, blank DVDs and devices that enable transmission and reproduction the royalty for their patents are paid to Philips all over the world, while in some places people are completely unfamiliar with remunerations for the private reproduction. By the way, licenses in e.g. 2002 represented 40% of the price of a blank CD.

What about other challenges?

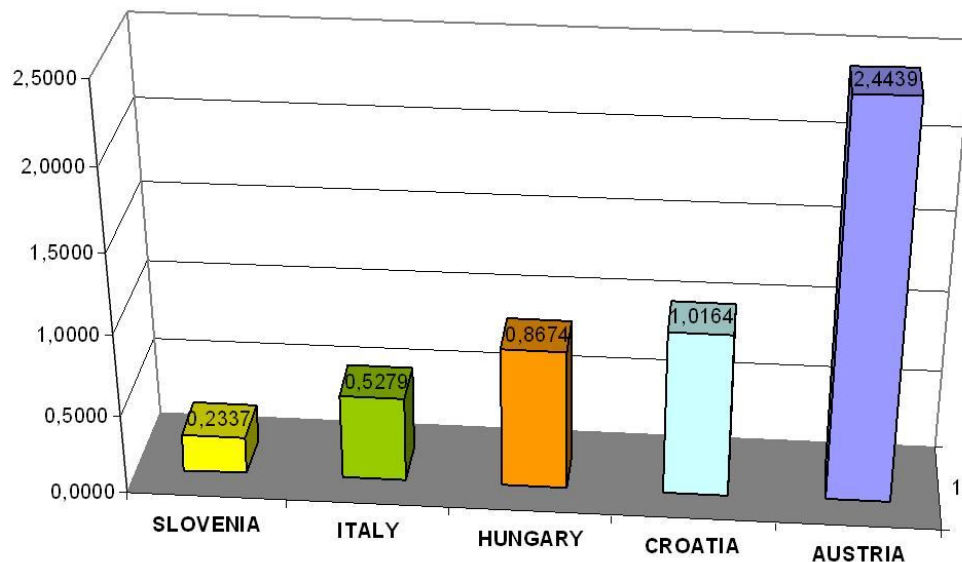
€-region average producers revenue per capita



The bare look on the comparative table of amounts of collected remunerations tells everything. In the euro area Slovenia takes the last place and is behind the penultimate country by 100%. The average of collected remunerations per capita in the euro area is by 800% higher than the Slovenian and the comparison with the most successful Ireland shows that the remuneration there is by 2100% higher.

Also, Slovenia shows a bad picture in comparison with neighboring countries; Italy, Hungary, Croatia, and Austria. Italy collects by 300% and Austria 1200% more remunerations per capita.

Neighbouring countries performers & producers revenue per capita



Where is the solution?

I believe that in the last few years collective organizations in Slovenia reached a satisfactory level of recognition; they are talked and written about a lot, web pages offer the possibility of getting to know the field of implementation; however, collective organizations can do a lot alone with the direct addressing of potential users. As an example, let me set out that Institute PPP sent the presentation brochures to almost 50,000 addresses in 2005 and 2006.

I believe that currently the judicial protection is the weakest link. Short and efficient judicial procedures would certainly contribute to any one who does not comply with the legislation being appropriately punished in the shortest possible time. This way we would achieve in a very short time a broad range of users to take care of the registration of the use of works in the competent collective organization. The first step into the better future is to be made soon; execution in electronic form is to be introduced, which should, as envisaged by the Ministry of Justice, considerably speed up the judicial recovery procedure.