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THE UNWILLINGNESS OF PUBLIC BROADCASTERS IN BOSNIA AND HERZEGOVINA TO PAY FOR THE MUSIC THEY USE

Bosnia and Herzegovina has three official public broadcasters:

- Radio and Television of Bosnia and Herzegovina (BHRT),
- Radio and Television of the Federation of Bosnia and Herzegovina (RTVFBiH), and
- Radio and Television of the Republic Srpska (RTRS).

Association of Composers – Music Authors (AMUS) is the collective rights management organization for copyright protected musical works in Bosnia and Herzegovina (B&H) as per the Decision IP-03-47-5-12-06059/12VT of the Institute for intellectual property of Bosnia and Herzegovina in accordance with the rules set out in the Law on collective management of copyright and related rights (Official Gazette of Bosnia and Herzegovina number 63/10). AMUS collectively manages and protects all copyright on copyright protected musical works for authors and other right holders from B&H and the world over in B&H.

AMUS has been licensed for, among other things collecting royalties for this use of copyright protected musical works since the 21st of June, 2012. As soon as AMUS had been licensed we entered into negotiations with the public broadcasters with the purpose of coming to an agreement on a more appropriate, fair and equitable agreement on the remuneration for use of copyright protected musical works by the public broadcasters of B&H in their programming. We offered terms that were fair, just and equitable, as was evidenced by other broadcasting organizations concluding contracts with AMUS.

The public broadcasters entered into negotiations but did not do so in good faith. They engaged in stall tactics, never really willing to entertain any proposals by AMUS while at the same time never really putting forth any productive proposals of their own.

After two years of minimal progress, as a show of good faith, AMUS had acquiesced to considerable concessions and, to propagate a speedier resolution, had agreed to enter into a one year, special, contract with the public broadcasters. This contract took note of their particular position and special circumstances of their existence and was understood as a stepping stone to a more permanent solution.

For the time the contract was in power none of the public broadcasters made full payments under the terms of the contract. Radio and Television of the Republic Srpska (RTRS) has made absolutely no payment for the use of copyright protected music the whole time AMUS has had its license (some 6+ years). The other two public broadcasters had made partial payments, RTVFBiH had paid 29.735,03 €, while the main and primary public broadcaster, covering the entire country and abroad, and EBO member, BHRT paid only 6.365,47 € for the use of all the music in its radio, TV, satellite, internet and other programming since the year 2012, and absolutely no payment since early 2015.

Since early 2015 no public broadcaster in B&H has made any payment to AMUS for the use of copyright protected musical works. This means that for three years minimum now, and for some public broadcasters much, much longer, the public broadcasters of Bosnia and Herzegovina have been infringing the rights of B&H authors and all authors and right holders in copyright protected musical works from all around the world, by using said works without a legal basis and permission and by not paying remuneration for said use. In all this time the public broadcasters have continued to provide round the clock programming and continue to use music hourly, constituting multitude infringements on their radio, TV, satellite, internet and other broadcasts.

Since 2015 there has been no contract for the use of copyright protected musical works between the public broadcasters and AMUS. Due to the particularities of B&H copyright legislation, the public broadcasters cannot get a legally valid license to use music from any other organization. As it now stands public broadcasters do not have valid legal permission to play any music on any of their broadcasts.

As is customary practice AMUS determines royalty rates for the right holders based on the information provided to it by the radio and TV broadcasters. The public broadcasters refuse any kind of cooperation with AMUS in identifying the copyright protected works being used by them and for the purpose of royalty calculations. This creates significant problems for the operation of AMUS outside the confines of its relations with public broadcasters. AMUS has provided know-how and tools to the public broadcasters to ease with such information provision, to do so to no avail. The public broadcasters refuse any cooperation whatsoever with any kind of administrative tasks in administration and oversight of the use of copyright protected musical works.

It is important to note that AMUS has made overtures to the public broadcasters to engage into negotiations with the purpose of concluding a fair and appropriate contract for the use of music, since the very start and particularly after the previous contract elapsed. But these negotiations were never in good faith on the part of the public broadcasters and were in fact never real negotiations. The other side would agree to no concessions on their part, they would stall and postpone meetings on a regular basis, their behavior was arrogant and aloof, they would offer tangential suggestions and then without explanation withdraw them the next meeting, they would never acquiesce to any constructive proposals and would deviate from their standing position in no way whatsoever, overall they have employed many transgressions against good faith and constructive cooperation, too numerous to list in this document. All the while AMUS had provided good faith offers and overtures to resolve the situation, to acquire fair remuneration for the authors and right holders the world over while at the same time allowing the public broadcasters to operate legally without infringing copyright.

Furthermore it is significant to note that there are no outstanding valid legal disputes, outstanding legal problems or issues between the public broadcasters and AMUS. The situation, legally speaking, is well regulated and clear.

On the 30th of June, 2017, over two years after the last contract between the public broadcasters and AMUS had elapsed and after it became clear beyond any possible doubt that the public broadcasters were never going to negotiate in good faith and after all hope was lost for a fair and equitable resolution of outstanding issues regarding remuneration for the use of copyright protected musical works, AMUS filed lawsuits against all three public broadcasters in Bosnian courts. This has had a further detrimental effect on communication between AMUS and the public broadcasters.

The lawsuits are ongoing, and will continue so for the foreseeable future. When it comes to copyright cases in particular Bosnian courts take a long, long time to resolve them, and the outcome is anything but certain. Even though the legal situation is clear, we cannot rule out political influence and interference, corruption or some other non-legal factor influencing the resolution of the ongoing cases. Even if AMUS wins the case, an appeal is almost a given and with it a very long period of time to any kind of a resolution and most importantly to remuneration. All the while the public broadcasters will continue to use copyright protected works without paying the artists, authors, right holders the world over their fair and equitable share.

AMUS will continue to apply pressure on the public broadcasters of all manner and kind.

We are kindly asking for the help and cooperation of CISAC and other international organizations to render onto us any and all assistance and to apply pressure of their own and in consort with other international organizations, for the good of all authors and right holders the world over.

We kindly ask CISAC to please intercede on our behalf with the European Broadcasting Union and the European Commission, with other government bodies in B&H and abroad and in communication with the public broadcasters themselves and in general for them to exert their considerable influence on the public service broadcasters of Bosnia and Hercegovina to motivate them to negotiate in good faith, to pay their legally mandated royalties to the authors of copyright protected musical works, to deliver much needed information to AMUS and to cooperate in the legal process of acquiring and protecting the rights of authors of copyright protected musical works to the fullest extent expected of them by the law.