



Ref. No.: MK-408/2025-321/4614
Bratislava on 24 February 2025
Clause of legal validity:

DECISION

The Ministry of Culture of the Slovak Republic, Department of Art, Creativity, Media and Copyright (hereinafter the “Ministry”), as the authority competent under Section 5, Section 6 par. 2 and Section 64 par. 1 of Act No. 71/1957 Coll., on administrative procedure (administrative order), as amended (hereinafter the “Administrative Procedure Act”) in conjunction with Section 189 par. 1 of Act No. 185/2015 Coll., on copyright, as amended (hereinafter the “Copyright Act”), in the matter of the renewal of proceedings **regarding the application for authorization to perform collective administration of rights** under Section 148 of the Copyright Act, **by the participant in the proceedings: Združenie autorov filmu a audia (ZAFA.sk)**, with its registered office located at Štefánikova 6, 811 04 Bratislava - Staré Mesto, ID No.: 42353734, ID No.: 17 310 598 (hereinafter the “Participant”), reached the following

d e c i s i o n

- I. The application of the Participant is **partially g r a n t e d**, and the Participant is **g r a n t e d** authorization in accordance with Section 151 of the Copyright Act for an indefinite period to perform collective administration of rights to audio-visual works in the following fields of collective administration of rights:
- a) collection of remuneration for creating copies of an audio-visual work for private needs,
 - b) use of an audio-visual work by presenting it publicly in the form of cable retransmission,
 - c) use of an audio-visual work by creating its copies,
 - d) use of an audio-visual work by public distribution of its original or copies in the form of transferring the ownership right,
 - e) use of an audio-visual work by public distribution of its original or copies in the form of renting the work,
 - f) use of an audio-visual work by public distribution of its original or copies in the form of borrowing the work,
 - g) use of an audio-visual work by presenting it publicly in the form of a public display,
 - h) use of an audio-visual work by presenting it publicly in the form of a public live performance,
 - i) use of an audio-visual work by presenting it publicly in the form of a public technical performance,
 - j) use of an audio-visual work by presenting it publicly in the form of broadcasting,
 - k) use of an audio-visual work by presenting it publicly in the form of retransmission,

- l) use of an audio-visual work by presenting it publicly in the form of making it publicly accessible,
 - m) use of an audio-visual work by presenting it publicly in the form of by any other means of public transmission,
 - n) use of an audio-visual work by processing it, including it in a database or connecting it with another protected object,
 - o) collection of appropriate remuneration for the use of an audio-visual work by publicly spreading it in the form of renting the work.
- II. The previous decision No. MK-5088/2023-321/21354 dated 2 November 2023 is hereby annulled.
- III. In accordance with Section 151 par. 6 of the Copyright Act, the authorization is issued as an independent document without undue delay upon the moment when this decision comes into force and effect. The organisation of collective administration is entitled to perform collective administration in accordance with the Copyright Act as of the day on which it receives the authorization.

Reasoning

On 21 July 2023, the Ministry received an application submitted by the Participant – an application to be granted the authorization to perform collective administration dated 20 July 2023, in which the Participant applied for being granted the authorization for the performance of collective administration of rights in the fields as specified in the application (hereinafter the “Application”). The administrative proceedings started on the moment when the Application was delivered in accordance with Section 18 par. 1 and 2 of the Administrative Procedure Act in conjunction with Section 189 par. 1 of the Copyright Act.

In the form of a document No. MK-5088/2023-321/16848 dated 28 August 2023 (hereinafter the “Notification”) which was sent to the Participant’s representative JUDr. Jana Mikušová, with her registered office Seberíniho 1, 821 03 Bratislava, reg. No. with the Slovak Bar of Attorneys: 7948, authorized to act on behalf of the Participant on the basis of a Power of Attorney, the Ministry notified the Participant via an electronic filing office of the initiation of the administrative proceedings, and also requested that the Participant removes deficiencies in its Application within a period of 20 days after the Notification was delivered. The Notification was delivered to the Participant on 5 September 2023. Furthermore, the Ministry sent to the Participant a decision on the suspension of the proceedings which was granted up to the moment when the Participant removed the deficiencies in its Application. The decision on the suspension of the proceedings was delivered to the Participant on 6 September 2023.

On 22 September 2023, the Ministry received a document from the Participant dated 19 September 2023 with annexes which included the Participant’s statement in the matter of removal of the deficiencies in its Application (hereinafter the “Statement”). The period for the removal of deficiencies thus started on 23 September 2023 again. Within the meaning of the Statement and its annexes, the Ministry was able to determine that the Participant removed the objective deficiencies of the proceedings under Section 148 of the Copyright Act of which the

Participant was notified in the Notification, as the Participant especially submitted verified copies of documents and supporting documents as well as adjusted the Application and its annexes in a manner that it removed the masters of sound (sound engineers) from the rightsholders who/which the Participant intends to perform the collective administration of rights if the authorization is granted. However, the fulfilment of requirements under Section 151 par. 2 clause 2 of the Copyright Act remained disputable.

On 2 November 2023, the decision No. MK-5088/2023-321/21354 in the matter of these administrative proceedings was issued in which the Ministry decided to dismiss the Application in the matter of granting the authorization to perform collective administration of rights to the Participant under Section 151 of the Copyright Act.

On 24 November 2023, the Ministry received an appeal in accordance with Section 61 of the Administrative Procedure Act against the decision in the first instance in which the Participant requested that the Minister of Culture dismissed the decision No. MK-5088/2023-321/21354 and handed the matter back to the Ministry for new proceedings and a new decision, or that she herself issued a decision to grant the authorization to perform collective administration of rights to the Participant.

On 22 February 2024, the Minister of Culture issued a decision No. MK-3826/24-110/3816 in which she confirmed the decision in the first instance No. MK-5088/2023-321/21354 which dismissed the Participant's Application to be granted the authorization to perform collective administration of rights.

On 22 May 2024, the Ministry received the Participant's motion for renewal of the proceedings. In this motion, the Participant requested that the Minister as an administrative authority permitted the motion for renewal of the proceedings and in the renewed proceedings decided that the Application of the Participant to be granted authorization to perform collective administration of rights is granted. In this motion, the Participant based its claim to have the renewal of proceedings granted on the fact that the Ministry submitter further documentary evidence as part of the appeal proceedings and that the Participant was not notified of new documents in the file during the appeal proceedings, namely the Ministry's request No. MK-5088/2023-321/25774 dated 6 December 2023 addressed to a collective administrator named LITA, autorská spoločnosť (authorial association; hereinafter the "LITA"), and its reply – Supplementary Statement of LITA No. 251-12/2023 dated 14 December 2023. Moreover, the Participant based its claim to have the renewal of proceedings granted on the fact that the document No. 251-12/2023 dated 14 December 2023 issued by LITA was of significant importance for the decision itself and that the Participant was not able to provide its statement to these documents.

The Minister of Culture reviewed the motion of the Participant for renewal of the proceedings and then issued a decision No. MK-5916/2024-110/14857 dated 20 September 2024 in which she recognized that the Ministry's request towards LITA and LITA's supplementary statement could have influenced the decision in the second degree and that, from a procedural point of view, the Participant should have been informed of these documents and should have had a chance to provide its statement to these documents during the appeal proceedings before the decision was issued. Based on these facts and circumstances, the Minister reached a decision that the renewal is admissible because the requirement under

Section 62 par. 1 letter c) of the Administrative Procedure Act, and therefore she permitted the renewal of the proceedings in her decision MK-5916/2024-110/14857.

Based on this decision of the Minister of Culture dated 20 September 2024, the Ministry sent to the Participant a notification of the initiation of administrative proceedings No. MK-6198/2024-321/17129 together with a request for the Participant to provide its statement to the documents on the bases of which the original appeal decision was reached, namely to the documents which were added during the appeal process of the original administrative proceedings, the manner of their acquirement and potential motion for supplementary requests in relation to these documents, all of these within the period of 30 days after the notification of the new initiation of administrative proceedings. On 20 November 2024, the Ministry received the Participant's statement including its annexes (hereinafter the "Statement dated 20 November 2024") to the documents on which the appeal decision was based – to the documents which were added during the appeal administrative proceedings.

By these legal acts, the grounds for the renewal of the proceedings within the meaning of Section 62 par. 1 letter c) of the Administrative Procedure Act were removed.

As part of the renewal of the proceedings, the Ministry reviewed the original Application for granting the authorization to perform collective administration of rights dated 20 July 2023, the supplemented version of the Application and further documentation on which the decision was based and which was known to the Participant, including the newest statement of the Participant regarding the documentation delivered to the Ministry on 20 November 2024.

The subject matter of this decision of the Ministry is the assessment of the matter whether the Participant should be granted the authorization to perform collective administration of rights, particularly in accordance conditions and criteria specified in the Copyright Act. In accordance with Section 151 par. 5 of the Copyright Act, the Ministry shall grant the authorization if the application meets the requirements under Section 148 par. 2, the application contains annexes in accordance with Section 148 par. 3 and the Participant meets the requirements under Section 151 par. 2 clause 2. Within the meaning of Section 151 par. 2 clause 2 of the Copyright Act, when deciding the matter of granting the authorization, the Ministry shall take into consideration whether it is possible to assume that the Participant is able to perform collective administration of rights in a proper and efficient manner and whether the Participant applied for the authorization to perform collective administration of such rights and rights related to such works for which it is effective to perform their collective administration.

While the criteria in accordance with Section 148 of the Copyright Act, which are required to be met for the purpose of being granted the authorization to perform collective administration of rights, are objective criteria and were fulfilled in the Participant's Statement dated 19 September 2023 by which the Participant removed this deficiency, yet the conflict remained in relation to another cumulative condition for being granted the authorization to perform collective administration of rights, namely the potential eligibility of the Participant to perform the collective administration of rights in a proper and efficient manner, for which the Copyright Act enables the Ministry to perform correct consideration of whether it was met.

Therefore, the Copyright Act bases the emergence of a claim to be granted the authorization to perform collective administration of rights on the fulfilment of a condition of the Participant's eligibility to perform the collective administration of rights in a proper and

efficient manner and the assessment of the effectiveness of the collective administration of rights and works or other objects under protection.

The proper performance of collective administration of rights primarily consists in the ability of an association/organisation of collective administration to guarantee that all the acts related to the collective administration of rights of represented rightsholders are performed in a proper professional, technological and economic manner. The proper performance of the collective administration of rights is related to the performance itself, that is whether the Participant is able to perform the collective administration of rights with due professional care.

Furthermore, the fundamental activities of an organisation performing collective administration of rights include contractual management in relation to the rightsholders on one side (concluding agreements on representation with the rightsholders) and to the users (concluding agreements in accordance with Section 165 par. 1 of the Copyright Act) on the other side, maintaining the registry of represented rightsholders and protected objects, identifying the users and individual uses of specific protected objects, collecting the remuneration and its enforcement in cases of unauthorized use of protected objects, the processes related to the distribution, billing and paying remuneration to the rightsholders within the Slovak Republic and abroad. These individual acts inevitably are based on each other, and the manner of their performance fundamentally affects the quality and reasonability of the collective administration of rights for the rightsholders.

The Participant specified its personnel, economic and legal capacities only during the very last stages of the proceedings and in its very last statements. Similarly, in its very last statements, the Participant specified how it intends to secure the provision of qualified legal, economic and technical services in relation to the collective administration of rights, and explained in more details, how it intends to secure expert activities of an organisation of collective administration of rights (including the planned use of external services), what type of an administrative apparatus it uses and how it intends to guarantee the effective management of resources.

As for the effectiveness, the Ministry considered the effectiveness in relation to the relevant market the size of which is limited in the Slovak Republic, while there are already organisations of collective administration of rights which represent the rightsholders in relation to audio-visual works. However, the Copyright Act in its provisions does not create a statutory monopoly over the collective administration of rights for only one organisation of collective administration for a specific type of works or other protected objects. The Participant declared and demonstrated that it unites significant Slovak creators in the audio-visual field and provided declarations of foreign organisations of collective administration of rights which include a future promise to sign reciprocal agreements on mutual representation with the Participant after it is granted the authorization.

In accordance with Section 83 par. 2 of the Copyright Act, the authors of audio-visual works include a director, script authors, dialogue authors and authors of music which was created specifically for this work, and other individuals if they participated in the creation of the given audio-visual work in the form of a creative mental activity. In connection with this provision, the provision of Section 83 par. 3 of the Copyright Act specifies that if more people participated in the creation of an audio-visual work under the previous clause, then the provisions on co-authorship shall apply adequately (Section 15 of the Copyright Act).

The Participant applied for the authorization to perform collective administration of works on behalf of rightsholders – people who creatively participate in the creation of an audio-visual work. Particularly, these are cameramen, editors, stage designers and costume designers, if they participated in the creation of the audio-visual work by their creative mental activity. However, these professions cannot be put on an even level with directors, script authors or music authors when it comes to the overall creation of the audio-visual work and the distribution of remuneration, since their part in the creation of the audio-visual work represents smaller part of the economic value of the given audio-visual work, but they can still be considered as other authors or co-authors of the audio-visual work when it comes to the creation of the audio-visual work when they meet the condition of a creative mental activity.

The Ministry also specifies that it grants the authorization in relation to professions of collective administration of rights and types of works (in this case to audio-visual works) and not to specific people, but **the decision on granting the authorization to perform collective administration of rights and the subsequently issued authorization do not apply to masters of sound (sound engineers).**

In its statement dated 20 November 2024, the Participant repeatedly mentioned masters of sound and the Czech organisation of collective administration named Ochranná asociace zvukařů – autorů (hereinafter “OAZA”). The Ministry emphasizes that it is irrelevant for the given administrative proceedings and the decision what the Participant declares in relation to the masters of sound and OAZA, since on 22 September 2023, the Participant submitted an adjusted application for authorization to perform collective administration of rights with its annexes in accordance with the Ministry’s request in which the Participant removed the masters of sound from the scope of rightsholders who the Participant intends to represent if it is granted the authorization for collective administration. The Participant recognized the Ministry’s argumentation that the Ministry cannot grant authorization for masters of sound until the court decides in this matter of masters of sounds. Moreover, the current court dispute addresses the nature of their activities and creations of sound masters, as well as an equal participant in the proceedings, and that is why the Ministry cannot decide on the matter of granting any authorization of collective administration of rights in relation to objects to which the masters of sound may be rightsholders.

Given the differences which will occur when the Participant is granted the authorization to perform collective administration of rights, especially when it comes to various protected objects – the Participant is granted the authorization to perform collective administration of rights to audio-visual works, but since the Czech organisation of collective administration of rights named OAZA has been granted the authorization to represent the rights of masters of sound, **it will not be possible for the Participant to establish reciprocal relations between the Participant and OAZA.**

Therefore, it is immaterial for these administrative proceedings and decision how many Slovak masters of sound are represented by OAZA, **since the Participant will not be able to take over their representation even if it is granted this authorization.** The facts mentioned in the Participant’s statement dated 20 November 2024 in relation to masters of sound and OAZA are thus not taken into consideration and the subsequent issued authorization does not cover the masters of sound or their creations.

The Ministry would like to draw the Participant’s attention to the situation that after the Participant is granted the authorization to perform collective administration of rights, it would

be desirable and recommended for Slovak audio-visual creators who are currently represented by a Czech organisation of collective administration named Ochranná organizace autorská (hereinafter “OOA-S”) to transfer to the Participant, i.e. to be represented by the Participant directly.

Furthermore, the Ministry would like to point out that the provisions of Section 155 par. 3 of the Copyright Act could be used analogically in these proceedings, which specify that an organisation of collective administration of rights is obliged to provide the Ministry with true and complete information or documentation and assistance at its own expense. Therefore, the Ministry is not obliged to verify the truthfulness of information, such as activities of the Participant or of the collective administrator named LITA, especially when the Participant and LITA provided the Ministry with completely conflicted information. The administrative authority only assesses the evidence as for their content, credibility and relevance for the given administrative proceedings.

Moreover, the Ministry takes into account the statements by OOA-S (such as its declarations dated 12 March 2024 and 15 November 2024) addressing, among others, facts that OOA-S terminated its reciprocal agreement with a Slovak collective administrator named LITA and intends to conclude a reciprocal agreement with the Participant if it is granted the authorization to perform collective administration of rights.

In accordance with Section 144 par. 1 of the Copyright Act, an organisation of collective administration is a legal entity which is entitled on the basis of legislation or agreements concluded with rightsholders to manage property rights on behalf of several rightsholders and for the benefit of collective prosperity of these rightsholders as their only or major purpose of its activity.

In accordance with Section 144 par. 1 of the Copyright Act, it is possible to state that the prosperity of the rightsholders shall be secured by such an organisation of collective administration of rights which can reasonably meet the legitimate claims of rightsholders arising from the use of their works.

In accordance with Section 152 par. 2 of the Copyright Act, an organisation of collective administration is obliged to fulfil the conditions for being granted the authorization even during the entire course of performing the collective administration of rights. In accordance with Section 152 par. 3 of the Copyright Act, the rights and obligations of the collective administration of rights arising from the issued authorization cannot be subject to transfer against payment or any other form of transfer to another person or entity.

The Ministry thus considers it to be imperative to emphasize that the Ministry performs in accordance with Section 155 par. 1 of the Copyright Act thorough supervision of organisations of collective administration of rights by verifying the performance of not only the obligations specified above and in Section 152 of the Copyright Act, but also of other obligations required by the Copyright Act.

Given the above-mentioned facts and circumstances, the Ministry has decided as specified in the verdict section of this decision.

Instructions: An appeal may be filed against this new decision on the matter in accordance with Section 64 par. 4 of the Administrative Procedure Act

which shall be delivered to the Ministry within 15 days from the date when this decision is delivered.

This decision may be subject to review by the court upon using all the regular legal remedies.

Mgr. Jozef Švolík

(electronic signature)

Authorized to perform the position of
General Director of the Department of Art,
Creativity, Media and Copyright

The decision is issued exclusively in an electronic form with authorization by a valid mandate certificate.