

ACT

from [date] 2004,

amending Act No. 121/2000 on Copyright Law and Rights Related to Copyright and on the Amendment of Certain Legislative Acts (“Copyright Act“)

The Parliament of the Czech Republic adopted the following Act of Parliament:

Title I

Act No. 121/2000 on Copyright Law and Related Rights and on Amending Other Related Acts („Copyright Act“) is hereby amended as follows:

1. In s. 14 (2) the wording “on the territory of the Czech Republic“ is replaced by “on the territory of a member state of the European Union or any other party to the Agreement on the European Economic Area”.¹
2. In s. 22 a new subparagraph (3) is inserted in the following wording:

“(3) Enabling reception of a simultaneous, unabridged and unaltered radio or television broadcast on the receivers of the same building or of adjacent buildings, which are functionally or spatially attached, via common house aerials shall not be deemed exploitation of the work, provided only an uncoded broadcast over the earth is enabled and the common reception is not used for commercial purposes. “
3. At the end of s. 23 the following sentence is added: „In compliance with s. 18 (3), making the work available by means of devices technically able to receive a radio or television broadcast to accommodated persons within the scope of providing accommodation services shall not be deemed as performing of the radio and television broadcast, provided the devices are placed in areas designed to be used as private space by the accommodated guests.”
4. In s. 98 at the end of (3) the full stop is replaced by a comma and (f) is inserted in the following wording:

„f) proposal of the amounts of remuneration for the respective modes of use of the items of protection“.
5. S. 100 (1), subparagraph h) shall have the following wording:

„h) to conclude, on reasonable and equal terms, with the users of items of protection, or with bodies authorized to protect the interests of users associated in such bodies who use the items of protection in the same or similar manner, or with persons obliged to pay remuneration in compliance with this Act, agreements by which:

¹ *Translator’s note:* The Czech original mentions two almost identical changes in this subparagraph, one containing the Czech equivalent of the preposition „on“[the territory of the Czech Republic], the other the Czech equivalent of „for“[the territory of the Czech Republic]. The official English translation uses “on” in both cases, therefore the text of the other change is not repeated in this translation.

1. the user is granted authorization to exercise the right to exploit the item of protection, for which the collective administrator² administers such right collectively,

2. the amount and method of payment of remuneration is set for the user pursuant to Article 96 (1) (a) items 1 and 2, and (b) and its disbursement monitored.

3. the amount and the method of payment of the remuneration in line with s. 19 (1) and (2), and based on the number of persons, to whom the work is thus communicated, is stipulated,

4. the method of payment of remuneration, provided for by this Act, is determined. “

6. The wording of s. 100 (1), subparagraph s) shall be as follows:

„s) publish, in a suitable manner enabling also a remote access, the proposed amount of remuneration tariffs or the method of calculating such amount for the respective modes of exploitation of the item of protection.”

7. S. 100 (5) and (6) shall read as follows:

„(5) The operator of a facility or other space who provides this facility or other space for a non-theatrical performance of a musical work with or without text or of an artistic performance (henceforth ”public musical performance”) shall provide the relevant collective administrator with data and collaborate with the administrator, so that the producer of the said public musical performance can be duly identified.

(6) The provider of a live public musical performance shall inform the producer of the live public performance on the programme of the performance, listing the names of the authors and titles of works that are to be produced no later than 20 days before the event. The producer of the live public musical performance must forward this data including the programme of the performance and the names of the authors and works to be performed to the relevant collective administrator no later than 10 days before the event, unless stipulated otherwise in the contract concluded by the producer and the collective administrator.“

8. In s. 100, subsections 7 and 8 shall be inserted in the following wording:

“(7) Upon concluding contracts in accordance with subsection 1 (h), the following shall be considered:

- a) whether the item of protection will be used within a business or other economic activity,
- b) the direct or indirect economic or commercial benefit, which the user will enjoy by exploiting the item of protection or in the context of exploitation of such item,
- c) the specific features and characteristics of the place or region, in which the item of protection is used,
- d) purpose, method, scope and circumstances of the use of the item of protection.

(8) Upon drafting the proposal of the remuneration amount or of the method of calculation thereof, the collective administrator must consult the legal entities associating the relevant users of the items of protection, if such entities have contacted the collective administrator to this end, and provided they represent more than a negligible number of users.“

² *Translator’s note:* more commonly „collecting society“; however, official translation of this Act uses „collective administrator“

9. S. 100 shall be followed by a new section 100a, the wording of which is as follows (incl. footnote No. 6a):

“§ 100a

(1) The collective administrator, or the holder of the rights represented by the administrator, cannot raise cease-and-desist claim [s. 40 (1) (b)], nor a claim to the surrender of unjust enrichment pursuant to a special provision of this Act (s. 40 (3)) based on an infringement of the collectively managed rights, if, in the light of such infringement or exposure of the right, the user or an entity authorized to defend the interest of the users associated in this entity opens duly and without unnecessary delay negotiations with the relevant collective administrator to conclude a contract required by this Act, or if in this context the user or the said entity agrees with using a mediator pursuant to this Act (s. 102).

(2) The provision of subsection 1 does not affect the claim to the surrender of unjust enrichment in the standard amount pursuant to special legal acts.^{6a)}

(3) The impediment to raise a cease-and-desist claim pursuant to subsection 1 does not arise if a waiver to raise such claim is at variance with the legal joint interests of the rightholders, i.e. in particular, if the conduct of the users or the authorized representative of the associated users clearly indicates that they do not intend to conclude the contract specified in subsection 1, or if the claimed surrender of the unjust enrichment pursuant to special legislation is thus jeopardized.^{6a)}

^{6a)} Act No. 40/1964 (Civil Code), s. 451 ff., as amended. “

10. S. 101 is extended by subsection 11 in the following wording:

“(11) If the user of the item of protection concludes a contract with three and more collective administrators, the users or their association are entitled to request that the collective administrators in question authorize a joint representative, who concludes a contract with the user on behalf of all said administrators.”

11. The wording of s. 103 incl. the title and the footnote No. 8) shall be as follows:

“103

Supervision by the Ministry

(1) The Ministry is entitled to:

- a) request information and documents from the collective administrator, which are relevant for carrying out the supervision,
- b) investigate whether any breach of the obligations imposed by this Part of the Act, in particular s. 100 (7) has occurred,
- c) impose, in the event of establishing defects in the compliance with this Part of the Act, obligation to remedy such defect within a reasonable time period, and to impose penalties.

(2) Where the Ministry ascertains a breach of an obligation ensuing from this Part of the Act on the part of the collective administrator, it imposes an obligation on the collective administrator to remedy the breach and sets a reasonable time limit for this remedy. The

Ministry can also impose a fine on the collective administrator in the amount of up to 10 million CZK. The fine may be imposed repeatedly. The fine may be imposed no later than one year from the date on which the Ministry ascertains that a breach of duty has occurred, however, no later than three years from the day on which the obligation was breached. When stipulating the amount of the fine, the Ministry shall take into account the severity of the breach of duty and its consequences. The fines shall become revenue of the State Fund of Culture of the Czech Republic; the Ministry shall enforce them pursuant to special legal regulations⁸⁾

⁸⁾ Act No. 337/1992 on Administration of Taxes and Duty, as amended. “

Title II

This Act shall come into effect upon its promulgation.