
Collective management of music copyrights in Macedonia: climbing up the ladder in the corner of Europe

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Abstract: Music copyrights are an instrument of the legal system that provides for incentives for commercial music market creation and profit generation. This article addresses the trials and tribulations of the music authors in Macedonia with respect to collective management of their music copyrights. Our evidence-based conclusion is that, generally, the music authors get what they deserve. Complaining about the inefficiency of the current music copyrights collective management system in Macedonia will not make the problems disappear. Copying other countries' 'successful' systems will not do the trick either. Macedonia should devise a new system of music copyrights, using the successful models developed by others, yet tailored to its own needs.

Keywords: music copyrights; collective management; Macedonia.

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1 Introduction

A well-established credo of the modern intellectual property (IP) system is that music copyrights¹ are an instrument of the legal system that provides for incentives adequate for both creation of a commercial music market creation and for generation of profit. This has been supported with data derived from the practical functioning of well-established music copyrights systems in developed countries.² Trade revenue generated by global recorded music sales totalled \$15.9 billion in 2010, according to the International Federation of the Phonographic Industry's (IFPI, 2011) annual report. Although in the economies of the developing countries the music copyrights industries are relatively insignificant, this is likely to change with the growing importance of their knowledge-based service sector, their integration into the global market economy, and with the development of digital media, information and communication technologies.

Testing of the above policy assumption in the context of the former Yugoslav Republic of Macedonia (Macedonia), a small developing country, is somewhat dubious due to several factors. First, even though Macedonian copyright law is in line with

international and European Union (EU)³ IP law instruments, it lacks adequate enforcement infrastructure. Second, due to weak leverage in negotiating international IP law instruments, Macedonia has accepted the ‘one size fits all’ IP model imposed by the developed countries (Chang, 2002; UNCTAD, 2010). This creates pitfalls because the legal solutions successful in one country may prove to become a failure in another, due to different legal, economic and cultural traditions.⁴ Third, the Macedonian music market mechanism is dysfunctional due to a variety of factors such as limited to lack of capital, primitive infrastructure and institutions, and modest entrepreneurial skills (UNCTAD, 2010). The fragmented market consists of small, dispersed stakeholders, who typically enforce their music copyrights through collecting societies that lack either institutional capacity or transparency in the method of collecting royalties.⁵ This creates a vicious cycle that drains away the creative energy of the musicians. A similar landscape can be found in the creative economy domain in Africa where the fragmented creative economies result in incomplete chain of production, marketing and distribution of the musical works (UNCTAD, 2010).

Against that backdrop, the suboptimal enforcement of music copyrights in Macedonia has for years negatively impacted the development of the Macedonian music copyright industry. This can be attested not only by the high levels of music piracy,⁶ but also by the music industry stakeholders’ repeated pleas for substantial changes to the current music copyrights system. The problem is not due to the lack of pertinent legal provisions; copyright laws in Macedonia have been in existence since its inception as a state almost sixty years ago. The laws, and particularly the quality of the laws, are just a part of the problem. The real issue is the enforcement, because the mere existence of music copyrights is of little monetary value if there is no adequate system of enforcement. Thus, the legal, economic, and cultural aspects of music copyrights enforcement are inevitably interwoven into a social ‘spider web’ of the Macedonian music industry. They need to be analysed together in order for this ‘spider web’ to be untangled.

To our knowledge, there has been no comprehensive theoretical or empirical research into music copyrights enforcement in Macedonia. Accordingly, using empirical data against the existent legal and policy framework, this article proposes and argues in favour of establishment of a centralised ‘umbrella’ society model for collective management of music copyrights that would balance the interest of all music stakeholders. The uniqueness of the model is that it envisages the establishment of a single ‘umbrella’ music copyrights collecting society that will be licensed from the Ministry of Culture of the Republic of Macedonia. This ‘umbrella’ collecting society will consist of professional membership organisations which will not undergo the stringent procedure of approval by the Ministry of Culture. They will be established on a voluntary basis, and will represent the interests of different music stakeholders, i.e., authors of music, phonogram producers and performers. The ‘umbrella’ society will collectively manage the music copyrights of the individual members of its professional membership organisations.

In this article we focus solely on the domestic (Macedonian) music stakeholders, i.e., the physical and legal persons treated as ‘nationals’ under Macedonian law. We present empirical data from a survey on the efficiency of music copyrights enforcement in Macedonia. Our findings point out that the critical part of the music copyrights enforcement system that needs to be changed is the collective management of music copyrights. This can be done through a set of legislative and administrative measures aimed at changing the current institutional structure of collective management of music

copyrights. The proposed amendments should represent an incremental step towards the creation of a coherent system for protection and growth of the Macedonian music industry. If the *status quo* persists, Macedonia will remain a net music copyrights importer. As compliance with international and EU IP instruments requires further strengthening of the domestic music copyrights laws, this will result in static inefficiency problems, without prospect for long term dynamic efficiency results, measured by the level of participation of the Macedonian creative music industry in the overall GDP of the nation (Fink and Maskus, 2005).

2 Problems with music copyright enforcement in Macedonia, focus on collective management

2.1 Legal observations

A copyright system consists of three pillars: legislation, management and enforcement (Gervais, 2010). Positive communication feedback loops among the three pillars must exist for the establishment of a well functioning copyright system, e.g., if there are certain problems with the enforcement pillar, this has to be signalled both to the management and legislation pillars which will act accordingly to the feedback received.

A utopian society presumes that all its members will obey what the law stipulates. However, behavioural economics rejects the theoretical assumptions that humans are fully rational creatures. Instead it claims that humans dispose with bounded rationality. Neither societies nor humans are perfect (Thaler and Sunstein, 2008), thus law is brought into life through enforcement. The law sets the rules and norms. The latter are not self-enforceable; they need adequate institutional mechanisms in order to be enforced. Herein is the crux of the problem for music copyrights in Macedonia: not only do the music copyrights laws have to be changed, they also need to be enforced. Indeed, as music piracy has become a problem of great concern, enforcement has been one of the most criticised aspects of the music copyrights system.⁷ Poor enforcement damages the economic and moral rights of both domestic and international music copyrights holders. The damages are amplified as modern information and communication technologies make it easier (both in terms of costs and quality) to make illegal copies of copyrighted music works. The gravitas of the problem is enhanced by the presence of a weak institutional framework for enforcement. Even though the laws provide some necessary preconditions for the establishment of an 'effective' music copyrights enforcement system, the latter is chaotic at best and non-existent at worst.

A crucial question in the Macedonian music copyrights milieu remains unresolved and continues to resonate: *Is there something beyond the legal infrastructure that should be taken into account when analysing the music copyrights enforcement system?* We believe there is, and that the legal analysis of the music copyrights enforcement problem in Macedonia should be supplemented with economic and cultural analyses. Those are addressed below.

2.2 Economic observations

A distinction exists between the type of creativity that relates to person's fulfilment as an individual and can be found in all societies and in all times; and the type of creativity that

is relatively more expressed and stronger in developed countries that put a monetary value on novelty, utility, and IP rights. This distinction should be kept in mind when crafting adequate music copyrights enforcement policy. In developed countries, the music copyrights economy is a subset of the so-called 'creative economy' (Howkins, 2001).⁸ It is enmeshed in the tangled 'spider-web' of law, economics and culture that are present in the domain of music copyrights enforcement (UNCTAD, 2010).

Musical copyrighted works are considered public goods.⁹ They are viewed as both non-rivalrous (consumption of which by one individual does not diminish the availability of the good for consumption by others) and non-excludable (no one can be effectively excluded from using those goods). The rationale for creating music copyrights as monopoly rights is the very nature of music copyrighted goods as public goods. Since it is hard to prevent free consumption and distribution of those goods, the legal system created music copyright as a legal fiction, allowing their holders to enjoy the proceeds from their creative efforts for a limited period of time, after the lapse of which the goods enter the public domain (UNCTAD, 2010). The music copyrights are property rights meant to enable the right holder to "own, buy, sell and use their property in a market economy". The music copyrights market can be described by the exclusive rights conferred to the right holder.¹⁰ Problems occur when the law declaratively provides for protection of copyrights and related rights – in countries such as Macedonia – but in reality these rights are grossly infringed. Why is this so and what can be done about it? One possible explanation might be the distortions of the Macedonian music market created due to the lack of capital¹¹, the lack of infrastructure and institutions (problems associated with the value chain of music production, i.e., supply chain gaps for inputs into the creative process, inadequate distribution networks for effective marketing of music copyrights works), and the lack of entrepreneurial skills (UNCTAD, 2010).

One of the main functions of the music copyrights system is to create equilibrium between productive and distributive efficiency. An economic value will attach to the music copyrights works if they are "produced and distributed in a manner that can make their continued production and distribution economically sustainable and hence provide income for their creator" (WIPO, 2003). The classical economics theory assumes that the market (through the faultless functioning of the invisible hand) and the price mechanism will signal the monetary value of the work and give the right holders access to the benefits guaranteed by the law (Samuelson and Nordhaus, 1992; Smith, 2001). *What happens in the case of the Macedonian music copyrights markets where the invisible hand is invisible simply because it is not there?* (Stiglitz, 2002).

In an environment where the music copyrights of the domestic music stakeholders are not efficiently protected, and where this is flavoured by the dysfunctional market mechanism, the protected music copyrights works will be easily reproduced. Moreover, other delivery media available through emerging digital technologies will compete with the original work on the market. This will substantially lower the profits of the music copyright holders and therefore chase them away from the sector. If the legal system performs its function properly, then the marginal cost of reproduction will be increased (because the right holders will be able to enforce their monopoly rights) and thus the right holders will be able to control the prices of the goods (WIPO, 2003).

Modelling an effective regulative system of the domestic music copyrights market, the government should take into account the fact that the levels of Macedonian exports of music copyrights works is very low when compared to the levels of imports.

Tables 1 and 2 represent statistics for the Macedonian creative industries' international trade by values and shares of creative goods for the period of 2002–2010, shown as a percentage of total world trade in creative goods (UNCTAD, 2010).

Table 1 Values and shares of creative goods, exports, annual, 2002–2010, percentage of total world, Republic of Macedonia

Product group exports	Year									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Music – CDs and tapes	0.0002	0.0002	0.007	0.0001	0.00007	n/a	n/a	n/a	n/a	

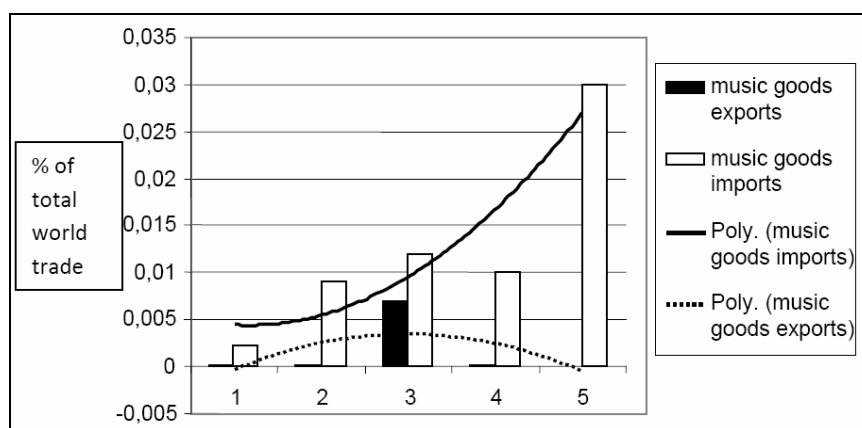
Source: UNCTADstat

Table 2 Values and shares of creative goods, imports, annual, 2002–2010, percentage of total world, Republic of Macedonia

Product group exports	Year									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Music – CDs and tapes	0.0023	0.009	0.01	0.01	0.03	n/a	n/a	n/a	n/a	

Source: UNCTADstat

Figure 1 Values and shares of creative goods, international trade, annual, 2002–2010, percentage of total world, Republic of Macedonia



Source: UNCTADstat

The data in Tables 1 and 2 and in Figure 1 show a decline of the Macedonian balance of trade (difference between exports and imports) in creative goods. The relative size of the imports sharply rises, while the relative size of exports decreases. Translated into music copyrights language and observed from a developmental prism Macedonia is a net importer of musical copyrights works. Coupled with the draconian strengthening of the music copyright protection,¹² in the short term this leads to static inefficiency problems. The government must undertake measures to overcome these static inefficiency problems and generate dynamic efficiency gains on the long run. This can be done through

enactment of approaches that will take into consideration the specificities of the Macedonian cultural system.

2.3 Cultural observations

“[F]ormal rules ... make up a small ... part of the sum of constraints that shape choices; ... the governing structure is overwhelmingly defined by codes of conduct, norms of behaviour and conventions” (North, 1990). There is no universal definition of ‘culture’. This article uses the definition from ‘The impact of culture on creativity – a study prepared for the European Commission (Directorate-General for Education and Culture)’: “Culture is the general expression of humanity, the expression of its creativity. Culture is linked to meaning, knowledge, talents, industries, civilisation and values” (KEA, 2009).

Depoorter et al. (2011) have an interesting theory to explain the societal and cultural roots of general non-compliance with copyright laws. Their analysis can be transposed into the realm of music copyrights enforcement in Macedonia. They examine the countervailing norm’s effects as a possible explanation for the pervasiveness of copyright non-compliance in the face of increased enforcement activities and the so-called ‘stickiness’ of norms (Parisi and von Wangenheim, 2006). Once established, social norms can be very difficult to change. In cases of strong legal condemnations of norms, the fission between the law and the societal norms sometimes strengthens the pre-existing antisocial norm. “Legal innovation that departs from current values may lead to private enforcement norms or civil disobedience. Through private enforcement of expressive laws and through civil disobedience, individuals reveal their approbation or disapproval of laws to other individuals. This may lead to a hysteresis effect on individual values that may have a reinforcing or countervailing effect on the legal innovation” (Parisi and von Wangenheim, 2006).

Society responds in its own ways to the rules that govern it and tends to be reluctant to enforce laws that are perceived as unbeneficial to society. Depoorter et al. theory on the tension between the law and the social norms applies to situations where a social group perceives legal sanctions to be disproportionate to the behaviour the norms punish (Parisi and von Wangenheim, 2006). The Macedonian public generally perceives that the music copyrights take away something from the public domain and put it in the private domain where it is not easily accessible due to the economic reality (22% of the total population lives below the poverty line). Moreover, music copyrights are often perceived by many as being artificially imposed in order to protect the rights of the ‘foreigners’.

2.4 Survey results

The survey conducted for the purposes of this article measures the perceptions of the Macedonian domestic music stakeholders with respect to the efficiency of the Macedonian music copyrights enforcement system. The survey was distributed online via survey software service (<http://www.surveymonkey.com>). The method of data collection was controlled. Respondents were allowed to answer questions in multiple roles (author of music, performer or phonogram producers) depending on their factual status; the software designed complex question skip patterns depending on the respondents’ replies. Also, a number of questions allowed the respondents to comment on the issues. The survey dissemination was strictly controlled and the questionnaire was sent out to a

total of 40 individuals who were chosen beforehand according to their status as domestic music stakeholders. The survey was completed by 33 (82.5%) respondents, 76% of which are authors of music, 88% performers, and 48% phonogram producers. Taking into account the small size of the Macedonian music industry market,¹³ the survey sample size is representative of an average domestic music stakeholder's perceptions.

The survey questions were divided into nine parts:

- 1 introductory part
- 2 general institutional framework for music copyrights enforcement
- 3 judicial proceedings for music copyrights enforcement (general observations)
- 4 judicial proceedings for music copyrights enforcement (authors of music)
- 5 judicial proceedings for music related rights enforcement (performers)
- 6 judicial proceedings for music related rights enforcement (phonogram producers)
- 7 other institutions for music copyrights enforcement
- 8 music copyrights enforcement on the internet
- 9 information on respondents.

The results of the survey show that a vast majority of the respondents (61.3%) are of an opinion that the music copyrights in Macedonia are not fully protected and thus reform is needed. General impression is that the problem is acute and requires a holistic analytical approach and thus we hope that this article will stimulate further in-depth research in this area. There is an evident lack of cooperation between the legislature, judiciary, collective rights management societies, and other institutional stakeholders. This, in turn, deflates the overall institutional capability of addressing the music copyrights piracy effectively.¹⁴

The institutional framework of music copyrights enforcement is chaotic and needs to be changed. Often, the roles of the institutions in charge are overlapping, or there are missing links in their areas of authority and competence. This creates confusion among music stakeholders in mapping the roles of these institutions in the music copyrights enforcement system. For example, only 44.8% of the respondents knew what the role of the Copyright and Related Rights Department within the Ministry of Culture is. Moreover, 90% stated that this Department is "inefficient and slow in decision making". High percentage of respondents (75%) stated the same thing about the state market inspectorate, which supposedly is the main institution in control and enforcement of music copyrights. Only 14.3% of the respondents had ever initiated a judicial procedure for music copyrights enforcement.

Striking is the percentage of respondents (100%) who replied that they do not evaluate the judge's work as 'neutral' and 'swift in decision making'. Macedonian courts have been criticised for their ineffectiveness in addressing music copyrights disputes and the low percentage of initiated judicial proceedings might indicate this.

There are three functional music copyrights collecting societies in Macedonia: ZAMP – Zdruzenie za zastita na muzicki avtorski prava (Collective Authors of Music Society), KOMIP – Zdruzenie za kolektivno ostvaruvanje na srodnite prava na muzickite izveduvaci i producenti od RM (Collective Society of Music Performers and Phonogram Producers) and MMI – Makedonska muzicka industrija (Collective Society of Phonogram Producers). Relatively high percentage of respondents (60.9%) replied that

they 'are not satisfied at all' with the work of the main music copyrights collecting society in Macedonia, ZAMP, and they indicated that 'substantial changes are needed' in its work. When asked to evaluate different features of ZAMP's functioning, 54.2% of respondents indicated that change is needed in the structure of ZAMP (number and composition of employees), and even a higher percentage indicated that changes are needed in ZAMP's professionalism and efficiency (78.3% and 87.5%, respectively). Many respondents perceive the work of ZAMP as opaque, inefficient, and harmful to the interests of music stakeholders due to a multitude of legal, economic and cultural factors.

The establishment of music copyrights collecting societies and their functioning is regulated by the law on copyright and related rights of the Republic of Macedonia.¹⁵ The collecting societies are licensed by a governmental agency, i.e., the Ministry of Culture. Until recently, there has been only one fully functioning collecting society for music copyrights royalties for authors of music, i.e., ZAMP. Many respondents claim that the process of obtaining work licenses from the Ministry of Culture is heavily influenced by the lobbying of ZAMP and has resulted in ZAMP having a monopoly on the Macedonian music market for distributing music royalties. However, this anomaly of the music copyrights system was remedied by a decision of the Administrative Court of the Republic of Macedonia, which has instructed the second-instance [governmental] commission to annul within one month its decisions suspending the activities of two of the three collective rights management societies. This means that the monopoly of ZAMP has been broken down and that the complaints of both the Collective Society of Music Performers and Phonogram Producers (KOMIP) and the Collective Society of Phonogram Producers (MMI) have been accepted. As of May, 2012 the Collective Society of Phonogram Producers has obtained a working license from the Macedonian Ministry of Culture and has become fully operational.

Interestingly, 95.5% of the survey respondents state that they are members of ZAMP, as opposed to 45.5% that are members of KOMIP and 9.1% that are members of MMI. These figures are indicative of the factual power of ZAMP on the Macedonian music copyrights market. This conclusion is only strengthened when one looks at the percentage of respondents that do not know what MMI's function is (41.4%) or what KOMIP's function is (26.8%). On the other hand, ZAMP has put forward arguments in defending its ineffectiveness in the distribution of music royalties and collective management of music copyrights overall.¹⁶ ZAMP blames its ineffectiveness on the lack of digitalisation of electronic media enterprises (e.g., TV broadcasting companies and radio stations) and to the acute problem of music piracy in Macedonia. The persistence of these problems enables easy misrepresentation of the lists of broadcasted musical copyrighted works that ZAMP receives from the TV broadcasting companies and the radio stations. ZAMP asserts that certain electronic media broadcast pirated CDs. These CDs lack codes that will be recognised by the software intended to create lists of broadcasted musical copyrighted works. The TV and radio stations bear criminal responsibility for the truthfulness of the lists handed over to ZAMP.¹⁷ ZAMP, allegedly, also faces difficulties in collecting music copyrights royalties from legal persons that use musical copyrighted works as a supplement to their business (e.g., restaurants, hotels, art galleries).

In light of these heavily contested issues, the Constitutional Court of the Republic of Macedonia has stricken down some of the provisions of ZAMP's rules on the levy scheme and rules on the calculation of royalties.¹⁸ The Court held that copyright royalties

should be calculated on the profits and not on the income of the usage of the copyrighted work.

To contribute towards the resolution of the Macedonian music copyrights enforcement saga, we propose a package of legislative and policy measures that will craft a sustainable, centralised ‘umbrella’ model of collective management of music copyrights in Macedonia.

3 Proposal for a sustainable model of collective management of music copyrights in Macedonia

3.1 The model

Governments can institute a variety of measures to achieve effective music copyrights enforcement. Legislative and enforcement authorities can deploy a targeted approach towards different types of copyright infringers, bearing in mind that deterrence and norm adaptation might not be attainable at the same time, i.e., there might be time lags (Parisi and von Wangenheim, 2006). From an institutional point of view, there are alternative, substitute means of correcting undesirable social norms, apart from law enforcement. Draconian measures will often lead to even stronger opposition to the respect of music copyrights. The most gentle of ‘nudges’ are perhaps those that do not resort to formal sanctions but those that manipulate the underlying social meaning (Parisi and von Wangenheim, 2006).

The Macedonian government should take into account this fact that while increasing the egregious sanctions (e.g., the recently introduced reforms to the Macedonian Law on Copyright and related rights and the criminal code). The egregious sanctions might even induce the users to look for more circumvention technologies. In turn, this will raise the costs of enforcement of music copyrights.

The outlined problems related to the functioning of music copyrights collecting societies in Macedonia require both legislative and institutional changes. The current system for approval and oversight of the music copyrights collecting societies by the Ministry of Culture is time-consuming, cumbersome and ineffective. Under the law on copyright and related rights, the Ministry of Culture can withdraw the work license given to a collecting society if the society does not perform its functions properly. The Law does not specify a time frame for a renewal of the given work license, and this *de facto* means, that once approved, the collecting societies might usurp their position and remain on the music copyrights market, provided that they do a successful lobbying at the officials of the Ministry of Culture. To cure this anomaly, the provisions of the Law of Copyright and Related Rights, pertaining to formation of music copyrights collecting societies, should be taken out from the law and amended accordingly; perhaps per our suggestions advanced herein.

We propose the establishment of a single ‘umbrella’ music copyrights collecting society that will act as a parent society to ZAMP, MMI and KOMIP. Our proposal is partly based on the Finnish model of KOPIOSTO.¹⁹ This way the oversight function will shift, at least partly, from the Ministry of Culture, to this music copyrights society. The collecting societies that are already in place, such as ZAMP, KOMIP and MMI should be transformed into organisations formed according to the Law on Citizen Associations and Foundations of the Republic of Macedonia.²⁰ They should not undergo the stringent

procedure of approval by the Ministry of Culture. Instead, the Ministry will give a work license only to this 'umbrella' music copyrights society. The Law should provide for a time frame of three years, after which the respective music copyrights society will have to satisfy all the requirements *de novo* for obtaining a work license from the Ministry of Culture. This way, the collecting society will heighten its standards of work, be more transparent and more agile in the protection of music copyrights of its members.

The professional member organisations will represent the interests of different music stakeholders, i.e., authors of music, performers and phonogram producers. Once established, they will be required to accede to the umbrella collecting society. The individual members of these organisations (authors of music, performers and phonogram producers) will accede to them on a voluntary, contractual basis. This will ensure the principle that the music copyrights holders retain the right to choose if they wanted all or some of their music copyrights to be collectively managed.

The 'umbrella' collecting society will perform numerous functions, including:

- 1 Render decisions by a simple majority rule of its member organisations, e.g., ZAMP, MMI and KOMIP. Licenses will be administered and remuneration will be collected for the use (e.g., public performance, broadcasting and mechanical reproduction rights in musical works, home taping royalties from the blank tape levy, reprographic reproduction right, etc.) of musical copyrighted works in accordance with the Law of Copyright and Related Rights and the bilateral agreements concluded with each member organisation. Each member organisation's share will be determined in negotiations conducted between the 'umbrella' society and the member organisation. Each organisation will be entitled to a certain number of votes depending on factors such as the number of members and the number of potential users of musical copyrighted works.
- 2 Adhere to well known standards for charging of royalties. The authors of music would receive a ten percent share in the revenue from the use of the musical copyrighted work. In the case of the performance of protected musical copyrights works, the percentage would be reduced in proportion to the performance time (*pro rata temporis* rule). If the music performance pertains to a ballet, the composer and the choreographer will share the ten percent royalty, each having a five percent (ballet rule). The scheme pertaining to royalties' distribution can be amended by a qualified majority of member organisations of the 'umbrella society' (Uchtenhagen, 2005).
- 3 Negotiate licenses and collect royalties on behalf of its member organisations representing music related rights holders (phonogram producers and performers). This will be done in accordance with the pertinent provisions of the Law on Copyright and Related Rights and the provisions of the bilateral agreements concluded with the respective member organisations.
- 4 Transfer the collected royalties to member organisations, which in turn will transfer them to their individual members.
- 5 Treat all music copyrights holders as equal – no preferential treatment or privilege will be allowed.

- 6 Oversee and mediate disputes between its member organisations. Administrative proceedings can be initiated with the Copyright and Related Rights Department within the Ministry of Culture if a member organisation breaches the bilateral agreement reached with the ‘umbrella’ society or if a musical copyrighted work user or its representative association does not honour the licensing contract. The Copyright and Related Rights Department within the Ministry of Culture for the purposes of the proceedings will form an ad hoc Copyright Tribunal made up of 3 impartial copyright experts. The procedure for the nomination of these copyright experts will be regulated by the Law on Copyright and Related Rights. The decision of the Department will be enforceable immediately, even though it will be a subject to a judicial review from the Administrative Court of the Republic of Macedonia.
- 7 Initiate judicial proceedings for protection of the interests of its member organisation(s), if necessary, upon a written request filed by the respective member organisation(s).
- 8 Function according to the principles of openness (e.g., licensing fees and remuneration paid to its member organisations would be available on its website), reliability and active participation (aim towards creation of collective management of music copyrights that will meet the challenges posed by digitalisation). The ‘umbrella’ society will establish a computerised system for administering music copyrights using a set of linked databases according to the common information system (CIS) model developed by CISAC. This type of management of information system pertaining to musical copyrighted works and their right-holders will assist the transactions’ automation, the process of license granting, and the process of monitoring. The system is based on allocation of a unique identification number that will follow the work throughout its lifetime. On the one hand, this will enable the ‘umbrella’ society to be cost effective, and on the other it will enable users find information more easily, to obtain the necessary authorisation and to pay the royalty fees.²¹

Therefore, the ‘umbrella’ society will function as a quasi-government organisation based on the powers conferred by the Ministry of Culture of the Republic of Macedonia. It will provide for a centralised system of administration of music copyrights in Macedonia.

3.2 *Possible concerns and criticisms*

The creation of a centralised system of collective management of music copyrights might encounter objections from the proponents of the current inefficient system of collective management of music copyrights. We presume that the strongest opposition to this proposal might come from ZAMP – an institution that is presently benefiting from its position as a *de facto* monopolist in collective management of music copyrights in Macedonia.

In general, concerns might be put forward in two forms:

- 1 Proponents of the old system might say that the new model is creating a centralised two tier structure that would be ‘cost inefficient’ because the collective management

functions will be ‘unnecessarily’ doubled with the establishment of both the ‘umbrella’ society and its member organisations. Why establish an ‘umbrella’ society when all its functions are already performed by ZAMP, KOMIP and MMI? We believe that this argument is refuted by taking an objective look at the Macedonian music market reality: the current collective management system of music copyrights is bureaucratic, chaotic, and inefficient. Those that are supposed to benefit most, i.e., authors of music, performers and phonogram producers, do not. They cry foul, complain, write newspaper and blog articles, establish non-governmental organisations, hoping that the official authorities in charge of music copyrights collective management will respond to their pleas; to no avail. By establishing the proposed centralised system, certain oversight functions from the Department of Copyright and Related Rights from the Ministry of Culture will be shifted to the ‘umbrella’ society. This Department is ineffective in its functioning, a fact confirmed by 90% of the respondents of our survey. On the other hand, the ‘umbrella’ society’s functioning will depend on its rate of success in collection and distribution of music copyrights royalties. This, coupled with the fact that its work license will be renewed every three years, should entice it to be as efficient as possible. The ‘umbrella’ society’s functioning will be shaped democratically by the voices of its member organisations, which in turn represent the legitimate interests of the individual music stakeholders. Presumably, this will negate any claims that the ‘umbrella’ society resembles ZAMP and that too much power will be accumulated in the hands of this institution.

- 2 Another set of arguments against the ‘umbrella’ society model might be put forward from the Ministry of Culture as an institution having substantial competencies in the field of collective management of music copyrights in Macedonia. The Ministry might argue that it is a time consuming process to draft and implement an amendment to the Law on Copyright and Related Rights. Indeed, this might be a legitimate concern, but only in the short term. Any static inefficiency that might be initially created would be replaced by the long term gains for the music stakeholders, whose rights will receive an adequate monetary value. In addition, the institutions of the system, e.g., the Copyright and Related Rights Department from the Ministry of Culture, will be able to focus their activities on other issues pertaining to music copyrights enforcement in Macedonia.

4 Conclusions

To paraphrase George Bernard Shaw, imagination is the beginning of creation; we imagine what we desire, we will what we imagine and at last we create what you will. The music authors in Macedonia get what they deserve. Complaining about the inefficiency of the current music copyrights collective management system in Macedonia will not make the problems disappear. Copying other countries’ ‘successful’ systems will not do the trick either. A new system needs to be devised, tailored to the own needs. In doing this Macedonia should rely on the successful models developed by others, but not blindly.

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Notes

- 1 This article uses the term 'music copyrights' as one encompassing both copyrights and related rights for several reasons. First, many of the problems faced by music copyright holders are faced by music related rights holders as well. Second, because of the size of the Macedonian music market, a single entity is often simultaneously the author of music, performer and phonogram producer.
- 2 The World Bank's main criterion for classifying economies is gross national income (GNI) per capita. See <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20420458~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html> (accessed 16 August 2012).

- 3 The former Yugoslav Republic of Macedonia (Macedonia) is a EU accession candidate country.
- 4 Macedonia is far from immune to these trends. For example, the Intellectual Property Strategy of the Republic of Macedonia 2009–2012 (http://www.wipo.int/wipolex/en/text.jsp?file_id=246018), a document prepared by the Ministry of Economy with the assistance of law professors, can hardly be called a strategy. The more appropriate term would be ‘declaration’ that consists of ‘copy-paste’ theories and models from the EU countries. For example, the strategy uses the term ‘knowledge economy’ (cf., EU Lisbon strategy) without any linkage and reference to the Macedonian reality – the composition of the Macedonian GDP does not refer at all to the group of creative goods.
- 5 For the purposes of this article, the following music copyrights market stakeholders are considered: (1) record labels – phonographic producers; (2) authors of music; and (3) performers. The phrase ‘music stakeholders’ is used interchangeably with the phrase ‘music copyrights holders’.
- 6 The Commission of the European Communities, Commission Staff working document, The Former Yugoslav Republic of Macedonia Progress Report, Brussels, 12.10.2011, SEC (2011) 1203 [online] http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf.
- 7 The Commission of the European Communities, Commission Staff working document, The Former Yugoslav Republic of Macedonia Progress Report, Brussels, 12.10.2011, SEC (2011) 1203, page 39: ‘However, counterfeit products continued to be sold on temporary stalls in the streets, markets and outlets. The trade in counterfeit medicines and fake products via the internet is not subject to criminal prosecution. There is still no reliable enforcement record. A methodology for collecting statistical data has yet to be developed. A system for exchanging data between the law enforcement institutions has yet to be established. Counterfeit channels remain untraced and little was done to tackle the ‘counterfeit pyramid’. A central body is needed in order to bring together the various institutions and authorities involved in enforcement related activities and to fully assess the current situation and develop a national strategy and action plan’.
- 8 Also see <http://www.creativeeconomy.com/john.htm>.
- 9 Definition of public goods in The Concise Encyclopedia of Economics [online] <http://www.econlib.org/library/Enc/PublicGoods.html> (accessed 16 August 2012).
- 10 One must distinguish between the copyrighted work (e.g., a novel) and the means of delivery (e.g., the book embodying the novel). The copyrighted work has characteristics of a public good, whilst the means of delivery is a private good from an economics point of view. The matter is further complicated because in the case of the music copyright market, the medium (e.g., CD as a means of delivery) embodies copyrighted works of the author of the music, the performer and the phonogram producer. All of these copyrighted works are under different music copyright regimes. They also have different value from an economic perspective. See WIPO, Guide on surveying the economic contribution of the copyright-based industries, at p.19.
- 11 As a microeconomic indicator, the average salary in Macedonia is € 490, one of the lowest in Europe, according to the Agency for Foreign Investments and Export Promotion of the Republic of Macedonia [online] <http://www.investinmacedonia.com/Default.aspx?item=menu&themeid=295&itemid=361> (accessed 12 February 2012). According to the World Bank Development report, 22% of the Macedonian population lives below the national poverty line [online] http://devdata.worldbank.org/AAG/mkd_aag.pdf (accessed 12 February 2012). As Marx said “empty stomach was not conducive to freedom”, cited in David Harvey, *A Brief History of Neoliberalism*, Oxford University Press (2007), p.184.
- 12 With the recent amendments to the Criminal Code of the Republic of Macedonia the fines and the prison terms for certain types of copyright and related rights infringements have been severely heightened and strengthened. See Articles 157 and 157 – c, Criminal Code (Official Gazette of RM No. 37/96, 80/99, 48/01, 04/02, 16/02, 43/03, 19/04, 40/04, 81/05, 50/06, 60/06 and 73/06).

- 13 Macedonia has 2,022,547 inhabitants [online] http://www.stat.gov.mk/pdf/kniga_13.pdf (accessed 16 August 2012).
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- 15 Law on Copyright and Related Rights (Official Gazette of RM No. 47/96, 03/98, 04/05 and 131/07), Article 159–181.
- 16 Хитовите не носат ни пет пари (Newspaper article: “Hits aren’t worth a penny”) [online] <http://www.dnevnik.com.mk/?itemID=7DBA7F868724C545B65AFA53C8A1C7D8> (accessed 5 December 2009).
- 17 Law on Copyright and Related Rights (Official Gazette of RM No. 47/96, 03/98, 04/05 and 131/07), Articles 159–181 and 182–197.
- 18 See also Decisions 71/2008-0-1 [online] <http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/5ee94a4d76e33f1dc125758d0026ef44?OpenDocument>, and 74/2007-0-0 and <http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/86af1f55ebb1ab45c12573f7003af05c?OpenDocument> (accessed 16 August 2012) of the Constitutional Court of the Republic of Macedonia. The website of ZAMP (<http://www.zamp.com.mk>) does not offer statistical data with respect to collected music copyright royalties. ZAMP calculates the distribution of music copyright royalties according to the duration of the performance, the broadcast or any other use of the musical copyrighted work. The composer gets 50% and the author of the text and the arranger 25% each.
- 19 See KOIPIOSTO, Copyright Society [online] http://www.kopiosto.fi/kopiosto/kopiosto/kopiosto_in_brief/en_GB/kopiosto_in_brief/_files/78046502629737066/default/Yleisesite_UK.pdf (accessed 16 August 2012).
- 20 <http://www.mlrc.org.mk/law/NGOLAW.htm> (accessed 16 August 2012).
- 21 *Id.*