



**REPUBLIC OF SERBIA  
PROTECTOR OF CITIZENS**

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Belgrade



Заштитник грађана  
Zaštitnik građana

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COURIER DELIVERY

NATIONAL ASSEMBLY

Dear Speaker of the National Assembly and MPs,

On the basis of Article 107, Paragraph 2 of the Constitution of the Republic of Serbia and Article 18, Paragraph 1 of the Law on the Protector of Citizens (LPoC), I hereby submit the **PROPOSAL** for amending the Law on Copyright and Related Rights (LCRR) (*Official Gazette of RS*, No. 104/2009).

PoC

Saša Janković

**PROPOSAL**

## LAW AMENDING THE LAW ON COPYRIGHT AND RELATED RIGHTS

## Article 1

Article 39 of the LCRR (*Official Gazette of RS*, No. 104/2009) shall be deleted.

## Article 2

This Law shall enter into force on the eighth day after its publication in the *Official Gazette of the Republic of Serbia*.

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## Explanation of the Proposal of the Law Amending the Law on Copyright and Related Rights

### I. CONSTITUTIONAL BASIS FOR ADOPTING THE LAW

The constitutional basis for adopting the Law Amending the LPoC is contained in Article 138 Paragraph 6 of the Constitution of the Republic of Serbia, according to which the law shall be adopted about the PoC (PoC), who according to Paragraph 6 of the same article protects the rights of citizens and controls the work of state administration authorities, authorities responsible for legal protection of property rights and interests of the Republic of Serbia, as well as other bodies and organizations, enterprises and institutions vested with public powers.

### II. EXPLANATIONS FOR ADOPTING THE LAW AND EXPLANATION OF INDIVIDUAL PROVISIONS

Article 39 Paragraph 1 of the LCRR (*Official Gazette of RS*, No. 104/2009) provides that "the authors of works, which in view of their nature, can be expected to be reproduced for personal non-commercial purposes on sound, picture and text carriers (works of literature, music, cinematographic works and similar), shall have the right to remuneration on the basis of import and/or sale of technical devices and empty sound, picture and text carriers, for which it can be justifiably assumed that they will be used for such reproduction".

The said provision of the Law introduces the remuneration paid by manufacturers and sellers of computer and technical equipment, and indirectly, through them, by the citizens of Serbia who buy and use such equipment, whereas the **Law finds the reason and basis for the introduction of remuneration in two presumptions - that these are the works of authorship that "can be expected to be reproduced" and that this is the equipment "for which it can be justifiably assumed that it will be used for such reproduction"**.

The PoC considers the provision of Article 39 of the Law harmful for the rights of citizens, because it requires from the citizens to pay remuneration for something that they will supposedly do with the equipment for which it is expected, also supposedly, to be used in order to fulfil the first assumption.

Further on, a "special remuneration" is paid for something that, in most cases, citizens will not use, although it does not protect or comply with the general interest (such as in the case of the collection of subscription fee for the Public Service Radio-Television of Serbia), but individual interest (which is realised through the organisations for collective protection of copyright - and which keep a significant portion of income for themselves). Such collection of charges will lead to irreversible adverse effects on natural persons and legal entities in Serbia (according to the LPoC the "citizens" are both natural persons and legal entities).

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There are no devices for recording sound, images and texts with such technical characteristics that would make them suitable only for recording the works of authorship, but they are designed for recording regardless of whether the record is an original intellectual creation of authorship or not.

The use of technical devices for recording onto the media, *inter alia*, sound and images, does not necessarily mean that, even if the equipment is used for recording sound and image, it will be used for reproducing the works of authorship, but these may be, and often are, other contents whose recording and using does not interfere in any way with other people's copyrights or related rights.

The real harm of such impermissibly broad assumption of citizens' intentions and charging of "special compensation" for the fulfillment of assumed intentions derives from the fact that a series of by-laws for the application of Article 39 have already been adopted, whereas one of the organisations for collective protection of copyright has included in its *Tariff for Using Performing Rights (PI) from the Repertoire Recorded on Commercial Sound Carriers (Phonogram), and Audio and Video Carriers (Videogram)* technical devices that are not even covered by previously adopted Decree (e.g. mobile phones, personal computers, hard disk)!

**The Decree on establishing the list of devices and items for which the remuneration shall be paid to copyright and related rights holders** (*Official Gazette of RS*, No. 45/2010), specifies technical equipment and items for which there is an obligation of paying special remuneration to copyright holders and related rights holders, as follows:

- Empty sound, image and text carriers (compact discs, digital video discs, high definition digital video disks, Blu-ray discs, mini discs, audio tapes, video tapes and USB Flash Drive) and
- Equipment for sound and visual recording, photocopying or other devices with similar copying technique (photocopy machines, CD burners as computer components, DVD burners as computer components, printers, scanners, digital video recorders, Blu-ray recorders, video recorders, digital jukeboxes, digital audio players, HI-FI CD recorders, Hi-Fi DVD recorders and Hi-Fi HD recorder).

**Tariffs charged by SOKOJ - Organisation for Music Copyright Protection** (*Official Gazette of RS*, Nos. 85/2007, 91/2008, 96/2008, 23/2009 and 29/2009) specify the amount of fees that SOKOJ charges the users of each form of exploitation of musical works from the SOKOJ repertoire.

- The sixth tariff class established a special compensation from the sale of technical devices which are suitable for reproduction of musical works, and empty sound or image carriers (audio tapes, video tapes, CDs, etc.) to be paid by producers, importers and retailers, as solidary payers.
- Compensation is paid monthly, or upon realised imports, in the amount of 1% of the retail price of any technical device that is suitable for reproduction of musical works, or any empty sound or image carriers.

*Tariffs for Using Performing Rights (PI<sup>1</sup>) from the Repertoire Recorded on Commercial Sound Carriers (Phonogram), and Audio and Video Carriers (Videogram) (Official Gazette of RS, No. 45/2010)* specify the amount of compensation for various uses of interpretations from the PI repertoire, consisting of all interpretations recorded on commercial phonograms and/or videograms and protected according to the LCRR, international conventions and authorship agreements with right holders, as well as the amount of special compensation for imports or sale of technical devices and sound and/or image carriers.

- Article 1 Paragraph 4 of the Tariffs provides that a separate fee shall be charged for import and sale of technical devices and sound and/or image carriers which are suitable for the reproduction of recorded interpretations for personal, non-commercial purpose
- Article 17b of the Tariffs determines the amount of special fees for various devices and sound/image carriers and stipulates that the special fee is paid exclusively as a lump sum, per each item of device or sound/image carrier.

Tariffs for Using PI from the Repertoire Recorded on Commercial Sound Carriers (Phonogram), and Audio and Video Carriers (Videogram) envisage also the payment of special fees for certain technical devices that are not specified in the Decree, such as mobile phones, personal computers, hard disk.

### III. OVERVIEW OF PROVISIONS THAT SHOULD BE AMENDED

#### Article 39

~~The authors of works, which in view of their nature, can be expected to be reproduced for personal non-commercial purposes on sound, picture and text carriers (works of literature, music, cinematographic works and similar), shall have the right to remuneration on the basis of import and/or sale of technical devices and sound, picture and text carriers, for which it can be justifiably assumed that they shall be used for such reproduction.~~

~~The remuneration from Paragraph 1 of this Article is paid by the producers of devices for sound or visual recording, producers of photocopying devices or other devices with the similar technology for multiplication, the producers of empty carriers of sound, picture and text, and in solidarity with them, the importers of devices for sound or visual recording, photocopying devices or other devices with the similar technology for reproduction and empty carriers of sound, picture or text, with the exception of the import of small amounts intended for the private and non-commercial use, as part of personal luggage.~~

~~If the devices and items from Paragraph 1 of this Article are not produced in the Republic of Serbia, the remuneration shall be paid by the importer.~~

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<sup>1</sup> PI is the short name for the Organisation for Collective Administration of Performing Rights.

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The obligation for the payment of remuneration referred to in Paragraph 1 of this Article exists:

- 1) at the first sale in the Republic of Serbia or import in the Republic of Serbia of new devices for sound or visual recording;
- 2) at the first sale in the Republic of Serbia or import in the Republic of Serbia, of empty carriers of sound, picture and text;
- 3) at the first sale in the Republic of Serbia or import in the Republic of Serbia, of new devices for photocopying or other devices with the similar copying technology.

In the case of copying works protected by copyright by photocopying or similar technology, apart from the right to remuneration referred to in Paragraph 1 of this Article, the author has the right to remuneration from the legal entity or natural person providing commercial services of photocopying.

Entities/persons referred to in Paragraph 2 of this Article do not pay remuneration for:

- 1) technical devices and empty carriers of sound, picture and text if they are intended for export,
- 2) technical devices which are usually not used for copying works for personal non-commercial purposes (for example, studio equipment and devices, dictaphone, and similar),
- 3) empty carriers of sound, picture and text applicable exclusively with technical devices referred to in item 2 of this Paragraph.

Entities/persons referred to in Paragraphs 2 and 5 of this Article have an obligation, at the request of the organizations for collective management of copyright and related rights, to provide the information on the type and number of sold or imported devices or carriers of sound, picture and text, as well as information on the number of photocopies made, as the ground for the calculation of compensation. Information obtained in such a way can be used by the organization only for the calculation of the remuneration and must not be used for any other purposes.

Remuneration referred to in Paragraphs 1 and 5 of this Article must be fair compensation and in determination its amount it must be taken into account the probable damage suffered by the author when his/her work is copied without his/her permission for personal non-commercial use, the application of technical measures of protection and other circumstances that can influence the correct calculation of the amount of this special remuneration.

The authors may realise their right to remuneration referred to in Paragraphs 1 and 5 of this Article only through the organizations for collective management of copyright and related rights.

At the proposal of the state administration bodies responsible for the intellectual property matters (henceforward: competent body), with the previously obtained opinion of the state administration bodies responsible for the development of

~~information society, the Government shall establish the list of technical devices and objects for which there is an obligation of payment of special remuneration under the conditions referred to in Paragraphs 1 to 9 of this Article.~~

#### **IV. FUNDS FOR IMPLEMENTATION OF THE LAW**

No funds are required for the implementation of this Law.

#### **PROTECTOR OF CITIZENS**

Saša Janković