

REPORT
on
„Sine qua non” d.o.o.
Agency for the representation and protection of copyright Sarajevo
for the period 2005 – 2010

I. Legal Basis

The Institute of Standards, Metrology, and Intellectual Property of Bosnia and Herzegovina (predecessor of the Institute for Intellectual Property of B&H) granted, by the Decision No. IP-5694/02-01SŽ of 04/06/2002, to Sine qua non, Company providing intellectual services – Agency for the representation and protection of copyright Sarajevo, the authorization for carrying out the activity of the management of copyright on the basis of the power of attorney granted by authors, authors' associations or other right holders, management of performers' rights on the basis of the power of attorney granted by performers, performers' associations or other holders of performers' rights (hereinafter: Sine qua non).

„Sine qua non” is registered in the Company Register maintained by the Cantonal Court in Sarajevo by the Decision No. UF/I3234/97 of 06/11/1997.

The founder and owner of Sine qua non is Amela Hadrović-Hasanefendić, and the director is Mirza Hajrić.

II. Statute and organization

According to the Statute, „Sine qua non” has the following bodies: Board of Directors, Advisory Board, Legal Group, and Consultancy Board.

The Board of Directors is a collegial management body of „Sine qua non“, and its members are appointed by the founder among eminent B&H experts. The Chair of the Board is the founder of „Sine qua non“.

According to the Statute, the aims of the company „Sine qua non” are representation and protection of copyright in the acountry and abroad.

In the report submitted upon invitation of the Institute for Intellectual Property B&H, it is specified that in the database of authors there are 6.910 works of 473 authors, and that „Sine qua non” concluded 50 reciprocal contracts with foreign organizations covering more than 150 countries.

III. Property acquisition and manegement

The property/assets of „Sine qua non” includes tangible and intangible property, property rights, and cash for financing business activity. The company generates the funds necessary for its operation by consultancy service providing, representation, protection, and management of copyright and related rights, and from other sources in accordance with law. The company secures its liabilities by its entire property.

IV. Association „Sine qua non” and its relation with the company „Sine qua non”

The association for the collective management of copyright and related rights „Sine qua non“ was set up under the same name on the basis of the Decision on setting up made at the Founding Assembly held on 16/02/2005 in Sarajevo. The founders of the Association are three legal entities:

- 1) Company „Sine qua non” d.o.o. Sarajevo,
- 2) AMUS – Association of composers-music creators Sarajevo,
- 3) Association of actors Sarajevo.

The association „Sine qua non“ is registered in the Register of Associations maintained by the Ministry of Justice of B&H on 17/07/2006. The aims of the Association „Sine qua non“ are: collective management and protection of copyright and related rights in the country and abroad, improvement of collective management of copyright and related rights in B&H in accordance with the laws of B&H and international instruments and standards, cooperation with other associations and organizations for the collective management of copyright and related rights, encouraging and development of professional and collegial relations among the members of the association, providing professional support to the members of the association in the management of their rights, activities that are in accordance with B&H laws which are directly related to the fulfillment of aims and objectives.

Note: The association „Sine qua non“ Sarajevo, entered in the Register of Associations of the Ministry of Justice of B&H, **has not been granted the authorization** for the collective management of rights by the Institute for Intellectual Property of B&H.

V. Operating Report for the Period 2005 – 2010

Within its responsibility for supervising the work of collective organizations, the Institute for Intellectual Property of B&H requested the company Sine qua non to produce the work report for the period 2005-2010, and instructed it to furnish:

- information on the right/rights it manages;
- copies of powers of attorney granted by authors and authors' associations to the company for the management of their rights;
- copies of contracts concluded with users per year;
- income derived from users from B&H per year;
- income derived abroad on the basis of contracts on reciprocal representation;
- amounts distributed to authors and related right holders per year;
- amounts distributed to the authors from other countries through foreign collective organizations;
- operating expenses per year;
- operating plans per year;
- decisions of the responsible body of the company on the adoption of operating plans per year;
- financial reports per year adopted by the responsible body;
- audit reports along with the assessment of the licensed auditor of the correctness of company operations and harmonization with laws, company's acts, and contracts concluded with third parties per year;
- copies of judicial and administrative decisions involving the company as a party to proceedings.

The report was received on 24/02/2011. Along with the report the following documents were furnished: copies of powers of attorney granted to Sine qua non for the management of rights, copies of contracts with users per year, operating plans per year, decisions made by the bodies of Sine qua non on the adoption of operating plans per year, financial reports adopted by the responsible body per year, decisions of the company bodies concerning the adoption of financial reports per year, audit reports per year, copies of judicial and administrative decisions involving the company as a party.

The Institute requested „Sine qua non“ on 24/10/2011 to amend the report by the information on outstanding receivables (per year and total) and information to whom the balance/difference between revenue, operating expenses, and distributed funds was remitted.

„Sine qua non“ submitted to the Institute, on 28/10/2011, the amended version of the report, indicating that the **difference of 597.977,70 KM** remained on the company transaction account and it belongs to foreign authors whose works were used within the territory of B&H. It was highlighted that the difference **had not been remitted to anyone**, but that such information could not be provided.

In order to make a full analysis of the operation of Sine qua non, the Institute requested the users to provide information on the amounts of remuneration paid for the use of works of authorship and subject matters of related rights for the period 2005-2010.

The requested information was provided by 28 users (radio and TV stations). According to the information provided, the amount of **KM 857.282,60** was remitted to Sine qua non within the reporting period. Taking into account that the information provided by users is not complete, it was not possible to make comparison with the information provided by Sine qua non, so that the report included only the information provided by Sine qua non.

VI. Financial transactions

According to the report, the following is income and expenditure account of Sine qua non in the period 2005-2010:

- income generated in B&H was **KM 7.829.275,89**, operating expenses amounted to **KM 1.585.161,95 KM**, and right holders were distributed the total of **KM 5.793. 334,64**,
- income generated from other countries on the basis of contracts on reciprocal representation amounted to **KM 147.198,43**,
- authors from other countries were distributed **KM 1.948.663,57** through foreign collective organizations without the information per year;

Table 1. Financial operation of the company „Sine qua non”

COLECTIVE ORGANIZATION	YEAR	OUTSTANDING RECEIVABLES	REVENUE	OPERATING EXPENSES	%	DISTRIBUTED FUNDS	%	BALANCE (INCOME - EXPENDITURE)
„Sine qua non” d.o.o. Sarajevo	2005.	145.065,20	338.803,35	68.017,69	20%	297.675,79	88%	-26,89
	2006.	111.944,20	684.879,18	136.311,69	20%	292.531,25	43%	256.036,24
	2007.	111.947,00	1.309.998,99	262.737,59	20%	626.583,75	48%	420.677,65
	2008.	109.879,40	2.030.585,94	407.303,76	20%	1.163.685,15	57%	459.597,03
	2009.	336.595,50	1.487.922,25	312.895,21	21%	1.560.821,04	105%	-385.794,00
	2010.	381.187,17	1.977.086,18	397.896,01	19%	1.852.037,66	94%	-254.883,49
	Total	1.196.618,47	7.829.275,89	1.585.161,95	20%	5.793.334,64	74%	450.779,30

Income generated by means of judicial decisions

Sine qua non reported outstanding receivables on the basis of final judicial decisions in the amount of **KM 625.526,85**, judicial settlements in the amount of **KM 2.718.898,25**, and judgments nisi in the amount of **KM 160.924,03**, totalling to **KM 3.505.349.13**.

Table 2. Income generated by means of judicial decisions

COLLECTIVE ORGANIZATION	YEAR	FINAL JUDGMENTS	JUDICIAL SETTLEMENTS	JUDGMENTS NISI
„Sine qua non” d.o.o. Sarajevo	2005.	23.175,00	939.618,32	0,00
	2006.	35.168,37	0,00	0,00
	2007.	89.674,48	6.149,93	13.500,00
	2008.	253.894,29	163.688,25	0,00
	2009.	130.979,27	1.548.813,58	43.026,08
	2010.	92.635,44	60.628,17	104.397,95
	Total	625.526,85	2.718.898,25	160.924,03

Calculation and distribution of remunerations (tariff)

Sine qua non does the calculation and distribution of remunerations to national and foreign authors on the basis of the Regulations concerning remuneration rates for public performance and communication to the public of music works, and remuneration rates for the use of musical performance materials with the tariff of minimum remunerations **enacted by the Board of Directors of the Association of Composers and Music Creators (AMUS) on 02/07/2002**.

VII. Remuneration for the use of works of authorship by users in B&H

Some users (Radio Kalman, Radio Uno, RTV Tešanj, RTV Q) have many objections to the work of the company Sine qua non and the way it treats the users of their services. They state that the company Sine qua non incorrectly treated the majority of electronic media, that it threatened the users by saying that if they do not sign the contract, they will not be granted long-term licenses by Regulatory Communication Agency, that it has not accepted any PEM (Electronic Media Association) proposal, threatening/explaining that it can realize its contracts through judiciary proceedings. They also state that, despite a number of requests, the company Sine qua non has never provided the list of authors it represents, information on the amount of money it collected and the manner of distribution, and information on authors who received royalties and amount of royalties.

All the users (electronic media) share the opinion that they have to pay for the use of works of authorship, but they also think that tariffs need to be determined by means of negotiations between the representative association of users and a collective organization and in accordance with the new law provisions regulating the field of copyright and related rights in Bosnia and Herzegovina.

Conclusion

The following has been established by the analysis of the information received from the company Sine qua non:

1. The legal entity authorized by the Institute for the collective management of copyright and related rights is the company „**Sine qua non**“ **d.o.o. Sarajevo**. The association Sine qua non, established in 2006, has never filed with the Institute an application for the grant of authorization for the collective management of copyright and related rights.
2. According to the information received, Sine qua non carried out all the activities in the field of collective management of copyright and related rights as a profit entity also engaged in other business activities. Concerning the fact that it refers to some decisions of the association in its reports, and that the company Sine qua non is one of the three founders of the association Sine qua non (AMUS, Association of Actors Sarajevo, and the company Sine qua non d.o.o.), it is not clearly outlined in documents which entity or body made decisions concerning the collective management of copyright and related rights. For illustration, decisions on adoption of the operating plan from 2005 to 2010 were made by the Assembly of the company Sine qua non d.o.o., although, according to the company Statute, such body does not exist.
3. The income generated in B&H, as specified in the report, amounted to KM 7.829.275,89, and the income generated abroad amounted to **KM 147.198,43**, or generated revenue amounted to **KM 7.976.474,32** on one side, and on the other, the reported operating expenses amounted to **KM 1.585.161,95** (or 20% in relation to revenue). The funds distributed to right holders in B&H and abroad totalled to **KM 7.741.998,21** (in B&H **KM 5.793.334,64** were distributed, and **KM 1.948.663,57** were distributed abroad). It arises from the aforesaid that **97%** funds were distributed. The manner of covering operating expenses and distribution to right holders is not clear, because there is a difference of **KM 1.350.685,84** between income and expenditure (operating expenses and distribution of funds to right holders are larger than revenue generated in the reporting period). The report as amended on 28/10/2011 does not prove the said difference, and it does not provide information on the persons to whom the difference of said funds was remitted.
4. There is a disproportion between the funds collected through courts on the basis of final judiciary decisions and judiciary settlements and the total generated funds per year (e.g. reported income

generated on the basis of judiciary decisions and settlements in 2009 was **KM 1.679.792,85**, and revenue generated in 2009 was **KM 1.487.922,25**.

5. Taking into consideration that the purpose of collective management of copyright and related rights is collection of funds for the account of right holders and that, according to international practice, the expenditure of the organization must not exceed 20-30% of its revenue, the company Sine qua non keeps within limits, according to its information. However, the company Sine qua non is an economic subject performing various activities, and it is not possible to check the data related to income and expenditure on the basis of collective management of copyright and related rights, specified in the attached balanced sheet/income statement, and separate them from the income generated on other bases. The documents that would enable the check of accuracy of the data on collected and distributed funds for the use of works of authorship have not been furnished.
6. When appraising the performance of Sine qua non d.o.o. Sarajevo, it should be taken into account that the reporting period covers the period of application of the Law on Copyright and Related Rights of 2002 (the old Law) that regulated the collective management of copyright and related rights only in rudimentary way. As the Law on Collective Management of Copyright and Related Rights, which entered into force in 2010, precisely regulates this matter in accordance with the standards of comparative law, it needs to be noted that the work of Sine qua non d.o.o. in such manner is impossible to continue, because it does not meet the standards of transparency and democratic approach to the work of the collective organization, the manner of distribution of revenue, and efficiency in fulfilling the aims and objectives regulated by law.

[End of Report]