

# Kluwer Copyright Blog

## Poland: Collecting Societies – New Regulations on Tariffs

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It is a cliché that collecting societies play a significant role in shaping the practice of copyright contracts, however the fact that it is a cliché does not make it less true. Therefore, legal rules concerning collecting societies are of huge interest for copyright lawyers, especially when they are new and offer an uncharted territory of opportunities. Polish copyright law has been based on the assumption that tariffs and contracts of collecting societies should not be subject solely to forces of competition and free market, but require a more detailed regulation. One of the characteristics of the Polish system has been a regulation of tariffs applied by collecting societies. Such tariffs had to be approved by a special body – the Copyright Law Commission. Since the so-called users had little say in these proceedings the Constitutional Tribunal found the previous rules contrary to the Constitution, which has prompted the legislator to prepare a new regulation. It has come into force on October 21, 2010, but practically it could not work at once, since it also relies to a great extent on the existence of a specialised body, i.e. The Copyright Law Commission (the name has remained the same). The Commission was created on December 21, 2010. It consists of 30 arbitrators, 15 of which have been designated by collecting societies and associations of authors, performers and producers and 15 by societies of ‘users’, i.e. entities using in their professional activities copyright works and the subject-matter of neighbouring rights, including broadcasters. The body convened for the first time on January 5, 2011 and on January 18, 2011 the chairman of the Commission was selected in the person of Prof. Ryszard Markiewicz. The institutional framework is thus ready and the Commission may commence its operations.

It is beyond description how many theoretical and practical problems the new regulations may bring. Here I will focus only on the basics, i.e. how the collecting societies are supposed to set their tariffs. The Copyright Law Commission has also other functions: apart from authorising tariffs it *inter alia* decides disputes concerning tariffs and disputes concerning contracts between collecting societies and cable operators.

The new legislation makes tariffs obligatory in a certain category of cases. Collecting societies have an obligation to submit to the Copyright Law Commission tariffs applied to:

- Radio and TV broadcasters
- Use in Internet (right of communication to the public in a place and at the time chosen by the user)
- Cable retransmission
- Additional remuneration for co-authors of audiovisual works and performing artists
- The field of exploitation “communication” (i.e. when works are communicated to the public via

sound, image or combined sound and image carriers, or by way of using devices intended for receiving a radio or television broadcasts)

The Copyright Law Commission may approve the submitted tariffs in whole or in part or may decline to do so. It cannot change the tariffs, however if it declines to approve a tariff, it must provide a proposal of amendments and give grounds for its decision. Decisions are taken in proceedings to which provisions of the code of civil procedure apply accordingly. Apart from the applicant, also other collecting societies with overlaying scope of activities and organisations of entities using copyright works on the fields of exploitation to which the submitted tariffs apply, may participate in the proceedings. The proceedings should be concluded within 6 months.

When deciding whether to authorise a tariff the Copyright Law Commission should take into account, among other factors, also the overall amount of remuneration for use of copyright works due to all collecting societies on a given field of exploitation. This makes an explicit connection between tariffs submitted by different collecting societies and although the idea seems to be correct, its practical implementation may prove particularly tricky.

Any party may appeal the decision of the Commission to the court. The court may however either approve the tariff, or refuse to approve it. It may not make any amendments on its own.

Some fear that the fact that there may be no changes in the tariffs (neither before the Commission, nor before the court) could practically mean that no tariffs will be approved and since, unlike previous proposals, the adopted regulation does not provide for any provisional solutions, this may suit some of the parties, for example collecting societies who do not want to be bound by any restrictions as to their pricing policies. What one has to know is that the approved tariff must be applied in contracts concluded by collecting societies. If other, lower, prices are agreed, they will be supplemented by prices resulting from the approved tariffs. This means that tariffs actually only define the minimal price, and to have such an elaborate system of their approval could be an overkill. As is customary with new legislation, it may still keep some surprises in store, and when they come, they will be reported here.

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This entry was posted on Wednesday, March 16th, 2011 at 9:36 am and is filed under [Collective management](#), [Legislative process](#), [Poland](#), [Remuneration \(equitable\)](#)

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