



# Russian IP Court rules out collection of authors' royalties for music in US movies

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**T**he Russian Authors' Society (the Society) is a Russian organization accredited for managing rights of authors and other rightholders. It is the largest Russian collective management organization by amount of collected royalties and has the right to represent rightholders even in the absence of a contract with them and collect royalties for the performance of works, including music, on their behalf. The total amount of royalties collected by the Society in 2017 exceeded US \$ 83 mln. In accordance with Russian law, the author of a musical work has the right to be remunerated for the public performance, translation or retranslation of his(her) work even as a part of audiovisual works. On the basis of this provision, the Society successfully claims from cinemas in Russia the payment of royalties for music in motion pictures. Cinemas consider this

practice unfair as they already pay for the performance of the movies and copyright to films distributor. Legislation adopted in 1994 sets a royalty rate of 3% of the cinema revenues for music content, but the Society collects a 1.2% rate only from cinemas who have concluded contracts with it. As a rule, the Russian Courts grant the payment of royalties to the Society, so many cinema owners prefer to sign an agreement with the Society to pay lower royalties.

In January 2018, the Society filed with a Russian Commercial Court a claim against the owner of a cinema in Ekaterinburg. The Society was claiming the payment of authors' royalty in a total amount of about US \$ 5 600 for the music played in movies shown in the cinema in 2015, including films of US producers. There was no surprise that the Commercial Court of Ekaterinburg granted the Society's claim.



However, the Court of Appeal reversed the decision of first instance and rejected the claim, holding that the Society has the right to claim royalties on behalf of specified authors of music, but did not provide a list of performed music, which made it impossible to identify the names of all authors and the royalties owed. The Court considered that the claim by the Society of a total sum of royalties to be later distributed between unidentified authors could not be upheld. The Court also held that the authors of music have the right to claim the royalties in their own name (*sui juris*).

The Court of Appeal further noted that since the authors were US citizens, the provision of Russian law envisaging payment of royalties to authors was not applicable, as their national law does not provide for such special right (see below).

The decision of the Court of Appeal was reviewed by the IP Court (as cassation instance), which upheld the previous ruling by a decision of July 26, 2019.

The Cassation Court agreed with the appellate decision and pointed out that the Society could file a claim for royalties for authors, but not without stating the full list of names of authors and their musical works, with the calculation of the exact sums to be paid to each of them. In the view of the Court, the absence of this information can cause prejudice to the rights of other authors of music featuring in the listed films but not listed in the case. The Cassation Court thus held that the claim could not be granted due to the ambiguity of the cause of action.

Further, the Cassation Court held that the Court of Appeal was correctly referring to the law of the country of origin of the work to determine the author of the musical work. The author should, therefore, be identified on the basis of US law, not Russian law providing that the author of the work is the person who

created it. The US Copyright Act of 1976 provides instead that the employer is considered the author and the owner of the copyright in the work created for hire, unless agreed otherwise.

The evidence provided by the defendant, i.e. information from the United States Copyright Office, showed that the producers were legally the authors and copyright owners of the music in their motion pictures. The Court stated that the information from Que Sheet Reports and IPI and WID information systems provided by the plaintiff did not override the information from the US Copyright Office and did not prove that the listed natural persons held the capacity of authors.

The Court concluded that in accordance with US law, the producers hold the capacity of authors of the music, not the persons having created it, while Russian law provides the right for authors' royalty only for authors who are natural persons, not legal entities. So, authors' royalties are not payable for the music in movies produced by US producers.

This decision could be at the source of a new approach to collecting authors' royalties in Russia, leaving the composers of music created for movies of US producers outside the scope of the Society's collection of authors' royalties under Russian law.

The Society has the right to file an appeal of law to the Supreme Court of the Russian Federation within 2 months. In accordance with comments from the Society, it is likely to do so, and it will be interesting to see what the final say of the Supreme Court will be.



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