



United Nations Educational, Scientific and Cultural Organization
Organisation des Nations Unies pour l'éducation, la science et la culture

GUIDE TO THE COLLECTIVE ADMINISTRATION
OF AUTHORS' RIGHTS

(The Administration Society at the Service of Authors and Users)

PAULA SCHEPENS

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Guide to the Administration of the Collective Copyright

PREFACE

The collective administration of authors' rights is generally intended to facilitate the effective execution of these rights by the authors themselves and to favour the lawful exploitation of works and cultural productions. It is seen in modern society as one of the most appropriate means of assuring respect for exploited works and a fair remuneration for creative effort of cultural wealth, while permitting rapid access by the public to a constantly enriched living culture.

The industrialized countries have used it widely, particularly in the field of music, and the developing countries, and those in transition to a market economy, are attaching more and more importance to its establishment and promotion.

UNESCO has regularly encouraged the Member States, notably the developing countries, to organize and develop the collective administration of rights by authors and other rights holders as an essential element in the construction of a modern national system of protection of copyright which would effectively promote a dynamic cultural development.

UNESCO assistance has borne particularly on the creation of structures adapted to the administration of rights, the training of professional personnel and the provision of expertise leading to a competent organization of the various technical activities related to the administration of rights. The training of specialists was a regular activity undertaken in cooperation with the International Confederation of Societies of Authors and Composers (CISAC) whose vocation is to promote the sure and efficient administration of the rights of all authors worldwide and the lawful widespread, distribution of intellectual works.

The purpose of the Guide is to provide this assistance on a continuous basis. In order to effectively assume its role of endogenous support for the continuous creation of intellectual works, and as a dynamic factor in the promotion of cultural exchanges between nations, collective administration must be developed throughout the world.

The Guide aims at contributing to the improvement of the technical administration of rights while throwing light on the relations between the different public services and other social partners in the domain of cultural development.

It provides useful information for members of statutory organs and professional administrators of young authors' societies on the conditions which favour the statutory creation of authors' societies, according to the type of rights to be administered and the realities of local cultural activity. It explains to the technicians the mechanisms for organizing different types of activities for the collection, documentation, distribution, administrative and accounting management of the technical means of achieving them. To this effect, it can serve as a useful tool for officials who have received training during a practical internship abroad and who wish to consolidate and improve the knowledge they have acquired with a view to becoming a resource person in services dealing with the improvement of local structures of collective administration. The Guide also recalls the norms of sound administration which assure collective administration, consideration and respect for authors, the users of works, public authorities and the public in general.

The Guide also resumes the political, cultural, economic and social functions of collective administration and its role in cultural development. In this regard, it opportunely provides inspiration with regard to public administration policies on the legal framework of this activity and the setting of rules for the supervision and control of the different functioning mechanisms of the administration of rights.

The cooperative character of the auto-administration of rights by authors and its non lucrative aim are given prominence and are elements which recall the need to avoid recourse to anti-thrust legislation and the usual rules of competition which can mainly pointlessly hinder the efficient functioning of this undertaking of general interest.

Supervision by the public administrations of the efficient functioning of the statutory organs and the application of the rules governing strong administration would appear necessary and essential to assure the success of collective administration. It requires precise organization and must be carried out with continuity and objectivity with strict respect for statutory competence.

The Guide opportunely provides information on the conditions for communicating protected works to the public. The producers and disseminators of cultural goods and services are informed on the conditions for the lawful exploitation of protected works. Close cooperation with the services of collective administration would appear to be a useful and effective means to reinforce the security of their investment against piracy in addition to the effective protection of their own rights when they become the legitimate owners of the administered rights.

The public in general can appreciate the work of precision and the persevering effort which collective administration accomplishes on a permanent basis so that the remuneration paid by users in return for the lawful use of protected works is received by authors and other rights holders, thus enabling them to continue to provide society with the necessary cultural goods and services.

The Guide was drafted by Ms Paula Schepens (Belgium) on the basis of a plan prepared by the UNESCO Secretariat, in a pedagogical style aimed at rendering this somewhat technical subject matter accessible to technicians and to the public at large.

The technical aspects of the problem are reflected in ten annexes designed in accordance with the development of the text. These annexes represent the principal basic documents which every structure of collective administration should regularly use or produce.

It is hoped that with a wide distribution, this Guide will help, in particular the developing countries and the countries in transition towards a market economy, to organize their system of collective administration of copyright with the required performance. It will thus contribute to developing a network of collective administration world wide, promoting solidarity and cooperation between authors. It is in this spirit of solidarity as well as the technical mastery of the mechanics of accomplishing this aim that collective administration can play its full role as a useful tool for the continuous promotion of the creation and dissemination of intellectual works and as an effective means of securing and promoting cultural exchanges between nations.

Salah Abada
Director
Creativity and Copyright Section

**CHAPTER I: THE ROLE OF COLLECTIVE
ADMINISTRATION**

Introduction

When the UN decided to adopt a solemn declaration enshrining the rights that were considered essential and fundamental to the human condition, authors' rights were included. The Universal Declaration of Human Rights of 10 December 1948 provides in its Article 27.2: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author".

Consequently, authors' rights have become fundamental rights which States throughout the world are required to grant and promote.

This requirement of the legal protection of creators is an idea of modern times. Copyright originated in the 18th century. Before then artists were supposed to have no need for such protection. Their talent was at the service, not of men, but of the crown: the divine powers and their representatives on earth. However, with the invention of printing and especially the development of trade, art became a commodity and artists had to find their place in this new world.

The disappearance of patrons changed the position of writers, composers, painters and sculptors radically. Authors had to claim a status as workers - and rights in their works as objects of trade. At the material level, they had to find the means of slaking their thirst and appeasing their hunger. Nature will have it that men must eat 365 days a year!

Authors have always felt a certain nostalgia for an age when talent did not have a price. For them, the value of their art is incalculable: it is absolute. Yet their art certainly does have a value for traders: the publisher, the concert promoter, the producer, the art dealer! Authors understood that they could not face all the problems arising from the exploitation of their works alone, on an individual basis. They chose representatives. The way towards collective administration was opened up.

I.1. LEGISLATION

As intellectual works are intangible, authors' rights must be given concrete form in laws which make them effective against all persons. Since they are neither palpable objects nor services rendered by a visible person, it appears difficult to place these rights in relation to other branches of law.

Authors' rights have some features in common with other intellectual rights, such as those relating to trademarks, patents and inventions. However, they retain some very specific characteristics, the principal one of which is that no formalities are required in order to be able to exercise them.

The terms and conditions to which authors will subject their permission will secure them some revenue. There are similarities between this revenue and salaries. Authors' rights could thus be classified under labour law. But authors lack one of the fundamental prerogatives of other workers: the right to strike! The only weapon they have at their disposal is an absolute, discretionary right to authorize or to prohibit the use of their works. This prerogative can be assimilated to a proprietary right.

However, the framework within which the protection lies does not matter; the important thing is that it exists and that it is enshrined in texts which have force of law.

A modern law must meet the needs of traditional works and those born of the marriage between imagination and technology. There is no point in the law protecting the interests of authors if its application is limited to nationals and stops at the border – because works cross borders. A network of international conventions thus needed to be established.

Two major international copyright treaties exist: the Berne Convention¹ and the Universal Copyright Convention² (Geneva). These have been supplemented by the TRIPS Agreement³, which places the accent rather more on the economic aspect of authors' rights, and the new WIPO copyright and neighbouring rights treaties of December 1996, which adapt the protection of rights to the digital environment.

These conventions are all based on the principle of the assimilation of foreigners to nationals.

Moral rights and **economic rights** are the two pillars of the protection of authors.

The author-creator does not want to cut the umbilical cord which attaches him to his creation. He is its father and he wants everyone to know and respect this. By virtue of his moral rights, he wants to be able to control the paternity of his work and guard against any misappropriation of it or any alteration that is contrary to his initial intentions.

Apart from this moral aspect of the protection, copyright laws secure authors the possibility of reaping the fruit of their intellectual effort. No use of their works, whether by means of the process of reproduction or by communication to the public, is conceivable without their consent. This is the general rule which admits only those exceptions that are expressly provided for in the law on a limitative basis.

Copyright law must secure a fair balance between the interests of the community (the public), which is entitled to information, education and training in order to develop its intellectual capacities to the full, and the personal interests of creators. The author needs his audience; he needs to be heard, to be understood. The public, in its turn, needs those who have been favoured by nature and have that little something extra called talent which enables them to create a work that is capable of moving, of captivating the spirit and of broadening its vision of the world.

Authors cannot isolate themselves. They must live in the community from which they draw their inspiration. They will dip into the culture left by their ancestors. They will give back to the world what they took from it after they have added the stamp of their own

¹ Berne Convention For the Protection of Literary and Artistics Works of September 9, 1886, revised, administrated by WIPO.

² Universal Copyright Convention adopted on September 6, 1952, and revised at Paris on 24 July, 1971, administrated by UNESCO.

³ Agreement on Trade-Related Aspects of Intellectual Property Rights, appended to the Treaty of Marrakesh of 15 April 1994 creating the World Trade Organization (WTO).

personalities. There is interaction. That is why there must be limits to their absolute power.

In order to preserve this balance, their exclusive right will be converted into a simple right to remuneration in certain cases.

I.2. EXERCISE OF RIGHTS

The rights that are granted to the author in legislative texts may be exercised **by the author** personally, **by an agent** or **by the author's administration society**.

In practice, authors will rarely exercise the rights they hold. However, they will always do so themselves when their moral rights are at issue and on the occasion of the very first presentation of their works to the public, thus exercising, moreover, their moral right of disclosure.

The writer will negotiate personally with the publisher of his novel or his poetry.

The composer will do the same for the publication of his score or, if the music is not published in graphic form, for the production of a sound recording.

The dramatist will be in contact with the director of the theatre in which the first performance of his play is going to be given.

The screenwriter will engage in discussions with the director and producer of the audiovisual work, whether a cinematographic film or a television production, in order to fix the rules relating to the use of his screenplay.

The painter or sculptor will choose the gallery in which the first exhibition of his paintings or sculptures will be held and will agree on the conditions under which this communication to the public will take place.

The author will see to it personally that the first confrontation with his audience, which is capital for his reputation, materializes in the most auspicious manner. The relationship with this first user of his work is and must be one of trust. The contract determining the conditions under which the work will be exploited is concluded in the light of the person whom the author is dealing with. The author will sign a contract with that person and not with anybody.

After its first publication, the author will lose interest to some extent in the future of his work. Already another creation will be maturing! The author will place the management of the work's future use in the hands of an intermediary, an agent who will negotiate in his place and on his behalf, consulting him if any decisions of a serious nature or fraught with consequences have to be taken.

Indeed, authors are generally disinclined to conduct largely or purely commercial transactions. When they were born, the fairy that endowed them with creative talent perhaps deprived them of even the most basic inclination for business. Imagination and managing one's affairs do not get on well together!

This intermediary will sometimes be the first user of the work. Like the author, he will be keen to ensure that the work in which he has invested part of his fortune is disseminated as widely as possible. Whenever new technology creates the opportunity to use a pre-

existing work for another form of exploitation, the author should be paid for the intellectual effort he provided and the intermediary for the capital he invested. In the course of the last few decades, these intermediaries have been granted recognition of their neighbouring rights nationally and internationally.

That is why it would be ambiguous and risky for the author to place the administration of his rights in the hands of an agent who has become a rightholder in his turn. The latter would then hold all the rights, his own and those assigned to him by the author. This might create confusion in people's minds and would throw the door open to abuse caused by the ever-growing appetites of dominant industries.

Everyone is aware of the unenviable position of many creators in countries where the "buy-out" system prevails and only successful authors manage to obtain attractive fees. A number of comparative studies show clearly that the average author will lose considerable earnings if he assigns all his rights at the outset subject to payment of a lump sum which, though not necessarily representing the legendary peanuts, will still be derisory in relation to what he can expect from normal exploitation of the work.

The best solution is undoubtedly that the agent's role should be confined to promoting the work - for a fee of course - and nothing more. The author should entrust his collective administration society with the task of administering his rights.

I.3. WHY COLLECTIVE ADMINISTRATION?

Collective administration means administration by a collective body of authors. The sums collected in this way cannot be diverted from their end recipients, namely individual authors. To each his due! Royalties must not be used for collective purposes. They are not a tax but the author's salary. So, collective licensing but individual distribution.

Collective administration is the only means of ensuring that the legitimate interests of the author are respected when the latter is dealing with a **multiplicity of users**.

How could a composer know what use was being made of his music in the countless bars, cafés and shops, in short in all the public places around the world? And how could he enforce his rights in the courts each time they were infringed?

A dramatist might be able to keep track of the performances of his plays by professional actors, at a pinch! But he is totally incapable of monitoring performances by amateurs. An artist will know who has purchased his painting when it is sold for the first time, but if the lucky owner is obliged for reasons beyond his control to part with his acquisition or if he decides to do so wittingly, the successive sales will escape the artist's attention.

Collective administration is the most effective means of facilitating the public dissemination of works when the user draws upon a **multiplicity of works**.

Consider a local radio broadcasting music almost non-stop 24 hours a day from records or pre-recorded tapes somewhere out in the bush in the tropics or in the jungle of a big city, who could it apply to other than an administration society to obtain the licence that the law requires it to have?

Television transmits a considerable number of musical works. Where would it get permission to use them if there were no authors' societies? Not to mention the operator of a cable network who does not even know the content of radio and television programmes before retransmitting them and would thus be totally incapable of ensuring that he had the consent of the authors of all the different categories of works that he uses, be it music, films, drama, works of visual art or photographs.

The publisher of an encyclopaedia or electronic database, to make it more attractive to consult, must use a large number of illustrations. By applying to the authors' society he may draw from the world repertoire that it represents. Otherwise he would have to make do with just the drawings that could be produced by his in-house illustrator. What riches would then be out of his reach!

Unless he were to behave like a pirate, a user who is faced with a **multiplicity of rightholders** will find that collective administration is the only solution, even if he uses only a single work.

Already, in the past, audiovisual works implied the involvement of all kinds of authors. The list of contributors to a film is always impressive.

Things have become more complicated with the advent of multimedia works. Only collective administration can resolve the problems that arise, if these forms of exploitation are to operate lawfully.

It is sometimes said that the 21st century will be the century of information. The world has become a village. The ability to have legally secure **access to all works** thus constitutes a fundamental challenge. The key is offered by administration societies. There are some who think that, in the digital age, this form of administration will be out-of-date. Nothing could be farther from the truth!

Admittedly, collective administration might not continue to be the exclusive privilege of authors' societies. It is easy to imagine that intermediate users, acting as authors' agents, might organize themselves in their turn into societies since they have already done so for management of neighbouring rights.

But, in that event, the State should monitor very closely the allocation of the remuneration collected in order to offer every guarantee to those who provide the raw material: the content of the information. As the saying goes, if you want something done, do it yourself! Authors should not abandon self-management of their rights. They would lose their souls and it would not be in their financial interest!

Created on the initiative of authors or with the support of the State in developing countries, collective administration societies are at the service of authors, users of works and the general public.

I.4. ROLE OF ADMINISTRATION SOCIETIES

The vocabulary we use has an importance which must not be underestimated. Pollution attacks words just as it endangers nature. Until recently, there were only authors' societies. Imperceptibly, they were replaced by copyright societies before finally giving way to administration societies, an even broader notion. From a personal approach we slip towards pure business! The role and function of a society will thus change.

Administration societies have a **political role** of preserving the balance between the right to information and the right to the effective protection of creators. They must ensure that this balance is not upset to the disadvantage of authors. There is no reason why culture should be offered free of charge to the detriment of the legitimate interests of authors, the creators of cultural wealth. In the same way as for basic commodities, consumers must pay on principle to have access to the cultural product or service of their choosing. They must also pay for their daily bread! However, the prices charged must be reasonable for ordinary people. The administration society is the guardian of the balance between both rights!

In order to retain the possibility of intervening in respect of subsequent derivative use, societies must assist their members in their individual administration. This is the **legal role** that they have to perform. The society is its members' privileged adviser. Attention must be paid, however, to the costs that this activity generates. The societies must propose model contracts and draw up standard clauses guaranteeing that the right will be retained by the author. They must negotiate the adoption of these principles by publishers or producers. These services are paid for by means of the commission that the societies receive when works are used.

The society can do more, by assisting the author individually when negotiating contracts. Such administration of contracts should be offered on an optional basis and be paid for separately on each contract.

Of course, the main course on the menu offered by authors' societies is formed by their **economic role**. The collection and distribution of royalties are the *raison d'être* of administration societies. These activities also guarantee authors their legitimate remuneration for the creation of cultural wealth.

The authors' society offers the various actors in the economic exploitation of works legal certainty and also creates the basic condition for their economic development.

The legal certainty offered to users will not be complete, however, unless the society enjoys a *de jure* or *de facto* monopoly. It is clear that users would lose some of the benefits of collective administration if, as a result of the juxtaposition of competing societies in the same field, they were forced to apply to a multiplicity of societies.

Additionally, the administration society plays a **social role**. A creator's life is an irregular one. Creators' income is irregular. Their careers are not adapted to the requirements of the social structures set up by public authorities. The societies are perfectly familiar with the good and bad habits of their protégés. Indeed, authors have to be protected from themselves. Success is intoxicating, but it is also treacherous and uncertain. Societies oblige their members to put a little away for rainy days. By deducting a small percentage from distributions, they help authors when the three great afflictions of humanity strike: illness, old age and death. Such a system can operate only on the basis of solidarity between rich and poor. In a world in which self-centred materialism prevails, this practice is sometimes contested.

Those who show no solidarity will be solitary! Such blind egoism could become suicidal. Authors' rights should exist only if they are of benefit to all authors. The self-seekers will be isolated and will sink into banality.

The societies' **cultural role** is so obvious that one hesitates to stress it. By campaigning to ensure that standards of protection are maintained, the societies mobilize the intelligence of creating cultural wealth and contribute to the preservation of cultural identities. Without new creators, culture dies out. Without authors' rights, authors die out.

New forms of expression, even when based on technology, always appeal to a privileged few initially. Yet the cultural industry needs these precursors; indeed, it feeds on them. Through corrective mechanisms in their distribution rules, the societies support works belonging to genres which are neglected by the laws of the market.

Depending on their particular characteristics, societies will place the accent on all or some of these different aspects of their role.

I.5. AREAS OF OPERATION

The authors' societies can be classified by **category of works** represented.

It was in the sphere of music that the phenomenon very quickly took on an international dimension. Works tied to language travel badly. Music, on the other hand, knows no borders.

The administration of dramatic rights by authors' societies has never experienced a worldwide expansion. The provision, by a collective body of authors, of administration which does not cut the link with the individual author has never really taken root outside the countries under Latin influence. The Anglo-American world continues to make do with the status of dramatic agent.

Literary works do not lend themselves well to exploitation other than by reading, unless they are adapted. It is in this form then that they will be brought to the attention of the public with the rights being administered in the appropriate category.

The collective administration of works of visual art made a timid start in the course of this century. The sale of works continues, however, to be the main source of income. Use giving rise to copyright royalties is still marginal. Nevertheless, its significance is increasing steadily with the advent of multimedia.

For a long time, photographic works were ignored to some extent by the authors' societies which found it hard to accept that these works, which spring from technology and do not exist in any other form, had the originality required to be ranked among intellectual works.

Audiovisual works, which form a special category, constitute a technically new form of expression. They fall either into the category of dramatic works (fiction) or into that of literary works (documentaries). It is in audiovisual form that dramatic and literary works lend themselves to collective administration.

Computer programs are protected by copyright, for want of anything better. These works are rarely administered on a collective basis because in most cases they are made within companies.

Copyright law grants authors two major **categories of rights**: the right of reproduction and the right of communication to the public.

Reproduction may be graphic, mechanical, electronic or digital. Duplication has developed since Gutenberg! From impression on paper, fabric, records, audio or video

cassettes, films, photocopies, compact discs, electronic copies, CD-ROM, CD-I, etc. to storage in an electronic database for transmission over networks followed by access to on-screen copies, the reproduction of a work implies the collective administration society's intervention each time.

Communication to the public ranges from performance in a public place to radio and television broadcasting, cable distribution and transmission over a telephone line or telecommunications network. The relevant licences are issued by the collective administration society.

Some of the rights that are granted to authors are hard to assert: for example, the *droit de suite* (resale right in works of art), the rental or lending right and the exhibition right. Whatever the classification, these rights must be administered collectively.

Collective administration is carried out for all **forms of exploitation**. A change is to be noted in the means by which authors communicate with their public. We are witnessing a shift in the use of creative works from public places to the privacy of people's homes. Communication networks are going to accelerate this phenomenon. The listener-viewer no longer goes out into the world. Instead, the world comes to his home.

Reproduction is no longer carried out exclusively on an industrial scale; copies are made at home.

The intermediary who makes a huge choice of works available to the public carries out communication to the public, like an organizer of public performances did and still does. The public has access to works without having to go out.

All the forms of exploitation of works compete with one another but continue to co-exist. The radio did not spell the demise of concert halls; the cinema did not replace the theatre; television does not rule out the organization of live shows; video has not killed off the cinema; digital broadcasting will not make recording on a medium obsolete; the communication networks do not replace books and cassettes.

The administration societies must extend their activities to all processes of reproduction and communication to the public, whatever they may be.

I.6. STRUCTURE

An authors' society is not a trading company or business concern like others. It does not live for itself. It does not make a profit. It exists for the sole benefit of the authors who form it. Authors own the society. Through the deed of membership they acquire a shareholding. The society's policy will be determined not by a few well-intentioned anonymous directors but by the right holders. There is true self-management and those in charge of it are its spokesmen.

At the national level, one or more societies may be formed. The choice is up to authors themselves. They group together according to their affinities and the opportunities offered to them by their country's cultural and economic situation.

If the country is lucky enough to have a very significant national repertoire, authors can create specialist societies which administer only the rights relating to a particular branch of creation or only a particular category of rights or even only certain modes of exploitation. It is possible to divide up the field at will, the only limit being its

acceptability as far as the public is concerned. It must always be borne in mind that the administration society is at the service of authors and users alike.

Authors in countries which are chiefly consumers of imported cultural goods or products do not have the opportunity to dictate the course of operations. In order not to be reduced to adopting a defensive policy, they must group together within a strong society which is open to everyone: this system is that of the pluridisciplinary society.

The rights that new technology brings into play concern a wide variety of right holders. Authors are not alone any longer. Not only authors' rights but also neighbouring rights are involved. It would not be advisable to have a single organization looking after potentially conflicting interests. The administration society must comprise elements forming a relatively homogeneous group. When common interests are involved, the various groupings may form an *ad hoc* association for the purpose in hand. "Umbrella" societies have thus been set up in the fields of private copying (home taping) and reprography. The "one-stop shops" that operators are calling for in the multimedia sector constitute another example of such an arrangement.

It is not enough to organize themselves in each country. To carry out their role effectively, administration societies must establish relations **at the international level**.

The oldest association of authors' societies is [CISAC](#)⁴, which was founded in 1926. This organization has become an institution which is essential for the survival of authors' rights.

CISAC embraces societies operating in all branches of creation and administering all kinds of rights. This pluridisciplinary character is reflected in its structure.

Two tools of capital importance are placed at the disposal of societies by CISAC: firstly, the network of reciprocal representation contracts and, secondly, the system of exchange of documentation on the represented repertoires. Without these instruments, the societies could not function.

By concluding reciprocal representation contracts, the national societies entrust one another on a mutual basis with the task of administering their members' rights. Thus each author is represented and his or her interests are defended throughout the world. By applying to the national society, users obtain licences to use the entire world repertoire.

Through the exchange of international documentation, each society is equipped to allocate to authors worldwide the royalties accruing to them.

In some particular areas, the interested parties have felt the need to create a more specific structure. The 1920s saw the emergence of the *BIEM*⁵/*IFPI*⁶ couple representing respectively the mechanical reproduction rights administration societies and the phonographic industry. In the 1980s, due to the audiovisual explosion, another couple appeared, namely *AIDAA*⁷/*AGICOA*⁸ representing authors and producers of

⁴ CISAC: *Confédération Internationale des Sociétés d'Auteurs et Compositeurs/International Confederation of Societies of Authors and Composers.*

⁵ BIEM: *Bureau International des Sociétés gérant les Droits d'Enregistrement et de Reproduction Mécanique/International Bureau of Societies Administering the Recording and Mechanical Reproduction Rights.*

⁶ IFPI: *International Federation of Producers of the Phonographic Industry.*

⁷ AIDAA: *Association Internationale des Auteurs de l'Audiovisuel/International Association of Audio-visual Writers and Directors.*

audiovisual works. Unauthorized photocopying led authors and publishers to create *IFRRO*⁹ in 1988.

I.7. PLURIDISCIPLINARY APPROACH

Pluridisciplinary societies cover four categories of repertoires: musical works with or without words, dramatic and literary works, audiovisual works and works of visual art. Two sets of rights exist: rights of reproduction and rights of communication to the public. A pluridisciplinary society will thus be a multi-repertoire and multi-rights society. In countries where collective administration is not yet established, the young society starting out will be faced with a choice of limiting its operations cautiously to one category and considering an extension later or embracing the whole area of authors' rights administration. Youth is the age when everything seems possible and thus everything IS possible! Where there's a will there's a way.

The **advantages** of a pluridisciplinary society are of various kinds.

The most obvious advantage is of an economic nature: to focus efforts in one and the same administration structure is more cost-effective.

Operating costs will be largely the same whether all or some of the rights are administered. Savings are to be made principally in staff and office automation equipment. The same legal department will study the complex problems of securing copyright protection in the face of the challenge of new technology (satellite broadcasting, information superhighways...). The same switchboard will be used for telephone calls and fax transmissions. The computer configuration will be used for all distributions and other administration tasks.

A pluridisciplinary society will have a corporate image that is easier to impose. The author who is visible behind a dramatic work is a concrete person. His or her name will be printed on posters. The public will thus understand the abstract notion of copyright more easily. From the concrete it will pass to the concept of the somewhat anonymous mass of writers of music. However, copyright administration is more widely established at the worldwide level in the music rights sector. The other rights will gain from this advance.

The society's standing and effectiveness will be far greater if it represents all authors. By force of numbers it will form a pressure group that cannot be ignored.

Membership of a single society offers a not insignificant administrative simplification. Everyone knows the aversion that creators have to formalities even though they are necessary. Authors do not imprison themselves in narrow compartments. Their imagination does not accept the boundaries of a category of works that they have supposedly chosen once and for all. Versatile authors are legion. Why should a screenwriter not write song lyrics? A composer who is writing ballet music today may

⁸ AGICOA: *Association de Gestion Internationale Collective des Oeuvres Audiovisuelles/Audiovisual Works Collective International Administration Association.*

⁹ IFRRO: *International Federation of Reproduction Rights Organisations.*

tomorrow be writing the pop music that young people are swinging to at the local discotheque or at the Saturday night dance.

Contacts with colleagues from other disciplines are always enriching. The society is the natural meeting place.

A pluridisciplinary society offers a "one-stop shop" which makes life easier for users wishing to operate within the law. And even less scrupulous users will be thankful that they have to face only one lawsuit instead of perhaps several!

As with everything, this structure has its **drawbacks**. Creators representing less profitable categories will feel marginalized. The cake will sometimes have to be shared between everyone! Each group will want the biggest share. But even within a more or less homogeneous group, conflicts of interests may darken the sky. Is it not preferable, however, to settle such conflicts in private? The same problems will exist if authors belong to different societies since they are inevitable; only this time the struggle will be more bitter!

Compromise is necessary. The various categories of creators must be able to act within the society with maximum autonomy. The society must ensure that the decision-making bodies are pluridisciplinary. The board of directors must be representative and accept that the dose must not be based purely on economic factors. Money is not the only thing that counts! Personalized services should be set up, if possible by designating contacts for each discipline.

Some may argue perhaps that there is nothing to beat self-determination and that administration by one's own kind is the ideal thing. But then just how far should the diversification be stretched? And is there not a risk of spoiling a good thing by wanting more?

CHAPTER II: LICENSING

Introduction

As a rule, authors ask for only one thing: to be known by the general public. Barring exceptions, therefore, they will not refuse to grant permission to the many users who wish to communicate their works to the public in one way or another.

Authors are not competitors. Their works are unique.

When authors' societies act on behalf of an individual author, it can happen that they must refuse to grant authorization either temporarily if a licence has been granted to another user or permanently if the author's moral rights are involved. The author does not even have to justify his decision. It can be taken as of right. This is still individual administration carried out through a society.

Where authors' societies play their true role of collective administration, authorization will be the rule and prohibition very much the exception

This authorization will be tied to certain conditions. Every user who fulfils the conditions will receive authorization. Any user who thinks that the conditions are unacceptable must refrain from using the works he has chosen. If he uses them anyway he will lay himself open to legal or other proceedings for unlawful reproduction or performance.

The main condition will be payment of a royalty for the licence granted to use works. Therefore the main task of the administration society is to collect copyright royalties.

Payment of royalties is not the only condition. It is the job of the licensing officers to ensure that all the conditions laid down by authors are respected. The society must thus make sure that it obtains the information it needs to carry out the second part of its task, namely distribution.

II.1. TARIFFING PRINCIPLES

Authorization can be granted on a **work by work** basis. In this case, the administration is similar to that carried out by the author in person. The link between the author and his or her work is still solid. Moral rights come into play. The licences granted may affect the author's reputation. This is a sensitive matter. The authors' societies must consult their members.

In the field of musical rights, the performance right is seldom if ever administered in this way. It is in connection with reproduction that the compatibility of the use with the author's vision is subject to control. Any adaptation requires the author's consent. A musical work is written to be listened to. If a visual element is added to it, this can alter its essence.

In the case of the dramatic, audiovisual and visual arts repertoires, however, individual licensing (i.e. on a work by work basis) is quite common. Depending on the theatre or theatrical company which wants to perform the work, the author will set different conditions that will vary in the light of the standing of the author or the work. For certain

forms of use, the final version must be passed by the artist before a work of art can be printed or reproduced.

In all of these cases, the authors' society is not entirely free to fix its tariffs. It will set a minimum rate and propose a band, thus limiting the excessive demands that some authors might be tempted to make. Let us not forget that the society is at the service of authors and users.

The method most frequently adopted by the administration societies is that of the **blanket licence**. The society offers users the entire repertoire that it represents, subject to payment of the tariffs it sets.

In this way, the society guarantees peaceful access to all of the works in its repertoire. Users help themselves from the repertoire. They have the opportunity to use all, many or some of the works on an unrestricted basis, as long as they respect the conditions of the licence.

The tariff will be the same for everyone, without discrimination.

Whether they are musical, dramatic, literary, audiovisual or visual, works are of value to the person who uses them. Otherwise he would not use them. Through the works, the user obtains receipts. He does not offer his service for nothing in return from the person who receives it. This principle of the **link with the receipts** is easily understood and accepted where the public has to pay a purchase price or admission fee. In other cases, this link is less apparent. Copyright royalties are calculated by reference to the direct or indirect receipts.

Therefore, the tariff is calculated in the form of a **percentage of the receipts**. This rule has gained international acceptance. It was enshrined by the World Intellectual Property Organization (WIPO) in its publication on collective administration.

If all the works used belong to the copyright repertoire, the user generally pays about 10% of his receipts. A minimum tariff must always be set. Indeed, there is a level below which authors should refuse to grant a licence.

If the works are not the main source of interest for the public, it is not always necessary to apply the percentage rule. In this case, the society must convert the percentage into a **flat charge** or lump sum using criteria and parameters which enable an indirect connection to be established with the receipts that it is estimated were obtained partly thanks to authors' works. The flat charge must follow the cost of living by being linked to the price index. Otherwise inflation would make it necessary to reassess it too often.

II.2. TARIFF STRUCTURE

Any tariff structure is based on the consideration that the work or works, whatever the category to which they belong, have a value both for the person proposing them (the author) and the person interested in them (the user). What is the amount that the author wishes to obtain for the use of a work that is the result of his or her intellectual labour? What is the price that the user is prepared to pay?

The administration society must find an answer to these two questions and reconcile the two positions. The author expects to receive as much as possible. The user wants to pay as little as possible. The society will have to justify the remuneration it claims. A comparison with the fees and salaries of other workers in the cultural sector offers a starting point. An extra does not earn as much as a lead actor. The role played by the work in the exploitation will determine the royalty rate.

The society must thus draw up a list of all the forms of exploitation which use the repertoire it represents and classify them according to the importance assumed by that use. If it is an essential feature of the activity, it will figure at the top of the scale. If, on the other hand, it is very secondary in nature, it will be placed at the bottom of the scale.

The authors' societies administering **musical rights** have established a vertical hierarchy of the various types of exploitation in which music is performed (see *Annex 1*). On the basis of the role played by music, these types of exploitation are classified under three headings: exploitation where music is essential or indispensable, exploitation where music creates the atmosphere and is thus necessary and exploitation where music serves as a background which is not strictly necessary but is nice to have.

If the music is essential, the percentage of the receipts will be calculated at a high rate. If the music is used to create atmosphere, the average rate will be considered. In the case of background music, a flat charge seems more appropriate. The flat charge is calculated on the basis of objective, verifiable criteria such as the capacity of the premises and the surface area. By starting from the 10% rule, one can fix the unit of measure applied from one end of the scale of types of exploitation to the other.

In the field of **broadcasting**, the tariff, which will be valid for all categories of works, will be calculated by reference to the broadcaster's receipts. The rate will depend on the content of the programmes. If the copyright repertoire provides the content of all the programmes, the 10% rate will be applied.

The musical repertoire occupies an important place in radio programmes. The rate will thus be high. In television broadcasting, audiovisual works form one of the attractions. However, the audiovisual repertoire is not as widely represented worldwide by authors' societies since the rights of audiovisual authors are in the hands of producers, sometimes by virtue of the law. The blanket licence fee is thus harder to determine. Consequently, it is recommended in some cases to separate the dramatic repertoire from the overall collection and to provide for a tariff based on the duration.

If it appears impossible to base the collection on the receipts, the flat charge formula can be adopted. In this case, the number of listeners or viewers capable of receiving the programme and the airtime will determine the royalty payable.

The same rates as for the primary transmission will apply to the cable distribution of radio or television programmes or their retransmission by relay stations.

In the case of the **dramatic repertoire**, the system of licensing on a work by work basis applies. The percentage of the receipts will be the highest because the copyright

repertoire takes up the whole performance. The minimum per performance or per set of performances will depend on the capacity of the venue and the artistic budget.

Royalties for the use of works of **visual art** are generally collected on a work by work basis. However, blanket licensing can be adopted with major users of this repertoire such as the press and museums. As in the field of music, the rates will differ depending on whether the reproduction represents the main feature or is secondary. Flat charges will be based on the selling price to the public, the number of copies printed and the format of the reproduction.

The royalties for **non-graphic reproduction** on any kind of medium will be calculated in the form of a percentage of the selling price. The rate, which is negotiated internationally by *BIEM* and the industry, will serve as a reference for all use. The minimum will take account of the recorded duration. In the field of multimedia, this criterion is not sufficient: images cannot make do with the time factor. The number of works or extracts used must come into play.

In the case of radio and/or television broadcasting, the reproduction right royalties are collected from the broadcasters at the same time as the performing right royalties. They will thus follow the performing right tariff structure. If the collection is not combined, it will take place on production by reference to the recorded duration.

Graphic reproduction right royalties for literary or scientific texts and, to a lesser extent, musical works are collected under the blanket licensing system in the form of a percentage of the receipts relating to the exploitation or through the application of an overall flat charge or a charge calculated by reference to the number of pages or works reproduced.

In some **special cases**, the tariff is given in the law. This will be the case when the legislator provides for a compulsory licence with a right to remuneration which leaves the interested parties little or no freedom to negotiate rates.

The *droit de suite* royalty payable in the event of the resale of works of art is one example. The principle of the link with the receipts is respected. The percentage of the resale price payable is determined by the legislator. It is relatively low because it is based on the whole of the selling price, whereas its justification lies in the increase in value, an element which however is unverifiable.

The royalties for private copying, whether in the form of audio or video recording or reprographic reproduction by means of photocopying or electronic copying, are calculated on the basis of the purchase price of the equipment and/or the blank mediums. The rates are set by the authorities.

Rental right royalties are collected by reference to the price asked by the rental business. They are freely negotiated. The rates vary depending on the repertoire represented. On the other hand, public lending right royalties may be set by the legislator. The public authorities organize public lending and are responsible for paying for it. They may opt for a blanket licensing system based on a flat charge or tariffs for each copy loaned by the book, record or video library.

II.3. NEGOTIATION

In each of the disciplines in which the society administers rights, it will draw up licensing rules based on internationally adopted principles and structures. The administration society must listen to its partners, namely its principals, that is to say authors, on the one hand, and its clients, i.e. users, on the other. In order to be able to guarantee both sides an untroubled and not troublesome exercise of authors' rights, it will negotiate the terms on which it will issue licences.

Such negotiations may be conducted **individually** with each user who wishes to use the represented repertoire. Inevitably, they will leave very little room to manoeuvre as the society is obliged to apply the same tariffs to everyone without discrimination. Therefore, the negotiations will deal exclusively with the parameters on which the tariff is based and other conditions to be complied with. Like it or not, the contract proposed by the society will be viewed as one-sided and this may create tension.

The solution to this problem lies in **collective** negotiation. If associations of users exist, the tariff can be discussed before its final adoption. Again, the negotiations will not be concerned with the principles themselves but rather with their implementation and in particular the actual figures involved. A tariff which is agreed jointly will reduce the likelihood of any subsequent discussion with individual users or, at any rate, will limit to a considerable extent the vehemence and bitterness which may mark the talks. Where there is no association of users, it is in the interest of the authors' society to prompt the creation of one. It is true that it will be a strong, perhaps even formidable partner, but at least it will be a well-informed one.

These collective negotiations are sometimes conducted at the international or inter-regional level.

The **approach towards the user** must be pleasant but firm. There are negotiating techniques. The important thing is to give convincing explanations, with a smile but without complacency.

II.4. LICENSING CONTRACT

Authorization to use the works in the repertoire represented by the authors' society must be sought before any reproduction or performance takes place. This requirement stems from the law. The society has the power to grant authorization or otherwise on behalf of authors. The terms of the authorization (licence) granted by the authors' society to users may be formulated in several pages.

Occasional users will ask a short question. Theirs is a simple one. They wish to reproduce or perform one or several works for a single event of limited duration. The immediate answer will be short: exceptionally it may be negative, but in nearly all cases it will be positive, subject to the condition of sending in the programme of the works used and of paying the relevant royalty at the applicable rate or at the minimum one provided for in the appropriate tariff.

This exchange of letters constitutes a contract. As the question and answer are often similar, printed forms may circulate. However, there must always be a written document. A verbal agreement may give rise to confusion and does not guarantee the necessary legal certainty. The society must have complete information and the user must possess proof of his good faith.

Permanent users draw from the repertoire on a regular basis. They should not be obliged to apply to the administration society each time they use copyright works. They receive a permanent licence in the form of a subscription contract.

The contract may be a skeleton one which provides for a blanket authorization but does not remove certain formalities each time the licensee makes use of the repertoire in view of the fact that the types of use are not homogeneous and thus bring different tariffs into play. As an example, see *Annex 2*.

Or the contract may be complete in itself and grant a blanket licence to use the entire repertoire subject to payment in compliance with the financial clauses and to communication of the information needed by the society to make a distribution. As examples, see *Annexes 3 and 4*.

The **extent of the authorization** must be specified. The types of use for which the authorization is given must be described carefully. The categories of works and the rights granted must be clearly defined. It is almost as important to mention what is excluded from the authorization as it is to state what is covered by the contract. For example, the contract for a terrestrial broadcaster transmitting by hertzian means will not cover satellite or cable transmissions.

The authors' society acts for authors and composers. The neighbouring right remuneration of the musicians, singers, actors, etc. who perform their works may be collected separately, either by the same administration society or by another body. The contract may cover the right of communication to the public (public performance) and the right of reproduction or only one of these two rights.

It is vital to ensure that no confusion can exist.

The **financial clauses** constitute the main element of the contract. They are the sinews of war!

Where a flat charge is collected, the price to be paid for the licence is set by reference to certain parameters. These parameters must be clearly defined.

If the collection takes the form of a percentage, the calculation basis must be set out fully and in detail.

If reductions or deductions are allowed, they must be mentioned on a limitative basis.

It is in the interest of both parties that nothing should be left in the dark so that there are no points which could be subject to interpretation or dispute.

The user does not only undertake to pay royalties. The administration society must be supplied with any documentation it needs to carry out its task of remunerating the authors whose works have actually been used. The detailed **statement of the works used** (programme returns) is an essential document. The contract must stipulate precisely when and how - i.e. at what date and in what form - the information will be sent to the society. Information technology makes data communication much easier. The

exchange of information must be standardized. The contract must provide for penalties in the event of non-compliance with this obligation.

Obviously, the contract will also include all the ordinary law clauses imposed by the law of each country.

II.5. ADMINISTRATION CONCERNING USERS

An authors' society does not choose its users. All the users who call on the works of the authors whom the society represents form its clientele. They are many and varied and the modes of exploitation are also varied. One of the advantages of a pluridisciplinary society is precisely that it is wide-ranging, just as users are themselves. Like those authors who try out everything, users do not necessarily confine themselves to a single mode of exploitation or a single category of works which brings into play only one of the rights granted to authors. The society's administration in respect of users will have to take this into account.

Normally, it is for the user to contact the society to obtain the licences he requires. However, the society has an undertaking towards its authors to act whenever a work is used. It is the society's duty to track down all exploitation even in the farthest corners of its territory. It will thus carry out **market research** in the form of a **study of the density of the exploitation of works**. The various modes and forms of exploitation can be catalogued by category of works and type of rights.

Certain forms of exploitation are concerned specifically with a particular category of works. Even in many cases of traditional exploitation, however, the use brings several repertoires into play and combines the performance right and the reproduction right. All categories of works are used by the new forms of exploitation. This phenomenon began with the advent of television. Cable distribution, private copying and transmission over networks constitute highly important areas for rights administration. In all three cases, all kinds of works are involved.

The society's research must thus be carried out for all categories of works and all types of rights together.

The economic importance of each sector of exploitation is a factor worth taking into consideration. While less remunerative forms of exploitation cannot be neglected, it is necessary to have data on hand so as to be able to assess the efforts to be devoted to each sector.

Once the market for the exploitation of works is known, the administration society will focus on the **identification of users**. Files need to be established (see *Annex 5*). The same classification will be used. As the society is pluridisciplinary, it will keep a file of all users in alphabetical order. Users are not just natural persons. Companies and associations must be included under their own names and under the names of the natural persons responsible for them.

This list will be divided into two groups: permanent users and occasional users.

A subdivision based on geographical factors (country, region, city, town or village, district, street) will make things a lot easier for licensing inspectors and agents. All these classifications can be made without too much difficulty with the help of computer technology. The cross-checks are easy to set up. Sitting in front of his screen, the licensing inspector will pass from one file to another before setting off to visit premises.

The file of all potential users will naturally be divided into two parts: active users and those who for the time being are not using or have ceased using the society's repertoire. The first part will be used for collection purposes, the second for repertoire promotion activities. In both cases, a **schedule** must be established. The schedule will enable the society to remind active users under a licensing contract to send the necessary documents (statement of receipts, programme of the works used, sales statements, etc.) and pay the royalties when due. Occasional users must be monitored, particularly on the anniversaries of their last use of the repertoire. The schedule will help the licensing inspectors.

At regular intervals, the society will organize prospecting for potential users who could become active (or active again). It must also check that the tariffs continue to reflect the reality.

Prospecting and monitoring must be carried out systematically and not in a disorderly way. The schedule will be helpful in this regard.

The **statements of royalties** due from users must contain as many details as possible. They must be precise and refer to the licensing contract. In the case of permits for occasional use, the statement constitutes part of the contract itself. The more precise the statement, the less room there will be for any dispute if the reality proves to be different from the information supplied.

II.6. DISPUTES

Unfortunately, all is not always for the best in the best of worlds!

Enforcement mechanisms are thus needed.

Even users who have good intentions at the outset and take up the licence proposed by the administration society or sign the application form which is sent to them do not always continue to act in good faith to the end. **Non-payment of royalties** can never be tolerated, not only because the administration society has a commitment towards the authors who are its principals, but also through a spirit of solidarity with those users who discharge their obligations correctly. The only leniency that could be permitted would be to extend the deadline for payment. A user may have financial problems which will be sorted out sooner or later. To show patience is acceptable, to forgive is not. If the requests for payment of the royalties due, then the threats of legal action are not heeded, the society must carry out these threats. In this event, there is no alternative but to institute legal proceedings before the civil courts. In the event of a continuous refusal to pay royalties, the contract must be cancelled. The user will not receive any further clearance and will have to stop using the repertoire.

If the user carries on regardless, he is then engaging in acts of **unlawful use** which will give rise to a legal action for damages failing a settlement out of court. If the society has to go to court, the amounts claimed will be significantly higher than those payable normally. Indeed, if a user behaves in an exemplary fashion by applying for clearance in advance, the rate will be reduced in relation to the one applicable to a user who takes up a licence only at the administration society's request, so the damages claimed must have a strongly dissuasive character. The courts do not hesitate to double and sometimes even triple the royalty that the user failed to pay. Moreover, the society will also claim all the administrative and legal costs incurred by it as a result of the refractory user's failure to comply with the law.

Proof of the unlawful use will be provided on the administration society's instructions either by means of statements from witnesses or directly by sworn agents.

As copyright is immaterial property, unauthorized use seems easy. Unlike a shopkeeper or service provider, an authors' society cannot just cut off the supply. Users may be tempted to carry on regardless of their obligations in the hope of escaping detection. Therefore, the administration society must be extremely vigilant and set up a very exhaustive **monitoring** system. It is extremely important to keep track of users. All the information on their files must be checked. It is necessary to monitor not only the payment of royalties but also the basis on which the royalty is calculated. The user may have sent in false statements of his receipts or incorrect information concerning other factors used to determine the tariff. Communication of false programmes of the works used must be prohibited. In all of these cases, the administration society may take legal action so as to be able to allocate the correct amounts to authors.

Where considerable amounts are involved under licensing contracts with major users, **auditing** will be expressly stipulated.

This will be the case for contracts with the recording industry or with broadcasters. The truth of the statements must be checked by neutral, specialist auditors. If the audit merely confirms the accuracy of the statements, all the better. It proves that this is a reliable partner. In this case, the costs will be borne by the authors' society. If, on the contrary, serious discrepancies are found, the costs will be charged to the person who gave rise to them.

Piracy is a plague against which it is necessary to fight with all one's might. International cooperation is essential. It is a question here not of violations giving rise to liability for compensation, but acts requiring a response under criminal law. The penalties must be heavy and extend even to terms of imprisonment.

Piracy exists in every area of copyright. Music, films, works of visual art and literature all attract pirates just as they attract the general public. The sole aim of the criminals who engage in acts of piracy, i.e. unauthorized commercial reproduction and distribution, is to get rich dishonestly by feeding off the talent of creators. Society as a whole, including the thoughtless consumer, is the victim of piracy. All civilized governments have a duty to provide the injured parties with the means needed to combat piracy forcefully and effectively.

II.7. ORGANIZATION OF LICENSING

The choices open to an authors' society which must take a decision on how to organize its licensing activities depend largely on the political situation (unitary or federal state), the population's social and cultural habits (living as an autarky or open to foreign influences), the degree of education (a mainly rural or mainly urban population) and the disciplined or undisciplined character of the people (a country which has always been independent or one which has been subject to long periods of occupation).

But the choice depends mainly of course on the administration society's financial possibilities.

The **centralization** of all operations at the society's head office represents the simplest method to adopt. A society which has just been set up will begin by concentrating everything for obvious reasons of economy. The know-how is not sufficiently developed. Various investments take up the budget. This solution will last until the society's financial position is stronger.

New forms of exploitation which will emerge over the years will always need to be dealt with at the highest level and thus at the head office. Indeed, new matters require an in-depth legal study and a careful economic approach. It is difficult to change course later if the society makes a mistake! New forms of exploitation require delicate, uniform negotiations without any risk of contradictions. Qualified staff must be put in charge of them.

Things will be different once the work has become routine.

Major users who exploit the works in the repertoire on a consistent, permanent, varied and massive basis will always be the responsibility of the head office. The stakes are very high; large amounts of money are involved.

At the end of the 20th century, the world has become a village; yet human beings remain deeply attached to their roots - and these roots are strong!

In order to make access to the repertoire easier, it will be in the administration society's interest to **decentralize** its licensing departments. Fieldwork will obviously give better results and these will make up for the increased costs that it implies. A better knowledge of the situation can be gained from visiting users. Such contacts also help to encourage constructive dialogue, avoid conflicts and misunderstandings, and give a more social image of the authors' society.

Decentralized administration makes it easier to monitor the returns sent in by users. Canvassing potential users is a means of promoting the repertoire, for the benefit of authors and culture in general.

The authors' society is a private entity which protects private interests though ones which are beneficial to society. These interests have been guaranteed by the legislator. The helpfulness of good **cooperation with the authorities** is undeniable.

The authorities are also users of intellectual works. They use the repertoire directly or indirectly through institutions that they subsidize entirely or to a very large extent. The first thing they should do therefore is to set a good example. While this may seem self-evident, practice sometimes shows a less rosy picture.

A self-respecting government respects what it has decreed itself!

The authors' society must be able to count on the authorities to enforce the law enacted to protect the legitimate rights of creators of cultural wealth.

The authorities sometimes call on the administration society to obtain information.

The society will apply to the administrative authorities to obtain information on users (licences issued, addresses, etc.). The local councils and the ministry responsible for culture should be special partners. The ministry can act as a mediator in the event of conflict.

The correctness of statements of receipts can be verified with the tax authorities, while the customs authorities can give useful information on imports. The latter play an important role in the fight against piracy.

It goes without saying that the judicial authorities must cooperate. The police and the courts are the guardians of the law on copyright as they are the guardians of all laws.

The population listens to the religious and educational authorities. They can help to get the message across that the intervention of the authors' society is justified for everyone's benefit!

**CHAPTER III:
DOCUMENTATION - DISTRIBUTION**

Introduction

The second part of the administration society's task is to give each individual right owner the share to which he or she is entitled in the distribution of the monies collected.

Imagine someone going down the road one evening to post a letter in the local letter box. The only expenditure he has had to make, apart from the small physical one of walking to the end of the road, is that of buying a stamp. Through that small purchase, he can be certain that his letter will be received in a few days time by the addressee at the other end of the world. The post sees to it.

This situation is comparable to that of a user who pays royalties for a particular work created by a single author. The authors' society undertakes to ensure that these royalties reach the author concerned.

But first it will be necessary to trace the author's country and address. It is as though the good fellow who wrote the letter forgot to mention the address on the envelope!

Things are even more complicated when the work has been written not by a single author but by two or three. The royalties will have to be divided between them on the basis of each one's percentage share. The more owners of rights in a work there are, the harder the task becomes.

However, the administration carried out by authors' societies is not limited to collection on a work by work basis. Where true collective administration is involved, several works, each created by several authors, are used in return for payment of a given royalty. In the case of major users, we are talking not about several works but about thousands of works. Put all the users together and the figure runs into millions. Imagine millions of letters without an address!

Yet it is the job of the administration society to ensure that all these royalties reach the right owners concerned safe and sound.

The society must have comprehensive **documentation** on all the authors and all the works it represents. Then it must **distribute** the royalties collected to all the right owners whose works have been used somewhere in its territory of operation during the period concerned. A titanic task!

III.1. RIGHTHOLDERS

Authors' rights belong initially to authors of course!

It is for them that lawmakers have made copyright laws. But like any owner, they can part with all or some of their property.

Barring a few exceptions, authors' rights are assignable. They can thus be transferred to third parties who become the rightholders. This transfer is justified by the need to secure a wider dissemination of the work, which is the main concern of every creator.

The producer/publisher/agent knows the marketplace better and must be able to act and take decisions quickly, without constraint. If he has to consult the author, the deal may be lost. These successors in title thus have the same right to authorize or prohibit. This

arm disappears if the exclusive right is transformed into a simple right to remuneration. The right must then become non-transferable. Indeed, a transfer is no longer justified because there is nothing in return and in particular no promise of exploitation.

Authors and their successors in title make up the **membership** of administration societies. The members may be natural persons or legal entities.

The first group of members is formed by authors from every discipline. They are the intellectual right owners. In principle, authors are always natural persons. However, in certain cases, some national laws grant authorship from the outset to legal entities under a legal fiction.

The second group is formed by adapters who are likewise intellectual right owners. Indeed, arrangements and translations also enjoy copyright protection. Authors' rights do not end on the author's death. They are transferred to the author's heirs under each country's national law. Heirs make up the third group of members.

Lastly, there are the assignees: agents responsible for promoting and exploiting works, like publishers for musical and literary works, producers for audiovisual works, galleries for artistic works and agencies for photographs. They form the fourth group of members.

On joining an administration society, the right owner signs a **membership agreement**.

Through an assignment, authors can transfer their rights to the society which then acts in their name and place and on their behalf. The society becomes the holder of the rights. Having assigned their rights once and for all to their society, authors cannot subsequently assign them again without the society's agreement. This method provides an effective means of protecting authors against the pressure exerted on them by publishers and producers. To the extent that the latter also join the administration society, the assignments provided for in publishing or production contracts can co-exist harmoniously.

The other method is that of an administration mandate. In this case, the society is given authority to exercise the rights but they are not assigned to it. This method is better suited to the ultra-individualistic spirit of certain creators. It is perfectly suited to administration on a work by work basis and in cases where a right to remuneration has been introduced under a compulsory licence. However, it weakens the position of the collective administration society in its relations with users and in legal proceedings.

A file must be kept of all the members, whether natural persons or legal entities. It must also include any pseudonyms. The society may establish categories of members if it wishes. Traditionally, it will classify its members by the category of works created. However, it must not be forgotten that authors are versatile!

The classification must be consistent with international standards so as to allow for easy incorporation into the files of foreign sister societies.

An **international exchange** of documentation is provided for in the reciprocal representation contracts that the authors' societies conclude with one another.

This exchange may take the form of the communication of printed lists. However, these lists must be constantly updated. They are long. The risk that they could be selective is not precluded. This method is a dangerous one. Hence the need to create a tool adapted to the development of collective administration. Luckily, digital technology has

made the task possible. CISAC has given SUISA^{*} responsibility for keeping a world file (see Annex 6). The names of the authors and their society of membership are mentioned for four categories of works and two types of rights. However, some categories of authors and some rights are missing. This file must develop into a more comprehensive one which is also open to holders of neighbouring rights.

III.2. WORKS

No formalities are required in order to enjoy copyright protection. A work is protected from its creation. If authors' societies ask their members to notify their societies of their works it is purely in a concern to improve the identification of works. At the same time the notification constitutes *prima facie* evidence in the event of a dispute.

Right owners are required to **notify** their works (see Annex 7). There is a minimum amount of information that must be given. It includes the title, genre and duration of the work, the names of the right owners and their respective shares. The notification form must be dated and signed by all the right owners without exception, whether or not they are members. A copy of the work will usually accompany the notification form. Depending on each society's statutes, specific rules may be established by category of works.

When a notification form is received it will be stamped with the society's name and the date of reception. The work is then registered in the society's repertoire. Registration can be done manually on index cards or a register. An electronic register offers the advantage of being an easy tool to handle.

Unlike the position as regards the file of members, it is in the interest of pluridisciplinary societies to register works according to the category to which they belong. The society should have five files: musical works, audiovisual works, dramatic works, literary works and works of visual art.

The international code number of each right owner must be given.

The work also receives a digital code which will be used for **international documentation exchange**. This exchange will be carried out by means of standardized forms (see Annex 8).

For musical works, the "international index card" is in use. This card contains the minimum information given on the notification form. The card can be in stiff paper form for filling in manually, but the exchange is more likely to be effected by means of an electronic medium, based on a standardized format.

Thus each society will receive documentation on the international repertoire from sister societies and each society will send international index cards to foreign societies on request or whenever it is aware of the international exploitation of works in its national repertoire.

In the case of audiovisual works, the exchange is carried out by means of "cue-sheets". What is meant by this strange term is a list of the works included in the audiovisual work, whether they are pre-existing works or ones specially written for it. The names of the

^{*}SUISA: Swiss Society for the Rights of Authors of Musical Works

literary and visual right owners (the director, screenwriter, etc.) should be given on the same cue-sheet. In the event that the production contract contains a clause reserving these authors' remuneration, the society has authority to collect and must therefore be in possession of the information needed to make a distribution. The societies to which the cue-sheet is sent will include the dramatic rights administration societies. Paper can be used for the exchange but here again information technology has come to the societies' assistance.

Documentation on works can also be provided by means of circular letters. This method is used in general for dramatic works.

The **distribution key** is an essential element. The intellectual right owners (co-authors and co-adapters) and the assignees (publishers, sub-publishers and other promotional agents) must split the royalties between themselves. Their respective shares can be expressed either as a percentage (preferably) or in fractions.

In the case of musical works (performing rights), certain limitations are imposed. Here distribution keys which must be consistent with the *CISAC** standards are compulsory. In the mechanical reproduction rights field, the key can be determined freely, unless otherwise provided in the society's statutes. For dramatic, literary and audiovisual works, the key can always be determined freely.

The societies can propose a key which will only be supplementary.

In order to lighten the workload caused by the international exchange of documentation, **international files** have been developed. A centralized file removes the need for correspondence throughout the world. Each society provides the centre with documentation on those of its works which are likely to be used abroad. The centre sends the information it has received to all the participating societies. For example, *ASCAP*** manages a file of musical works.

In the case of audiovisual works, attempts are being made to centralize information concerning the author part, on the one hand, and the incorporated music part, on the other. A preference seems to be emerging for the creation of a simple index of titles giving basic information with a reference to the society which possesses detailed information.

In some **special cases**, notably in the field of visual art, notification of works is not required. Identification is a real problem, particularly for photographs. A true crusade is being conducted by societies in this regard.

* *CISAC: International Confederation of Societies of Authors and Composers*

** *ASCAP: American Society of Composers, Authors and Publishers*

III.3. CONTRACTS

The members of administration societies in the various disciplines have frequent contacts. They often work together. Contracts laying down the terms and conditions of this collaboration are concluded. Although the negotiations take place outside the authors' societies, certain provisions of these contracts refer to the administration carried out by the societies. In order to make their contents effective as far as the society is concerned, these contracts must be notified to it.

Contracts **between authors** are rarely concluded on a formal basis. Often agreements are made orally and even tacitly. In many cases, the joint signature on the works' notification form is the only written trace of such an agreement. In certain countries, the law stipulates explicitly that co-authors may not use their contribution by calling upon another collaborator. However, they may exploit their individual contributions separately. This is the system of indivisibility. In addition to the agreed shares, this type of contractual clause must be brought to the attention of the societies.

Most of the contracts which are notified to societies concern agreements **between authors**, on the one hand, and **publishers** or **producers**, on the other.

As a rule, music publishers have joined authors' societies. The performance and non-graphic reproduction right royalties collected by the societies are payable in part to the publisher. These shares, which vary according to the type of rights involved, is subject to certain restrictions which are laid down in the societies' statutes. Some societies accept a complete transfer of royalties until the advances paid to the author have been recouped. All these contractual provisions are of relevance to the administration society since it will have to take them into account in its distributions.

Barring a few exceptions, literary publishers are not members of authors' societies. Occasionally, a society may represent them for forms of secondary exploitation under a mandate given individually or through their professional association. Reprographic reproduction has led to the creation of societies which represent both authors and publishers. In all such cases of collaboration, the contracts need to be communicated.

The terms of the contract between the authors and the producer of an audiovisual work will determine whether or not the authors' society can act when the work is performed. Indeed, the producer holds the rights but the authors may reserve the right to receive their remuneration through their society which will collect it directly from users. Otherwise they must claim it individually from the producer. Both systems operate. Consequently, it is not just useful, but essential, that the societies be notified of such specific contractual clauses.

The businesses which have become right holders in return for the capital they have invested in the cultural industry negotiate forms of collaboration between themselves. These contracts **between publishers** or **between producers** are relevant to the authors' societies. They may be joint publishing contracts or coproduction contracts. The original publisher may also assign some of his prerogatives to a sub-publisher. In the musical sphere such transactions are so frequent that a minimum had to be

imposed. These transfers may be negotiated on a work by work basis or they may be valid for the publisher's entire catalogue or one of his catalogues. The sub-publishers become right holders themselves and are entitled as such to a share of the royalties. Their role becomes more important if local versions are involved. The authors' societies must keep close track of these contracts and continually update their documentation.

Cooperation is standard practice. The societies must therefore set up an **international exchange of documentation** concerning these contracts. The minimum information provided by the members concerning the parties to the contract, the date, the duration, the territories covered and the shares of royalties of the interested parties must circulate around the world.

The original publisher's society must notify the contents of sub-publishing contracts to the societies in the territories concerned. The sub-publisher's society must ensure that there is nothing to prevent sub-publication and the local version that may be made as a result and must ask the original society for a *nulla osta*.

The societies will often be obliged to up-date their documentation. When dealing with isolated cases, the exchange can be effected by means of international index cards or simply by letter. However, catalogue transfers imply an enormous number of corrections. As a rule, the societies still correct data manually. The digitization of works and contracts should make it possible to automate these operations. In the face of the size of the task, it is difficult to know what to think!

III.4. DISTRIBUTION SECTIONS

Authors are always curious to know where, when, how and by whom their works were used. Where licensing is carried out on a work by work basis, this is obvious. The royalties collected are payable to the owners of the rights in the work which generated them. The process is rather more complicated when, under a blanket licence, percentage-based or lump-sum royalties are payable to the numerous owners of rights in the numerous works used on numerous occasions. The society must allocate to each one the amount due, giving as much information as possible while keeping costs to a minimum.

The royalties collected by a pluridisciplinary society concern all forms of exploitation, they are payable to the owners of rights in all categories of works and cover all types of rights. The total amount of royalties collected is going to be allocated between several sections or pools (for an example, see *Annex 9*). This is the first stage of the distribution to the payees.

The royalties which are collected on a blanket basis are first allocated **by form of use**. The royalties from all the users in the same section are added up and form a mass which will be used to remunerate all the right owners whose works appear on the statements communicated in the section in question.

Each society determines freely the number of distribution sections.

The societies are merely obliged to respect the provisions of the reciprocal representation agreements that they have signed. The agreements covering musical performing rights provide for at least three sections: general royalties (performances in public places), broadcasting (radio and television) and films. The agreements between societies administering the dramatic repertoire (dramatic performance) also mention three sections: professional theatre, amateur theatre and broadcasting. The agreements covering mechanical reproduction rights recommend two separate statements, the first for royalties from the sound and video recording industry and the second for broadcasting. Agreements in the field of visual art provide for three sections: graphic reproduction, broadcasting and the *droit de suite*.

However, it is in the interest of the authors' societies to create subsections.

Thus general royalties will be subdivided into performances of live music and performances of music by mechanical means. The live music subdivision will be split again into serious music and light music.

In the mechanical music section, dance music will be separated from background music and in the latter section performances by means of radio or television sets will be listed separately.

To group all broadcasting royalties in a single section is no longer justified today. The royalties from secondary exploitation - public reception, cable distribution, private copying etc. - have to be added. Considerable sums are involved. Radio broadcasting royalties must be separated from television broadcasting royalties.

As collections increase, the society will have to introduce distribution subsections and sub-subsections.

Collections sometimes overlap. Transfers from one section to another are then necessary. The more sections there are, the greater the number of transfers that have to be made. The society needs to ensure that the whole thing remains manageable at least cost and to avoid pushing the diversification too far.

In a number of sections, there is next a division **by category of works**. Although it is conceivable to have a single distribution covering all works and based on a common scale, the practice of the societies shows that the various categories of works require separate treatment. The weighting criteria are not the same. The society's foreign counterparts are specialist societies. Therefore the royalties will be allocated within each mixed section according to the place that each of the repertoires occupies in the exploitation.

This allocation must be made on the basis of parameters which have been agreed jointly by the groups of authors representing the various interests in the society's decision-making bodies.

For some forms of exploitation, reproduction royalties are collected in addition to public performance royalties. In this case, the section is split into two **by type of rights**. While the authors of the works are the same, the assignees may not necessarily be. The distribution key and the society of membership of the rightholders may be different.

III.5. INFORMATION ON THE REPERTOIRE USED

Ideally, the society should be in possession of all the programmes of all the works used so that it can make a completely accurate distribution based on this information. However, we do not live in an ideal world!

The work involved would cost more than what was collected! An administration society's operating costs must represent just a small fraction of the sums collected. The purpose of royalties is to remunerate authors not to create jobs for office workers. A distribution which is too costly must be rejected, particularly as it is not essential or even always possible to obtain programmes of the works which were actually used. Other methods have thus had to be sought. Alternative solutions have been found.

Collections work by work are based on the contents of the **programmes** supplied. The whole sector of commercial reproduction, whether graphic or mechanical, by professionals requires a work by work distribution based on the information obtained. This information will always be available since it is needed to determine the royalty rate. Musical or dramatic performances by performing artists also require individualized treatment, even if the collection is sometimes made for a set of works, because each performer has his or her own particular repertoire which is not interchangeable.

Broadcasters, and particularly television broadcasters, undertake to provide details of all the works used, second after second, in view of the significance of the royalties they generate and of those that will be added to them.

These details will include not only the title of the work and duration of the use but also the names of the authors and any information which makes identification easier such as the record label and number, the original title if an adapted version is used, the producer and the country of origin of the film or sequence if a series is involved, the museum or gallery where the work of art is exhibited and the press agency which supplied the photograph, etc.

This information on the repertoire used may be provided on paper, a print-out, a floppy disk, a cassette and even on-line.

In cases where there is massive use of copyright works but few royalties are generated, the administration society will make distributions based on **sampling**.

In other fields outside that of intellectual property, it has been proved statistically that, provided that a representative sample is chosen, the results of a sample survey will be the same as those of a complete survey.

The results of elections are known almost infallibly as soon as the first projections are available after the closure of the polling stations. Of course, surprises are always possible but they merely prove that the sample was not valid. It is common knowledge that the rural population does not vote the same way as the inhabitants of depressed inner-city areas or those of residential suburbs.

The same holds in the intellectual property world.

It is fair to say that a well chosen, geographically, socially and culturally balanced group is representative of all users in the same category. If the society confines itself to this

group which will be asked to provide faithful and complete programme returns of the works used, it can be claimed that these works are assumed to be used by all the members of the category concerned.

The sample surveys must be drawn up scientifically and will preferably be carried out by a neutral, outside organization.

Some societies have set up an in-house department responsible for carrying out sampling, either by choosing the representative group of users or by eliminating similar programme returns or again by recording various performances. Confidentiality and discretion are a must in this case.

Whatever the method adopted, the rule of non-discrimination between the national and international repertoires must be respected.

The sampling method is used particularly for performances of music in discotheques and by local radio stations, etc.

Photocopying machines in educational establishments are there for a purpose. Students and teachers use them. It is sufficient for the society to take a few of these teaching establishments at every level to find out what works are photocopied and use this information to distribute all the royalties collected in this sector. The same procedure will be adopted for lending by libraries.

Royalties for private copying are paid on all blank cassettes/tapes and recording equipment used for copying. A representative group of the population will be asked to indicate the sources of the recordings they make and to note down scrupulously all the programmes or works they copied over a given period. On the basis of such a survey, the administration society will be able to allocate the royalties to the appropriate sections.

Thus we already have a mix of two distribution methods: one based on the sampling principle and the other being distribution **by analogy**.

Experience has shown that certain groups of users use the same repertoire as others. The royalties from the first group will then be distributed on the basis of the programme returns available for the second group.

For example, it has been established that background music use in certain public places is similar to local radio programming which in its turn is equivalent to that of the national popular radio. Therefore, all or some of the royalties collected will be added to the body of radio royalties.

Certain societies which administer the rights in works of visual art leave it to their members to license their broadcasting rights individually. On the other hand, their cable distribution rights are administered by the society. As the society does not then have details of the primary programming, the royalties in question will be allocated to the artists or photographers whose works have come up for distribution in other sections, based on the presumption that activity in one area implies use in others.

This lack of information on programming due to the fact that the primary rights are not administered by the authors' society has led some societies to distribute the royalties on the basis of **notifications** sent in by their members. Having authorized the primary use personally or through the intermediary of an agent, they then claim from the administration society the secondary royalties collected on a collective basis.

Whatever the distribution method adopted, it is necessary to **check** the information provided. For various reasons, ranging from unintentional negligence to deliberate fraud, the information on the works used may not be correct. Therefore, machinery for checking the truth of the information contained in programme returns must be set up. Checks will be made by means of the sampling system. Repressive measures must be taken systematically if it is found that programmes are incomplete or false. The society's credibility is at stake!

III.6. DISTRIBUTION WORK

The principle is simple: firstly, the society possesses **documentation** on all the works in its **repertoire**, either from its members' notifications or through international documentation exchange; secondly, users send it **programme returns of the works used** classed by distribution section. These two sources of information – the database and the lists – must be **compared** and that is it! The royalties for all the works that have been identified will be sent to the right owners concerned.

However, the precise identification of works is not an easy thing. All the information in the society's possession must tally. If the slightest doubt exists then the investigation must continue.

The number of **unidentified works** left after this comparison between programme returns and documentation files varies depending on how good a system has been developed and the accuracy of the information provided by users. The royalties for such unidentified works must be placed in suspense provisionally. The missing information will be sought by every means. The user may be asked to supplement the information given in the programme he sent in. If the work has not been notified, the member may be asked to correct his oversight. Publishing catalogues may be consulted and the publisher or sub-publisher questioned. If one of the right owners is identified as belonging to a foreign society, the latter may be asked to send the relevant international index card or cue-sheet.

A circular inquiry list setting out the titles of the unidentified works may be sent to all the sister societies.

Within the community of societies administering musical rights, *CISAC* has introduced a rule known as the Warsaw Rule. This provides that all the royalties will be sent to the society of membership of one of the intellectual right owners who has been duly identified, it being for that society to distribute the royalties to the various right owners involved. The works subject to this rule must be shown as such in the distribution so as to ensure that they do not go unnoticed.

The royalties for works which still cannot be identified after all these avenues have been exhausted are not distributable and return to the section from which they came after a given period fixed in the society's statutes. This period varies but is generally from three to five years. They increase the **mass** in that section and the **point value**. The pull of amount of available royalties is formed by all the collections in the section in question and will serve to pay all the owners of rights in all the duly identified works appearing in the programme returns. Each work receives a certain number of points. The value of

the point is obtained by dividing the total sum for the section by the total number of points for all the works involved.

The number of points assigned to each work depends on the **scale** developed by the administration society based on set weighting **criteria**.

The basic criterion will always be either each work's recording or performance time (*pro rata temporis*) or the number of works reproduced or performed (*pro rata numeris*).

In the field of radio and television, almost all the societies have a scale which grants a multiplying factor according to the genre of the work – the aim here being to take into account in the remuneration the difficulty and degree of creativity or the chances or not of repeated use – or the type of use of the work as a main or secondary feature of the programme.

A conversion with regard to duration must be effected for works of visual art if they are included in a common scale. This fictitious duration may vary depending on the genre. It would be unfair to take only the real duration of the broadcast which is always very short for works of visual art. These works are consumed with one look, but they have a big impact. Does not every picture tell a story?

Each society determines its scale freely and sets the weighting criteria. However, the society must always ensure that there is no discrimination between the national repertoire and the international one. Whatever the criteria adopted, they must be applied objectively.

The frequency of distribution **statements** (see *Annex 10*) is tending to increase. They are becoming half-yearly rather than yearly or monthly rather than quarterly.

The statements sent to foreign societies must respect the rules agreed on in the reciprocal representation contract which requires statements to be sent at the latest within three months from the date of the distribution to members.

Each society which receives from abroad a statement of royalties for its members must complete the distribution if the statement is drawn up by works and check that the shares allocated to each right owner match the notifications if it is drawn up by right owners.

Statements do not always arrive spontaneously. The societies have sampling systems for monitoring the activities of sister societies.

III.7. COMPUTERIZATION

Information technology has become an essential tool in the administration of authors' rights, particularly in the documentation and distribution sectors. In fact one almost wonders how the societies managed before! The answer is simple enough. Absolutely all the work can be done manually. Only in this case a lot of hands and time are needed to get through it. Today labour has become expensive and patience is a word that has been deleted from the vocabulary of members. New forms of exploitation of intellectual works have given rise to a considerable increase in the number of works and right owners.

Therefore, authors' societies need to acquire computer **hardware**.

The movement began in the 1960s. From first-generation to second-generation and third-generation computers we have now moved on to microcomputers. The early dinosaurs have gradually been replaced by desktop PCs connected to one another to form a network.

As the hardware developed, so too the **software** was adapted. We have come a long way since the early punch cards! Microfiches have been abandoned. Magnetic tapes, cassettes and floppy disks are still in use but the CD-ROM is now invading the market.

Networking which was first limited to in-house PCs is now being introduced between societies in neighbouring countries and will soon extend worldwide. The telecommunications services are becoming more democratic. The price will become more and more reasonable.

Right owners still have a name but they are also given an international code number. Works still have a title but they too have a digital code. Standardization is the watchword. In order to prepare the **future** of collective administration by authors' societies, *CISAC* is developing a common information system (**CIS**) involving the use of unique numbers for musical works and for audiovisual and visual works, following the example of the code for books. This approach will enable the societies to communicate in the only language which is understood by the weird machines we have today which operate purely by means of 1s and 0s. The near or the distant future? Who knows?

**CHAPTER IV:
ADMINISTRATIVE, LEGAL AND
FINANCIAL ORGANIZATION**

Introduction

Any association requires some form of organization. As soon as two people unite, rules have to be established so that this communal life develops harmoniously.

Each one's competencies and powers must be clearly defined.

Power is based on consensus without which the union will break up at the first sign of discord. Each one has his or her role to play. These roles will develop during the existence of the union. Its organization will have to be adapted accordingly. Serious decisions which may imply a revision of the basic rules require careful consideration, whereas it must be possible to make less important changes rapidly.

Authors' rights administration societies fit in with this logic and this duality is to be found at every level: strictness if the basis of the common structure is involved coupled with flexibility so that the society can follow the evolution of the environment.

The essential, fundamental rules are laid down in the statutes.

While these rules are not immutable, they are subject to a relatively lengthy procedure in the event of amendment.

Those provisions that govern the day-to-day operation of the society are set out in internal rules and regulations which can be adapted more easily so as to be able to reflect a changing environment.

The structure of the administrative departments follows the same principle. The basic structure must rest on tradition and requires a certain amount of experience. As it is rights that are administered, any administration society must have a solid, highly qualified legal department. As the administration of the rights is expressed in figures, a reliable financial department is needed.

While the licensing and distribution departments do not require as much consistency, they call for a great deal of flexibility to keep up with external developments.

The administration society is answerable to both right owners and users. Its intervention is justified only at minimum cost. Its administration must be sound, that is obvious. But it must also be a model of transparency. It is therefore the society's duty, through public relations activities, to communicate with the world around it in a spirit of openness.

IV.1. STATUTES

The statutes are to an authors' society what the constitution is to a nation or what the marriage contract is to a husband and wife. This document contains all the information that is essential to the life of the society. Besides the provisions which depend on each country's legislation on non-trading or commercial companies and the legal form chosen, which will be the one that best meets the needs of right owners, the statutes must begin by defining what is the society's *raison d'être*, i.e. its **aim**.

The role of any administration society, as specified earlier, must be described precisely. The pluridisciplinary society will cite all the categories of works and the various types of rights that it intends to administer. Without necessarily being exhaustive, this list must be as complete as possible. The future must be safeguarded. If new forms of exploitation give rise to claims on the part of other creators or generate new rights, the

society must be in a position to extend its activities. The possibility must be provided for without creating an obligation. The society could act as a service provider for groups of right holders which formed without necessarily accepting these right holders as members.

The **members** either assign their rights or simply give the society authority to administer them by means of a mandate. A non-exhaustive list of the right holders – authors from existing disciplines and assignees – in line with each country's legislation should be given in the statutes.

All the members are treated on an equal footing as far as distributions are concerned. However, in order to guarantee quantitative and qualitative representativeness, the societies may establish different categories of members and thus limit access to their decision-making bodies to professionals. Except for the society's first few years in operation, this professionalism is expressed by the amount of royalties earned and by consistent participation in distributions.

Societies generally have three categories of members: full members who are the true owners of the society, provisional members and associate members, a category which includes authors' successors in title.

All the members without exception form the **general assembly**. This is the society's supreme governing body. It is the parliament of authors.

The statutes must mention how, where and when the general meeting takes place and how frequently. The presence of all members is desirable. However, it is acceptable that only those members who meet certain criteria – in particular that of evidence of a sufficient, consistent creative or professional activity – should have the right to take part in deliberations.

The level should be set neither too high (no elitism) nor too low (no amateurism).

The democratic principle that each member has one vote is a sound one. However, some laws allow members who have been with the society longer or are more professional to qualify for more votes.

The general assembly lays down the law. The board of directors or **administrative council** that it elects decides on the path to be followed to achieve the objectives that have been set. The council represents the interests of all the members. It must be representative, with a balanced mix which is delicate to establish. For maximum effectiveness, it must not be too big. To be a director of an administration society demands some knowledge of the subject and thus a minimum amount of experience. To secure the necessary continuity, mandates should be renewable within certain limits to be laid down in the statutes.

At the same time, a rotation in the seats is to be recommended. This brings in fresh approaches and avoids the harmful effect of routine.

Rigour and flexibility! Continuity and freshness!

However representative the administrative council may be, its members are not omniscient. Certain aspects requiring specialist knowledge may escape them. Therefore, whenever it is considered judicious, they will seek the opinion of advisory or **consultative committees** of true specialists in each field. These committees will also act as pressure groups.

Each to his own job! Authors are creators. They must watch over their interests. But they must also leave the management to managers. The statutes of many societies lay down the principle of the incompatibility between membership and employment as a member of staff of the society.

The statutes must lay down the principle and operating conditions of the **administrative departments** together with the limits of the capacities of the manager who will be appointed by the administrative council.

IV.2. INTERNAL RULES AND REGULATIONS

The statutes contain most of the rules that are agreed upon so that the society can develop harmoniously. The internal rules and regulations will complete this body of provisions in a detailed manner.

They also create the working tools in the fields of licensing, documentation and distribution. To the international provisions they add further details in line with the society's own management conception.

The rules and regulations are submitted for approval to the general assembly, at the administrative council's proposal.

The international community of authors' societies shows the way by laying down tariffing principles. Each society must calculate the royalties by fixing rates. The **licensing rules** may set out the tariffs for the various categories of exploitation in accordance with the established vertical hierarchy.

It is necessary to ensure that the scales are well balanced: the categories of works in relation to one another; the reproduction right in relation to the public performance right.

The rules must give a precise definition of the receipts linked to the exploitation of works forming the basis for calculating the royalty.

The rules also give a clear definition of the parameters adopted to guarantee an indirect link with the receipts.

Freedom to set rates and tariffs is limited by users' spending power.

Though established and adopted by authors in general meeting, the licensing rules will reflect the results of collective negotiations with users.

The **documentation rules** indicate the minimum information to be provided by members in accordance with international standards. Members must comply with them. They must also submit to the obligation of notification prior to any use. If they fail to do so, the works concerned will be excluded from the distribution. The rules must remind them explicitly of this.

Each society may also require its members to provide any additional information that may be necessary to assign multiplying factors, to qualify for higher grades, to publish a promotional catalogue or to supply statistical data required by the authorities, etc.

To establish a book, record or video library of works in the repertoire to be placed at the disposal of users, members may be required to provide a copy of each work for which the society received notification.

The number of works for which the society receives notification is impressive and implies considerable work for the administrative departments. Consequently, the rules may determine the average in each category of works and require payment of a fee in the event that this figure is exceeded.

The administration society's third tool, the **distribution rules**, will be the part of the internal rules and regulations most frequently consulted by members. Like the licensing and documentation rules, these rules must meet international requirements and choose between the options open to each society. Accordingly, they will 1) set out the distribution sections to which royalties will be allocated, 2) specify, for each mode of exploitation giving rise to a joint collection, the parameters of the apportionment between the various categories of works administered while accepting that these criteria may vary from one mode of exploitation to the next, 3) for works of visual art, specify how the number of works will be converted into duration, 4) for each distribution section provide details of the method of obtaining information on the repertoire used, 5) describe how the calculation operates by explaining the notions of mass and point value, 6) set out the international distribution keys and the society's own keys which are imposed or proposed, without overlooking what happens to public domain or non-member shares, 7) determine the scale of broadcasting royalties and give the criteria adopted, 8) fix the period for which non-distributable royalties remain in suspense before being returned to the mass in the relevant section, 9) mention the frequency of distributions, 10) possibly provide for a system of advance payments, 11) set the minimum required per right owner to give rise to payment and the end use of such sums, and 12) explain in detail the operation of the social fund.

There is no harm in repetition, even if the rules may end up seeming frightfully long. It is imperative that members should know exactly how their royalties are distributed.

IV.3. STRUCTURE OF THE SOCIETY'S DEPARTMENTS

No ship can sail without a captain. It would go adrift. No organization can function if it does not have a leader, the only master on board. Two captains might give conflicting instructions. However, the leader cannot do everything himself. He or she must have assistance from others.

The **delimitation of each one's duties** must be clearly specified. Each person must know exactly what tasks are his or hers and to whom he or she reports.

The administrative council, under the supervision of the general assembly, determines the policy that the society is going to follow. It appoints the general manager who implements its decisions. The general manager chooses in turn the staff of the administrative departments.

The general manager is accountable for his or her management to the rightholders: the society's own members, on the one hand, and its sister societies, on the other. He or she attends the administrative council's meetings and the general meeting.

The general manager attends congresses and meetings organized by the international associations of authors' societies.

He (or she) may delegate some of his duties to persons recruited by him who work under his authority.

The administrative departments may be organized on the basis of a vertical or horizontal structure. Whatever the method adopted, all members of staff are answerable to the general manager and to him or her alone. In relation to the outside world, the general manager is always liable. He or she is answerable for the acts of members of staff. That is why he (or she) must be completely free to choose the persons who are going to work under him so that the work can be carried out in an atmosphere of complete trust.

The older and larger the society, the more likely it is that the administrative departments will be modelled on a **vertical hierarchy**. This model is based on the authoritarian principle. To be acceptable, the authority must be natural. It is not enough to decree that someone is empowered to give orders to other persons. These orders have to be carried out. The only authority that will be effective is that based on know-how. In other sectors of the economy, those who risk their capital can exercise authority which does not have this intellectual basis. In the field of copyright administration, the real bosses are the world's authors. The intermediate boss does not put his or her fortune at stake. The latter must reign purely by the power of his or her superior knowledge.

It is inevitable that a pyramidal construction based on intelligence and a sense of responsibility (and not thirst for power) at every level of the hierarchy will gradually establish itself as the society's activities develop and diversify.

At the beginning of its activities, an administration society will always have a **horizontal structure**. In pluridisciplinary societies this phenomenon will be seen to a greater extent than in specialist societies. In order to provide the personal service that the authors of the various categories of works so appreciate, it is necessary to call on the services of highly qualified members of staff capable of taking on all the tasks in the particular sector in which they work.

A flat construction with no relief, based on equal responsibilities is bound not to last long. Experience has shown that the capacity to manage and to accompany other persons is limited to the figure of seven. A certain difference in level will emerge, therefore, once this number has been exceeded as a result of the development of the society's activities.

The **basic structure** follows naturally from the fundamental function and role of the authors' rights administration society. Five persons are essential: the manager, lawyer, accountant, licensing officer and documentation/distribution technician.

The **organization chart** of the administration society's administrative departments will develop from the basic structure, through the horizontal line, towards a pyramid-shaped layout.

The supreme power will always be held by the assembly of right owners.

The administrative council, assisted by the consultative committees, will direct the operations conducted by the general manager. The funnel shape will always be preserved. Whatever the weight of the lower pyramid, the instructions on the objectives to be achieved will always come from authors.

IV.4. PROFILE OF THE STAFF

It goes without saying that the society's personnel must be skilled and that the persons hired must have the necessary professional qualifications. The legal department cannot operate without lawyers; the financial department needs accountants; the computer department needs technicians, etc. Based on the post they hold, members of staff need to have received the academic **training** that will prepare them for the job. But theoretical knowledge is not enough; practical experience must complete the training. In addition to professional skills, there is a characteristic that they must all share: they must all show an **interest in culture**.

The fact of liking the subject matter that they will have to deal with day after day is a considerable advantage. Moreover, the employees of a pluridisciplinary society are particularly lucky in this respect. They have a wide choice of artistic branches to choose from. At least one of them is likely to arouse their curiosity. The contact with the works which form the basis of their daily bread procures them the joy of feeling useful in the creative process while their knowledge of the arts and of artistic life will be of great help to them in carrying out their tasks.

Know-how or technical expertise and just plain knowledge are the basic requirements for the job. For maximum performance, certain **intellectual abilities and traits of character** will be added. These will vary depending on the type of work involved.

Users will try to avoid paying royalties. **Licensing officers** thus need to be perspicacious and at the same time affable, easy to talk to and sociable. They must like other people a lot because they will not be liked at first sight. They must be calm because they will be attacked. While they cannot be timid, nevertheless they must not be arrogant. They must be good talkers and be able to speak clearly and precisely. They must be patient because they will have to explain over and over again. They must be determined to succeed. They can never give up.

Of course, they must be honest and incorruptible, like their colleagues in the distribution department. Indeed, right owners are not always angels! Jealousy between creators is not unknown. Feelings may run high. In contacts with members, silence is golden. **Distribution officers** must fend off indiscreet questions while remaining amiable. If they are talkative they will be done for. Authors have an aura that ordinary mortals envy. Distribution officers must accept that this is part of life. Moreover, logic and mathematics are their strong points. They have no desire to be in the limelight. They work behind the scenes. They are precise and like to see work well done. They will tend to be introverted, happy to be good technicians and to be of service. They have their feet firmly on the ground and two plus two equals four.

The **accountant** must be an upright, placid, level-headed person who is steady and consistent. He (or she) must have irreproachable moral standards and be above all suspicion. His honesty is flawless. He inspires confidence but tends himself to be distrustful in nature. He goes to the bottom of things, checking and double checking.

For the **documentation staff**, rules are rules! They apply them and stick to them. They like order and discipline. They are tenacious. They are meticulous. They are not frightened of routine. On the contrary, they are afraid of change. They are assiduous, orderly, sedentary and allow themselves little or no extravagance.

Legal disputes require a firm but not inhuman approach. The **lawyer** seeks a balance so that the society continues to run. He (or she) is for the happy medium and compromise. He will find it hard to take quick decisions. The lawyer is thoughtful and goes into files in depth. He will be reproached for being slow but this is inevitable.

In an ideal world, the **general manager** should have every quality. In the real world, he (or she) must above all direct his team and ensure that he is seconded by good people whom he can trust. He must want to delegate! He must be positive, upright and fair. He must be amiable and sociable.

All these portraits of men or women are somewhat oversimplified and unsubtle. Our stressful existence at the end of the 20th century demands performances which are such that we need to feel at home in our jobs. That is why, more than ever, these traits of character need to be considered.

IV.5. ACCOUNTING SYSTEM

The **objectives** to be achieved are the same as those that companies set themselves in any sector of the economy: to obtain maximum revenue. More than any other company, however, the authors' society must keep an eye on expenditure. Indeed, it does not make any profits. All the royalties collected must be distributed after costs have been deducted. In this case, costs do not reduce the company's profits but come off the revenue of authors. Like any company, the society will endeavour to increase its revenue, not for itself but for the world's authors.

In order to show its will to achieve this twofold objective, the society will develop an accounting system which is a combination of management accounting and of rendering an account. On the one hand, it must have information at its disposal quickly and regularly so that this information can be acted upon and, on the other, members and foreign societies must receive an account of the administration while users and the public in general, through the supervisory authorities, must be reassured.

Accounting rules vary from country to country. These differences concern both the substance and the form. Each society will have to comply with the statutory provisions on the subject.

Every society must publish a **balance sheet**. The balance sheet reflects the financial position at a particular date. It is an important document which gives an idea of the society's health, but taken in isolation, it is not sufficient. The balance sheet shows the society's assets and liabilities.

The assets are made up of durable (fixed) items, and in particular the building, furniture, computers, motor vehicles, etc., and non-durable (current) holdings such as amounts receivable, cash in the bank, etc. which are likely to disappear because they will be

used before long. The liabilities are formed by the capital and reserves such as the reserves required by law and the society's statutes, the provisions for taxation, litigation, etc. and the debts which are mainly the royalties to be distributed, suppliers' invoices to be paid and bank loans, etc.

The **income statement** or profit and loss account completes the assessment of the society's state of health. It reflects the position over a given period. It shows the income and the expenditure and the result of the subtraction. In the jargon of authors' societies, licensing revenue plus interest, less costs gives the amount payable to right owners.

To arrive at these two synthesis documents, the society must draw up its **accounting plan** which is a list of all the accounts to be opened coupled with an explanation of the relationships and movements between the different accounts. These must be classified in a systematic, logical order: firstly, the accounts used to prepare the balance sheet and, secondly, the expenditure accounts and the income accounts. The latter accounts correspond to the licensing and distribution sections, established by category of works and type of rights, and the mixed sections.

If there is any wealth, it belongs to authors and not to the administration society. In principle, therefore, the society should not consider making **investments**. Like any household which needs a minimum number of possessions to survive – the traditionally non-seizable bed, table and chairs – the authors' society will allow itself a safety margin. It can live on the poverty line, but destitution is not acceptable. On the other hand, luxury is to be excluded. In order to guarantee freedom of negotiation with users, the society must have the minimum necessary for its subsistence.

During its first years, the society must be able to count on its parents: the national authorities and international solidarity. It is in their interest that the baby grows up so that when it reaches adulthood it will be independent.

If the society is in a weak bargaining position vis-à-vis powerful users because of its frailty, it may give in too quickly, to the detriment of the cause it is there to defend. To have the right dose of resources is reassuring.

However, the authors' society is not a financial organization. The temptation to use licensing income even temporarily to launch out onto the financial markets is to be resisted just as any speculative investment is to be precluded.

IV.6. MANAGEMENT OF COSTS

Income (the revenue from collections increased by interest) is subdivided into different sections. It would be logical, therefore, for expenditure (operating costs) to follow the same pattern.

It will be in the interest of a society which is just starting out to give **solidarity** particular weight.

The society must have a full house. It must administer the rights in all works, whether they generate substantial or insignificant royalties.

The commission which is intended to cover the administrative costs is calculated generally in the form of a percentage of revenue. If it was a flat charge, it might lead either to a profit or to losses, neither of which would be acceptable.

This percentage, which will always be deducted without discrimination from the revenue payable to national and foreign right owners alike, may be a single rate which is valid without any distinction based on the category of works or type of rights.

However, greater **diversification** will gradually be required, firstly between the major groups of works or rights and then within each group.

Some collections are difficult to make and are therefore costly. In some cases, distribution requires considerable work.

Some types of administration combine high licensing and distribution costs.

A more sophisticated system which reflects closely the degree of difficulty inherent in each area of administration must be developed gradually and smoothly.

It will be helpful in this regard to draw up a **financial plan**.

A study of potential use of the repertoire will enable the sources of revenue to be located and their importance to be assessed. Certain fixed, inescapable, minimum expenses will have an influence on the determination of the basic rate of the commission. Diversification will be possible only above this basic rate.

The standard laid down by *CISAC* is that the commission for administrative costs never exceeds 30%. Any temporary needs above that rate must be financed therefore through external aid or, failing that, through loans.

The financial plan which must be drawn up at the outset covers a minimum period. This minimum period is generally two years. However, it is advisable for the plan to cover a longer period – from five to ten years – in order to justify the use of such equity capital that is necessary for the planned activities.

Unfortunately, it is not uncommon for societies in the first few years of their activities to be unable to achieve the cost-effectiveness that is to be desired. A financial plan encourages thought and is useful when it comes to determining the policy to adopt.

This effort of thought will continue throughout the society's existence. The plan covering several years must be coupled with an **annual budget**. Forecasts of use of the repertoire administered and the costs to be maintained within reasonable limits are founded on an analysis of the past and the interpretation of precursory signs.

It is psychologically important for a society to set itself a concrete objective based on precise figures so that it can bring into play the means necessary to achieve it. The chances of success increase with the conviction that it is imperative to attain the goal that one has imposed on oneself.

This budgetary policy will be applied instinctively by each of the heads of department of the society. However, uncoordinated thinking is not sufficient. It is preferable to structure all these efforts because otherwise they may be less effective.

Will the reality match the forecasts? At regular intervals, the budget and the actual results must be compared. The differences that will doubtless emerge need to be analysed. This **periodic monitoring** must be carried out by means of a monthly assessment leading to a quarterly check. If the variations between the forecasts and the reality are not detected in time, efforts to put the situation right may well come too late.

As with everything, one must first analyse, then synthesize, then draw conclusions and lastly take decisions. These four steps apply to the examination of the figures obtained. This examination is not limited to the comparison between the budget and the reality. The results of the previous period – not only the period immediately preceding the one under consideration but also the same period last year or in past years – will be included. An assessment in relation to the results of sister societies operating in countries on a similar economic level may provide helpful insight.

IV.7. PUBLIC RELATIONS

The accounting documents are the most important source of information on the health of a society's administration. More so than any other company or organization, a society which enjoys a *de facto* monopoly, even if that monopoly is useful, must give an account of its management.

In addition to publishing the legal and financial documents that are required by law, the authors' society must keep the outside world informed, through public relations activities, of everything it undertakes and achieves.

The society has nothing to hide. Its image must be that of a glass house with open doors. Of course, business secrecy applies. It is obvious that details of individual accounts must never be revealed. But apart from this one exception, it must be possible for those who are entitled to be informed to know everything, absolutely everything.

Complete trust must reign between the society and its **members and sister societies**. To create a climate of trust, they must get to know one another. Unknown will be misunderstood! Brochures and leaflets prepared by discipline and giving an outline of the services offered will be provided from the outset. Detailed brochures will supplement them later. Apart from its legal responsibilities, the society has moral obligations towards those who are the reason for its existence. It has their source of income in its hands. A periodic magazine and the annual report accompanying the accounting documents must bring out all the particular aspects of the society's administration.

Every citizen is supposed to know the law and every **user** is presumed to be aware of the copyright law. However, it is not pointless to remind users of the law. They must have access to any documentation on the way in which the rights of copyright are exercised and in particular on the repertoire administered by the society, the tariffs and what happens to the royalties. It is their money – at least that is what users believe in all good faith (although they are mistaken without realizing it) – and they wish to know what the society does with it.

Users must receive the information they wish to have, preferably through their professional associations.

The society must place explanatory texts on copyright law in general and the law relating to the relevant mode of exploitation in particular at the disposal of users.

The **authorities** have responsibilities towards the people. By adopting legislation on copyright, they enact legal provisions which grant rights to authors and thereby oblige users to respect these private interests. Their position would become extremely

delicate if there was abuse. That is why the authorities have a right to monitor the exercise of rights by administration societies. They must receive all prior and subsequent information. But supervision of the society's administration: yes; participation in its administration: no. Only rightholders take decisions affecting the administration of their rights.

As a result of the development of the modes of exploitation of works of authorship, authors' rights increasingly concern the general **public**.

At the end of the day, it is the public which pays! Therefore, it must understand the legitimate reasons for the society's intervention on behalf of authors.

Through the press, the society makes contact with the public. Information prepared beforehand will be provided in the form of articles or programmes concerning the basis of authors' rights. Information will be provided on-the-spot where topical events require it.

Authors themselves are their society's first promoters. As they often combine creative and performing talents, they appear in public. Societies should take advantage of these opportunities.

The **key word** is **transparency**. It must guide all the activities of administration societies.

Authors' societies must get across the message of their *raison d'être* and the usefulness of the services they render to authors and users by any means of communication, be it text, sounds or images. They must explain and justify the flow of money that their intervention causes. The money which passes through the administration societies must be transparent and must reach its aim: the remuneration of the creative effort of cultural values.

ANNEX I

Vertical Hierarchy of Tariffs for Music Use

**INTERNAL VERTICAL HIERARCHY
OF TARIFFS FOR MUSIC USE**

I. ESSENTIAL MUSIC

1. Concert
2. Public's active participation through dancing or singing (dance, discotheque, singing-pub, karaoke)
3. Show, cabaret
4. Ballet
5. Radio broadcasting - music channel
6. Television broadcasting - music channel
7. Music delivery services
8. Radio broadcasting - general entertainment channel
9. Television broadcasting - general entertainment channel
10. Cinema - Audiovisual - Film channel (television)

II. IMPORTANT MUSIC

11. Bar with musical ambience - Live ambience music
12. Dance class
13. Son et lumière, entertainment on ice, carnival, majorettes
14. Circus
15. Musical sport (skating rink, rhythmic gymnastics, aerobics)
16. Amusement park
17. Incidental music (theatre)
18. Broadcasting - sports, news, education channels (radio and television)

III. SECONDARY MUSIC

19. Horeca
 - A. Bars
 - Coin-operated machine
 - Equipment (non-coin-operated) with loudspeakers or a screen
 - Equipment (non-coin-operated) without loudspeakers or a screen

B. Cafés

- Coin-operated machine
- Equipment (non-coin-operated) with loudspeakers or a screen
- Equipment (non-coin-operated) without loudspeakers or a screen

C. Restaurants

- Coin-operated machine
- Equipment (non-coin-operated) with loudspeakers or a screen
- Equipment (non-coin-operated) without loudspeakers or a screen

D. Hotels, Campsites

- Coin-operated machine
- Equipment (non-coin-operated) with loudspeakers or a screen
- Equipment (non-coin-operated) without loudspeakers or a screen

20. Fun fairs, fêtes
21. Exhibitions, trade fairs, promotional vehicles (admobiles)
22. Shops, supermarkets
23. Hairdressing salons
24. Means of transport (plane, coach, train)
25. Competitive sports
26. Churches, museums, offices
27. Car parks, waiting rooms, hospitals, lifts
28. Music-on-hold (telephone)

ANNEX 2

Model Licensing Contract for Producers of Recordings

ALL REPERTOIRES

**CONTRACT
PRODUCER OF SOUND RECORDINGS**

Between
the Society whose registered office is at,
represented by
hereinafter called the **SOCIETY**
and
the Company whose registered office is at,
represented by
hereinafter called the **PRODUCER**

It is hereby agreed as follows:

It being understood that the **PRODUCER** wishes to record, in their original form, musical works with or without words, literary works or dramatic works belonging to the repertoire of the **SOCIETY**;

ARTICLE 1

The **PRODUCER** undertakes to complete **WORK** by **WORK** and return beforehand the form "Application to Carry out Reproduction on a Sound Carrier", a copy of which is appended hereto.

This application must be submitted even if the **PRODUCER** thinks that the recording does not include any work belonging to the repertoire of the **SOCIETY**.

ARTICLE 2

On the basis of such applications, which may be first requests or for repressing, the **SOCIETY** shall grant the **PRODUCER** a conditional reproduction licence or a certificate of non-intervention. If necessary, a copy shall be sent directly to the manufacturer.

A definitive licence shall be granted only upon payment of the royalties due.

ARTICLE 3

As the author's moral rights are expressly reserved, any impairment of the character or unity of the work, through its mutilation or distortion, shall be prohibited. Any arrangement or adaptation shall require the authorization of the rightholders.

ARTICLE 4

The following shall be mentioned obligatorily on the sound carrier:

- a) the facsimile of the SOCIETY;
- b) the title of the work and the names of the authors, composers, arrangers and publishers;
- c) the words "All rights of the producer and of the owner of the recorded work reserved. Unauthorized copying, hiring, renting, public performance and broadcasting of this record prohibited."

The PRODUCER undertakes to place at the disposal of the SOCIETY free of charge, at the latter's request, a supporting copy of the carrier that is made.

ARTICLE 5

Distribution of sound carriers outside the countries listed in the phonographic reproduction application form shall be subject to the SOCIETY's prior authorization.

The PRODUCER may not pass on matrices and/or tapes to third parties without the SOCIETY's prior authorization in writing.

The SOCIETY's licence shall be valid only if the copies have been lawfully manufactured as regards the rights of performers and producers of phonograms. In the event that this proves not to be the case, the SOCIETY's licence shall automatically be null and void.

ARTICLE 6

In return for the licence granted to it, the PRODUCER shall pay the SOCIETY a royalty at the rate of% of the retail selling price (exclusive of tax). If the sound carrier includes works the mechanical reproduction rights in which are not administered by the SOCIETY, the royalty shall be calculated proportionally.

In the case of a carrier which is not intended for retail sale or where its selling price is less than the minimum price provided for in the SOCIETY's tariff, the royalty shall be calculated by reference to that minimum.

The royalties shall be paid per production for a number of sound carriers the minimum of which has been set at copies.

A deduction of% for sleeve or packaging costs shall be applied to the retail selling price (exclusive of tax) taken to calculate the royalty.

As a promotion on the quantity of carriers notified for the first time, a discount of% shall be accorded, subject to an absolute minimum of copies.

ARTICLE 7

The PRODUCER undertakes to pay the royalties due within a fortnight from receipt of the statement.

ARTICLE 8

The SOCIETY shall exercise absolute control over the operations of the PRODUCER. The latter shall authorize this control as regards both its own exploitation and that of other operators involved with it in the exploitation (pressing companies, retailers, etc.).

ARTICLE 9

The PRODUCER undertakes, at the request of the SOCIETY, to arrange a bank guarantee in favour of the SOCIETY, guaranteeing full compliance with these stipulations. The amount of the guarantee, the minimum of which is set at, shall be payable automatically to the SOCIETY by the mere fact of it noting a failure to comply with any one of the stipulations in question, and particularly where the SOCIETY has found, *inter alia*, that the number of carriers manufactured is greater than the one authorized or that sound carriers have been manufactured without authorization.

ARTICLE 10

If the PRODUCER fails to comply with any of the conditions set out in this agreement, the SOCIETY shall be entitled to denounce it with immediate effect. In this event, the SOCIETY shall be entitled, after informing the PRODUCER accordingly, to turn to the bank as guarantor and to deduct the sums due under this agreement from the amount guaranteed. The guarantee shall be reconstituted at the SOCIETY's first request.

ARTICLE 11

Without prejudice to what is stipulated in Article 10, in the event of non-compliance with any provision of this agreement or in the event of late payment, the PRODUCER shall pay the SOCIETY a sum of as damages. Late payment shall exist as a result of non-payment at the date indicated, without any request, reminder or other demand being necessary and without the PRODUCER being able to invoke any notices, terms and extensions of time granted on previous occasions. In this event, in addition to the royalty due, default interest calculated at% shall be charged.

ARTICLE 12

This agreement shall be concluded for a period of one year beginning on and ending on

It shall be renewed from year to year by tacit agreement unless terminated by either of the parties by recorded delivery letter three months before the expiry of each annual period.

ARTICLE 13

The courts of shall have exclusive jurisdiction in the event of dispute.

Executed in, on, in two copies.

For the SOCIETY,

For the PRODUCER,

Appendix to the Producer of Sound Recordings Contract
APPLICATION TO CARRY OUT REPRODUCTION ON SOUND CARRIER NO.

.....

PLEASE COMPLETE IN TYPE OR BLOCK CAPITALS

The PRODUCER (name)
(address)
(tel.) (fax)
asks the SOCIETY to grant it authorization to reproduce the works
listed overleaf on

the sound carrier (label) (catalogue no.)
(possible title of the sound carrier)
(performer)

- | | |
|---|---|
| <input type="checkbox"/> MC single up to 8' | <input type="checkbox"/> MC up to 120' |
| <input type="checkbox"/> MC maxi up to 16' | <input type="checkbox"/> CD 5" single up to 10' |
| <input type="checkbox"/> MC up to 16 min. | <input type="checkbox"/> CD 5" single up to 20' |
| <input type="checkbox"/> MC up to 30 min. | <input type="checkbox"/> CD 5" normal up to 80' |
| <input type="checkbox"/> MC up to 60 min. | <input type="checkbox"/> |

(No. of copies) (retail selling price, excl. of tax)
(Countries for which intended)

The manufacturer (name)
(address)

Nature of the application first request
 for repressing (please indicate below the no. and date of the first
authorization (number) (date)

The material was recorded by the applicant on (date)
at (name and address of the studio)

 was obtained from the original Producer (name)
(please enclose a copy of the contract or authorization)

N.B. To make recordings from a commercial record or a radio/TV broadcast is **always** prohibited.
A specific application is required for any reproduction on a videogram.

Note: The annotations made by the SOCIETY overleaf are valid only to the extent that the information provided by the
PRODUCER is complete and exact.

The SOCIETY accepts no responsibility in the event of the reproduction of a work annotated PM, PAI or SAI. However,
these annotations do not imply any permanent exemption from payment of royalties in the future.

For annotation

PM = copyright work not belonging to the repertoire of the SOCIETY

DP = work which is no longer in copyright - public domain

PAI = work the owners of the rights in which are currently unknown

SAI = work whose status is currently unknown

PROV = provisional collection without prejudice (insufficient information)

For the PRODUCER:
DATE:

SIGNATURE:

ANNEX 3

Model Licensing Contract – Subscription contract for Use of the Society's Repertoire

ALL REPERTOIRES

LICENCE (SUBSCRIPTION) CONTRACT

Between
the Society whose registered office is at,
represented by
hereinafter called the **SOCIETY**;
and
M..... domiciled at,
manager of the establishment located at
having a capacity of (number of seats, persons, surface area),
hereinafter called the **MANAGER-ORGANIZER**;

It is hereby agreed that *all* the provisions laid down in the General Conditions apply to this agreement and, in addition, Articles
.....
.....
of the Special Conditions.

It being understood that the **MANAGER-ORGANIZER** wishes to use musical works with or without words, literary works or dramatic works belonging to the repertoire of the **SOCIETY** and that he/she undertakes to pay a royalty fixed on the basis of the **SOCIETY**'s tariff in return for the **SOCIETY**'s authorization;

GENERAL CONDITIONS

ARTICLE 1

The **SOCIETY** hereby grants authorization, as provided for in the copyright law, to perform, or cause or allow to be performed, the works belonging to its repertoire other than dramatic plays.

ARTICLE 2

This general authorization is valid for the performances given by the MANAGER-ORGANIZER in his/her establishment by any means, such as the following: radio, cable radio, pick-up, recorder, CD player, automatic piano or organ, jukebox, record player, television, cable television, video recorder, karaoke, etc.

ARTICLE 3

This authorization excludes dances, dancing parties, thé-dansants, in short any form of dance even on an occasional basis. It also excludes any live performances, numbers and acts by performers, even in playback, and any performances in premises other than the ones indicated.

ARTICLE 4

The MANAGER-ORGANIZER is required to notify the SOCIETY of any change or changes of circumstances relating to the use. If such changes lead to a revision of the amount of royalties payable, a new agreement shall be drawn up.

ARTICLE 5

The amount payable in return for the SOCIETY's authorization shall be paid to the SOCIETY in advance on receipt of the SOCIETY's invoice or by bank transfer, at the time of the annual renewal date as indicated. The royalties are fixed as a flat charge and are payable whatever the composition of the programme.

ARTICLE 6

The amount of royalties payable is linked to the consumer price index reflecting changes in the cost of living. Any rise or fall in this index shall automatically lead, upon notification from the SOCIETY, to a corresponding increase or decrease in the royalty with immediate effect.

ARTICLE 7

The MANAGER-ORGANIZER undertakes, at least once a year at the time of the annual renewal date, to communicate to the SOCIETY, against receipt or by recorded delivery, a complete and truthful statement of the works performed. The MANAGER-ORGANIZER is hereby reminded that it is a punishable offence to communicate incomplete or incorrect programme returns.

ARTICLE 8

In the event of non-compliance with any of the clauses of this contract or of late payment or failure to communicate the programmes of the works performed or late delivery of the programmes, the MANAGER-ORGANIZER shall pay as damages a sum of for each breach. In addition, any breach may lead automatically, if the SOCIETY so decides, to the withdrawal of this licence. Late payment shall exist as a result of non-payment at the date indicated, without any request, reminder or other demand being necessary and without the MANAGER-ORGANIZER being able to invoke any notices, terms and extensions of time granted on previous occasions. In this event, in addition to the royalty due, default interest shall be charged.

ARTICLE 9

This contract shall be concluded for a period of one year beginning on and ending on It shall be renewed from year to year by tacit agreement unless terminated by either of the parties by recorded delivery letter at least one month before the expiry of each annual period.

ARTICLE 10

This contract may not be amended in whole or in part without the formal, written agreement of the contracting parties.

ARTICLE 11

The courts of shall have exclusive jurisdiction in the event of dispute.

ARTICLE 12

The costs relating hereto and of collection, the costs of reminders and warning letters and the costs of reports to prove that the clauses of this agreement have been observed, together with any tax or duties, shall be borne by the MANAGER-ORGANIZER.

SPECIAL CONDITIONS

ARTICLE 1

The SOCIETY grants authorization to perform, or to cause or allow to be performed, the works mentioned in Article 1 of the General Conditions and also the dramatic and dramatico-musical works belonging to its repertoire.

ARTICLE 2

In addition to the authorization mentioned in Article 1 of the General Conditions, the SOCIETY grants authorization to the MANAGER-ORGANIZER, for authors' rights (reproduction right) only, to reproduce mechanically the works in its repertoire for his/her use exclusively and to use such reproductions or those made lawfully by others.

This authorization releases the MANAGER-ORGANIZER from the prohibition relating to public use appearing on the label of commercial recordings. This authorization does not cover any other rights which may belong to third parties, notably in connection with re-recordings.

ARTICLE 3

The MANAGER-ORGANIZER undertakes to use for his/her performances only sound or visual carriers manufactured with the authorization of the owners of the rights in the reproduced works. In the event that he/she uses carriers which are known to be pirate ones, this authorization shall be revocable on the SOCIETY's decision notified by recorded delivery letter.

ARTICLE 4

Notwithstanding the terms of Article 3 of the General Conditions, dancing on an occasional or regular basis shall be permitted. Live performances, numbers and acts by performers continue to be excluded.

ARTICLE 5

Notwithstanding the terms of Article 3 of the General Conditions, live performances, numbers and acts by performers shall be permitted.

ARTICLE 6

Notwithstanding the terms of Article 5 of the General Conditions, the royalties shall be payable half-yearly.

ARTICLE 7

Notwithstanding the terms of Article 5 of the General Conditions, the royalties shall be payable quarterly.

ARTICLE 8

Notwithstanding the terms of Article 5 of the General Conditions, the royalties shall be payable monthly.

ARTICLE 9

Notwithstanding the terms of Article 7 of the General Conditions, the MANAGER-ORGANIZER shall be released from the obligation to supply programmes of the works performed. However, he/she shall give free access to the SOCIETY's representatives who have been instructed to note down the titles of the works performed.

Executed in, on, in two copies.

For the SOCIETY,

The MANAGER-ORGANIZER,

ANNEX 4

Model Licensing Contract – Broadcasting

ALL REPERTOIRES

CONTRACT BROADCASTER

Between the company, whose registered office is at,
represented by hereinafter called "THE BROADCASTER"
on the one part,

and

the Society, whose registered office is at represented by
..... hereinafter called "THE SOCIETY"
on the other part,

It being understood that the Broadcaster operates a radio and television programme
broadcasting service in the territory of;
that it transmits its signal by hertzian means and through a telecommunications satellite;
and
that it obtains receipts for the advertisements that it includes in its broadcasts, in
addition to resources obtained from subsidies;

ARTICLE 1: ACTIVITIES CONCERNED

Within the limits of its rights, THE SOCIETY gives the Broadcaster, under the conditions
and subject to the reservations set out *infra*, non-exclusive authorization to use all the
musical works, with or without words, literary works, dramatic works and works of visual
art belonging to its repertoire for the purpose of radio and television broadcasting. A
description of THE SOCIETY's repertoire is attached hereto.

This authorization covers all transmissions, whether relayed or otherwise and whether
broadcast live or from lawfully made sound carriers combined or not with visual carriers.

This authorization does not give the Broadcaster the right to transmit its programmes by
relays in foreign territories or the right to transmit or distribute them by cable.

The moral rights of authors are expressly reserved. Accordingly, the Broadcaster shall
ensure that the names of the authors and composers are mentioned when works are
presented.

THE SOCIETY reserves the right to prohibit exceptionally the transmission of certain
works. This right may be exercised only to avoid serious damage to the interests of
authors. Any prohibition of this kind shall be notified, with the reasons for it, at least 24
hours in advance.

ARTICLE 2: LITERARY AND DRAMATIC WORKS – WORKS OF VISUAL ART

§1 The Broadcaster may make any adaptations and arrangements that are needed to meet the requirements of the particular technique of television broadcasting. However, this authorization may not at any time impair the moral rights of the authors involved.

§2 The authors and composers or their duly authorized representatives shall have free access to the studios' listening rooms to attend rehearsals of their works. The studio managers shall as far as possible take account of the observations that the authors, composers or their representatives see fit to make at the rehearsals.

§3 The Broadcaster undertakes to mention the names of the author and composer of the original work and, where applicable, those of the translator and adapter when presenting the programme and in press releases.

§4 If there is no authorized translation of a particular work, the Broadcaster may translate the work to be broadcast or, in the case of a film, dub it or add subtitles to it as necessary, for its exclusive use.

If an authorized translation exists in the relevant official language, the Broadcaster shall use it; THE SOCIETY shall communicate the name and address of the translator and, as far as possible, the text of the translation.

§5 Notification prior to transmission

In principle, no dramatic work belonging to the repertoire of THE SOCIETY may be transmitted in full or in the form of an adaptation, arrangement, translation, condensed version, abridgement or selection without prior notification which the Broadcaster shall send to THE SOCIETY by recorded delivery letter at least forty days before the scheduled transmission date or, in the case of a retransmission or relay, at least fifteen days before the retransmission or relay date.

THE SOCIETY reserves the right to prohibit the transmission twenty days at the latest from receipt of the notification or, in the case of a retransmission or relay, ten days at the latest from receipt.

However, the Broadcaster shall be exempted from this notification requirement for transmissions made by means of lawfully made commercial recordings.

The Broadcaster shall also be exempted from this notification requirement for successive (repeat) transmissions effected lawfully by means of visual or sound and visual recordings made by it for a period of eighteen months from the first transmission, provided that this contract, or a contract replacing it, is still in force between the parties.

§6 Any use of works of visual art for advertising purposes is subject to the artist's express, prior authorization, through the intermediary of THE SOCIETY.

ARTICLE 3: EXTENT OF THE AUTHORIZATION

This authorization is issued for the public performance right and the mechanical reproduction right.

A. Public Performance Right

This authorization covers the public performance right and releases the Broadcaster, as far as authors' rights are concerned, from the prohibition relating to public performance appearing on the label of commercial records.

This authorization does not concern performances organized by the Broadcaster in its studios or elsewhere, in the presence of members of the public, even if the performances in question form, in whole or in part, the subject matter of transmissions.

In the case of such performances, prior authorization must be sought in accordance with the law and THE SOCIETY's usual tariffs apply.

This authorization does not cover communication to the public in hotels, cafés, restaurants, etc. The persons in charge of such establishments must seek prior authorization from THE SOCIETY.

B. Mechanical Reproduction Right

The mechanical reproduction right is covered by this authorization to the extent needed by the Broadcaster to make its own programmes.

"Own programmes" mean all the programmes produced and made by the Broadcaster in its installations and with its material, as well as programmes produced by the Broadcaster but made by a third party for the Broadcaster's exclusive use.

This authorization concerns sound or visual operations relating to works as they constitute the repertoire of THE SOCIETY. However, it excludes cases where a recording concerning a work created purely to be listened to would transform it into a dramatically performed work through the addition of a theatrical concept adapted to the work.

This authorization does not cover any reproduction of THE SOCIETY's repertoire for purposes other than those necessary for the Broadcaster's own programmes as defined above.

This authorization excludes, *inter alia*:

- the duplication, sale, free distribution or rental of programmes to the public;
- the making of productions, for advertising or otherwise, produced or co-produced by or with a third party.

Any use of pre-existing musical works for advertising is subject to the author's express, prior authorization, through the intermediary of THE SOCIETY.

ARTICLE 4: EXCLUSION FROM THE AMBIT OF THE AUTHORIZATION

Any other right claimed by third parties, such as producers of phonograms and performers, for example, is excluded from the ambit of this contract.

It is also up to the Broadcaster to come to an agreement with the publishers concerning the use of material hired out to it.

ARTICLE 5: FINANCIAL CONDITIONS

In return for the authorization granted to it, the Broadcaster shall pay THE SOCIETY a royalty at the following rate calculated on the basis set out below:

.....% of the receipts, with an annual minimum of

The calculation basis comprises the Broadcaster's total resources: advertising receipts, sponsoring (including funds allocated for sponsoring the production or co-production of programmes), aerial rental, subscriptions, bartering (exchange of services or goods), State subsidies or subsidies from regional or local authorities, etc.

The receipts mean the gross receipts exclusive of tax.

Only agency and advertising space selling costs that have actually been incurred may be deducted. This deduction may not exceed% of the gross advertising receipts from advertisers.

The royalty shall be payable whatever the composition of the programmes.

ARTICLE 6: METHOD OF PAYMENT

At the end of each quarter and on the 10th of the following month at the latest, the Broadcaster shall notify THE SOCIETY of the total receipts made and shall pay the corresponding royalty based on these receipts.

If the royalty calculated on the basis of the receipts is less than the guaranteed minimum stipulated in Article 5, the balance shall be paid within two months from the end of the relevant annual period.

In order to enable THE SOCIETY to check that the payments made are correct, the Broadcaster shall provide it with any proof and explanations that may be necessary concerning the resources forming the basis for calculating the royalty stipulated in this contract.

In addition, the Broadcaster shall authorize THE SOCIETY's representatives to consult, on its premises, any accounting documents that may be necessary to check the receipts.

ARTICLE 7: PROGRAMMES

In order to enable the royalties paid by the Broadcaster to be distributed correctly, the Broadcaster shall provide THE SOCIETY with details of the contents of its programmes, indicating, for each work performed, the title of the work, the name(s) of the author(s), the duration and the commercial record label and number where appropriate.

This documentation shall be delivered monthly in a form to be determined by joint agreement.

ARTICLE 8: CONFIDENTIALITY

THE SOCIETY shall have a duty of confidentiality concerning the statement of receipts and supporting documents; however, it may make use of them before the courts in the event of a dispute with the Broadcaster.

ARTICLE 9: DURATION

This contract shall come into force on and shall remain in force until

It shall then be renewed from year to year by tacit agreement unless terminated by either of the contracting parties by recorded delivery letter at least three months before the expiry of each annual period.

ARTICLE 10: DAMAGES

In the event that the Broadcaster fails to comply with any of the clauses of this contract, alters the conditions under which its transmissions are effected without having notified THE SOCIETY beforehand, is overdue in making the payments stipulated in Article 6 or fails to supply the documents or programme returns referred to in Articles 6 and 7 or is late in supplying them, the Broadcaster shall pay THE SOCIETY the sum of as damages for each breach. In addition, any breach may lead automatically, if THE SOCIETY so decides, to the withdrawal of this licence without notice.

Late payment shall exist as a result of non-payment at the stipulated date, without any notice, reminder or demand being necessary and without the Broadcaster being able to invoke any notices, reminders or extensions of time granted on previous occasions.

Only the acknowledgement of receipt of recorded delivery by the post or, failing that, the receipt issued by THE SOCIETY or by one of its employees, shall be proof of delivery of the documents or programmes.

ARTICLE 11: COSTS

The costs of this contract and of any revenue stamps and registration fees shall be borne by the Broadcaster.

ARTICLE 12: JURISDICTION

The courts of shall have exclusive jurisdiction in the event of dispute.

Executed in, on, in two copies.

For THE SOCIETY,

For the Broadcaster,

DESCRIPTION OF THE SOCIETY'S REPERTOIRE

THE SOCIETY's repertoire comprises:

1. Musical works with or without words, the rights in which are known as **SMALL RIGHTS**, including both existing works and those written specially at the Broadcaster's request by composers affiliated to THE SOCIETY.
2. Dramatic or dramatico-musical works, the rights in which are known as **GRAND RIGHTS**:
 - operas, comic operas, lyric drama, operettas, musicals, ballets, mimes, puppet theatre, tragedies, comedies, drama, vaudevilles, revues and in general all the works belonging to THE SOCIETY's **dramatic repertoire** or the repertoires it represents in It includes not only existing works but also those specially written at the Broadcaster's request by authors affiliated to THE SOCIETY;
 - directing, scenario, literary part, dialogues, original contributions to films of any kind, whether cinematographic films or TV films, series or extracts from series, and in general all the works belonging to THE SOCIETY's **audiovisual repertoire** or the repertoires it represents in It includes not only existing works but also those specially written at the Broadcaster's request by authors affiliated to THE SOCIETY.

This repertoire includes, in addition to the works of members of THE SOCIETY, the works of members of foreign authors' societies represented by THE SOCIETY in

3. The literary works and texts of various kinds, the rights in which are known as **LITERARY RIGHTS**:

poetry, prose, sketches, documentaries, evocations, programmes based on a scenario, essays, lectures, talks, chronicles and in general all the works belonging to THE SOCIETY's **literary and audiovisual repertoire** or the repertoires it represents in It includes not only existing works but also those specially written at the Broadcaster's request by authors affiliated to THE SOCIETY.

This repertoire includes, in addition to the works of members of THE SOCIETY, the works of members of foreign authors' societies represented by THE SOCIETY in

4. Works of visual art:

paintings, engravings, drawings, sculptures, photographs and in general all the works belonging to THE SOCIETY's **visual arts repertoire** or the repertoires it represents in It includes not only existing works but also those specially made at the Broadcaster's request by authors affiliated to THE SOCIETY.

This repertoire includes, in addition to the works of members of THE SOCIETY, the works of members of foreign authors' societies represented by THE SOCIETY in

ANNEX 5

Model User Files

No. 000001

Date creation of file record: 27.10.1998

Date final update: 02.12.2001

Name: ADAMOV, Bérangère

Address: Rue de Lille, 68
F-75069 Paris

Place of exploitation: Avenue Charles de Gaulle, 122
F-92521 Neuilly-sur-Seine

Contract no.: 798654 **from** 16.11.1998 **to** 15.11.1999

Category: HORECA

No. 000002

Date creation of file record: 27.10.1998

Date final update: 02.12.2001

Name: AVA sprl

Represented by: STROOBANTS Louis
Drève Ste Anne, 112
B-1020 Brussels

Address: Drève Ste Anne, 66
B-1020 Brussels

Place of exploitation: Réserve Monteverdi
rue Guisarde, 5
F-75006 Paris

Date: 14.11.1988

Category: CONCERT

No. 000003

Date creation of file record: 27.10.1998

Date final update: 02.12.2001

Name: ANTENNE 2/FRANCE 2

Address: Avenue Montaigne, 22
F-75387 Paris Cedex 08

Place of exploitation: Avenue Montaigne, 22
F-75387 Paris Cedex 08

Contract no.: 66321 **from** 01.01.1999 **to** 31.12.1999

Category: BROADCASTER

No. 000004

Date creation of file record: 27.10.1998

Date final update: 02.12.2001

Name: THEATRE DE LA BARDANNE

Address: Rue St Denis, 4
F-59000 Lille

Place of exploitation: Rue St Denis, 4
F-59000 Lille

Contract no.: 798654

Date: Octobre 1998

Category: THEATRE

FILE 1: LIST OF USERS

.000001	ADAMOV Bérangère
.000002	AVA sprl
.000003	ANTENNE 2/FRANCE 2
.000004	THEATRE DE LA BARDANNE
.	
.	

FILE 2: LIST OF CONTRACTUAL COLLECTIONS

ADAMOV Bérange (000001)
ANTENNE 2/FRANCE 2 (000003)

FILE 2Bis: LIST OF OCCASIONAL COLLECTIONS

AVA sprl (000002)

THEATRE DE LA BARDANNE (000004)

.
. .
. .
. .
. .

FILE 3: GEOGRAPHICAL LIST BY POSTCODE

59000	THEATRE DE LA BARDANNE (000004)
75006	Réserve Monteverdi – AVA sprl (000002)
75387	ANTENNE 2/FRANCE 2 (000003)
92521	ADAMOV Bérangère (000001)

.

.

FILE 4: SCHEDULE

.01.01	ANTENNE 2/FRANCE 2 (000003)
.00.10	THEATRE DE LA BARDANNE (000004)
.14.11	AVA sprl (000002)
.16.11	ADAMOV Bérangère (000001)
.	
.	
.	

FILE 5: LIST BY CATEGORY OF USE

HORECA

ADAMOV (000001)

.
. .
. .
. .

CONCERT

AVA (000002)

.
. .
. .
. .

THEATRE

THEATRE DE LA BARDANNE (000004)

.
. .
. .
. .

BROADCASTING

ANTENNE 2 (000003)

.
. .

ANNEX 6

Summary of the Functions of the CAE and Examples

INTERNATIONAL DOCUMENTATION EXCHANGE

Practical Information

- *File* of Authors, Composers and Publishers (**C.A.E.**) for the use of the member societies of CISAC and BIEM.
- *Extension* to other rightholders: Interested Parties Index (**I.P.I.**).
- *Managed* by **SUISA**, Bellariastrasse 82, CH-8038 Zurich (Switzerland).
- *Contents*: names (patronymics and pseudonyms) of all authors, composers and publishers (**A, C, CA, E**) and their society of membership.
- *Language* used: English.
- *Provision* of information by the societies: every three months by means of printed lists, magnetic tapes or direct registration on-line.
- *Publication*: **four times a year** on CD-ROM, magnetic tape or through on-line consultation.
- *Complete list* (confidential document exclusively for the use of societies) and *pocket edition* (document which may be distributed to third parties).
- *CAE code* number: 9 figures; ★ year of birth; + year of death.
- *Administration society's code* number: 3 figures, non-member NS=099; public domain DP=000.
- *Headings*: rights of **communication to the public** (performing and broadcasting rights) and rights of **reproduction** (mechanical rights).
- *Categories of works*: non-dramatic music; dramatic music, non-dramatic literature, dramatic literature.
- *Territories*: world, continents, subcontinents, groups of countries, countries.
- *Restrictions*: language, status, multiple affiliation, etc.
- *Examples*: Bach, Brel (see attached).
- *Detailed brochure*: contact SUISA.

CARD I P I - SYSTEM -SELECTION- CC : 00 04/03/97

NAME : BACH JOHANN -02- NR.:

SMALL-R
BACH JOHANN CHRISTOPH FRIEDRICH C PA 000 000 +1795 001 74 90 17
BACH JOHANN MICHAEL C PA 000 000 +1694 001 74 91 15
BACH JOHANN NIKOLAUS C PA 000 000 +1753 001 74 92 13
BACH JOHANN SEBASTIAN C PA 000 000 +1750 001 74 93 11

AM075 PLEASE SELECT
AM085 PF1, PF2, PF3, PF12, ENTER

CARD IPI - SYSTEM -TERRITORIES-CC : 00 04/03/97

NAME : BACH JOHANN NR.:

BACH
JOHANN SEBASTIAN PA C 001 74 93 11 * 1685 + 1750

WORLD 000 000 000 000 000 000 000 000 03.1973

CARD IPI - SYSTEM -TERRITORIES- CC : 00
04/03/97

NAME : BREL J NR.:

BREL
JACQUES ROMAIN G PA CA 004 14 00 56 *
+1978

--- ---
--- --

WORLD 055 055 055 055 055 055 055
055 03.1973

ANNEX 7

Model Notification Forms for Various Categories of Works

NOTIFICATION FORM
NOTIFICATION of musical works, with or without words for
PERFORMING RIGHTS and MECHANICAL REPRODUCTION RIGHTS

Society:
Received on:
Registration nr:

TITLE.....
SUBTITLE.....

Duration .....min.	GENRE	Mech. Reproduction Rights DISTRIBUTION KEYS			SIGNATURE(S)
		1 Original Version	2 Version	3 Version	
Columns 2 and 3 are reserved for versions other than the original one. Mention, if applicable, which version is involved (e.g. French version, }-----> for orchestra, etc.)					
COMPOSER	IN BLOCK CAPITALS	.....	.....	.....	.....
COMPOSER .....		.....	.....	.....	.....
AUTHOR .....		.....	.....	.....	.....
AUTHOR .....		.....	.....	.....	.....
TRANSLATOR .....		.....	.....	.....	.....
ARRANGER .....		.....	.....	.....	.....
PUBLISHER .....		.....	.....	.....	.....
<i>Is it a work of joint authorship?</i> <i>If not, has the composer obtained the exclusive right to set the words to music?</i>					

The name of the publisher is mentioned by the authors only if the work is actually published. The publisher should not sign this form.

Observations for the Mechanical Reproduction Rights

Dated20

★ Please remember to indicate the shares payable to each right owner.

Notification is obligatory and must be effected prior to performance.

The notification form is kept in the Society's records and cannot be returned under any circumstances.

This notification is considered to be a declaration of ownership.

Any borrowing from another work, whether or not in copyright, must be indicated on the form by the signatories (original title, surnames and first names of the authors and composers).

A copy of each work being notified must be enclosed with this form.

Authors who publish their own works are required to deposit their publications.

The Society's acceptance of a work does not imply that the Society guarantees its originality in relation to others.

NOTIFICATION FORM

NOTIFICATION OF DRAMATIC WORKS

Society Received on Registration nr.
--

I/we the undersigned hereby certify that I/we am/are the only of the work set forth below, that this work has not been notified to another society or organization and that the public performance right in it is assigned exclusively and without reservation to the Society.

TITLE	GENRE	NUMBER OF		PLACE AND DATE of the first performance	AUTHOR	(1) COMPOSER (1) TRANSLATOR (1) ADAPTER
		acts	scenes			
.....
.....	DURATION (in minutes)		.....	.....	.....

SIGNATURE(S)

Date: 20

Share-out of royalties

.....
.....
.....

Initials

.....
.....
.....

- This form must be signed and the share-out initialled by **all** the authors and composers of the work (even if they are not affiliated to the Society).
- It must be deposited at the registered office **eight days at the latest before the first production**.
- NOTA BENE. The authors and composers are reminded that they must never agree to rates lower than those charged by the Society.

(1) Delete as appropriate.

Please also complete overleaf

Notification is obligatory and must be effected prior to performance.

The notification form is kept in the Society's records and cannot be returned under any circumstances.

This notification is considered to be a declaration of ownership.

A copy of each work being notified must be enclosed with this form.

The Society's acceptance of a work does not imply that the Society guarantees its originality in relation to others.

OPTIONAL:

CAST:

F(emales):

M(ales):

E(xtras):

Number of sets:

SUMMARY:

NOTIFICATION FORM NOTIFICATION OF LITERARY WORKS

TITLE	IN BLOCK CAPITALS	.....	Society Received on Registration nr.
SUBTITLE .....		.....	SIGNATURE OF THE AUTHOR
GENRE .....		.....
AUTHOR .....		.....	.....
PUBLISHER .....		.....	Author's membership no.

For published works, please indicate:

- 1) whether your contract with the publisher stipulates that the publisher must be consulted in the event of reproduction in whole or in part in newspapers, magazines, anthologies, etc.

.....

- 2) whether the publisher is entitled to a share of these reproduction right royalties and, if so, what the publisher's share is.

See the additional instructions overleaf.

Dated

20

Notification of works is obligatory.

The notification form is kept in the Society's records and cannot be returned under any circumstances

This notification is considered to be a declaration of ownership. Any borrowing from another work, whether or not in copyright, must be indicated on the form by the signatory (original title, surname(s) and first name(s) of the author(s)).

A published or manuscript copy of any notified work must be enclosed with this notification form.

The Society's acceptance of a work does not imply that the Society guarantees its originality in relation to others.

NOTIFICATION FORM

NOTIFICATION OF CO-AUTHORS **AUDIOVISUAL WORKS** for the Cinema, Radio and Television,...

Society Received on Registration nr.
--

Title

VERSION (1) :

GENRE (2) :

TOTAL

DURATION:

RIGHT OWNERS			
Surnames + First Names Membership Number or Society	Status (3)	Share-Out of Royalties	Signature

Producer (name + address):

Broadcaster/Transmitter + date(s):

Date:/...../..... 20..

(1), (2) and (3): see overleaf

- (1) VERSION: In the case of a translation of adaptation, please indicate the original title and the name of the author in the section headed "Right Owners".
- (2) GENRE: Fiction film, television film, documentary, advertising film, animated film, video film, Radiophonic work,
Stage play, opera, operetta, musical,
Poetry, prose text, sketch,
Lecture, talk, chronicle, prepared interview, presentation text.
- (3) STATUS: Author of the dialogues or commentator,
Author of the original work, literary author,
Translator, adapter,
Screenwriter, director
Author of subtitles or dubbing
Composer (only for dramatico-musical works)

Please enclose the following documents with this form:

- 1) a copy of the work
- 2) a copy of the contract concluded with the producer

Notification is obligatory and must be effected prior to performance.

The notification form is kept in the Society's records and cannot be returned under any circumstances.

This notification is considered to be a declaration of ownership.

The Society's acceptance of a work does not imply that the society guarantees its originality in relation to others.

Society Received on Registration nr.
--

Notification Form for FILMS

Title of the film :

Genre: **Fiction Film – Documentary – Advertising Film – Cartoon – Animated Film** (delete as appropriate)

Version: Shooting script:.....

Scenario by: Adaptation :

Dialogues or Commentaries by : Based on a novel by:

Length of the film (in metres): (Filmmm Total duration:

Duration of the music: Production: Year.....

Producer (firm) :..... Director :.....

Distributor:.....

Main performers:

TITLES Of the works recorded in the fillm	Vis. Voc. Instr. B.M. *	Number of passages	Duratione In seconds	Composer	Author	Arranger	Publisher

All the works recorded in the film, without distinction, must appear on this statement

dated.....20.....

Certified true and complete,

* Vis.: Visuel / Voc.: Vocal / Instr.: Instrumental / M.F. : Musique de fond

.....
(signature)

Optional Registration Form of Graphic, Plastic or Photographic Works of Art,

I, the undersigned,....., on behalf of the Society
Certify having received this day for safe custody

Under a closed envelope

From:	Mr.
First name:	Pseudonym:
Date of birth:	In:
Profession:	
Domicile:	Tel.:

Nationality:

Or by the mandate of:

First name:	Pseudonym:
Date of birth:	In:
Profession:	
Domicile:	Tel.:

Nationality:

A work (drawing, model, plan, project, document, photograph..)*

Specified:

of which Mr..... declares himself to be the author.

In good faith of which I:

placed under a sealed envelope

the (drawing, model, plan, project, document),.... specified above, after having fixed the seal
of the Society dated this day.

I also declare having restored to Mr.

the second original of the (drawing, model, plan, project, document) which he had
submitted to me, stamped with the seal of the Society and dated this day.

Dated20.....

* delete as appropriate

Notification of a Work of visual art is not obligatory.
The optional registration form is kept in the Society's records.
The Society's acceptance of a work does not imply that the Society guarantees its originality in relation to others.

ANNEX 8

Model International Index Card

Title

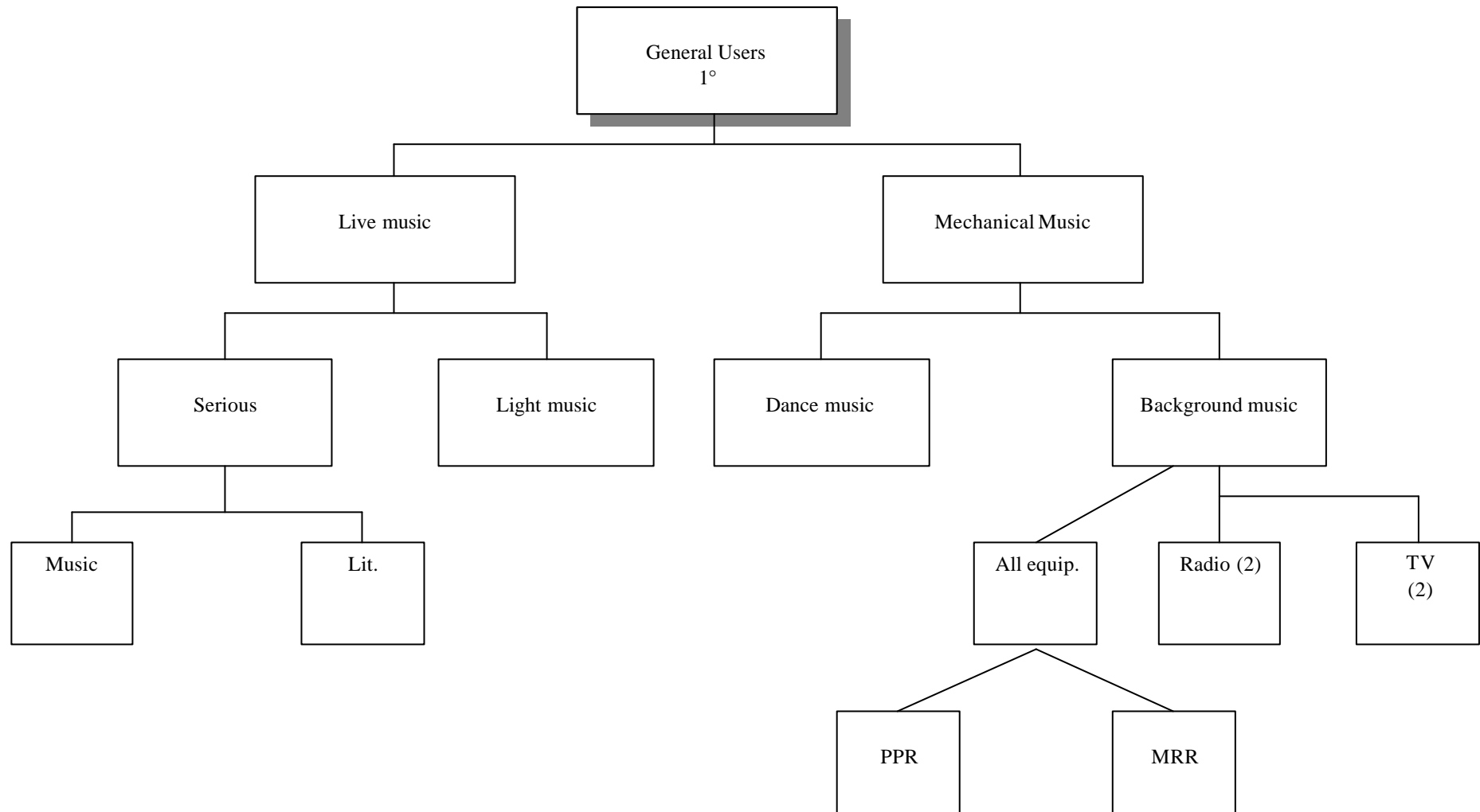
				Duration	
CAE	Right Owners	Performing Rights		Mechanical Rights	
		Society	Share	Society	Share
Countries Assigned					
Duration Assignment					

ANNEX 9

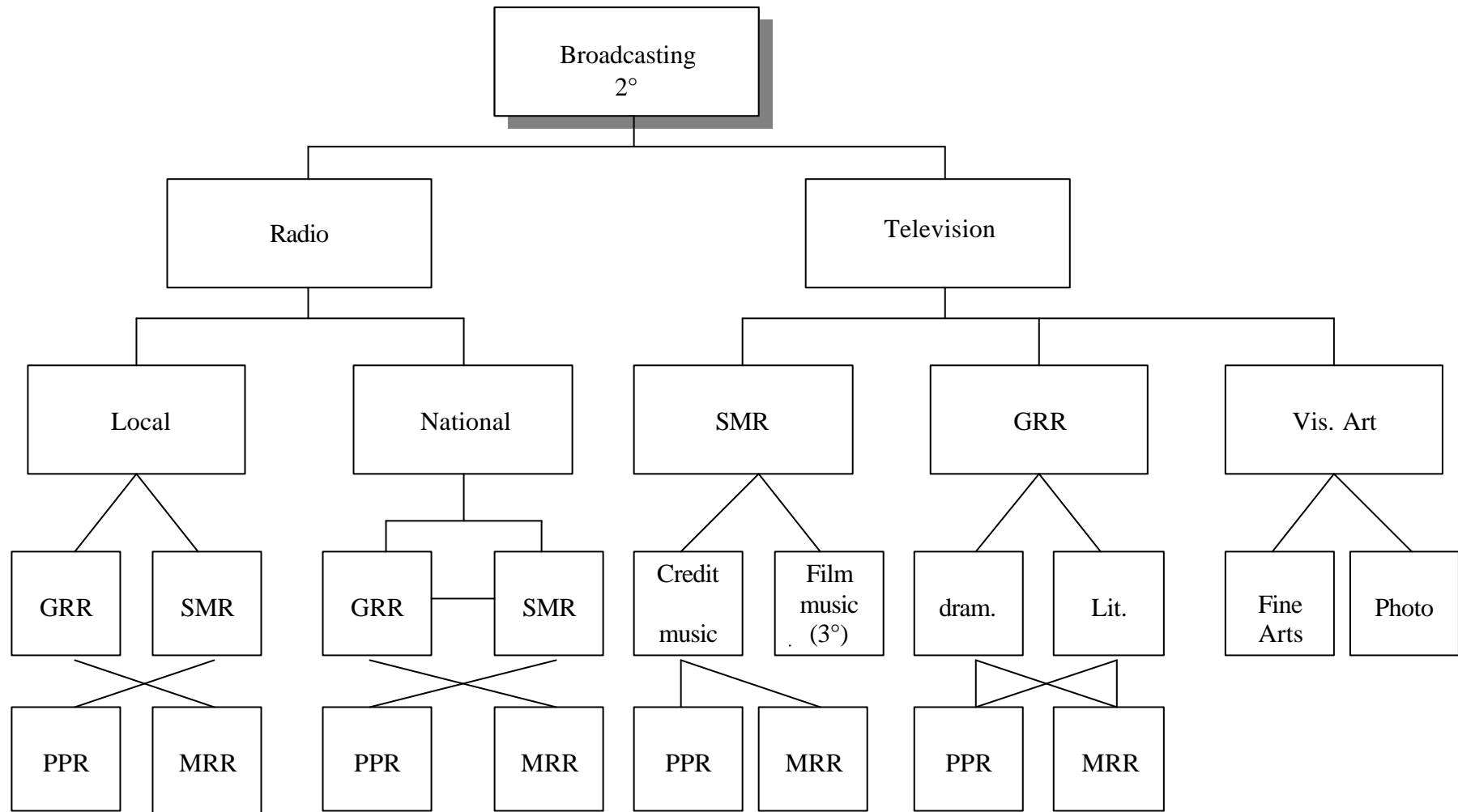
Distribution Categories

DISTRIBUTION CATEGORIES

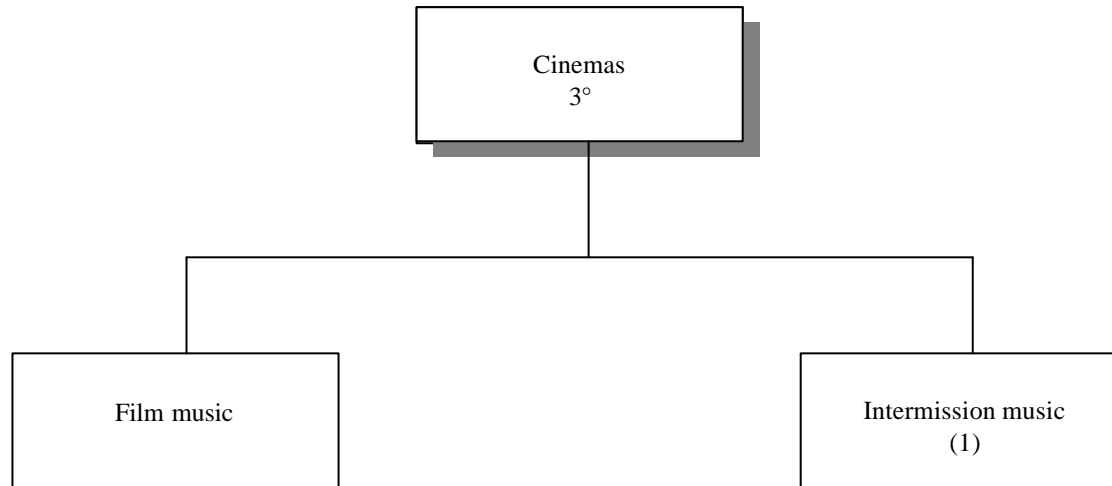
- 1° GENERAL USERS
- 2° BROADCASTING
- 3° CINEMAS
- 4° THEATRES
- 5° PRODUCERS OF RECORDINGS
- 6° REPROGRAPHIC EXPLOITATION
- 7° DROIT DE SUITE

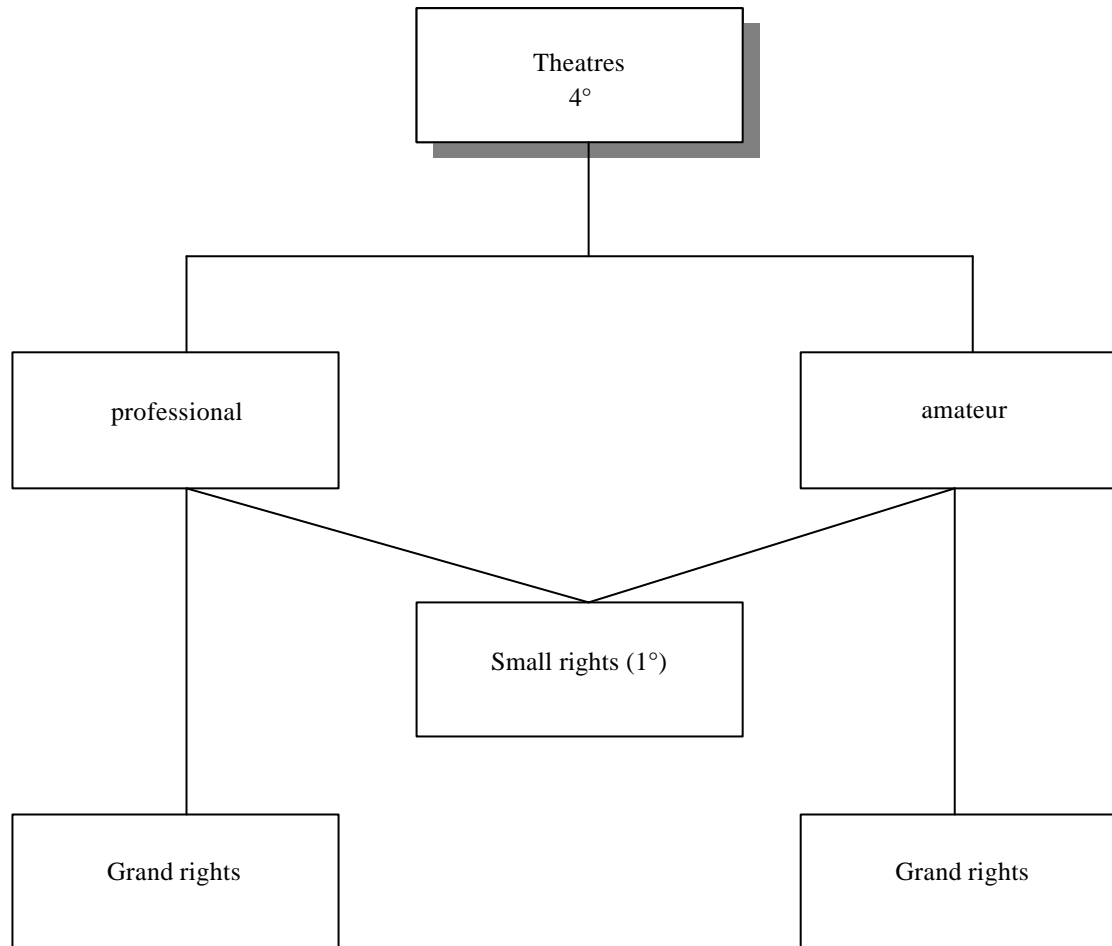


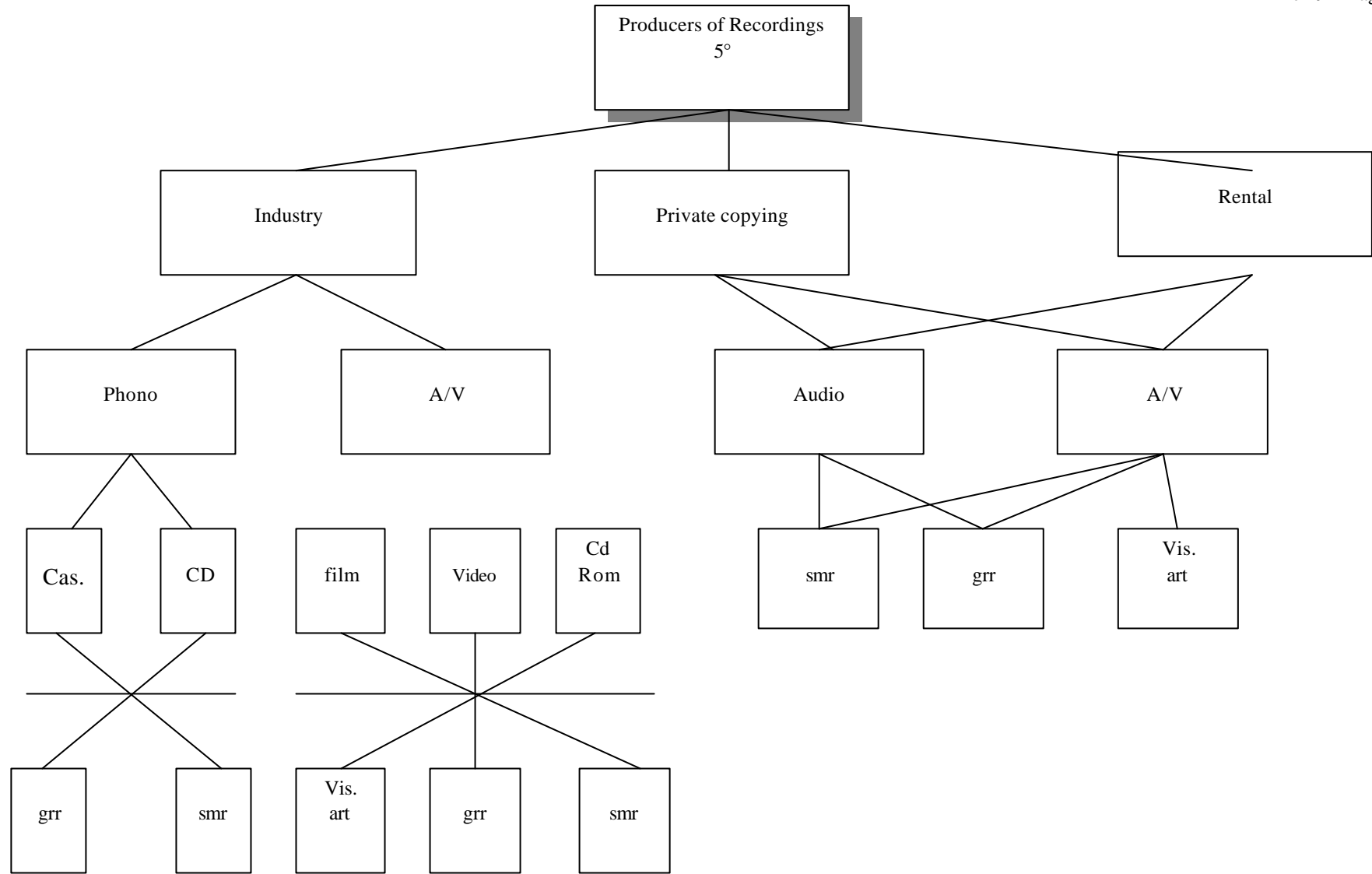
PPR: Performing Rights
MRR: Mechanical Rights

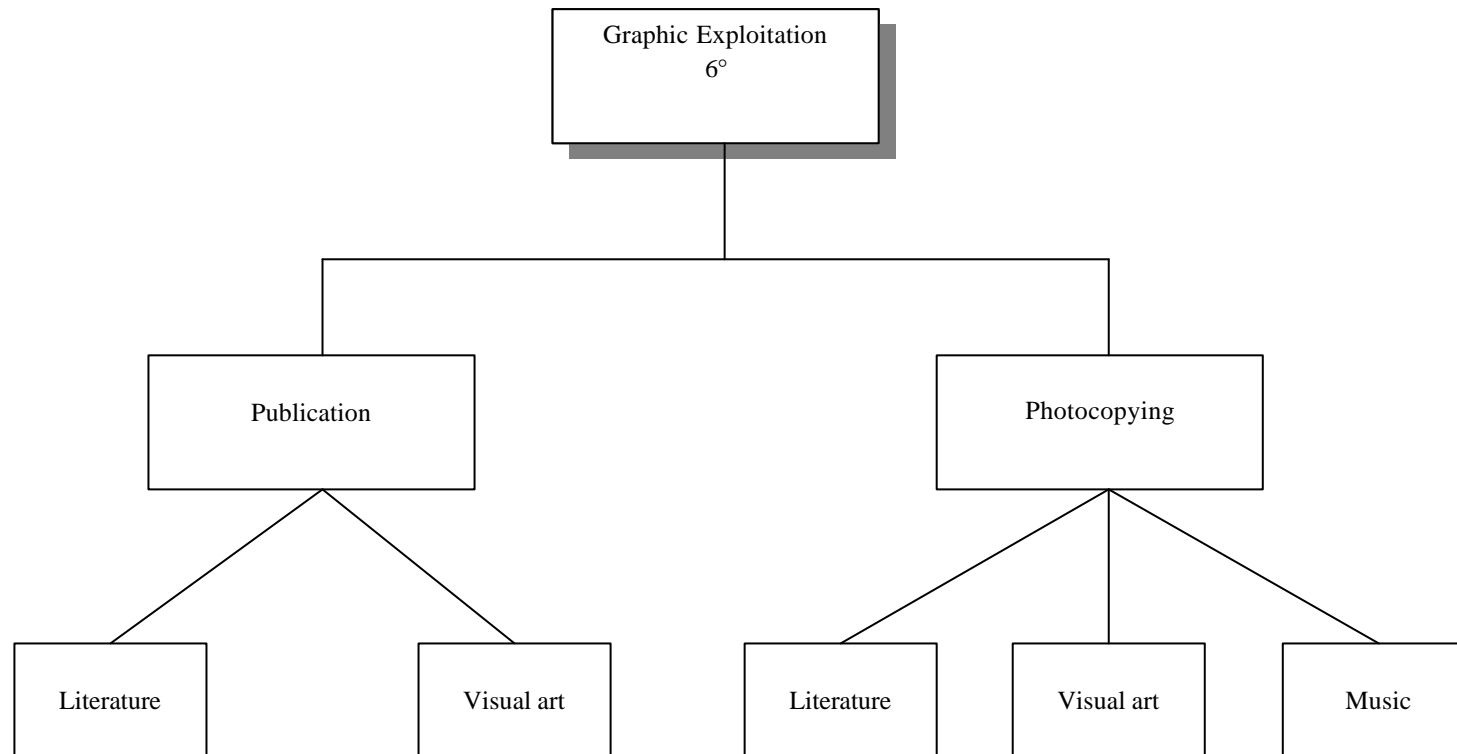


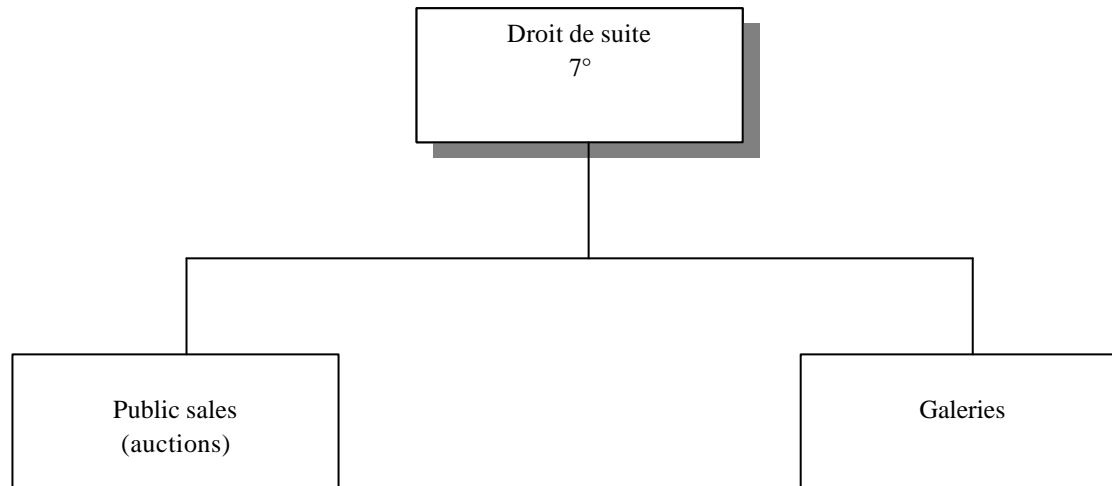
PPR: Performing Rights
 MRR: Mechanical Rights
 GRR: Grand Rights
 SMR: Small Rights











ANNEX 10

Model Distribution sheets

C/WORK COMPOSER AUTHOR	TITLE WORK	(ORIGINAL TITLE)	ARRANGER	STATUS	DURATION	YEAR	QUAL.	SHARE	HEADING	PERFORMANCE ROYALTIES NETS (U)	ROYALTIES FOR USE NETS (G)	NET TOTAL PER WORK (U+G)
123456789 TOUTLEMONDE/P	DANCING			MUSIC	3'15"	1995	C A EO AR SE	E 002/004 M 50,00%	RADIO CABLE RADIO TV CABLE TV GENERAL MECH. EQUIP.	1258 412 708 536 580 980 4474	326 268 850	532
987654300 PERSONNE	SINGING		TOUTLEMONDE/P	MUSIC	6'25"	1995	C A EO AR SE	E 001/004 M 12,50%	RADIO CABLE RADIO TV CABLE TV GENERAL MECH. EQUIP.	620 356 873 1849	158,12 158,12	2007,12
111333456 MOLIERE	L'AVARE MODERNE	L'AVARE	TOUTLEMONDE/P	THEATRE	2h10'	1995	AD	E 100,00%	TV CABLE TV	1756 10456	0	10456
TOTALS										16779	1008,12	17787,12
ROUND.GEN.TOT.												17787

SUMMARY

HEADING	PERFORMANCE ROYALTIES	ROYALTIES FOR USE
RADIO	1878	484,12
CABLE RADIO	768	
TV	9408	256
CABLE TV	2292	
GENERAL	1453	
MECH. EQUIP.	980	268
TOTAL	16779	1008,12

Detailed version of Breakdown

GENERAL TOTAL	DEBIT BALANCE	AMOUNT WITHHELD	NET PAYABLE	NEW DEBIT BALANCE
17787	2000	3157	12630	