

SCAPR

**Policy
and
Guidelines**

(Including changes adopted on
May 2002, May 2005, May 2008, May 2009, May 2010 and May 2013)

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1. Introduction to Collective Management of Performers' Rights (Adopted by SCAPR May 2009, May 2010 and May 2013)

Economic rights and compensations deriving from such rights are essential for performers, if those rights are exercised and managed in an efficient and cost-effective way.

Performers' collective management organisations (PMOs) started to meet regularly as from the first meeting in Vienna October 1988. The main topics to be discussed then were – and still are – how to improve the practical cooperation between PMOs worldwide in order to manage and improve performers' rights. These main tasks were laid down in the first resolution on SCAPR (Societies' Council for the Management of Performers' Rights) adopted May 1990 in Stockholm.

For several years working groups prepared new policies and guidelines for improving the international cooperation which were adopted in October 1995 to replace the former "London principles" agreed between IFPI, FIM and FIA back in 1969.

Soon followed the first model contracts between SCAPR members adopted in March 1996 together with the first version of the Code of Conduct. The SCAPR principles for Membership and relations to intermediaries followed in October 1996.

SCAPR was formally incorporated in 2001 as a non-profit organisation.

The Code of Conduct and the model contracts were revised in 2002, 2005 and in 2008

major improvements related to cross border payments were adopted.

Motives and advantages for collective management

In the field of performers' rights a decisive characteristic is the large number of right owners involved. Usually a recording, whether audio or audiovisual, contains performances of more than one performer. The number of performers involved in one and the same production/performance can easily reach a hundred or more in orchestra performances, operas and audiovisual productions.

Performers' rights affected by mass uses must, as reflected by most national legislations, be managed by non-profit organisations established for collective management of individual rights. Such practical considerations inter alia induced national and international legislators to provide performers with remuneration rights regarding certain mass uses and to entrust organisation with the assertion of the performers' remuneration rights.

Remuneration rights mean statutory licenses given by law to the users to use the fixed performance in the manner described by the law against the payment of the remuneration to the organisation entrusted with the management of the performers' rights. Thus collective management of performers' rights provide users with an easy way to clear their obligations vis-à-vis the performers by paying to a single point representing the performers.

In some cases national laws provide for a compulsory management of performers' exclusive rights by PMOs as well. Such compulsory management of exclusive rights comes in practice close to the management of remuneration rights.

For reasons of efficiency and/or better safeguarding of performers' rights PMO's might also manage performers' exclusive rights on a voluntary basis through voluntary mandates by performers or assignments of their rights to the PMOs.

The existence of the great number of performers involved means that the total sum of remuneration for the use of each recording may have to be shared between many shareholders and the result for each of them is therefore usually rather small.

During his or her professional career, an individual performer performs and works in a large number of productions, constellations or orchestras and for many different producers and employers. This fact stresses the need for the performer to gather the same category of main economic rights (as defined in the section immediately below) for a particular territory in one PMO. Otherwise he or she will lose all contacts with, or possibility of controlling, his or her individual rights.

Main economic rights managed collectively by PMOs:

Broadcasting and communication to the public of commercial phonograms (Art. 12 Rome Convention, Art. 15 WPPT) and audiovisual recordings.

Public performance of commercial phonograms (Art. 12 Rome Convention, Art. 15 WPPT)

Retransmission of TV and radio broadcasts;

Rental and lending of phonograms, video grams and films.

Private copying of sound recordings, video grams and films.

Making available on demand of phonograms and audiovisual fixations (article 10 of the WPPT and article 10 of the 2012 WIPO Beijing Treaty).
In some cases reproduction rights can be managed collectively.

Relation to performers

The managerial services of a PMO shall be open to all performers enjoying rights in the territory of its operation to the effect that performers have a right to adhere to any performers' collective management organisation for any particular category of performers' rights and territory of their own choice.

The relationship between a performer and the PMO is expressed in an individual written contract (mandate, application form or the like) signed by the performer specifying the performers' rights covered by the mandate given to the PMO and for which territories. In this respect, to the extent permitted by applicable law, the performer may act through its duly authorised representative.

The performer or its intermediary shall supply the PMO with the performer's pertinent personal information, as relevant, such as personal identification number (issued by national authorities), home address, email-address, telephone and fax numbers, and other information relevant for the proper payment of remuneration and subsequent information to tax authorities. It is vital that this information is kept up to date.

The PMO will upon membership assign the performer with a unique international performers' identifier, IPN, (issued by the International Performers' Database Association, IPDA).

The performers should keep a close contact with their PMO(s) and give all available information necessary for its management to the PMO.

Accordingly, the performers must give all relevant information on their participation in recordings, and keep the PMO(s) currently informed of their new recordings. These matters require direct relation between the society and the performers.

For the avoidance of doubt, the reference to "direct relation" or "close contact" between the society and the performer should not be understood as precluding the performer from assigning such duties or obligations to its appointed intermediary. The PMO must be able to contact the performers to confirm the information given, as appropriate, and in particular in order to have the correct basis for the collection and distribution of remunerations.

With due respect to statutory provisions or the like, performers are free to instruct their PMO(s) to which payment address or bank account they want their remuneration to be sent. As per the above, the performers are free to appoint any intermediary, whether temporarily or permanently, to receive their remuneration through the account of the intermediary. In such circumstances it is important that

the performers themselves are informed directly by the PMO about what amounts have been transferred.

PMOs and international cooperation

In all countries where national legislation provides rights for performers corresponding to those listed above, PMOs are or will be set up for the purpose of collecting and distributing revenues due to performers for these rights.

Such a PMO is the link between the right owners it represents and the users in its national territory. For this reason the PMO must be able to contact the right owners directly, where appropriate.

According to the international conventions such as the Rome Convention, the WPPT, the Beijing Treaty or according to the national laws performers not only in the home country of the PMO are entitled to the remuneration arising from the rights granted to performers but also performers in other countries.

Thus the PMOs are confronted with the task of settling the performers' rights across the borders, either by bilateral agreements with sister organisations abroad or by direct payment.

PMOs have established an international database with a unique international identifier for performers to keep track of the members and the category of rights managed by which PMOs and for which territories.

Bilateral agreements

SCAPR has adopted a new model contract for bilateral agreements in May 2008, amended in May 2013 with specific focus on improving individual distribution and cross border payments .

SCAPR encourages members to develop their management systems in order to be able to exchange individual remuneration with corresponding PMOs in other countries by use of option 1 (of the model bilateral agreement below).

Code of Conduct for Performers' Rights Collective Management Organisations

(Adopted by SCAPR March 1996)

Reviewed on 2nd May 2002, 19 May 2005, 8 May 2008 and 16th of May 2013

Recognizing that:

Performers must be able to enjoy intellectual property rights wherever such rights are established, independent of national borders, modes of use or technical means for exploitation and during the whole term of their duration;

Performers shall, as a matter of principle, be treated equally to any other involved category of right owners;

Performers' rights affected by mass uses must, for practical reasons, be administered by non-profit organisations established for collective management of individual rights; these rights being audio or audiovisual rights, exclusive rights or remuneration rights;

Effective management of performers' rights and facilitating licensing provide users easy access to worldwide repertoire;

Performers shall be able to control the management of their rights independently from other right owners;

Performers' rights collective management organisations, hereafter called "PMOs" are indispensable elements for the protection of intellectual property rights of performers and their rightful claimants;

Performers hereafter called "members" are those performers who are either members of or associated to a PMO in a comparable manner; Performers are members in their personal capacity as right owners and shall retain personal contact and relation with the PMO, themselves or via their duly authorised intermediary where applicable, as their rights are having both an economic and moral aspect;

Performers authorize a PMO to represent and act on their behalf in its country of operation and possibly in other countries through bilateral agreements with corresponding organisations;

A performer shall for the same category of main economic rights (as defined in the "Introduction to Collective Management of Performers' Rights", in the section "Main economic rights managed collectively by PMOs") in a particular territory become member of one PMO only in order to give users easy access and to further efficient and cost-effective management of performers' rights related to mass uses;

In practice the PMO in the country of residence of the performer is the most accessible for the performer and close to the basic recording data for the proper management of performers' rights

Within the European economic area (EEA) applications from performers residing in or nationals of any other country within the EEA shall be considered equally to applications from performers resident in the territory of its operation.

Activities of PMOs shall be based on the principle of equal treatment of all represented right owners, without any discrimination on grounds of nationality or domicile;

PMOs shall not impose on their members, neither in statutes nor in general regulations or by contracts, any commitments that cannot be justified by the need to fulfil the specific tasks of that organisation;

The international exchange of remuneration to performers is governed by bilateral agreements. National and foreign performers shall be treated and remunerated on equal terms unless otherwise is agreed upon between the two parties in the start-up phase;

New PMOs shall distribute to foreign performers at the same time as they start distributing to their own members. This should occur within 3 years from starting the collection with a maximum of 5 years;

SCAPR members (Societies' Council for the Collective Management of Performers' Rights) have agreed to comply with the above mentioned principles and the following

CODE OF CONDUCT

1

Performers shall be encouraged to entrust the management of their rights to a PMO at their own choice.

A performer shall for the same category of main economic performers' rights in a particular territory become member preferably of one PMO only.

Relations to right owners

2

The managerial services of a PMO shall be open to all performers enjoying rights in the territory of its operation.

The membership is a personal right of the performer.

3

In order to avoid double claims for the same rights in the same territory, the PMO is obliged upon a membership application to check the identity of the performer, the actual performer's rights involved and eventual membership of another PMO.

4

PMOs shall act under the democratic control of the members. They shall be represented in a fair and balanced way in the decision making process of the PMO.

PMOs shall be accountable and transparent to their members and make available to the performers all relevant information regarding the organisation's activities, particularly its management, collection conditions and distribution of remuneration, including its relations with sister organisations in other countries.

In this respect, the PMOs shall ensure a direct line of contact with all their members, as appropriate.

Basic information on membership and the activities of the PMO shall be available in English to all foreign performers.

Management of rights

5

PMOs shall be established as non-profit organisations for the collective management of performers rights. The performers should only pay the costs which are necessary for an effective management of their rights. Deductions from the sums collected by the PMO can also be made upon the authorisation either by the members of the organisation or by statutory provision, for purposes aiming at promotion of the general interests of performers.

6

Remuneration collected from users and interests deriving from such income shall, to the highest possible extent, be distributed individually between the performers concerned in proportion to the uses of their performances, according to reports by users, or other available relevant information related to use enabling calculation, and according to the distribution rules adopted by performers in the country of collection.

Distribution and payment of remuneration to foreign performers shall be based on the principle of equal treatment of all represented performers.

7

New PMOs shall distribute to performers within 3 years from the start of collections with a maximum of 5 years.

When a PMO starts paying its members the PMO shall likewise distribute to foreign performers represented by a bilateral agreement.

PMOs shall develop specific action plans with proper regard to the exchange of remuneration across the borders on a regular basis.

The Contracting Parties shall cover their own costs incurred in the application of this Agreement. In the event that further cost deductions are taken by the receiving Contracting Party, both parties shall agree on the specific and clear conditions upon which such deductions will be based

8

The PMO shall continually strive for the development of systems for the identification of right owners and uses and for a trans border exchange of information and data enabling individual distribution according to the principles mentioned above.

Based on the principle of equal treatment PMOs are obliged to identify all protected right owners involved, national as well as foreign right owners. PMOs having signed bilateral agreements shall assist each other in the process of identifying all right owners.

PMOs shall concurrently register the uses of both national and foreign performers' performances subject to the rights in the territory of its operation preferably based on reports from users.

9

Individual remuneration, due to performers but not paid out because of lack of the necessary information for identifying or tracing the right owner, shall be reserved during the relevant national period of limitation and after such a period be dealt with according to the rules of the PMO in the country of collection.

PMOs shall exercise reasonable prudence and due care when investing reserved funds.

10

PMOs shall maintain continuous contact and cooperation with other organisations representing performers.

11

PMOs shall act in a consistent and transparent manner with regard to users and the public in general.

International cooperation

12

Bilateral agreements by which the PMOs mutually exchange mandates to represent each other in their respective territories of operation are the most efficient and cost-effective management of performers' international rights.

13

PMOs shall negotiate and sign bilateral agreements and exchange remuneration with all other SCAPR members within 3 years from starting the collection with a maximum of 5 years to be agreed between the two contracting parties.

These agreements should be in conformity with the model contract adopted by SCAPR and clearly specify which rights and right owners are covered by the agreement and how remuneration due to those right owners shall be dealt with. PMOs should cooperate to solve transitional problems for their members arising when such bilateral agreements enter into force. A copy of the bilateral agreement shall be communicated upon request to the SCAPR Secretariat.

When new principles are adopted within SCAPR and/or the model contract has been changed the contracting parties shall adopt these changes accordingly within the maximum of 3 years.

14

PMOs should act in good faith and the spirit of cooperation and uphold the principles and recommendations adopted by SCAPR. Misunderstandings and disputes should, as far as possible, be settled within SCAPR without legal proceedings in accordance with the established complaints procedure.

**BILATERAL AGREEMENTS of the
SCAPR Policies and Guidelines for International Cooperation
(Adopted by SCAPR May 2008)**

Introduction

The following model contract adopted by SCAPR covers all bilateral relations between PMOs in order to improve the cross border payments.

According to the new model agreement, PMOs mutually agree to collect the remuneration due to the performers who are represented by the other party and send the amounts to which they are individually entitled to the PMO in the country of the other party. The PMO in the receiving country is in charge of the payment of the remuneration to the individual entitled performers according to the information it receives from the PMO in the country of collection.

In the start-up phase, however, a new PMO might not be able to distribute individually and thus the parties may agree on how to use the collected remuneration.

If individual distribution based on information on the actual use of recordings and the participating featured and non-featured performers, however, cannot take place within 3 and maximum 5 years, the distribution to foreign right owners may be based on other information. Furthermore, the Contracting Parties shall agree on the best method to handle situations where the amounts to be exchanged are not in proper proportion to the costs involved.

SCAPR members are obliged to conclude bilateral agreements or revise existing agreements in accordance with the principles of the new model agreement.

The following aspects have to be taken into account when using the model agreement:

Agreement:

In Art. 8 (Settlement of Disputes) the WIPO arbitration can be chosen as an option.

In Art. 15 (Duration) Option 1 has to be chosen if no Bilateral Agreement between the Contracting Parties exists yet, otherwise if the new Agreement replaces an old one, Option 2 has to be chosen.

Annex:

In Art. 1 of the annex the rights covered have to be specified individually

Members have to choose between certain options:

1. If both Contracting Parties are already able to pay individual remuneration both to their own members and to the members of the other Contracting party based on the use chose

Option 1 of whereas and Option 1 of Art. 2 Annex.

2. If one Contracting Party started paying to their members but is not able to pay individual remuneration to the other Contracting Party yet, chose Option 2 of whereas and option 2 of Art. 2 Annex and a certain model provided there.

3. If one Contracting Party did not start to distribute yet chose Option 3 of whereas and option 3 of Art. 2 Annex.

Regarding the necessary information, the Parties have to choose in Art. 3 of the Annex between exchanges based on track-information (option 1 of Art. 3. 2) or membership-data (option 2 of Art. 3. 2) for audio. Only option 1 can be chosen for an unlimited period.

For audiovisual there is no choice between different kinds of information. Only Art. 3.3.3 of the Annex (Equivalence of Performers' Contribution) is optional to make guarantee the compatibility between different performers' categories, the Contracting Parties apply.

Other additional information to be provided (e.g. tax status etc.) can be added in Art. 3 of the Annex.

In case there is no distribution based on uses yet, the Contracting Parties shall stipulate the stages and time scheme for the improvement of the cooperation from commencement date of the Agreement until the exchange of remuneration based on uses can take place in accordance with the above regulations.

The different options mentioned below can be combined with a timeframe either by signing the Agreement or later. If for example the individual distribution according to Option 2 of Art. 2 of the Annex cannot be made within the agreed time frame, the Parties have to agree on another basis provided by Option 3 and adjust the existing Agreement accordingly till the final stage of Option 2 can be reached. The options can be chosen differently by each Contracting Party according to their functioning.

For further questions please contact the SCAPR General Secretary.

**SCAPR New Model Bi-/Multilateral Agreement
Between Performers' Collective Management Organizations
for the Exchange of Remunerations in the Audio [and/or]
Audiovisual Field**

The undersigned Parties:

[PMO A], [Address], [Phone], represented by [Name] as [Title],

On the one hand

And

[PMO B], [Address], [Phone], represented by [Name] as [Title],

On the other hand

Declare that

Whereas the Contracting Parties shall cooperate in order to strengthen performers' rights and ensure an effectively functioning international management of such rights through bi- or multilateral agreements between performers' collective management organizations ("PMOs"),

Whereas the proper management of performers' rights requires that the Contracting Parties have already established an effective system of management enabling them to distribute the remuneration individually to the performers in proportion to the actual use of their protected fixed performancesⁱ, to the best extent possible,

Whereas the purpose of this Agreement is to facilitate the payment of remuneration due to performers and, in terms of receiving remuneration, to approximate as much as possible the conditions enjoyed by rightholdersⁱⁱ represented by the Contracting Parties,

[Option 1:

Whereas, from the date of entry into force of this Agreement, the Contracting Parties are able to pay individual remuneration to the rightholdersⁱⁱⁱ of the other Party according to the same rules as for their own rightholders, allowing for an accurate distribution on an individual basis proportional to the use of fixed performances in the territory of the other Contracting Party[ies],]

[Option 2:

Whereas [PMO A and/or PMO B] [has/have] begun to pay individual remuneration to [its/their] own rightholders, but [is/are] not able to fully apply the same rules for the rightholders of the other, allowing for an accurate distribution on an individual

basis proportional to the use of fixed performances in the territory of the other Contracting Party[ies], the Contracting Parties therefore agree to begin the exchange of remuneration in accordance with Annex I and transition to an accurate distribution on an individual basis proportional to the use of recordings within the agreed timeframe,]

[Option 3:

Whereas [PMO A and/or PMO B] [has/have] not yet begun to pay out remuneration to [its/their] own rightholders, and shall establish, within a maximum of [three (3)/four (4)/five (5)] years, a system to calculate remuneration for individual rightholders through the identification of such rightholders and their recordings, thereby enabling the Contracting Parties to exchange the necessary information for the exchange of remuneration between them,

Whereas the Contracting Parties recognize that the necessary information from users on certain performers' rights, groups of performers, or specific uses is not available to allow for a proper exchange of remuneration,

Whereas as soon as [PMO A and/or PMO B] has begun to pay out remuneration to its own rightholders [it/they] shall begin to exchange remunerations in accordance with Annex I within the agreed timeframe,]

They now enter into the following

AGREEMENT

Article 1 - Territory of the Agreement

This Agreement covers the management of performers' rights in the respective territories of [Country A] and [Country B].

[PMO A] is operating in [Country A] under the provisions of [Law of Country A], and of its bylaws and internal regulations.

[PMO B] is operating in [Country B] under the provisions of [Law of Country B], and of its bylaws and internal regulations.

Article 2 - Authorization to Manage

The Contracting Parties have been empowered by their respective rightholders to represent them via bi- or multilateral agreements with corresponding PMOs in other countries and territories.

The Contracting Parties warrant that they are entitled to represent their respective rightholders within the territory determined in Art. 1 with respect to the rights specified in Annex I.

In accordance with the mandates given them by their rightholders, the Contracting Parties empower each other to represent their rightholders in the territory of the other, as to the use of fixed performances protected under applicable national [and EU] laws and international conventions, with respect to the rights specified in Annex I.

Article 3 – Rightholders covered by this Agreement

This Agreement covers only the rights of rightholders. For the purposes of this Agreement the term "rightholder" means the natural person or entity who/that has authorized their PMO to represent them within the territories of the other Contracting Party. Rightholders of both Contracting Parties for the same rights in the same territories are not covered by this Agreement^{iv}

The Contracting Parties shall check the International Performers Database (IPD) to verify that no applicants to their PMO are already rightholders in the other Party. In cases where an applicant or member is found to be a rightholder of [the other/another] Contracting Party, that Contracting Party shall be informed.

Heirs of deceased rightholders may also be accepted as rightholders.

Article 4 - Code of Conduct

The Contracting Parties agree to observe the SCAPR Code of Conduct, which forms an integral part of this Agreement. Amendments will automatically be included, unless objection is expressed by one Contracting Party to the other no later than three (3) months after the amendments have entered into force. In such case, the Contracting Parties agree to renegotiate and update this Agreement accordingly in good faith and in a spirit of collaboration.

Article 5 - Mutual Recognition of Rules

The Contracting Parties mutually recognize the statutes, bylaws, internal regulations, and distribution rules of the other Contracting Party[ies].

Article 6 - Cooperation

The Contracting Parties shall cooperate to ensure that their rightholders receive rightful remuneration in accordance with their respective national legislations and applicable distribution rules.

The Contracting Parties agree to provide each other with any other information, and to take any steps necessary, for the proper functioning of this Agreement and for the effective management of the rights specified in Annex I.

The Contracting Parties shall inform each other of any changes in their applicable legislations, statutes, bylaws, internal regulations, and collecting practices or distribution rules, and, once a year, shall provide each other with copies of their audited annual accounts and/or any other documents required by law.

On a practical and economic reciprocal basis, the Contracting Parties express their mutual interest to initiate and carry out joint projects, in assisting with the promotion of the performing arts and the professional interests of performers.

Any claim for remuneration by rightholders of the Contracting Parties covered by this Agreement according to Art. 3 shall be settled by [PMO A] and [PMO B], independently. Thus, no rightholder of one Contracting Party may claim directly from [the other/another] Contracting Party.

Remuneration erroneously paid to a Contracting Party shall be returned to the other Contracting Party, promptly upon having been notified to do so by that other Contracting Party. However, such remuneration may not be reclaimed if it has already been distributed to performers by the receiving Contracting Party, in accordance with Article 5 of Annex I.

Article 7 - Management Costs

The Contracting Parties shall cover their own costs incurred in the application of this Agreement.

In the event that further cost deductions are taken by the receiving Contracting Party, both parties shall agree on the specific and clear conditions upon which such deductions will be based.

Article 8 - Settlement of Disputes

By negotiation, the Contracting Parties shall make every effort to settle any disputes that may arise from or in connection to this Agreement or its application.

Such disputes shall be settled, first and foremost, in accordance with the SCAPR Complaint Procedure. However, in the event that a dispute leads to legal proceedings, such dispute shall be submitted to and governed by the laws applicable on the defendant's place of jurisdiction.

[Optional:

In cases where no settlement can be reached, the dispute shall be submitted for an ad hoc arbitration under the World Intellectual Property Organization (WIPO) procedures.

The Contracting Party acting first shall notify the other Contracting Party[ies] by registered mail of its intention to go in for arbitration and to appoint an arbitrator. The other Contracting Party[ies] shall then have a period of thirty (30) days from the receipt of such notification to designate, in [its/their] turn, an arbitrator. In the event of failure to meet this requirement, an arbitrator shall be appointed by WIPO at the request of the Contracting Party acting first. If the Contracting Parties are unable to agree upon the appointment of a third arbitrator within thirty (30) days, such arbitrator shall be appointed by WIPO at the request of the Contracting Party acting first or of the aforementioned arbitrators.

The language and place of arbitration shall be those of the registered office of the defendant.]

Article 9 - Force Majeure and Hardship

If for reasons of force majeure or hardship a Contracting Party cannot fulfill its obligation in accordance with this Agreement, the necessary consequences shall be negotiated by both Contracting Parties or settled in accordance with Art. 8 . The Contracting Parties may then renegotiate this Agreement in good faith, taking into account any changes that may have occurred.

Article 10 - Non-Transferability of the Agreement

[Neither/None] of the Contracting Parties shall have the right to assign this Agreement in part or in whole to any third party whatsoever without the written consent of the other Contracting Party[ies].

Article 11 - Revision of Legislation

In the event of an amendment to an applicable national [or EU] law or international convention or treaty, or the adoption of a new international instrument having resulted in the introduction of new rights or in the extension of existing ones, the Contracting Parties hereby agree to re-discuss this Agreement in good faith so that the mutual powers of management may reflect the new provisions or rights.

Article 12 - Control Procedures

Subject to mutually agreed date(s) and timeframe(s), the Contracting Parties shall have access to all relevant information on the registered performers, fixed performances, and other documents within the office premises of the other Contracting Party, which enable the Contracting Parties to ensure the proper functioning of this Agreement and which could not be obtained otherwise^v.

Upon request, the Contracting Parties shall be obliged to supply the other with all specified information available on the actual use of performers' fixed performances.

Furthermore, upon request, the Contracting Parties shall be obliged to supply the other at its expense an audit of Accuracy, Completeness, and Delivery in time of the supplied information. If requested by the receiving Contracting Party, an independent accountant, on whom both Contracting Parties agree, shall be designated to review the audit provided.^{vi}

Article 13 - Data Protection

The Contracting Parties shall ensure that they comply with the provisions and obligations imposed by the applicable data protection legislation or required by the other Contracting Party[ies].

The Contracting Parties shall be responsible for obtaining any necessary consent for the collection and use of personal data that they may transfer to the other Contracting Party[ies].

Article 14 - Confidentiality

The Contracting Parties shall take appropriate steps to ensure the confidentiality of information, to the extent required by [the other/another] Contracting Party or the applicable statutory provisions. Unless otherwise agreed by the Parties all information obtained from a Contracting Party regarding that Contracting Party or its members in the course of implementing this Agreement shall be regarded as confidential^{vii}.

Article 15 - Duration

[Option 1: (First Bi- or Multilateral Agreement Between the Contracting Parties)]

This Agreement shall enter into force on [Date/the date of its conclusion] and shall remain in force until the end of the third calendar year following this date ("End Date").

If [either/any] of the Contracting Parties wishes to terminate this Agreement on the End Date, it shall give to the other Contracting Party[ies] written notice of its intention to terminate no later than six (6) months before the End Date.

If no notice under the previous clause is given, this Agreement shall remain in force automatically for a period of twelve (12) months beyond the former End Date ("Extended End Date") and this clause shall continue to operate to extend the term of this Agreement for successive periods of twelve (12) months, unless written notice of non-renewal is sent via registered mail by one Contracting Party to the other[s] no later than six (6) months before the then applicable Extended End Date.

If one Contracting Party receives funds under this Agreement prior to [the other/another] Contracting Party ceasing its activities, the receiving Contracting Party shall remain entitled to distribute such funds in accordance with this Agreement.

Remuneration paid by one Contracting Party to [the other/another] under this Agreement prior to termination may be distributed by the receiving Contracting Party even if such distribution takes place after the termination of this Agreement.]

[Option 2: (Replacement of an Existing Bi- or Multilateral Agreement Between the Contracting Parties)

This Agreement shall replace the existing Agreement between the Contracting Parties of [Date of Previous Agreement] as from [Date of This Agreement] and shall remain in force until the end of the third calendar year following this date ("End Date").

If [either/any] of the Contracting Parties wishes to terminate this Agreement on the End Date, it shall give to the other Contracting Party[ies] written notice of its intention to terminate no later than six (6) months before the End Date.

If no notice under the previous clause is given, this Agreement shall remain in force automatically for a period of twelve (12) months beyond the former End Date ("Extended End Date") and this clause shall continue to operate to extend the term of this Agreement for successive periods of twelve (12) months, unless written notice of non-renewal is sent via registered mail by one Contracting Party to the other[s] no later than six (6) months before the then applicable Extended End Date.

If one Contracting Party receives funds under this Agreement prior to [the other/another] Contracting Party ceasing its activities, the receiving Contracting Party shall remain entitled to distribute such funds in accordance with this Agreement.

Remuneration paid by one Contracting Party to [the other/another] under this Agreement prior to termination may be distributed by the receiving Contracting Party even if such distribution takes place after the termination of this Agreement.]

Date _____

Date _____

For [PMO A]

For [PMO B]

[Name]
[Title]

[Name]
[Title]

ANNEX I

Article 1 - Performers' Rights Covered by the Agreement

The following performers' rights conferred to the rightholders of the Contracting Parties under their national legislations are covered by the Agreement:

[PMO A]:

[Rights managed by PMO A to which the rightholders of PMO B are entitled.]

granted by [Law of Country A].

[PMO B]:

[Rights managed by PMO B to which the rightholders of PMO A are entitled.]

granted by [Law of Country B].

Article 2 - Objective of the Agreement

The objective of the Agreement is the transfer between the Contracting Parties of remuneration distributed to individual performers represented by the other Contracting Party[ies], in accordance with Art. 1.

[PMO A] shall distribute to [PMO B] the remuneration due to its rightholders since [Date].

[PMO B] shall distribute to [PMO A] the remuneration due to its rightholders since [Date].

[Option 1:

The Contracting Parties shall begin the individual distribution based on sufficient information on the actual use of fixed performances [and participating featured and/or non-featured performers] as from [Date].]

[Option 2:

Since distribution on the basis of information on the actual use of fixed performances [and participating featured and/or non-featured performers] cannot yet take place, distribution to foreign right holders shall until [Date] be based on [SELECT ONE: A-the nationality and rightholder status of performers; B-the country code of tracks; C-the share of repertoire (percentage of use of the other country's repertoire within a territory); D-the share of sale (percentage of sales figures for the other country within a territory); or, E-another mutually agreed model including a combination of A-D.]

From the end of the aforementioned period, individual distribution based on information on the actual use of fixed performances [and participating featured and/or non-featured performers] shall take place.]

[Option 3:

Since a system to calculate remuneration for individual rightholders through the identification of such rightholders and their fixed performances must be established, thereby enabling the Contracting Parties to exchange the necessary information for the exchange of remuneration between them, the Contracting Parties agree to start the exchange of remuneration as soon as they have begun distribution to their own rightholders.]

Article 3 - Exchange of Information

Article 3.1 - Information on Rightholders

On an annual basis, the Contracting Parties shall provide each other with the following and full databased information on their rightholders covered by the Agreement, to substantiate the claims for remuneration. This information shall contain the following, to the extent possible:

First name, last name, date of birth, local ID, IPN, pseudonym(s), nationality, country of residence, and group name(s).

This information shall be provided in a format supported by the systems of both Contracting Parties in accordance with the accepted standards of SCAPR.

The Contracting Parties authorize each other to extract and download the above data directly from the IPD.

[If relevant, insert a clause on collective mandates for professional orchestras and choirs.]

Article 3.2 - Recording Information for Audio Agreements

[Option 1: Exchange on the Basis of Track Information

Once a year and before the end of the respective months indicated below, the Contracting Parties shall exchange data files containing the following information, in full accordance with the procedure in the SCAPR Data Exchange Guidelines (SDEG). [In cases where the SDEG procedure but not format is used – e.g. SDEG procedure in Excel – or where the SDEG procedure and/or format is not in place but is in development, this must be detailed in this article.]

1. Played Main Artists ([Month])
2. Request for Recordings ([Month])

3. Played Recordings ([Month])
4. Recording Claims ([Month])
5. Distribution Statements and Exchange of Remuneration ([Month])

Recording:

[Refer to Overview of Data Exchange by PMO, inserting the mandatory and optional data as indicated by both PMOs.]

- [List data from "Playlist" and "Claims" [Track] section of the overview here.]

Performer:

- [List data from "Claims" [Performer] section of the overview here.]

When available, reliable, and relevant, the recording claims file shall comprise all participating performers, irrespective of their rightholder status or nationality. [Alternatively, in absence of details on such performers, an actual or estimated performer count [Featured Artists and/or Non-Featured Artists] may be useful if provided.]

To maintain efficiency and limit the long-term workload, the Contracting Parties shall store the exchanged information regarding the specific tracks and their participating performers in their domestic recording databases after finalizing the annual exchange.

[Option 2: Exchange on the Basis of Rightholders' Data (Optional for the Initial Period, Max. 3-5 Years)]

The Contracting Parties agree to exchange the below information since [Date].

Once a year and before the end of [Month], the Contracting Parties shall provide each other with the following full databased information on the performers covered by the Agreement:

- First name, last name, date of birth, IPN, local ID, pseudonym(s), and group name(s).
- Group lists with local IDs and components, incl. first name, last name, date of birth, IPN, local ID, and pseudonym(s).
- Information on new rightholders since the previous exchange.
- Information on new local IDs since the previous exchange.]

Article 3.3 - Recording Information for Audiovisual Agreements

Article 3.3.1 - Exchange of Title Information

Once a year and before the end of [Month], the Contracting Parties shall provide each other with lists containing the titles of productions or co-productions of the country of the other Contracting Party used in its territory during the previous year.

The lists shall also contain the following information, to the extent possible: Original title, ISAN, year of production, producer, and director.

Article 3.3.2 - Exchange of Casting Information

Within [Number (#)] days of receipt of the title information, the receiving Contracting Party shall provide the other with details on the casts connected to such titles, containing the following information, to the extent possible:

- Casting list.
- First and last names, pseudonym(s), member code, IPN, date of birth, nationality, and local ID of the performers in the casting list.
- Role(s) (actor, dancer, musician, etc.) of the performers in the casting list and the category assigned to such.
- Original title, date and place of first fixation, producer, director, and VRDB code.

[Optional:]

Article 3.3.3 - Equivalence of Performers' Contribution

On the basis of the information received, the Contracting Parties shall allocate, according to their respective distribution rules and any other applicable internal rules, the remuneration due to the individual performers of the other Contracting Party. For that purpose, the Contracting Parties have established an equivalence table in Annex II for conversion of the performer categories used by [PMO A] and [PMO B].]

Article 3.4 – Tax Modalities and Accountability

The Contracting Parties apply the system of deduction at source in accordance with the tax legislation of the country of collection, unless specific provisions of an existing tax treaty - to which [Country A] and [Country B] are parties – are applicable.

With respect to the payments of the remunerations and to the invoices to the other Contracting Party, each Contracting Party applies the accountability rules of its national law.

The Contracting Parties mutually provide each other with relevant information regarding applicable tax and accountability rules.

Article 3.5 - Additional Information to be Provided

The following additional information shall be provided by [PMO A] to [PMO B]:
[E.g., tax details, deadlines, etc.]

The following additional information shall be provided by [PMO B] to [PMO A]:
[E.g., tax details, deadlines, etc.]

Article 4 - Transfer of Remuneration

Once a year and on or before the end of [Month], rightholders the Contracting Parties shall exchange lists in digital format of databased information on the amounts to be passed on to specified rightholders of the other Contracting Party ("Statement").

The Contracting Parties shall transfer the total amount due to such rightholders of the other Contracting Party no later than thirty (30) days after communication of the Statement and any necessary documents required by law.

Payments by [PMO A] shall be made in [Currency A] and the cost of transfer shall be paid by [PMO A]. The initial transfer shall cover the remuneration collected for earning in [Year(s)] and shall be made on or before [Date].

Payments by [PMO B] shall be made in [Currency B] and the cost of transfer shall be paid by [PMO B]. The initial transfer shall cover the remuneration collected for earning in [Year(s)] and shall be made on or before [Date].

If in any given year the amounts to be exchanged are not in proper proportion to the costs involved, the Contracting Parties shall agree to pursue the best course of action.

Article 5 - Payment to Performers

The Contracting Parties shall transfer the remunerations to the specified rightholders no later than [Number (#)] months from the receipt of funds. In the event that any amount of such remuneration cannot be distributed to such rightholders within [Number (#)] months from its receipt, such amount shall be returned to the collecting Contracting Party.

Article 6 - Non-Transfer of Remuneration

Individual remuneration reserved for rightholders who are residents of the country of the other Contracting Party but not rightholders of that Contracting Party, or who cannot be properly identified, shall remain in the country of collection.

Individual remuneration to rightholders that cannot be transferred by way of the Agreement shall be reserved in accordance with the national rules of limitation and subsequently distributed by the applicable national distribution rules.

Article 7 - Duration

This Annex shall enter into and remain in force simultaneously with the Agreement.

Date _____

Date _____

For [PMO A]

For [PMO B]

[Name]
[Title]

[Name]
[Title]

- _____
- i The model agreement should use internationally recognised standard neighbouring right definitions. See the definitions used in the WPPT and the Peking Treaty. Well-established usage of the term "recording", for example when it refers to "recording data" or "recording databases" should be preserved.
 - ii Apart from being a very negative approach, it is unclear what kind of difficulties exactly this provision refers to. This should be replaced with a text reflecting a more positive approach and logically emanating from the first part of the sentence: approximation of conditions for performers represented by the parties.
 - iii General amendment to be enforced throughout the agreement. The term "member" should be changed to a more encompassing expression such as, for example, "rightholder". The contracting parties represent also non-rightholders. Moreover, as far as collection and distribution of monies are concerned, CMOs normally apply the same rules to all categories of rightholders represented, regardless of them being actually rightholders of the CMO or being merely licensors or assignors of the rights managed. It is to be noted that the forthcoming CMO draft directive uses the same approach.
 - iv The text of the footnote herewith attached ("Including worldwide mandates or mandates for limited territories. Performers who are members of both Contracting Parties for the same rights are not covered by this Agreement.") was modified and then moved in main body of the text.
 - v Obviously, these on-site inspections should not take the form of a "raid" and should be subject to the prior accord of the parties. Also, on-site inspection might be regarded abusive if it were to extend to information otherwise available.

vi Moved here from the Annex. Placement to be approved.

vii There should be a default value to the extent of confidentiality the model agreement requires. Otherwise parties might be compelled to conduct endless debates about what was actually "required" by the other party or by applicable laws.