AudioGest
Associação para a Gestão e Distribuição de Direitos

DISTRIBUTION REGULATION

(Approved in General Assembly of May 9th, 2016)

Considering:

A. The convenience of gathering in one document some rules relative to distribution, already adopted and in use in the Association;

B. The necessity recognized by the associates of updating and improving the criteria of distribution, in order to allow, in short or medium term, a distribution of the charged remunerations, as close as possible to the real utilization.

C. The growing difficulties in applying the current criteria to an ever vaster number of associates;

D. That distribution with new "real" criteria and at track level, lacks a high human, financial and technical investment and a timeframe for implementation and adaptation;

E. That, nevertheless, we may improve the current distribution criteria right away integrating the "digital market" while calculating the key to distribution rights.

F. That it is important to establish, right away, the minimum content of the obligations that the associates shall have in terms of reporting repertoire to the association.

The Management proposes to the General Assembly, assembled on May 9th, 2016, that it should adopt the following norms:

Article 1

(Repertoire Database)

1. AUDIOGEST creates, organizes and supplies to its associates the technical and IT mechanisms to maintain a repertoire database that is up-to-date.
2. Without detriment of other information and records that may reveal useful, such a database shall have as minimum contents:
   a) The phonographic repertoire whose originating ownership of rights belongs to the members associated to or represented by AUDIOGEST;
   b) The phonographic repertoire whose exploitation under any of the forms included in the warrant vested in AUDIOGEST, in national territory, has been conferred by contract (i.e. licensing) to members associated to or represented by AUDIOGEST;
   c) The repertoire whose management in national territory has been granted to AUDIOGEST by one of its counterparts and that has been communicated by this same counterpart to AUDIOGEST.

3. The responsibility for the uploading of the database with information relative to the repertoire referred in points a) and b) above, is exclusively of the associates, members or representees of AUDIOGEST.
4. The fields (compulsory and optional), format, technique and uploading procedures of the database shall be those established by AUDIOGEST's management, and should follow high requirement and quality standards of information in compliance with the best techniques, criteria and methods used internationally by its counterparts and proposed by the International Federation of the Phonographic Industry (IFPI).
5. Without detriment to information pertaining the catalogue and the album, the database shall be developed at the track level, and each one of the phonograms (individual recordings) shall be individually registered.

Article 2

(Duties of AUDIOGEST's Associates, Members or Representees)

1. Concerning the uploading and updating of the database, it is the duty of AUDIOGEST's associates, members or representees to:
   a) Send, as soon as solicited, all data relative to the repertoire of which they are holders or whose exploitation rights in national territory have been conceded to them;
   b) Permanently maintain all information relative to that repertoire up-to-date;
   c) Always use, when in accordance to the previous points, the models, procedures and formats defined by AUDIOGEST, under number 4 of the previous article;
   d) Use a high level of zeal, diligence and precision in providing information and uploading data;
   e) Not report, as having ownership or the right of exploitation, repertoire that effectively does not belong to them or whose rights of exploitation for the national territory were not conceded to them;
   f) Follow and accept the litigation resolution mechanisms and procedures relative to duplicate repertoire claims that, at each instant, are in effect at the association;
   g) Actively collaborate with the association and engage their best efforts in supplying information that should be included in fields defined as optional.

2. The provisions in point a) of number 1 should be fulfilled, concerning the reporting of repertoire already edited by any of the associates or phonographic producers represented by AUDIOGEST within a maximum of 2 months after approval of the following regulation.
3. Without detriment to other responsibilities that may be attributed to the specific circumstances of the case, the non uploading or updating of data and information relative to the repertoire that, as a consequence, prevents the allocation of a value to a track, shall import the non attribution of due compensation to the alleged owner for the elements of the repertoire (tracks) that have not been reported and uploaded to

the Database or whose upload was executed in an incorrect, incomplete, erroneous or imprecise manner.

Article 3

(Identification and Location of Owners)

1. The Association's services shall use maximum zeal and diligence to identify and locate the owner of the rights for each of the tracks that appear in any list of real uses that may be used for distribution effects.
2. Until such identification and location is executed successfully, the value corresponding to that same track shall be retained on behalf of the person or entity that comes to validly claim the ownership of the rights over that same track.

Article 4

(Establishment of Distributable Values)

1. In order to determine the total of the distributable values relative to a given period of billing and to a given usage, the following operations shall be conducted:
   (i) To the total amount of earnings charged in representation of the phonographic producers in a given period, the amounts that, according to law should be affected to the so called cultural fund, shall be deducted.
   (ii) The amounts corresponding to the reserves that are determined by the Management, in view of safeguarding the inherent risks of the various distribution criteria, shall also be deducted, namely to address non represented reporting errors and third party complaints.
2. Apart from exceptional circumstances, adequately motivated by the identification of effective or potential risks that may severely hinder distribution and the conformity of the respective reports, the amounts referred in (ii) of the previous point shall not exceed 5% of the charged amount deducted of the amount referred in (i) of the same point, apart if otherwise decided in General Assembly.
3. The reserves and all unallocated or allocated and not claimed amounts, may be redistributed after a minimum of three years after the constitution of the reserve and/or the respective distribution to associates or representees and in the same proportion in which the earnings were originally distributed, without detriment of in such distribution being included the owners who may have been found or determined in the mean time.
4. The operational costs shall be proportionally divided among the associates and billed and charged to them.

Article 5

(Duplicate Claims)

1. Whenever the ownership (original or derived) of rights of phonographic producer for the national territory, concerning the use or ability concerned, is claimed by more than one phonographic producer represented by AUDIOGEST – or by entities that represent said producers – in a same period, in relation to a given phonogram, catalogue or part of a catalogue, the interested parties shall be notified to, in a maximum of ten days:
   a) Declare if, in face to the claim of the other presumable owner of the rights, they consider themselves to be the owners of the said rights for the national territory;
   b) If the claim is maintained, indicate the purchasing title (original or derived) of the claimed ownership;
   c) Present evidence of their claim or substantiate it with legally specified ownership presumptions.
2. In the event that only one of the potential owners involved in the ownership dispute claims and presents proof of their ownership, they shall receive the earnings corresponding to the relevant phonogram, catalogue or part of catalogue.
3. In the event that more than one of the potential owners involved in the ownership dispute claims and presents documents and elements intended to demonstrate the ownership of the phonographic producers rights over the phonogram, catalogue or part of catalogue concerned, and there are no evident reasons to categorically and clearly attribute or deny ownership to one of them, the Management shall determine that the proportional amount corresponding to the object of dispute is to be held by AUDIOGEST until the dispute is resolved.
4. The amount retained in accordance to the last point, may only be delivered to one of the claimant associates after agreement between them or after condemnation or communication to AUDIOGEST of a judicial or arbitral decision that determines the ownership of the rights and/or the amount in question.
5. Each phonographic producer represented by AUDIOGEST is civilly, criminally and disciplinarily responsible before AUDIOGEST and before all other representees, whenever it is verified that they haven't used the highest standards of zeal, precision and diligence in identifying the ownership of the rights over the given repertoire or the claim of the respective ownership of the rights or powers.

Article 6

(Market Share)

1. Whenever the current regulation or any internal norms of AUDIOGEST determines as the criteria or one of the criteria to apply to the distribution of given earnings the "Market Share", such shares shall be determined under the following terms:
   (i) **Establishing the proportions of physical and digital markets:** to determine, from the whole market, what share shall be imputed to the physical market (physical sales) and what share shall be imputed to the digital market (digital sales, including *streaming*) the proportions resulting from the monthly market survey conducted by AFP (Associação Fonográfica Portuguesa) shall be used in the sum of the months of the relevant semester, in the following formulas:

a) $$\text{Physical Market (\%)} = \frac{\text{Sum of Physical Market of the 6 months}}{\text{Sum of Total Market of the 6 months}} \times 100$$

b) $$\text{Digital Market (\%)} = \frac{\text{Sum of Digital Market of the 6 months}}{\text{Sum of Total Market of the 6 months}} \times 100$$

While calculating the market shares, any advanced payments relative to availability of repertoire, shall be charged and distributed monthly '*pro-rata temporis*' in relation to the whole period of time to which the advanced payments concern.

(ii) **Division of amounts for distribution:** the total value of earnings or category of earnings is divided in the following parcels:

a) Total amount for distribution x Percentage calculated in previous point a)

b) Total amount for distribution x Percentage calculated in previous point b)

(iii) **Application of Distribution Keys:** the "physical market distribution key" shall be applied to the amount calculated in a) of the previous point; the "digital market distribution key" shall be applied to the amount calculated in b) of the previous point.

(iv) **Physical Market Distribution Key:** The Physical Market Distribution Key is calculated based on market shares (in sales values) reported to the Association by its associates and representees, in accordance to the respective regulation, and with the possibility of audit on these values.

a) Market shares refer to the sales of musical phonograms and videos, in physical format, sold in Portugal, by associates and/or beneficiaries of AUDIOGEST's services, whether national of foreign.

b) Without detriment to the above, every time an associate and/or representee is only the distributor in national territory of a given repertoire, thus not being the owner of the rights either originally or through licensing, they shall state in the report submitted to the Association the total amounts distributed in representation of a third party, and also the identity of the owners of the rights whose recordings they are distributing.

c) Except in cases where the associates and representees carry out the communication and correct identification of the owners of the rights, whether original rights or licensing rights, under the above terms, they are exclusively responsible towards third parties and towards the Association for all amounts they may have received in accordance to the market numbers criteria declared as being owed to them (on account of their ownership of the rights) if it is verified that these rights do not belong to them.

d) The associates and representees who do not report the relevant information until the scheduled date in the Regulation of Market Values, shall have their values reduced to zero for effects of calculating distribution of rights;

(v) **Digital Market Distribution Key:** The Digital Market Distribution Key is calculated by the aggregated data for all musical file sales in digital format, including track-by-track sales and including, whenever possible and available, all '*streamings*' but excluding musical videos, included in the six-monthly total sales and *streamings* survey carried out by an independent market research firm ("Top Digital Infinito"), whereby, for this purpose:

a) The total number of sold units shall be considered (*'full track download')* or added to the total number of accesses (*'streams'*)

b) The unit used will be the *stream*;

c) To determine the stream unit, the minimum usage time shall be considered in accordance to international practices and by the Market Research Firm.

d) The conversion from *download* to *stream* unit will be of 1 *download* for 250 *streams*;

e) The information of the two last six-month periods available shall be considered;

f) The distribution may be undertaken at the track level, by owner or by catalogue or label, depending on the available information and the state of the distribution mechanisms and procedures;

g) Until there is effective separation between phonographic and karaoke repertoire, the digital sales and *streams* of karaoke shall be considered, whenever monitored;

h) The Association's Management and Services must embark all efforts in order that the largest number possible of music and karaoke distribution companies and digital distribution platforms are included in the sample monitored by the Market Research Firm.

(vi) **Selection of the Market Research Firm:** The Management is responsible for selecting, hiring and choosing the independent market research company that shall undertake the surveys referred in this article.

2. The percentage to distribute, with basis both on the physical market and the digital market, shall be calculated using the latest available data of annual market numbers.
3. Safeguarding the ongoing implementation of new distribution criteria, all earnings from rights will be distributed, from March 31st 2016, based on the market share criteria, assessed in the terms of this article, and at a catalogue or owner level, with exception of what is referred in the following article.

4. Exceptions to the point above are the amounts of the earnings charged for usage prior to 2015 and that do not concern public execution rights (always imputed to the charging period). These excepted amounts shall be distributed according to the criteria previously in effect.

Article 7

(Sound Broadcasting Operators)

1. The revenue of right originating from national radio stations or other radio program services that have national audience attributed by the "Baréme Radio" panel, shall be distributed according to the following criteria:
   a) Based on the report listings supplied by the sound broadcasting operators licensed by AUDIOGEST and in relation to the concrete amounts paid by the operator and in relation to the considered period, whenever such listings are promptly supplied and are not excluded due to contradicting elements supplied by audiometry companies.
   b) In the absence of these listings, and whenever the respective program service is being monitored by an independent audiometry company, based on the listings obtained from that company.
2. In any of the cases referred to in the previous points, the revenue arising from an operator relating to a given period shall be distributed according to the effective plays detected by any of those methods in the program(s) service(s) of that operator and in the same period, without considering ratings.
3. When the same sound broadcasting operator explores several program services and the contract celebrated with him does not distinguish the relative chargeable value of each program service, the value shall be divided, exclusively for the application of the previous points, in proportion to the relative ratings of each program service in the considered period.
4. The provisions in the previous points shall be applied to all radio program services that are or may be monitored by an independent audiometry service company, and whose rights earnings are equal to or higher than €7.500,00 (seven thousand and five hundred Euros) per year.
5. The amount specified in the previous point may be adjusted annually by the Management taking into account the costs of the monitoring process, the number of sound broadcasting operators who are licensed and are fulfilling their contract and the relative value of the prices effectively applied.
6. Concerning all rights revenue originating from other radio program services that do not fulfill the requirements specified in number four of the present article, the distribution of the respective earnings received by AUDIOGEST shall be undertaken, in conjunction, based on a conjugated *play-list* of a rotating "mix" of "Generalist Musical Programming Radio stations" and of "Thematic Musical Programming Radio stations" to be monitored, in the proportion of one third for "Thematic Musical Programming Radio stations" and two thirds for "Generalist Musical Programming Radio stations".

7. For the purpose of the provisions of the previous point, the following shall be applied:
   (i) A list of all sound broadcasting program services that may be monitored by an independent audiometry service company shall be compiled and that are not included in the services referred to in points 1 and 4 of the present article.
   (ii) The Management is responsible for determining in that list, which program services shall be included in the "Thematic Musical Programming Radio stations" group, whereby all others shall be included in the "Generalist Musical Programming Radio stations" group.
   (iii) Rotationally, every two months, and respecting the proportion referred to in point 6 above, there shall be a draw to select which Generalist Musical Programming Radio Stations and which Thematic Musical Programming Radio Station(s) shall be monitored during the bimester.
   (iv) The radio stations monitored in the previous bimester shall be excluded from the draw.
   (v) The draw shall be conducted by the Association's services, in the presence of three of its employees or service providers, and the monitored services may only be revealed following the concerned monitored period.
   (vi) The number of radio stations (program services) to be monitored shall be determined by the Management accounting for the relative costs of the monitoring process, the number of sound broadcasting operators that are licensed and in contract fulfillment and the relative value of the effectively applied fees.
8. Any group of three associates may solicit the ratification by the General Assembly of the deliberations undertaken by the Management in the terms of point number 5 and points (ii) and (vi) of article 7 above.

Article 8

(Other Criteria)

1. The Management is responsible for developing and implementing mechanisms that allow, in the shortest amount of time possible, to proceed to the distribution of rights revenue based on the best international practices and as close as possible to the real usage.
2. In the chart in Appendix 1 of the present regulation, the criteria that preferably should be adopted concerning the several uses and revenues are included, in exploratory and indicative manner.

3. The management is entrusted to implement the distribution criteria, processes and mechanisms referred in the previous, whereby it should propose its implementation schedule and necessary regulation changes to the General assembly.

Article 9

(Implementation and Transitional Rule)

1. The present regulation comes into effect on the day following its approval.
2. In the ten day following the approval of the present regulation, all associates and beneficiaries who have not yet supplied to AUDIOGEST the pertinent information concerning market numbers may supply such information for the effects considered in point (iv) of number 1 of article 6.
3. The present regulation shall be applied to all distributions of revenue:
   a) Resulting from the licensing of public execution and supply of ambience music, provided that these are submitted at a date that is subsequent to the date the present regulation comes into effect;
   b) Resulting from earnings charged by foreign counterparts in their respective territories and entrusted for distribution to AUDIOGEST, providing they are delivered on a date that is subsequent to the date the present regulation comes into effect;
   c) Resulting from other sources and uses as long as these are relative to periods that are subsequent to the fourth quarter of 2015 and made available on a date that is subsequent to the date the present regulation comes into effect.

The present regulation, that includes an Appendix, was approved at AUDIOGEST General Assembly of May 9th 2016.

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APPENDIX TO THE DISTRIBUTION REGULATION

	Grid of Distribution Criteria		
	Rights	**Distribution Criteria**	**Mediums**
Public Execution	**Radio Broadcasting**	**Radio Station Reports**	**MCR; RR; BMAT; Mix of local radio stations**
	TV Broadcasting	**Listings**	**BMAT; Mix of Cable Retransmission**
	Night Entertainment	**Market Share - 50%** **Radio Station Reports (BMAT) - 50%** **Whenever they exist, and reduce from the percentage above** **Usage Reports - 20% -> 50%** **Others - 80% -> 50%**	**Usage Reports are: Usage reports from ambience music suppliers, Reports from the users themselves, and eventual monitorings that AUDIOGEST may hire**
	Other Restaurants and Drinks Venues		
	Gyms and Fitness Clubs		
	Shopping Centers / Large Retail		
	Business and Services (Others)		
	Events		
	Private Copy	**Market Share - 50%**	