

## Provisional DISTRIBUTION REGULATIONS 2010

as resolved<sup>1</sup> by the Board on 30<sup>th</sup> June 2011, 1<sup>st</sup> November 2011, 20<sup>th</sup> November 2012, 4<sup>th</sup> December 2012, 27<sup>th</sup> June 2013, 18<sup>th</sup> November 2013, 4<sup>th</sup> March 2014, 17<sup>th</sup> November 2014, 18<sup>th</sup> March 2015 and 15<sup>th</sup> November 2016

### I. GENERAL

1. As long as individual shares can be established with adequate means, each rights holder shall receive a share - relating to the usage of their contribution to a performance - of the amount collected after deduction of the effective costs and any allocations for cultural and social purposes.
2. In cases where the individual usage share of the collected amount cannot be established with adequate means, general evaluation and distribution rules for a general approach to this method of measuring the relevant share shall be established. The scope of the usage and the cultural or artistic significance of each rights holder's performance shall be considered adequately. Minimum thresholds for collecting usage data and setting pay-out levels to rights holders shall be permissible.
3. Any rights holders' remuneration entitlements, their exploitation rights or other rights assigned to GVL shall be governed by the distribution regulations, even if the agreement between the rights holder and the user includes deviating provisions.
4. The distribution includes:
  - a) remuneration collected for the financial year 2010
    - For broadcasts of commercially published sound recordings<sup>2</sup> and music video clips,
    - For public performance and reproduction/copying,
    - For rental and lending of commercially published sound recordings and films,
    - For cable re-transmission of artistic performances.

<sup>1</sup> The authority of the Board will transfer in 2017 to the governing body designated by the new Articles of Association.

<sup>2</sup> Sound recordings are recordings of individual tracks irrespective of their format, i.e. including pure electronic formats such as MP3.

- b) remuneration which has not been included in the distribution yet, e.g. undeliverable distributable amounts, overpayments to rights holders which had to be recouped, unused reserves.
5. Collected revenue, interest accrued on funds prior to their distribution and all other revenue including any extraordinary income shall be paid out to rights holders after the necessary administration costs have been deducted. GVL's managing directors shall be authorised to withhold a reserve for economic risks to an extent as they see fit, amounting to a maximum of € 1,000,000. They must report their respective actions to the Board.
6. If GVL gathers retroactive collections for one or several distribution periods already paid for outside its usual business (extraordinary collections), these extraordinary collections shall be calculated as a supplementary percentage to the pay-out made for the relevant distribution period for each distribution budget or [its] subcategory for the distribution period (supplementary distribution). If it is not possible to make a supplementary distribution specific to a certain period, the amounts shall be shared between all distribution periods in question.
- If the cost for any supplementary distributions is higher than 25% or if the total amount collected ready for an adjustment pay-out is lower than EUR 1m, the collections may be distributed together with other distributable amounts.
7. Up to 5% of the revenue ready for distribution shall be made available for cultural, politico-cultural and social purposes.

## II. DISTRIBUTION PLANS

### 1. Distribution Plan no. 1 – for performing artists and producers of sound recordings and music video clips

Remuneration for broadcasts of commercially published recorded music shall be shared equally (50/50) between performing artists and record companies; remuneration for rental and lending of commercially published sound recordings and films shall be shared equally (50/50) between performing artists and record companies. The distribution splits for public performance shall be, based on an overall ratio of 55%/45%, 50%/50% for sound recordings and audio-visual recordings accompanying sound recordings (music video clips), 60%/40% for public performance of radio broadcasts and 90%/10% for public performance of TV broadcasts. The distribution of remuneration arising from private copying shall result directly from the allocation by ZPÜ to GVL's rights holder groups – including event organisers. Any remuneration that has already been paid out based on the previous distribution system, shall be offset against the amounts resulting from the new distribution system and shall either be credited or claimed back.

Remuneration for the cable re-transmission of performances not related to sound recordings or audiovisual recordings (video clips) accompanying sound recordings, shall be allocated exclusively to the performing artists.

Remuneration for audio-visual recordings accompanying sound recordings (music video clips) will be subject to a preliminary allocation of 60% for the manufacturers, and the remuneration for rental and

ending of films will be subject to a preliminary allocation of 40% for the performing artists.

## 2. Distribution Plan no. 2 – for performing artists

### a) Basic Principles

- aa) The distribution to performing artists shall – apart from distributions for the period prior to 2001 where evidence of any contributions cannot be supplied anymore – be made separately in each distribution budget and within such budgets separately under the respective sub-budgets.

In a first step distribution shares from the different usage categories are allocated to the relevant distribution budgets and sub-budgets. The result is the distributable total amount of the budgets.

- aaa) The basis for the distribution of the budgets is – apart from the distribution for newly released sound recordings without any relevant broadcast exploitation (Distribution plan no. 2 b) bb) – usually the broadcast of all productions within a distribution budget or sub-budget. The broadcast duration of a production in minutes and seconds shall form the basis for this, and it can be increased or decreased by certain factors such as coverage or cultural multiplier, broadcast duration etc. The result is the point value for the duration. The production as such may be subject to a multiplier depending on its genre or work category. This multiplier shall be applied consistently to each sub-budget. Based on broadcasters with different weightings or broadcast durations, each production may obtain a different point value. If several broadcasts took place, they may be subject to a regressive multiplier.

The remuneration calculated for each individual artist per production shall depend on the nature of their contribution to the recording. Depending on the kind of contribution, the respective contribution point value shall be multiplied with the point value of the used production in that specific instant. As far as contributions by specific artists have already been determined, their contribution point value shall be used. For contributions that have not been specifically determined yet, the contribution point values shall be calculated on the basis of a statistically calculated average number in a line-up. The total points of all rights holders thus ascertained within the distribution budgets or sub-budgets are then added up. The total amount of the distribution budget and sub-budgets shall be divided by the total points after it has been reduced by a deduction for exploitations that have not been processed so far but can still be reported retroactively. The result thereof is the financial point value of each distribution budget and sub-budget. The point value for each artist for each individual production, multiplied with the financial value per point shall equal the distributable value for each artist per production.

- bbb) The basis for the distribution of the budget for new releases of sound recordings without any relevant broadcast exploitation (Distribution Plan No. 2 b) bb) shall be the declared, verified and allocated compensation for artistic contributions. The distribution shares for performing artists shall be determined by dividing the budget pursuant to Distribution Plan No. 2 b) bb) by the amount of the declared, verified and allocated compensation.

- ccc) In cases where a usage based distribution based on the analysis of all broadcast products is deemed uneconomical for individual sub-budgets, the Board may resolve that these sub-budgets are distributed based on different parameters such as individual/personal claims.
- bb) The distribution usually takes place once a year based on the annual distribution to be made per distribution budget or sub-budget. Pay-out dates may differ depending on distribution budget or sub-budget. The Board may decide that distributions take place in shorter periods. For certain sub-budgets, it may also decide that the remuneration can be combined for several years if the distribution cost is disproportionate to the distributable amount.
- cc) Performing artists shall only receive pay-outs of individual allocations if, subject to any applicable tax deductions or other deductions, a minimum amount of EUR 5.00 is reached. Allocated amounts not paid out shall be credited to the rights holder for a later distribution.
- dd) In order to be entitled to get a share of the remuneration, performing artists need to register their contributions with GVL. Rights holders shall be obliged to provide GVL with evidence of their contributions if they are prompted to do so.
- ee) The share reserved for rights holders whose contribution has not yet been established in line with dd) shall be calculated based on the reported usages of the relevant productions, increased by a risk premium for productions that have not been reported to GVL, but are relevant for distribution. Rights holders may establish their claims up to four years after the financial year during which income was collected for the rights has lapsed. In the fifth year, reserves still available shall be dissolved and distributed on an accrual basis, as long as the total amount per distribution is more than EUR 500,000. In case the amount falls short of EUR 500,000, it can be allocated to the next regular distribution.
- ff) Any amounts still available after the statutory retention period pursuant to ee) has lapsed shall be paid as supplementary distributions within the relevant distribution budget or sub-budget. In cases where the amount of rights holders' claims related to a sub-budget exceeds the reserves available for it, the Board can resolve that non-distributable monies from another distribution budget or sub-budget may be used for the settlement of such claims.
- gg) The Board may resolve that up to 10% of the reserves dissolved pursuant to ff) may be used for social and cultural purposes.
- hh) The following basic principles shall apply for qualifying contributions – with the exception of the distribution for newly released sound recordings without relevant broadcast exploitation (Distribution Plan No. 2 b) bb) Depending on the nature of their contribution, different weightings shall be applied to artists' performances. Based on **Annex 1**, the nature of contributions is categorised (role and function) and a point value is allocated to each category.
- aaa) A maximum contribution of 1 artistic music producer shall be considered per recording and/or live transmission. If more artistic music producers contributed, their share shall be reduced proportionately.
- In cases where a contribution as a conductor is determined, it is not possible for the artist to be considered additionally as an artistic producer or studio conductor.
- bbb)

- If performing artists have contributed to the same recording in more than one different artistic role, the role with the highest point value shall be fully considered, the second contribution only with the lowest point value. Further performances/contributions shall not be considered at all.

The following additional provisions shall apply to AV productions:

- Only one of the two different artistic contributions to be considered can have a performing character. The other one will be valued in conducting terms only (Dubbing, spoken word and stage directors, conductors, artistic producers, studio conductors)
- Contributors to AV productions pursuant to AV sub-budget vii. (Individual contributions in non-fictional formats) shall be considered only once per production; their highest contributory role shall be applied.

The following additional provisions shall apply to radio productions:

- Music contributors to radio productions pursuant to AV sub-budget ii. (radio plays, readings) shall be considered only once per production; the highest role they contributed in shall be applied.

ccc) For recordings with contributions by performer ensembles, the total number of musicians in the ensemble is deduced from the actual number of parties contributing to the recording. Replacements shall receive the full point value. A performer ensemble shall be a body established long-term including a minimum of 10 members who are linked to this ensemble in a setup often identical over a long period of time. Its members can be singers, instrumentalists or dancers.

Permanent members of the ensemble may usually only report their contribution via a representative they elected or who has been appointed by the board of the ensemble. The rules applicable for the respective board shall apply in cases of electing and deselecting representatives for ensembles. As a rule, only those members of the ensemble who have actually contributed to the productions which qualify for distribution shall receive remuneration. In cases where it is not possible to identify all contributors any longer, the remuneration shall be distributed on a pro rata basis to all members of the ensemble who have been members of said ensemble during the year where the production qualifying for distribution was made (solidarity distribution). The solidarity distribution can also take place if a binding resolution of the representative of the ensemble can be proven. Replacements must register their contributions themselves.

Permanent members of an ensemble without a representative must carry out their registrations independently and autonomously. Confirmation of the registration of their contributions requires a complete list of all contributors for the production in question.

Remuneration of the productions qualifying for distribution shall only be paid to GVL rights holders who were actual contributors and have been registered.

## b) Creation of distribution budgets

The distributable amounts for performing artists shall first be allocated to various distribution budgets. These are distributed independently from one another to the rights holders who are entitled to receive remuneration pursuant to distribution plans specific to the relevant distribution budgets. Within each distribution budget, fixed shares may be allocated to sub-categories which in turn may be distributed independently.

The distribution budgets below shall be allocated with the following revenue shares:

- aa) **Commercially published sound recordings broadcast** during the distribution year in radio and TV programmes that are subject to analysis

Revenue for this category shall consist of 97% of sound recordings' broadcast remuneration, 75% of sound recordings' public performance remuneration, 50 % of private copying audio remuneration, 5% of private copying video remuneration and 69.286 % of lending remuneration of the relevant distribution year.

- bb) **Sound recordings which were published during the distribution year for the first time and have generated less than EUR 25 within two calendar years based on the broadcast pursuant to item 1**

A reserve for this amounts to 3% of sound recordings' broadcast remuneration, 25% of sound recordings' public performance remuneration, 25% of private copying audio remuneration and 25% of lending remuneration of the relevant distribution year.

- cc) **Music video clips**

Revenue for this category shall consist of 100% of music video clips' broadcast remuneration, 100% of music video clips' public performance remuneration, 1.85% of private copying video remuneration, 10% of rental remuneration and 0.714% of lending remuneration.

- dd) **Radio broadcasts of productions not based on commercially published sound recordings**

Revenue for this category shall consist of 100% of the public performance remuneration of radio broadcasts, 25% of private copying audio and 100% of cable retransmission remuneration of any other artistic audio productions.

- ee) **Audiovisual Productions (except music video clips)**

Revenue for this category shall consist of 100% of the public performance of TV broadcast, 93.15% of private copying video, 90% of rental remuneration, 5% of lending remuneration and 100% of cable retransmission remuneration for any other artistic video productions.

- c) Individual distribution of the distribution budgets per distribution budget

- aa) **Commercially published sound recordings broadcast during the distribution year in radio and TV programmes that are subject to analysis**

A distribution shall be made to rights holders which have contributed to commercially published sound recordings, subject to the qualifying total broadcast duration per recording during the distribution year (aaa) and the nature of their contribution to the recording (bbb).

aaa) Total broadcast duration per recording

The duration of a sound recording's broadcast via broadcasters subject to analysis and to a weighting system as per the Board's resolution (see **Annex 2**) shall be taken into consideration.

The minutes aired by the TV broadcasters shall qualify in accordance with their technical coverage. Minutes broadcast via the "night programme of ARD" shall only count for the broadcaster in charge of the programme. If ARD radio programmes contain regional windows, they receive a 75% share of broadcast minutes; in the case of sub-regional or local windows the share is 50%. Background music during periods when no programmes are broadcast on TV, and during pure "filler" programmes as well as music accompanying on-screen text/images shall be evaluated at 10% of the broadcast duration. The same shall apply for trailers and signature tunes to programmes.

"Weighted" broadcast minutes shall only be considered per distribution year, per recording, as follows:

Weighted broadcast minutes	Percentage considered for calculation
over 30,000 to 60,000	90%
over 60,000 to 90,000	80%
over 90,000 to 120,000	70%
over 120,000 to 150,000	60%
over 150,000 to 180,000	50%
over 180,000	40%

bbb) Nature of contribution to the recording

Depending on the nature of the contribution a point value as per **Annex 1** shall be applied.

Speakers and literary directors shall be considered consistently without any further differentiation between the featured and non-featured categories. Music contributions to a word production shall be weighted with 25%.

Music contributors to word productions shall not receive more than a joint share of 20% of the remuneration which is allocated to contributions to word productions.

bb) **Sound recordings which were released during the distribution year for the first time and have generated less than EUR 25 in GVL remuneration within two calendar years pursuant to item II.2.c) aa)**

The distribution is made to rights holders which have contributed to published sound recordings which have generated less than EUR 25 in GVL remuneration in the year of release and the subsequent year. The distribution is based on the declared, verified and allocated domestic remuneration in relation to the respective sound recordings.

Remuneration can only be allocated if it has been generated for artistic performances in the year of publication and the subsequent year. One-off remuneration (so-called buy-out payments) shall be considered based on factor 1, recurring remuneration which the performing artist received for his contribution per published sound recording in the distribution year or in the subsequent year, shall be multiplied by factor 15.

Allocable remuneration will be considered pursuant to Annex 6, according to which a lump-sum percentage-based deduction shall be taken from the total remuneration for artistic or other performances. A deduction can also be made in cases where the remuneration share designated for the rights of the performing artists is unusually high in market terms. It is only possible to take the adjusted remuneration into consideration up to a cap limit to be determined by the Board.

The guidelines for the calculation of the salary shares to be taken into consideration will be determined by the Associates' and Delegates' Assembly in time for the distribution 2018.

Individual rights holders are allowed a maximum of 40% of the declared, verified and allocated remuneration.

Except thereof are performances which were recorded prior to 2008.

cc) **Music video clips**

The broadcast duration of a music video clip via broadcasters subject to analysis and to a weighting system as per the Board's resolution (see **Annex 2**) shall be taken into consideration.

The distribution shall be made analogously to the distribution of sound recordings in TV broadcasts subject to the provision that the authors of the film work shall be paid for this usage as GVL rights holders, just like performing artists.

dd) **Radio broadcasts of productions not based on commercially published sound recordings**

The distribution shall be made to rights holders which have contributed to sound recordings which were not commercially published, in accordance with the relevant sub-budgets (aaa), the qualifying total broadcast duration per recording during the distribution year (bbb) and the nature of their contribution to the recording (ccc).

aaa) For this distribution budget, the following sub-budgets shall be created.

- i. Commissioned broadcasts (broadcasters' own productions) – music (recordings and live broadcasts): this sub-budget is subject to weighting factor 1.
- ii. Radio dramas and readings: this sub-budget is subject to weighting factor 1.
- iii. Small literary formats: this sub-budget is subject to weighting factor 0.9.
- iv. Jingles (broadcasters' self-promotion). The sub-budget comprises 1.72% of the distribution budget.



v. Advertising: The sub-budget comprises 0.18% of the distribution budget.

bbb) Total broadcast duration of the sound recording

The duration of a sound recording's broadcast via broadcasters subject to analysis and to a weighting system as per the Board's resolution (see **Annex 3**) shall be taken into consideration.

The following tiers shall apply for the calculation of broadcast minutes:

i. Broadcasters' own music productions

"Weighted" broadcast minutes shall only be considered per distribution year, per recording, as follows:

Weighted broadcast minutes	considered percentage for calculation
over 15,000 to 30,000	90%
over 30,000 to 45,000	80%
over 45,000 to 60,000	70%
over 60,000 to 75,000	60%
over 75,000 to 90,000	50%
over 90,000	40%

ii. Radio dramas and readings

The first broadcast and the following three broadcasts shall be considered as 100% each, the fifth to the ninth broadcast with 50% each and the tenth and any further broadcasts with 10% each. The count of broadcasts shall relate to the entire usage period since 1<sup>st</sup> January 2010.

iii. Small Literary Formats

The number of broadcasts shall not be subject to a regressive multiplier in this sub-budget.

iv. Jingles (broadcasters' self-promotion)

In this sub-budget, the number of broadcasts is not subject to a regressive multiplier.

The distribution of the sub-budget jingles shall be made together with the distributions 2011 and 2012.

v. Advertising

In this sub-budget, the number of broadcasts is not subject to a regressive multiplier

The distribution of the sub-budget advertising music shall be made together with the distributions 2011 and 2012..

ccc) Nature of contribution to the recording

Depending on the nature of the contribution, a point value, as per **Annex 1** shall be applied.

Speakers and literary directors shall be considered consistently without any further differentiation between the featured and non-featured categories. Music contributions to radio plays and readings containing music shall be allocated with 25%..

In the case of feature productions, neighbouring rights of the contributing speakers and literary directors shall only attract 25% of the usual point value.

Music contributors in radio plays shall not receive more than a joint share of 20% of the remuneration which is allocated to contributions in radio plays.

ee) **Audiovisual productions (except music video clips)**

A distribution shall be made to rights holders which have contributed to commercially published audiovisual recordings, in accordance with the relevant sub-budgets (aaa), the qualifying total broadcast duration per recording during the distribution year (bbb) and the nature of their contribution to the recording (ccc).

aaa) For this distribution budget, the following sub-budgets shall be created:

- i. Concert, ballet, opera, theatre: the sub-budget shall be subject to weighting factor 1.
- ii. Cabaret, Comedy programmes: the sub-budget shall be subject to weighting factor 0.9.
- iii. Cinema movies: the sub-budget shall be subject to weighting factor 1.
- iv. TV films, short films, TV series, comedy series: the sub-budget shall be subject to weighting factor 0.9
- v. Daily Soaps / Telenovelas: the sub-budget shall be subject to weighting factor 0.3
- vi. Documentary soaps, courtroom shows: the sub-budget shall be subject to weighting factor 0.1
- vii. Individual performances (such as live performances of music or comedy, fictional scenes, cartoon scenes) in non-fictional formats ( "AktENZEICHEN XY", Childrens' programmes, shows), other  
The sub-budget shall be subject to weighting factor 1.
- viii. Jingles (TV self-promotion). The sub-budget comprises 1.26% of the distribution budget.
- ix. Advertising. The sub-budget comprises 2.80% of the distribution budget.
- x. Documentary cinema films. The sub-budget shall be subject to weighting factor 1.
- xi. Documentary TV productions. The sub-budget shall be subject to weighting factor 0.9.

The size of the sub-budgets calculated based on projected usage units can be found in **Annex 6**.

bbb) Total broadcast duration of the recording

The broadcast duration and the broadcast time of a sound recording shall be based on the broadcasters subject to analysis and weighting as per the Board's resolution. (see **Annex 4**).

The following tiers shall apply for the calculation of broadcast minutes:

- i. Concert, ballet, opera, theatre: The first broadcast and the following three broadcasts shall be calculated with 100% each, the fifth to ninth broadcast with 50% each, and the tenth and any further broadcasts with 10% each.
- ii. Cabaret, Comedy programmes: The first broadcast and the following three broadcasts shall be calculated with 100% each, the fifth to ninth broadcast with 50% each, and the tenth and any further broadcasts with 10% each.
- iii. Cinema movies: The first broadcast and the following three broadcasts shall be calculated with 100% each, the fifth to ninth broadcasts with 50% each, and the tenth and any further broadcasts with 10% each.
- iv. TV films, short films, TV series, comedy series: The first broadcast and the following three broadcasts shall be calculated with 100% each, the fifth to ninth broadcasts with 50% each, and the tenth and any following broadcasts with 10% each.
- v. Daily Soaps, Telenovelas: The first broadcast and the following three broadcasts shall be calculated with 100% each, the fifth to ninth broadcasts with 50% each, and the tenth and any following broadcasts with 10% each.
- vi. Documentary Soaps, courtroom shows: The first broadcast and the following three broadcasts shall be calculated with 100% each, the fifth to ninth broadcasts with 50% each, and the tenth and any following broadcasts with 10% each.
- vii. Individual performances (such as live performances of music or comedy, fictional scenes, cartoon scenes) in no-fictional formats (documentary films and documentaries, „AktENZEICHEN XY“, Childrens' programmes, shows), other: The first broadcast and the following three broadcasts shall be calculated with 100% each, the fifth to ninth broadcasts with 50% each, and the tenth and any following broadcasts with 10% each. The distribution shall be made together with the distributions for 2011 and 2012. The distribution criteria shall be resolved in due time before the distribution.
- viii. Jingles: In this sub-budget, the number of broadcasts shall not be subject to a regressive multiplier. The distribution of the sub-budget jingles shall be made together with the distributions 2011 and 2012.
- ix. Advertising: In this sub-budget, the number of broadcasts shall not be subject to a regressive multiplier. The distribution of the sub-budget advertising music shall be made together with the distributions 2011 and 2012. Documentary cinema films: The first broadcast and the following three broadcasts shall be taken into consideration with 100%

each, the fifth to ninth broadcast with 50% each and the tenth and further broadcasts with 10% each.

- x. Documentary TV productions: The first broadcast and the following three broadcasts shall be taken into consideration with 100% each, the fifth to ninth broadcast with 50% each and the tenth and further broadcasts with 10% each.

The count of broadcasts shall relate to the entire usage period since 1st January 2010.

ccc) Nature of the contribution to the recording

Depending on the nature and duration of the audio-visual production, the nature of contribution shall be categorised as follows:

- i. Actors', dancers' and speakers' contributions in films, series and other fictional productions from 40 minutes shall be calculated based on the number of production units they took part in (days of shooting, takes) in relation to the total production units in accordance with **Annex 5**
- ii. Actors', dancers' and speakers' contributions to fictional formats under 40 minutes as well as on all daily series (daily soaps, telenovelas) and documentary soaps shall not be categorised and shall be treated consistently.
- iii. Actors', dancers' and speakers' contributions to documentary formats with a share of play scenes of at least 40 minutes shall be treated as if they were contributions to fictional formats.
- iv. Actors', dancers' and speakers' contributions to documentary formats with a share of play scenes of less than 40 minutes shall be treated as if they were contributions to individual performances in non-fictional formats.
- v. Actors shall only be considered if evidence can be provided for the role provided in the script – usually with text –
- vi. Music contributions to fictional formats and documentary productions shall be weighted as follows:
 

1. music contribution	20%
2. Speakers' contribution/dubbing	25%
3. Actors' contribution – dubbed	55%
4. Actors' contribution – not dubbed	80%
5. Dancers' contribution	80%
- vii. Music contributions to stage formats or individual contributions shall be weighted as follows:
 

1. All contributions	80%
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- viii. Music contributors to fictional formats shall not receive more than a joint share of 20% of the remuneration which is allocated to contributions to fictional formats.
- ix. Music contributions to audio logos shall only be weighted at 25% of the normal point value.

**ff) Recordings prior to 2001 where evidence for contributions can no longer be provided**

The distribution criteria shall be resolved in due time before the distribution as a separate matter.

- d) Distribution of foreign remuneration to rights holders who have assigned their foreign rights administration to GVL

In the case where performing artists entitled to such rights have entrusted GVL with the administration of their foreign rights for specific countries, the remuneration shall be paid out based on existing and future reciprocal agreements. These agreements shall provide for the remuneration for artists represented by foreign sister societies to be based on a calculation pursuant to these Distribution Regulations. In return, the artists represented by GVL shall receive the remuneration specifically calculated on the basis of the sister societies' distribution plans. In cases where this is not achievable due to a lack of individual details for distribution purposes, and where these details cannot be acquired with a reasonable effort, GVL may, in the framework of the reciprocal contracts, also agree to blanket arrangements, which are based on other available parameters. If sister societies receive lump-sum payments based on this methodology, the relevant payments allocated to the members of sister societies pursuant to items I – III, should they exceed the amounts calculated for the lump-sum payments, shall be paid as a supplement within each of the distribution budgets applicable to the rights holders of GVL who have assigned GVL with the administration of their rights for the territory of the sister society.

**3. Distribution Plan no. 3** – for event organisers

Distribution Plan no. 2 shall be applicable to event organisers. It contains a triple point value of the maximum point value provided for the respective media type.

**4 Distribution Plan no. 4** - for producers of sound recordings or music video clips, relating to the remuneration for broadcasts, public performance, copying and rental and lending

Remuneration for sound recordings shall be distributed to producers for the financial year 2010 in relation to the actual usage (broadcast minutes) of their sound recordings in radio / TV broadcasts by the public and private broadcasters listed in the Annex to Distribution Plan no. 4.

The minutes aired by the TV broadcasters shall qualify in accordance with their technical coverage. Minutes broadcast via the "night programme of ARD" shall only count for the broadcaster in charge of the programme. If ARD radio programmes contain regional windows, they receive a 75% share of broadcast minutes; in the case of sub-regional or local windows the share is 50%. Background music during periods when no programmes are broadcast on TV, and during pure "filler" programmes as well as music

accompanying on-screen text/images shall be evaluated at 10% of the broadcast duration. The same shall apply for trailers and signature tunes to programmes, provided that they are taken from various commercially published sound recordings, and for broadcasts of the gospel radio. Recordings commissioned by broadcasters themselves, or made with broadcasters pursuant to s. 15 AktG (Companies Act) or other related enterprises shall not qualify for distribution, even if broadcasts are made from recorded audio or video media.

Remuneration for music video clips shall be paid to the producers in relation to the usage during financial year 2010 by the public and private broadcasters listed in the Annex to Distribution Plan 3. Each usage of a music video clip with a duration of over 45 seconds and a usage of 10 excerpts each with a duration under 45 seconds shall qualify as one usage.

In accordance with the broadcast minutes evaluated in line with paragraphs 1 to 3, remuneration for broadcasters not chosen for evaluation and remuneration for public performance and copying shall be distributed.

In the first three complete years after an agreement has been entered into, and in addition to a potential short financial year, the number of minutes shall be increased to 100, as long as broadcast minutes have accrued at all. Producers which generated less than 15 broadcast minutes for sound recordings shall not participate in the distribution (minimum threshold).

#### **5. Distribution Plan no. 5**

- for producers of music video clips, who have not assigned their remuneration entitlement to sound recording manufacturers

If videoclip producers retain an entitlement for remuneration pursuant to s. 94, para. 4 German Copyright Act (UrhG) for certain music video clip productions, the distribution to them shall be made as follows:

First, the total share due to music video clips for a remuneration entitlement shall be calculated. The broadcasts of music video clips reported to GVL shall be calculated as follows: First, the total share due to video-clips for remuneration entitlements shall be calculated. During this process, the broadcasts of video clips reported to GVL pursuant to Distribution Plan No. 4 shall be calculated at 45 seconds each for excerpts, and entire video clips with 3 minutes each.. The total duration resulting from this is then doubled. The final amount shall be put into the ratio of the total broadcast minutes of sound recordings in accordance with Distribution Plan no. 4. The result is the total remuneration share allocable to music video clips. The remuneration specifically allocable to each individual clip shall now be calculated as a ratio between the total usage of this music video clip and the total of all music video clip usages. Again, excerpts shall be calculated at a duration of 45 seconds, full videos at a duration of 3 minutes.

The amounts thus calculated must be deducted from the payments to the producers who had the broadcast rights assigned to them. If a producer of a sound recording has received an unreduced distribution payment, he must pay it back and the amounts in question may be recouped from future distributions.

If producers of music video clips and the commissioning sound recordings producer file claims, GVL shall put the amount allocated to the video on hold. GVL shall only be obliged to pay one of the claiming parties if the parties either provide a contractual agreement or a legally binding court decision which proves the entitlement of one of the parties.

**6. Distribution Plan no6** – regarding allocations for cultural, politico-cultural and social purposes

Specially reserved fees - up to a maximum of 5% of the amount available for distribution - shall be used in accordance with the guidelines agreed by the Board relating to grants for cultural, politico-cultural and social purposes as resolved by the Board on 13th February 2009.

Unofficial Translation

### III. DISTRIBUTION PROCESS

1. The distributable amounts for the financial year 2010 in accordance with distribution plans 1 to 3 shall be paid to producers in December 2011 and to the other rights holders also in December 2011, namely for the distribution budgets “broadcast sound recordings” and “music video clips”, the sub-budgets in the AV category i. to vi. and the “radio productions”-sub-budgets i. to iii.; there shall also be subsequent distributions in the following years until the closing distribution in December 2017. The other sub-budgets as well as music in radio dramas are expected to be distributed with the relevant collections for 2011 and 2012 in 2017. Sound recordings which were first published in 2010 and have not been broadcast are expected to be distributed in 2018.

Distributable amounts which, despite all necessary efforts undertaken by GVL to find and reach the addressee, could not be delivered within three years from the first attempt to deliver the payment to the rights holder for reasons GVL is not responsible for, shall be allocated and distributed to the remaining performing artists and/or producers or organisers.

Allocations for cultural, politico-cultural and social purposes in line with Distribution Plan no. 5 have already been paid out during financial year 2010.

2. If, in retrospect, the distribution for a specific distribution period should turn out to be systematically faulty in its entirety or in parts, specifically in cases where this is due to the invalidity of a provision of the underlying distribution regulations (including their Annexes), and if a complete reversal and rerun of the distribution is not possible or only feasible at disproportionate costs,
  - a) the level of the entitlements arising from the faulty distribution can be estimated if a precise calculation is not possible or only at disproportionate costs,
  - b) the entitlements of those negatively affected by the faulty distribution can be satisfied from current and future collections,
  - c) Reclaim entitlements by the society may be offset against future payment entitlements
  - d) or instead of these amounts being offset, reclaim entitlements by the society may be waived in their entirety or in part.

When selecting from these measures, the aim is to consider that the relevant entitlements are being fulfilled as completely as possible, and to observe the requirement of proportionality. The principle of equality shall be observed and cases of hardship must be taken into consideration.

Berlin, 15<sup>th</sup> November 2016

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