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# Distribution regulations fund for performing artists

## Definitions

### Article 1

In these distribution regulations, the terms below are defined as follows:

- a** WNR (Neighbouring Rights Act): Act of 18 March 1993, containing regulations concerning the protection of performing artists, producers of phonograms or first recordings of films and broadcasting organisations and amendment of the Copyright Act 1912, as later amended;
- b** Sena: the Foundation for the Exploitation of Neighbouring Rights, with its registered office in Hilversum, being the legal entity that was designated by the Minister of Justice on 29 June 1993 on the basis of Section 15 of the Neighbouring Rights Act (WNR) as the legal entity that is exclusively charged with the collection and distribution of the reasonable compensation referred to in Section 7 WNR and that is charged with the collection and distribution of the compensation referred to in Section 9b, first subsection, WNR;
- c** Articles of Association: the articles of association of Sena;
- d** Performing artist: the performing artist within the meaning of Section 1 sub a of the WNR;
- e** Producer: the producer of a phonogram within the meaning of Section 1 sub d of the WNR;
- f** Phonogram: a phonogram within the meaning of Section 1 sub c of the WNR;
- g** Board of Directors: the board of Sena as referred to in Article 12 of the articles of association;
- h** Supervisory Board: the supervisory body of Sena as referred to in Article 16 of the articles of association;
- i** Board of Affiliates: the body of Sena as referred to in Article 24 of the articles of association;
- j** Section Performing Artists: the performing artists section as referred to in Article 20 of the articles of association;
- k** Section Producers: the producers section as referred to in Article 20 of the articles of association;
- l** Section Representatives: the representatives section as referred to in Article 20 of the articles of association;
- m** Meeting of Affiliates: the meeting of affiliates of Sena as referred to in Article 20 paragraph 2 of the articles of association;
- n** Participant: the natural person or legal entity that has concluded an exploitation agreement with Sena in the capacity of rights holder or its successor in title, in the event this exploitation agreement has not been terminated;
- o** Repertoire: the total of phonograms;
- p** CvTA: the Supervisory Board for Collective Management Organisations of Copyrights and Neighbouring Rights within the meaning of Section 2 of the Supervision of Collective Management Organisations (Copyrights and Neighbouring Rights) Act of 6 March 2003;
- q** In Writing: by letter, fax or e-mail or any other electronic means of communication, provided the message is legible and can be reproduced.

## General provisions

### Article 2

- 1** If a performing artist has transferred the rights of his performance to the producer of a phonogram and has received a nonregular compensation in respect thereof, the performing artist has the right to receive an additional annual compensation from that producer for each year following the 50th year after the phonogram was first put into circulation in a lawful manner or, if such is sooner, has been published, pursuant to Section 9b subsection 1 of the WNR.
- 2** Pursuant to Section 15g subsection 1 of the WNR, the producer is required to pay this additional compensation to Sena and Sena is obliged to distribute this additional compensation among the entitled performing artists.

## Article 3

- 1 The compensation referred to in Article 2 amounts to twenty per cent (20%) of the income acquired by the producer of the phonogram by reproducing, distributing and making the phonogram available in the year prior to the year for which the compensation is paid.
- 2 For the purpose of calculating the amount of the compensation, income is defined as the income enjoyed by the producer before deduction of costs. The completeness and timeliness of this responsibility comes under the producer's regular audit. Income from renting out, broadcasting and the compensation for private copies, as well as the reasonable compensation received by the producer from Sena for publishing the phonogram is not taken into account in the calculation of the income.
- 3 Pursuant to Section 15g subsection of the 3 WNR, the producer is obliged to state its income to Sena, as referred to in paragraph 2, which it acquired by means of the phonogram, before 1 April of each calendar year. Failing to fulfil this responsibility or deliberately providing inaccurate or incomplete information is punishable pursuant to Section 15g subsection 4 of the WNR.
- 4 The statement of income pursuant to paragraph 3 of this article must be accompanied by a statement of the name of the (main) artist(s) and, if known, the session musicians who collaborated as such on the relevant phonogram, the year the relevant phonogram was first released, the label name, the title of the track and the ISRC if applicable.
- 5 The producer transfers the compensation due in accordance with paragraph 1 each year before 1 April into a separate Sena bank account accompanied by a file that is delivered electronically in a format indicated by Sena, which shows the specification of the compensation as referred to in paragraph 4.
- 6 When so requested by Sena, the producer will be obliged to provide additional information for the purpose of identifying the right phonogram and/or the right performing artists of the relevant phonogram.

## Article 4

- 1 Each performing artist is obliged to notify Sena, in the manner indicated by Sena, of the phonograms on which he/she has collaborated as a performing artist and in respect of which he/she has transferred his/her rights to the producer in return for a non-regular compensation. The performing artist is also obliged to state a bank account, if possible in the Netherlands, into which bank account Sena can transfer the compensation reserved for the performing artist, or a performing artist established in the Netherlands designated as a payment address, while stating the account number of this performing artist.
- 2 Payment will only be made if the performing artist has concluded an exploitation agreement with Sena.
- 3 When so requested by Sena, a performing artist will be obliged to demonstrate to Sena on what grounds he/she considers that he/she is a rights holder in connection with Article 2 paragraph 1, for example by submitting contracts that have been concluded, a studio/recording attendance list or other documents from which it is evident that the performing artist collaborated on the relevant phonograms.
- 4 In the case of well-founded doubts concerning the basis of the claim for compensation presented by the performing artist, and in the event this claim is disputed by another performing artist, Sena will have the right to suspend payment until it has been properly established that the alleged claim is justified, if necessary by a disputes committee as referred to in Article 6 of the Sena General Distribution Regulations.

## Distribution basis

### Article 5

The amounts available for distribution will be paid to the performing artists on the basis of the data received by Sena from the producer upon collection of the additional compensation and the other data that are known to Sena.



## Allocation of revenue per phonogram

### Article 6

- 1 The distribution of revenue per phonogram takes place on the basis of the data provided to Sena upon payment, whereby the collected revenues are reserved for the title(s) indicated by the producer.
- 2 The distribution to the performing artists takes place on the basis of the data that are known to Sena concerning the performing artists who collaborated as such on the relevant phonogram and on the basis of the information provided by the producer pursuant to paragraphs 4 and 5 of Article 3.

## Calculation of the share of the performing artist

### Article 7

Articles 7 and 8 of Sena's distribution subregulations performing artists are declared to apply equally, on the understanding that the above Article 6 of these regulations applies rather than Article 6 of the distribution subregulations applies.

## Minimum payments

### Article 8

- 1 Article 9 of the Sena distribution subregulations performing artists is declared to apply equally.
- 2 The total of the compensations that are reserved for the performing artist on the basis of Section 7 WNR and Section 9b subsection 1 of the WNR is used to determine whether the minimum amount has been realised.

## Non-distributable and/or non-payable compensations

### Article 9

- 1 Compensation collected for the entitled performing artists who have not notified or registered with Sena will remain reserved (in the name of the performing artist) for a period of three years.
- 2 If no performing artist has notified or registered with Sena after the period of three years referred to in paragraph 1, the amount reserved in respect of the relevant phonogram will be refunded to the producer, unless the producer decides otherwise.
- 3 If Sena has only been able to register part of the entitled performing artists after the period of three years referred to in paragraph 1, or in the event not all performing artists have registered with a claim for compensation, the remainder of the amount reserved for the relevant phonogram will be distributed among the entitled performing artists who did notify or register with Sena.

## Distribution of revenue collected for foreign rights holders and distribution of revenue received through sister organisations for dutch rights holders

### Article 10

Article 12 of the Sena distribution subregulations performing artists applies equally, on the understanding that the funds referred to in Article 5 in conjunction with Article 6 of these regulations apply rather than the music usage.

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## Other provisions

### Article 11

Sena has the right to claim back funds that were incorrectly paid out within a term of three years following the incorrect payment, or to set such funds off against subsequent payments.

### Article 12

In cases involving distribution among performing artists not provided for in these regulations, the general distribution regulations, the distribution subregulations performing artists, the exploitation agreement, the articles of associations or other regulations that apply within Sena, the Board of Directors will decide after having heard the Section Representatives of the Section Performing Artists.

## Entering into effect

### Article 13

These regulations enter into effect on 5 July 2017. Adopted by the Sena Board of Affiliates by resolution dated 20 January 2017, and approved by the CvTA dated 8 March 2017.