



MAKES
THE MOST
OF
MUSIC

DISTRIBUTION REGULATIONS

GENERAL / SUBREGULATIONS PERFORMING ARTISTS /
SUBREGULATIONS PRODUCERS

Sena



DEFINITIONS

Article 1

In these distribution regulations and the distribution subregulations that accompany them:

- a. 'WNR' means the Wet op de naburige rechten [Neighbouring Rights Act] passed on 18 March 1993, Staatsblad [Bulletin of Acts and Decrees] 178, containing rules for the protection of performers, producers of phonograms and broadcasting organizations and amendments to the Copyright Act 1912;
- b. 'Sena' means the Stichting ter exploitatie van naburige rechten [Foundation for the Exploitation of Neighbouring Rights], with its registered office in Hilversum, which is the corporate entity which pursuant to Article 15 of the WNR was designated on 29 June 1993 by the Minister of Justice as the corporate entity which, to the exclusion of every other body, is responsible for the collection and distribution of the equitable remuneration referred to in Article 7 of the WNR;
- c. 'Articles of association' means the articles of association of Sena;
- d. 'Performer' means performer within the meaning of Article 1(a) of the WNR, that is, he or she who has contributed in that capacity to a phonogram as defined below under (f);
- e. 'Producer' means the producer of a phonogram within the meaning of Article 1d of the WNR, that is, the natural person or corporate entity who first produced or caused to be produced a phonogram as defined below under f and who has the financial responsibility for that phonogram;
- f. 'Phonogram' means a sound recording or reproduction thereof, published for commercial purposes, within the meaning of Article 1c and Article 7 of the WNR;
- g. 'Title' means an independent musical work appearing on a phonogram as defined in (f);
- h. 'Member' means a natural person or corporate entity which has entered into an exploitation agreement with Sena in the capacity of a rights holder or a rights holder's successor in title, in the event this exploitation agreement has not been terminated;
- i. 'Repertoire' means the total number of phonograms and the performances recorded on them for which a producer or a performer or their successors in title can claim entitlements pursuant to the provisions of Article 7 and Article 32 (4 and 5) of the WNR;
- j. 'Music usage' means broadcasting, whether or not by cable transmission, or any communication to the public of phonograms or reproductions of phonograms published for commercial purposes within the meaning of Article 7 of the WNR;
- k. 'Collection source' means a type of music usage to be distinguished according to the type of communication to the public, whereby music usage by the media is to be considered a separate source in any case, to be sub-divided into music usage at national and regional/local level on the one hand and public music usage on the other hand;
- l. 'CVTA' [Copyright Supervisory Board] means the College van Toezicht collectieve beheersorganisaties Auteurs- en naburige rechten [Supervisory Board for Collective Management Organizations of Copyrights and Neighbouring Rights] within the meaning of Article 2 of the Supervision of Collective Management Organizations (Copyrights and Neighbouring Rights) Act passed on six March two thousand and three;
- m. 'Section representatives' means section representatives within the meaning of Article 20(4) of the articles of association.
- n. Music year: the year in which a title is publicised, in which revenues are reserved for the title concerned;
- o. Reservation period: the period in which revenues are reserved, starting from the music year and ending after the third calendar year following the music year.

DISTRIBUTION

Article 2

1. The revenue received by Sena pursuant to Article 7 of the WNR over any financial year will be credited per collection source in accordance with Article 26(1) of the articles of association.
2. After deduction of the general administration costs and the expenses referred to in Paragraph 3 below, half of the revenue referred to in Paragraph 1 will be allocated to the performers' section and half to the producers' section.
3. The Board of Affiliates is authorized to determine that, after deduction of the costs referred to in Paragraph 2, in accordance with Article 26(3) of the articles of association a certain amount of the collection source accounts will be withheld, to a maximum of 5%, to be appropriated for social, cultural and educational purposes. The size of these expenditures will be determined annually at the beginning of each financial year as part of the budget. The Board of Affiliates will establish more detailed rules regarding the way in which this money is to be spent.
4. The distribution costs incurred by Sena and the costs referred to in Article 5 of these regulations will be allocated pro rata to the sections referred to in Paragraph 2. The extent to which this allocation will take place will be determined annually by the Board of Affiliates at the beginning of each financial year as part of the budget.

5. The net proceeds thus obtained per each section will be distributed according to the distribution subregulations laid down for that purpose in accordance with Article 27 of the articles of association.

Article 3

1. Sena undertakes to pay the members the net proceeds allocated to each section, in accordance with the provisions of the distribution subregulations referred to in Article 2(5), with the proviso that amounts which do not exceed the minimum amounts determined by the section representatives on the basis of these distribution subregulations will not be payable.
2. All payments by Sena will be in Dutch currency.
3. The Board of Affiliates may establish more detailed rules regarding the time of payment, with the proviso that payment and distribution shall in any case take place no later than nine months after the end of the financial year in which the collection took place, unless objective reasons prevent Sena from observing this deadline.

Article 4

1. Distribution among the members will be based on the representative data regarding music usage available to Sena.
2. With respect to the acquisition and processing of the data referred to in Paragraph 1, Sena's Executive Board will take such measures as are desirable in terms of both equitable distribution and cost-effective operations management.
3. Sena will endeavour to distribute the remuneration as efficiently, accurately and fairly as possible, on the basis of as many representative use data as possible, at the lowest possible cost.

DISPUTES

Article 5

1. Any disputes arising as a consequence of these distribution regulations and the distribution subregulations that accompany them, will be submitted in writing by the complainant to the Distribution Dispute Committee, which will settle the dispute by means of a binding advice, unless one of the parties, within a month after the other party has invoked this provision against it, notifies the other party in writing that it opts for settlement of the dispute by the court which has jurisdiction according to the law.

2. The Distribution Disputes Committee consists of three members who will be appointed and dismissed by the Executive Board, after consultation with the Supervisory Board. The Chair of the Distribution Disputes Committee must have a Master's degree in law. The Distribution Disputes Committee will hold its hearings at Sena's office, unless the chair of that Disputes Committee determines otherwise.
3. The Distribution Disputes Committee will offer each party the opportunity to make its position known in writing and has the authority to order a subsequent oral hearing of the dispute. The Disputes Committee's decision will be in writing and will be properly reasoned.
4. The Disputes Committee will regulate its own procedures to the extent that they are not regulated in this Article. If the Distribution Disputes Committee should draw up regulations regarding its procedures, those regulations must not violate the provisions of this Article.

ENTRY INTO FORCE

Article 6

1. Performing artists and/or producers are entitled to submit claims to Sena during the reservation period. Subsequently, the music year concerned will be closed and a final settlement for that music year will take place.
2. During a period of not more than three months after the participant has received his or her final payment for a music year which has been closed in accordance with the first paragraph, the participant may still submit comments or complaints to Sena with regard to this payment. Comments or complaints must be substantiated in the manner described in Sena's Complaints and Dispute Regulations for rightholders and will be dealt with in accordance with said Complaints and Dispute Regulations (available on Sena's website).

Article 7

These regulations will take effect on 5 July 2017. Adopted by the Board of Affiliates of Sena by resolution of 20 January 2017 and approved by the Supervisory Board for Collective Management Organisations of Copyrights and Neighbouring Rights (CvTA) by resolution of 6 March 2017.

GENERAL PROVISIONS

Article 1

1. A certain amount – to be determined by the section representatives – of the sum at the disposal of the Performers' Section pursuant to Article 2 of the general distribution regulations will be withheld as a reserve against unforeseen claims by rights holders/performers. The section representatives of the Performers' Section may also decide to use a certain percentage (up to a maximum of 10%, to be specified annually) of the net revenues for social, cultural and educational purposes for the benefit of performers.
2. The net amount available after deduction of the reserve and expenses referred to in Paragraph 1 will be distributed by Sena among those members/performers for whom remuneration under Article 7 of the WNR has been collected.
3. The amount used for social, cultural and educational purposes by virtue of (i) Article 2(3) of the general regulations; and (ii) Article 1(1) of the distribution subregulations performing artists collectively, may never exceed 15% of the net revenues.

Article 2

1. Each member/performer must submit a statement to Sena, in the manner indicated by Sena, listing the phonograms/titles produced for commercial purposes to which he or she contributed as a performer. The member must also supply a bank account number, in the Netherlands if possible, to which account number Sena can remit the amount due to the member.
2. Payment will only take place if the performer or rights holder has entered into an exploitation agreement with Sena.

Article 3

1. If requested by Sena, a member/performer is obligated to prove on what grounds he/she claims to be a rights holder with respect to the phonograms/titles referred to Article 2(1), for example by producing the relevant recording contract, a studio or recording attendance list, a VAT list pertaining to session performances or other documents proving the performer's contribution to the phonogram/titles in question.
2. In case of valid reasons for doubting the foundation of a claim to remuneration asserted by a member/performer, as well as if this claim is challenged by another member, Sena is entitled to suspend payment relating to the usage of the phonograms/titles in question until it has been satisfactorily determined, if necessary by a Dispute Committee as referred to in Article 5 of the general distribution regulations, whether or not the asserted claim is justified.

DISTRIBUTION BASIS

Article 4

To ensure that the amounts available for distribution are distributed as fairly as possible among the individual members/performers, distribution will be based on:

- a. the actual usage in terms of running time of a phonogram or title within a certain collection source;
- b. a point system whereby one or more points are awarded for the contribution of the performers who have worked in that capacity on the title in question.

Article 5

1. Distribution will take place per genre (popular and classical) on the basis of the calculation method formulated below in Article 6. Consequently the amount collected in the category popular is distributed among the performing artists of popular music, the amount collected in the category classical is distributed among the performing artists of classical music.
2. The 'classical' category includes: symphonic performances, musical drama performances (operas, operettas, musicals), choral performances and chamber music performances, and other classical music performances. The 'popular' category includes performances by jazz, pop and cabaret groups, improvised music, as well as other performances of popular music.

ALLOCATION OF REVENUE PER PHONOGRAM

Article 6

1. The distribution of revenue to the performers will take place as follows:
 - a. The total amount per genre available for distribution to the performers will be divided by the relevant playing unit of repertoire subject to royalties per collection source.
 - b. This amount per minute is multiplied by the number of minutes played per title, thus resulting in an amount per title that is available for distribution among the performers who have contributed in that capacity to the title in question.
2. If it is impossible to determine the actual usage of the repertoire subject to remuneration per genre or the number of minutes played per title per collection source, the section representatives of the Performers' Section will determine a representative distribution formula based on the music usage data available to Sena.

CALCULATION OF PERFORMER'S SHARE

Article 7

1. Performers of popular music who have contributed in that capacity to a particular title share the amount that is available for the title in question in accordance with the provisions of Article 6 according to the following point system:
 - main artist: band member (every permanent member of the band) and/or soloist with an artist contract and/or exploitation agreement who is not the session musician or conductor: 5 points
 - conductor: the person who directs the orchestra, choir or band by means of physical conducting, whereby he/she determines and specifies the rhythm and mood for the performing artist: 3 points
 - session musicians: session musicians and/or other performers who are not the main artist or the conductor. The session musician who makes a (supporting) musical contribution which forms part of a phonogram by a specific main artist: 1 point.

Article 8

Performers who have played or sung several parts on one title in their capacity of session musicians, can at most count three times for the point system set out in Article 7.

MINIMUM PAYMENTS

Article 9

1. The section representatives of the Performers' Section will determine an amount below which no payments will be made to rights holders. The amounts thus remaining unpaid will be reserved for three years until the minimum amount has been exceeded. The section representatives of the Performers' Section can decide to use an amount which has not been paid within this period mentioned in the following way: the revenues will become available, with observance of the provisions of Article 1(3) of these distribution subregulations performing artists, for use for social, cultural and educational purposes.
2. Members/performers will be notified in writing of any decision to determine a minimum sum.

NON-DISTRIBUTABLE AND/OR NON-PAYABLE REVENUE

Article 10

- 1a. Revenues payable to entitled performers are considered to be non-distributable of non-payable revenues if these revenues can still not be distributed three years after the end of the financial year in which the collection of those revenues took place and Sena has taken all necessary measures to identify and locate the entitled performers as referred to in b and c.
- b. No later than three months after the expiry of the period referred to in Article 3(3) of the general distribution regulations, Sena shall provide information regarding the revenues referred to in Article 2(2) of the general distribution regulations for performers to the members/performers and to the international collective management organizations with which Sena has concluded an agreement. Insofar as available, the information referred to above comprises the following:
 - the title of the phonogram;
 - the name of the performer;
 - the name of the producer involved;
 - all relevant available information that can help to identify the rights holder.
- c. If the provision of the information referred to in b does not lead to a result, Sena shall publish the information referred to in b on the website of Sena no later than one year after the expiry of the period of three months.
2. In accordance with a decision to be made by the section representatives of the Performers' Section, the revenues referred to in paragraph 1(a) can be used in the following ways after a period of three years, without prejudice to the right of an entitled performer to claim such revenues from Sena, insofar as he is entitled to them:
 - a. the revenues are added to the revenues intended for distribution among the performers of the music year concerned;
 - b. the revenues are added, with observance of the provisions in Article 1(3) of these distribution Subregulations for performers, to the revenues available for use for social, cultural and educational purposes of the section.

EXPENDITURE SOCIAL, CULTURAL AND EDUCATIONAL PURPOSES

Article 11

The section representatives of the Performers' Section will establish more specific regulations regarding how the funds made available for social, cultural and educational purposes under Articles 1(1, 9 and 10) are to be spent.

DISTRIBUTION OF REVENUE COLLECTED FOR FOREIGN RIGHTS HOLDERS AND DISTRIBUTION OF REVENUE RECEIVED THROUGH SISTER ORGANIZATIONS FOR DUTCH RIGHTS HOLDERS

Article 12

1. The provisions of these distribution regulations apply in full to the distribution of revenue collected for foreign entitled performers, unless Sena has entered into an agreement with a sister organization in the country in question which provides that the revenue will be paid through this sister organization.
2. Revenue received by Sena on the basis of an agreement with a sister organization for Dutch rights holders for the use of their repertoire in a foreign country will be distributed in proportion to music usage based on the information received from the sister organization in question, no later than six months after receipt of these revenues, unless prevented by objective reasons, in accordance with the distribution rules adopted by the sister organization and the arrangements laid down in the agreement.
3. Exceptions to the provisions of Paragraphs 1 and 2 will only be made if and insofar as Sena has entered into an agreement with a foreign sister organization which agreement provides that the revenue collected by both organizations will be paid to national rights holders as mutual compensation. In that case the revenue is allocated, as much as possible in proportion to the music usage in the country in question, to entitled performers in the Netherlands who have charged Sena with the exercise of their rights in that country.
4. The provisions of this Article can never lead to a rights holder receiving more than one payment for a single instance of music usage.

OTHER PROVISIONS

Article 13

Sena is entitled to reclaim unjustly payments within five years of payment, or to offset them against subsequent payments.

Article 14

In cases regarding distribution among performers which are not provided for in these regulations, the general distribution regulations, the exploitation agreement, the articles of association or other regulations in force within Sena, the Executive Board will decide, after consultation with the section representatives of the Performers' Section.

ENTRY INTO FORCE

Article 15

These regulations will take effect on 5 July 2017. Drawn up following the recommendation of the section representatives of the Performers' Section, and adopted by the Board of Affiliates of Sena by resolution of 20 January 2017 and 17 March 2017 and positively voted on at the Meeting of Affiliates of the Performers' Section of 9 May 2017 and approved by the Supervisory Board for Collective Management Organisations of Copyrights and Neighbouring Rights (CvTA) by resolution of 30 March 2017.

GENERAL PROVISIONS

Article 1

1. A certain amount – to be determined by the section representatives of the Producers' Section – of the sum at the disposal of the Producers' Section pursuant to Article 2 of the general apportionment regulations will be withheld as a reserve against unforeseen claims by producers or rights holders. The section representatives of the Producers' Section may also decide to use a certain percentage (up to a maximum of 10%, to be specified annually) of the net proceeds for social, cultural and educational purposes.
2. The net amount available after deduction of the reserve and expenses referred to in Paragraph 1 will be distributed by Sena among those members/producers for whom remuneration under Article 7 of the WNR has been collected.
3. The amount used for social, cultural and educational purposes by virtue of (i) Article 2(3) of the general regulations; and (ii) Article 1(1) of the distribution subregulations producers collectively, may never exceed 15% of the net revenues.

Article 2

1. Each member/producer must submit a statement to Sena, in the manner indicated by Sena, listing the phonograms or titles he/she has produced and published for commercial purposes. The member must also supply a bank account number, in the Netherlands if possible, to which account number Sena can remit the amount due to the participant, or he/she must appoint a producer established in The Netherlands as intermediary, stating the account number of this producer.
2. Payment will only take place if the producer or rights holder has entered into an exploitation agreement with Sena.

Article 3

1. If requested by Sena, a member/producer is obligated to prove on what grounds he/she claims to be a rights holder with respect to the phonograms/titles referred to Article 2(1), for example by submitting written documents which prove that he or she produced the phonograms/titles in question.
2. In case of valid reasons for doubting the foundation of a claim to remuneration asserted by a member/producer, as well as if this claim is challenged by another member, Sena is entitled to suspend payment relating to the usage of the phonograms or titles in

question until it has been satisfactorily determined, if necessary by a Dispute Committee as referred to in Article 5 of the general distribution regulations, whether or not the asserted claim is justified.

3. In case of a dispute concerning a claim for compensation by one or more other participants/producers, as referred to in paragraph 2, Sena refers these participants/producers to the description of its procedure for producers' double claims. The description of this procedure can be found on Sena's website and a copy can also be obtained from Sena.

DISTRIBUTION BASIS

Article 4

The amounts available for distribution will be paid per collection source to the producers/members in proportion to the actual usage in terms of the running time of a phonogram/title within the collection source in question.

ALLOCATION PER PHONOGRAM

Article 5

1. The allocation of revenue per phonogram/title will take place as follows:
 - a. The total amount per collection source which is available for distribution among producers will be divided by the relevant playing unit of repertoire subject to royalties per collection source.
 - b. This amount per minute will be multiplied by the number of minutes played per title, thus resulting in an amount per phonogram that is available for distribution among producers.
2. If it is impossible to determine the actual usage of the repertoire subject to remuneration in terms of the number of minutes played per title per collection source, the section representatives of the Producers' Section will determine a representative distribution formula based on the music usage data available to Sena.

CO-PRODUCTIONS

Article 6

If several producers have released one phonogram as a coproduction, the amount available per phonogram/title under Article 5 will be divided among them on a pro rata basis. Without further specifications provided by the producers concerned, Sena will assume equal distribution.

MINIMUM PAYMENTS

Article 7

1. The section representatives of the Producers' Section will determine an amount below which no payments will be made to rights holders. The amounts thus remained unpaid will be reserved for three years until the minimum amount has been exceeded. With respect to the amount which has not been paid within this period mentioned, the section representatives of the Producers' Section can decide whether:
 - a. the revenues are added to the revenues intended for distribution among the producers of the music year concerned;
 - b. the revenues are added, with observance of the provisions in Article 1(3) of these distribution Subregulations for producers, to the revenues available for use for social, cultural and educational purposes of the section.
2. Members/producers will be notified in writing of decisions as referred to in Paragraph 1.

NON-DISTRIBUTABLE AND/OR NON-PAYABLE REVENUE

Article 8

- 1a. Revenues payable to entitled producers are considered to be non-distributable or non-payable revenues if these revenues can still not be distributed three years after the end of the financial year in which the collection of those revenues took place and Sena has taken all necessary measures to identify and locate the entitled producers as referred to in b and c.
- b. No later than three months after the expiry of the period referred to in Article 3(3) of the general distribution regulations, Sena shall provide information regarding the revenues referred to in Article 2(2) of the general distribution regulations for producers to the members/producers and to the international collective management organizations with which Sena has concluded an agreement. Insofar as available, the information referred to above comprises the following:
 - the title of the phonogram;
 - the name of the performer;
 - the name of the producer involved;
 - all relevant available information that can help to identify the rights holder.
- c. If the provision of the information referred to in b does not lead to a result, Sena shall publish the information referred to in b on the website of Sena no later than one year after the expiry of the period of three months.
2. In accordance with a decision to be made by the section representatives of the Producers' Section, the revenues referred to in paragraph 1(a) can be used in the following ways after a period of three years,

without prejudice to the right of an entitled producer to claim such revenues from Sena, insofar as he is entitled to them:

- a. the revenues are added to the revenues intended for distribution among the producers of the music year concerned;
- b. the revenues are added, with observance of the provisions in Article 1(3) of these distribution Subregulations for producers, to the revenues available for use for social, cultural and educational purposes of the section.

EXPENDITURE FOR SOCIAL, CULTURAL AND EDUCATIONAL PURPOSES

Article 9

The section representatives of the Producers' Section will establish more specific regulations regarding how the funds made available for social, cultural and educational purposes under Articles 1(1), 7 and 8 are to be spent.

OTHER PROVISIONS

Article 10

Sena will be entitled to reclaim unjustly payments within five years of payment, or to offset them against subsequent payments.

Article 11

In cases regarding distribution among producers which are not provided for in these regulations, the general distribution regulations, the exploitation agreement, the articles of association or other regulations in force within Sena, the Executive Board will decide, after consultation with the section representatives of the Producers' Section.

ENTRY INTO FORCE

Article 12

These regulations will take effect on 5 July 2017. Drawn up following the recommendation of the section representatives of the Producers' Section, and adopted by the Board of Affiliates of Sena by resolution of 20 January 2017 and 17 March 2017 and positively voted on at the Meeting of Affiliates of the Producers' Section of 9 May 2017 and approved by the Supervisory Board for Collective Management Organisations of Copyrights and Neighbouring Rights (CvTA) by resolution of 30 March 2017.