

## CONFLICT RULES

of January 6, 2003  
as amended on February 10, 2004, March 30, 2004  
November 16, 2005, February 14, 2008 and September 30, 2008

### **CHAPTER ONE** **GENERAL PROVISIONS**

#### ARTICLE 1 PURPOSE OF THE PRESENT RULES

The present rules govern the assistance that AGICOA gives to its rightsholders for the resolution of conflicts.

#### ARTICLE 2 DEFINITION OF CONFLICTS

A conflict in the sense of the present conflict rules arises whenever two or more rightsholders register a work with the same rights, i.e. rights for the same territory, the same period, the same language version, for the same TV channel and with an overlapping percentage of rights.

#### ARTICLE 3 ASSISTANCE OFFERED BY AGICOA IN RELATION TO CONFLICTS

- (1) AGICOA encourages conflicting rightsholders to resolve their conflicts amongst themselves.

For this purpose AGICOA's rightsholder have the possibility to extract detailed information about their works and rights in conflict from IRRIS web, the integrated information system of AGICOA accessible over the internet. Furthermore, AGICOA's rightsholders can get detailed information about their works and rights in conflict from their respective portfolio managers. They can notably define whether and if so in which intervals they want to be informed about their works and rights in conflict.

Particular rules exist for conflicting parties that take the initiative to resolve conflicts (see articles 13 and 14) and for so-called small and non-evolving conflicts (see article 15).

- (2) If the conflicting parties fail to resolve the conflict between themselves AGICOA's Legal and Business Department launches an AGICOA conflict resolution procedure for those works in conflict the retransmission of which has generated a substantial amount of royalties (see Chapters Four, Five and Six).

If the conflict continues after the first and second phase of the conflict resolution procedure, AGICOA's Legal and Business Department makes a recommendation to the conflicting parties on how to resolve the conflict (see Chapter Seven).

- (3) Should the conflict continue after AGICOA's recommendation the conflicting parties may opt to either go to court or to engage in external arbitration proceedings (see Chapter Eight, Court or Arbitration proceedings). If the conflicting parties fail to do so within certain deadlines, AGICOA's recommendation becomes final and the conflict shall be resolved accordingly.

#### ARTICLE 4 SCOPE OF THE CONFLICT RULES

The present conflict rules apply to all rightsholders having registered their works and rights with one of the partner companies of the AGICOA Alliance unless otherwise specified in the co-operation agreements.

#### ARTICLE 5 EXTERNAL COLLECTING SOCIETIES AND AGENTS

- (1) The present conflict rules do not apply if AGICOA claims royalties on behalf of its rightsholder(s) from an external collecting society unless otherwise agreed upon between AGICOA and the external collecting society.

External collecting society in the sense of the present rules is a collecting society that does not apply the distribution rules of the AGICOA Alliance.

- (2) However, if an external collecting society, acting on behalf of one of its rightsholders, claims royalties from AGICOA, the present rules apply.

The external collecting society shall communicate to AGICOA the identity and the address of its rightsholder together with the information upholding the claim according to Chapter Five Article 26 of these rules. All future communications shall be addressed to the external collecting society with a copy to its rightsholder.

If the external collecting society does not object in writing within thirty calendar days after having received AGICOA's communication to start a conflict resolution procedure, the external collecting society accepts that it represents its rightsholder in the conflict resolution procedure and that it is responsible for the respect of the present conflict rules, notably of their deadlines. The external collecting society shall hold AGICOA harmless against any claim made by its rightsholder against AGICOA in the context of the conflict resolution procedure.

The external collecting society remains responsible for conflicts arising from claims made on behalf of its rightsholder irrespective of the fact whether the rightsholder may have ceased its relationship with the external collecting society unless AGICOA has been duly informed of such change by a co-signed change of mandate form in which a new external collecting society, the initial

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rightsholder, the new rightsholder or any other third party agrees to take over the responsibility for the conflict.

- (3) If an agent acting on behalf of one of its clients claims royalties from AGICOA, the present rules apply.

Agent in the sense of the present rules means any person or legal entity making declarations at AGICOA that acts on behalf of its clients or member rightsholders.

The agent shall communicate to AGICOA the identity and the address of its rightsholder together with the information upholding the claim according to Chapter Five Article 26 of these rules. All future communication shall be addressed to the agent and a copy to its rightsholder.

If the agent does not object in writing within thirty calendar days after having received AGICOA's announcement to start a conflict resolution procedure, the agent accepts that it represents its rightsholder in the conflict resolution procedure and that it is responsible for the respect of the present conflict rules, notably the deadlines. The agent shall hold AGICOA harmless against any claim made by its rightsholder against AGICOA in the context of the conflict resolution procedure.

The agent remains responsible for conflicts arising from claims made on behalf of its rightsholder irrespective of the fact whether the rightsholder may have ceased its relationship with the agent unless AGICOA has been duly informed of such change by a co-signed change of mandate form in which a new agent, the initial rightsholder or a new rightsholder agrees to take over the responsibility for the conflict.

### **CHAPTER TWO** **FINANCIAL IMPACTS OF CONFLICTS AND CONFLICT RESOLUTIONS**

#### ARTICLE 6 BLOCKING OF THE ROYALTIES

- (1) If the retransmission of a work with rights in conflict has generated royalties, AGICOA blocks the amount of royalties from being paid out to the rightsholders until the conflict is resolved.
- (2) The blocked amount does not generate any interest for the conflicting rightsholders.

#### ARTICLE 7 UNBLOCKING OF THE ROYALTIES

- (1) The amount allocated to the retransmission(s) of the work in conflict remains blocked until the conflict is resolved.

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- (2) The conflict can be resolved by the rightsholders themselves (Chapter Three of the present rules), notably through a settlement agreement without or outside AGICOA's conflict resolution procedure.
- (3) The conflict can also be resolved in the framework of AGICOA conflict resolution procedure according to Chapters Four, Five, Six and Seven of the present rules.

Within AGICOA's conflict resolution procedure, the conflict can be resolved notably by settlement agreement, withdrawal of the claim, non-reply, lack of timely answer, incomplete answer or by acceptance of AGICOA's recommendation.

If AGICOA's recommendation on how to resolve the conflict is rejected by the conflicting parties, the conflict is nevertheless deemed resolved if, within 60 calendar days after AGICOA's announcement of the rejection of its recommendation, the conflicting parties will have started neither legal nor arbitration proceedings under Chapter Eight, nor reached settlement of the conflict.

- (4) If the conflicting parties opt for arbitration proceedings, the conflict is deemed to be resolved after communication of the arbitrator's final and binding award to AGICOA. If, however, the conflicting parties opt for court proceedings, the conflict is deemed to be resolved after communication of the final binding court ruling to AGICOA.
- (5) Once the conflict is resolved, AGICOA updates the rights that have been in conflict. This releases the amount of royalties previously blocked by the conflict.

Depending on the resolution of the conflict, the blocked royalties may be distributed to one or several conflicting parties or become payable to AGICOA's general reserve. In case of payments to be made to the conflicting party(ies), AGICOA shall release the royalties no later than within the next distribution run for the territory broadcasting year with conflicting rights.

### ARTICLE 8 RETURN OF UNDULY RECEIVED PAYMENTS

- (1) If a conflicting party had received royalties for a work in conflict from AGICOA which, according to the following resolution of the conflict, should not have been paid to it, the conflicting party is obliged to refund those royalties to AGICOA.
- (2) AGICOA is entitled to recover the amount paid to the rightsholder either by compensating AGICOA's claim with non-conflicting royalties due to the rightsholder or through making a separate recovery claim against the rightsholder.

### ARTICLE 9 PAYMENT PRIOR TO CONFLICT AND LATE DECLARATIONS

- (1) A rightsholder who received royalties from AGICOA for a retransmitted work that was not in conflict at the moment of the payment has to refund these royalties to AGICOA if a second rightsholder declares the same rights in the same work afterwards and if this second rightsholder – according to the outcome of the

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resulting AGICOA conflict resolution procedure, arbitration or litigation – is entitled to claim the payment of these royalties from AGICOA.

- (2) However, the initial rightsholder who received royalties from AGICOA is entitled to keep the royalties if the conflict created by the second rightsholders is based on a late declaration. Whether a declaration is late is set out in AGICOA's Distribution Rules. The above provision applies to late declarations that are made after January 1, 2004 only.

### ARTICLE 10 WAIVER AND WARRANTY IN CASE OF PAYMENT

- (1) Any party receiving royalties following the resolution of the conflict according to these conflict rules agrees - by accepting such payment - to hold AGICOA harmless from any claim related to this payment and notably from any claim made by the other conflicting party.
- (2) If following the resolution of the conflict the royalties previously blocked by the conflict are released, the conflicting party that receives payment can't hold AGICOA responsible for the way how the released royalties were calculated unless AGICOA has wilfully or grossly negligently infringed the present conflict rules or its distribution rules.
- (3) The conflicting party that does not receive payment following the resolution of the conflict can't hold AGICOA responsible for not having released the blocked royalties to it unless AGICOA has wilfully or grossly negligently infringed the present conflict rules.

### **CHAPTER THREE** **RESOLUTION OF CONFLICTS PRIOR TO THE AGICOA CONFLICT RESOLUTION PROCEDURE**

#### ARTICLE 11 INFORMATION ABOUT THE EXISTENCE OF THE CONFLICT

AGICOA encourages conflicting rightsholders to resolve their conflicts amongst themselves.

For this purpose AGICOA's rightsholder have the possibility to extract detailed information about their works and rights in conflict from IRRIS web, the integrated information system of AGICOA accessible over the internet. Furthermore, AGICOA's rightsholders can get detailed information about their works and rights in conflict from their respective portfolio managers. They can notably define whether and if so in which intervals they want to be informed about their works and rights in conflict.

ARTICLE 12  
RESOLUTION OF THE CONFLICT THROUGH SETTLEMENT OR WITHDRAWAL

Prior to the launching of a conflict resolution procedure in the sense of Chapter 4 of the present rules, the conflict can be resolved by settlement agreement between the conflicting parties or withdrawal of the conflicting rights.

ARTICLE 13  
RESOLUTION OF THE CONFLICT DUE THE LACK OF REPLY FROM THE OTHER  
CONFLICTING PARTY

- (1) A conflict shall also be considered resolved prior to the launching of a conflict resolution procedure in the sense of Chapter 4 if the following two conditions are met:

Firstly, the conflicting party provides its AGICOA Portfolio Manager with sufficient evidence according to which it tried without success to contact the other conflicting party in order to settle the conflict.

Secondly, after the failure of the rightsholder's initiative, AGICOA Portfolio Manager's efforts to contact the other rightsholder failed, too.

- (2) Sufficient evidence in the sense of the previous paragraph requires that the rightsholder submits to its AGICOA Portfolio Manager at least three registered mails or fax messages (with sender reports) that proposed to the other conflicting party to resolve the conflict. There must be at least one month between each of these three communications. For these communications, the address of the other conflicting party as indicated by AGICOA can be used.

To this evidence must be added a confirmation duly signed by the rightsholder that it could not reach the other rightsholder and/or that the other conflicting rightsholder did not reply.

In addition, after the failure of the rightsholder's initiative to contact the other conflicting rightsholder, AGICOA's Portfolio Manager must have set per fax or registered letter a deadline of one month to the other conflicting rightsholder to which the other rightsholder failed to respond.

ARTICLE 14  
FAILURE OF THE PARTIES TO RESOLVE THE CONFLICT BETWEEN THEMSELVES  
AND SWITCH TO AGICOA'S CONFLICT RESOLUTION PROCEDURE

- (1) If the conflicting parties have exchanged communications in order to resolve the conflict without reaching a resolution of the conflict, each of the conflicting parties can submit to AGICOA's Legal and Business Department a written request to start an AGICOA conflict resolution procedure according to Chapters Four, Five and Six of the present rules.

The above request can be sent either directly to AGICOA's Legal and Business Department or to the conflicting rightsholders' AGICOA Portfolio Manager(s) who transfer(s) the request to AGICOA's Legal and Business Department.

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- (2) The conflicting party shall add to its request the necessary written evidence in form of copies of the exchange of letters, e-mails, etc, between the conflicting parties, that did not lead to a resolution of the conflict.
- (3) AGICOA's Legal and Business Department remains free to reject the request to launch a conflict resolution procedure. It shall reject the request if the amount of blocked royalties is not substantial also it shall reject the request if the party failed to provide the above mentioned evidence proving that the conflicting rightsholders had tried to resolve the conflict between themselves.
- (4) If AGICOA's Legal and Business Department decides to launch a conflict resolution procedure according to Chapters Four, Five and Six, AGICOA sends to both parties a formal communication with the details of the conflict (rights in conflict, broadcasts, other parties, etc).
- (5) As the parties had already exchanged and maintained their positions on the conflict, the conflict resolution procedure shall skip its first phase and immediately start with the second phase (see Chapter Six). Article 31 and following apply.
- (6) After the conflict announcement the conflicting parties have 90 calendar days to either withdraw or maintain their claim. Each party that wishes to maintain the claim shall provide AGICOA within this deadline with the necessary grounds and full evidence supporting its claim. This includes any evidence like agreements, copyright certificates and other documents that are necessary to prove that the rightsholder is the initial producer of the audiovisual work or that the rightsholder has acquired the rights in conflict through a complete and uninterrupted chain of titles from the initial producer. Article 33 applies.

The grounds and evidence provided within this deadline constitute the basis for AGICOA's draft recommendation in the sense of article 39 of the present rules. No further substantive evidence shall be admitted for the draft recommendation.

### ARTICLE 15 RESOLUTION OF SMALL AND NON-EVOLVING CONFLICTS

- (1) AGICOA is entitled to consider a conflict to be resolved without launching formal conflict resolution procedure if the blocked amount of royalties is lower than € 200.- and if there has been no broadcast of the work in conflict for at least five years.
- (2) AGICOA's Portfolio Managers shall inform in regular intervals the conflicting parties of the existence of these small and non-evolving conflicts. With this communication, AGICOA's Portfolio Managers shall set a deadline to the conflicting parties to resolve these small and non-evolving conflicts between themselves.
- (3) If the conflicting parties fail to resolve these small and non-evolving conflicts within the deadline, AGICOA's Portfolio Managers shall delete the respective conflicting rights.
- (4) The amounts blocked by these conflicts shall be transferred to AGICOA's general reserve.

**CHAPTER FOUR**  
**CONFLICT RESOLUTION PROCEDURE**  
**GENERAL PROVISIONS**

ARTICLE 16

GENERAL STRUCTURE OF THE CONFLICT RESOLUTION PROCEDURE

- (1) AGICOA's conflict resolution procedure is a special procedure offered by AGICOA's Legal and Business Department to assist parties in the resolution of their conflicts.
- (2) In phase one and two of the conflict resolution procedure, AGICOA's Legal and Business Department invites the conflicting parties to analyze the conflict and then to either withdraw their claims or to maintain and substantiate them (see Chapter Five, first phase of the conflict resolution procedure and Chapter Six, second phase of the conflict resolution procedure).
- (3) If, after these two phases, the conflicting parties continue to maintain their claims, AGICOA's Legal and Business Department makes a recommendation to the parties on how to resolve the conflict (see Chapter Seven, recommendation phase of the conflict resolution procedure)

ARTICLE 17

SPECIAL REQUIREMENTS FOR COMMUNICATIONS DURING  
THE CONFLICT RESOLUTION PROCEDURE

- (1) As AGICOA's conflict resolution procedure is a formal procedure conducted by AGICOA's Legal and Business Department particular formal requirements for the communications between conflicting rightsholders and AGICOA's Legal and Business Department apply.
- (2) The conflicting rightsholders shall use the reply forms for the communication with AGICOA's Legal and Business Department.
- (3) The conflicting rightsholders shall communicate these forms and related documents either by registered letter with acknowledgement of receipt or via fax message.
- (4) The conflicting parties may also use e-mail communication but bear the risk of proof that AGICOA received their e-mails.
- (5) AGICOA's Legal and Business Department shall send its communications to the conflicting parties either by registered letter with acknowledgement of receipt or via fax message if the communication sets a deadline.

Should the volume of data to be communicated to the conflicting parties make a paper communication inappropriate, electronic mailing or electronic data carrier can be used by AGICOA. However, AGICOA shall inform the conflicting parties by registered letter with acknowledgement with receipt or by fax that it has used electronic mail or an electronic data support.

- (6) For communications to the conflicting rightsholders that do not set deadlines AGICOA is entitled to use electronic mail.
- (7) For neutrality reasons AGICOA's Legal and Business Department is free to refuse any oral communication with the conflicting rightsholders.

An oral communication is not sufficient to respect the deadlines in the course of the conflict resolution procedure.

ARTICLE 18  
SPECIAL REQUIRMENTS FOR THE EVIDENCE TO BE PROVIDED  
IN THE CONFLICT RESOLUTION PROCEDURE

Contracts, agreements and other documents bearing personal signatures and being used for evidence purposes shall be sent in the original, copied or scanned version.

AGICOA is free to refuse the submission of agreements or letters that do not bear the necessary signatures.

ARTICLE 19  
ADMITTED LANGUAGES FOR THE CONFLICT RESOLUTION PROCEDURE

- (1) All communications have to be made in English or French.
- (2) If requested in writing by AGICOA, contracts, agreements and other documents in other languages being used for as evidence have to be accompanied by an authorised English or French translation.

If within 30 calendar days upon receipt of AGICOA's written request the conflicting party does not provide AGICOA with the translation the evidence will not be taken into account.

ARTICLE 20  
DEADLINES IN THE CONFLICT RESOLUTION PROCEDURE

- (1) The time limits set forth in these conflict rules start on the day on which any notification or any communication is received or could have been received, either by the addressee himself or by his representative.
- (2) In the case of communication per registered letter with acknowledgement of receipt the date of receipt is the date marked on the receipt. In case of fax communication, the date of receipt is the date of sending the fax message as indicated on the sender's fax transmission report. The conflicting parties are urged to keep the acknowledgements of receipts and their fax transmission reports throughout the conflict resolution procedure.
- (3) A deadline set forth under these regulations expires independently of the fact that it expires on a holiday or on a non-working day in the country of domicile or of the place of incorporation of the addressee.
- (4) Holidays and non-working days are included in the calculation of the time limits.

ARTICLE 21  
PROCEDURAL FLAWS IN THE CONFLICT RESOLUTION PROCEDURE  
AND REMEDIES

- (1) If a party proves that it has not received a communication from AGICOA's Legal and Business Department that sets a deadline, the party will be treated as if it had not missed the deadline: AGICOA shall set a new reasonable deadline to this party to respond.
- (2) If AGICOA's Legal and Business Department sent its communication to a wrong postal address or – in case of fax transmission – to a wrong fax number, the communication is deemed to be inexistent. It does not generate any deadline.

However, the address or fax number is deemed to be valid if the communication, while arriving at the premises of the addressee, did not reach the competent person within the organization of the addressee.

- (3) If a conflicting party failed to respond within a deadline, AGICOA is free to accept a belated reply if the delay is insignificant. In case of a significantly belated reply AGICOA can accept it if the late rightsholder substantiates the reasons for the delay and if the opposing conflicting rightsholder agrees with the acceptance of the belated reply.

As a general rule, a reply is significantly belated if it is received more than 7 calendar days after the end of the relevant deadline.

ARTICLE 22  
THIRD PARTY JOINING AN EXISTING CONFLICT  
RESOLUTION PROCEDURE

- (1) If, after AGICOA's Legal and Business Department having started a conflict resolution procedure between conflicting parties, a third party validly declares rights that are in conflict with the initially conflicting rights, the third party shall join the existing conflict resolution procedure on the conditions set out below. The conditions depend on the status of the conflict resolution procedure between the initially conflicting parties at the moment of the joining of the third party.
- (2) If the third party's declaration of rights for a given country and retransmission year that already are in conflict between the initially conflicting parties is a late declaration according to AGICOA's Distribution Rules, it is not a valid declaration in the sense of the present rules. A third party that makes a late declaration cannot join the existing conflict resolution procedure.

This provision applies to late declarations made as of January 1, 2004 only.

- (3) If the valid third party's declaration of rights has been registered before the end of the 120 days deadline that starts to run after the initial conflict announcement (see article 24), AGICOA's Legal and Business Department shall restart the conflict resolution procedure from its very beginning.

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- (4) If the valid third party's declaration of rights has been registered after the above mentioned 120 days deadline but before a draft recommendation has been sent to the initially conflicting parties, AGICOA shall apply an accelerated conflict resolution procedure to allow the third party to join the existing conflict resolution procedure without starting it from the beginning.

For this purpose, AGICOA shall send to the third party a communication with all necessary details of the conflict (rights in conflict, broadcasts, parties, etc). The third party has 60 calendar days from the receipt of this communication to react to it. The reactions can be: lack of response or incomplete response, withdrawal of the claim, settlement agreement or upholding of the claim.

Articles 25-29 of the present conflict rules apply mutatis mutandis.

As the third party joins the conflict in its second phase the joining party has to provide AGICOA from the beginning with the full evidence of its entitlement. The requirements for substantiation and evidence from both the first and second phase apply to the joining party. For this purpose notably articles 26 and 33 apply mutatis mutandis except for the shorter deadline of 60 calendar days.

To the parties that were in conflict prior to the joining of the new party AGICOA shall send an updated conflict report that includes the new joining party. The initially conflicting parties have 60 calendar days from receipt of this communication to react to the announcement that a new party has joined the conflict resolution procedure. The reactions can be: lack of response, withdrawal of the claim, settlement agreement or upholding of the claim. The initially conflicting parties have to provide AGICOA within the above deadline with any (additional) substantiation and evidence of their claims that they judge necessary in light of the third party that joins the conflict.

- (5) If the valid third party's declaration of rights has been registered in the period between the sending the draft recommendation and the implementation of the final recommendation, AGICOA's Legal and Business Department shall revoke its (draft or final) recommendation and apply the accelerated conflict resolution procedure defined in article 22(4) in order to allow the third party to join the existing conflict resolution procedure without starting it from the beginning.
- (6) If the valid third party's declaration of rights has been registered after the implementation of the final recommendation, AGICOA's Legal and Business Department shall revoke its recommendation and apply the accelerated conflict resolution procedure defined in article 22(4) in order to allow the third party to join the existing conflict resolution procedure without starting it from the beginning.

AGICOA shall inform the parties of the initial conflict resolution procedure that, according to the outcome of the new shortened conflict resolution procedure, they may have to refund the royalties that they received following the implementation of the recommendation.

- (7) If the valid third party's declaration of rights has been registered after the initially conflicting parties have validly rejected AGICOA's final recommendation and therefore have started litigation, arbitration or settlement negotiations, AGICOA shall inform the initially conflicting parties about the third party's declaration.

The initially conflicting parties have 60 calendar days to inform AGICOA on how they have agreed to deal with the third party in the context of the arbitration or court proceeding.

If AGICOA does not receive within this deadline a commonly agreed proposal from the initially conflicting parties on how to fully include the third party in the arbitration, litigation or settlement negotiation, the third party shall not be included in the arbitration, litigation or settlement negotiations. In this case AGICOA shall not implement the final results of the arbitration, litigation or settlement negotiations but launch a new shortened conflict resolution procedure between the third party and those parties that got their claims confirmed by court, arbitration or settlement agreement. For this shortened conflict resolution procedure paragraph 4 of the present article applies mutatis mutandis. There is for all conflicting parties only one single phase prior to recommendation with immediate full substantiation within a reduced deadline of 60 calendar days.

### ARTICLE 23

#### ADDITIONAL BROADCASTS WITH CONFLICTING RIGHTS AFTER THE LAUNCHING OF THE CONFLICT RESOLUTION PROCEDURE

- (1) If, in the course of the three phases of the conflict resolution procedure or the following litigation or arbitration proceedings, additional broadcasts of the work in conflict lead to an increase in the royalties frozen, AGICOA will not start separate conflict resolution procedures, but will inform the conflicting parties about the additional amounts involved.
- (2) If the additional broadcast(s) result(s) in the addition of new conflicting parties, article 22 of the present Conflict Rules applies.

## **CHAPTER FIVE**

### **FIRST PHASE OF THE CONFLICT RESOLUTION PROCEDURE**

#### ARTICLE 24

#### ANNOUNCEMENT OF THE CONFLICT TO THE CONFLICTING PARTIES

- (1) AGICOA's Legal and Business Department starts the first phase of the conflict resolution procedure by sending the conflict announcement to the conflicting parties.
- (2) The above conflict announcement shall contain appropriate information enabling the parties to analyse the conflict and their claim.

As a general rule the conflict announcement shall contain the following information: name(s) and address(es) of the conflicting party(ies), the work in conflict, the language version(s) and the country(ies) of retransmission with conflicting rights, the conflicting rights period(s), the percentage of the claimed rights, the broadcasts and the amount of frozen royalties.

- (3) By the conflict announcement AGICOA sets to the parties a deadline of 120 calendar days to react to AGICOA's announcement of the conflict. In case of a third party joining an existing conflict resolution procedure article 22 applies.

- (4) AGICOA may not be in a position to communicate to the other conflicting rightsholders the name and the address of the individual rightsholder being in conflict if this individual rightsholder is represented by an external collecting society, an agent or another entity that acts in AGICOA's conflict resolution procedure instead and in the place of the individual rightsholder.

If the external collecting society, agent or the other entity does not object in writing at the moment of the above conflict announcement the external collecting society, the agent or the other entity accepts that it is deemed to act instead of its rightsholder in the conflict resolution procedure and that it is also responsible for the respect of the present conflict resolution procedure and notably its deadlines. The external collecting society, agent or the other entity shall hold AGICOA harmless against any claim made by its rightsholder against AGICOA in the context of the conflict resolution procedure.

#### ARTICLE 25 REACTIONS TO THE ANNOUNCEMENT OF THE CONFLICT

- (1) The conflicting rightsholders shall react to the conflict announcement within the deadline of 120 days set in Article 24.
- (2) For their reaction to the conflict announcement, the conflicting rightsholders shall use the form attached to the announcement of the conflict.
- (3) Their reaction to the conflict announcement can be either the withdrawal of the rights, upholding of the claim or the conclusion of a settlement agreement with regard to the conflict.
- (4) The reaction to the conflict announcement has to specify whether the upholding, settlement or withdrawal of the claim is total or covers only a part of the conflict.
- (5) A lack of reaction or an incomplete reaction is deemed to be a withdrawal of the claim. Also a late reaction after the expiration of the deadline is deemed to be a withdrawal of the claim.

#### ARTICLE 26 UPHOLDING OF THE CLAIM

- (1) In case of upholding the claim the conflicting party has to substantiate its claim by describing the reasons why it believes to be entitled to receive the royalties in conflict from AGICOA:

If the party is the initial producer of the title in conflict, it has to indicate this in its reply and also has to give the necessary assurance that it has not transferred or licensed the rights in conflicts to the other conflicting parties.

If the party is not the initial producer of the title in conflict but a successor in title, it has to describe the full and uninterrupted chain of agreements from the initial producer to its own entitlement.

Should the conflict not be resolved after the first phase of the conflict resolution procedure, AGICOA shall communicate the above substantiation to the other

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conflicting parties at the beginning of the second phase of the conflict resolution procedure.

- (2) The conflicting party who upholds its claim in this first phase of the conflict resolution procedure is not obliged to support its claim with the relevant evidence like copyright certificates, agreements, letters and other documentation.

However, it is encouraged to do so, as the presentation of full evidence at this early stage of the conflict resolution procedure may induce the other conflicting parties to withdraw their claim.

If the conflicting party provides AGICOA with the relevant evidence in this first phase of the conflict resolution procedure, AGICOA will communicate these documents to the other conflicting parties at the beginning of the second phase of the conflict resolution procedure unless the party explicitly request non-disclosure of the evidence.

Should the conflict not be solved after the second phase AGICOA will base its recommendation on how to resolve the conflict on that evidence only that has been disclosed to the other conflicting parties. Therefore, parties are encouraged to produce and to disclose their evidence to the other conflicting parties already in the first phase. This increases the chances that the other conflicting parties withdraw their claims in light of the presented evidence.

- (3) If a conflicting individual rightsholder is represented by an external collecting society, an agent or another entity that acts instead of it in the context of the conflict resolution procedure, the external collecting society, agent or the other entity has to comply with the requirements specified above.

### ARTICLE 27 WITHDRAWAL OF THE CLAIM

- (1) If the rightsholder has duly informed AGICOA of having totally or partly withdrawn its rights, it is deemed to have thus definitively waived its claim. AGICOA will update or delete its rights accordingly.
- (2) AGICOA will inform the other conflicting party(ies) of the total or partial withdrawal of the rightsholder's claim.

### ARTICLE 28 SETTLEMENT OF THE CONFLICT

- (1) If the conflicting rightsholders have duly informed AGICOA that they have reached total or partial settlement (together with a copy of such settlement agreement duly signed by the conflicting parties), AGICOA shall update the rights accordingly and also distribute the amount of royalties according to the terms of the settlement agreement.
- (2) The rightsholders by informing AGICOA about the settlement waive all claims against AGICOA going beyond the settlement and jointly hold AGICOA harmless against any third party claim related to the specific rights for which the settlement had been reached.

ARTICLE 29  
LACK OF RESPONSE OR AN INCOMPLETE RESPONSE

- (1) If AGICOA does not receive a written response in the first phase of the conflict resolution procedure within the deadline of 120 days set out in Article 24(3), the rightsholder is deemed to have withdrawn its claim. AGICOA will update or delete its rights accordingly.

The rightsholder waives all claims against AGICOA with regard to update or the deletion of the rights and the non-payment of the royalties blocked by the conflict.

- (2) The above paragraph applies mutatis mutandis in case of incomplete response.

The response is incomplete if it does not state whether the rightsholder either (a) withdraws the claim, (b) upholds the claim, or (c) has settled the conflict.

The response will also be deemed incomplete if it does not specify the partial withdrawal, settlement or upholding of the claim.

In the case of upholding the claim, the response is incomplete if it is not sufficiently substantiated. The requirements for substantiation are specified in article 26 of the present rules.

In the case of settlement, the response will be deemed incomplete if it does not include the original or copy of the settlement agreement signed by the conflicting parties.

- (3) In case of total lack of responses or in case of incomplete responses from all conflicting parties, AGICOA shall delete all their conflicting rights and distribute the royalties amongst other rightsholders either by adding the royalties to the distribution of the respective country and broadcasting year or by adding them to the next general reserve distribution.
- (4) If only one conflicting party upholds its claim while the other conflicting parties do not respond or do not respond properly, AGICOA will distribute the amount of royalties to the party upholding its claim.

ARTICLE 30  
COMMUNICATION OF THE RESULTS OF THE FIRST PHASE OF  
THE CONFLICT RESOLUTION PROCEDURE

Following the reactions that AGICOA has received from the conflicting parties following the conflict announcement AGICOA's Legal and Business Department shall inform the parties whether the conflict has been fully resolved or whether the conflict goes on.

Should more than one party fully or partly uphold their claims, AGICOA's Legal and Business Department shall start the second phase of the conflict resolution procedure (see Chapter Six).

**CHAPTER SIX**  
**SECOND PHASE OF THE CONFLICT RESOLUTION PROCEDURE**

ARTICLE 31  
COMMUNICATION OF THE ONGOING CONFLICT

- (1) In the communication to the conflicting rightsholders that the conflict continues after the first phase of the conflict resolution (see article 30), AGICOA's Legal and Business Department shall set a deadline of 90 calendar days to the conflicting parties for their further reactions.
- (2) Together with this communication, AGICOA's Legal and Business Department shall circulate amongst the conflicting parties the grounds for upholding their claims that the opposing parties had sent to AGICOA in the first phase of the conflict resolution procedure. AGICOA shall also circulate the evidence like letters and agreements provided by the parties in the first phase unless a party explicitly requested non-disclosure of the evidence.
- (3) Those rightsholders who in the first phase of the conflict resolution procedure have withdrawn their claims or are deemed to have withdrawn their claim shall not be party to the second phase of the conflict resolution procedure.

ARTICLE 32  
REACTION TO THE COMMUNICATION OF THE ONGOING CONFLICT

- (1) The conflicting parties have to react to the communication of the ongoing conflict within the deadline of 90 days.
- (2) For their reaction the conflicting rightsholders shall use the form attached to the communication of the ongoing conflict.
- (3) The reaction can be either the upholding of the claim, the withdrawal of the rights, or the conclusion of a settlement agreement with regard to the conflict.
- (4) The reaction has to specify whether the upholding, withdrawal or settlement of the claim is total or covers only a part of the conflict.
- (5) A lack of reaction or an incomplete reaction is deemed to be a withdrawal of the claim. Also a late reaction after the expiration of the deadline is deemed to be a withdrawal of the claim.

ARTICLE 33  
CONTINUOUS UPHOLDING OF THE CLAIM

- (1) In case of upholding its claim in the second phase of the conflict resolution procedure, the conflicting party has to further substantiate its claim by describing the reasons why it believes to be entitled to receive the royalties in conflict from AGICOA. It shall also comment on the substantiations and /or

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evidence provided by the other conflicting parties in the first phase of conflict resolution proceedings and shall describe the reasons why it believes that the position of the other conflicting parties is wrong.

Should the conflict not be resolved after the second phase of the conflict resolution procedure, AGICOA shall communicate the above substantiation to the other conflicting parties at the beginning of the third phase of the conflict resolution procedure.

- (2) The conflicting party who upholds its claim in this second phase of the conflict resolution procedure is obliged to support its claim with the relevant evidence like copyright certificates, agreements, letters and other documentation.

If the party is the initial producer of the title in conflict, it has to indicate this in its reply and also has to give the necessary assurance that it has not transferred or licensed the rights in conflict to the other conflicting parties.

If the conflicting rightsholder is not the initial producer of the title in conflict, the rightsholder has to provide evidence for the full and uninterrupted chain of titles from the initial producer to its own entitlement.

If the conflicting party provides AGICOA with the relevant evidence in this second phase of the conflict resolution procedure, AGICOA will communicate these documents to the other conflicting parties at the beginning of the third phase of the conflict resolution procedure unless the party explicitly request non-disclosure of the evidence.

The recommendation that AGICOA's Legal and Business Department shall issue in the third phase of the conflict resolution procedure shall be based on that evidence only that has been disclosed to the other parties.

- (3) If the rightsholder who wants to uphold its claims does not provide AGICOA with further substantiation and evidence according to paragraph (1) and (2), AGICOA is entitled to consider its response as incomplete (see article 32 (5)) or to accept its response as valid. In the latter case AGICOA's recommendation shall be based on the limited substantiation and evidence that the rightsholder provided AGICOA with in the first phase of the conflict resolution procedure.
- (4) If a conflicting individual rightsholder is represented by an external collecting society, an agent or another entity that acts instead of it in the context of the conflict resolution procedure, the external collecting society or the other entity has to comply with the requirements specified above.

### ARTICLE 34 WITHDRAWAL OF THE CLAIM

- (1) If the rightsholder has duly informed AGICOA of having totally or partly withdrawn its rights within the 90 day deadline specified in Article 31(1), it is deemed to have thus definitively waived its claim. AGICOA will update or delete its rights accordingly.
- (2) AGICOA will inform the other conflicting party(ies) of the total or partial withdrawal of the rightsholder's claim.

ARTICLE 35  
SETTLEMENT OF THE CONFLICT

- (1) If the conflicting rightsholders have duly informed AGICOA that they have reached total or partial settlement (together with a copy of such settlement agreement duly signed by the conflicting parties) within the 90 day deadline specified in Article 31(1), AGICOA shall update the rights accordingly and also distribute the amount of royalties according to the terms of the settlement agreement.
- (2) The rightsholders by informing AGICOA about the settlement waive all claims against AGICOA going beyond the settlement and jointly hold AGICOA harmless against any third party claim related to the specific rights for which the settlement had been reached.

ARTICLE 36  
LACK OF RESPONSE OR AN INCOMPLETE RESPONSE

- (1) If AGICOA does not receive a written response in the second phase of the conflict resolution procedure within the deadline of 90 days set out in Article 31(1), the rightsholder is deemed to have withdrawn its claim. AGICOA will update or delete its rights accordingly.

The rightsholder waives all claims against AGICOA with regard to update or the deletion of the rights and the non-payment of the royalties blocked by the conflict.

- (2) The above paragraph applies mutatis mutandis in case of incomplete response.

The response is incomplete if it does not state whether the rightsholder either (a) withdraws the claim, (b) upholds the claim, or (c) has settled the conflict.

The response will also be deemed incomplete if it does not specify the partial withdrawal, settlement or upholding of the claim.

In the case of upholding the claim, AGICOA's Legal and Business Department is free to judge the response incomplete if it is not sufficiently substantiated and does not give sufficient evidence. The requirements for substantiation and evidence are specified in article 33 of the present rules.

In the case of settlement, the response will be deemed incomplete if it does not include the original or a copy the settlement agreement signed by the conflicting parties.

- (3) In case of total lack of responses or in case of incomplete responses from all conflicting parties, AGICOA shall delete all their conflicting rights and distribute the royalties amongst other rightsholders either by adding the royalties to the distribution of the respective country and broadcasting year or by adding them to the next general reserve distribution.
- (4) If only one conflicting party upholds its claim while the other conflicting parties do not respond or do not respond properly, AGICOA will distribute the amount of royalties to the party upholding its claim.

ARTICLE 37  
COMMUNICATION OF THE RESULTS OF THE SECOND PHASE OF THE  
CONFLICT RESOLUTION PROCEDURE

In light of the reactions (see articles 32 – 36) that AGICOA received from the conflicting parties in the course of the second phase of the conflict resolution procedure, AGICOA's Legal and Business Department shall inform the parties whether the conflict has been resolved. Should more than one party fully or partly uphold their claims, AGICOA's Legal and Business Department shall start the third phase of the conflict resolution procedure (Chapter Seven).

**CHAPTER SEVEN**  
**THIRD PHASE OF THE CONFLICT RESOLUTION**  
**PROCEDURE: RECOMMENDATION**

ARTICLE 38  
RECOMMENDATION

- (1) If, at the end of the second phase of the conflict resolution procedure, more than one conflicting rightsholder is upholding its claim, AGICOA's Legal and Business Department shall make a recommendation to the parties on how to resolve the conflict.
- (2) Subject to articles 33 (3)(5) and 40, AGICOA's recommendation shall be based on the information and evidence given by the conflicting parties during the first and second phases of the conflict resolution procedure. No additional information and evidence will be accepted by AGICOA, and all information in proof delivered after the terms of the relevant and applicable deadlines will be rejected.

AGICOA's Legal and Business Department is not obliged to do further research and enquiries if the entitlement of the conflicting parties can not clearly be derived from the information and evidence that the conflicting parties have provided AGICOA within the first and second phases of the conflict resolution procedure. AGICOA's Legal and Business Department is free to use publicly available information that has not been given by the conflicting parties, while it is not obliged to use these sources.

- (3) AGICOA's Legal and Business Department shall analyse in the context of the recommendation if and to which extent the conflict was fully or partly generated by late declarations. Whether a declaration is considered to be a late declaration is set out in AGICOA's Distributions Rules and similar rules in place prior to the entry of force of AGICOA's Distribution Rules.

The present paragraph applies to late declarations made as of January 2004 only.

- (4) AGICOA shall make its recommendation to parties on how to resolve the conflict to its best knowledge.

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The conflicting parties cannot hold AGICOA legally and financially liable for its recommendation unless in case of wilful or seriously negligent infringement of substantive law or the present conflict rules. The conflicting parties notably waive any claim against AGICOA with regard to the content of its recommendation unless in case of wilful or seriously negligent infringement of substantive law or the present conflict rules.

### ARTICLE 39 DRAFT RECOMMENDATION

- (1) AGICOA's Legal and Business Department shall send a draft recommendation to the conflicting parties.

As a general rule, the draft recommendation shall be sent within 90 calendar days after information about the end of the second phase of the conflict resolution procedure as mentioned in Article 37.

- (2) The conflicting parties have 30 calendar days after receipt of AGICOA's draft recommendation to either reject or accept AGICOA's draft recommendation.
- (3) For the rejection or acceptance of the draft recommendation the parties have to use for the form proposed by AGICOA.
- (4) No reply within this deadline or an incomplete reply is considered to be an acceptance of the draft recommendation.
- (5) If all conflicting parties accept the draft recommendation, it becomes final. AGICOA shall inform the parties accordingly.

### ARTICLE 40 REJECTION OF THE DRAFT RECOMMENDATION

- (1) The rejection of the draft recommendation is valid only if the rejection is motivated.
- (2) The rejection of the draft recommendation which does not detail the reasons why the draft recommendation was rejected, is incomplete. The incomplete rejection is considered to be an acceptance of the draft recommendation.
- (3) The rejection of the draft recommendation may be accompanied by new evidence.

This new evidence will be accepted by AGICOA only if the party validly substantiates why it had not submitted this evidence during the first and second phase of the conflict resolution procedure.

- (4) AGICOA shall communicate the grounds of the rejection and new evidence to the other conflicting party.

A party is not allowed to request that its grounds for the rejection of the draft recommendation and/ or new evidence should not be communicated to the other parties. If it nevertheless makes this request, its rejection of the draft recommendation is not valid and deemed to be an acceptance.

- (5) Should at least one of the conflicting parties validly reject the draft recommendation, AGICOA's Legal and Business Department shall inform the other conflicting party(ies) about the rejection. It shall also communicate the grounds for the rejection and the new evidence provided by the rejecting party to the other conflicting party.
- (6) In the communication according to the previous paragraph, AGICOA's Legal and Business Department shall set a second deadline of 30 calendar days to the other conflicting party to send their final comments on the draft recommendation in light of the grounds of the rejection and the new evidence.

The other conflicting party may also submit new evidence. However, validly unless this new evidence is directly related to the new grounds and evidence submitted by the rejecting party, AGICOA will accept this new evidence only if the other conflicting party validly substantiates why it has not submitted this evidence during the first and second phase of the conflict resolution procedure.

- (7) If AGICOA's Legal and Business Department deems it appropriate it can also freeze the conflict resolution procedure at any moment after the rejection of the draft recommendation and set an additional appropriate deadline to the parties to give them more time to find an amicable solution of the conflict. If this deadline expires without the parties having agreed upon a settlement agreement, AGICOA shall continue the conflict resolution procedure.

#### ARTICLE 41 FINAL RECOMMENDATION

- (1) After the end of the second deadline of 30 calendar days set according to article 40(6), AGICOA's Legal and Business Department shall analyse whether to maintain, to complete or to change its draft recommendation.
- (2) The confirmed draft recommendation or the revised recommendation is the final recommendation.
- (3) The final recommendation (confirmation of the draft recommendation or the revised recommendation) shall be sent to the conflicting parties.

#### ARTICLE 42 REACTION TO THE FINAL RECOMMENDATION

- (1) After receipt of AGICOA's final recommendation for resolution of the conflict, the parties shall have 90 calendar days after receipt to react to it.
- (2) The parties shall use the form proposed by AGICOA in order to communicate their reaction to the final recommendation.
- (3) The reaction to the final recommendation shall be either the acceptance or the rejection of AGICOA's recommendation. The parties can also advise AGICOA of the settlement of the conflict if they reached a settlement independently of AGICOA's recommendation, together with a copy of such settlement agreement signed by both parties.

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- (4) Subject to article 43, the lack of reaction or an incomplete reaction is deemed to be an acceptance of the final recommendation.

### ARTICLE 43 LACK OF RESPONSE OR INCOMPLETE RESPONSE

- (1) If AGICOA receives no response from a conflicting party, the party failing to respond to the recommendation pursuant to these rules will be deemed to have accepted the final recommendation. In this case, AGICOA will update the rights of the party accordingly.
- (2) The same applies in case of an incomplete response.

A response is incomplete if it does not contain one of the following: (a) acceptance of the recommendation, (b) rejection of the recommendation, or (c) settlement of the conflict.

A response will also be deemed incomplete if it does not specify the contents of a partial acceptance, rejection or settlement.

In the case of settlement, the response will be deemed incomplete if it does not contain the settlement agreement duly signed by the conflicting parties.

- (3) The conflicting parties whose lack of response or incomplete response is deemed to be an acceptance of the recommendation waive any claim against AGICOA for having interpreted their silence as acceptance of the recommendation. They also waive any claim against AGICOA with regard to the content of the recommendation and its implementation, unless in case of wilful or grossly negligent infringement of substantive law or the present conflict rules.

### ARTICLE 44 ACCEPTANCE OF THE FINAL RECOMMENDATION

- (1) To the extent that the conflicting parties agree on the final recommendation, AGICOA shall implement its recommendation, update the corresponding rights and distribute the royalties accordingly.
- (2) Article 10 shall apply mutatis mutandis.
- (3) The conflicting parties waive any claim against AGICOA with regard to the content and the implementation of the final recommendation unless in case of wilful or grossly negligent infringement of substantive law or the present conflict rules.

### ARTICLE 45 SETTLEMENT OF THE CONFLICT

- (1) If the conflicting parties settle the conflict regardless of the recommendation, Article 28 shall similarly apply mutatis mutandis, the deadline being the one of 90 calendar days specified in Article 42 (1).

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- (3) The conflicting parties waive any claim against AGICOA with regard to the content and the implementation of their settlement agreement unless AGICOA does not correctly interpret and/or implement the settlement agreement.

### ARTICLE 46 REJECTION OF THE FINAL RECOMMENDATION

- (1) If AGICOA's final recommendation is totally or partially rejected by at least one of the conflicting parties, AGICOA will advise all conflicting parties in writing of the total or partial failure of the AGICOA recommendation procedure. AGICOA will send to the parties an updated conflict report defining the scope of the conflict after rejection of the recommendation.
- (2) By the above communication, AGICOA shall set a deadline of 60 calendar days to the conflicting parties to either:
  - (a) start litigation; or
  - (b) start arbitration at either the WIPO Arbitration and Mediation Center (WIPO Center) under the WIPO Expedited Arbitration Rules for AGICOA (Annex 1 of the present conflict rules) or at any other arbitration institution; or
  - (c) agree on a settlement between themselves;and to inform AGICOA about one of the above-mentioned options within the deadline of 60 calendar days.
- (3) The deadline starts running upon receipt of AGICOA's communication that the recommendation has been rejected.

### ARTICLE 47 IMPLEMENTATION OF THE RECOMMENDATION DESPITE REJECTION

- (1) Despite their rejection of the recommendation, the conflicting parties are deemed to have accepted AGICOA's recommendation if they fail to start litigation, arbitration, or to reach a settlement agreement within the deadline of 60 calendar days and to inform AGICOA accordingly. As a result AGICOA shall implement its recommendation.
- (2) Despite the start of litigation or arbitration within the above deadline, AGICOA shall also implement its recommendation if, within 10 years after the starting of such litigation or arbitration, AGICOA's Legal and Business Department has not been informed by the conflicting parties about the final binding decision on the conflict through the court or the arbitration institution.
- (3) Despite the start of litigation or arbitration within the above deadline AGICOA shall also implement its recommendation if the litigation or arbitration ends without final ruling, arbitration award, or settlement agreement.

The conflicting parties are obliged to inform AGICOA's Legal and Business Department in case that the court or arbitration proceedings are ended without

final court ruling, arbitration award, or settlement agreement. If the parties fail to inform AGICOA, article 47 (2) applies mutatis mutandis.

- (4) The conflicting parties waive any claim against AGICOA if AGICOA decides to implement its recommendation despite rejection according to the previous paragraphs.

ARTICLE 48  
REJECTION OF THE RECOMMENDATION THROUGH LITIGATION,  
ARBITRATION OR SETTLEMENT

- (1) The conflicting parties shall be deemed to validly have started litigation if the following requirements are met:
  - (a) Within the deadline of 60 calendar days as set out in Article 46(2), AGICOA's Legal and Business Department has received a copy of the dated and signed statement of claim,
  - (b) A duly signed confirmation of the plaintiff that the above statement of claim has been forwarded to the court has been added to the above copy of the statement of claim,

- (2) The conflicting parties shall be deemed to validly have started arbitration under the WIPO Expedited Arbitration Rules for AGICOA at the WIPO Center if the following requirements are met:

Within the deadline of 60 calendar days as set out in Article 46(2), AGICOA's Legal and Business Department has received a duly signed and dated copy of the Arbitration Agreement or the Notification of Intention to file a Request for Arbitration, as sent to the WIPO Center by one of the conflicting parties (see Article 6 WIPO Expedited Arbitration Rules for AGICOA).

- (3) The conflicting parties shall be deemed to validly have started arbitration at another arbitration institution if the following requirements are met:

Within the deadline of 60 calendar days as set out in Article 46(2), AGICOA's Legal and Business Department has received the duly signed and dated copy of the arbitration agreement between the conflicting parties which submits the conflict which was subject of the AGICOA recommendation procedure to arbitration before such arbitration institution.

- (4) The conflicting parties will be deemed to have resolved the conflict by settlement agreement if AGICOA receives within the deadline of 60 calendar days a copy of the dated and signed settlement agreement between the conflicting parties or any other document(s) providing clear and unequivocal evidence about the terms of the settlement.
- (5) In case of doubt whether the documents provided by the conflicting parties meet the requirements of the previous paragraphs, AGICOA is entitled to request from the conflicting parties additional documents, declarations or evidence.

By the above request AGICOA shall set a deadline of another 60 calendar days within which the conflicting parties shall provide AGICOA with the requested additional information.

If the parties fail to provide this additional information within the deadline of 60 calendar days, they are deemed not to have validly started court or arbitration procedures or not to have reached a settlement agreement.

- (6) If the conflicting parties submit only a part of the conflict to court or arbitration proceedings or if the parties reach a settlement only for a part of the conflict, they are deemed to have accepted AGICOA's recommendation with regard to the other part of the conflict. AGICOA shall implement the part of its recommendation that is not covered by the court or arbitration proceedings or for which the conflicting parties have not reached a settlement agreement.
- (7) The court or arbitration proceedings shall involve all those conflicting parties who after rejection of the recommendation are still in conflict. The same applies to the settlement agreement.

If the court or arbitration proceedings involve only a part of the conflicting parties, AGICOA's Legal and Business Department shall invite all conflicting parties to include the missing party to the court proceedings, arbitration proceedings or settlement agreement. AGICOA's Legal and Business Department shall also inform all conflicting parties to which extent the exclusion of the missing party shall hinder AGICOA from the implementation of a later court ruling, arbitration award or settlement agreement.

## **CHAPTER EIGHT** **COURT AND ARBITRATION PROCEEDINGS**

### ARTICLE 49 COURT PROCEEDINGS

- (1) The conflicting parties are free to choose the court to which they submit the conflict for ruling following the rejection of AGICOA's recommendation. However, as the conflict is amongst the conflicting parties and not with AGICOA, the conflicting parties renounce to sue AGICOA unless for willful or grossly negligent infringement of substantive law or these conflict rules.
- (2) According to the final judgment on the conflict AGICOA shall update the rights of the conflicting parties and release the royalties blocked by the conflict. AGICOA shall do so upon receipt of a notarized copy of the final judgment.
- (3) AGICOA shall also update the rights and release the royalties blocked by the conflict if the parties settle the conflict in a court settlement or an out-of-court settlement during the litigation. AGICOA shall do so upon receipt of a copy of the settlement agreement duly signed by both parties or -in case of a court settlement- receipt of the respective court document confirming the settlement in court.
- (4) AGICOA shall also update the rights and release the royalties blocked by the conflict if all or all but one of the conflicting royalties withdraw their claims during the litigation and therefore end the litigation without judgment. It shall do so upon receipt of the court declaration that the litigation ended without judgment by the withdrawal of the claims.

- (5) By accepting AGICOA's conflict rules and the conflict resolution procedure, the conflicting parties waive any claim against AGICOA with regard to the court proceedings. AGICOA can notably not be held responsible for the procedure nor the result of the court proceedings. AGICOA cannot be held responsible either for the implementation of the court ruling unless in case of willful or grossly negligent errors or omissions in the process of the implementation of the result of the court proceedings.

The same applies to an out-of-court or court settlement that the parties agree upon during the court procedures. In case of a withdrawal of the rights in conflict the above applies mutatis mutandis.

#### ARTICLE 50 WIPO EXPEDITED ARBITRATION FOR AGICOA

- (1) By accepting the present AGICOA conflict rules, by participating in the AGICOA conflict resolution procedure and by opting to submit the conflict to WIPO Expedited Arbitration for AGICOA according to article 46(2)(b), the conflicting parties agree that the conflict shall be referred to and finally determined by expedited arbitration in accordance with the WIPO Expedited Arbitration Rules for AGICOA (Annex 1 of the present conflict rules).
- (2) At the beginning of the WIPO expedited arbitration AGICOA shall communicate to the WIPO Center the final recommendation and an updated conflict report defining the scope of the conflict after rejection of the recommendation.
- (3) The WIPO Center shall inform AGICOA if despite the Notification of Intention to File a Request for Arbitration the WIPO arbitration proceedings do not start or end without a final arbitration award. In this case AGICOA shall set to the parties a deadline of 60 calendar days to find a settlement agreement or to start court proceedings. Otherwise AGICOA shall implement its final recommendation. Article 47, 48 and 49 apply mutatis mutandis.
- (4) AGICOA shall update the rights and release the royalties blocked by the conflict according to the WIPO arbitration award upon receipt of a copy of such award from the WIPO Center.

However, AGICOA shall not implement the WIPO arbitration award if it receives within 60 days of the date of such arbitration award official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that the arbitration award is being challenged in court by one of the conflicting parties.

- (5) If a WIPO arbitration award is challenged in court by a conflicting party, Article 49 applies mutatis mutandis.
- (6) AGICOA cannot be held responsible by the conflicting parties for the procedure and the outcome under the WIPO Expedited Arbitration Rules for AGICOA. AGICOA cannot be held responsible either for the implementation of the WIPO arbitration award unless in case of willful or grossly negligent errors or omissions in the process of the implementation of the WIPO arbitration award.

ARTICLE 51  
NON-WIPO ARBITRATION

- (1) If the conflicting parties have opted to submit the conflict to arbitration before an arbitration institution other than the WIPO Center, the conflicting parties agree that the conflict shall be referred to and finally determined by arbitration in accordance with the arbitration rules of such arbitration institution.
- (2) AGICOA shall communicate to the arbitration institution the recommendation and an updated conflict report that defines the scope of the conflict after rejection of the recommendation.
- (3) The arbitration institution and/or the parties shall inform AGICOA if the arbitration proceedings do not start or end without a final arbitration award. In this case AGICOA shall set to the parties a deadline of 60 calendar days to find a settlement agreement or to start court proceedings. Otherwise AGICOA shall implement its final recommendation. Articles 47, 48 and 49 apply mutatis mutandis.
- (4) AGICOA shall update the rights according to the arbitration award and release the royalties upon receipt of a notarized copy of the arbitration award. However, AGICOA shall not implement the arbitration award if it receives within 60 days of receipt of such arbitration award official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that the arbitration award is challenged in court by one of the conflicting parties.
- (5) If an arbitration award under this Article is challenged by a conflicting party in court, Article 49 applies mutatis mutandis.
- (6) AGICOA cannot be held responsible by the conflicting parties for the procedure and the outcome of the arbitration under this Article. AGICOA cannot be held responsible either for the implementation of the arbitration award unless in case of wilful or grossly negligent errors or omissions in the process of the implementation of the arbitration award.

ARTICLE 52  
COMMUNICATION AND CONFIDENTIALITY OF  
ARBITRAL AWARDS

Any arbitral award communicated to AGICOA for the purposes of Article 50(4) or Article 51(4) shall be communicated to AGICOA's Legal and Business Department. The Legal and Business Department shall treat such award as confidential and shall disclose the arbitral award to a third party (including to AGICOA staff outside the Legal and Business Department) only if and to the extent that:

- (a) the conflicting parties consent; or
- (b) the award falls into the public domain as a result of an action before a national court or other competent authority; or

- (c) the award must be disclosed in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.

## **CHAPTER NINE** **FINAL PROVISIONS**

### ARTICLE 53 BINDING FORCE OF THE CONFLICT RULES

- (1) Through their registration as rightsholders and through each of their following works and rights declarations (including updates) rightsholders acknowledge the binding force of the present conflict rules. This includes notably the provisions on court proceedings and arbitration in Chapter 8 of the present rules.
- (2) Rightsholders also acknowledge the binding force of the present conflict rules by participating in the conflict resolution procedure according to Chapters Four to Seven.
- (3) Rightsholders acknowledge the binding force of the present conflict rules by accepting the payment of royalties following the conflict resolution.

### ARTICLE 54 APPROVAL OF THE PRESENT RULES BY AGICOA'S COMPETENT BODY

The present rules have been approved by AGICOA's Executive Committee pursuant to Article 34 of AGICOA's by-laws. AGICOA's Executive Committee is AGICOA's competent body to represent the interests of AGICOA's rightsholders in this matter.

### ARTICLE 55 ENTRY INTO FORCE AND AMENDMENTS

- (1) AGICOA's conflict rules were approved by AGICOA's Executive Committee on January 6, 2006 and came into force on January 1<sup>st</sup>, 2003. Amendments were approved by AGICOA's Executive Committee on the meetings held on February 10<sup>th</sup>, 2004, March 30<sup>th</sup>, 2004, November 16<sup>th</sup>, 2005, February 14<sup>th</sup>, 2008 and September 30, 2008.
- (2) Subject to the following paragraphs AGICOA's conflict rules apply to all existing conflicts regardless of their date of commencement.
- (3) Unless stated otherwise previous and future amendments shall apply to conflict resolution procedures launched prior to the amendments. However, their retroactive effect is limited to those phases of the conflict resolution procedure which were not yet engaged at the moment of the amendment.
- (4) The present rules replace the provisions of the AGICOA Regulations Regarding the Procedures of Declaration of Works and of Payment dealing with multiple

claims and AGICOA's Arbitration Regulations with retroactive effect as of January 1, 2003.

ARTICLE 56  
WAIVER

- (1) AGICOA shall use its best efforts to assist conflicting rightsholders in resolving their conflicts through the proper application of the present conflict rules.
- (2) AGICOA cannot be held responsible by the conflicting rightsholders for the content of the conflict rules, their interpretation and application unless AGICOA infringes wilfully or grossly negligently infringing substantive law or the present conflict rules.
- (3) The conflicting parties, by accepting the present conflict rules, also renounce to sue AGICOA with regard to the content of the conflict rules, their interpretation, their application and the payment of royalties following the conflict resolution unless AGICOA infringes wilfully or grossly negligently substantive law or the present conflict rules.

ARTICLE 57  
CONFLICT RULES AND COPYRIGHT OWNERSHIP

The present rules stipulate internal rules governing the relationship between AGICOA and the conflicting parties. They do not have any effect on the copyright ownership and its consequences as far as third non-conflicting parties are concerned.

However, AGICOA is entitled to modify its rights and works register according to the resolution of the conflict.

Annex I: WIPO Expedited Arbitration Rules for AGICOA