



# CONFLICT RULES

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

## ARTICLE 1

### CONFLICT RESOLUTION PROCEDURE

- (1) Whenever a work has been declared for the same territory, the same period and the same language version by two or more rightsholders and has been broadcast and retransmitted in the conflicting language version during the overlapping period and in the conflicting territory(ies) where AGICOA directly or indirectly collects royalties, AGICOA applies the following rules in order to assist the conflicting rightsholders with settlement of their conflict.
- (2) At a first stage AGICOA assists the rightsholders by making a recommendation on how to settle the conflict (Chapter 1: conflict resolution rules). This service is provided at no charge. In case of continuous conflict, AGICOA proposes special arbitration proceedings to the conflicting parties (Chapter 2: arbitration proceedings), with the parties bearing the costs.
- (3) Two or more rightsholders sharing rights to the same work in the same territory, in the same language version and for the same time period are considered to generate one conflict in the context of these rules. If, during the conflict resolution procedure between the initial conflicting parties, a third party also claims the initial rights, the conflict resolution procedure has to be started again including the third party.
- (4) The present rules have been approved by the members of AGICOA's Executive Committee pursuant to Article 34 of AGICOA's by-laws and will enter into force on January 1, 2003. Amendments were approved by the members of AGICOA's Executive Committee on February 10<sup>th</sup>, 2004 and March 30<sup>th</sup>, 2004 and November 16<sup>th</sup>, 2005. The present rules replace Article 25 of the regulations regarding the procedures of declaration of works and payments. They apply not only to future conflicts but also to conflicts already existing at the time when the present conflict rules come into force.
- (5) When a rightsholder has already been paid by AGICOA the present rules only apply if the conflicting rightsholder makes his claim prior to the final distribution for the country and the year for which the initial rightsholder had already been paid. The present rules only apply if an additional conflicting rightsholder makes his claim prior to the final distribution. In the context of the present rules a claim is considered prior to the final distribution when it was duly registered with AGICOA or one of AGICOA's national partner 90 calendar days prior to the date of signature of the final distribution sheet.

## ARTICLE 2

### FINANCIAL CONSEQUENCES OF A CONFLICT

- (1) AGICOA, after having calculated the amount of royalties allocated to the retransmission of the work in conflict, freezes this amount.
- (2) The frozen amount does not generate any interest for the rightsholder.
- (3) It remains frozen unless the conflict is resolved or the frozen amount is released.

The conflict can be resolved by settlement, by withdrawal of the claim, by lack of a timely answer or due to an incomplete answer of the conflicting party, or by acceptance of AGICOA's conflict resolution recommendation according to the present conflict resolution rules.

If the conflict has not been resolved during the conflict resolution proceedings, the frozen money is released 90 calendar days after AGICOA's announcement of the refusal of its recommendation to the conflicting parties according to Article 23 (1) of Chapter 1 of the present conflict resolution rules unless the parties have started legal proceedings or the formal arbitration proceedings under Chapter 2 of the present conflict rules. In the case of formal arbitration proceedings the frozen money is released within 60 calendar days after submission of the arbitrator's decision to the parties unless one of the parties commences litigation in order to resolve the conflict and so notifies AGICOA in writing with a 60 days' deadline.

- (4) As to conflicts already existing at the time that the present rules enter into force, paragraph (3) similarly applies. Resolution proceedings pursuant to these Rules will commence as provided for herein upon receipt by the parties of a notice of conflict which will be issued subsequent to the entry into force of these Rules.
- (5) When the money is unfrozen, AGICOA will distribute the amount as it shall decide. For this purpose AGICOA will apply the result of its previous recommendation or the arbitrator's decision. According to the individual circumstances the money may be distributed to the prevailing party, or be split or become payable to the general fund.
- (6) No distribution by AGICOA pursuant to these conflict rules will give rise to any claim by any party to the conflict, and any party receiving a distribution pursuant to these conflict rules will, by accepting such distribution, agree to hold AGICOA harmless from any third party claim and notably from any future claim made by the other conflicting party(ies) resulting from the updating of the specific rights according to the conflict resolution procedure.

## ARTICLE 3

### CONFLICTS, EXTERNAL COLLECTING SOCIETIES AND OTHER THIRD PARTIES

- (1) If AGICOA claims royalties through an external collecting society and the external collecting society announces the rightsholder(s) represented by AGICOA are in conflict with (a) third party(ies) not represented by AGICOA, the present rules can only apply in case of acceptance of AGICOA's conflict rules and communication of the third party's(ies') identity(ies) and address(es) by the external collecting society. If the external society does not accept AGICOA's conflict rules or does not provide this information, there can be no resolution of the conflict under the present Rules.
- (2) If an external collecting society or another third party is claiming royalties through AGICOA on behalf of (a) rightsholder(s) who is(are) in conflict with the rightsholder(s) represented by AGICOA, the present rules apply. Notably, the external collecting society or the third party(ies) is(are) obliged to communicate the identity(ies) and the address(es) of the rightsholder(s) represented by itself to AGICOA together with the information upholding the claim according to Chapter 1 Article 7 of these rules. All future communication will be made between the rightsholders and AGICOA with a copy to the external collecting society or to the third party.

## ARTICLE 4

### COMMUNICATIONS

- (1) Letters and other documents under these rules may be communicated by registered letter with acknowledgement of receipt or via fax message. The conflicting parties may use e-mail communication but bear the risk of proof of AGICOA's receipt of e-mails sent by them.
- (2) In the case of fax communication, the date of receipt is the date of sending the fax message as indicated on the sender's fax message sending report. The parties are urged to retain copies of fax transmission confirmation reports throughout resolution proceedings under these rules.
- (3) Contracts, agreements and other documents bearing personal signatures and being used for offer of proof purposes have to be sent in the original, copied or scanned version. An electronic version without personal signature is not permissible and will not satisfy requirements set out in these Rules.
- (4) All communications have to be made in English or French. If requested in writing by AGICOA or one of the conflicting parties through AGICOA, the contracts, agreements and other documents bearing personal signatures and being used for offer of proof purposes in the context of continuous upholding of the claim pursuant to article 17 have to be accompanied by an authorised English or French translation. If the conflicting party does not provide AGICOA with the necessary translation within 30 calendar days upon receipt of AGICOA's written request the offer of proof is deemed to be non-existent.

- (5) The time limits set forth in these regulations start on the day on which any notification or any communication is received by its addressee or could have been received, either by the addressee himself or by his representative.

A time limit 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 party who is to comply with such a time limit.

Holidays and non-working days are included in the calculation of the time limits.

- (6) If a party successfully proves that it has not validly and duly received any of those formal communications made by AGICOA within the conflict resolution proceedings for which the party's non-response is assimilated to a loss of its rights, the party is entitled to be treated as if it had not failed to respond.

There is no valid communication if AGICOA sent its communication to a wrong postal address or – in case of fax transmission – to a wrong fax number. However, the address or fax number is not deemed to be wrong if the communication while arriving at the premises of the conflicting party did not reach the competent person.

## ARTICLE 5

### 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 outcome of the conflict resolution procedure.

## ARTICLE 6

### RESOLUTION OF CONFLICTS PRIOR TO THE FORMAL CONFLICT RESOLUTION PROCEDURE

- (1) Prior to the launching of formal conflict resolution procedures in the sense of the conflict resolution rules set out in Chapter One of the present rules AGICOA shall inform the conflicting parties about the naissance of the conflict at the moment of the conflicting rights registration and invite the conflicting parties to resolve the conflict between themselves.

# AGICOA

- (2) After the naissance of the conflict but prior to launching formal conflict resolution procedures according to Chapter one of the present rules, AGICOA shall inform the conflicting rightsholders in regular intervals about the continuous existence of the conflict and invite them to resolve the conflict between themselves.
- (3) At that stage the conflict can be resolved by settlement agreement between the conflicting parties or unilateral withdrawal of the conflicting rights.
- (4) A conflict shall also be considered resolved at that early stage if the following two conditions are met: first, one of the conflicting party (ies) provides AGICOA with sufficient evidence according to which it tried without success to contact the other conflicting party (ies) in order to settle the conflict. Secondly, after the failure of the rightsholder's initiative AGICOA's efforts to contact the other rightsholder(s) failed, too.
- (5) Sufficient evidence in the sense of article 4 requires that the rightsholder submits to AGICOA at least three registered mailings or fax messages (with sender reports) sent to the other conflicting party (ies) at at least one month intervals and asking the other conflicting party(ies) to resolve the conflict(s). For these communications the address of the other conflicting party (ies) as indicated by AGICOA can be used. To this evidence must be added a confirmation duly signed by the rightholder according to which it could not reach the other rightsholder(s) and/or that the other conflicting rightsholders did not reply.
- (6) In addition, after the failure of the rightsholder's initiative to contact the other conflicting rightsholder(s) AGICOA must have set per fax or registered letter a deadline of one month to the rightsholder(s) who failed to respond.
- (7) No payment made by AGICOA according to the above paragraphs shall give raise to any claim by any party to the conflict, and any party receiving a payment will, by accepting such payment, agree to hold AGICOA harmless from any third party claim and notably from any claims made by the other conflicting party (ies) that may result from the deletion of the specific rights according to this provision.
- (8) Furthermore, AGICOA is entitled to consider a conflict to be resolved without launching formal conflict resolution proceedings if the blocked amount of royalties is lower than Euro 200 and if there has been no broadcast of the work in conflict for at least the last five years on one of the TV channels paid by AGICOA. The amounts blocked by the conflict falling under the previous sentence are released and transferred to AGICOA's general reserve.

## **CHAPTER ONE: CONFLICT RESOLUTION RULES**

### ARTICLE 7

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

- (1) After having calculated the amount of royalties allocated to the retransmission of the work in conflict, AGICOA informs the conflicting rightsholders about the conflict(s). As the work may be retransmitted several times or in several countries, AGICOA is entitled to make this communication on a yearly basis in order to regroup all the relevant amounts.
- (2) The above communication contains 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 broadcasts and the amount of frozen royalties.
- (3) The name(s) and the address(es) of the individual rightsholder(s) being in conflict may not be communicated at this stage if the individual rightsholder is represented by an external collecting society or another third party or has assigned its rights to an external collecting society or another third party. In this case the name and address of the external collecting society or the third party will be communicated together with the communication according to Article 12(2). Once the name and the address of the individual rightsholder have been disclosed to AGICOA, all further communication will be forwarded to the individual rightsholder with a copy to the external collecting society or the third party representing the individual rightsholder.
- (4) If, during these conflict resolution or related arbitration proceedings, the additional broadcast of the work leads to an increase in the royalties frozen, AGICOA will not start separate conflict resolution or arbitration proceedings, but will inform the conflicting parties about the additional amounts involved. If the additional broadcast(s) result(s) in the addition of new conflicting parties, AGICOA will in so far start separate conflict resolution or arbitration proceedings. Such separate proceedings will be announced by a separate communication pursuant to these rules.
- (5) By such communication, AGICOA sets a deadline for the parties of 120 calendar days after receipt of the communication to react to AGICOA's announcement of the conflict.

### ARTICLE 8

#### REACTION TO THE ANNOUNCEMENT OF THE CONFLICT

- (1) The reaction to the announcement pursuant to Article 7, which must be conveyed by using the form attached to the announcement of the conflict within the deadline set out in Article 7(5), can be either the total or partial withdrawal, total or partial settlement, or total or partial upholding of the claim.

- (2) If several language versions, several conflicting parties, several countries of retransmission and/or licensing periods are concerned, the answer has to specify whether the upholding, settlement or withdrawal of the claim is total or covers only a part of the above elements. In the last case, the answer has to specify in addition which parts of the above elements are covered by the upholding, settlement or withdrawal of the claim.

## ARTICLE 9

### LACK OF RESPONSE OR AN INCOMPLETE RESPONSE

- (1) If AGICOA does not receive a written response or receives an incomplete response within the deadline set out in Article 7(5), the rightsholder(s) is(are) deemed to have withdrawn his(their) claim(s) as defined in the conflict announcement report. AGICOA will delete the rights accordingly.
- (2) The response is incomplete if it does not state that the rightsholder either (a) withdraws the claim, (b) upholds the claim, or (c) has settled the conflict. In the case of upholding the claim, the response will be deemed incomplete if it does not substantiate or support the claim with a written description of the basis for upholding the claim. 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 settlement, the response will be deemed incomplete if it does not contain the settlement agreement signed by the conflicting parties. If one of the conflicting individual rightsholders is represented by an external collecting society or another third party, the response is deemed to be complete only if the collecting society or the third party communicates the name(s) and the address(es) of the individual rightsholder(s) represented by it and substantiates or supports the claim with a written description of the basis for upholding the claim.
- (3) In case of total lack of response or in case of incomplete response from all the conflicting parties, AGICOA will delete the rights and distribute the royalties amongst other rightsholders as it shall decide.
- (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.
- (5) The party(ies) having provided AGICOA with no answer or no complete answer is/are informed by AGICOA on the status of the conflict resolution proceedings after the first deadline of 120 days. Within 14 calendar days upon receipt of the above information the party(ies) not having answered completely or not having answered at all can provide AGICOA with the necessary elements of response and thereby remedy the fault if and when the party(ies) submit(s) reasonable and motivated evidence of the fact having prevented it/them from answering within the first deadline of 120 days pursuant to article 7(5). AGICOA is free to decide whether it deems the submitted facts to be reasonable and sufficiently motivated.

## ARTICLE 10

### 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 deadline set out in Article 7(5), AGICOA will update the rights and distribute the amount of royalties according to the terms of the settlement agreement.
- (2) The rightsholders by receiving such distribution agree to make no further claims against AGICOA in connection with the conflict and to jointly hold AGICOA harmless against any third party claim resulting from the specific rights for which the settlement had been reached.

## ARTICLE 11

### WITHDRAWAL OF THE CLAIM

- (1) If a (the) rightsholder(s) has(have) duly informed AGICOA of having totally or partly withdrawn his(their) claim(s) within the deadline set out in Article 7(5), he(they) is(are) deemed to have thus definitively waived his (their) claim(s). Accordingly AGICOA will delete or update the rights accordingly.
- (2) AGICOA will inform the other conflicting party(ies) of the total or partial withdrawal of its (their) claim(s).
- (3) Article 9(3) and (4) applies mutatis mutandis.

## ARTICLE 12

### UPHOLDING THE CLAIM

- (1) If the rightsholder(s) maintain(s) his(their) claim(s) he(they) has(have) to support or substantiate his (their) claim(s) by indicating in writing the grounds for the asserting of the rights. This provision also applies to conflicting individual rightsholders represented by an external collecting society or another third party.
- (2) AGICOA will communicate the grounds for the claim(s) to the conflicting rightsholder(s) unless the other rightsholder(s) has(have) withdrawn his(their) claims or has(have) not duly answered the conflict announcement.
- (3) In the communication from AGICOA informing the conflicting party(ies) of the grounds for upholding the claim(s), AGICOA will set another deadline of 90 calendar days after receipt of this communication for reaction from the conflicting party(ies) to the grounds for upholding the claim(s).

## ARTICLE 13

### REACTION TO UPHOLDING THE CLAIM

Article 8 of this Chapter applies mutatis mutandis, the deadline being the one specified in Article 12(3).

## ARTICLE 14

### LACK OF RESPONSE OR AN INCOMPLETE RESPONSE

- (1) If AGICOA does not receive any reply or receives an incomplete response within the deadline set out in Article 12(3) of this Chapter, the rightsholder(s) is (are) deemed to have withdrawn his (their) claim(s) as defined in the conflict announcement report.
- (2) The response is incomplete if it does not choose one of the three options consisting of withdrawal, upholding or settlement of the conflict. If in the case of upholding the claim the rightsholder(s) do(es) not deliver further information in offer of proof of his (their) right(s) according to Article 17 of this Chapter AGICOA's recommendation to settle the conflict will be based only on the elements submitted by the rightsholder(s) at the previous stage.
- (3) The response is incomplete if it does not specify that the rightsholder either partially or totally withdraws, settles or upholds the claim, or, in the case of settlement, if the response does not contain the settlement agreement signed by the conflicting parties.
- (4) Article 9(3) and (4) applies mutatis mutandis.

## ARTICLE 15

### SETTLEMENT OF THE CONFLICT

Article 10 of this Chapter applies mutatis mutandis, the deadline being the one specified in Article 12(3).

## ARTICLE 16

### WITHDRAWAL OF THE CLAIM

Article 11 of this Chapter applies mutatis mutandis, the deadline being the one specified in Article 12(3).

## ARTICLE 17

### CONTINUOUS UPHOLDING OF THE CLAIM

- (1) Within the deadline of 90 days as specified by article 12(3) the rightsholder(s) must provide additional information and offer of proof of his(their) rights to AGICOA if he(they) maintain(s) his(their) claims on the grounds given by the conflicting rightsholder(s). This additional information and offer of proof will be communicated to the other conflicting party(ies) unless the rightsholder providing such information requests confidential treatment.
- (2) Article 14(2) second sentence of this Chapter applies if the rightsholder(s) maintain(s) the claim but does(do)not give any further information in offer of proof of his(their) rights in conflict.

## ARTICLE 18

### AGICOA'S CONFLICT RESOLUTION RECOMMENDATION

- (1) If the claim is upheld by more than one conflicting rightsholder, AGICOA will advise the parties of its recommendation for resolution of the conflict. As a general rule this recommendation should be sent within 90 calendar days after the end of the latest of the deadlines mentioned in Article 12(3) of this Chapter.
- (2) AGICOA's recommendation will be based exclusively on its knowledge of the conflict and the rights of the parties derived solely from the information in offer of proof given by the parties during the previous stages of the conflict resolution proceedings. No additional information in proof will be accepted by AGICOA, and all information in proof delivered after the terms of the relevant and applicable deadlines will be rejected.

## ARTICLE 19

### REACTION TO THE RECOMMENDATION

- (1) After AGICOA issues its recommendation for resolution of the conflict, the parties will have 90 calendar days after their receipt of it pursuant to Article 18(1) during which to react to the recommendation.
- (2) The reaction must consist of either total or partial acceptance or total or partial rejection of AGICOA's recommendation or the advice to AGICOA of the total or partial settlement of the conflict if reached by the parties independently of AGICOA's recommendation, together with a copy of such settlement agreement signed by both parties.

## ARTICLE 20

### LACK OF RESPONSE

- (1) If AGICOA receives no response from any of the conflicting parties or if it receives only incomplete responses, the party(ies) failing to respond pursuant to these rules will be deemed to have withdrawn his(their) claim(s) such as specified in the conflict announcement report. In this case, AGICOA will update the rights and distribute the royalties according to its recommendation.
- (2) Any response will be deemed 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.

## ARTICLE 21

### ACCEPTANCE OF THE RECOMMENDATION

AGICOA will apply its recommendation to the extent agreed by the parties, update the corresponding rights and distribute the royalties accordingly.

Articles 2(6), 10(2) and 11(1) of this Chapter shall apply mutatis mutandis.

## ARTICLE 22

### SETTLEMENT OF THE CONFLICT

Article 10 of this Chapter shall similarly apply mutatis mutandis, the deadline being the one specified in Article 19(1).

## ARTICLE 23

### REJECTION OF THE RECOMMENDATION

- (1) If AGICOA's recommendation is totally or partially rejected by at least one of the conflicting parties, AGICOA will advise all conflicting parties of the total or partial failure of the recommendation procedure.
- (2) By the above advice AGICOA will propose an arbitrator to the conflicting parties in order to commence arbitration proceedings pursuant to Chapter 2 of these rules. Furthermore, AGICOA will assess the costs of the arbitration and ask the parties to pay an equal share of the expected costs in form of an advance payment.

# AGICOA

- (3) If all the conflicting parties accept AGICOA's proposal for arbitration proceedings and settle the advance payment specified in article 23(2) within 90 calendar days after receipt of the above advice, arbitration proceedings will start according to Chapter 2 of these rules.
- (4) If one of the conflicting parties refuses the proposal for arbitration proceedings on other grounds than the lack of neutrality and impartiality of the proposed arbitrator or if one of the conflicting parties fails to settle the advance payment specified in article 23(2) and (3), AGICOA will not start arbitration proceedings. A party that does not answer to the proposal for arbitration proceedings is deemed to refuse the proposal.
- (5) In case of refusal of the proposal for arbitration proceedings according to article 23(4) AGICOA will inform the conflicting parties. The parties are deemed to have accepted AGICOA's recommendation unless they inform AGICOA of having started legal proceedings or reached independent settlement within 90 calendar days after receipt of AGICOA's information about the refusal of the arbitration.

## **CHAPTER TWO: ARBITRATION PROCEEDINGS**

### ARTICLE 24

#### SUBSTANTIATION

- (1) Upon receipt of the declarations by all conflicting parties to accept arbitration pursuant to Article 23(3), AGICOA shall immediately set a time limit of 30 calendar days for each party to present their claims or objections as well as all pertinent exhibits or documents.
- (2) If one of the parties fails to respond or does not provide its exhibits or documents to AGICOA within the time limit mentioned in the preceding paragraph, the arbitration will nevertheless proceed on the basis of evidence submitted by other parties and evidence submitted by the non-responding party at the previous stages of the conflict resolution procedure.

### ARTICLE 25

#### INFORMATION TO THE ARBITRATOR

AGICOA shall inform the arbitrator of his/her acceptance by the conflicting parties.

## ARTICLE 26

### NEUTRALITY AND IMPARTIALITY

Together with the proposal pursuant to article 23(2) AGICOA sends a written declaration to the parties according to which the proposed arbitrator confirms his/her agreement to conduct the arbitration proceedings rapidly and in a neutral, impartial and independent way. He/she must, then or at any future stage of the proceedings, further reveal to the parties in writing any circumstances which might influence his/her neutrality, impartiality or independence.

## ARTICLE 27

### OPPOSITION TO THE ARBITRATOR

- (1) If, for any of the circumstances revealed by the arbitrator, one or other of the parties opposes the nomination of the arbitrator and informs AGICOA as well as the other parties within ten calendar days of receipt of the information given according to Article 26, AGICOA shall repeat the procedure described under Article 23(2) here above. The party(ies) has(have) the right to oppose AGICOA's arbitrator proposal twice.
- (2) If there is no opposition within this time limit, AGICOA shall confirm to the arbitrator his/her final nomination by the parties.
- (3) AGICOA will deliver the parties' files to the arbitrator. The date of this delivery shall determine the date of the actual constitution of the arbitration court.

## ARTICLE 28

### REPLACEMENT OF AN ARBITRATOR

- (1) If an arbitrator is to be replaced, a new arbitrator shall be designated in application of Article 23(2) here above. Replacement of an arbitrator can occur because the arbitrator remains inactive, dies, or is prevented from fulfilling his mission for any other reason, or because, during the procedure, the arbitrator reveals any new circumstances which make continuation of his/her mission impossible (e.g. circumstances affecting the arbitrator's independence, neutrality or impartiality), or one or the other of the parties challenges the arbitrator (as required under these rules or due to discovery of new information affecting an arbitrator's impartiality or independence). In case of new circumstances, AGICOA is notified by one or the other of the parties of a challenge to an arbitrator by registered letter with acknowledgement of receipt within ten calendar days in order not to forfeit the right to challenge.
- (2) If the other parties or the arbitrator oppose(s) the challenge or the request for replacement presented by one of the parties, AGICOA's legal and business director shall deliver a final decision on the issue.

- (3) If an arbitrator is replaced, the new arbitrator shall decide upon the necessity to review consideration of the issues undertaken by the replaced arbitrator.

## ARTICLE 29

### COMMUNICATIONS

Communication between any of the parties or its representative(s) and the arbitrator regarding any matters other than questions of procedure is prohibited once the arbitrator has been appointed.

## ARTICLE 30

### SEAT OF THE ARBITRATION

The seat of the arbitration is Geneva, Switzerland, at AGICOA's headquarters. AGICOA's legal and business department serves as secretary of the arbitration court.

## ARTICLE 31

### APPLICABLE LAW

The arbitrator shall determine the applicable law.

## ARTICLE 32

### LANGUAGE

The languages of arbitration are English or French or any other language chosen by the parties and the arbitrator by common agreement. The arbitrator may request from the parties that all the transmitted exhibits and documents are translated into one of these languages, and such translations must be certified true and correct.

Each party shall assume the translation costs regarding its exhibits or any other documents.

## ARTICLE 33

### PROCEDURE

- (1) As a general rule, the proceedings shall be conducted in writing. The arbitrator must inform the parties of any counter-claim or any objection submitted or raised by another party, within a time limit of 30 calendar days of receipt. Upon request made by the parties, or if deemed necessary by the arbitrator a second exchange of written submissions may be required.
- (2) If the matter under consideration is sufficiently complex and if a request by one of the parties is agreed, the arbitrator may decide to hear the parties verbally, at the seat of the arbitration or, as an exception, at any other place he/she deems appropriate, provided a summon is addressed to each party 30 calendar days in advance. If one of the summoned parties does not appear at this hearing, the arbitration shall be continued, unless a valid excuse is provided within 5 calendar days of the date of the hearing, and the hearing shall be considered to have taken place in the presence of all the parties. The arbitrator shall then rule on the basis of the evidence submitted by the parties.
- (3) Any person intervening in whatever capacity within arbitration proceeding must sign a commitment to confidentiality.
- (4) Any opinion(s), avowal(s), or proposal(s) stated or made by one of the parties cannot be invoked in any ongoing or future judiciary or arbitration proceedings whatsoever.

## ARTICLE 34

### EVIDENCE

The arbitrator alone shall assess the evidence submitted by the parties and he/she may reject any evidence he/she deems irrelevant or which is not submitted within the given time limits. The arbitrator may require the parties, within a specified time limit, to transmit any further evidence that may be useful for consideration of the conflict.

## ARTICLE 35

### REPRESENTATION

The parties may be represented or assisted by the person(s) of their choice whether in written submission or personal appearance before the arbitrator.

## ARTICLE 36

### CLOSING OF THE ARBITRATION PROCESS

Once the arbitrator considers that the parties have had sufficient opportunities to present their claims he/she shall pronounce the process closed and shall inform the parties thereof in writing. If there are new circumstances, the arbitrator may decide to reopen the process provided that his/her decision has not yet been announced.

## ARTICLE 37

### DECISION

The arbitrator must deliver his/her decision within 30 calendar days after the closing of the process. The decision must be delivered in English or in French. It must be in writing and must contain the reasoning for his/her decision. The decision has to be duly signed and dated by the arbitrator.

The arbitration decision shall be deemed delivered at the seat of the arbitration.

## ARTICLE 38

### AMICABLE SETTLEMENT

If the parties reach an amicable settlement of their dispute and so inform the arbitrator, the settlement shall be acknowledged within a ruling delivered by the arbitrator to confirm a binding agreement between the parties.

## ARTICLE 39

### COSTS

Apart from the amounts in conflict, the decision shall also deal with the distribution of costs among the parties, i.e. the fees and expenses of the arbitrator,, the costs incurred by the parties as well as the fee due to AGICOA within the arbitration process for administrative expenses. Decisions on division of costs shall take into account the specific circumstances, the parties' attitude during the arbitration procedure as well as the outcome of the arbitration. The advance payment made by the conflicting parties are treated according to the final decision on the costs.

## ARTICLE 40

### ADVICE OF THE DECISION

The arbitrator shall advise his/her decision to the parties by registered letter with acknowledgement of receipt and copy to AGICOA.

## ARTICLE 41

### IMPLEMENTATION OF THE DECISION

If, within 60 calendar days after the notification of the decision, the parties have not informed AGICOA about having started court proceedings nor about having reached an amicable settlement independently of the decision, the parties are deemed to have waived their claims. AGICOA will then implement the decision and distribute the royalties accordingly. This distribution will not give rise to any claim by any party to the conflict, and any party receiving distribution according to the decision agrees to hold AGICOA harmless from any third party claim resulting from the specific retransmission(s) of the work(s) and the distribution of the relevant royalties.

## ARTICLE 42

### LIABILITY

The arbitrator will be liable only for his/her respective intentional actions and only insofar as such actions are the immediate and consequent cause of monetary damage to one of the parties.

AGICOA shall have no responsibility or liability neither to the arbitrator nor to the conflicting parties. In particular, AGICOA shall have no responsibility or liability to the arbitrator in the event the latter's fees and expenses remain unpaid by the parties.

## ARTICLE 43

### INTERPRETATION

The arbitrator has the power to interpret all rules of these regulations notably those concerning his/her powers, his/her obligations, the procedure as well as the obligations of the parties.