



**MAGICOA**  
The Rights People

Annual Report 2013





# AGICOA Annual Report 2013



**AGICOA**  
The Rights People

"IN THE NAME OF", POLAND - MD4

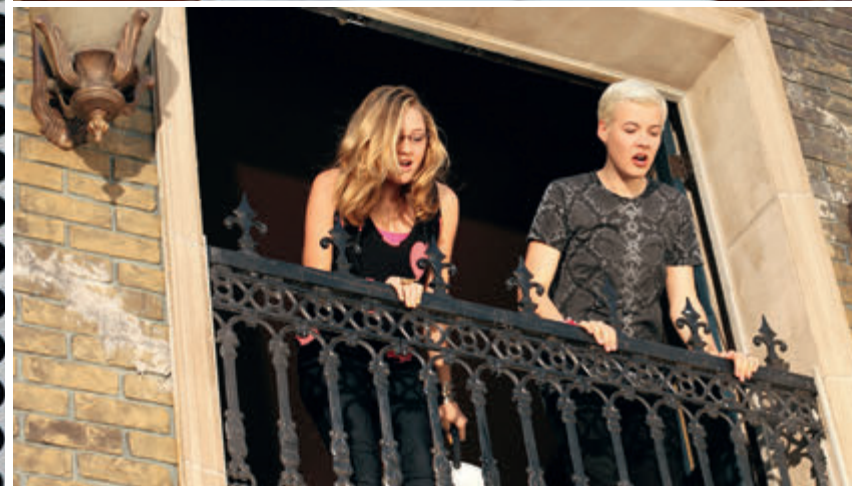
"WITCHING AND BITCHING" (LAS BRUJAS DE ZUGARRAMURDI), FRANCE, SPAIN - ARTE FRANCE CINEMA - ENRIQUE CEREZO P.C., S.A. - LA FERME PRODUCTIONS

"LIFE FEELS GOOD", POLAND - TRAMWAY STUDIO FILMOWE

## CONTENTS

5	PRESIDENT'S MESSAGE
7	FACTS & FIGURES
9	MANAGEMENT REPORT
16	AGICOA MEMBERS
18	AGICOA EXECUTIVE BOARD
20	AGICOA ALLIANCE
22	GUEST EDITORIAL
24	FINANCIAL INFORMATION
26	AUDITOR'S REPORT





"CRACKS IN CONCRETE", AUSTRIA - WEGA FILMPRODUKTIONS

"INGREDIENTE SECRETO", PORTUGAL - VENDE SE FILMES

"BABY BLUES", POLAND - MD4

"DIE LEGENDE VON PAUL UND PAULA", GERMANY - ©DEFA-STIFTUNG/MANFRED DAMM, HERBERT KROISS

"DEGRASSI", CANADA - EPITOME PICTURES INC., PHOTOGRAPHER STEPHEN SCOTT





## P R E S I D E N T ' S   M E S S A G E

**AGICOA and the AGICOA Alliance delivered very satisfactory levels of revenue in 2013 despite an ever evolving environment, and did so in cost-efficient ways. At the same time, the organization continued to adapt to on-going change and experimentation with new business models and new services in the market as these relate to AGICOA's activities.**

**T**he recurrent themes and business challenges were broadly similar to previous years. Technology offers innovative ways of linking content and consumers, both in and beyond their homes. This should benefit the industry as a whole and consumers, but many of the new Internet-based services are reluctant to recognize basic licensing rights and operate illegally. Others Internet players remain timid in their commitment to bringing about a more responsible Internet environment.

Some progress was made through favourable court judgements in 2013 as regards AGICOA's core retransmission interests, but the tracking and collection of royalty revenues is continuously challenged. Further important court cases are pending in key markets.

There are also growing differences in the levels of rightsholder needs: certain producers believe the weight and economies of scale of collective management have a more important role to play for them. Others are more reluctant to see collective management expand into areas that they

believe are better addressed through direct commercial negotiations. AGICOA must remain flexible in this respect, and be in the best possible position to meet the varying preferences of its members and partners. The organization's mandate must remain high on the agenda as Internet-based platforms carve out space in the industry mainstream alongside cable and satellite retransmission.

In operational terms, the governance changes AGICOA made in 2012 are working satisfactorily. The extended Board has increased transparency without slowing decision-making, and communication with members has improved. The Board has asked management to ensure that AGICOA is in compliance with the requirements of the recently adopted EU Directive on Collective Management. Such changes as may be required should be implemented in the course of 2014.

The Board has authorised a three-year investment program to upgrade AGICOA's information systems and simplify user interfaces. This will enable the tightening of internal controls to ensure accu-

racy in the management of rightsholder properties, and identify and deal quickly with issues that arise.

I would like to thank former co-General Managers Pierre Oberholzer and Helmut Koszuszeck for their contributions to AGICOA's development, and express my support for General Manager Tom De Lange and his team and their on-going work on behalf of rightsholders. Pierre's responsibilities have been delegated to senior members of his team. I would also like to warmly welcome Ms Vera Castanheira who will take charge of the legal department as Legal Counsellor, while Helmut will continue to provide some advisory services to AGICOA.

I am confident that these changes will strengthen even further AGICOA's team as it strives to meet its members' expectations in an environment that is increasingly challenging.

CHRIS MARCICH AGICOA PRESIDENT



"DAS KLEINE GESPENST", GERMANY - CLAUSSEN +  
WÖBKE + PUTZ FILMPRODUKTION GMBH

"TRAFFIC DEPARTMENT", POLAND - FILM IT

"SPUR DER STEINE" (THE TRACE OF STONES), GERMANY -  
©DEFA-STIFTUNG/KLAUS-DIETER SCHWARZ

"DAS WILDE LEBEN" (EIGHT MILES HIGH), GERMANY - NEUE BIOSKOP FILM GMBH

"POL", AUSTRIA - EPO FILM

"DER ALTE AFFE ANGST", GERMANY - NEUE BIOSKOP FILM GMBH



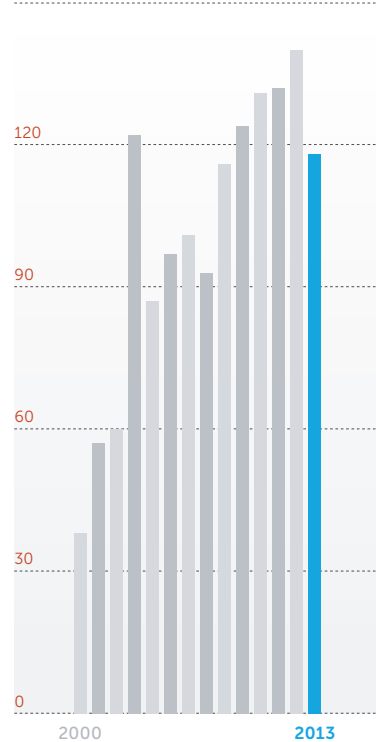
## FACTS & FIGURES

### Royalties

**€119M**

Royalty distributions are back to normal level of 2008.

IN MILLIONS €

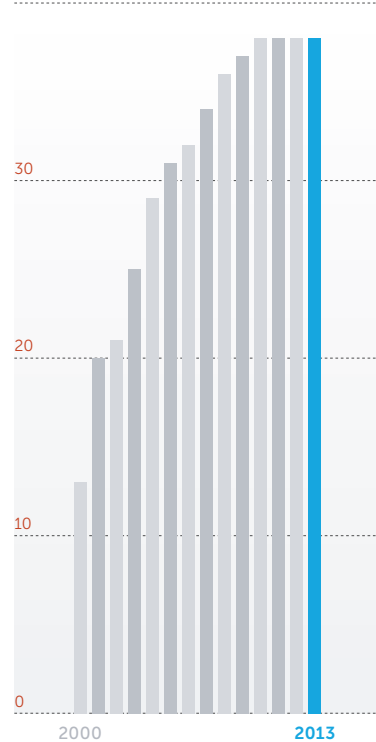


### Countries

**38**

Unique collection and distribution network across major markets.

IN MILLIONS €

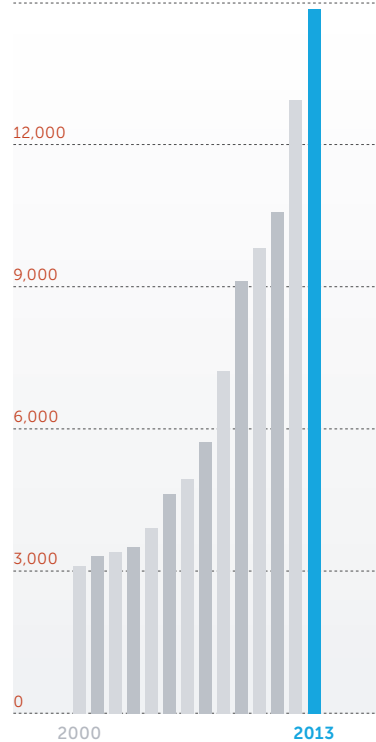


### Rightsholders

**14,879**

The numbers of audiovisual rightsholders using the organization's services increased by 15%.

IN THOUSANDS OF WORKS

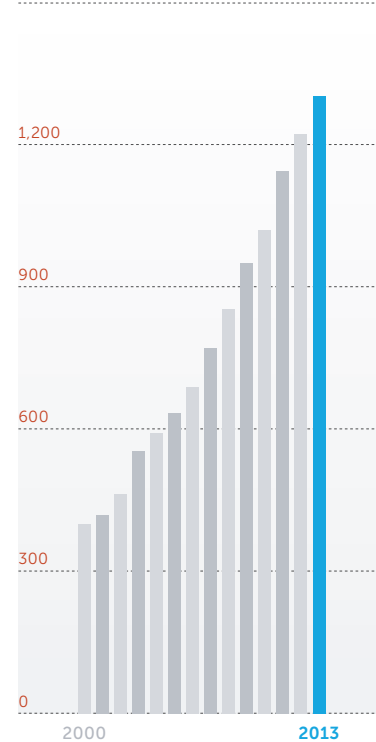


### Declared Works

**1,304,000**

Total number of declared works was up by 7%.

IN THOUSANDS OF WORKS

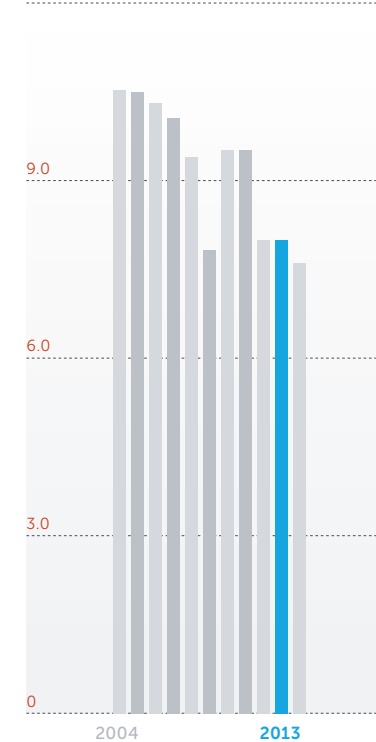


### AGICOA Fees

**8 %**

AGICOA management fees – originally planned at 9.84% were finally dropped to 8% following very successful 2012 results.

IN PERCENTAGE





"DIE BLECHTROMMEL" (MY BOY), GERMANY - SEITZ GMBH FILMPRODUKTION

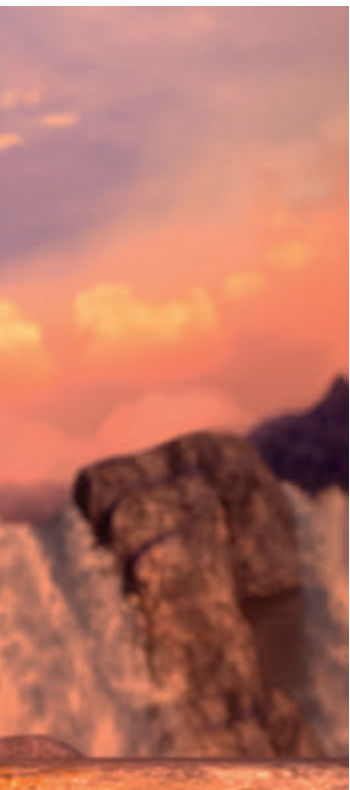
"SOLO SUNNY", GERMANY - ©DEFA-STIFTUNG/DIETER LÜCK

"JUSTIN AND THE KNIGHTS OF VALOUR" (JUSTIN Y LA ESPADA DEL VALOR), SPAIN - KANDOR GRAPHICS, S.L. - ALIWOOD MEDITERRANEO PRODUCCIONES, S.L.

"CHALET GIRL" (POWDER GIRL), GERMANY - NEUE BIOSKOP FILM GMBH

"DER GROSSE KATER", GERMANY - NEUE BIOSKOP FILM GMBH





## MANAGEMENT REPORT

# Keeping pace with change

**On balance, 2013 was another successful year for AGICOA. Collections and distributions continued at a high level despite the prolonged impact of economic recession and the emergence of new content platforms and business models that challenge established industry licensing patterns.**

**T**he numbers of audiovisual rightsholders using the organization's services increased by 15% to over 14,800 in the course of the year and the total number of declarations was up by 7%. Royalty collections totalled €119m, slightly down from €125m the previous year, although royalty revenues from key markets such as Belgium, Germany, the Netherlands and Poland were stable or increased.

Distributions totalled €119m compared to the exceptional distribution of €140m in 2012. In effect, the decrease as a result of changes to AGICOA's mandate in the Netherlands and the one-time impact of negotiated settlements on 2012 result, was less than expected: the 2013 result exceeded forecast by €4.5m. In addition, royalty payments for Denmark were received late and will be distributed in 2014, as will 2012 educational royalties from the

UK and the first quarter collection of the new licensing agreement in the Netherlands.

The AGICOA organization operated within budget while making essential investments to upgrade its information systems and data management capabilities. It continued to respond imaginatively to the challenges of doing more with less, and was able to propose a reduced management fee of 8% for royalties put into distribution in 2013, compared to 9.84% in 2012.

The broadcast world continued to diversify at a remarkable rate. Technological advances are enabling a new generation of consumer services. In many cases, the new business models emerging to exploit them further complicate the already complex licensing and collection environment for rightsholders.

For most of the last decade, legislators and industry bodies have struggled to keep pace with the speed and scale of change. Despite some progress in 2013, the regulatory frameworks governing the interests of rightsholders and royalty collections often fail to reflect present day market realities. Many time-consuming uncertainties and ambiguities remain.

A more positive perspective is that technological progress is creating new content licensing opportunities. This, in turn, adds weight to the case for more efficient collection and distribution models. As complexity increases, it is in the interests of distributors, operators and rightsholders to seek simplicity.

The possibilities of extending the organization's mandate to include royalty collection for new consumer viewing options were reviewed at length





"SCHLAWINER" (FREUD OFFSPRING), AUSTRIA - BREITWANDFILM  
 "MODERN FAMILY", USA - TWENTIETH CENTURY FOX, ALL RIGHTS RESERVED

"EPIC", USA - TWENTIETH CENTURY FOX, ALL RIGHTS RESERVED  
 "DIE VAMPIRSCHWESTERN" (VAMPIRE SISTERS), GERMANY -  
 CLAUSSEN + WÖBKE + PUTZ FILMPRODUKTION GMBH

"MIG ÄGER INGEN" (NOBODY OWNS ME), SWEDEN - FILMLANCE  
 INTERNATIONAL AB, PHOTO BY ALEXANDRA ARISTARHOVA





by the AGICOA Executive Board in the course of 2013. The general belief of many members is that such a move could be logical and timely subject to confirmation with their members.

The organization continued to represent rightsholder interests in a number of important legal cases and business developments. A significant court success in Israel led to the establishment of collecting rights for cable and satellite TV retransmission in that market. Elsewhere, in Ireland,

Belgium and the Netherlands, progress was made on on-going cases.

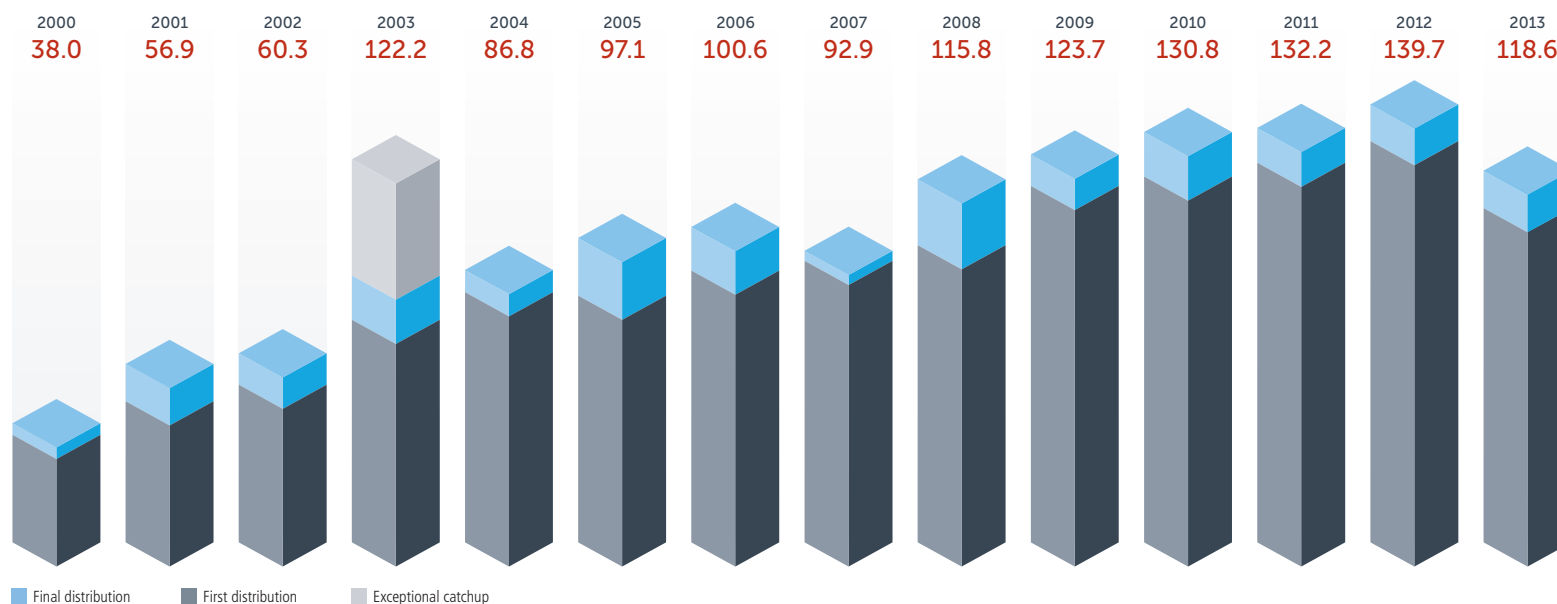
Within the organization, work began on development of a new generation of IT systems and investments were made to ensure the continuing, fast, accurate registration of work and the easy access of rightsholders to monitor management of their properties.

Changes to the AGICOA management structure towards the end of the 2013 and early 2014

saw Pierre Oberholzer and Helmut Koszuszek, two previous co-General Managers, leave the organization and co-General Manager and Chief Financial Officer Tom De Lange assume overall control. A new head of the legal department, Vera Castanheira, has been hired to run that key department. This has been complimented by the appointment of a functional management team focused on specific aspects of creating value for members.

#### ROYALTIES DISTRIBUTION

ROYALTIES DISTRIBUTED IN MILLIONS €



<sup>1)</sup> BOSNIA, CROATIA, ESTONIA,  
HUNGARY, ICELAND, KOSOVO, LATVIA,  
MACEDONIA, MOLDOVA, MONTENEGRO,  
SERBIA, SOUTH AFRICA

#### FIRST DISTRIBUTION

AUSTRALIA	2001 - 2011	GERMANY	2012	PORTUGAL	2012	THE NETHERLANDS	2012
BELGIUM	2012	IRELAND	2012	SLOVENIA	2010		
CANADA	2011	LUXEMBOURG	2012	SPAIN	2012		
DENMARK	2008, 2010, 2011	NORWAY	2011	SWEDEN	2009, 2011, 2012		
FINLAND	2012	POLAND	2012	SWITZERLAND	2011	Mark-Up <sup>1)</sup>	2013

#### FINAL DISTRIBUTION

BELGIUM	2009	LUXEMBOURG	2009	ROMANIA	2009
FINLAND	2009	NORWAY	2009	SWEDEN	2009
GERMANY	1997 - 2007	POLAND	2009	THE NETHERLANDS	2009

## Industry Environment

**Conventional TV broadcasting is just one part of the increasingly complex world of TV transmission and viewing options that exist today.**

Commercial broadcasters have reacted in different ways to continuing uncertainty in advertising revenues. Some are investing in production assets to build their own content portfolios. Many seek to grow subscriber revenue through pay-to-view and extended retransmission services. The latter include multi-device streaming within homes, catch-up services, and so-called “time shifted” viewing of retransmitted content.

There are significant implications for rights-holders. For most, it is no longer realistic to handle

retransmission rights directly, and complications of keeping track of and being paid for content are certain to increase. Collective management is the only practical alternative for some.

Most distributors and operators favour a bundled approach to licensing work, and it was clear from industry discussions during 2013 that they will increasingly seek this in negotiating the renewal of existing agreements.

There is urgency on all sides to clarify royalty obligations and collection processes in what were

once regarded as fringe activities but are rapidly becoming an integral part of the mainstream broadcast industry offer.

With this in mind, the AGICOA Executive Board sought member opinions on extending the organization’s mandate during 2013. Management is now formulating proposals to add new forms of retransmission to the organization’s existing cable and satellite franchises where and for whom these may be deemed useful.



## Legal and Regulatory Framework

**After extensive consultation, the European Commission finalized and published (in January 2014) a new Directive that will regulate activities of collective rights management organizations in member states.**

**A**GICOA followed this legislative development throughout last year and analysed its potential impact at different points in the process. The regulations require new levels of transparency and the publication of more data. As a Swiss-based organization, AGICOA is not directly affected by EU rulings, but will observe the new regulations and already fulfils most of the obligations it imposes.

Despite intensive lobbying by film directors, scriptwriters and other creative stakeholders, the Directive does not include their claim that they (and not producers) should exercise control of secondary exploitation of content. They challenge the automatic transfer of retransmission rights to producers and seek a share of royalties. AGICOA continues to

monitor this issue and defends the need for producers to control rights in order to fully exploit the commercial potential of films and other products.

In another significant Brussels ruling, the European Union Court of Justice held that retransmission of original broadcasts via the Internet is separate use of audiovisual content and must be licensed by rightsholders, supporting AGICOA's belief that every re-exploitation is subject to royalty payment.

AGICOA has been closely involved in particularly complex situation in Ireland arising from the 2004 terms of trade agreement between the producers association, PACT, and UK public service broadcasters (BBC, ITV and Channel 4). Questions

arise as to the remuneration of commissioned works which have been complex and controversial.

A significant legal development in 2013 was the favourable settlement after protracted litigation of the HOT case in Israel. The outcome is a retrospective licensing agreement with the country's sole cable operator valued at €10m. Influenced by this, progress was made towards a similar agreement with the YES satellite operator which will enable 100% coverage of retransmission in Israel.

The Telenet and Airfield cases - landmark litigation in the Belgian market - are on-going, but some progress was made in 2013 and a definitive ruling on the Airfield is expected in 2014.

## International Reach

**There were positive and negative developments across European markets in 2013, but progress, overall, was satisfactory.**

**C**onflict with local collection societies in Slovenia and Romania and the unsurprising failure of negotiations with cable operators amidst upheaval in Ukraine adversely impacted Eastern and Central European revenue streams.

Elsewhere, however, there were positive developments. A royalty-sharing agreement that will increase revenue was concluded with the national collection organization in Lithuania.

Elsewhere in Europe, despite the generally difficult economic environment, collections in key markets such as Belgium, Germany and Poland were stable or increased in direct comparison with the previous year.

Comparative adjustments have to be made in the case of the Netherlands where AGICOA received a one-off royalty settlement in 2012. While it no longer collects for local rightsholders, it

maintains the due level of collections for non-Dutch members in 2013. Legislative changes also had an impact in Norway.

International rightsholder membership continues to grow with The Film & Television Producers Guild of India Ltd and UFMI (Uganda Federation of Movie Industry), joining AGICOA in 2013.

## Rightsholder Services

**AGICOA's TV channel selection criteria and the definition of its repertoire were reviewed in the course 2013 with the intention of recommending changes in 2014.**

The organization is reconsidering the channel selection criteria used to decide the commercial viability of collection and distribution of royalties. It remains committed to monitoring as many channels as possible, but must balance the cost of doing so in relation to anticipated revenue for members. A need for a degree of market-by-market flexibility in this respect, rather than the application of universal measures is recognized.

Management has also been asked to consider the need for possible changes to AGICOA's content repertoire.

Changes were made to the distribution process for small country collections, previously totalled and added as a pro rata "mark-up" to member distributions for the year. An alternative process proposed in 2013 offers new options to address the interests of local rightsholders in smaller markets, and also to allocate a proportion of the mark-up to financing the organization's operating costs for the following year. This, in turn, will reduce the management fees charged to members.

The planned changes will be written into revised distribution rules and submitted to the AGICOA General Assembly in May 2014.

The conflict resolution service continues to be highly valued by some members. The organization's legal experts reviewed over 340 ownership disputes in 2013, and an additional €2.75m was released for distribution as a result.

## Operating Efficiency

**Moves to further increase the productivity and operational efficiency of the organization continued in 2013.**

After increasing significantly in the decade to 2010, AGICOA's operating budget has been reduced in each of the last three years. Actual operating costs in 2013 year were below those for 2003. Meanwhile, the number of rightsholders served has quadrupled, the number of collection markets increased by almost 50%, the number of properties registered has more than doubled, and so have royalty distributions.

This sustained productivity drive and the new mark-up arrangements for distribution of royalties from markets with revenue streams of less than €500,000 have enabled a reduction in AGICOA's management fee from the 8% applied in 2013 to 7.64% in 2014.

Work commenced during 2013 on the upgrading of the organization's information systems - a key initiative in upgrading this asset and

in the continuous improvement of rightsholder services. Incremental change has been possible until now, but generational change is needed to take full advantage of new technologies and applications possibilities.

The systems upgrades, which will also enable new levels of internal management control and data security, are scheduled for completion by the end of 2015.



## Management



Two of AGICOA's co-General Managers left the organization at the end of the year and in early 2014. The third co-General Manager and CFO, Tom De Lange, heads a new management team that will bring more specific focus to different aspects of creating value for AGICOA rightsholders.

Annika Andrivet assumes responsibility for Information Systems Development; Vera Castanheira for Legal & Licensing; Carla Dechamboux for Rightsholders Relations; Jean-Daniel Girod for Distributions & Identifications; Stephanie Guffroy-Droux for Finance & Administration and Salvatore Silvestri for Information Technology & Security.

Apart from Vera Castanheira - a copyright specialist for legal and public affairs - who joins the organisation in 2014, all the other members of the management team have between 12 and 23 years' experience at AGICOA and are experts in their respective area.

LEFT ROW:  
JEAN-DANIEL GIROD, CARLA DECHAMBOUX, ANNIKA ANDRIVET

RIGHT ROW:  
VERA CASTANHEIRA, STÉPHANIE GUFFROY-DROUX,  
SALVATORE SILVESTRI, TOM DE LANGE

## Conclusion

AGICOA continued to deliver value through the collection and distribution of royalties on more works for more audiovisual rightsholders than ever before.

The challenges of keeping pace with industry change and representing member interests in an expanded world of consumer choice are clear, but the organization believes it has the experience, resources and flexible outlook needed to succeed and has continued to demonstrate this.

The management team would like to thank AGICOA rightsholders for their continuing trust and looks forward to working together productively in 2014 and beyond.

TOM DE LANGE GENERAL MANAGER

## AGICOA MEMBERS

**The purpose of the association AGICOA is to defend, through collective rights management, the interests of its members.**

**A** GICOA's members are associations of audio-visual producers or distributors, audiovisual producer collective rights management organizations, rights agents and other film and television rightsholders from all over the world.

AGICOA's members define AGICOA's role through their presence in and contributions to AGICOA's supreme decision making body, AGICOA's General Assembly.

AGICOA's members, through the General Assembly, define AGICOA's purpose in AGICOA's by-laws and fundamental rules of royalty distribution. They approve AGICOA's annual operating budget and the AGICOA fee. They approve the association's year's end profit and loss account as well as balance sheet. They give discharge to AGICOA's Executive Board and Management and elect and dismiss the auditors. They proclaim the exclusion and suspension of a member and also decide on AGICOA's dissolution.

### NORTH AMERICA

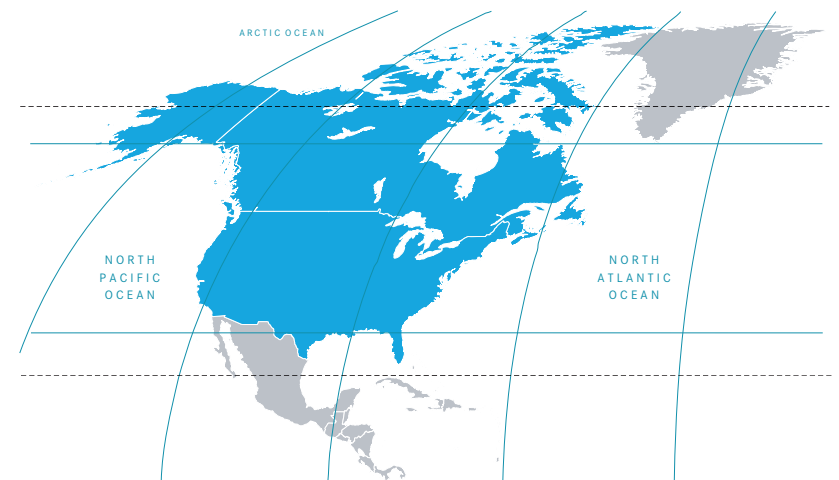
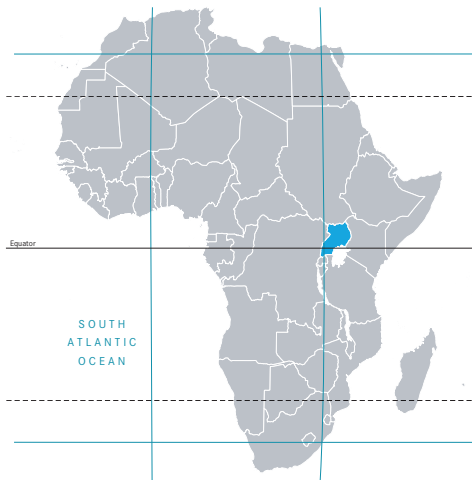
- CANADA
- › CRC
- USA
- › APTPA-PBS
- › IFTA
- › MPA

### AFRICA

- UGANDA
- › UFMJ

### SOUTH AMERICA

- ARGENTINA
- › CAPIT





## EUROPA

### AUSTRIA

› VAM

### BELGIUM

› BAVP

› COMEDIA

### BULGARIA

› FILMAUTOR

### DENMARK

› CAB

### ENGLAND

› COMPACT MEDIA GROUP

› EMI MUSIC PUBLISHING LIMITED

› PACT

### FINLAND

› COFFPA

› TUOTOS

### FRANCE

› FIAD

› FIAPF

### GERMANY

› GWFF

› VDF

› VGF

### GREECE

› SAPOE

### ICELAND

› SIK

### IRELAND

› SCREEN PRODUCERS IRELAND

### ITALY

› ANICA

### LUXEMBOURG

› ALGOA

› SAMSA FILM SARL

### NORWAY

› AGICOA NORGE

### POLAND

› ZAPA

### PORTUGAL

› GEDIPE

### SERBIA

› FILM CENTER SERBIA

### SLOVAK REPUBLIC

› SAPA

### SPAIN

› EGEDA

› IBAIA

› PAC

› UPCT

### SWEDEN

› FRF

### SWITZERLAND

› SUISSIMAGE

### THE NETHERLANDS

› FINTAGE HOUSE

› SEKAM

### UKRAINE

› APU

## ASIA

### CHINA

› CFCA

### INDIA

› THE FILM & TELEVISION PRODUCERS GUILD OF INDIA LTD

### RUSSIA

› PRODUCERS' GUILD OF RUSSIA

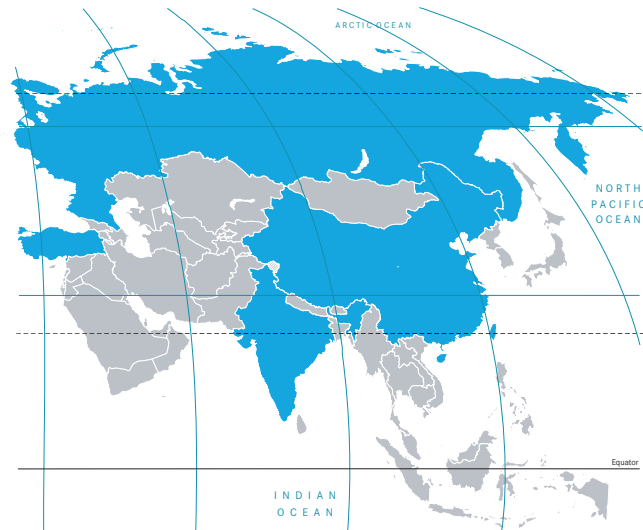
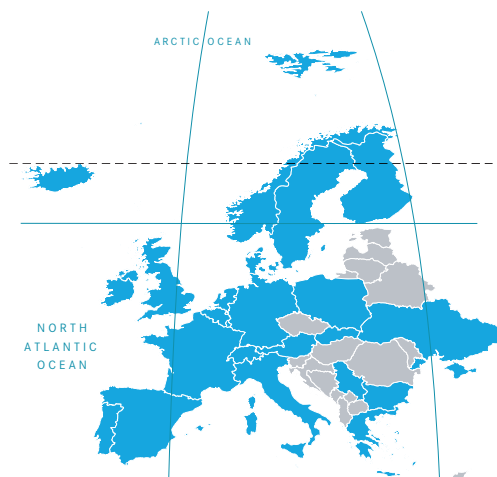
### TURKEY

› SE-YAP

## OCEANIA

### AUSTRALIA

› SCREENRIGHTS



## AGICOA EXECUTIVE BOARD



**CHRIS MARCICH**

USA

**PRESIDENT**

Substitute:

JANE SAUNDERS

President and Managing Director of Motion Picture Association (MPA), European office, Brussels.



**NICOLE LA BOUVERIE**

BELGIUM

**VICE-PRESIDENT**

CEO of BAVP (collecting society for cable), PROCIBEL (collecting society for private copy), AGICOA Europe Brussels, Zenab consulting, Director of AUVIBEL (collecting society for the private copying of sound and av works).



**PR. DR. RONALD FROHNE**

GERMANY

**VICE-PRESIDENT**

Substitute:

GERTRAUDE MÜLLER-ERNSTBERGER

Attorney and CPA. Head of New York Office of international Law Firm Noerr LLP. Managing Director of GWFF (collecting society for private copy) and AGICOA Germany. Board member of various German and international companies.



**MICHAEL BRODIE**

UNITED KINGDOM

**TREASURER**

Bachelor of laws, ACA chartered accountant, UK former Universal Pictures executive.



**MIGUEL ANGEL BENZAL MEDINA**

SPAIN

Substitute:

JOSÉ ANTONIO SUAREZ

CEO EGEDA, Spain (Audiovisual Producers Rights Management Association) since 1992. At the same time, is CEO of the Madrid Film Commission Foundation and of Audiovisual SGR, a mutual guarantee society in which EGEDA is a protector member.



**BÖRJE HANSSON**

SWEDEN

**OBSERVER**

Substitute:

ANTOINE VIRENQUE

(picture missing)

Film producer, managing director of Bright Pictures. Earlier head of production at Svensk Filmindustri (SF) and Swedish film company Filmlance that produced among others the famous Swedish criminal series "Beck". Representative of FIAPF.





**JOHN M. JACOBSEN**

NORWAY

Producer and head of Filmkameratene AS, one of the leading Norwegian film and television companies. Their productions include the Oscar nominated "Pathfinder", the international Emmy nominated animated series "Elias, the little rescue boat" and the recently acclaimed "Max Manus" and "Trollhunter", the most successful Norwegian films in decades.

**SAN FU MALTHA**

THE NETHERLANDS

Substitute:

**RUUD VAN BREUGEL**

(picture missing)

Dutch film producer. San Fu Maltha found the production company Fu Works in 1995 and the company has grown into one of the most leading feature film production companies of the Netherlands. Fu Works is an independent and internationally oriented production company that produces feature films, documentaries and TV series.

**JEAN PREWITT**

USA

President/CEO of the Independent Film & Television Alliance (IFTA).

**NIELS TEVES**

THE NETHERLANDS

Substitute:

**ERNST JACOB BAKKER**

Co-owner and Co-CEO of Fintage House (an independent company that deals with global Music, Film & TV rights) with main offices in The Netherlands, Budapest and London. Niels oversees the Music Division business lines such as Neighbouring Rights, Music Publishing, Digital Distribution, Talent & Audiovisual Producer Rights.

**RYSZARD KIREJCZYK**

POLAND

Substitute:

**SYLWIA BIADUN**

CEO of ZAPA (Union of Audiovisual Authors and Producers - a collecting society within Polish Filmmakers Association). Former Head of production and former Director of Gdynia Film Festival and Debut Film Festival - the biggest Polish film events.

**JOHN O'SULLIVAN**

UNITED KINGDOM

Substitute:

**ANDY HARWOOD**

Founder and CEO of Compact Media Group representing over 500 rightsholders. Also worked extensively at PRS for Music in the UK and served at Mentorn Films, Diamond Time and Palan Music Publishing.

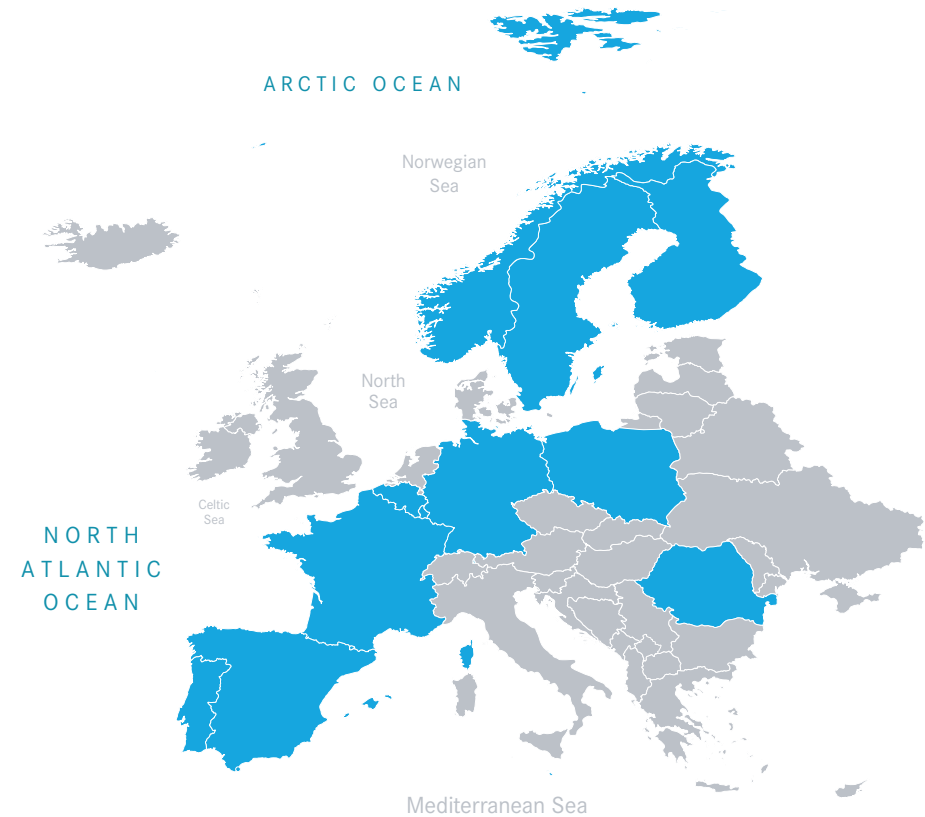
**NICOLAS STEIL**

LUXEMBOURG

Exclusive legal representative of AGICOA in the Grand-Duchy and founder of ALGOA (Luxembourgish Copyright Collecting Agency). Producer-Director and President/CEO of the Iris Group (Luxembourg, France, Belgium, Germany, UK) which produced and coproduced over 40 movies and distributed over 200 in France and internationally.

# AGICOA and its partners organizations

The AGICOA Alliance is a unique partnership that enables the efficient international collection and distribution of royalties for the retransmission of audiovisual works.



Alliance partners accommodate different national legal requirements but embody common practices to manage rightsholders' interests in a consistent, cost efficient way. The single declaration of an audiovisual work enables the collection of royalties wherever collective management operates.

Alliance partners have deep knowledge of their own broadcast markets. Aggregation of the interests of international rightsholders adds considerable weight to the collective licensing agreements they negotiate with national and local operators. Equal treatment of all rightsholders, irrespective of size and nationality, is guaranteed.

## BELGIUM

› AGICOA EUROPE BRUSSELS

## FINLAND

› TUOTOS

## FRANCE

› ANGOA

## GERMANY

› AGICOA GMBH

## LUXEMBOURG

› AGICOA EUROPE

› ALGOA

## NORWAY

› AGICOA NORWAY

## POLAND

› ZAPA

## PORTUGAL

› GEDIPE

## ROMANIA

› AGICOA ROMANIA

## SPAIN

› EGEDA

## SWEDEN

› FRF





## People in Geneva

**Approximately 60 people located in 12 countries are involved in the management of rightsholder interests by the AGICOA Alliance.**

Of these in 2013, 33 were located at AGICOA's Geneva headquarters. Customers & Distribution took care of client portfolios and tracked use of work, identifying well over a million broadcasts a year. The Legal and Business department negotiated new license agreements, renewed

and extended existing contracts and helped Rights-holders resolve ownership conflicts. The Finance department managed our funds collection and distribution, while Information Systems managed the flow of data across the organization and to almost 15,000 registered rightsholders via IRRIS.



STEPHEN EDWARDS

STEPHEN EDWARDS IS A LONDON-BASED BROADCAST INDUSTRY SPECIALIST WITH INTERNATIONAL LAW FIRM REED SMITH

## GUEST EDITORIAL

# Rules and Exceptions

**Over the course of the past year, case law and legislative reform in the UK have opened up new directions in rights-licensing.**

The mismatch that can emerge over time between the realities of modern-day broadcasting and the original policy motivations that underlie long-standing copyright exceptions was highlighted by a UK High Court decision obtained last year by broadcasters against the operators of the Internet-based service TV Catchup. TV Catchup retransmits the UK's public service channels - the BBC channels, ITV 1 and Channels 4 and 5 - without licence from broadcasters or other rightsholders.

ITV, Channel 4 and 5 challenged TV Catchup's right to do so. The High Court has now ruled that TV Catchup may continue providing these channels to on-line viewers, although not to wireless-enabled devices such as mobile phones. While such provision amounted to communication to the public, as had been decided by a ruling of the Euro-

pean Court of Justice in the case, the High Court decided that TV Catchup's online retransmissions of the channels fell within the scope of an exception in UK copyright legislation.

The exception, set out in section 73 of the Copyright, Designs and Patents Act 1988, in fact dates back to 1956. The policy motivation for its introduction at that time was to ensure that copyright claims would not present a potential barrier to retransmission of the BBC and ITV channels on the cable networks that were being constructed and whose operators were being put under regulatory obligation to retransmit those channels. During the 1990s those 'must-carry' obligations were removed, but section 73 nonetheless remained on the statute book. TV Catchup successfully based its defence upon it, despite the absence of any connection between the kind of service it was provid-

ing and the motivations that had led to the introduction of the exception more than fifty years ago.

The future of section 73 was, however, cast into doubt by the High Court because in handing down its decision, the Court remarked on the incompatibility of section 73 with the EU Directive on harmonisation of certain aspects of copyright and related rights in the information society. The Directive permits only a limited range of exceptions to copyright protection, none of them broad enough to encompass an exception such as section 73. This opens the door for broadcasters and other rightsholders to challenge the availability of the section 73 exception to Internet-based retransmission services, and indeed to traditional cable services also. Needless to say, the abolition of section 73 in the UK would lead to a complex rearrangement of licensing and clearances and spark lively



"THE CLOSED CIRCUIT", POLAND -  
FILMICON DOM FILMOWY S.C.

"LIVING IS EASY WITH EYES CLOSED"  
(VIVIR ES FACIL CON LOS OJOS CERRADOS),  
SPAN - FERNANDO TRUEBA P.C., S.A.

"DER JUNGE TÖRLESS" (YOUR ARE A MAN),  
GERMANY - SEITZ GMBH FILMPRODUKTION





debate between industry parties about who is to pay for what.

It is not only in the sphere of retransmissions that changes to rights-clearance arrangements are likely to come to the fore in the UK in the not too distant future. The UK has decided to follow the example set in the Nordic countries by introducing the option to create extended collective licensing schemes as a solution to otherwise intractable rights clearance problems that could stifle the development of new and useful means of exploiting copyright works through the new technologies.

Extended collective licensing has proved a useful tool in situations where individual licensing is simply too burdensome to be practicable, where collecting societies are ready and willing to grant licences for the works they control, and where the potential user needs to be assured that works that

are not within the societies' repertoires will be included in any licence granted so that there is no risk of infringement of third parties' copyrights. In essence, regulated extended collective licensing expands the scope of a licence granted by a collecting society to cover all works of the type covered by that society, not just those works voluntarily placed under its control.

The UK government has paved the way for introduction of extended collective licensing in the Enterprise and Regulatory Reform Act 2013. Following a consultation which closed in January 2014, and a parallel consultation on licensing of so-called 'orphan' works whose rightsholders cannot be found despite diligent search, we now await publication of the legislative orders which will set out the procedures to be followed in implementing such licensing schemes.

One particular driver of this legislative intervention in the UK was the recognition that the BBC's ambition to make available to the public its extensive television and radio archives would be frustrated by the sheer scale of the rights-clearance task that would be involved in obtaining the additional permissions required in respect of works that had originally been cleared only for broadcast use for a limited period.

While individual licensing and voluntary collective licensing is here to stay, most industry parties will welcome the emergence of an additional collective licensing framework that can be adapted to take account of fundamental changes in technology and consumer preferences and of the need to manage rightsholder interests in ways that reflect today's realities.

## FINANCIAL INFORMATION

FIGURES FOR THE YEAR ENDED DECEMBER 31

### Fiduciary Funds Managed by AGICOA (EURO)

Summary fiduciary funds balance sheet	2013	2012
<b>Current Fiduciary Assets</b>		
Cash and term-deposits	173,620,572	157,945,314
AGICOA current account receivable	-	363,244
Other assets	2,172,831	3,681,010
	<b>175,793,403</b>	<b>161,989,568</b>
<b>Non-Current Fiduciary Assets</b>		
Investment property	5,183,250	5,183,250
	<b>5,183,250</b>	<b>5,183,250</b>
<b>Total Fiduciary Assets</b>	<b>180,976,653</b>	<b>167,172,818</b>
<b>Fiduciary Liabilities, Reserves and Provisions</b>		
<b>Short-Term Fiduciary Liabilities</b>		
Payable to rightsholders	6,809,481	10,547,878
AGICOA current account payable	79,144	0
Payables of national partner organizations	370,062	229,655
Fiduciary funds put into distribution pending allocation to rightsholders	69,980,651	58,801,759
Fiduciary funds to be put into distribution	84,028,633	73,682,926
	<b>161,267,971</b>	<b>143,262,218</b>
<b>Fiduciary Reserves and Provisions</b>	<b>19,708,682</b>	<b>23,910,600</b>
<b>Total Fiduciary Liabilities, Reserves and Provisions</b>	<b>180,976,653</b>	<b>167,172,818</b>

Summary fiduciary funds statement of income	2013	2012
<b>Revenues</b>		
Royalties earned	93,651,670	104,267,984
Financial and other revenues	926,091	2,177,659
<b>Total Revenues</b>	<b>94,577,761</b>	<b>106,445,643</b>
<b>Distributions and other Charges</b>		
Fiduciary funds put into distribution	(79,372,246)	(87,938,364)
AGICOA fees	(6,718,874)	(5,691,235)
Bank charges	(29,550)	(25,656)
Foreign currency translation adjustment	(860,657)	394,979
<b>Total Distributions and other Charges</b>	<b>(86,981,327)</b>	<b>(93,260,276)</b>
<b>Net Surplus prior to Allocations</b>	<b>7,596,434</b>	<b>13,185,367</b>
<b>Total Allocations</b>	<b>(7,596,434)</b>	<b>(13,185,367)</b>
<b>Net Surplus after Allocations</b>	<b>0</b>	<b>0</b>

The fiduciary funds financial statements exclude the fiduciary funds managed by AGICOA Urheberrechtsschutz GmbH (Germany), ANGOA (France) and EGEDA (Spain).

## Financial Statements of AGICOA (CHF)

Summary balance sheet	2013	2012
<b>Assets</b>		
<b>Current Assets</b>		
Cash and term-deposits	68,559	29,480
Receivables from the fiduciary funds	97,001	0
Other receivables and prepaid expenses	829,410	1,108,518
	<b>994,970</b>	<b>1,137,998</b>
<b>Non-Current Assets</b>		
Deposits and guarantees	558,473	577,410
Investments in affiliates	99,828	99,828
Receivables ISAN International Agency	2,605,054	2,623,054
Tangible fixed assets	239,989	240,687
	<b>3,503,344</b>	<b>3,540,979</b>
<b>Total Assets</b>	<b>4,498,314</b>	<b>4,678,977</b>
<b>Liabilities</b>		
<b>Current Liabilities</b>		
Accounts payable	955,474	656,586
Payable to the fiduciary funds	0	438,555
Accrued and other short term liabilities	937,786	960,782
	<b>1,893,260</b>	<b>2,055,923</b>
<b>Non-Current Liabilities</b>		
Provision ISAN International Agency	2,605,054	2,623,054
	<b>2,605,054</b>	<b>2,623,054</b>
<b>Total Liabilities</b>	<b>4,498,314</b>	<b>4,678,977</b>

Summary statement of income	2013	2012
<b>Operating Expenses</b>		
Salaries and social charges	4,965,582	4,857,493
Professional fees and administrative expenses	1,952,400	2,295,754
Depreciation	148,932	190,780
Costs incurred by partner organizations	3,353,026	3,497,325
Special projects	236,996	54,487
<b>Total Operating Expenses</b>	<b>10,656,936</b>	<b>10,895,839</b>
<b>Other Expenses</b>		
Interest and bank charges, net	5,181	4,286
Taxes	82,619	35,026
Exchange (gains)/losses, net	29,778	(8,001)
<b>Total other Expenses</b>	<b>117,578</b>	<b>31,311</b>
<b>Miscellaneous Income</b>		
External services	(281,677)	(267,470)
Rent office space	(112,200)	(90,173)
Other income	(36,626)	(32,850)
<b>Total Miscellaneous Income</b>	<b>(430,503)</b>	<b>(390,493)</b>
<b>Total Net Expenses</b>	<b>10,344,011</b>	<b>10,536,657</b>
<b>Funding of Net Expenses</b>		
Operational budget	11,613,463	12,578,028
Allocation from fiduciary provision	152,372	0
Operational budget (surplus)/deficit	(1,421,824)	(2,041,371)
<b>Total Funding of Net Expenses</b>	<b>10,344,011</b>	<b>10,536,657</b>



## AUDITOR'S REPORT



Report of the auditor on the summary financial statements  
to the Members of AGICOA  
Geneva

The accompanying summary financial statements, which comprise the summary balance sheet as at December 31, 2013, the summary statement of income for the year then ended, and related notes, are derived from the audited financial statements of AGICOA for the year ended December 31, 2013. We expressed an unmodified audit opinion on those financial statements in our report dated April 23, 2014.

The summary financial statements do not contain all the disclosures required by Swiss law and the association's By-Laws. Reading the summary financial statements, therefore, is not a substitute for reading the audited financial statements of AGICOA.

### **Management's Responsibility for the Summary Financial Statements**

Management is responsible for the preparation of a summary of the audited financial statements in accordance with Swiss law and the association's By-Laws.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on the summary financial statements based on our procedures, which were conducted in accordance with International Standard on Auditing (ISA) 810, Engagements to Report on Summary Financial Statements.

### **Opinion**

In our opinion, the summary financial statements derived from the audited financial statements of AGICOA for the year ended December 31, 2013 are consistent, in all material respects, with those financial statements, in accordance with Swiss law and the association's By-Laws.

PricewaterhouseCoopers SA

A handwritten signature in black ink, appearing to read 'M. Foley'.

MICHAEL FOLEY  
AUDIT EXPERT

A handwritten signature in black ink, appearing to read 'Julien Ménoret'.

JULIEN MÉNORET  
AUDIT EXPERT

Geneva, 23 April 2014

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 **AGICOA**  
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