

Transition Facility – Twinning Project PL04-IB-OT-03

„Strengthening the protection of intellectual and industrial property rights”



The implementation of the Directive on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission in certain Member States of the European Union

Introduction

This survey has been conducted within a twinning project of the European Union entitled “Strengthening Intellectual Property Rights in Poland” in order to find out whether there are any European best practices in the field of collective management of rights for cable and satellite broadcasting. It is the first comprehensive overview undertaken on this topic.

A questionnaire had been sent out to numerous collecting societies in all countries of the European Union that have such societies; additionally, we have also received answers from Switzerland.

Unfortunately, it was not possible to gather information on the situation in the United Kingdom and in Slovenia. Representatives from Greece told us that there is no cable retransmission there, thus being unable to answer the questions. Italy also stated that there is no cable broadcasting so far, but provided us with some answers to our questions. Therefore, answers from 34 collecting societies of 22 European countries figure in this paper.

The questions covered the following subjects:

1. The distribution of remuneration among certain groups of right holders and the way these quotas had been agreed upon.
2. Percentages of distribution in case several collecting societies for the same field exist.
3. Impact and implementation of Art. 9.2. of the Cable and Satellite Directive 93/83.
4. Exception for broadcasters mentioned in Art. 10 of the aforementioned directive.
5. Mediation / arbitration etc. procedures.
6. Consequences of “must carry clauses”.
7. Distribution among the “group of four” – right holders mentioned in Art. 2.2. of the Term of Protection Directive.

A summary of the answers is followed by the original questions and all individual answers received from the collecting societies.

Also, a list of all collecting societies mentioned in the survey is included in this paper.

An example of a distribution scheme provided to us by the German VG Bild-Kunst is attached, as well as some legal information regarding the mediation procedure in copyright issues received from Hungary.

We would like to thank our colleagues from the Polish Ministry of Culture, especially Ms. Magda Chudzikiewicz and Mr. Dariusz Urbanski, for their relentless support and their commitment to this endeavour.

Walter Dillenz¹ and Lothar Alexander Müller²

Warsaw, September 2007

¹ Professor of law, University of Vienna

² Doctor of law

Content	Page
Text of the questionnaire	4
Short analysis of the answers	5
Questions and answers in detail	9-61
Question 1 (distribution of remuneration)	9
Question 2 (distribution in case several collecting societies exist)	24
Question 3 (Art. 9.2. of the Cable and Satellite Directive 93/83)	30
Question 4 (Exception for broadcasters)	40
Question 5 (Mediation / arbitration etc. procedures)	45
Question 6 (Consequences of “must carry clauses”)	51
Question 7 (Distribution among the “group of four”)	57
Annex 1: List of contributing collection societies	62
Annex 2: Mediation procedure in copyright issues in Hungary	64
Annex 3: Example of a distribution scheme (VG BILD-KUNST)	66

Text of the questionnaire

1.) What are the percentages which each group of right holders (e.g. musical authors, literary authors, performers, broadcasters, film producers, film authors) receive from cable remuneration? How were these percentages reached (e.g. negotiations, arbitration, court decisions)? Additional remarks on remuneration rights etc. for cable broadcasting.

2.) If there is more than one collecting organisation in the same field (e.g. film producers, musical authors) what is the percentage among them?

3.) Article 9.2 of the Cable Directive provides for inclusion of and payment for right holders who are not members of a particular collecting society ("outsiders").

a) What practical impact has this provision had (e.g. relieve of the burden of proof of actual membership, level playing field for societies with different degrees of membership)?

b) How was the following provision of Art. 9.2 put into practice, in particular how long is the period mentioned here in your country and does the outsider have to join a collecting society before he/she receives payment?

"A right holder referred to in this paragraph shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is deemed to be mandated to manage his rights as the right holders who have mandated that collecting society and he shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the cable retransmission which includes his work or other protected subject matter."

4.) Article 10 provides for an exception for broadcasters. They do not have to join collecting societies for their claims vis-à-vis cable operators. Are these claims in your country actually made individually by each broadcaster, or do they use collecting organisations of their own?

5.) Article 11 provides that in case no agreement is reached "either party may call upon the assistance of one or more mediators." Does such a mediator exist in your country as an institution or is it appointed ad hoc? Has there ever been a case of such mediation?

6.) In many national media laws there are provisions which oblige broadcasters or cable operators to carry certain programmes of national interest ("must carry clauses"). Does this have any impact on the payments for copyright (exemptions or reductions) and do the right holders whose works are used in these programmes receive the same remuneration as the right holders in other programmes?

7.) Article 2.2. of the Term of Protections Directive mentions a group of four (principal director, author of the screenplay, author of the dialogue and composer of the music which was specifically created for the film) to determine the term of protection. What is the distribution of cable remuneration within this group?

Short analysis of the answers

Questions 1, 7: Since the answers to those questions turned out to be often covering both questions in one answer, we decided to analyse them jointly.

The exact distribution schemes are more often than not too elaborate to cite them here; please consult the answer section for details.

Below, therefore, figures a general overview on which societies receive cable remuneration (for what) and how the percentages had been agreed upon.

In the vast majority of countries (13 out of 22), there is a General Distribution Scheme of some kind (in Bulgaria, this applies only for foreign films – there is no remuneration for the retransmission of national programs; in the Netherlands, this applies only partially). In five countries (Belgium, Czech Republic, Poland, Slovakia and Spain), each collecting society has to negotiate individually with the operators. No answers available on that for Finland, Lithuania and Portugal; in Greece, there is no cable transmission so far.

In detail:

Austria: Nine collecting societies receive shares of the cable remuneration, which had been negotiated and arbitrated.

Belgium: Since 1996, no global agreement between cable operators and collecting societies exists any longer; each party has to negotiate separately with the operators.

Bulgaria: Collection of remuneration for cable retransmission is done only for foreign TV programs through a General Licensing Agreement, dating from 1999. Cable operators refuse to pay for national programs.

Czech Republic: Five collecting societies have individual agreements with cable providers; tariffs are based on the quantity of end-users.

Denmark: An extended collective license provides for the remuneration shares among the shareholders. The quotas have been reached by arbitration in a court.

Estonia: A General Licensing Agreement, reached through negotiations, regulates the shares of the right holders.

Finland: Kopiosto provided us with a detailed distribution scheme. No answer as to other societies involved or how the shares have been reached.

France: Annual negotiations among the authors' societies result in a yearly changing distribution scheme for the 3.75% of the cable operators' revenues they receive (for authors' rights only). In case more than one author exists in the same category, they have to find an agreement between themselves.

Germany: An elaborated general distribution scheme existed between the numerous collecting societies, which had been reached by negotiation. Currently, negotiations for a new agreement are in a deadlock. Arbitration is most likely.

Greece: There is no cable TV yet in Greece.

Hungary: A general distribution scheme had been reached originally by the right holders, but is now included in the Copyright Law.

Italy: Although no commercial cable retransmission exists so far, there are negotiations under way; the IP law stipulates for the exclusive exercise of the remuneration right through SIAE.

Latvia: A General Licensing Agreement, reached through negotiations, provides for a distribution scheme.

Lithuania: LATGA collects 1.9% of the income from subscription fees, which are then distributed to the right holders according to a scheme negotiated and approved by the annual conference of authors.

Netherlands: Cable operators have individual agreements with each broadcaster and a collective agreement with Agicoa/ Sekam and Cisac organisations.

Poland: There is no general licensing agreement. Every society acts only on behalf of its right holders. ZAPA e.g. has a contract with the Association of Polish Filmmakers, from which they receive a lump sum of 2.8% of their net incomes.

Portugal: Right holders have two sources of cable remuneration: Public communication and cable (subscribers)–collection. There exists an elaborate scheme of distribution.

Romania: The Copyright and Neighbouring Right Law establishes a 2%-fee for all right holders. The shares have to be negotiated every year.

Slovakia: There exists no joint collection for all categories. For authors, collection is exercised by SOZA, remuneration then distributed to members of SOZA and LITA. Performers and producers are represented by SLOVGRAM; the share has to be negotiated by the stakeholders.

Spain: The law provides for collection through AISGE and AIE. Since 2006, each society has to negotiate its remuneration individually.

Sweden: The shares are the result of annual negotiations between the organisations representing each category.

Switzerland: The collecting societies have a common distribution scheme; only one society exists for each group of right holders.

Question 2: Twelve countries out of the 22 responding to this question have only one collecting society for a given field (either de facto or through a legal monopoly). These are: Austria, Bulgaria, Denmark, Estonia, Finland, Hungary, Italy (as soon as cable transmission starts), Latvia, Lithuania, the Netherlands, Portugal, and Romania.

The following nine countries have more than one collecting society at least for some field of rights management: Belgium, Czech Republic, France, Germany, Poland, Slovakia, Spain, Sweden and Switzerland.

Two countries (Italy and Greece) have no cable TV yet; Greece has also no regulation foreseen for the future.

Question 3: Out of the 18 countries answering to this question, the majority stated that the article did not have a relevant impact on the legal situation. Mostly, because the requested status already existed in these countries before.

Four countries (Latvia, Poland, Slovenia and Spain), though, cited the advantage for the collecting societies of the relief of burden of proof of membership, one country (Portugal) mentioned favourably that the article made the collection compulsory, one (Belgium) mentioned an increase of security for the cable broadcasters, and one country (Austria) highlighted the level playing field between smaller and bigger collecting societies.

DAMA from Spain held that the article in question requires the right holder to join a collecting society in order to receive payment.

As to the time limit wherein these outsiders can claim their remuneration:

In 15 countries, this time frame is three years: Belgium, Czech Republic, Austria, Denmark, Estonia, Finland, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Portugal, Romania and Slovakia.

In Sweden, this time limit is legally also three years, but for practical reasons, they allow claims to be made within 5 years.

Switzerland foresees a limit of five years; in France and Poland, it is ten years and in Spain 15 years.

No precise answer to that question was given by Bulgaria (refers to “the common provision in the civil law”).

Regarding the question whether an outsider has to join a collecting society, 17 countries answered negatively (Belgium, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Sweden and Switzerland); only in Austria and Germany, there is clearly an obligation to conclude a contract of commission before being able to receive the remuneration. In Spain and Romania, there seem to be different practices with different collecting societies.

Question 4: Collecting societies of eleven countries stated that they would have to make their claims vis-à-vis the cable operators individually. This is the case in Belgium, Czech Republic, France, Hungary, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia, and Spain.

In Estonia, Portugal and Switzerland, they are using existing societies, in Austria and Sweden societies of their own. In Bulgaria, most broadcasters claim individually, but there is also a collecting society for broadcasters; in Germany and Denmark, most claims jointly through their own society, but there is also the possibility to claim individually.

Question 5: As to the question of conflict solution procedures:

The laws of Austria, Belgium, Czech Republic, Estonia, Poland and Sweden foresee the possibility of ad hoc arbitration/ mediation.

In Denmark, France, Germany, Hungary, Lithuania, Portugal, Spain and Switzerland, mediation/ arbitration is provided for by a permanent body.

Finland, the Netherlands, Romania and Italy did not specify whether this is an ad hoc or a permanent body.

In Bulgaria, Latvia and Slovakia, law foresees no such institution.

It has to be mentioned, though, that only in four countries (Austria, Belgium, Czech Republic and Germany) successful mediation/ arbitration has been reported – the last such case was decided upon on 26 July 2007 by the “Urheberrechtssenat” in Austria. In most of the countries, no such cases of mediation have occurred so far.

Question 6: The overwhelming majority of the countries (16 out of 21) do not discriminate against contents carried by must carry clauses: The right holder receives the same remuneration.

Only Finland seems to be the clear exception to that rule.

In four countries, the question has not been solved until now. In some of them, it is pending in court. Cable operators refuse to pay in Bulgaria for content in must carry programs. There is also a dispute regarding the question whether there is remuneration due for the retransmission of national programs in the Netherlands; a similar problem exists in Romania. The issue has not been solved so far in Poland, either.

Questions and answers in detail

1.) What are the percentages which each group of right holders (e.g. musical authors, literary authors, performers, broadcasters, film producers, film authors) receive from cable remuneration? How were these percentages reached (e.g. negotiations, arbitration, court decisions)? Additional remarks on remuneration rights etc. for cable broadcasting.

Austria:

VDFS

Literar-Mechana	(literary rights)	11,11%
LVG	(literary non dramatic rights)	1,87%
VDFS	(film authors and actors)	1,21%
VBK	(graphic and plastic art)	1,30%
VAM*	(film producers)	15,07%
LSG	(musicians and phonograph producers)	5,07%
ÖSTIG	(musicians)	1,14%
AKM	(authors, composers and music publishers)	28,02%
VGR	(broadcasters)	35,21%

* The share of VAM contains an additional share for VDFS that has been determined on 26 July 2007 by an arbitration board ("Urheberrechtssenat") for the period of 2001-2008 as follows:

2001	17,82%
2002	20,55%
2003	23,75%
2004	27,32%
2005	30,36%
2006	30,36%
2007	30,69%
2008	30,69%

All percentages were reached through negotiations and arbitration.

Belgium:

SABAM

Since 1996, there is no longer a global agreement between the cable operators and a collective of rights holders. Each party negotiates separately with the operators. It is not possible to give percentages.

Bulgaria:

Filmautor

The collection of remunerations for cable retransmission in Bulgaria is very problematic. The Bulgarian societies are collecting only for the retransmission of 37 foreign TV programs in the frame of the General Licensing Agreement (GLA), signed in 1999. All other programs that are retransmitted in Bulgaria are out of the scope of this agreement and the operators refuse to pay for them.

According to the agreement, the collected remunerations are distributed as follows:

- 35 % - AGICOA
- 43% - broadcasters
- 22% for the copyright collecting societies, from which 58% are for musical authors, 30% for the authors of audiovisual work and 4% for the authors of dramatic works.

Czech Republic:

Dilia

There are five CMOs in the Czech Republic, and every CMO acts independently in case of collecting the royalties for cable retransmission.

The law does not specify either the tariffs or the percentages. Each CMO has its own tariffs, which are reached on the basis of agreements with individual cable television providers or eventually with their association. Tariffs of all CMOs in the Czech Republic result from the quantity of end-users, and are set out as a fee for end-user's line. Currently only three CMOs have their tariffs established, which are OSA (composers, CZK 1,20 per user's line), INTERGRAM (performing artists and producers, CZK 1,15 per user's line) and Dilia (directors and scriptwriters, CZK 0,43 per user's line). The other two (OOA-S and OAZA) are negotiating their tariffs with cable TV providers.

As for the authors represented by Dilia (in this domain mainly scriptwriters and directors), the rate between them is stated by Dilia's Distribution Rules, which are approved by the members of Dilia's General Assembly. The amount for individual authors depends on the so-called "Value of Work" in points and the author's role in such work, i.e. director – 100 pts, scriptwriter – 90 pts.

INTERGRAM

National legislation protects performers for cable retransmission, and gives them both the exclusive right and the remuneration right.

Share:

Performers 50%

Producers 50%

(Share for authors: unknown)

Reached through negotiation amongst rightholders.

Denmark:

COPY-DAN

Broadcasters receive 36%, film producers 26%, composers 18% and the remaining group of authors and performing artists get 20%. The percentages were reached by arbitration.

Authors (except for composers) and performing artists are entitled to receive 20 per cent of the Danish cable remuneration according to a decision made by arbitration of court dated February 8th 1989. These 20% are distributed as follows:

<u>Authors' rights (except for composers) include:</u>	Per cent
Journalists' rights	1.86
Photographers' rights	2.24
Scientific rights	0.54
Writers' and Dramatists' rights	2.71
Directors / producers	1.60
Scenographers' rights	1.34
Pictorial Artists' rights*)	0.17
Animators' rights	0.13
Editors' rights	0.05
Performing artists' rights include:	
Actors' rights	8.00
Musicians and soloists' rights	0.99
Circus artists' rights	0.14
Theatrical technicians' rights	0.07
Conductors' rights	0.16
Total	20 per cent

*) Please note that cable remuneration to other countries regarding rights holders regrouped within the category of pictorial artists is distributed through COPY-DAN BILLEDKUNST.

Filmex:

Performers enjoy for cable retransmission the same rights as authors, producers and broadcasters by means of an extended collective license. The license is practiced as a remuneration right.

Shares:	
Broadcasters	36 %
Film producers	26 %
Musical authors	18 %
<i>Filmex (actors, dancers, etc.)</i>	8 %
Journalists	1,86 %
Photographers	2,24 %
Scientific authors	0,54 %
<i>Musical performers</i>	0,99 %
Writers/Playrights	2,71 %
Directors	1,60 %
Set designers	1,34 %
<i>Circus artists</i>	0,14 %
<i>Visual artists</i>	0,17 %
Animators	0,13 %
Film cutters	0,05 %

Conductors	0,16 %
<u>Theatre technicians</u>	<u>0,07 %</u>
	100 %.

The results were reached by arbitration by court.

Estonia:

EAÜ

There exists a General Licensing Agreement (GLA), reached through negotiations. Distribution is as follows:

Broadcasters 43%, AGICOA 35%, CISAC rights 22%.

Among CISAC rights: musical authors: 70%
 Works of visual arts and photographs: 7%
 Audiovisual works: 10%
 Grand and literary rights: 10%
 Reserve: 3%.

Finland:

Kopioisto

The cable retransmission remunerations are divided as follows:

Broadcasters: 37 % of the remunerations,
 producers: 26 % of the remunerations, and
 authors: 37 % of the remunerations.

The authors' share of the remunerations is again divided as follows:

Composer: 12%,
 screenplay/dialogue: 11,05%,
 director: 8,95%,
 cinematography/cameramen: 1,98%,
 others: 3,02%
 (shares are based on Kopioisto's distribution scheme).

France:

SACD

Cable operators pay to authors' societies (all repertoires included) 3,75% of their revenues (subscription fees, non-refundable working subsidies, advertising and other specific commercial activities) for the public communication right. This percentage was reached through negotiations.

First of all, it has to be made clear that the 3,75% represent the authors' share only. It is

difficult to give figures on the distribution of this 3,75% between the various repertoires, as this distribution does vary according to the actual use of each society's repertoire by the cable operators and by the broadcasters they are retransmitting. Hence, the distribution varies from one year to another and from one channel to another, and is the result of negotiations between the authors' societies.

On average, it is currently approx. 62% for the musical repertoire, 36% for the audiovisual repertoire and less than 2% for the visual arts.

Authors' collecting societies also collect royalties from the channels directly, for their cable retransmission: broadcasters pay to authors societies 1,25% of the remunerations they receive from the cable operator for the distribution of their program, for the reproduction right.

SCAM

SCAM, managing audiovisual and radio phonic documentary works, is not able to answer this question, since each category of right-owners negotiates (negotiation exclusively until now, no arbitration so far) for its own part.

SPEDIDAM

A general exclusive right for cable retransmission is granted to performers for any type of communication to the public of their fixed performances (article L 212-3 of Intellectual Property Code).

For commercial phonograms, if the cable retransmission of a given programme is simultaneous to a wireless broadcasting, the exclusive right is replaced by the equitable remuneration right (article L 214-1).

If subject to exclusive right, there is no sharing since the management of this right is not concentrated in the hands of one single society for all categories of rightholders. In case of an equitable remuneration right, the split is 50% for performers and 50% for producers.

This 50/50 sharing of equitable remuneration between performers and producers is stated by the law.

Germany:

VG BILD-KUNST

1. „Classical Collecting Societies“: 24%
2. Free Productions: 35%
3. Broadcasters EBU: 41%

Amongst those groups, the distribution is as follows:

- 1: „Classical Collecting Societies“:
 - 1.1.: Music: 67.72% (GEMA)
 - 1.2.: Text: 21.28% (VG Wort)
 - 1.3.: Performing artists: 9% (GVL)
 - 1.4.: Art/ Photo: 2%

2. Free Productions:
 2.1.: 5.5% Authors (VG BILD-KUNST)
 2.2.: 4.8% Producers (VFF)
 2.3.: 0.12% Producers (GÜFA)
 2.4.: 67.67% Producers (AGICOA)
 2.5.: 21.91% Producers (Film-collecting societies)

Figures date from 2006. The percentages were reached by negotiations. Agreement has now expired, no solution reached so far. Arbitration most likely. For more details and earlier years, please see attached excel-sheet.

Greece:

AEPI

According to AEPI, there is no cable TV in Greece; thus, the questionnaire is not applicable to Greece.

Hungary:

EJI

All type of performances broadcast in the program of a broadcasting organisation give right to remuneration, exercisable through collective administration.

Shares: film producers	13%
motion picture authors	19%
visual artists (other than motion picture authors)	3%
film writers	14%
composers and lyrics writers	15,5%
performing artists	26,5%
phonogram producers	9%
	<hr/>
	100%

This distribution was reached through negotiation amongst rightholders.

FILMJUS

The percentages between the right holders are as follows, according to Article 28, paragraph (4) of the Act No. LXXVI of 1999 on copyright: “The collected remuneration, with the expenditures deducted from them, shall be distributed to the right holders, and – unless otherwise agreed between the interested organizations performing collective administration of rights before March 31 of every year, – 13% shall be due to film producers, 19% to cinematographic creators of movie pictures, 3% to creators of works of fine arts, designs and authors of artistic photographs, 14% to script writers, 15.5% to composers and lyricists, 26.5% to performers, and 9% to producers of sound recordings.”

In the case of remuneration for the cable retransmission, the frame agreement concluded between Artisjus and the alliances representing the cable organizations shall apply. This frame

agreement has a particular condition, i.e.: the cable organizations are obliged to put a fund at disposal in the case one of its members did not pay the remuneration in time.

The origin of these percentages is: originally Artisjus determined them as the sole collecting society. When the other collecting societies were founded, the percentages were negotiated between them.

Italy:

IMAIE

There is only experimental cable retransmission so far in Italy; negotiations just started. The first such agreement, yet still in a draft version, between IMAIE and RAI, provides for a lump sum.

But: Art. 180 bis of the IP law stipulates: “The exclusive right to authorize cable transmission is exercised by right holders of authors’ rights and by the right holders of related holders of related rights exclusively through SIAE. For right holders of authors’ rights SIAE acts on the basis of a specific agreement to sign with IMAIE and, if necessary, with other collecting societies purposely established to manage, as their only and main activity, the other related rights”.

SIAE

So far, there is no cable operator in Italy distributing TV or radio programs from other member States of the European Union.

Consequently at the moment the percentages, which the various groups of right holders should receive as cable remuneration, have not yet been established.

Latvia:

AKKA-LAA

According to the General Licensing Agreement (GLA), the percentages are 35% for AGICOA, 43% for EBU TV channels and 22% for CISAC rights. These percentages were reached by negotiations.

The 22% CISAC rights are divided as follows:

- 1) 70% goes to the authors of musical works;
- 2) 22% goes to the authors of literary works;
- 3) 3% goes to the authors of visual works;
- 4) 2% is for authors of audiovisual works;
- 5) 3% is kept as a reserve for unidentified works.

Lithuania:

LATGA-A

For cable retransmission, LATGA-A collects 1,9 % of the income from the subscription fee (without VAT), but no less than 100 Lt per month.

Then this percentage is distributed according to the Distribution Regulations of LATGA-A: "The royalties for cable retransmission shall be distributed according to the retransmitted programmes where 71,5 per cent is distributed to authors of music, 26,5 per cent – to authors of literature and audiovisual works, 2 per cent – to authors of visual works. The respectful foreign associations according to the information they possess shall carry out the final distribution to foreign authors."

The tariffs are concluded by way of negotiation and approved by the Annual Conference of Authors.

Netherlands:

LIRA

The Netherlands used to have an agreement with cable operators, which provided for an authorisation for all authors rights. Three groups of rights owners participated, with the following shares: Broadcasters 44,5%, Agicoa/Sekam 33,5% and Cisac 22%.

Since a few years, cable operators have an agreement with the individual broadcasters and a collective agreement with Agicoa/Sekam and Cisac organisations. The last two have maintained their relative sharing.

The Cisac shares are: Music 70%, literary/audiovisual authors 22%, and visual material 5%. General reservation for claims 3%. If no claim is received, that money will be redistributed.

Poland:

ZAiKS

The percentage of distribution shares among each group of rights holders has not been established. Each of the collective management organizations collects on behalf of the groups it represents. The efforts aiming to reach an agreement in another field in order to collect applying one tariff met with opposition from the users and accusation of price fixing.

As of January 2005, ZAiKS applies fixed fees as remuneration instead of percentages.

ZAPA

Polish Law on Copyright and Neighbouring Rights states that the producer of an audiovisual work is presumed to have acquired, by virtue of contract, the economic rights in the works commissioned by him or included in the audiovisual work, but exclusively in connection with the audiovisual exploitation of the said work. Moreover, according to Article 87 the

cooperation contract for the making of an audiovisual work, concluded between the performer and the producer of the audiovisual work, shall constitute transfer to the latter of the right to use the performance in the audiovisual work in all areas of exploitation known at the time of the conclusion of the contract, unless otherwise provided. In consequence, producers, as a rule, are the rightholders of economic rights in the audiovisual works, economic rights in performances and rights in videograms.

a) According to Article 211 cable operators may distribute works broadcasted by other radio and television organizations only by virtue of a contract concluded through the appropriate organization for the collective administration of the rights of authors or neighbouring rights (collecting society which manages rights of certain category).

b) According to Article 70 Paragraph 2, following types of authors of audiovisual works are entitled to extra remuneration for exploitation on the area of broadcasting on television or transmission through other means of communication to the public: i) the principal director; ii) the director of photography; iii) the screenwriters; iv) authors of other literary and musical works commissioned by producer or included in the audiovisual work (i.e. created especially for audiovisual work or pre-existing work). Article 70 Paragraph 2 also grants extra remuneration for performers of audiovisual works.

Stowarzyszenie Filmowców Polskich (The Association of Polish Filmmakers) with its special unit - The Union of Audiovisual Authors and Producers (ZAPA) - the organization of collective management, is the only collecting society in Poland which exercises producer's rights to grant or refuse authorization to a cable operator for a cable retransmission and to collect remuneration in exchange for the use of the audiovisual work, as referred to in Article 211. SFP – ZAPA also executes the author's rights for extra remuneration for exploitation (Art. 70 Par. 2) by collecting royalties for the principal directors, the directors of photography, most of authors of screenplay and authors of dialogue and set decorators

The Association of Polish Filmmakers (SFP) by virtue of contracts collects from cable operators **lump sum of 2,8 % of their incomes net (VAT excluded) resulting from providing cable services**. The above-mentioned rate was reached through negotiations, which was carried out by SFP and the association of cable operators – Ogólnopolska Izba Gospodarcza Komunikacji Kablowej (PIKE). Corresponding memorandum of agreement was concluded on 1st October 2004.

The gathered sum of money is distributed by SFP to producers (with the exception of producers who are also broadcasters) and authors in proportion 75% for producers and 25% for authors. Generally speaking, the author's share is distributed as follows:

I) regarding film:

47,6 % for principal director,
32 % for authors of screenplay and authors of dialogue,
13,6 % for director of photography
6,8 % for set decorator;

II) regarding sitcom/soap opera:

35% for principal director,
50 % for authors of screenplay and authors of dialogue,
10 % for director of photography
5 % for set decorator;

Stowarzyszenie Autorów ZAiKS is a collecting society, which is entitled to gather royalties for screenwriters and authors of other literary and musical works commissioned by producer or included in the audiovisual work. As far as SFP is concerned remuneration for composers, screenwriters and authors of other literary works collected by Stowarzyszenie Autorów ZAiKS amounts to 3,5 %. The level of the rate mentioned was set independently by ZAiKS and confirmed in court decisions.

SFP does not have information about percentages which each group of rightholders represented by Stowarzyszenie Autorów ZAiKS receive from the above-mentioned lump sum.

Portugal:

SPA

Cable remuneration arises from 2 sources:

1. Public communication of cable/satellite

- 80% is distributed to the general channels. These 80% are proportionally distributed between the Musical area and the Grand Rights area. This proportion is set by the proportional value between TV payments and Grand Rights payments.

- 20% is distributed to the cable channels (mostly foreign). From these 20%, 18% are for the channels and 2% are for eventual claims of non-identified works.

2. Cable (subscribers) - collection made to the cable operators

- Neighbouring rights 73,34%

- 66,67% TV bodies

- 6,67% Portuguese Phonographic Associations

- Author's Rights 26,66%

- 21,33% is distributed to the general channels

- 5,33% is distributed to the cable channels. From these 5,33%, 4,80% are for the channels and 0,53% are for eventual claims of non identified works.

From this cable/satellite and neighbouring rights scheme, the following percentages extrapolation is made:

Musical-Literary authors - 46,55%

Performers/Phonographic Associations - 3,33%

TV bodies - 33,34%

Audio-visual (Grand Rights) - 16,78%.

Romania:

CREDIDAM

The Romanian legislation protects performers' rights for cable retransmission. The type of the right is an exclusive one for audio and audiovisual.

The shares are distributed as follows:

Audio:

Performers and Producers:

2000 = 0.4% (idem for phonograms producers) of cable operators' retransmission revenues

2001 = 0.5% (idem for phonograms producers)

2002 = 0.35 % (idem for phonograms producers)

2003 = 0.4% (idem for phonograms producers)

2004 = 0.45 % (idem for phonograms producers)

01.01.2005 - 30.04.2005= 0.45% (idem for phonograms producers)

01.05.2005 = 0.085%. Fixed by arbitrage (0.125% for Phonograms Producers).

2006 = tariffs still under discussion (see remarks above).

Composers:

1999 = 1, 1%

2000 – 30.04.2005 = 1, 2%

01.05.2005 until now = 1, 5% for all authors.

Audiovisual:

Performers:

2002 = 1, 1%

2003 = 1, 2%

01.08.2004 – 01.01.2006 = 0,165%. The Law no.285/2004 provisions excluded performers' rights in the audiovisual field.

2006 = tariffs still under discussion (see remarks above). In practice: 0 so far.

Producers:

01.05.2005 = 0,125%

Film directors:

2003 = 3%;

30.04.2005 until now = 1, 5% for all authors.

This distribution was reached through negotiation amongst rightholders.

UCMR-ADA

The share is 2% for all the categories of rights. The Romanian Copyright and Neighbouring Right Law established this percentage, and nowadays we are trying to renegotiate it. This will be done by arbitration.

Slovakia:

LITA

Joint collection of cable retransmission remuneration for all rights holders' categories does not exist in Slovakia. Distribution following the joint collection for authors, which is carried out by SOZA (collective management society of authors of musical works) both for the authors represented by LITA and SOZA, is as follows:

The collection is divided 30% to audio (10% for LITA and 90% for SOZA) and 70% to video (66.7% for LITA and 33.3% for SOZA). The shares were negotiated.

SLOVGRAM

There exists a remuneration right for cable retransmission.

Performers receive 50% as well as producers. The share is not fixed by law; this is let to negotiations between the stakeholders concerned.

Spain:

AISGE

The Spanish LPI provided to the performer an exclusive and remuneration right for cable retransmission in the art. 108.1 and art 20.4, administered by AISGE (actors, dubbing actors, dancers, and stage managers) and AIE (singers and musicians).

The amount collected for the exercise of remuneration right in 2005: 1.435.747,92 €.

Before the amendment of the Spanish LPI the remuneration was shared in equal part between producers and performers. Then the Law 23/2006, of July 7th, incorporating into Spanish legislation the Directive 2001/29, has been passed by the Parliament. Now, each society acts individually, fixing, collecting and administrating their remunerations separately.

DAMA

In Spain, there is no percentage system; DAMA for example uses a table of prices, with which remuneration is collected work by work, so the author can receive exactly what her/his work produce.

SGAE

SGAE only represents the repertoire of its members. In Spain there are other Societies that represent other right holders.

Sweden:

COPYSWEDE

The distribution of collected remunerations takes place in several stages. According to a splitting agreement, COPYSWEDE distributes 35,5% of the total remuneration to UBOS (broadcasters), 29% to the Swedish film producer organization FRF and keeps 35,5% for distribution among authors, performers and phonogram producers. Each category then subdivides their share of the remuneration according to its own distribution rules on the basis of quantifications of the actual retransmission, i.e. COPYSWEDE is not involved with the further distribution of the revenues of UBOS and FRF.

COPYSWEDE 's revenue is divided with regards to channels for which the revenue has been collected. According to a network of reciprocal agreements, payments to authors and performers participating in foreign channels retransmitted in Sweden are made via sister societies in the countries concerned. For some categories of right holders, the distribution of revenues allocated to foreign channels is made via COPYSWEDE's member organizations.

According to reciprocal agreements, COPYSWEDE receives payments from foreign collecting societies for retransmission of Swedish channels abroad. This remuneration, together with the remains of COPYSWEDE's own revenue, is divided among the Swedish channels and thereafter shared among various right holder categories, including foreign right holders participating in Swedish channels.

The share for each author/performer category is, a result of yearly negotiations between organizations representing each category and can vary for year to year. The variations depend on actual program content in each channel for the particular year.

Some examples:

The percentages that each group of right holders, exclusive broadcaster and film producers – see above, received for the channels *SVT 1 & 2* during the retransmission year 2004 were:

Musicians 10,56 %
Artists 5,37 %
Singers 0,66 %
Actors 12,29 %
Hosts in TV-shows 1,47 %
Directors 6,44 %
Writers 20,19 %
Visual authors/ still photographers 4,99 %
STIM 35,44 %
Phonograms (performers and producers) 2,61 %

The percentages that each group of right holders, exclusive broadcaster and film producers, received for the channel *SVT Europa* during the retransmission year 2004 were:

Musicians 12,27 %
Artists 6,28 %
Singers 0,74 %
Actors 14,53 %

Hosts in TV-shows 1,64 %
Directors 5,74 %
Writers 21,53 %
Visual authors/ still photographers 5,10 %
STIM 29,00 %
Phonograms (performers and producers) 3,17 %

The percentages that each group of right holders, exclusive broadcaster and film producers, received for the channel *TV 4* during the retransmission year 2004 were:

Musicians 6,97 %
Artists 2,59 %
Singers 0,01 %
Actors 8,99 %
Hosts in TV-shows 0,12 %
Directors 8,05 %
Writers 15,27 %
Visual authors/ still photographers 1,44 %
STIM 55,35 %
Phonograms (performers and producers) 1,21 %

After the revenue for Swedish channels has been apportioned to various categories of author and performers, the respective amounts are distributed as individual payments, either via the member organizations (e.g. STIM; STIM is the Swedish Performing Rights Society which protects the interests of authors and publishers of music in Sweden) or direct from COPYSWEDE. Remuneration allocated for foreign programmes in the Swedish channels are separated and distributed to foreign organisations for further distribution to the authors and performers.

COPYSWEDE co-ordinates all relevant right holder categories in respect of a large, but not complete, number of TV and radio channels on the Swedish retransmission market. These channels, the COPYSWEDE repertoire, come from Sweden, the Nordic countries, Continental Europe and the Middle East and are foremost public service or semi-public service channels, although there is a number of commercial channels as well.

The retransmitter is offered a global license comprising of all relevant copyrights including the broadcasters and pays according to a set global tariff.

The distribution of collected remunerations takes place in several stages. On the top there is an agreed split between the main categories; broadcasters, film producers and authors/performers. Each category then sub-divides according to its own distribution rules on the basis of quantifications of the actual retransmission.

Foreign right holders are entitled to shares in this revenue on equal footing as nationals. The authors and performers total share is divided by channel according to actual retransmission and payments to the foreign authors and performers are primarily made via sister collecting societies in the countries concerned.

The Swedish authors/performers share is divided by COPYSWEDE among the various right holder categories according to rules agreed upon by all the relevant groups. After the revenue has been apportioned to the various categories of author and performer, the respective

amounts are calculated according to the weight of each contribution and distributed as individual payments directly from COPYSWEDE or in some instances via a member organization.

Switzerland:

SUISSIMAGE

Overview GT 1: Cable retransmission

(1.1.2007 – 31.12.2011)

Revenues basic use Nr. 4.1 / Radio + TV) *

- Share for first transmission (Nr. 2.3 GT1):

- SUISA 90%
- SWISSPERFORM 10%

$\frac{2}{208}$

- Share retransmission (Nr.2.1 GT1) :

$\frac{206}{208}$

<i>Neighbouring rights</i>

25 %

SWISSPERFORM

<i>Copyrights</i>

75 %

- SUISA (non-theatrical music)

23 %

- SSA (theatrical/ musical dramatic works)

4,375 %

- ProLitteris (literature, photo, visual arts)

9,375 %

- SUISSIMAGE (audiovisual works)

63,25 %

* The distribution between Radio and TV is performed by the respective society internally.

2.) If there is more than one collecting organisation in the same field (e.g. film producers, musical authors) what is the percentage among them?

Austria:

VDFS

There is a legal monopoly for collecting societies in their field of collection, so no competing societies can exist.

Belgium:

SABAM

See question 1.

Bulgaria:

Filmautor

There is only one society.

Czech Republic:

Dilia

See question 1.

INTERGRAM

INTERGRAM collects all cable retransmission money for performers, audiovisual and phonogram producers. Music author's society OSA collects for all kinds of authors.

Denmark:

COPY-DAN

There is only one collecting society concerning retransmission. Kabel-TV collects on behalf of KODA (composers) the remuneration for commercial broadcasters, which have obtained all rights except composer's rights.

Through agreements of cooperation with the Broadcasters and the composers collecting society, KODA, Kabel-TV licenses all retransmission rights for radio and TV to approx. 7.000 Danish cable operators. Once a year cable operators report what channels they retransmit on December 31.

It is the business idea of COPY-DAN to swiftly meet the demands of the market and the key elements behind this idea is 1) that all rightholder groups are working together in Kabel-TV and 2) the extended collective license in the Danish Copyright Act.

Filmex

COPY-DAN Cable-TV (all right holders) and Filmex (actors, dancers, singers, choreographers) are responsible for the collection.

Estonia:

EAÜ

Not applicable.

Finland:

Kopiosto

In Finland, there is only one collecting society, which manages the rights of a certain right holder category.

France:

SACD

In France, authors and producers have negotiated separate agreements with cable-operators. Therefore, it is not possible to give a distribution key between authors and producers.

Authors' societies have negotiated joint agreements with cable-operators. The distribution key between the various categories of authors differ from one cable-operator to another and from one channel to another, according to the actual use of each society's repertoire by the said cable-operator and channel (for instance, it will be different in the case of a musical channel and in the case of a movie channel).

SCAM

Authors' societies (SACEM, SACD, SCAM, ADAGP) negotiate together with cable operators, and then split the global remuneration between them, following the effective exploitation of each repertoire they represent.

SPEDIDAM

SPEDIDAM manages collectively the exclusive rights of its 27 000 members with regard to secondary use of their recordings. For those retransmissions subject to equitable

remuneration, the society SPRE, representing performers and producers of phonograms, is collecting the corresponding remuneration.

Germany:

VG BILD-KUNST

See question 1 and attachment.

Hungary:

EJI

The collection of fees is administered by the collecting society of musical and literary authors (ARTISJUS) on behalf of all right-owners concerned. The fees thus collected are then transferred to the respective collecting society of the right-owner concerned (to EJI in case of performing artists).

FILMJUS

In Hungary, Artisjus, the Hungarian Bureau for the Protection of Authors Rights, is exclusively entitled to collect the royalties and remunerations due to the right holders. After the collection, it transmits the due amount to the collecting societies concerned.

Italy:

IMAIE

So far, there is no cable retransmission in Italy.

SIAE

The Italian Law on the Author's and neighbouring rights (Legge n. 633 of April 22nd 1941 and updates) was modified on October 23rd 1996 in order to comply with the Cable and Satellite European Directive 93/83. Article 180-bis of the Law provides that SIAE is the only collective manager entitled to authorize the cable retransmission as regards both to the author's right and to the neighbouring rights. Where the neighbouring rights holders are grouped in collective societies (as it is the case for the artists performers who are represented by IMAIE), SIAE has to reach agreements with each single collective society.

Latvia:

AKKA-LAA

There is only one collecting society in the same field in Latvia.

Lithuania:

LATGA-A

There is only one collecting organization in the field.

Netherlands:

LIRA

This is not the case in the Netherlands.

Poland:

STOART

In Poland, there is more than one collecting organisation which administers the retransmission right: ZAiKS (authors), SAWP, STOART, STL (performers-musicians), ZASP, SFP (actors), ZPAV (producers) and SFP (film).

STOART uses the “minimum” tariffs that are established in tables of tariffs. These tables were approved by the Copyright Commission.

STOART table of tariffs for retransmission:

TV cable retransmission - 0,3 % of income.

Radio cable retransmission - 0,1 % of income.

ZAIKS

In Poland several management organizations of authors’ rights and neighbouring rights operate in the field ‘retransmission’. ZAIKS collects royalties on behalf of all creators of specific categories of works by a permit of the Ministry of Culture and National Heritage.

ZAIKS enters into talks with SFP aiming to establish shares of the authors represented by SFP regarding the fees collected by ZAIKS from cable operators.

ZAPA

At present Stowarzyszenie Filmowców Polskich (SFP) carries on negotiation with Stowarzyszenie Autorów ZAiKS in order to establish common proportional rate for each group of authors.

Portugal:

SPA

In terms of Author's Rights there is no other collecting society besides SPA.

Romania:

CREDIDAM

Since 30.04.2005, the provisions of the Law no.285/2004 stipulated for cable retransmission only:

- a) one methodology for all categories of right holders;
- b) maximum of 2% of cable operators revenues for each category of right holders;
- c) a sole collector for all categories of right holders;

Therefore, during the period between 2000 and 30.04.2005, CREDIDAM collected for performers. From 30.04.2005 until today, UCMR – ADA (Romanian Composers Collecting Society) has been appointed by Public Authority as a sole collector.

In 2005, GEO no. 123/2005 (Governmental Emergency Ordinance) was published and it cancelled the Law no.285/2004 provisions; but the cable operators have launched legal actions against the new Decisions for negotiations. As a result, there is currently no agreement on the new tariffs and the bodies liable for payment keep on applying the old tariffs.

UCMR-ADA

In the musical field, UCMR-ADA is the only collecting organisation society.

Slovakia:

LITA

As regards authors, each category of authors is represented by only one collecting society. There are two collecting societies representing performing artists and two collecting societies representing producers of audiovisual recordings (representing only the rights of these producers, not authors' rights). No figures as to the ratio of distribution available.

SLOVGRAM

Only SLOVGRAM collects on the field it is responsible for.

Spain:

AI SGE

Collecting is done by AISGE (actors, dubbing actors, dancers and stage managers) and AIE (singers and musicians).

DAMA

In the audiovisual field and just concerning the directors and the screen writers, there is more than one collecting organisation here in Spain, namely SGAE and DAMA.

SGAE

In Spain, there are two collecting societies for audiovisual works: SGAE and DAMA. The percentage among them is defined work-by-work depending of the percentage of authorship.

Sweden:

COPYSWEDE

In respect of the “COPYSWEDE -repertoire”, all the collecting societies in Sweden are coordinated. In the top split mentioned above, COPYSWEDE distributes 35,5% of the total remuneration to UBOS (broadcasters), 29% to the Swedish film producer organization FRF, and keeps 35,5% for distribution among authors, performers and phonogram producers.

Switzerland:

SUISSIMAGE

In Switzerland, 5 “concessioned” societies exist, which are bound by law to agree on a joint tariff for the global remuneration. See answer 1 for details.

3.) Article 9.2 of the cable directive provides for inclusion of and payment for right holders who are not members of a particular collecting society ("outsiders").

a) What practical impact has this provision had (e.g. relieve of the burden of proof of actual membership, level playing field for societies with different degrees of membership)?

b) How was the following provision of Art. 9.2 put into practice, in particular how long is the period mentioned here in your country and does the outsider have to join a collecting society before he/she receives payment?

"A right holder referred to in this paragraph shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is deemed to be mandated to manage his rights as the right holders who have mandated that collecting society and he shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the cable retransmission which includes his work or other protected subject matter."

Austria:

VDFS

a) When societies compete for shares one argument (usually working in favour of highly organized music societies) has been eliminated by this provision.

b) The term of prescription for these claims is 3 years. "Outsiders" have to join a society and thereby become members in order to be able to claim their share.

Belgium:

SABAM

a) During negotiations, SABAM still has to indicate what the reach of her repertoire is. The provision referred to gives the operators a guarantee, which is of course very useful, as the operators do not know the content of the programmes they are retransmitting. The degree of membership and reciprocal agreements still is an indication for the remuneration agreed upon between an operator and a collective society.

b) In practice, SABAM reserves an amount corresponding to 0,5% of the rights paid by the operators during a period of 3 years. When these sums are released, they are added to the rights collected that year. For instance, during 2007, SABAM will add the 0,5% blocked on the amounts collected in 2003.

An outsider does not have to join a collecting society to get his share. That is the essential point about the guarantee that collecting societies have to offer to operators to comply with the cab/sat regulation.

As legally foreseen, the procedure is that anyone, not being a member of a collecting society, who knows that his work has been distributed in a cable network has the possibility during 3 years to claim rights with the collecting society who deals with that kind of works (musical

works, literary works, ...) and gives a licence in that particular country. The society has the obligation to treat the works of a claimer on the same level as the works of his members. In fact, during the more than 20 years that SABAM has been giving licences to cable operators, we have not registered one single claim.

Bulgaria:

Filmautor

There is no such limitation in the Copyright act and the common provision in the Civil law would be applicable.

Czech Republic:

Dilia

- a) The must carry clause has no impact on the remuneration. The remuneration for cable retransmission is administered as compulsorily collective license, so it is collected for non-members either. It does not constitute any problem for Dilia, because Dilia administers compulsorily collective licenses in other domains, too.
- b) The limitation period is three years. An outsider has to register for the distribution of remunerations and has to announce his works, but it does not constitute his membership.

INTERGRAM

- a) A special provision in the Law provides for distribution for non-members in case of compulsory collective management of their rights, applying to cable retransmission as well, in line with Art. 9.2 of the Directive.
- b) The holdback period is 3 year. Membership is not a precondition (the rightholders only has to ask for such remuneration).

Denmark:

COPY-DAN

The extended collective license ([LINK](#)) has been implemented in the Nordic legislations as a means to handle non-represented right holders. The period of limitations is 3 years.

This extended collective license means that COPY-DAN can license retransmission rights of non-represented right holders. Non-represented right holders receive their share of the remuneration in the same way as represented right holders.

The group of authors (ex. Composers) and performing artists have given Kabel-TV the mandate to distribute remuneration to foreign rightsholders described in “The Danish national distribution system”.

The Danish national distribution system allocates the remuneration according to the TV programmes that are retransmitted and to the productions in Danish TV channels. All the productions in Danish TV channels are registered and this is the foundation of the distribution of remuneration for the productions. For example, this means that Danish right holders are allocated remuneration for Danish TV-channels and Danish productions in Danish TV channels. In their turn, the remuneration is distributed to represented and non-represented right holders. In the same way remuneration for French TV channels and French productions in Danish channels are sent to a French collecting society who in their turn distributes the remuneration. And so on.

Filmex

- a) Distribution is non-discriminatory, no practical problems occurred.
- b) The holdback period (as to unidentified right holders) is 3 years. Membership is not a precondition (which can imply significant time and efforts spent to identify non members that deserve remuneration).

Estonia:

EAÜ

- a) Not applicable.
- b) The period of limitation is three years; the right holder does not have to join a society.

Finland:

Kopioisto

- a) So far, this provision has had no significant practical impacts in Finland. However, it is important to be adequately prepared to handle possible claims of such a right holders.
- b) The period in which a non-member has to claim payment from a collecting society is three years from the date of the cable retransmission, which includes his work or other, protected subject matter.

A non-member does not need to join a collecting society in order to receive a payment.

France:

SACD

- a) No particular impact, as SACD collects the whole audiovisual share of fiction (except the American share), and identifies and allocates royalties to all audiovisual works exploited by cable-operators. Each year, cable royalties due to unidentified right owners are put aside, to satisfy their eventual future claims.

b) SACD collects the whole audiovisual share of fiction (excluding the American share) from the cable-operators. Royalties are sent to collecting societies with which we have a reciprocal agreement for cable rights.

Any scriptwriter / director, national of a EU country and of a country signatory to the Berne Convention and not member of a society having signed a reciprocal agreement with SACD, can individually claim its cable rights to SACD, on the condition that he had not previously transferred his cable rights to the producer, during a period of 10 years, according to the French intellectual property code.

SCAM

a) In fact, SCAM has so far not had to face such claims from “individual” authors directly. SCAM only distributes cable rights to its own members and to foreign societies with which it had signed agreements for this particular remuneration right. They are supposed to pay back their own members or national authors, and SCAM has never heard about a foreign author complaining about not receiving such payment.

b) In France, the code of Intellectual property (art. L.321-9, 2°) provides that collective management societies will have to keep in reserve cable rights that have not been claimed for 10 years in order to pay them if necessary; nonetheless, the corresponding amounts may be used for collective cultural aims after the 5th year following the distribution date.

SPEDIDAM

a) No impact in practice, notably for lack of cable retransmission between France and the other Member States: most users are receiving international programmes through satellite.

b) The holdback period is 10 years. No obligation for a performer to join the society that collected remuneration for this performer.

Germany:

VG BILD-KUNST

Outsiders are included through mutually granted exemptions of the collecting societies vis-à-vis the cable operators. They are being remunerated if requested by the respectively responsible collecting society. Art. 9.2. has had not practical impact so far.

The outsider has to conclude a commission contract with the collecting society before being able to collect his revenues. The right holder has to claim his remuneration within three years.

Hungary:

EJI

a) Distribution is non-discriminatory: you do not have to be a member of EJI in order to claim your rights. All you have to do is actually claim them (either individually, by submitting

a standard claiming form or collectively, by way of bilateral agreements). So what is described in Article 9.2 of the cable directive is standard procedure.

b) the holdback period is 3 years calculated from the year in which distribution has started, unless provided for otherwise by a bilateral agreement covering that particular claim. Membership is not a precondition.

FILMJUS

In Hungary, the system of the management of rights is an extended one, so the collecting societies do not need any mandate from the right holders to be able to pay the remuneration to them. With other words: the right holders do not have to be registered in a collecting society (With regard to the extended management of rights, please see Article 91, paragraph (1) of our Copyright Act in the attachment, which states: “Where a society registered according to Articles 86 to 89 for the collective administration of rights authorizes the use for, or enforces a claim to remuneration against, a user, the user shall be entitled to the use the works or performances of neighbouring rights of the same genre covered by collective administration under this Act or according to the decision of the interested right holders, provided that the user pays the remuneration for the use of the works and performances of neighbouring rights involved under the same conditions.”).

Italy:

SIAE

As regards the non-member holders (“outsiders”), the same article 180 bis of the Law provides that the collective societies act also on their behalf. The non-members can claim their remuneration within three years from cable retransmission. Up to now, no case has occurred.

Latvia:

AKKA-LAA

a) It is a great relieve of proof of actual membership.

b) In Latvia, the period is 3 years from the date when such sums were paid into the account of AKKA-LAA. According to the Latvian Copyright Act, there is no need to join the society to receive payment.

Lithuania:

LATGA-A

a) The Law on Copyright and Related Rights provides that cable retransmission of works and objects of related rights, except where they constitute a cable retransmission of an operator’s own programmes, may only be enforced by way of collective administration. Thus, there is no different treatment of members and non-members.

b) Since the cable retransmission is only enforced by way of collective administration, the royalties are collected and distributed for members as well as for non-members. The period of three years applies as well. However, it is fixed in the "Regulations on the Distribution of Royalties of LATGA-A", not in the Law on Copyright and Related Rights of the Republic of Lithuania.

Netherlands:

LIRA

a) No outsiders have claimed remuneration in the past 23 years. There has been a challenge to the system in the beginning by a photographer, claiming that his collective did not have the mandate to collect, but he has lost in all courts.

b) Rights owners can claim three years after the distribution of a program. There is some discussion with foreign film and television directors at the moment, but it is expected that this will be solved amicably.

Poland:

STOART

a) No problems.

STOART acts also on behalf of artists who are not its members (*negotiorum gestio*).

Distribution is equal to members and non-members.

b) The above-mentioned period is 10 years in Poland. The non-member is not obliged to join STOART to receive the payment.

ZAiKS

a) It does not matter. The rules and terms of payments of the fees collected by the collective management organization are the same for the subjects that entitled the organization and for those who have not done so; they are based on the rules constituted by the organization.

b) The payment of royalties is not conditioned to the membership in the organization. The period mentioned here is 10 years.

ZAPA

a) Article 9.2. of the cable directive has been implemented in Article 105 Paragraph 1 Polish Law on Copyright and Neighbouring Rights, according to which "the collective administration organization shall be presumed qualified to carry out the administration and protection of rights in the areas of exploitation in which its administration is conducted, and engage in judicial proceedings associated therewith. This presumption may not be invoked where two or more collective administration organizations claim competence in respect of one and the same work or performance". In fact, quoted provision relieves collecting societies of

the burden of proof of their actual membership except when other collective administration claim competence to carry out administration of rights to the same work in the same area of exploitation. The person who, according to abovementioned principle, defends an action commenced by a collecting society must prove that another collective administration organization has already claimed against him its mandate to manage rights to the same category of work on the same area of exploitation.

b) Stowarzyszenie Filmowców Polskich, referring to Article 106 has been obliged to treat on an equal footing the rights of its members and those of others that it represents with regard to the administration of those rights and the protection thereof. There is no obligation to join SFP to receive payment from that collecting society.

Portugal:

SPA:

a) The practical impact is that the collection has to be compulsorily made by the collecting society.

b) The period cannot be shorter than three years from the date of the cable retransmission. The outsider does not have to join SPA.

Romania:

CREDIDAM

a) Distribution is non-discriminatory (CREDIDAM had the same policy for members and non members since the first repartition in 2000). Both members and non-members receive remuneration. The non-members must claim their rights in writing and declare their repertoire.

b) the holdback period is 3 years.

UCMR-ADA

The provisions from the Article 9.2 of the cable directive, in the Romanian Copyright and Neighbouring Right Law, were introduced in 2005; the administration of the rights for cable retransmission is compulsory by law.

In order to receive his share, an outsider has to join a collecting society.

Slovakia:

LITA

a) The impact is the relieve of burden of proof of actual membership.

b) Collecting societies are obliged to create reserve funds. They also have an obligation to

represent all rights holders under the same conditions. On the other hand, the user has to fulfil his obligations through a collecting society, if the following two conditions are met: A collecting society for the particular field of use exists and there is no proof that the rights holder has excluded the collective management of his rights. However, there are no provisions in the Copyright Act on how these rights holders should claim their remuneration from the collecting society or when. Here, the rules of the Civil Code on expiration of rights would apply (the term is three years from the day when the right could be exercised for the first time). In practice it is not required for such rights holders to join LITA. He can simply claim the remuneration from the organisation. In LITA, there are no particular rules on this. According to the Copyright act the outsider can even go to court claiming the remuneration from the organisation.

SLOVGRAM

- a) Distribution is non-discriminatory and there is no separate distribution system for members and non-members.
- b) The holdback period is 3 years.

Spain:

AISGE

- a) Distribution is non discriminatory, all the right holders of the category that are represented by AISGE are taken into account. No practical problems have been encountered.
- b) It is tried to localize the right holders by all the possible means because the membership is not a precondition. In case of not identification or finding, there is a legal term of 15 years for the unidentified right holders and for non-members.

DAMA

- a) Authors are free to choose between DAMA and SGAE.
- b) The Article 9.2 from the Directive was implemented into the article 20.4 from the Spanish Intellectual Property Law, and it says that outsiders must join a collecting society before they receive any payment.

“20.4. *b.* The right belonging to the owners of copyright to authorize cable distribution shall be exercised exclusively through an entity for the administration of intellectual property rights.

20.4. *c.* When there are two or more administration entities for the rights in the category concerned, the owners may entrust the management of those rights to any of the said entities.

The owners referred to in the present subparagraph (c) shall enjoy the rights and be under the obligations deriving from the agreement concluded between the cable distribution company and the entity to which they are regarded as having delegated the administration of their

rights, on the same footing as the owners of rights who have entrusted the administration of those rights to the entity. They may likewise claim their rights from the administration entity referred to in the foregoing paragraphs of the present subparagraph (c) within the three years following the date on which the protected work was distributed by cable.”

SGAE

- a) The most practical impact is the relief of the burden of proof membership.
- b) The period established in our country is for 15 years. SGAE only pays to its members or to other collecting societies.

Sweden:

COPYSWEDE

There already existed an extended collective license in the Swedish Copyright Act before the implementation of the Cable and Satellite Directive, which included an obligation to distribute to outsiders. This means that the Swedish collecting societies are obliged, according to law, to treat an outsider equal to a member of such society. Hence, there have been neither formal legal, nor practical changes in Sweden.

According to the extended collective license clause in the Swedish Copyright Act, the statute of limitation to claim remuneration for a used work is three years. COPYSWEDE, however, applies a statute of limitation to claim remuneration of five years due to the fact that remunerations are paid in retrospect and that the processing of collection, statistics production and distribution requires due time.

According to COPYSWEDE 's procedures for individual distribution, applying in respect of the Swedish channels, the right holders do not have to claim for remuneration. As for the Swedish channels, the broadcasting companies supply COPYSWEDE with detailed records of which right holders contributions have been used and to what extent. From this, COPYSWEDE calculates the amount due to each right holder.

As for the foreign channels, the remuneration is sent as lump sums to collecting societies (having provided COPYSWEDE with indemnity) abroad, the rationale being that such organizations are typically in a better position to correctly allocate these funds according to the program content in question.

However, according to the extended collective license clause, outsiders always (within the statute of limitation) have the legal option to claim individual remuneration from COPYSWEDE /FRF.

Switzerland:

SUISSIMAGE

- a) Societies collect also for outsiders. Membership is not necessary to be able to claim remuneration.
- b) Limitation is five years from distribution. Rights holders have to conclude a contract (membership or commission) or have to be registered via a foreign society.

4.) Article 10 provides for an exception for broadcasters. They do not have to join collecting societies for their claims vis-à-vis cable operators. Are these claims in your country actually made individually by each broadcaster, or do they use collecting organisations of their own?

Austria:

VDFS

The broadcasters use their own collecting society VGR for the collection of cable revenues (and the blank tape levy).

Belgium:

SABAM

As far as known, each broadcaster claims his rights vis-à-vis the operators. The obligatory collective management does not concern the broadcasters. As far as known, they do not have an own collecting society. In Belgium, the law foresees an obligation for the operators to dispose of the written authorisation of each broadcaster before the distribution of his programmes can start.

Bulgaria:

Filmautor

Most of the broadcasters claim individually, but there is also a collecting society called „TV Author“, pretending to represent the rights of broadcasters and their rights as producers of TV production.

Czech Republic:

Dilia

Each broadcaster claims his rights vis-à-vis the operators.

Denmark:

COPY-DAN

Through agreements of cooperation, the broadcasters joined Kabel-TV. As for commercial broadcasters, they deal individually with the cable operators. Kabel TV represents only the broadcasters who want Kabel TV to handle their rights. The broadcasters are public service broadcasters - primarily from Europe. As for the commercial channels, Kabel TV handles the rights of all rightholders except broadcasters.

Estonia:**EAÜ**

According to the GLA agreement, they use one of the existing collecting organisations.

Finland:**Kopioisto**

Kopioisto has several agreements with different foreign broadcasters. According to these agreements, Kopioisto has the right to grant licences for cable operators to retransmit these foreign broadcasts in Finland.

Kopioisto pays the broadcaster a share of the total cable remuneration on the basis of the agreement.

France:**SACD**

In France, broadcasters deal separately and individually with cable-operators. No collective management organization represents them.

SCAM

As an authors' society, SCAM has no accurate information on that issue.

Germany:**VG BILD-KUNST**

The public broadcasters are negotiating the future cable contract with all German cable enterprises together with the collecting societies in the so-called "Munich Group". The group of private broadcasters, jointly represented by 95% in the "Verwertungsgesellschaft Media", claims its rights (signal rights or producers' rights for own productions, but not copyright claims) separately; they are currently engaged in arbitration.

Hungary:**FILMJUS**

The broadcasters do not have a collecting organization of their own; they do not have to join any collecting society to make their claims.

Italy:

SIAE

Radio and TV broadcaster are exempt from joining a collecting society. At the moment, there is no news of direct negotiations.

Latvia:

AKKA-LAA

The broadcasters have made their claims individually, because they do not have their own collecting organization in Latvia.

Lithuania:

LATGA-A

These kinds of claims are made individually by the broadcaster or by the association of broadcasters.

Netherlands:

LIRA

Broadcasters have individual licenses and do not work in a collective.

Poland:

ZAiKS

Radio and TV organizations execute their rights independently/individually.

ZAPA

All main Polish television organization (i.e. TVP S.A., TVN, Polsat) has gratuitously granted authorization to a cable operator for a cable retransmission of their (TV organization's) own programs (transmission).

Whereas foreign broadcasters negotiates contracts individually with cable operators. These contracts are confidential and SFP does not have any information about their detailed content. In Poland claims vis-à-vis cable operators might be made only individually by each broadcaster.

Portugal:

SPA

The Law provides that the claims have to be made through a collecting society.

Romania:

UCMR-ADA

The radio and TV station are individually negotiating the right for cable retransmission of their programs.

Slovakia:

LITA

There is no collecting society representing broadcasters for the area of cable retransmission.

Spain:

DAMA

Collection is done by each broadcaster; they do not join a collecting organization.

20.4. *e.* of the Spanish Copyright Law states: “The provisions of subparagraphs (b), (c) and (d) of the present paragraph (4) shall not apply to the rights exercised by broadcasting organizations in relation to their own emissions, satellite broadcasts or transmissions, regardless of whether the said rights are theirs or have been transferred to them by other owners of copyright.”

SGAE

SGAE does not deal with the relation between broadcasters and cable operators. As far as known, there are no problems between them.

Sweden:

COPYSWEDE

The broadcasters within the COPYSWEDE co-operation are coordinated in the organisation UBOS, which manages the broadcasters share and within which the broadcasting companies agree on the distribution of this share.

Switzerland:

SUISSIMAGE

This clause does not take effect in Switzerland. Broadcasters have to claim their rights through existing collecting societies.

5.) Article 11 provides that in case no agreement is reached "either party may call upon the assistance of one or more mediators." Does such a mediator exist in your country as an institution or is it appointed ad hoc? Has there ever been a case of such mediation?

Austria:

VDFS

An ad hoc mediation board ("Vermittlungsausschuss") is provided by law for all cases of disputes between collecting societies and users (e.g. cable operators). If its proposal for an agreement is not accepted by a party, an arbitration board ("Urheberrechtssenat") will have the final decision in this matter excluding the regular courts.

Belgium:

SABAM

There is no mediator as an institution. Each time a need for mediation arises, the parties concerned appoint a "mediation - team".

The existing agreement between SABAM and RTD (the umbrella society of cable operators) was achieved by the outcome of such mediation.

Bulgaria:

Filmautor

There is no such provision in the law.

Czech Republic:

Dilia

A mediator is appointed ad hoc from the list of mediators administered by Ministry of Culture.

There was a case of such mediation. At that time there were three CMOs and the mediation helped them to specify the amount of remunerations for each CMO.

INTERGRAM

Under the Law, the Ministry of Culture must propose a list of such mediators and both parties can pick one from it. Failing a consensus on the mediator, it is designated by the Ministry of Culture.

Denmark:**COPY-DAN**

If an agreement is not reached between right holders and cable operators, a permanent arbitration court founded by the Danish Copyright Act can settle the dispute.

The dispute can be presented and dealt with as in a court case. Or by mediation where the chairman (a judge from the Supreme Court) acts as mediator. Mediation speeds up the process.

Filmex

In case of no agreement, mediation is prescribed by the Copyright Act. Decisions made by the Copyright License Tribunal are binding to all parties.

Estonia:**EAÜ**

Mediator is appointed ad hoc. No mediation took place so far.

Finland:**Kopiosto**

In case no agreement is reached, the dispute will be settled in arbitration proceeding. There has never been such a case so far.

France:**SACD**

Art. 132-20-2 of the French IP code provides for the possibility of mediation in case no agreement is reached. However, this mediation is facultative, and the parties always have the possibility to go directly to court.

In France, 20 mediators are appointed by the Minister of Culture, upon proposition of registered collective management societies, professional organisations representative of broadcasters and cable-operators. The mediators are appointed for a period of 3 years renewable.

SCAM

The French IP code (art. L.217-3) provides for a mediator if all the involved parties agree. 3-4 years ago, cable operators refused the financial conditions the authors' societies were asking for, looking for such a mediation, which was not accepted by the societies. It ended in agreements.

SPEDIDAM

A mediation system is foreseen for cable retransmission; no case has occurred so far.

Germany:

VG BILD-KUNST

The mediator is the arbitration office within the German Trade Mark and Patents-Office. The judgement can then be challenged in front of ordinary courts. A case is currently pending, see question 1.

Hungary:

EJI

Under the Hungarian Copyright Act (s. 103-105) mediation is an institutionalised procedure based, with some copyright specific exceptions, on the rules applicable to Arbitration Tribunals. Members of the Board of Copyright Experts may be appointed as mediators. No such case of mediation so far, as far as the organisation is aware of.

FILMJUS

In Hungary, the Mediation Board can proceed in such cases. No such case known yet. For detailed information, please find the relevant provisions of the Copyright Act in the attachment.

Italy:

SIAE

The possible mediators between the parties are provided by article 110 bis of the Law. At the moment no institution has been settled charged of the mediation. No case of mediation has occurred up to now.

Latvia:

AKKA-LAA

There is no such mediator in Latvia and as far as known, there has never been such mediation in Latvia.

Lithuania:**LATGA-A**

In such case, either party may call upon the assistance of the Council of Copyright and Related Rights of Lithuania. This is a public institution, which, as an expert and consultant, investigates issues related to the implementation of the provisions of this Law and international obligations of the Republic of Lithuania in the field of copyright and related rights and submits conclusions and proposals to the institution authorised by the Government. One of its functions is to act as a mediator. To current knowledge, there has never been a case of such mediation before.

Netherlands:**LIRA**

In almost all cases after the expiration of a contract, the negotiations were long and exhausting. In 2005, there was a court case to decide whether rights owners could be forced to allow broadcasters to clear all cable rights at the source and LIRA claimed confirmation of its rights with a possible claim for damages. Rights owners won all arguments. LIRA has never decided to ask for mediation.

Poland:**STOART**

Under Polish Copyright Law (art. 21 and 108), in the case of disputes related to the conclusion of the agreement for retransmission, a Copyright Commission composed of three members appointed from among the arbiters, one by each of the parties and a super arbiter elected by the so appointed arbiters, shall settle disputes (concerning the use of tables of tariffs). The party that is not satisfied with the decision of the Commission may file a suit to a regional court of the competent jurisdiction within 14 days from the date of being served with the decision.

The provisions concerning the procedure of approval the tables of tariffs and the Copyright Commission are currently under revision.

ZAiKS

At present, mediation rules are being changed. According to the so far existing (that are not binding any more), ad hoc arbiters were chosen from the members of permanent organ Komisja Prawa Autorskiego to settle disputes.

ZAPA

Polish Law on Copyright and Neighbouring Rights provides for the Copyright Commission, which is composed of 40 arbitrators submitted by collecting societies, societies of creators, performers and producers, organizations that group bodies the professional activity of which

has to do with the use of works and also radio and television organizations. According to Article 108 Paragraph 5 the Commission, with a composition of three persons, two of them designated by the parties from among the arbitrators and the third co-opted as referee by the other two, shall settle disputes concerning conclusion of license contract referred to Article 211 (i.e. concerning distribution by cable operators works broadcasted by other radio and television organizations).

Unfortunately, the abovementioned Commission so far does not play any role in settling corresponding disputes. Previous Court decisions have defined subject of the action before the Commission so narrowly, that it excluded most cases on the matter.

Portugal:

SPA

There are 2 possibilities:

1. Mediation and Arbitration Commission
2. Arbitration Court

The parties have to agree on which possibility will be used. Both have legal coverage.

Romania:

CREDIDAM

No mediation is foreseen by law. Failing agreement by negotiation, the arbitration procedure follows.

UCMR-ADA

In Romania, an arbitration procedure is regulated by the law, in the case no agreement is reached by the parties.

Slovakia:

LITA

There is no special mediation institution for these purposes. There has also never been a mediation of a dispute in the field of cable retransmission.

SLOVGRAM

No mediation exists.

Spain:**AISGE**

In case of no agreement, mediation is prescribed by the article 158 of the Spanish LPI through a qualified institution (Comisión de Arbitraje) within the Ministry of Culture.

DAMA

This possibility is foreseen in the law (“Comisión Mediadora y Arbitral de la Propiedad Intelectual “), but in practice it has never been used.

20.4. *f.* of the Spanish Copyright Law says: “Where, for want of agreement between the parties, it is not possible to enter into a contract for the authorization of cable distribution, the parties may apply to the Intellectual Property Mediation and Arbitration Board for mediation.”

SGAE

In the Spanish law, the figure of a mediator (Comisión Mediadora) exists, but until this moment there have not been any cases in which mediation has been necessary.

Sweden:**COPYSWEDE**

In case no agreement regarding the authorization of the cable retransmission of a broadcaster is reached, the Government appoints a mediator ad hoc on request by either of the parties. No case of mediation so far.

Switzerland:**SUISSIMAGE**

There exists the obligation to negotiate with users; each tariff has to be approved by the helvetic arbitration committee. If no agreement can be reached, the collecting societies can ask the helvetic arbitration committee to approve a disputed tariff.

6.) In many national media laws there are provisions which oblige broadcasters or cable operators to carry certain programmes of national interest ("must carry clauses"). Does this have any impact on the payments for copyright (exemptions or reductions) and do the right holders whose works are used in these programmes receive the same remuneration as the right holders in other programmes?

Austria:

VDFS

No impact based on must carry clauses.

However, a provision of the copyright act qualifies the cable retransmission of broadcasts of national public broadcasters as part of the original broadcast. In theory, the cable operator would therefore not have to pay for the distribution of these programmes and the national public broadcaster - and also all right holders whose works appear in these programmes - would not be entitled to remuneration. In practice, the cable operator pays a lump sum for the distribution of an unlimited number of programmes so this exception does not make a difference to him. The collecting societies in their turn distribute for works in all programmes including those of national public broadcasters.

Belgium:

SABAM

The status of must carry programmes has no impact on the remuneration paid by the operators and - as a result - there is no impact either for the rights holders of the works within programmes marked as must carry.

Bulgaria:

Filmautor

The cable operators refuse to pay for the works incorporated in the must carry programs and there are some court litigations in relation with this case.

Czech Republic:

Dilia

It does not have any impact, because the remuneration is set out as a fee for end-user's line.

INTERGRAM

There is such obligation by law for broadcasters. It is not supposed to impact anyhow on rightholders. However, this is one of the reasons why tariffs are very low.

Denmark:**COPY-DAN**

The Danish must carry clauses do not have any impact on the remuneration and the right holders receive the remuneration as for other programmes.

Filmex

The principle of “must carry” has no importance as to payments for IPR and no consequences for the remuneration.

Estonia:**EAÜ**

The principle of “must carry” has no impact in Estonia.

Finland:**Kopioisto**

It has a huge impact on the payments for the copyright holders.
Copyright holders are not entitled to receive any payment for the retransmission of must carry channels in Finland.

France:**SACD**

The principle is that royalties have to be paid, even for must-carry channels.
Cable operators have tried to contest the payment of royalties for must carry channels; they obtained, through negotiation, to pay a smaller amount of royalties for these channels, since they did not add any value to their offer because the same channels were also available for free.
A Belgian court decision has however confirmed the exercise of the exclusive right for channels retransmitted by cable, including must carry channel, as the “must carry” obligations are independent and do not release cable operators from the obligations which they have under copyright law.

SCAM

“Must carry clauses” exist in France for “public service” programmes. But this has no impact at all either on the global payments to collective management societies, nor on the remuneration paid to each author of the concerned programmes.

SPEDIDAM

No impact on performers' rights and remuneration levels.

Germany:

VG BILD-KUNST

There is no difference between "must carry" – and other programmes. The current problem between broadcasters and cable operators (let aside the problem of compensation for cable transmission) lies in the fact that the same cable operators ask for insertion fees, to which the broadcasters feels compelled, according to its market share. There are no figures available on these fees.

Hungary:

EJI

Cable operators must include in their retransmission package the programmes of public service broadcasters. In case of such "must carry" programs, retransmission fees owed to right-owners are paid by the National Broadcasting Fund and cable operators are thus exempted from any such liabilities.

In a dispute submitted for decision to the Board of Copyright Experts, the Board ruled that retransmission fees must be calculated (and imposed) upon the same conditions, regardless of whether these are to be paid by a cable operator or, as in the case of "must carry" programmes, by a public benefit fund appointed for that purpose.

FILMJUS

Art. 28 par. (6) of the Hungarian Copyright Act states: "The royalties due on the retransmission of the works broadcast in the programme of, or communicated by cable or in any other manner by, the Hungarian public radio and television broadcasting organization shall be paid from the Broadcasting Fund, and this payment shall be the responsibility of the administrator of the Fund."

There is no difference between the royalties so the right holders concerned receive the same remunerations.

Italy:

SIAE

The possible "must carry clauses" for programmes of national or public interest do not have any impact on the copyright fees.

Latvia:**AKKA-LAA**

The „must carry clause“ has no impact on the payment of the copyright royalties. All right holders are treated equally and receive the same remuneration.

Lithuania:**LATGA-A**

It does not have any impact on the payments of copyright. The royalties received are the same.

Netherlands:**LIRA**

This has always been a difficult issue. Must carry is valid for domestic public channels and for Flemish Belgian programs. Cable operators have always paid for the Belgium programs. Because of the fact that they paid for a package of programs, LIRA always included the authorisation for the domestic channels. Both parties could maintain that specific payment was (not) due for national programs.

Poland:**STOART**

No figures available.

ZAiKS

The obligation of retransmission of specific programmes by cable operator does not influence the way to allocate royalties.

ZAPA

The issue of remuneration due for cable network retransmission is affected by the provision of Article 43 of the Broadcasting Act, according to which the cable network operator shall as a rule introduce programme services into the cable network in the following sequence: 1) national programme services of public radio and television, 2) regional programme services of public radio and television, received in the given area, 2a) programme services of domestic social broadcasters, receivable in the given area, 3) programme services of other domestic broadcasters, receivable in the given area, and 4) programme services of other domestic and foreign broadcasters. Until now it remains unresolved the question, whether cable networks acting under this must carry obligation, may or may not charge fees for their retransmission

services, and what should be the level of such charges. This preliminary question blocks also the process of negotiating remunerations for use of copyrights and neighbouring rights for the purpose of the programme retransmission.

Portugal:

SPA

There is no differentiation in the collections.

Romania:

CREDIDAM

During the period from 2000 to 01.05.2005 there was no legal provision for “must carry” restrictions.

The principle was introduced by the Law no.285/2004. This modification of the Romanian Copyright law was removed from the new GEO no. 123/2005, and then reintroduced. It states that the programmes that are mandatory to be broadcast according to the law are excluded from the negotiations on remunerations. In September 2006, the EU Commission reacted sending a letter to the Romanian Government and mentioned in the October Country Report the IPR problems in Romania, including the “must carry” problem. It warned that such provision could lead to a situation where – in the absence of a negotiated tariff – no remuneration is paid and concludes by saying “This would clearly violate the exclusive nature of the rights concerned” (European Commission, Internal Market and Services DG, MARKET D1, 04.09.06, 3914,). Indeed, there is an unacceptable discrimination between Romanian and foreign right holders: the Romanian right holders (most of them broadcasted on Romanian national TV stations) are not allowed to receive any remuneration for the use of their fixations. All the money collected must go abroad.

This “must carry“ exemption was adopted only for cable retransmission by the Culture, Arts and Media Commission of Deputy Chamber from Romanian Parliament.

UCMR-ADA

The Romanian Copyright and Neighbouring Right Law has shady provisions regarding the exclusion of the “must carry” programmes from the calculation of remuneration, without stipulating exclusion for the right holders also.

Slovakia:

LITA

The Slovak law also contains the “must carry clauses” but the remuneration for these programmes is paid in unmodified amount.

SLOVGRAM

The same remuneration, no difference.

Spain:

AISGE

There are some obligations to carry certain programmes of national interest for traditional broadcasters. These provisions do not affect the cable operators. The said obligations have no importance as to payments and there is not any sort of reduction or benefit for the broadcasters during these emissions.

DAMA

According to DAMA, there are no “must carry” - obligations.

SGAE

In Spain the law establishes must carry clauses. Must carry channels have no special impact on payments because SGAE’s license covers all channels retransmitted by cable operators.

Sweden:

COPYSWEDE

There are must carry clauses in the Swedish Radio & TV Act, but these clauses do not have any principal impact on the remuneration distributed to the right holder, nor on the licensing of retransmission rights as such for that matter. Right holders in such channels are treated equally to other right holders.

Switzerland:

SUISSIMAGE

The „must-carry-rule“ has no impact on the remuneration.

7.) Article 2.2. of the Term of Protections Directive mentions a group of four (principal director, author of the screenplay, author of the dialogue and composer of the music which was specifically created for the film) to determine the term of protection. What is the distribution of cable remuneration within this group?

Austria:

VDFS

The principal director receives 54% of 80% (i.e. 43,2%) of the amount that VDFS receives (not the 1,21%, but the share which VAM will eventually have to pay after the arbitration board decision).

Authors of screenplay and dialogue together receive 12,98% (combined shares of LVG and Literar Mechana).

Composers generally receive 28,02% regardless if the music has been specifically created for the film or not.

Belgium:

SABAM

The distribution of the cable rights follows the keys of distribution made by the rights holders on their declaration form and the distribution rules in the general distribution rules of SABAM.

Bulgaria:

Filmautor

The distribution for audiovisual work is as follows:

45 % - director

40 % - screenplay writer

15 % - cameraman.

The remuneration for the authors of the music is collected by another society.

Czech Republic:

Dilia

See question 1.

Denmark:**COPY-DAN**

Concerning remuneration for retransmission of radio- and TV channels, the group in question receives remuneration according to the Danish distribution system and the extended collective license.

Estonia:**EAÜ**

Director: 40%
Author of the screenplay and author of the dialogue: 25%
Photographer: 20%
Set designer: 15%.

Finland:**Kopiosto**

Director: 8,95%
Screenplay/ dialogue: 11,05%
Composer: 12%.

France:**SACD**

In France, the director, the author of the screenplay, the author of the dialogues, the author of the adaptation, the author of the pre-existing work, and the composer are recognised as co-authors of an audiovisual work. SACD represents all these co-authors, except the composer, represented by the musical society SACEM.

Distribution of the cable royalties collected by SACD is made according to the declaration forms filled in and signed by the authors themselves. The board of directors of SACD has only decided upon the distribution between text and direction (for cinematographic works: 60% for the script and 40% for the direction; for television works: 80% for the script and 20% for the direction). Should there be several authors within a category, authors have to find an agreement between themselves on the split of royalties.

SCAM

The distribution of remuneration among the 4 “main authors” according to the said directive is freely decided among the co-authors of each work and there is no difference, whatever rights are concerned, between “primary” or “secondary” rights.

Germany:

VG BILD-KUNST

Besides the authors mentioned, Germany also includes cameramen, cutter, scene makers, costume directors and in exceptional cases also sound engineers. An equal treatment of the four mentioned groups is practiced. According to the existing internal distribution within VG Wort and GVL, also the neighbouring rights holders (including phonogram producers) receive a share, equivalent to that of the film author, respectively the script author.

Hungary:

FILMJUS

See question 1.

Italy:

IMAIE

So far, there is no cable retransmission in Italy.

SIAE

The distribution of cable remuneration between music composers on one side and authors of films on the other side will depend on the agreements to be reached when the distribution in Italy of foreign TV or Radio programs is effective.

Latvia:

AKKA-LAA

Within this group, the cable remuneration are distributed as follows:

70% right owners of music

22% the author of the dialogue and screenplay

2% principal director;

besides that, **3%** are distributed to the authors of visual works and **3%** are being kept as a reserve for the works that have not been identified or could be claimed due to inaccurate reports.

Lithuania:

LATGA-A

The distribution for the creators of the audiovisual works are made on the following grounds: The national authors receive a percentage that is fixed among them in the audiovisual work

registration form. This percentage varies on a case-by-case basis.

The foreign collections are transferred to the country of origin. In this case, the various conditions set out in the reciprocal representation agreements with sister societies are also taken into account.

Netherlands:

LIRA

In the Netherlands, no specific statements regarding remuneration per group can be made, since different collecting societies are involved. For the scenario writers for instance, LIRA in the Cisac Group is acting for Dutch Directors Agicoa/Sekam pay to Vevam. Buma deals with the music in the Cisac package.

Poland:

ZAiKS

Please note that the Society of Authors ZAiKS does not protect rights of principal director.

ZAPA

See answer 1.

Romania:

UCMR-ADA

There are no specific provisions regarding the distribution of cable remuneration within that group.

Slovakia:

LITA

The shares of authors of audiovisual works are as follows:

33.3% for authors of music;

66.7% for the other authors and of these 66.7%, 45% go to the directors and 55% to the authors of text part of the audiovisual work.

Spain:

DAMA

The distribution in Spain its 25% director, 25% author of the screenplay, 25% author of the dialogue, 25% composer of the music which was specifically created for the film.

SGAE

Unless authors accord a different percentage of distribution, the recommended percentage of distribution is 25% for each of the four groups.

Sweden:

COPYSWEDE

As the Swedish distribution system is not broken down according to these categories exactly, please refer to the answer in question 1 above.

Switzerland:

SUISSIMAGE

Directors and script authors (including dialogues) receive the same remuneration. It is impossible to determine the ratio of this group to the composers of film music, since the part, which SUISSIMAGE receives, includes also compensation for re-sending of radio programmes; furthermore, not only composers, but also publishers participate in that share.

ANNEX 1

Collecting societies mentioned in this survey

<u>Collecting society</u> (Main field of expertise)	<u>Country</u>	<u>Website & Email</u>
AEPI Authors' rights	Greece	http://www.aepi.gr legal@aepi.gr
AISGE Audiovisual Authors' and Producers' Rights	Spain	http://www.aisge.es aisge.madrid@aisge.es
AKKA-LAA Copyright	Latvia	https://www.akka-laa.lv/ info@akka-laa.lv
COPY-DAN Audiovisual Authors' (ex Composers), Performing Artists and Producers' Rights	Denmark	http://www.copydan.dk copydan@copydan.dk
COPYSWEDE Audiovisual Authors' and Producers' Rights	Sweden	http://www.copyswede.se/ copyswede@copyswede.se
CREDIDAM Performing Artists' Rights	Romania	http://www.credidam.ro/home_eng.asp office@credidam.ro
DAMA Audiovisual media authors' rights	Spain	http://www.damautor.es dptint@damautor.es
Dilia Authors' rights	Czech Republic	http://www.dilia.cz/ bartak@dilia.cz
EAÜ Authors' rights	Estonia	http://www.eau.org eau@eau.org
EJI Performers' Rights	Hungary	http://www.eji.hu/index1.php info@ej.hu
Filmautor Audiovisual Authors' and Producers' Rights	Bulgaria	www.filmautor.org filmautor@bitex.com
Filmex Performing Artists' Rights	Denmark	http://www.skuespillerforbundet.dk/ filmex@skuespillerforbundet.dk
FILMJUS Audiovisual Authors' and Producers' Rights	Hungary	http://filmjus.fok.hu/ filmjus@filmjus.hu
IMAIE Performers' Rights	Italy	http://www.imaie.it info@imaie.it
INTERGRAM Executive artists and producers of sound-tracks and videos	Czech Republic	http://www.intergram.cz intergram@intergram.cz
Kopiosto Audiovisual Authors' and Producers' Rights	Finland	www.kopiosto.fi kopiosto@kopiosto.fi

LATGA-A Authors' rights	Lithuania	www.latga.lt latga@latga.lt
LIRA Authors' rights	Netherlands	http://www.lira.nl/ lira@cedar.nl
LITA Authors' rights	Slovakia	www.lita.sk lita@lita.sk
SABAM Authors' rights	Belgium	www.sabam.be info@sabam.be
SACD Authors' rights	France	www.sacd.fr webmaster@sacd.fr
SCAM Multimedia	France	www.scam.fr communication@scam.fr
SGAE Authors' rights	Spain	www.sgae.es sgae@sgae.es
SIAE Authors' rights	Italy	www.siae.it rapporti.internazionali@siae.it
SLOVGRAM Performers and audio and video producers	Slovakia	http://www.slovgram.sk/ secretary@slovgram.sk
SPA Authors' rights	Portugal	www.spautores.pt dept.internacional@spautores.pt
SPEDIDAM Performing Artists' Rights	France	http://www.spedidam.fr service-juridique@spedidam.fr
STOART Performing Artists' Rights	Poland	http://www.stoart.org.pl stoart@stoart.org.pl
SUISSIMAGE Audiovisual Works	Switzerland	www.suissimage.ch mail@suissimage.ch
UCMR-ADA Musical performing and mechanical rights	Romania	www.ucmr-ada.ro ada@ucmr-ada.ro
VDFS Audiovisual Authors' and Producers' Rights	Austria	www.vdfs.at office@vdfs.at
VG BILD-KUNST Pictures, Film	Germany	http://www.bildkunst.de/ info@bildkunst.de
ZAIKS Authors' rights	Poland	http://www.zaiks.org.pl zaiks@zaiks.org.pl
ZAPA Audiovisual Authors and Producers	Poland	www.zapa.org.pl biuro@zapa.org.pl

ANNEX 2

Hungary: Provisions of the Copyright Act relating to the Mediation Board

Mediation Board

Article 102

(1) In case no agreement on remuneration and other terms and conditions of uses is reached between the user and the right holders or the organization performing the collective administration of their rights in connection with the simultaneous and unaltered retransmission to the public of the broadcast work with the involvement of another organization than the original one, either party may contact the Mediation Board set up pursuant to Article 103.

(2) If no agreement is reached about the remuneration to be paid and the conditions of the use between the user and the rightholder or between the users and their representative organizations, on the one hand, and the collective administration organization of the rightholders, on the other hand, the parties, by common agreement, may turn to the Mediation Board.

Article 103

(1) The provisions of Chapter II of Act LXXI of 1994 on Arbitration shall apply to the setting up of the Mediation Board on the understanding that the members of the Mediation Board shall be appointed from among the members of the Body of Experts in Copyright (Article 101).

(2) The Mediation Board shall operate within the Body of Experts in Copyright.

Article 104

(1) The objective of the procedure of the Mediation Board is the facilitation of an agreement between the parties. In the case of a procedure initiated in a dispute concerning collective administration of rights, the Mediation Board shall inform the Minister [Article 86(1)] immediately.

(2) In case no agreement is established between the parties, the Mediation Board shall draft a proposal concerning the contents of the agreement that it makes known to the parties in writing.

(3) The parties may accept the agreement expressly or tacitly. If the parties make no objection to the Mediation Board with regard to the proposal for agreement within three months from the date of its delivery, a case of tacit understanding obtains.

(4) In case the Mediation Board has proceeded by infringing the provisions of Article 105, the party having sustained injury may bring an action before the Court against the agreement established by the decision of the Mediation Board within three months from its entry into force.

(5) In the procedure referred to in paragraph (4), the Metropolitan Court shall have jurisdiction and exclusive competence.

Article 105

(1) Equal treatment shall be given to the parties during the proceedings of the Mediation Board and either party shall have the possibility to present his position. The Mediation Board

may not oblige the parties to get involved in the proceedings and carry out acts of proceedings unless the parties have agreed thereto. As regards other matters, the Mediation Board shall itself establish its rules of proceedings - within the frameworks of the statutes referred to in Paragraph (2) - and determine its tariffs.

(2) The statutes of the Mediation Board shall be elaborated by the Body of Experts in Copyright and approved by the minister of justice. Prior to the approval, the minister supervising the Hungarian Patent Office and the minister of national cultural heritage have to be consulted as regards their opinions.

Article 105/A.

(1) If no agreement is reached between the beneficiary of a free use and the right holder about the conditions of making the free use possible (Article 95/A) in spite of the protection against the circumvention of technological measures (Article 95), any of the parties may turn to the Mediation Board.

(2) The procedure may also be initiated by the representative organizations of the beneficiaries. In such a case, the effect of the award of the Mediation Board – in the absence of a stipulation to the contrary – shall extend to all members of such organization who are beneficiaries of the free use.

(3) The provisions of Article 103 shall apply to the establishment of the Mediation Board *mutatis mutandis*, on the understanding that the members of the acting panel of the Mediation Board shall be appointed by the President of the Body of Experts in Copyright, where the parties do not reach an agreement – within eight days from the beginning of the procedure – about the composition of the panel.

(4) Articles 104(1) and (2) and 105(2) shall apply to the procedure of the Mediation Board *mutatis mutandis*.

(5) The parties may accept the agreement proposed by the Mediation Board either explicitly or implicitly. It shall be regarded as an implicit acceptance if none of the parties oppose the proposed agreement at the Mediation Board within 30 days from its delivery.

(6) Where the Mediation Board has proceeded by violating the provisions of Article 105, the injured party may oppose the award of the Mediation Board in a lawsuit at the court within 30 days of its adoption.

(7) If no agreement has been reached on the basis of paragraph (5), the beneficiary of the free use may turn to the court within 15 days after the expiry of the deadline provided for in paragraph (5) and may demand in a lawsuit that the court oblige the right holder to make the free use possible according to the conditions indicated by him.

(8) The representative organizations of the beneficiaries shall also have the right to initiate lawsuits under paragraphs (6) and (7) – within the deadline mentioned there – on the understanding that the effect of any final court decision shall extend to all those members of the organization who are beneficiaries under this Act.

(9) In lawsuits initiated under this Article, the Metropolitan Court shall have exclusive competence.

(10) Article 95 shall apply *mutatis mutandis* to the technological measures to be applied on the basis of an agreement or final court decision according to this Article, provided that such a technological measure fulfils the conditions under Article 95(3).

ANNEX 3

Example of a distribution scheme (VG Bild-Kunst)