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AL SERVICIO DE LOS AUTORES EN EL MUNDO

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## **Professional Rules for musical societies**

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## **Preamble**

### **The overarching objectives governing the conduct of the Members are as follows:**

- a. to have as its aim and effectively ensure the advancement of Creators' moral interests and the defense of the material interests of Creators and publishers;
- b. to have at its disposal effective machinery for the collection and distribution of Income to Creators and publishers and assume full responsibility for the administration of the rights entrusted to it;
- c. to have regard to its high and long-standing duty to its Affiliates in the conduct of all its operations;
- d. to encourage the lawful dissemination of Works by facilitating the licensing of rights in return for equitable payment ("Licensing Income");
- e. to distribute Income (less reasonable Expenditure) to Creators, publishers and Sister Societies on a fair and non-discriminatory basis;
- f. to conduct its operations with integrity, transparency and efficiency;
- g. to strive to adopt best practice in the collective administration field; and
- h. to adapt continually to market and technological developments.

## Part 1

### General Provisions

1. In the Rules, unless the context otherwise requires, the words and phrases set out in the left hand column below shall have the meaning given to them in the corresponding right hand column below.

<b>Affiliate</b>	A Creator or Publisher affiliated by contract with a Musical Society.
<b>Binding Resolutions</b>	The resolutions laid down by CISAC from time to time which are binding on Members and which are set out in the Annex to the Rules.
<b>Compliance Thresholds</b>	The thresholds based on Societies Domestic Incomes, defined from time to time by the General Assembly for each category of Repertoire.
<b>Confidential Information</b>	Any information: <ol style="list-style-type: none"><li>a which is privileged;</li><li>b which constitutes a trade secret or protected business secret;</li><li>c from which a person may derive independent economic benefit (including a formula, pattern, compilation, program device, method, technique, or process);</li><li>d relating to the business of a Member, Associate, Provisional or Affiliate;</li><li>e relating to the financial arrangements of a Member, Associate, Provisional or Affiliate;</li><li>f belonging to a Member, Associate, Provisional or Affiliate about a Work, or belonging to those who own or control such Work; or</li><li>g which a Member, Associate, Provisional or Affiliate reasonably specifies in writing (prior to or at the time of the disclosure of such information).</li></ol>
<b>Income</b>	Any licensing or other income received by the Society.
<b>Documentation</b>	Any essential data required for the identification of a Work and for the administration of the rights in such Work.
<b>Distribution</b>	The act of a Member: <ol style="list-style-type: none"><li>a allocating Royalties (at regular and set intervals) among Affiliates or Sister Societies; and</li></ol>

- b paying such Royalties to the relevant Affiliates or Sister Societies once such Royalties have been allocated.

<b>Royalties</b>	Any Income allocated and payable to the Affiliate or Sister Society of a Member.
<b>Expenditure</b>	The administrative costs, fees, provisions, depreciation and any other agreed expenditure (including but not limited to social and cultural expenditure) deducted by a Society from time to time from its Income prior to distribution of such Income.
<b>Management Body</b>	Management team, whether collegiate or not, with the responsibility for the day-to-day management of the Society
<b>Rules</b>	CISAC's Professional Rules, as set out in this document.
<b>Sister Society</b>	A Society represented by another Society by means of a current Reciprocal Contract or by any other representation contract.
<b>Statutes</b>	CISAC's statutes for the time being in force.
<b>Supervisory Body</b>	Collegiate Body supervising the Management Body (independently from the local wording "Board", "Supervisory Board", "Board of Directors")
<b>Work</b>	Copyright Work.

2. Unless the context otherwise requires, the words and phrases:

- a. defined in the Statutes; and
- b. used in both the Statutes and in the Rules

shall have the meaning given to them in the Statutes.

### **Application**

- 3. For the avoidance of doubt, these Rules apply only to each Member which is a Musical Society.
- 4. The provisions of the Rules shall at all times be subject to all relevant and applicable laws and regulations.

## Part 2

### Rules of Conduct

#### Corporate Governance

5. Each Member shall at all times:
  - a. be open to Creators and publishers of all nationalities;
  - b. refrain from discriminating between Creators and publishers or between Sister Societies in any manner which is legally unjustifiable or which cannot be objectively justified;
  - c. permit a Creator and a publisher to terminate his affiliation agreement with such Member, provided that such Member may impose reasonable conditions in relation to the termination of such agreement;
  - d. (where the Board is composed of Creators and publishers) maintain a fair balance on its Board between Creators on the one hand and publishers on the other hand;
  - e. conduct its business in accordance with all relevant and applicable laws and regulations; and
  - f. act in accordance with its own constitution.
  - g. ensure that the by-laws -and/or internal rules- of each Member:
    - (i) provide for a collegiate body whose role is to supervise the Member's business as carried out by the management body;
    - (ii) ensure that such collegiate body effectively and independently supervises the management body, by means of setting up specific rules to this effect including, without limitation, the following rules:
      - (a) rules regarding the distinction and separation of the function of a member of the management body on the one hand and that of a member of the supervisory body on the other hand, or
      - (b) in the absence of such separation rules, rules prohibiting a member of the management body from having, (merely because of his status as a member of the management body) the right to vote during meetings of the supervisory body, or at the very least, a blocking minority voting right or any right of veto whatsoever, and
    - (iii) prohibit any improper interference of the supervisory body in decisions falling within the scope of the exclusive powers (if any) of the management body.
6. If a Member is unable to comply with any part of the Rules as a result of any national, legal or regulatory provision to which it is subject, then it shall with due promptness, with full particularity, and with appropriate documentary justification, inform CISAC in writing that it is unable so to comply.

## Transparency and Accountability

7. In each Calendar Year, and before the 1 June of such Calendar Year, each Member shall supply CISAC with any amendments which it has made to its constitution in the preceding Calendar Year and which might reasonably be considered to be pertinent to such Member's qualification for CISAC membership.
8. With the objective of making the provided information available to all CISAC Members and Provisionals, each Member shall supply CISAC in each Calendar Year (within three Months after CISAC has requested such details and in a form as well as in a manner laid down by CISAC), with:
  - a. the Statement of Professional Rules Compliance, stating, among other declarations, that it has complied with all relevant and applicable laws and regulations;
  - b. a list enumerating each of its Sister Societies and indicating the scope of the territory in respect of which it has been mandated by each such Sister Society;
  - c. the Statement of Income and Expenditure in respect to the preceding Fiscal Year;
  - d. its audited accounts in respect of the fiscal year which immediately precedes such Calendar Year. Such accounts may be provided in the native language of the Member;
  - e. an annual report in respect of the fiscal year which immediately precedes such Calendar Year, in one of CISAC's three official languages (English, French and Spanish);
  - f. an accurate statement of its current distribution rules and methods in accordance with Binding Resolution 17, in one of CISAC's three official languages (English, French and Spanish);
  - g. any declaration or document submitted by a Member to CISAC in accordance with Rules 8 (c) and 8 (d) above must be signed by Chief Financial Officer or equivalent of the Member.
  - h. any declaration or document submitted by a Member to CISAC in accordance with Rules 7, 8 (a) and 8 (e) above must be signed by Chief Executive Officer or the equivalent of the Member.
9. At least once in every calendar year, each Member shall make available to each of its Affiliates and Sister Societies, a description of its internal rules on the treatment and management of unidentified uses/works, and associated monies. The description shall include, at a minimum, the following:
  - a. the internal process(es) used by the Member to efficiently and diligently identify and link works to corresponding uses;
  - b. the internal practices, policies and procedures applied by the Member in respect of the disposition of monies attached to unidentified uses / works.

10. At least once in every calendar year, each Member shall make available to each of its Affiliates and Sister Societies, a description of the Member's internal Rules concerning financial and other non-copyright related income. This description shall also address the use made by the Member of this income.
11. In each Calendar Year, each Member shall make available to each of its Affiliates:
  - a. an annual report in respect of the fiscal year which immediately precedes such Calendar Year; and
  - b. a summary of its domestic and international Income in respect of the fiscal year which immediately precedes such Calendar Year;
  - c. a clear explanation of the purpose and the amount of all Expenditure which it makes from the Royalties due to such Affiliate; and
  - d. a clear explanation of its distribution rules.
12. In each Calendar Year, each Member shall make available to each Sister Society an annual report in respect of the fiscal year which immediately precedes such Calendar Year.

### **Confidentiality**

13. Subject to Rule 14, each Member shall refrain from disclosing any Confidential Information.
14. Nothing contained within Rule 13 shall prevent a Member from disclosing or otherwise making available Confidential Information:
  - a. which has entered the public domain otherwise than as a result of a breach of contract;
  - b. which must be disclosed or otherwise made available by virtue of a legislative provision, court order, court decision, administrative order or administrative decision; or
  - c. which is disclosed to another Member pursuant to a Reciprocal Contract or any other contract.

### **Licensing and collections**

15. Each Member shall use its reasonable endeavors to:
  - a. license all uses of its repertoire in accordance with and subject to the scope of its mandate;
  - b. promptly collect all Licensing Income due under the licenses which it issues and take all steps it may consider appropriate to collect unpaid Licensing Income;
  - c. monitor and protect the use, and prevent the unauthorized use, of its repertoire; and

- d. promptly collect relevant information about Works exploited by its licensees.

16. Each Member shall:

- a. grant licenses on the basis of objective criteria, provided that a Member shall not be obliged to grant licenses to users who have previously failed to comply with such Musical Society's licensing terms and conditions; and
- b. not unjustifiably discriminate between users.

### **Documentation**

17. Each Member shall, in accordance with the Binding Resolutions, keep accurate and up to date documentation relating to the scope of:

- a. its repertoire;
- b. the rights which it is mandated to administer in respect of such repertoire; and
- c. the territory in which it is mandated to administer in respect of such repertoire.

### **Distribution**

18A Each Member shall:

- a. base its distributions on actual usage of Works or, if not practicable, on the basis of a statistically valid sample of actual usage of Works;
- b. apply the same level of diligence and fairness to all distributions, including, but not limited to, the frequency of distributions, irrespective of whether such distributions are being made to its Affiliates or to its Sister Societies; and
- c. distribute any Royalties due to its Sister Societies or to its Affiliates in accordance with the Binding Resolutions.

18B Subject to Rule 18C below, each Member shall distribute any Royalties due to. Each Sister Society as soon as practicable after collection and in any event no less than once a year.

18C Each Member whose previous year total annual global collections are over €10M shall:

- a. target quarterly distribution as soon as practicable subject to quality and in any event distribute Royalties for a revenue stream due to its Sister Societies not less frequently than the Royalties for the same revenue stream due to its own Affiliates.
- b. distribute Royalties to its Sister Societies within thirty days of payments to its own Affiliates



### **Litigation**

19. Each Member shall be obliged to provide to another Member any document which is within its power to produce and which such other Member may reasonably require for the purpose of legal proceedings.

### **Authorization to operate**

20. If a Member is legally required to obtain authorization from a statutory body in order to operate, then it shall ensure that it so obtains such authorization prior to so operating.
21. If a Member is appealing against the refusal of such statutory body to allow it to operate, it shall continue as a Member at least until the final appeal decision has been delivered.

### **Administration**

22. Each Member shall encourage the development of appropriate skills and knowledge amongst its staff by having in place training and development programme for the benefit of all staff.

### **Reciprocal Contracts**

23. When concluding a contract with another Musical Society, each Member shall be guided (but shall not be bound) by the model terms for Reciprocal Contracts recommended from time to time by CISAC.

### **Dispute settlement**

24. Each Member shall resolve any dispute which arises between it and:
  - a. one of its Affiliates in accordance with the provisions of its affiliation agreement with such Affiliate and in accordance with the law governing such agreement; and
  - b. each Sister Society in accordance with the provisions of the contract for the time being in force between such Societies and with the law governing such Contract.

### **Complaints by a Sister Society**

25. The Board shall appoint an Executive Governance Committee ("Committee"). The Committee shall consist of:
  - a. a number of Directors appointed by the Board; and
  - b. the Director General or a duly authorized representative of the Director General.

26. If a Member believes that a Sister Society is in breach of the Rules, then it shall:
- a. inform the CISAC Secretariat in writing of this fact (“Complaint”); and
  - b. furnish the CISAC Secretariat with any documentation which it believes supports or otherwise justifies its Complaint.
27. The CISAC Secretariat shall:
- a. review the documentation provided by the Member;
  - b. request information from the Sister Society to confirm whether it is in breach of the Rules or not and, if so, to justify the reasons why it is in breach of the Rules; and
  - c. report its analysis to the Committee.
28. Subject to Article 29, the Committee shall, in relation to each Complaint:
- a. uphold the Complaint, draft a recommendation on how to address the Complaint, and refer the Complaint and its recommendation to the Board for the Board’s consideration in accordance with the provisions of Article 23 of the Statutes; or
  - b. dismiss the Complaint, giving a written justification to the Member which submitted the Complaint.
29. If any Director appointed to the Committee in accordance with Rule 25 has an interest in the Complaint, he shall recuse himself from hearing the Complaint and shall be replaced for the purposes only of such Complaint by another Director appointed by the Chairperson of the CISAC Board of Directors.

### **Request from a third party**

30. If the CISAC Secretariat receives a request (“Request”) from a third party that believes a Member is in breach of the Rules, the CISAC Secretariat shall:
- a. duly validate that the third party represents a group of Creators or music publishers with a broad representation, or a government agency responsible for copyright or collective management matters. For the avoidance of doubt, CISAC will not accept a request from an individual creator or publisher;
  - b. request any documentation and evidence that the third party can provide to support its request;
  - c. review the documentation provided by the third party (in cooperation with the relevant Regional Director);
  - d. inform the Member about the request and ask for information from the Member to confirm whether it is in breach of the Rules or not, and, if so, to justify the reasons why it is in breach of the Rules; and
  - e. report its analysis to the Committee.

31. Subject to Article 32, the Committee shall, in relation to each Request:
- a. uphold the Request, draft a recommendation on how to address the Request, and refer the Request and its recommendation to the Board, for the Board's consideration in accordance with the provisions of Article 23 of the Statutes; or
  - b. dismiss the Request, giving a written justification to the third party which submitted the Request.
32. If any Director appointed to the Committee in accordance with Rule 25 has an interest in the Request, he shall recuse himself from hearing the Request and shall be replaced for the purposes only of such Request by another Director appointed by the Chairperson of the CISAC Board of Directors.

### **Compliance and Developmental Reviews**

33. Each Member, and Provisional where relevant, shall be subject either to a Compliance Review or a Developmental Review.
34. The type of review shall depend on the Compliance Thresholds:
- a. A Compliance Review shall be conducted on Members whose Domestic Income is above the Compliance Thresholds. The goal of the Compliance Review is to ensure compliance of the Member with the Professional Rules;
  - b. A Developmental Review shall be conducted on Members and Provisionals whose Domestic Income is below the Compliance Thresholds. The goal of the Development Review is to identify areas of improvement and define a support plan to help the Member or the Provisional in meeting the standards set out in the Professional Rules.

The CISAC Secretariat may propose to move a Member to either side of the Compliance Thresholds in specific cases and upon objective criteria.

35. The process for Compliance Reviews shall be organised as follows:
- a. The CISAC Secretariat shall prepare the list of Members that may be subject to Compliance Reviews as defined in Article 34 a;
  - b. The Committee shall approve the list prepared by the CISAC Secretariat;
  - c. A number of Members (as determined by the Board of Directors) shall be selected from the list *via* a random process at the Annual General Assembly;
  - d. The Compliance Review will be conducted according to a process defined by the CISAC Secretariat.
36. The process for Developmental Reviews shall be organized as follows:
- a. The CISAC Secretariat shall propose a number of candidates (as determined by the Board of Directors) for approval by the Committee;

- b. The Committee shall review the proposed candidates for recommendation for approval by the Board and
- c. The Developmental Review will be conducted according to a process defined by the CISAC Secretariat.

### **Interpretation**

- 37. Each Member shall have the ability to request from the Committee, through the CISAC Secretariat, the interpretation of a Rule or of a Binding Resolution.
- 38. The French version of the Rules shall be the only authorized text. The Director-General shall have translations in English and Spanish made and circulated to the appropriate Members, provided that if there is any divergence or conflict in the wording, the French text shall be authoritative.
- 39. To the extent that there is any conflict between, or ambiguity relating to, any or all of the Rules and the Statutes, the wording of the Statutes shall prevail.
- 40. Article headings in the Rules are for ease of reference only and shall not affect the interpretation of the Rules.