



Gesellschaft zur  
Verwertung von  
Leistungsschutzrechten

# Agreement for the assignment and administration of rights for producers of sound recordings

GVL-ID: \_\_\_\_\_  
Contract number: \_\_\_\_\_  
(to be completed by GVL)

between

Name/company: \_\_\_\_\_

Name of representative: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

- hereinafter referred to as "rights holder" -

and

**Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL)**  
**Podbielskiallee 64, 14195 Berlin**  
**P.O. Box 33 03 61, D-14173 Berlin**

- hereinafter referred to as "GVL" -

the following Agreement governing the assignment and administration of  
rights is hereby concluded:

**Art. 1 Assignment of rights**

- (1) The rights holder grants GVL the right to administer, on its behalf and vis-à-vis third parties, the following rights he is entitled to at present and that he may become entitled to during the term of this Agreement:
1. statutory entitlements to receive equitable remuneration (Art. 86 UrhG, [German Copyright Act]) and/or equitable remuneration in respect of
    - a) conventional radio and TV broadcasts of performances on published sound recordings by broadcasters (Art. 78 (2) no. 1, UrhG).
    - b) cable retransmission of sound recordings in simultaneous, unaltered and unabridged programmes through cable or microwave systems (Art. 78 (2) UrhG);
    - c) communication to the public of performances recorded onto sound recordings or contained in conventional broadcasts or transmitted in accordance with Art. 1 nos. 2 - 5, or of performances based on the making available to the public (cf. Article 78 (2), nos. 2 and 3 UrhG);
    - d) direct or indirect copying of a sound or audio-visual recording onto other sound or audio-visual media for private or other personal uses (Art. 54 (1) UrhG);
    - e) reproduction of sound recordings used in the course of conventional school broadcasts pursuant to Art. 1 nos. 2-4, if the recordings thus made are not deleted at the end of the following school term (Art. 47 (2) UrhG);
    - f) recording and distribution of sound recordings which become part of a collections and libraries for church, school or educational purposes used by students or teachers, however limited to 10,000 copies at a time (Art. 46 (4) UrhG);
    - g) rental and lending of published sound recordings (Art. 27 UrhG) as from 01 July 1994; for recordings published after 01 July 1995, this shall only apply if the producer has authorised the rental of the sound recording;
    - h) non-commercial reproduction of recordings and their distribution to the disabled, subject to this being necessary to enable them to access to sensual perception of the recordings (Art. 45a (2) UrhG);
    - i) the public making available of sound recordings for education and research (Art. 52 a (4) UrhG);
  2. the right exceeding Art. 86 UrhG concerning the non-interactive transmission of performances recorded onto published sound recordings or conventionally broadcast performances via IP TV, and via new transmission standards for mobile reception or in mobile networks; this shall, however, be on a non-exclusive basis;
  3. the right exceeding Art. 86 UrhG concerning the non-interactive transmission of sound recordings in multi-channel services especially in a digital format (cf. Art. 85 (1) UrhG); this shall, however, be on a non-exclusive basis;

4. the right exceeding Art. 86 UrhG concerning the non-interactive transmission of sound recordings via simulcasting or webcasting via internet or mobile networks; this shall, however, be on a non-exclusive basis;
5. the non-exclusive right to make available performances recorded onto published sound recordings or conventionally broadcast in accordance with Art. 1, 1a) via podcasting;
6. the non-exclusive right to make available published sound recordings as background music on websites. For the avoidance of doubt, transmissions within closed proprietary systems (intranet) or closed private networks (intranet and/or VPN) or via mobile phone network configurations are excluded from the scope of this Agreement.
7. the right to authorise the manufacture of single copies of sound recordings against payment (Art. 85 (1) UrhG)
  - a) for the purpose of conventional radio or television transmissions by broadcasters and for the provision of copies under the conditions laid down in the valid broadcasting agreement at the time;
  - b) in connection with published tariffs or concluded general agreements for the purpose of public or non-public performance by the reproducer; or for the purpose of archiving except for reproductions to be included in a database; an exception thereto being if it is a database set up directly by the organiser of the public performance or the party engaged by the organiser for said event, for the purpose of public performance in accordance with Art. (2), nos. 2,3 UrhG;
  - c) for the purpose of non-commercial manufacture and exploitation of a film;
  - d) for the purpose of a non-interactive transmission via IP TV and via new transmission standards for mobile reception or in mobile networks in line with Art. 1 item 2 of this Agreement;
  - e) for the purpose of non-interactive transmission of sound recordings in multi-channel services, particularly in digital format in accordance with Art 1, item 3 of this Agreement;
  - f) for the purpose of non-interactive transmission in the form of simulcasting or webcasting via the internet or mobile networks in accordance with Art. 1 item 4 of this Agreement;
  - g) for the purposes of podcasting in accordance with Art. 1 item 5 of this Agreement;
  - h) for the purposes of background music on websites in accordance with Art. 1 item 6 of this Agreement;
  - i) for the purposes of the use in the context of internet programmes for young people in accordance with Art. 1 item 10 of this Agreement;
8. as regards audio-visual recordings, which contain musical performances or excerpts thereof recorded onto a sound recording, and whose duration is no longer than 10 minutes:

- a) the right to conventional broadcasts by broadcasting enterprises (Art. 94 (1) UrhG) in comprehensive and specialist TV programming (except for specialised music programmes);
  - b) the right to conventional broadcasts by broadcasting enterprises (Art. 94 (1) UrhG) in specialised music programmes (which would be those programmes with a content of the relevant audio-visual carriers of over 70%);
  - c) the non-exclusive right to non-interactive transmission via IP TV and via new transmission standards for mobile reception or in mobile networks in line with Art. 1 item 2 of this Agreement;
  - d) the non-exclusive right to non-interactive transmissions in multi-channel services in accordance with Art 1 item 3 of this Agreement;
  - e) the right to simulcast via internet or mobile networks;
  - f) the non-exclusive right to make available performances recorded onto published sound recordings or conventionally broadcast performances via podcasting in accordance with Art. 1, 7a) of this Agreement;
  - g) the non-exclusive right to make available [their] performances to the public via streaming on demand, in relation to the preparation of the broadcast of own or commissioned music events with a show character during the time between six weeks prior to the first transmission and the first transmission on the websites of the broadcasters which are responsible for organising the event, subject to the prerequisite that the respective broadcaster has signed a broadcasting licensing agreement, has fulfilled the operating conditions in line with **Annex 2**, and that only audio-visual recordings with performances of the performing artists (featured artists) which appear during the show are being used.
  - h) statutory rights to remuneration arising from cable retransmission, reproduction, communication to the public, rental, lending and the dissemination pursuant to Nos. 1 b) to 1 i);
  - i) the right of mechanical reproduction/copying corresponding with items 7. a) to 7 g) above; as well as participation entitlements and claims for remuneration, whose statutory administration can only be carried out by a collective management organisation - without limitation with respect to their duration;
9. as regards sound recordings, the non-exclusive right of reproduction and distribution via physical storage media, irrespective of its nature, reproduction and making available to the public (Art. 19 a UrhG), also via internet, and via new transmission standards for mobile reception or via mobile networks, plus the rights mentioned in item 8 c) (Art. 85 (1) UrhG), for specified and previously broadcast programmes of radio and TV stations in accordance with the following regulations:
- a) for TV broadcasts this shall apply to individual film and series works which were produced by the broadcaster itself or commissioned by it for its own broadcast purposes where sound recordings merely get used to provide dramaturgic support (except for music films) as well as for all programmes which fulfil the conditions in items 3 b to c of Annex 2.
  - b) For radio broadcasts this shall apply to radio plays which were produced by the broadcaster itself or commissioned by it for its own broadcast purposes where sound recordings merely get used to provide dramaturgic support (except for radio plays with a music related main subject) as well as for all programmes which fulfil the conditions in items 3 b to c of Annex 2.

10. Programmes as part of internet programmes for young people ("service for young people") for the purposes of Art. 11g RStV (German Interstate Broadcasting Agreement) or similar programmes of private broadcasters may be made available to the public via streaming, without the necessity to be linked to a broadcast, and be transmitted in their entirety or in parts prior or after having been made available, if the broadcasters have entered into a broadcasting licensing agreement with GVL. In the case of programmes of such internet services for young people, contents where published music recordings are used as background music can be placed into such on demand services without a broadcast being a requirement;
  11. the right to make claims in cases of omission, loss or damages in case of infringement of the rights transferred in accordance with item 2 and 9 in and out of court;
  12. neighbouring rights of the performing artists assigned to the rights holder in the scope defined in items 1. to 9 above; this includes the broadcasting right (Art. 78 (1) no. 2 UrhG) provided that the exploitation of published sound recordings in multi-channel services should be regarded as a broadcast;
  13. authors' rights assigned to the rights holder as previously defined in items 8 and 10 above.
- (2) The rights holder may assign the right to anyone to issue a non-commercial licence for the exploitation of his recordings or to use them for non-commercial purposes himself. The provisions in the respective current version published separately shall apply in particular.

#### **Article 1a Definitions**

- (1) "Database" for the purpose of this Agreement shall mean a collection of musical sound recordings arranged in a methodical or systematic way and accessible with the help of electronic or other means and whose set-up requires a substantial investment.
- (2) "IP TV" shall mean the transmission via broadband multimedia services based on an internet protocol (IP). "IP TV" for the purpose of this Agreement shall exclusively be the non-interactive electronic transmission of such services in IP based electronic networks outside the internet (world wide web).
- (3) New transmission standards for mobile reception shall mean those which enable the non-interactive transmission of programme signals via satellite or terrestrial signals to mobile end user devices (e.g. DVB-H).
- (4) Mobile network services shall mean the transmission channels used for public mobile telephony (e.g. UMTS) as long as they are exclusively used for the non-interactive transmission of programme signals.
- (5) "Multi-channel services" for the purpose of this Agreement shall mean services in which sound or audio-visual recordings are transmitted via at least two parallel channels by wire or wireless means without substantial editorial contribution and without interactive elements, - especially via satellite or cable - with the exception of internet transmissions. The user must not have any influence on the specific design of the particular programme he receives.
- (6) "Simulcasting" for the purpose of this Agreement shall mean the non-interactive, simultaneous, unaltered and not permanently storable transmission ("Streaming") of sound recordings included in a conventional broadcast via commonly accessible pages on the internet (world wide web) or mobile network services.

- (7) "Webcasting" for the purpose of this Agreement shall mean the non-interactive and not permanently storable transmission of a programme via commonly accessible pages on the internet (world wide web) or commonly accessible mobile network services on one or more channels, as long as the primary purpose of the service is not to sell, advertise or promote particular products or services other than sound recordings, live concerts or other music-related events, and provided that the criteria specified in Annex 1 of this Agreement have been fulfilled.
- (8) "Podcasting" for the purpose of this Agreement shall mean the making available to the public of a conventional broadcast already legitimately used for broadcasting or making available within 30 days of the intended conventional broadcast for the non-permanent ("streaming") or permanent ("download") storage via commonly accessible pages on the internet (world wide web including any specially designed applications (apps)) or publicly accessible mobile network services through the broadcaster, provided that the criteria specified in Annex 2 of this Agreement have been fulfilled. Instead of making a conventional broadcast publicly available as early as 30 days prior to the planned conventional broadcast, a rights holder may alternatively extend this assignment to GVL to 3 months prior to the planned conventional broadcast.
- (9) "Background Music on Websites" for the purpose of this Agreement shall mean the making available to the public of sound recordings as background music on sites accessible to a user of the Internet (world wide web)
- provided that it is a non-interactive, unaltered transmission of sound recordings ("streaming") by means of or via the computer of a user, and it excludes any reproductions of the transmitted sound recordings by the user and
  - it meets the criteria set out in the operating conditions for background music on websites (see Annex 3).

## **Art. 2 Limitations of the rights assignment**

- (1) The assignment of rights under Art. 1 above shall take effect only for the purpose of administration within the Federal Republic of Germany.
- (2) This limitation shall not be applicable to agreements concluded with foreign cable broadcasting companies, and provided that GVL grants rights in respect of territories outside the Federal Republic of Germany in agreements concluded with broadcasting enterprises and radio advertising companies of the Federal Republic of Germany. This limitation shall also not be applicable provided that agreements are concluded with foreign collecting societies concerning mutual administration of neighbouring rights of performing artists and/or producers of sound recordings.
- (3) If the rights holder has assigned rights to GVL for certain countries, the prevalent national rules and regulations which comply with the rights pursuant to Art. 1 shall be applicable with regard to the scope of the management of rights. On behalf of rights holders who have assigned their rights for administration outside Germany to GVL, GVL shall also be entitled to claim for the remuneration entitlements with its foreign sister societies and also to receive such remuneration calculated by foreign sister societies from them, relating to rights outside the scope of this Agreement or for periods prior to the conclusion of this Agreement. Remuneration entitlements claimed by GVL from its foreign sister societies within the framework of its existing reciprocal agreements are based on the registered rights ownership; in such cases, GVL may also rely on already saved and processed data.
- (4) The assignment of rights pursuant to Art. 1 shall not include the usage for advertising purposes.

- (5) The rights holder reserves the right to exercise the powers provided for in broadcasting agreements to exclude the reproduction of sound and/or audio-visual recordings if the artists involved so wish and where applicable, the powers provided in licensing agreements to exclude the making available of specific sound and /or audio-visual recordings. The rights holder also reserves the right to exclude sound and/or audio-visual recordings from any sort of reproduction if any of the artists involved has not given his consent to such an exploitation. The rights holder is obliged to inform GVL about such reservations in writing. The assignment of rights in this Agreement does not include the right to license background music on websites according to Article 1 item 6, as well as webcasting or podcasting services subject to Art. 1 items 4, 5, item 8 f and g as well as item 9 of this Agreement, which do not comply with the criteria listed in Annexes 1, 2 and 3 of this Agreement. Moreover, rights for the use of sound recordings as so-called “ringback tones” are not included either (so-called “ringback tones”).
- (6) In cases where GVL has not yet concluded general agreements or not yet established a tariff, it needs to obtain prior approval of the rights holder in each individual case.

### **Article 3 Duties of the rights holders**

- (1) The rights holder shall be obliged at all times to provide GVL with the necessary details in order to determine and manage his rights and claims, and to submit evidence; furthermore to submit the necessary details for establishing and executing the distribution regulations and to supply the required documentation. GVL shall also be entitled to acquire necessary information directly.
- (2) The registration deadlines in the distribution regulations and any expressly communicated deadlines shall be cut-off deadlines for establishing remuneration entitlements. The distribution regulations in their current version shall apply.
- (3) The rights holder shall inform GVL of his bank details and personal data (name, address, e-mail) and shall keep GVL informed of any changes to his details. In order to facilitate a payout at a later date, this obligation shall continue up to five years after the agreement has been terminated. GVL shall not be liable for misdirected transfers based on incorrect details. The rights holder shall be obliged to return any overpayments which result from incorrect, incomplete or unclear details to GVL.
- (4) The rights holder shall be obliged to inform GVL without delay about any changes to his residence or the registered office address or any changes to the company.
- (5) The rights holder is also obliged to identify or mark repertoire relating to sound recordings if it has not had its first or simultaneous publication in a signatory country of the Rome Convention. For such recordings, other evidence for protection criteria pursuant to the Copyright Act, Rome Convention or WPPT must be provided upon request.

### **Art. 4 Assignment of rights holders' entitlements**

Rights holders' entitlements vis-à-vis GVL may only be assigned to third parties subject to GVL's approval. GVL may make its approval subject to an assignment to payment of an administration fee. With regards to legal succession, the general statutory provisions shall apply.

### **Article 5 Duration of the rights assignments**

- (1) This Agreement shall commence with the day of signature by the parties and shall be valid retroactively for the distribution years for which the registration deadline has not lapsed yet.

- (2) This Agreement may be terminated by giving 6 months' notice per 31st December of any year. It is also possible to withdraw individual rights from GVL. The withdrawal of rights may extend to individual protected usage types or territories and must be clearly specified to GVL. Right from the beginning of this Agreement, a three months' notice may be given per the end of any semester in a calendar year, pursuant to Art. 1 items 2 to 6, provided that it does not involve claims for participation as well as pursuant to Art. 1 items 8 a) to g), 9 and 10, including the respective reproduction rights in items 7 and 8 i). The partial or complete termination of this Agreement must be made in writing. The date of receipt by GVL shall determine the beginning of the notice period.
- (3) Should the agreements entered into by GVL with users continue to be valid beyond the termination of this Agreement, then this Agreement shall be extended accordingly with respect to the relevant assignment of rights. This shall not apply to the termination options provided in the preceding paragraph 3, second clause, with the exception of items 7 a) and b) including the respective reproduction rights.
- (4) Once this Agreement has been terminated and/or rights have been withdrawn from it, the rights shall revert to the rights holder at the points in time mentioned in paragraph 3 without any explicit assignment.

#### **Article 6 Distribution**

- (1) GVL's Articles of Association in their current version shall form an integral part of this Agreement. Future changes to this Agreement passed by the Associate and Delegates' Assembly, for example with respect to new rights or usage types shall become part of this agreement if they were communicated to the rights holder in writing and if he has agreed to them. Approval shall be deemed as given unless the rights holder explicitly contests it within 6 weeks from dispatch of the announcement; he shall be made aware of this legal consequence in the relevant communication.
- (2) The following provisions shall apply with regards to distribution purposes:
  - a) Licence fees collected by GVL for the use of sound recordings shall be divided equally between record companies and performing artists.
  - b) Licence fees collected by GVL for the use of music video clips shall be divided equally between record companies and performing artists after a pre-allocation of 60% to the record companies.
  - c) Licence fees collected by GVL for the rental and lending of movies shall be divided equally between performing artists and record companies after a pre-allocation of 40% to the performing artists.
  - d) Licence fees collected by GVL for cable retransmission of artistic performances not covered by a) or b) above, shall be allocated to performing artists.
- (3) If, in retrospect, the distribution for a specific distribution period should turn out to be systematically faulty in its entirety or in parts, specifically in cases where this is due to the invalidity of a provision of the underlying distribution regulations (including their Annexes), and if a complete reversal and rerun of the distribution is not possible or only feasible at disproportionate costs,
  - a) the level of the entitlements arising from the faulty distribution can be estimated if a precise calculation is not possible or only at disproportionate costs,
  - b) the entitlements of those negatively affected by the faulty distribution can be satisfied from current and future collections,



- c) Reclaim entitlements by the society may be offset against future payment entitlements
- d) or instead of these amounts being offset, reclaim entitlements by the society may be waived in their entirety or in part.

When selecting from these measures, the aim is to consider that the relevant entitlements are being fulfilled as completely as possible, and to observe the requirement of proportionality. The principle of equality shall be observed and cases of hardship must be taken into consideration.

#### Article 7 Miscellaneous

- (1) The rights holder consents to his details being stored, processed and distributed electronically for the purpose of forming the basis, executing and terminating this Agreement for the assignment and administration of rights, but only within the framework of purposes of this contractual relationship. This consent shall be expressly extend to the making available of data in the remit of international databases which are used jointly with foreign sister societies.
- (2) The rights holder confirms that he has received information on his rights prior to signing this Agreement for the assignment and administration of rights and that GVL has fulfilled its obligation to provide information pursuant to Art. 53 VGG prior to consenting to his rights being managed.
- (3) Regarding matters relating to Art. 12.2 b) to e) of the Articles of Association, the rights holder may lodge an appeal with the complaints committee. The complaints committee can only be appealed to within four weeks from the receipt of the decision in dispute. If a party entitled to an appeal has missed the deadline through no fault of their own, they have the right to be reinstated into their status quo ante upon application. The application must be filed within a two week deadline once the hindrance has been removed. It is not possible to appeal for a reinstatement into a status quo ante once a year has lapsed counted from the end of the missed deadline. Legal action cannot be taken until the complaints committee has made a decision or once six months have passed since the appeal. Further details can be determined in the procedural rules of the complaints committee.
- (4) Place of performance and jurisdiction shall be the registered office of GVL.

Place, Date  
Signatures

**This is an unofficial translation:**

Please note that the translation of the "**Wahrnehmungsvertrag**", the Agreement governing the assignment and administration of rights, is a free translation into English and is provided as a service by GVL and shall serve for orientation purposes and your files only. The translation is provided solely for the convenience of English speakers. In the event of a discrepancy between the English translation and the German version, the version in the official language **shall** prevail.

Please sign the German original of the Wahrnehmungsvertrag.

## Annex 1

### OPERATING CONDITIONS WEBCASTING

A webcaster must fulfil the following operating conditions in order to obtain a webcasting licence in compliance with the agreement for the assignment and administration of rights.

#### 1. No previews

The webcaster may not publish or arrange the publication of any previews or other kinds of announcements revealing the titles of the individual music recordings or the titles of the album including such music recordings featuring as part of the programme. Names of performing artists being played in the programme may not be mentioned except for illustrative purposes. This does not exclude the webcaster from making an announcement that an artist features in the programme in an unspecified timeframe.

#### 2. Music programme

Broadcasts by the webcaster may not include the following within three hour-segments of his programme:

- (a) more than three different titles from a specific album; no more than two of which may be in consecutive order; or
- (b) more than four different titles by a specific artist or a compilation of music titles; no more than three of which may be in consecutive order.

#### 3. Pre-recorded programmes and broadcast loops

The transmission may not be part of:

- a) (a) a pre-recorded programme of less than five hours; or
- b) (b) a pre-recorded programme of five or more hours which is being transmitted for a period of more than two weeks; or
- c) (c) a broadcast loop of less than three hours.

#### 4. Programme repetition

The transmission may not be part of a programme that can be identified as one that plays music recordings in a predetermined order (except in pre-recorded programmes and broadcast loops) if this programme is transmitted:

- a) (a) more than three times within a previously publicly announced period of two weeks, as long as it is a programme lasting less than an hour; or
- b) (b) more than four times within a previously publicly announced period of two weeks, as long as it is a programme lasting an hour or more.

#### 5. Prohibition of use for advertising and dubbing purposes

The webcaster may not transmit music recordings as such or as part of a service offering the transmission of images or films in a manner that is suitable to create the false impression of a connection between the owner of the copyright and/or neighbouring rights with the webcaster or a specific product or service that the webcaster is advertising for. Furthermore, the webcaster may not create the impression that his activities over and above the transmission for music recordings itself are sponsored by the owner of the copyright and/or neighbouring rights (incl. the performing artist).

## **6. Prevention of programme scans and recordings**

In the case of consecutive music recordings being used for his programme, the webcaster must either talk over them or cross-fade them. Should this not be possible in an individual case, the interval between two transmitted music recordings must not exceed 0.25 seconds.

Unless it entails disproportionate costs, the webcaster must use effective technical measures, widely available on the market, which are targeted at preventing that:

- a) the person receiving a transmission or any other person can automatically scan the webcaster's programme itself or together with the transmissions by other webcasters in order to filter out specific music recordings from the programmes; and
- b) the person receiving a transmission can create copies of the music recordings (except thereof are transient copies made for technical reasons).

## **7. Support of technical measures**

The webcaster shall accommodate and not interfere with technical measures that are used by sound recording producers to identify or protect their music recordings, provided that these technical measures can be transmitted by the webcaster without substantial costs and without any perceptible aural or visual degradation of the digital signal.

## **8. Providing information for rights management purposes**

- a) The webcaster shall provide information on the music recordings in a way that they are displayed to the person receiving the transmission via a specific device, during, but not prior to the transmission: Title of the music recording, if possible, title of the album containing the track and name of the performing artist.
- b) The transmission of music recordings shall, if technically feasible, be accompanied by the transmission of the information on title and performing artist as implemented into each music recording by the rights owners.

This obligation shall apply subject to the conditions pursuant to no. 6.

## **9. No transmission of unauthorised music recordings**

The webcaster may not transmit any unauthorised music recordings; those include, without exception, so-called bootlegs (unauthorised concert recordings) and recordings which have not yet been published for webcasting purposes in the country where the webcaster is headquartered. The webcaster may not remix or change the music recordings in any other way so that the music recordings transmitted are different to the original recordings.

## **10. Automatic channel skipping and personalised programmes**

The webcaster may not support any devices that enable automatic skipping from one programme channel to another. The person receiving a transmission shall, however, have the option to use pause and skip functions. The webcaster must determine fixed gaps applying to functions for skipping individual titles or for skipping a time interval in a forward direction which cannot be influenced by individual persons receiving the transmission. The webcaster may also offer personalised programmes ("preference functions"). The preference function shall provide the persons receiving the transmission with the possibility to inform the webcaster of their preferred genres, artists or music recordings. The combination of skip and preference functions may not lead to transmissions of recordings by specifically requested artists or albums. The combination of unlimited skip functions with preference functions is, however, excluded.

## **11. Maintaining integrity of works and performances**

When using music recordings, the webcaster shall observe the moral rights of the authors and performing artists. The webcaster must, in particular, refrain from any distortion or other interference which might endanger the reputation and standing of such moral rights holders. This applies in particular to the combination of music recordings with images or films.

## Annex 2

### OPERATING CONDITIONS PODCASTING

A broadcaster must fulfil the following operating conditions in order to obtain a podcasting licence in compliance with the agreement for the assignment and administration of rights.

#### 1. Control by the broadcaster

The podcast of a broadcast must be made available using a server which is controlled by the broadcaster. The server shall only be accessible via the broadcaster's website including specifically designated applications (apps). Access via other websites must not take place unless the name of the broadcaster and/or the programme are mentioned, and is subject to permission by GVL.

#### 2. No further usage

The broadcaster must legally oblige the recipient of the podcast to use the programme only for private/personal use.

#### 3. Programme restrictions

- a) The programme must not be made up exclusively of music recordings [back-to-back music] and shall not contain more than 3 subsequent tracks.
- b) In cases where music recordings are merely used as background music, and the contents of the sound recordings in the podcast does not exceed 10% of the total duration of the programme, and the used sound recordings consist of excerpts shorter than one minute and less than half of the total duration of the actual music track, then the provisions in nos. 4, 6, 7 and 10 shall not be required.
- c) If at least 50% of the used total duration of music recordings used in programmes are subject to voice-overs, they shall not be taken into consideration when applying the restrictions mentioned above under a) to c).

#### 4. Prohibited use for advertising purposes

The broadcaster must not use his services to advertise or sell certain products except for sound recordings.

#### 5. Programme scan prevention

Unless the broadcaster incurs unreasonable costs in doing so, he shall use generally commercially available and effective technical measures which serve the purpose of preventing podcasts from being passed on or scanned in such a way that music recordings can be filtered out and reproduced.

#### 6. Support of technical measures

The broadcaster shall accommodate technical measures that are used by sound recording producers to identify and protect their music recordings, provided that these technical measures can be transmitted without substantial costs and without any perceptible aural or visual degradation of the transmitted signal.

#### 7. Providing information for rights management purposes

- a) The broadcaster may provide information on the music recordings in a way that they are displayed to the person receiving the transmission via a specific device, during but not prior to the transmission: Title of the music recording, if possible, title of the album containing the track and name of the performing artist.
- b) The transmission of music recordings shall, if technically feasible, be accompanied by the transmission of the information on title and performing artist as implemented

into each music recording by the rights owners.

#### **8. No transmission of unauthorised music recordings**

The broadcaster must not transmit unauthorised sound recordings such as bootlegs (unauthorised recordings of live concerts) or recordings not yet released for public broadcast. The broadcaster must not alter the recordings via e.g. re-mixes or other arrangements so that they differ from the original recordings.

#### **9. Automatic channel skipping and personalised programmes**

The broadcaster may not support any devices that enable automatic skipping from one programme channel to another. Furthermore, no skip or fast-forward or rewind functions shall be included in the broadcaster's product. The broadcaster may, however, provide for a pause, a backward and forward function. Such functions must in no way enable the listener to get from one sound recording to the next. No function shall enable the listener to create a personalised programme (e.g. relating to the offer of specific artists or the contents of specific albums).

#### **10. Integrity of works and performances**

When using music recordings, the broadcaster shall preserve the moral rights of authors and performing artists. The webcaster must, in particular, refrain from any distortion or other interference which might endanger the reputation and standing of such moral rights holders. This applies in particular to the combination of music recordings with images or films.

## Annex 3

### OPERATING CONDITIONS FOR BACKGROUND MUSIC ON WEBSITES

The following operating conditions must be complied with during the licensing procedure relating to sound recordings used as background music on websites:

#### 1. Programme restrictions

The total duration of all tracks used as background music may not exceed 15 minutes. The streams may not include more than one track of a specific artist and must consist of a minimum of 2 different tracks.

#### 2. Technical requirements

During the streaming process, non-downloadable formats shall be used. Only audio transmission formats must be used. The streamed contents must be purchased legally .

The streams shall commence automatically when a user visits the respective website or scrolls to a specific section on the website.

Website users must not have the ability to select, pause, rewind, replay certain tracks or, through whatever technical means, advance or retreat to a point in the streaming programme ("skip" function).

In order to prevent background music titles appearing as internet music search results or being detected by web-crawling services or so-called stream rippers, the titles may not be linked to metadata which would facilitate a search for titles or names of specific recordings, albums or tracks or the featured artists.

It is not allowed to link specific tracks. The website must not contain or support links to titles on other sites, including those of the licensee.

Unless the website operator incurs unreasonable costs in doing so, he shall use generally commercially available and effective technical measures which serve the purpose of preventing the used recordings from being passed on or scanned in such a way that they can be filtered out and reproduced.

#### 3. Prohibition of use for advertising and dubbing purposes

The website shall not advertise, announce or feature in any way, shape or form, titles of the specific tracks or the names of albums incorporating such tracks or the names of the featured recording artists.

The licensed website shall not carry third party advertising or suggest by implication or otherwise any endorsement by the artists of any product or service.

The website shall not synchronise the tracks with any particular visual materials.

The rights holders shall retain the right to withhold any individually specified tracks or all tracks of an artist from the licence.

In the event that a performing artist should retroactively object to the use of their recordings on a specific website or in the event that the producer concerned has specific reasons to believe that such continued use will negatively affect his relationship with the recording artist concerned, then the licensee is obliged upon notice to the licensee hereunder to immediately remove such recordings from his website or to swap them. The website operator shall not re-mix, edit or otherwise modify sound recordings.

#### 4. Licensees

Only one license can be granted to a natural or legal person.

The licensed website must be operated by a private individual or a legal entity that employs no more than 10 full-time employees or consultants and whose annual gross revenue does not exceed € 500,000. Where such a legal entity

is part of a group of associations or businesses, then the aggregate staffing level and the aggregate gross revenue of all members of such group shall be taken into account for the purposes of this Agreement.

Operators of websites and/or entities offering digital music services are not eligible for acquiring a licence.

The licensee shall be responsible for clearing all necessary usage rights subject to copyright for the use of the underlying musical works.

#### **5. Prohibited contents**

The licensed websites may not contain nor encourage or endorse the following contents in any way: Gambling, alcohol, tobacco products, illegal drugs, pornography, music piracy, violence and other illegal or unlawful content/activities as well as those which might be harmful to the interests of the entitled rights owners or performing artists such as obscenities or any other abusive or grossly inappropriate behaviour. This shall specifically apply to, but is not limited to, copyright infringements (including file sharing), racism, homophobia, instigation of violence, fraud, or infringements of the rights of third parties.