



## **Agreement on Reciprocal Representation to License Simulcasts**

Between the undersigned

collectively the "Contracting Parties"

**Whereas the Contracting Parties are aware of developments in technology and uncertainty regarding future applications of Internet streaming,**

**Whereas the Contracting Parties consider that it is necessary to clear rights for Simulcasting of sound recordings both in the country where the signal originates and in the country to which the signal is transmitted,**

**Whereas the Contracting Parties will cooperate in order to ensure an effectively functioning international administration of producers' rights through reciprocal agreements between producers' rights administration societies solely in the field of Simulcasting,**

**Whereas the purpose of this Agreement is to offer Simulcasters the possibility to obtain non-exclusive multi-territory licenses, and record companies the possibility to have, on a non-exclusive basis, their rights collectively licensed,**

**The Contracting Parties have entered into the following Agreement:**

### **1. Parties**

The Parties to this Agreement (hereinafter Contracting Parties) shall comprise every entity from the list set out in Schedule A, which has signed either this Agreement or an identical counterpart.

Each of the Contracting Parties contracts individually and separately with every other Contracting Party under the terms set out in this Agreement.

Each of the Contracting Parties hereby represents and warrants that it has the authority to enter into this Agreement.

This Agreement between any of the Contracting Parties may only be amended by a written agreement signed by those Contracting Parties.

### **2. Objectives**

- (1) This Agreement enables collecting societies representing sound recording producers' rights to clear rights for Simulcasting of sound recordings both in the country where the signal originates and in the country to which the signal is transmitted.
- (2) For the purpose of this Agreement "Simulcasting" means the simultaneous unaltered transmission via the internet of sound recordings included in original free-to-air broadcasts of radio and/or TV signals in compliance with the respective regulations on provision of broadcasting services.

### **3. Eligibility**

Non-profit collecting societies representing the rights of sound recording producers and validly mandated by the right holders to administer rights implicated in Simulcasting in their territory are eligible to become Contracting Parties to this Agreement.

#### **4. Reciprocal authorisation**

- (1) By virtue of this Agreement, each Contracting Party individually agrees to authorise each other Contracting Party on a non-exclusive basis to license Simulcasting
  - (i) When the original broadcasting is undertaken by a broadcasting station established in the other Contracting Party's territory; and
  - (ii) In and into its own territory for all sound recordings the Contracting Party administers; and
  - (iii) In and into that other Contracting Party's territory for those sound recordings the Contracting Party is eligible to license for that country.

The reciprocal authorisation to license sound recording producers' rights granted under this Agreement covers only the rights of those sound recording producers' that the contracting parties represent from time to time.

- (2) Notwithstanding the provisions of the previous paragraph, the Contracting Parties agree that Contracting Parties established within the European Economic Area (EEA) are authorised to issue multi-territory, multi-repertoire licences under this Agreement to Simulcasters having their commercial establishment anywhere within the EEA. Accordingly, Simulcasters established anywhere in the EEA can approach any Contracting Party based in the EEA for a multi-territory, multi-repertoire licence under this Agreement.
- (3) For the avoidance of doubt, the reciprocal authorisation under this Agreement covers all the sound recording producers' rights implicated in the Simulcasting activity. This authorisation does not, however, permit the Contracting Parties to authorise Simulcasters to sub-license any sound recording rights. Notwithstanding the foregoing, Contracting Parties may authorise Simulcasters to license the use of their streams for simultaneous and unaltered transmission under the original brand or channel name via third-party websites, provided that the streams continue to be transmitted from the Simulcaster's server, and subject to the approval of such third-party website by the Contracting Party that licenses the Simulcasters.
- (4) Only as to dealings with Contracting Parties established in the United States and to the extent the terms and conditions of this Agreement differ in any way from the terms and conditions under the Digital Millennium Copyright Act (DMCA), the terms and conditions of a licence under this Agreement as far as the exploitation of rights in the United States rights is concerned, shall be the DMCA terms and conditions.

#### **5. National treatment and country of destination**

- (1) By virtue of this Agreement each of the Contracting Parties undertakes to enforce within its territory the rights of the right holders of the other Contracting Party in the same way and to the same extent as it does for its own right holders.
- (2) Each Contracting Party shall, with respect to Simulcasts transmitted outside its own territory, respect the legal rights and protections granted to right holders in those

countries and apply to the Simulcasters the licence fees which apply in the other Contracting Party's territory for those Simulcasts received in the latter's territory.

- (3) EEA based Contracting Parties shall when granting multi-territory, multi-repertoire licenses under this Agreement individually identify and separately charge Simulcasters an administrative fee that corresponds to the cost of services to the user obtaining the license. Accordingly, the two elements to be charged to Simulcasters in the EEA are separately identified: the royalty for the use of phonogram producers' rights in the different territories and the administrative fee to cover the administration costs for services to users related to the granting of multi-territorial Simulcasting licenses.

## **6. Exchange of information and remuneration**

- (1) The Contracting Parties shall undertake to use their best efforts to exchange information required for the implementation of this Agreement concerning
  - (i) The licence fees they apply to Simulcasts in their own territory; and
  - (ii) The number and the origin of hits of the Simulcaster's website licensed by the parties; and
  - (iii) Their repertoire.
- (2) For the avoidance of doubt it is stated that as relates to Contracting Parties based in the EEA the exchange of information under clause 1(i) shall only relate to the royalty element required to calculate the multi-territory license fee under this Agreement. Contracting Parties shall not exchange information regarding the level of the administrative fee they charge Simulcasters.
- (3) Contracting Parties shall arrange and agree separately, in accordance with their mandates and this Agreement, how and when to distribute among each other the monies collected on behalf of sound recordings in the other Contracting Parties' repertoire. Contracting Parties acknowledge however that the objective of this Agreement is that monies collected for Simulcasting of sound recordings in the other Contracting Parties' repertoire will be distributed to the individual rights holders entitled to such remuneration.

## **7. Entitlement**

- (1) This Agreement enables, within the limits of Article 4 of this Agreement, each Contracting Party to
  - (i) License on a non-exclusive basis, whether in its own name or that of the right owner concerned, the Simulcasting of sound recordings in the repertoire of the other Contracting Party; and
  - (ii) Collect any and all remuneration and/or licence fees for the use of such sound recordings in Simulcasting against a due valid receipt for such collections; and
  - (iii) Receive all sums due as indemnification or damages for the unauthorised Simulcasting of sound recordings against a due valid receipt for such collections.
- (2) To commence and pursue, in full cooperation with the other Contracting Party, in its own name or that of the right holder concerned, legal actions before a court of law, or other judicial or administrative body

- (i) Against a person or corporate body responsible for unauthorised Simulcasting; or
  - (ii) For the purpose of setting the rate for and securing the payment of remuneration for the Simulcasting of sound recordings.
- (3) Notwithstanding the provisions in Article 5 of this Agreement, the Contracting Parties agree that in the event a single tariff for multi-territory Simulcasting is agreed between representatives of the Contracting Parties and their members and representatives of Simulcasters, such tariff may be applied by the Contracting Parties as an alternative to calculating the multi-territory multi-repertoire license fee on the basis of the aggregate of the applicable country of destination tariffs. It is understood that the single tariff referred to above corresponds to the license fee due to the rights holders excluding any administrative fees to be charged to Simulcasters in respect of services to Simulcasters attributable to the multi-territory, multi-repertoire licensing pursuant to this Agreement.
- (4) In the event that a Simulcaster has transmitted sound recordings without paying appropriate remuneration for the use of sound recordings before the Contracting Parties entered into this Agreement, the Contracting Parties undertake to use their best efforts to charge such Simulcasters for the prior use, so as to ensure that right holders are appropriately remunerated.

## **8. Enforcement**

- (1) Without prejudice to the provisions in Article 4(2) of this Agreement, the Contracting Parties shall actively seek to license and monitor Simulcasters established within their respective territories.
- (2) To ensure the effective enforcement of rights, a Contracting Party based in the EEA that has licensed a Simulcaster established in another EEA state, shall notify to the Contracting Party society within whose territory the Simulcaster seeking a license has its establishment, the details of the Simulcaster and the termination date of the license granted to the Simulcaster.

## **9. Dispute settlement**

- (1) Disputes between Contracting Parties as well as disputes between Contracting Parties and Simulcasters arising out of licenses issued under this Agreement, that cannot be resolved through good faith negotiations shall be subject to national arbitration procedures where provided by the national law. Where national arbitration is likely not to be effective or is non-existent Contracting Parties will refer disputes to a forum for International Arbitration, such as the WIPO Arbitration and Media Centre.
- (2) Disputes between Contracting Parties shall be decided in accordance with the laws in the territory where the defendant normally carries out their course of business and this Agreement shall be interpreted in accordance with the national law of the defendant's jurisdiction.

## **10. Termination**

- (1) A Contracting Party may terminate the Agreement by giving 3 months written notice to the other Contracting Parties at the address set out in Schedule A, or such changed address given by written notice by the other Contracting Parties.
- (2) The Agreement is entered into subject to the existence of a right to authorise/prohibit or claim for an equitable remuneration under the relevant national laws in the countries where the signals are transmitted. In case a court or other judicial or legislative authority

determines, or a Contracting Party considers, that besides rights clearance in the country from which the signal originates, clearance in the country to which the signal is transmitted is not required under its national law - so that such party is not entitled to collect licence fees in respect of Simulcasts transmitted into its territory - that Contracting Party shall no longer exercise any Simulcast rights on behalf of the other Contracting Party.

#### **11. Contractual period**

This Agreement shall come into force and binding with respect to each Contracting Party on 1 January 2005 or on a later date of its signature and will continue to be in force unless terminated by mutual consent of the Contracting Parties or in accordance with Article 10 of this Agreement.



## **Agreement on Reciprocal Representation to License Certain Webcasts**

Between the undersigned

collectively the "Contracting Parties"

**Whereas the Contracting Parties are aware of developments in technology and uncertainty regarding future applications of Internet streaming,**

**Whereas the Contracting Parties consider that it is necessary to clear rights for Webcasting of sound recordings both in the country where the signal originates and in the country to which the signal is transmitted,**

**Whereas the Contracting Parties will cooperate in order to ensure an effectively functioning international administration of producers' rights through reciprocal agreements between producers' rights administration societies solely in the field of Webcasting,**

**Whereas the purpose of this Agreement is to offer Webcasters the possibility to obtain non-exclusive multi-territory licenses, and record companies the possibility to have, on a non-exclusive basis, their rights collectively licensed,**

**The Contracting Parties have entered into the following Agreement:**

### **1. Parties**

The parties to this Agreement (hereinafter Contracting Parties) shall comprise every entity from the list set out in Schedule A, which has signed either this Agreement or an identical counterpart.

Each Contracting Party contracts individually and separately with every other Contracting Party under the terms set out in this Agreement and its annexes.

Each Contracting Party hereby represents and warrants that it has the authority to enter into this Agreement.

This Agreement and its annexes as between any of the Contracting Parties may only be amended by a written agreement signed by those Contracting Parties.

### **2. Objective**

- (1) This Agreement enables collecting societies representing sound recording producers' rights to grant multi-territory multi-repertoire licenses in respect of certain Internet originating transmissions (hereinafter Webcasting). Entities that engage in Webcasting are referred to hereinafter as "Webcasters".
- (2) "Webcasting" as covered by this Agreement means the streaming of sound recordings via the Internet when 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 the streaming is done

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- (i) In compliance with the operating conditions listed in Annex 1 to this Agreement; and
  - (ii) Without the transmitter inducing, intending or assisting the making of any unauthorised copies that would be usable after the cessation of the transmission.
- (3) "Streaming of sound recordings via the Internet" means any transmission
- (i) That is only made available for use via the World Wide Web accessible to a user of the Internet by means of a general purpose web browser capable of accessing substantially all other Internet services; and
  - (ii) That enables the contemporaneous performance of the transmitted sound recordings on or through a user's computer.
- (4) For the avoidance of doubt, and without prejudice to the further limitations in the operating conditions in Annex 1, Webcasting does not include any activities whereby the transmission of a particular sound recording commences upon the request of a user. Further, transmissions within closed proprietary systems and closed private networks or mobile phone networks likewise are excluded from the scope of this Agreement.

### 3. Eligibility

- (1) Non-profit collecting societies representing the rights of sound recording producers and validly mandated by the right holders to license Webcasting in their territory are eligible to become Contracting Parties to this Agreement, provided that they are able to
- (i) Process usage reports from licensed Webcasters electronically; and
  - (ii) Distribute, upon request of the right holders, the collected revenues on a per-track basis.
- (2) Collecting Societies that do not at present meet the eligibility criteria in point (1)(i) in the previous paragraph can join the agreement conditionally by signing the undertaking in Annex B of this Agreement

### 4. Reciprocal authorisation

- (1) By virtue of this Agreement, each Contracting Party individually agrees to authorise each other Contracting Party on a non-exclusive basis to license Webcasters that have their commercial establishment in the territory of that other Contracting Party
- (i) In and into its own territory for all sound recordings the Contracting Party administers; and
  - (ii) In and into that other Contracting Party's territory for those sound recordings the Contracting Party is eligible to license for that territory.

The reciprocal rights administration mandate granted under this paragraph covers only the rights of those sound recording producers that the Contracting Party represents from time to time.

- (2) Notwithstanding the provisions of the previous paragraph, the Contracting Parties agree that Contracting Parties established within the European Economic Area (EEA) are authorised to issue multi-territory, multi-repertoire licenses under this Agreement to Webcasters having their commercial establishment anywhere within the EEA. Accordingly, Webcasters established anywhere in the EEA can approach any Contracting Party based in the EEA for a multi-territory, multi-repertoire licence under this Agreement.

- (3) For the avoidance of doubt, the reciprocal authorisation under this Agreement covers all the sound recording producers' rights implicated in the Webcasting activity. This authorisation does not, however, permit the Contracting Parties to authorise Webcasters to sub-license any sound recording rights. Notwithstanding the foregoing, Contracting Parties may authorise Webcasters to license the use of their streams for simultaneous and unaltered transmission under the original brand or channel name via third-party websites, provided that the streams continue to be transmitted from the Webcaster's server, and subject to the approval of such third-party website by the Contracting Party that licenses the Webcaster.
- (4) Only as to dealings with Contracting Parties established in the United States and to the extent the terms and conditions of this Agreement differ in any way from the terms and conditions under the Digital Millennium Copyright Act (DMCA), the terms and conditions of a licence under this Agreement as far as the exploitation of rights in the United States rights is concerned, shall be the DMCA terms and conditions.

## **5. National treatment and country of destination**

- (1) By virtue of this Agreement each of the Contracting Parties undertakes to enforce within its territory the rights of the right holders of the other Contracting Party in the same way and to the same extent as it does for its own right holders.
- (2) Each Contracting Party shall, with respect to Webcasts transmitted outside its own territory, respect the legal rights and protections granted to right holders in those countries and apply to the Webcasters the licence fees which apply in the other Contracting Party's territory for those Webcasts received in the latter's territory.
- (3) EEA based Contracting Parties shall when granting multi-territory, multi-repertoire licenses under this Agreement individually identify and separately charge Webcasters an administrative fee that corresponds to the cost of services to the user obtaining the license. Accordingly, the two elements to be charged to Webcasters in the EEA are separately identified: the royalty for the use of phonogram producers' rights in the different territories and the administrative fee to cover the administration costs for services to users related to the granting of multi-territorial Webcasting licenses.

## **6. Exchange of information and remuneration**

- (1) The Contracting Parties shall undertake to use their best efforts to exchange information required for the implementation of this Agreement concerning
  - (i) The licence fees they apply to the Webcasts in their own territory; and
  - (ii) The number and the origin of hits of the Webcaster's website licensed by the parties; and
  - (iii) Their repertoire.
- (2) For the avoidance of doubt it is stated that as relates to Contracting Parties based in the EEA the exchange of information under clause 1(i) shall only relate to the royalty element required to calculate the multi-territory license fee under this Agreement. Contracting Parties shall not exchange information regarding the level of the administrative fee they charge Webcasters.
- (3) Contracting Parties shall arrange and agree separately, in accordance with their mandates and this Agreement, how and when to distribute among each other the monies collected on behalf of sound recordings in the other Contracting Parties' repertoire. Contracting

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Parties acknowledge however that the objective of this Agreement is that monies collected for Webcasting of sound recordings in the other Contracting Parties' repertoire will be distributed to the individual rights holders entitled to such remuneration.

### 7. Entitlement

- (1) This Agreement enables, within the limits of Article 4 of this Agreement, each Contracting Party to:
  - (i) License on a non-exclusive basis, whether in its own name or that of the right owner concerned, the webcasting of sound recordings in the repertoire of the other Contracting Party; and
  - (ii) Collect any and all remuneration and/or licence fees for the use of such sound recordings in webcasting against a due valid receipt for such collections; and
  - (iii) Receive all sums due as indemnification or damages for the unauthorised webcasting of sound recordings against a due valid receipt for such collections.
- (2) To commence and pursue, in full cooperation with the other Contracting Party, in its own name or that of the right holder concerned, legal actions before a court of law, or other judicial or administrative body
  - (i) Against a person or corporate body responsible for unauthorised Webcasting; or
  - (ii) For the purpose of setting the rate for and securing the payment of remuneration for the webcasting of sound recordings.
- (3) Notwithstanding the provisions in Article 5 of this Agreement, the Contracting Parties agree that in the event a single tariff for multi-territory Webcasting is agreed between representatives of the Contracting Parties and their members and representatives of Webcasters, such tariff may be applied by the Contracting Parties as an alternative to calculating the multi-territory multi-repertoire license fee on the basis of the aggregate of the applicable country of destination tariffs. It is understood that the single tariff referred to above corresponds to the license fee due to the rights holders excluding any administrative fees to be charged to Webcasters in respect of services to Webcasters attributable to the multi-territory, multi-repertoire licensing pursuant to this Agreement.
- (4) In the event that a Webcaster has transmitted sound recordings without paying appropriate remuneration for the use of sound recordings before the Contracting Parties entered into this Agreement, the Contracting Parties undertake to charge such Webcasters for the prior use, so as to ensure that right holders are appropriately remunerated for such use.

### 8. Enforcement

- (1) Without prejudice to the provisions in Article 4(2) of this Agreement, the Contracting Parties shall actively seek to license and monitor Webcasters that have their commercial establishment within their respective territories.
- (2) To ensure the effective enforcement of rights, an Contracting Party based in the EEA that has licensed a Webcaster having its commercial establishment in another EEA state, shall notify to the Contracting Party society within whose territory the Webcaster seeking a license has its establishment, the details of the Webcaster and the termination date of the license granted to the Webcaster.

### 9. Dispute settlement

- (1) Disputes between Contracting Parties as well as disputes between Contracting Parties and Webcasters arising out of licenses issued under this Agreement, that cannot be resolved through good faith negotiations shall be subject to national arbitration procedures where provided by the national law. Where national arbitration is likely not to be effective or is non-existent Contracting Parties will refer disputes to a forum for International Arbitration, such as the WIPO Arbitration and Media Centre.
- (2) Disputes between Contracting Parties shall be decided in accordance with the laws in the territory where the defendant normally carries out their course of business and this Agreement shall be interpreted in accordance with the national law of the defendant's jurisdiction.

## **10. Termination**

- (1) A Contracting Party may terminate the Agreement by giving 3 months written notice to the other Contracting Parties at the address set out in Schedule A, or such changed address given by written notice by the other Contracting Parties.
- (2) The Agreement is entered into subject to the existence of a right to authorise/prohibit or claim for an equitable remuneration under the relevant national laws in the countries where the signals are transmitted. In case a court or other judicial or legislative authority determines, or a Contracting Party considers, that besides rights clearance in the country from which the signal originates, clearance in the country to which the signal is transmitted is not required under its national law – so that such party is not entitled to collect licence fees in respect of Webcasts transmitted into its territory – that Contracting Party shall no longer exercise any webcasting rights on behalf of the other Contracting Party.

## **11. Contractual period**

This Agreement shall come into force and binding with respect to each Contracting Party on 1 January 2005 or on a later date of its signature and will continue to be in force unless terminated by mutual consent of the Contracting Parties or in accordance with Article 10 of this Agreement.

## **ANNEX 1. OPERATING CONDITIONS**

**A Webcaster is required to comply with the following operating conditions to be eligible for a licence pursuant to this Agreement:**

### **1. No advance publishing**

The Webcaster shall not publish or cause to be published, by means of an advance programme schedule or prior announcement, the titles of the specific tracks or the names of albums incorporating such tracks to be transmitted, or, other than for illustrative purposes, the names of the featured recording artists. This clause does not disqualify a transmitting entity that makes a prior announcement that a particular artist will be featured within an unspecified future time period.

### **2. Sound recording performance complement**

The Webcaster shall not Webcast in any 3-hour period:

- (i) more than 3 different songs from a particular album, including no more than 2 consecutively, or
- (ii) more than 4 different songs by a particular artist or from any compilation of songs, including no more than 3 consecutively.

### **3. Archived and looped programming**

The transmission shall not be part of:

- (i) an archived programme of less than 5 hours in duration; or
- (ii) an archived programme of 5 hours or greater in duration that is made available for a period exceeding 2 weeks; or
- (iii) a continuous program, which is of less than 3 hours duration.

### **4. Repeat of other programmes**

The transmission shall not be part of an identifiable programme in which performances of sound recordings are rendered in a predetermined order, other than an archived or continuous programme, that is transmitted:

- (i) more than 3 times in any 2-week period that have been publicly announced in advance, in the case of a programme of less than 1 hour in duration; or
- (ii) more than 4 times in any 2-week period that have been publicly announced in advance, in the case of a programme of 1 hour or more in duration.

## **5. Prohibition of use in advertising and synchronisation**

The Webcaster shall not knowingly perform the sound recording as such or as part of a service that offers transmissions of visual images, in a manner that is likely to cause confusion, to cause mistake, or to deceive as to any affiliation or association of the copyright or related-rights holder or featured artist with the Webcaster or a particular product or service advertised by the Webcaster, or as to the sponsorship, or approval by the copyright holder, related-rights holder or featured recording artist of the activities of the Webcaster other than the performance of the sound recording itself.

## **6. Defeat scanning and copying by recipient**

The Webcaster shall use effective technologies, insofar as such technologies are commercially available and can be implemented without imposing unreasonable costs, which aim to prevent:

- (i) a transmission recipient or any other person or entity from automatically scanning the Webcaster's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the transmission recipient; and
- (ii) a transmission recipient from making copies, other than transient copies, of the sound recordings.

## **7. Accommodation of technical protection measures**

The Webcaster shall accommodate and not interfere with technical measures that are used by sound recording copyright holders to identify or protect copyrighted works, and that are technically feasible of being transmitted by the Webcaster without imposing substantial costs on him or resulting in perceptible aural or visual degradation of the digital signal.

## **8. Transmission of copyright management information**

Subject to the conditions in Article 6 above:

- (i) the Webcaster shall identify in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the album embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the service provided by the Webcaster.
- (ii) the transmission of the sound recording shall be accompanied, if technically feasible, by the information encoded in that sound recording, if any, by or under the authority of the copyright or related-rights holder of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information.

## **9. No transmission of unlawful sound recordings**

The Webcaster shall not transmit unauthorised recordings, including without limitation bootlegs or sound recordings that have not yet been made available for webcasting purposes in the territory where the Webcaster has its establishment. The Webcaster shall not re-mix,

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edit or otherwise modify sound recordings so that what is transmitted would be different from the original sound recording.

#### **10. Automatic channel switching, buttons, and personalisation**

The Webcaster shall not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another. The Webcaster shall not incorporate skip, pause or back buttons into any part of its service or include any functionalities that allow the recipients of the service to personalize the service, such as the possibility to rate artists or albums.

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

The Webcaster shall exercise proper discretion in the choice and use of the sound recordings so as not to denigrate the artistic integrity of any copyright works or any performance embodied on any sound recording nor to subject any copyright works or performance embodied on any sound recording to derogatory treatment and it shall not perform the sound recording with any image that would have any of these effects or which is illegal or offensive.

## ANNEX 2. SIDE LETTER TO THE WEBCASTING AGREEMENT

**A Contracting Party that does not meet the eligibility criteria set out in Article 3 of the Agreement is required to sign the following side letter in order to be party to this Agreement:**

- 1 The undersigned Producers' Collecting Society (hereinafter the Society) is aware of the criteria for eligibility set out in Article 3 of the *Agreement on Reciprocal Representation to License Certain Webcasts* (hereinafter the Agreement).
- 2 The Society declares that it does not currently meet these criteria, but it intends to use best efforts to develop its internal procedures and systems within the immediate future so as to fulfil them in the future.
- 3 In order to facilitate the multi-territory licensing of Webcasters by other participating societies and to enable the Society to start licensing Webcasters immediately once it satisfies the criteria for eligibility in the Agreement, the Society wishes however to enter into the Agreement on the conditions that
  - (i) It will not license multi-territory Webcasters before it meets the criteria set out in Article 3 of the Agreement, but will allow other participating societies to license, in accordance with the terms and conditions with the Agreement, the rights implicated in webcasting in or into, as the case may be, its territory; and
  - (ii) Unless right holders have asked the collected sums to be distributed directly by the licensor society, it will receive remuneration due to the right holders it represents for transmissions in or into its territory, and it will distribute such remuneration to its members according to the information it has obtained from the licensor society; and
  - (iii) It will be fully eligible to license Webcasters in accordance with the terms and conditions of the Agreement as soon as it has developed its procedures and systems to meet the criteria in Article 3 of the Agreement and notified in writing the IFPI Secretariat thereof.

In \_\_\_\_\_, on \_\_\_\_\_. \_\_\_\_\_

\_\_\_\_\_  
(Name of the Society)

\_\_\_\_\_  
(Name of the authorised representative)



## **Agreement on Reciprocal Representation to License Certain On-Demand Offerings of Audio and Audiovisual Programs (with amends, September 2015)**

### **1. Parties**

- (1) The parties to this Agreement (hereinafter Contracting Parties) shall comprise of every Music Licensing Company (hereinafter MLC) from the list set out in Schedule A, which has signed either this Agreement or an identical counterpart.
- (2) Each Contracting Party contracts individually and separately with every other Contracting Party under the terms set out in this Agreement and its Annexes.
- (3) Each Contracting Party hereby represents and warrants that it has the authority to enter into this Agreement.
- (4) This Agreement and its Annexes as between any of the Contracting Parties may only be amended by a written agreement signed by those Contracting Parties.
- (5) In this Agreement references to sound recordings are to those sound recordings in the repertoires of the Contracting Parties and for the avoidance of doubt does not include music videos.

### **2. Objective**

- (1) This Agreement enables the Contracting Parties to license, under the terms and conditions of this Agreement, the rights in sound recordings owned or controlled by their member phonogram producers implicated (and expressly mandated to the Contracting Parties) in the Offering to the public of certain audio or audiovisual Programs, that have been previously Broadcast or are intended to be Broadcast within 30 days from the Offering, via the Internet or over mobile networks. The Contracting Parties acknowledge that the underlying mandates from the right holders to the Contracting Parties to license such uses are non-exclusive. For the avoidance of doubt this Agreement does not provide any rights for the licensing of video or audio on demand service providers.
- (2) When licensing rights under this Agreement the participating MLCs will fully implement and follow the technical conditions in Annex 1 to this Agreement, unless otherwise stated in this Agreement. This Agreement must also be read in conjunction with general guidelines on the protection of metadata and the use of DRMs as may be drafted and amended from time to time by the IFPI.
- (3) The following definitions shall apply:

“Broadcast” means an off-to-air television or radio broadcast by Herzian waves, or communication to the public by satellite or for the purposes of this Agreement an original cablecast, in compliance with the applicable local regulations on the provision of broadcasting services.

“Broadcast Organisation” means the entity which provides a Broadcast.

“Catch-up” means the Offering of Programs that have been previously Broadcast by that Eligible Entity.

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“Eligible Entity” means a corporate or other entity that engages in Broadcasting activity.

“Offering” means the making available of a Program by Streaming or as Podcast, via the Internet or mobile networks where it is accessible to a user by means of a general purpose web browser capable of accessing substantially all other Internet or mobile services, or by means of an application.

“Pause” means the ability of a recipient to stop play back of a Program and then, upon request, continue play back of the Program from the point that it stopped.

“Podcast” means a digital delivery of a Program which results in the creation of an electronic digital format copy of the Program.

“Preview” means the Offering of Programs that will be Broadcast within 30 days from the Offering by that Eligible Entity.

“Program” means a clearly separate identifiable radio or TV program (including episodes of a series), or a clearly identified and unedited part thereof (rather than continuous programming).

“Skip” means the ability, provided through whatever technical means, for a recipient upon request and at the time chosen by him, to advance or retreat to a point in the Program determined by the recipient of the service.

“Streaming” means to transmit a Program from a server by means of a transmission via the Internet and/or mobile network that is substantially contemporaneous with the rendering of the sound recording using a technology that is designed not to result in a reproduction of the sound recording that would be usable after the cessation of the transmission (other than a transitory reproduction required to render such contemporaneous performance for example, a data buffer).

## 3. Activities covered

- (1) This Agreement enables the Contracting Parties to license Eligible Entities on a non-exclusive basis to offer sound recordings incorporated in the Programs they make available in the territories of the Contracting Parties via the Internet or mobile networks as Preview or Catch-up Offerings provided that:
  - (i) The Programs are being Offered from a server owned or controlled by the Eligible Entity, and subject to article 5(4) below accessed only through the Eligible Entity’s own publicly accessible website or application.
  - (ii) The recipient of the service agrees, in advance of receiving the Offering of the Program, to only use the Program for its own personal non-commercial use.
  - (iii) The Program does not contain any “back to back” music, however one time occurrence of no more than three songs in a row within any one Program is allowed, provided always that Programs Offered under this Agreement may not consist solely of sound recordings.
  - (iv) Licensing of music rich Programs that highlight or focus on a single artist or a group or a several named artists or groups and/or a single music genre or a several named music genres (including chart shows and artist documentaries), require prior consent from the record company whose sound recordings are used in the Program.
  - (v) The Eligible Entity has acquired in accordance with the national law a dubbing license for the initial incorporation of the sound recordings into the Programs Offered under this Agreement and, a license for the Broadcast of the Program.

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- (vi) The Offering is not done in order to sell, advertise or promote particular products or services. However, the association of a Program with a brand is allowed under a sponsorship arrangement, provided, however, that the Program may not bear the name of the sponsor and that no reference may be made to the sponsor, either audibly or visually, when the sound recording is playing.
  - (vii) The Offering is done in compliance with the technical conditions listed in Annex 1 to this Agreement, including but not limited to the conditions on technical protection of sound recordings. This Protocol should be read in conjunction with the DRM/Metadata Guidelines as drafted and updated from time to time by the participating MLCs and the IFPI.
  - (viii) For the avoidance of doubt, this Agreement authorises the Contracting Parties to license the Offering of Programs exclusively by Eligible Entities that have a valid license or that pay the statutory remuneration for the Broadcasting of sound recordings incorporated into Programs. Therefore, this Agreement does not authorise the Contracting Parties to license services that do not Broadcast the Programs they Offer.
- (2) For the avoidance of doubt, and without prejudice to the further limitations in the technical conditions in Annex 1 the Offering of Programs under this Agreement does not include any activities whereby the transmission of a particular sound recording itself commences upon the request of a user, or where individual sound recordings would in any other manner be made available to recipients of the service.
  - (3) Where sound recordings are used in the Program only in an incidental manner, which means that recorded music can never amount to more than 10% of the total running time of the Program and that the Program includes only excerpts of sound recordings that are less than 60 seconds in duration and in any event less than half of the length of the sound recording, then the provisions in paragraphs 1, 2 and 5 of Annex 1 shall not apply to the Offering of the Program.
  - (4) This Agreement does not cover rights to license music videos or any rights in the sound recordings incorporated in music videos used in the Programs.

### 4. Eligibility

- (1) MLCs, representing the rights of sound recording producers and validly mandated by the right holders to license the sound recording producers' rights implicated in the Offering of Programs covered by this Agreement in their territory, are eligible to become Contracting Parties to this Agreement, provided that they are able to:
  - (i) Process electronically usage reports regarding the Programs; and
  - (ii) Distribute, upon request of the right holders, the collected revenues on a per-track basis.
- (2) MLCs that do not at present meet the eligibility criteria in article 4(1) can join the Agreement conditionally by signing the undertaking in Annex 2 of this Agreement.

### 5. Reciprocal authorisation

- (1) By virtue of this Agreement, each Contracting Party individually agrees to authorise each other Contracting Party on a non-exclusive basis to license Eligible Entities:
  - (i) That have their commercial establishment in the territory of that other Contracting Party with regard to the sound recording producers' rights implicated in the Offering of Programs in and into its own territory; and

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- (ii) To the extent that Contracting Parties are mandated to license such Offering outside their own territory, the Offering in the territory of the other Contracting Party.

The reciprocal rights administration mandate granted under this paragraph covers only the rights of those phonogram producers that the Contracting Party represents from time to time.

- (2) To the extent that right holders whose rights the MLCs represent wish to retain the right to veto the Offering of certain tracks in general or in the context of certain Programs, such conditions will be respected by all the Contracting Parties when licensing the Offering of Programs under this Agreement.
- (3) Notwithstanding the provisions of Article 5(1), the Contracting Parties agree that Contracting Parties established within the European Economic Area (EEA) are authorised to issue multi-territory, multi-repertoire licenses under this Agreement to Eligible Entities having their commercial establishment anywhere within the EEA. Accordingly, Eligible Entities established anywhere in the EEA can approach any Contracting Party based in the EEA for a multi-territory, multi-repertoire license under this Agreement.
- (4) For the avoidance of doubt, the reciprocal authorisation under this Agreement covers all the sound recording producers' rights implicated in the Offering of Programs. This authorisation does not, however, permit the Contracting Parties to authorise Eligible Entities to sub-license any sound recording rights. Notwithstanding the foregoing, Contracting Parties may authorise Eligible Entities to license in accordance with Article 3 the Offering of their Programs under the Eligible Entity's original brand or channel name via third-party websites (including distribution via applications and/or widgets), provided that the Programs continue to be Offered from a server that is controlled by the Eligible Entity, and subject to the approval of such third-party website by the Contracting Party that licenses the Eligible Entity.

### 6. National treatment and country of destination

- (1) By virtue of this Agreement each of the Contracting Parties undertakes to enforce within its territory the rights of the right holders of the other Contracting Party in the same way and to the same extent as it does for its own right holders.
- (2) Each Contracting Party shall, with respect to audio or audiovisual Programs Offered via the Internet or over mobile networks by an Eligible Entity outside its own territory, respect the legal rights and protections granted to right holders in those countries and apply to the Eligible Entities the license fees which apply in the other Contracting Party's territory for those transmissions received in the latter's territory, subject to the rules on marginal reception agreed by the MLCs.
- (3) EEA based Contracting Parties shall when granting multi-territory, multi-repertoire licenses under this Agreement individually identify and separately charge Eligible Entities an administrative fee that corresponds to the cost of services to the user obtaining the license. Accordingly, the two elements to be charged to the users are separately identified: the royalty for the use of phonogram producers' rights in the different territories and the administrative fee to correspond to the costs for services to users related to the granting of multi-territorial license.

### 7. Exchange of information and remuneration

- (1) The Contracting Parties shall undertake to use their best efforts to exchange information required for the implementation of this Agreement concerning:
  - (i) The license fees they apply to Offering of Programs covered by this Agreement in their own territory; and
  - (ii) The number and the destination of transmissions; and
  - (iii) Their repertoire.

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- (2) For the avoidance of doubt it is stated that as relates to Contracting Parties based in the EEA the exchange of information under clause 7(1)(i) shall only relate to the royalty element required to calculate the multi-territory license fee under this Agreement. Contracting Parties shall not exchange information regarding the level of the administrative fee they charge public service broadcasters.
- (3) Contracting Parties shall arrange and agree separately, in accordance with their mandates and this Agreement, how and when to distribute among each other the monies collected on behalf of sound recordings in the other Contracting Parties' repertoire. Contracting Parties acknowledge however that the objective of this Agreement is that monies collected for the exploitation of rights in sound recordings in the other Contracting Parties' repertoire implicated in the Offering of Programs covered by this Agreement will be distributed to the individual right holders entitled to such remuneration, via the Contracting Party in whose territory the Streams or Podcasts are received.

### 8. Entitlement

- (1) This Agreement enables, within the limits of Article 5 of this Agreement, each Contracting Party to:
  - (i) License on a non-exclusive basis, whether in its own name or that of the rights owner concerned, within the scope of this Agreement via the Internet and mobile networks Preview or Catch-up Offering of Programs incorporating sound recordings, rights to which are administered by the other Contracting Party; and
  - (ii) Collect any and all remuneration and/or license fees for such Offering of Programs against a due valid receipt for such collections; and
  - (iii) Receive all sums due as indemnification or damages for the unauthorised Offering of Programs against a due valid receipt for such collections.
- (2) To commence and pursue, in full cooperation with the other Contracting Party, in its own name or that of the right holder concerned, legal actions before a court of law, or other judicial or administrative body:
  - (i) Against a person or corporate body responsible for the unauthorised Offering of sound recordings in Programs where the Offering of such Programs could be licensed by a Contracting Party under this Agreement; or
  - (ii) For the purpose of securing an adequate payment for the rights implicated in the Offering of Programs covered by this Agreement.
- (3) Notwithstanding the provisions in Article 5 of this Agreement, the Contracting Parties agree that in the event a single tariff for multi-territory Preview or Catch-up Offering of Programs is agreed between representatives of the Contracting Parties and their members and representatives of the Eligible Entity, such tariff may be applied by the Contracting Parties as an alternative to calculating the multi-territory multi-repertoire license fee on the basis of the aggregate of the applicable country of destination tariffs. It is understood that the single tariff referred to above corresponds to the license fee due to the right holders excluding any administrative fees to be charged to an Eligible Entity in respect of services to the Eligible Entity attributable to the multi-territory, multi-repertoire licensing pursuant to this Agreement.
- (4) In the event that an Eligible Entity has Offered Programs incorporating sound recordings without paying appropriate remuneration for the use of the sound recordings before the Contracting Parties entered into this Agreement, the Contracting Parties undertake to use their best efforts to charge such Eligible Entity for the prior use (where such use is covered by this Agreement), so as to ensure that right holders are appropriately remunerated.

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## 9. Enforcement

- (1) Without prejudice to Article 6(2) of this Agreement, the Contracting Parties shall actively seek to license and monitor Eligible Entities that have their commercial establishment within their respective territories.
- (2) To ensure the effective enforcement of rights, a Contracting Party based in the EEA that has licensed an Eligible Entity having its commercial establishment in another EEA state, shall notify to the Contracting Party within whose territory the Eligible Entity has its establishment, the details of the Eligible Entity and the termination date of the license granted to the Eligible Entity.

## 10. Dispute Settlement

- (1) Disputes between Contracting Parties that cannot be resolved through good faith negotiations shall be referred to the WIPO Arbitration and Mediation Centre.
- (2) Disputes between Contracting Parties shall be decided in accordance with the laws in the territory where the use of rights subject to the dispute took place or if the dispute does not relate to any specific use of rights the defendant normally carries out its course of business and this Agreement shall be interpreted in accordance with the national law of the defendant's jurisdiction.

## 11. Termination

- (1) A Contracting Party may terminate the Agreement by giving 3 months written notice to the other Contracting Parties at the address set out in Schedule A, or such changed address given by written notice by the other Contracting Parties.
- (2) The Agreement is entered into subject to the existence of a right to authorise/prohibit or claim for an equitable remuneration under the relevant national laws in the countries where the signals originate and are received. In case a court or other judicial or legislative authority determines, or a Contracting Party considers, that besides rights clearance in the country from which the signal originates, clearance in the country to which the signal is transmitted is not required under its national law – so that such party is not entitled to collect license fees in respect of Offering into its territory – that Contracting Party shall no longer exercise any rights concerning the Offering of Programs covered by this Agreement on behalf of the other Contracting Party.

## 12. Contractual period

This Agreement shall enter into force and be binding upon each Contracting Party on the date of its signature and the contract shall continue to be in force until terminated either by mutual consent of the Contracting Parties or in accordance with Article 11 of this Agreement.

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## ANNEX 1. OPERATING CONDITIONS

An Eligible Entity is required to comply with the following technical conditions to be eligible for a license pursuant to this Agreement.

### 1. Defeat scanning and copying by recipient

The Eligible Entity shall use effective technologies, insofar as such technologies are commercially available and can be implemented without imposing unreasonable costs, which aim to prevent the recipient of the service from:

- (1) Making copies of the sound recordings, other than as part of the Programs Offered, and
- (2) Further transmitting the sound recordings either separately or as part of the Programs transmitted to him/her.

### 2. Accommodation of technical protection measures

The Eligible Entity shall accommodate and not interfere with technical measures that are used by phonogram producers to identify or protect the phonograms, and that are technically feasible of being transmitted by the Eligible Entity without imposing substantial costs on him or resulting in perceptible aural or visual degradation of the digital signal.

### 3. Transmission of copyright management information

Subject to the conditions in Article 1 above:

- (i) The Eligible Entity may identify in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the album embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the recipient of the service by the device or technology intended for receiving the service provided by the Eligible Entity.
- (ii) The transmission of the sound recording shall be accompanied, if technically feasible, by the information encoded in that sound recording, in a protected format, by or under the authority of the copyright or related-rights holder of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information.

### 4. No transmission of unlawful sound recordings

The Eligible Entity shall not transmit unauthorised sound recordings, including without limitation bootlegs or sound recordings that have not yet been made available for transmission purposes in the territory where the Eligible Entity has its establishment. The Eligible Entity shall not re-mix, edit or otherwise modify sound recordings so that what is Streamed or made available as Podcast would be different from the original sound recording.

### 5. Automatic channel switching, buttons, and personalization

The Eligible Entity shall not automatically and intentionally cause any device receiving the transmission to switch from one Program channel to another. The Eligible Entity shall not incorporate Skip, rewind or fast forward or back buttons (save to the limited extent that the recipient shall be able to Pause the transmission or rewind or fast forward to a point in the Program determined by the recipient of the service upon request and at the time chosen by him) into any part of its service or include any functionalities that allow the recipients of the service to personalize the Streams or Podcasts, such as the possibility to rate artists or albums. For the avoidance of doubt, the recipient shall not be able to fast forward, rewind Skip forward or back through a Program on a sound recording by sound recording basis.

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### **6. Safeguard of integrity of works and performances**

The Eligible Entity shall exercise proper discretion in the choice and use of the sound recordings so as not to denigrate the artistic integrity of any copyright works or any performance embodied on any sound recording nor to subject any copyright works or performance embodied on any sound recording to derogatory treatment, and shall not perform the sound recording with any image that would have any of these effects or which is illegal or offensive.

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### ANNEX 2: SIDE LETTER TO THE AGREEMENT ON RECIPROCAL REPRESENTATION TO LICENSE CERTAIN ON-DEMAND OFFERINGS OF AUDIO AND AUDIOVISUAL PROGRAMS

**A Contracting Party that does not meet the eligibility criteria set out in Article 4 of the Agreement is required to sign the following side letter in order to be party to this Agreement:**

1. The undersigned Producers' MLC is aware of the criteria for eligibility set out in Article 4 of the *Agreement on Reciprocal Representation to License Certain On-Demand Offerings of Audio and Audiovisual Programs* (hereinafter the Agreement).
2. The MLC declares that it does not currently meet these criteria, but it intends to use best efforts to develop its internal procedures and systems within the immediate future so as to fulfil them in the future.
3. In order to facilitate multi-territory licensing by other participating MLCs, the undersigned MLC wishes however to enter into the Agreement on the conditions that:
  - (i) It will not license multi-territory Eligible Entities before it meets the criteria set out in Article 4 of the Agreement, but will allow other participating MLCs to license, in accordance with the terms and conditions with the Agreement, the rights implicated in the Offering of Programs covered by this Agreement in or into, as the case may be, its territory; and
  - (ii) Unless right holders have asked the collected sums to be distributed directly by the licensor society, it will receive remuneration due to the right holders it represents for transmissions in or into its territory, and it will distribute such remuneration to its members according to the information it has obtained from the licensor society; and
  - (iii) It will be fully eligible to license Eligible Entities in accordance with the terms and conditions of the Agreement as soon as it has developed its procedures and systems to meet the criteria in Article 4 of the Agreement and notified in writing the IFPI Secretariat thereof.

In \_\_\_\_\_, on \_\_\_\_\_

\_\_\_\_\_  
(Name of the MLC)

\_\_\_\_\_  
(Name of the authorised representative)



## Protocol to Extend the Agreement on Reciprocal Representation to License Certain Webcasts

### DEFINITIONS

In this Protocol:

“*Collecting Societies*” refers to collecting societies representing and administering the rights of sound recording producers that are party to the Webcasting Agreement.

“*Webcasting Agreement*” refers to the Agreement on Reciprocal Representation to License Certain Webcasts entered into by Collecting Societies representing sound recording producers.

“*New Services*” refers to digital services offered to recipients of the service by means of Streaming of sound recordings via the Internet and/or mobile networks and which include Skip, Pause and Customisation features that are not allowed under the Webcasting Agreement.

“*Skip*” refers to the ability of a recipient to advance to a further pre-defined point in the transmission by way of a discrete and fixed step (or steps), which is either a fixed period of time or an advance to the commencement of the next sound recording, in either case the duration of such step being determined by the person making the transmission.

“*Customisation*” refers to a process by which the content of the transmission is influenced by a recipient of the service having provided to the person making the transmission (or a third party) information such as:

- i. The musical genres they prefer;
- ii. The artist or artists they prefer;
- iii. Ratings for particular artists; or
- iv. Ratings for particular sound recordings,

For the avoidance of doubt Customisation shall not result in a recipient being able to select performances by any particular artist or from any particular album to form part of the transmission, and Annex 1, Clause 2 of the Webcasting Agreement (*the sound recording performance complement*) shall apply also to services providing Customisation.

“*Pause*” refers to the ability of a recipient to stop play back of a sound recording and then, on request, continue play back of the sound recording from the point that the recording stopped.

### 1. OBJECTIVE

The purpose of this Protocol is to extend the reciprocal authorisation granted under the Webcasting Agreement to New Services as defined in this Protocol. This Protocol should be read in conjunction with the DRM/Metadata Guidelines as drafted and updated from time to time by the participating societies and the IFPI.

### 2. RELATION TO THE WEBCASTING AGREEMENT AND ELIGIBILITY TO SIGN THIS PROTOCOL

- a) This Protocol extends the reciprocal authorisation to license certain webcasters granted under the Webcasting Agreement. Unless otherwise expressly stated this Protocol does not alter or amend the Webcasting Agreement in other manner. Definitions and terms that

appear both in this Protocol and the Webcasting Agreement shall have the meaning and interpretation given to them in the Webcasting Agreement.

- b) Unless otherwise stated in this Protocol, Collecting Societies shall comply with the Webcasting Agreement also when licensing New Services under this Protocol.
- c) All signatories to the Webcasting Agreement are eligible to become party to this Protocol by signing the Annex 1 to this Protocol.

### 3. GRANT OF RIGHTS

- a) Extending the reciprocal authorisation already granted under the Webcasting Agreement Collecting Societies party to this Protocol authorise each other to license webcasters, to the extent their respective members have mandated the parties to license the required rights, with respect to New Services that:
  - i. Are offered to consumers via mobile networks and/or over the Internet,
  - ii. Enable the consumer to Skip and Pause songs,
  - iii. Enable the consumer to Customise the transmission,
  - iv. Excluding however from the authorisation services that offer unlimited Skips combined with Customisation functions

For the avoidance of doubt it is stated that this Protocol amends:

- paragraph 2 subparagraphs (1) – (3) of the Webcasting Agreement by enabling Collecting Societies to license also services streamed over mobile networks, including the simulcasting over mobile networks of off-to-air broadcasts and original cablecasts, and;
- paragraph 10 of Annex 1 (*“Operating conditions”*) to the Webcasting Agreement by enabling the Collecting Societies to license services with Skip, Pause, and Customisation functions.

All other terms and conditions on the Webcasting Agreement and the Annex 1 to the Webcasting Agreement, including those incorporated in paragraph 2 (*“Sound recording performance complement”*) remain in force and shall be complied with.

Further, and for the avoidance of doubt, all sound recordings must be hosted and transmitted by the licensee or under the direction and control of the licensee and the recipients shall not be involved in any transmission of the sound recordings. Service must not offer indexing or search functionality which allows the determination of the sound recordings that will be or are being transmitted.

All services must use a suitable DRM, digital format, and bit rate.

- b) Collecting Societies have no obligation under this Agreement to license services that have already obtained licenses directly from the right holders or through some other collecting society, for one or more territories.

### 4. TARIFF STRUCTURES

- a) In order to encourage the launch of new digital services on the one hand and the licensing under this Protocol on the other hand Collecting Societies are encouraged to establish tariffs that are:
  - i. non discriminatory, and

- ii. apply different rate categories so as to take into account the level of interactivity offered and the commercially relevant differences between services that offer additional functionalities and those that do not
- b) Depending on the extent of the mandates given to the societies by their members the following 8 tariff categories could be deployed:

	<u>Non-Interactive</u>	<u>Pause &amp; limited Skips (e.g. 5 per hour)</u>	<u>Customisation only</u>	<u>Pause &amp; limited Skips &amp; Customisation</u>
<u>On-line</u>	1	3	5	7
<u>Mobile</u>	2	4	6	8

Non-interactive is the level currently offered under the existing Webcasting and Simulcasting Agreements.