



## The Antitrust Authority

### Unofficial translation from Hebrew to English.

**In case of any discrepancies between the translation and the original text in Hebrew, the original text as published in ACUM Web prevails**

### Permanent Terms for ACUM's Activity

#### 1. Definitions

**“Sister societies”** - any of the societies, or companies, in other countries, whose purposes are similar to those of ACUM, and with which ACUM is bound in representation agreements from time to time;

**“Person”** – as defined in the Interpretation Law, 5742-1982;

**“Business association”** - a corporation whose purposes, in whole or in part, are the promotion of the business interests of the members therein;

**“ACUM”** - the Composers, Authors and Publishers Society of Israel, Ltd;

**“The Tribunal”** - the Antitrust Tribunal;

**“Database”** - a database that includes (1) an up-to-date list of ACUM's repertoire, the date of initial publication of each work, details of the names of the copyright owners in every work and the dates of death of the copyright owners who passed away, all as was reported to ACUM or brought to its attention; (2) an up-to-date list of all the members of ACUM;

**“The Law”** - the Restrictive Trade Practices Law, 5748-1988;

**“Imprinting or recording”** – recording of a work by means and technologies that are known today or which will be developed in the future, including audio recording or audiovisual recording, including a reproduction thereof, including synchronization (recording a work on a soundtrack of an audiovisual work) and including recording or copying for broadcasting purposes including as the terms "copying for broadcasting purposes" and "transient copying" are defined in sections 25-26 of the Copyrights Law, 5768-2007, excluding the filming of a literary work that was adapted for a screenplay and excluding the filming of a work that was specifically created for an audiovisual work;

**“Making available to the public”** – according to its definition in section 15 of the Copyrights Law, 5768-2007.

**“Copying”** – copying of a work, in its original form or after adaptation and editing, that was printed and published in at least one edition, in a graphic form by any means of printing, reproduction and duplication, excluding the copying of a novel or a play in their entirety, a group of works all of which are by the same author and/or a musical work in its entirety;

**“Public playing or broadcast”** - public performance, broadcast or making available to the public, of a work, including public playing, broadcast or making available to the public of a work as part of content that is transmitted via line, wireless, digital or other communications, including providing interactive and/or on-demand services and any similar service, including via television, Internet, telephone or mobile phone, whether alone or by means of integrating it in other audio or audiovisual material, synchronization, recording for the purposes of public playing or broadcast only and recording for the purpose of archival preservation and documentation of material played in public or broadcast;

**“Copyrights”** - the right of public performance, the right of broadcasting, the right of recording, the right of copying, the right of making available to the public, or any of these, as well as any copyright required in order to provide interactive and/or on-demand services and any similar service including by means of television, Internet, mobile phone or telephone – exclusively for these purposes;

**“Members of ACUM”** - a shareholder in ACUM in accordance with the provisions of the Articles of ACUM as shall be determined after the date on which this arrangement goes into effect;

**“Work”** - a musical or literary work of any type, or part thereof, in which any of the copyrights is managed by ACUM, with the exception of dramatic works and dramatic-musical works (e.g. plays and operas put on stage);

**“Applicant”** - a person who applied to ACUM with an application to grant him a user license;

**“Music publisher”** - any publisher who is a citizen or permanent resident of Israel whose main occupation is the publication and/or distribution of music and words accompanied by music of artists;

**“Representee”** – an artist or publisher, who is not a member of ACUM, who entered in to an agreement with ACUM according to which ACUM is permitted to grant user licenses for works to which he is the owner of the copyrights;

**“User”** - any person who makes use of a work or works;

**“Management of copyrights”** - granting user licenses for a work, demanding license fees, receiving reports on the use of the work, collecting license fees from those granted licenses, distributing license fees among members and enforcing the copyrights, in whole or in part;

**“Statutory damages”** - compensation without proof of damage, as this term defined in section 56 of the Copyrights Law 5768-2007 and/or the law that preceded it, pursuant to the provisions of application of law;

**“ACUM’s repertoire”** - all of the works in which the copyrights of the members of ACUM are managed by ACUM, as well as all of the works for which ACUM is authorized, from time to time, to enforce the copyrights therein, whether by virtue of agreements with sister societies or by virtue of other agreements;

**“User licenses”** - blanket or individual licenses for use of works;

**“Blanket license”** - a user license that permits use of works from ACUM’s repertoire, which is not an individual license;

**“Individual license”** - a license given to a user who is interested in using one work which he specified by its name or by the name of its artist or several works which he specified by their name or by the name of their artists, from ACUM’s repertoire;

**“Use of a work”** - an act, the performance of which requires under any law the consent of the owner of the copyright, or which establishes by law a duty to pay recompense to the owner of the copyright or to ACUM. The following are the uses of works: broadcasting and making available to the public (including by means of radio, Internet, television, mobile phone or telephone), providing various services, including interactive and/or on-demand services and any similar service (including by means of television, Internet, mobile phone or telephone), public playing, copying of works, recording of works, filming of works, as well as any other use permitted by the director-general of the Antitrust Authority.

**“New service”** – use of a work for which ACUM did not grant a user license to any user in the past;

**“Related service”** – the most similar and related service to the new service.

## **2. Membership in ACUM**

2.1 Membership in ACUM shall be open to any artist who is a citizen or a permanent resident of Israel whose work has been published or printed, to his successors, to the person to whom the artist transferred his copyrights, to a music publisher who expresses his desire to join ACUM;

2.2 A member of ACUM has the right, at any time, to give notice of withdrawal from ACUM and a representee has the right, at any time, to give notice of termination of his representation by ACUM (hereinafter: **“the notice of withdrawal”**). The notice shall be delivered to ACUM and shall go into effect within 30 days of the date of receipt by ACUM and in any case, no less than 15 days from the day of publication of the withdrawal details on ACUM’s Internet site in accordance with clause 6.4 below. The provisions of clause 8 below shall apply to the distribution of royalties after the notice of withdrawal.

2.3 Subject to the provisions of clause 8 below, a member or representee of ACUM shall have the right, at any time, to give notice to ACUM of his desire to exclude, all or some of his copyrights from ACUM’s management, provided that permission was obtained from all the artists in ACUM who own rights in the works to which such notice refers, and provided that they also notified ACUM of their desire to exclude their rights pursuant to this clause. The notice of exclusion may refer to all or part of the uses of the excluded works, however if the exclusion refers only to part of the uses of the excluded works, the notice of exclusion shall be in accordance with one of the following alternatives in full or any combination of the alternatives in full, only (hereinafter: **“the notice of exclusion”**):

2.3.1. Exclusion of the rights of audiovisual broadcasting including synchronization and recording for broadcasting purposes as stated, and including provision of interactive and/or on-demand services and any similar service, including via television, Internet, telephone or mobile phone.

- 2.3.2. Exclusion of the rights of broadcasting by means of audio including recording for broadcasting purposes as stated, and including provision of interactive and/or on-demand services and any similar service, including via radio, Internet, telephone or mobile phone.
- 2.3.3. Exclusion of the right of copying. For the avoidance of doubt, it shall be clarified that excluding the right of copying does not include the right of copying for broadcasting purposes.
- 2.3.4. Exclusion of the right of imprinting and/or recording. For the avoidance of doubt, it shall be clarified that excluding the right of imprinting and/or recording does not include the right of imprinting and/or recording for broadcasting purposes.

The notice of exclusion shall be delivered to ACUM and shall go into effect within 30 days of the date of its receipt by ACUM and in any case, no less than 15 days from the day of publication of the exclusion details on ACUM's Internet site pursuant to clause 6.5 below. The provisions of clause 8 below shall apply to the distribution of royalties after the notice of exclusion.

So long as no notice of exclusion has been delivered in accordance with this clause, rights in works which were excluded from ACUM's repertoire in accordance with clause 2.2 of The Conditions for a Temporary Permit of ACUM from December 28, 2004, December 4, 2005, December 7, 2006 or November 28, 2007 (hereinafter: "**the previous conditions**"), will once again be included in ACUM's repertoire; regarding granting user licenses by members of ACUM based upon the exclusions made in accordance with the previous conditions, it shall be deemed as though a notice was delivered to ACUM according to clause 2.5 of the previous conditions.

For the purposes of this clause, a "work" – including the accompanying lyrics and melody.

- 2.4 Without derogating from the aforesaid, ACUM shall grant all of its members and representees, a license, in a wording which shall be brought for the approval of the director-general, which allows every member and representee to grant licenses not via ACUM, for the whole of his copyrights or for part thereof or each of them, at his discretion (hereinafter: "**license to grant licenses**"). The granting of licenses, in accordance with this sub-clause, shall not derogate in any way from the transferring of the copyrights to ACUM by such member or representee and/or from licenses that were granted or will be granted by ACUM on the basis of the transfer of copyrights to it and such member or representee shall not be able to grant an exclusive license. ACUM will grant new members, who join ACUM after receipt of the approval, the license to grant licenses at the same time they join ACUM. The license to grant licenses is transferable and assignable from the member or representee to any third parties. Granting of a license according to this clause shall go into effect upon providing a written notice to ACUM.

### **3. The activities that are permitted to ACUM**

- 3.1 ACUM may enter into an agreement with its members, whereby, subject to what is stated in this arrangement, the ownership of the copyrights in the works of its

members is transferred to ACUM for the purposes of their management, and it is permitted to manage these copyrights;

- 3.2 ACUM may enter into non-exclusive agreements with its sister societies for the management of the copyrights of such sister societies in Israel and is permitted to manage these copyrights. Similarly, ACUM is permitted to enter into non-exclusive agreements with sister societies for the management of copyrights that it holds in countries in which such sister societies are active.
- 3.3 ACUM is permitted to enter into a non-exclusive agreement with a representee for the management of such representee's copyrights, and it is permitted to manage such copyrights;
- 3.4 Any activity of ACUM in any sphere other than the sphere of copyright management, is not included in the permitted activities according to this arrangement, unless otherwise permitted by the Antitrust Tribunal or the director-general of the Antitrust Authority;
- 3.5 ACUM is permitted to grant users brokerage services for use of foreign dramatic works and foreign musical-dramatic works, by virtue of its agreements with the sister societies.

**Nothing stated in these conditions shall grant ACUM, its members, sister societies or any other person any rights, including copyrights, that were not granted to them by law *ab initio*;**

#### **4. Prohibited activities**

- 4.1 ACUM and/or its members shall not prevent, restrict or intervene, in any way whatsoever, directly or indirectly, in the right of a member of ACUM to exercise the withdrawal mechanism and/or the exclusion of rights mechanism and/or the granting of rights mechanism and all whether such member desires to manage his right on his own or whether he desires to manage his rights via another person;
- 4.2 ACUM shall not enter into agreements which allow it to manage exclusively any of the copyrights in any of the works included in the repertoire of any of the sister societies within the boundaries of the State of Israel; regarding this clause "**exclusivity**" is meant to include any arrangement which actively or effectively brings about a result of exclusivity;
- 4.3 ACUM shall not unreasonably refuse to grant a user license to an applicant. Without derogating from the generality of the aforesaid, ACUM shall be deemed to be refusing unreasonably, *inter alia*, in the following cases:
  - 4.3.1. Refusal to grant a user license to an applicant who has expressed his willingness to accept upon himself the terms and the price according to which a user similar to himself entered into an agreement with ACUM within a period of no more than 2 years prior to the first communication as defined in clause 5 below, and excluding terms and/or a price that stem from the payment of temporary user fees as stated in clause 5 below;

- 4.3.2. Refusal to grant a user license for a use of work, when such use is in the framework of another audiovisual work and/or another audio work into which the work, regarding which ACUM is requested to grant a user license was integrated, provided that said integration was done according to a user license from ACUM;
- 4.3.3. Refusal to grant a user license to one whose main occupation is public playing of works on grounds that the works are played on someone else premises.
- 4.3.4. Refusal to grant a user license when an applicant expressed his willingness to pay license fees set by a competent court or arbitrator for a user of the same type.
- 4.3.5. An attempt to prevent a user license owner from acting according to the license that he owns.
- 4.4 Should ACUM believe that there exist circumstances which, in its opinion, constitute reasonable grounds for refusing to grant a user license, it shall give notice of this to the applicant, in writing, specifying the grounds for the refusal;
- 4.5 ACUM shall not abuse its status as a monopoly in a manner that may harm the public or reduce the competition in business between it and other joint management corporations, between it and its members, between the members amongst themselves, or between them and others;
- 4.6 Without derogating from the aforesaid, each of the following instances shall be deemed abuse of status:
  - 4.6.1 Fixing license fees at unfair rates. Without derogating from the aforesaid, license fees shall be deemed unfair, *inter alia*, (1) in case ACUM refused to adjust the license fee that it collects from a member in accordance with a decrease in the share of works managed by ACUM out of all of the works used; (2) in case ACUM refused to adjust the license fee that it collects from a user in accordance with the share of works managed by ACUM regarding which the user received a license from the owner of the rights, out of all the works used;
  - 4.6.2 A reduction or increase in the scope of user licenses offered by ACUM, not within the framework of fair competitive activity;  
  
In this regard, an **“increase in the scope of user licenses”** – shall be deemed to include, a requirement to obtain several user licenses for exercising several copyrights needed for one use of a work. For example, separating the right of recording for the purposes of broadcasting or the right of recording for archival purposes or the right of synchronization from a broadcasting license given to television broadcasting bodies;
  - 4.6.3 Establishing different transaction terms for similar transactions which may give certain users an unfair advantage over their competitors. With respect to this clause, transaction terms stemming from a transaction in which a similar user became engaged with ACUM over a period of more than two years prior to the first communication, as defined in clause 5

below, or that stem from payment of temporary user fees as defined in clause 5 below, shall not be deemed different transaction terms;

- 4.6.4 Making the granting of a license contingent upon conditions that inherently, or in accordance with accepted commercial conditions, do not pertain to the subject of the transaction;
- 4.6.5 The provisions of clauses 4.6.1 to 4.6.4 are intended to add to the provision in clause 4.5 of this arrangement;
- 4.7 ACUM shall not refuse unreasonably to conduct negotiations with a business association with regard to the terms of a user license which shall be recommended by the association to its members. The content of this clause does not constitute approval under Article 2 of the Law, with regard to the determining of a *modus operandi* by a business association;
- 4.8 User license terms that were determined in negotiations between ACUM and a business association shall be used also in ACUM's transactions with users of the type of users incorporated in the business association, even if such users do not belong to it. However, should the terms that were agreed with a business association take into account the savings made by ACUM as a result of the actions of the association, then it is permitted to take into account the value of such savings in determining the terms for an unassociated user;
- 4.9 ACUM shall not grant an individual license, until after obtaining the consent of the members of ACUM, who prior to joining ACUM were the owners of the copyrights in the work or the works, for which an individual license was requested; for the avoidance of doubt and subject to what is stated in this arrangement it shall be clarified that ACUM shall have the right to obtain from its members an advance consent to grant individual licenses on their behalf, as long as such consent is changeable at any time, will not be all encompassing and may refer to all of the uses or part thereof. **Should the artists position not be obtained within 30 days from ACUM's request to the artist, the artist will be deemed as having consented to ACUM granting individual licenses to his works.** The artist's decision to rescind his consent will go into effect within 14 days. Notwithstanding the above stated, nothing in the provisions of this clause can prevent ACUM from granting a license in a case in which the provisions of clause 4.3.2, 8.3 and 8.5 apply.

## 5. Determining user license fees that the user will pay

- 5.1 With regard to this clause:

**“Temporary user fees”** – temporary or permanent user fees that were determined for payment by a competent court or arbitrator, in a proceeding between ACUM and such user who received a demand for payment from ACUM pursuant to the provisions of this clause.

If no license fees were determined in a specific proceeding between the user and ACUM, the temporary user fees shall be deemed as being one of the following, according to the user's choice:

- (1) The license fees determined by a competent court or arbitrator for the same type of user;

- (2) The sum of the royalties that was determined for the same type of user in an agreement between ACUM and a business association representing the same type of user, subject to clause 4.8 above;
- (3) The sum of the royalties which the user paid ACUM in the framework of a license or agreement in a period of no more than two years from the date of the first communication as defined below (hereinafter: "**the relevant period**") or, in the absence of a license, the sum of royalties which was agreed upon between the user and ACUM in the relevant period;
- (4) If license fees were not determined as stated in alternatives (1)-(3), the user shall have the right to pay the sum of the royalties determined in a license between ACUM and a similar user that was given in the relevant period in accordance with the terms of the license; if no similar user who obtained a license from ACUM can be found in the relevant period, the user shall have the right to pay the sum of royalties determined in a license given to a similar user by ACUM in the period preceding the aforesaid period;
- (5) If license fees were not determined in an individual discussion between the user and ACUM in a case in which the user requests to introduce a new service, the temporary user fees will be deemed as the sum of the royalties that the user paid or would had to pay to ACUM for a similar service during the relevant period pursuant to the terms of the license. In the absence of said license, instead of the term "user" shall be written the term "similar user".

"**Similar user**" – the user with the closest and most similar characteristics of activity from among all the users;

"**The sum of the royalties**" – with the addition of linkage according to the Consumer Price Index published by the Central Bureau of Statistics.

- 5.2 ACUM shall have the right to initiate legal proceedings against users who only use the public performance right (except for broadcasting right) according to the following fixed outline, and such outline only.
- 5.3 Prior to initiating any legal proceedings ACUM will contact the user in writing and notify him of the license fees that it demands from him for the use of the works in its repertoire, in whole or in part, or what are the criteria for determining license fees as stated and their amount in accordance with these criteria (hereinafter: "**the first communication**"). ACUM shall attach to the form of the first communication a copy of the of this version of the conditions and will point out in its communication that if within 90 days from the date of the first communication, ACUM and the user do not reach an agreement with regard to payment of the license fees, it shall be have the right to act in accordance with the provisions of this arrangement. ACUM shall attach to the first communication an arbitration agreement the wording of which shall be approved by the director-general and will notify the user that in the event that he does not pay the temporary user fees within 90 days of the first communication, for the period commencing as of the date of the first communication, and in the absence of an agreement over the license fees or any other agreement – it is in ACUM's intention to apply to the competent court with a lawsuit for any relief due to it by any law, including a temporary injunction and statutory damages, all

in accordance with the provisions of this arrangement. ACUM will once again notify the user that in the event that he signs the attached arbitration agreement, and pays the temporary user fees, ACUM will file its claim in the framework of an arbitration proceeding and in this framework only. ACUM will allow the user to choose from one of five or more arbitrators determined by the director-general and approved by ACUM (hereinafter “**the list of arbitrators**”). Should the user not choose an arbitrator from the list of arbitrators, he will be deemed as not having signed the arbitration agreement;

- 5.4 After thirty days have passed from the date of the first communication, ACUM shall send the user an additional notice in writing in which it shall clarify that only 60 days remain in order to reach an agreement on the license fees and only 60 days remain for payment of the temporary license fees (hereinafter: “**the second communication**”). ACUM will clarify to the user that in the event that he does not pay the temporary user fees within 60 days, and in the absence of an agreement on the license fees or any other agreement, ACUM shall have the right to demand any relief due to it by any law, including a temporary injunction and statutory damages, all in accordance with the provisions of this arrangement.
- 5.5 After 30 days have passed from the date of the second communication, ACUM shall send the user an additional notice in writing in which it shall clarify that only 30 days remain in order to reach an agreement on the license fees and that only 30 days remain for payment of the temporary license fees. ACUM shall clarify to the user that in the event that he does not pay the temporary user fees within 30 days, and in the absence of an agreement on the license fees or any other agreement, ACUM will have the right to demand any relief due to it by law, including a temporary injunction and statutory damages, all in accordance with the provisions of this arrangement.
- 5.6 Should the user pay the temporary user fees for the period commencing as of the date of the first communication, within 90 days of the date of the first communication, ACUM shall have the right to act only in accordance with the provisions of the is sub-clause as follows:
  - 5.6.1 After receiving temporary user fees ACUM shall have the right to apply to the competent court with a claim for relief relating to the difference between the sum of royalties demanded by it and the temporary user fees that were paid to it, inasmuch as such a difference exists. Also, ACUM will notify that in the event that the court finds that such a difference exists in favor of the user, ACUM shall return such difference to the user. ACUM shall not have the right to petition for a temporary injunction or statutory damages. ACUM shall point out in its claim that it is being filed pursuant to the provisions of this arrangement, and that because of this, and subject to its provisions, it is not requesting, on the date of filing the claim, a temporary injunction and is not filing a claim for statutory damages;
  - 5.6.2 ACUM shall have the right to notify the court that it requests from the court to determine the proper amount of royalties for a user for a minimal period from the date of the first communication until three years after giving its judgment. ACUM shall have the right to further notify the court

that it requests from the court to set a provisional relief of temporary user fees for the period commencing as of the date of the first communication, as well as the amount of the temporary user fees, until the date of a decision on the amount of the permanent user fees. In a case in which ACUM claims royalties for the entire period of use, in accordance with clause 5.6.4 below, the words "*the first communication*" shall be replaced with the words "*the commencement of actual use.*"

- 5.6.3 Should ACUM file a claim as specified in clause 5.6.1 above, ACUM shall notify the user and the court, upon filing the claim that it is prepared that the court act in accordance with section 79B of the Courts Law [Consolidated Version] 5744-1984 (hereinafter: "**the Courts Law**") and refer the dispute to the decision of an arbitrator who shall be chosen from the list of arbitrators. The arbitrator shall act in accordance with the provisions of the substantive law but shall be exempt from the procedural rules and evidence law. For the avoidance of doubt it shall be clarified that the user shall have the right to clarify the matter under dispute in a regular judicial proceeding;
- 5.6.4 In a claim according to this sub-clause 5.6 ACUM shall have the right to claim royalties for the period commencing on the date of the first communication only. However if ACUM was made aware of a continuous use being carried out on works from ACUM's repertoire without a license as required by law, and ACUM contacted that user according to the clause 5 outline no later than a year as of the day it initially became aware of the said use without a license, ACUM shall have the right to claim royalties for the entire period of actual use. Clause 5.6.4 shall not apply to claims filed according to this clause 5 outline, in cases in which the first communication is made before 1.4.09.
- 5.7 Without derogating from the aforementioned, a user who paid the temporary user fees shall have the right to bring the dispute regarding the actual requirement to pay the user license fees or regarding their amount before an arbitrator who will be chosen by him from the list of arbitrators. The user will sign the arbitration agreement, in a wording that will be approved by the director-general. Should a user sign the arbitration agreement as stated, ACUM shall have the right to bring the dispute regarding the claim for difference as written in clause 5.6.1 above, before the arbitrator.
- 5.8 If within 90 days of the first communication the user did not pay the temporary user fees, and he did not reach any other agreement with ACUM, ACUM shall have the right to request from the court any relief that it has the right to claim according to law including, *inter alia*, for grant of a temporary injunction, prohibiting the user from using any of the works in ACUM's repertoire, in whole or in part, and/or to file a claim for statutory damages relating to the period set out in clause 5.6.4 above, and such period only. Additionally, ACUM shall notify, subject to the user's agreement and reserving its rights regarding demanding statutory damages and/or a temporary injunction for the period of the breach, that it is prepared that the court refer the dispute to the decision of an arbitrator, from the list of arbitrators, as stated in section 79B of the Courts Law,

and in such a case, the arbitrator will act in accordance with the substantive law and will be exempt from the rules of procedure and evidence;

- 5.8A Without derogating from the aforesaid, a user shall have the right to bring a dispute pertaining to the license terms before an arbitrator who will be chosen by him from among a list of arbitrators, provided that, if there is no dispute regarding the actual obligation to pay user license fees or their amounts, the user will pay permanent user fees. The user will sign the arbitration agreement in the wording approved by the director-general.
- 5.9 ACUM shall notify the user and the court or the arbitrator, depending on the circumstances, that in claims regarding the matter of determining the suitable user fees required by it, it agrees to undertake the burden of persuasion and the burden of evidence with regard to the reasonableness of the user license fees that it demands;
- 5.10 Nothing stated in the provisions of this arrangement shall deprive the user of any right or restrict him or impose upon him any burden whatsoever. Without derogating from the generality of the aforesaid, nothing in the provisions of these conditions shall prevent a user or restrict him in any way from denying his liability to ACUM, from opposing a permanent or temporary injunction against him, from opposing any demand of ACUM for payment of a temporary license fee, from defending himself against any claim for statutory damages or from acting for the return of monies paid to ACUM for a user license or temporary user fees for the present or the past;
- 5.11 ACUM shall not oppose the joining of a business association, whose members are of the same type as the user who is a party to a proceeding, to any proceeding before the court or the arbitrator, depending on the circumstances, if the user so requested;
- 5.12 If a judgment is given in a proceeding to which a business association was a party, and in it were determined the terms of a license or royalties that a user shall pay, terms or the royalties that were determined shall serve as a *prima facie* standard also with regard to the other users of that type, subject to what is stated in clause 4.8 above.
- 5.13 Subject to receiving approval from the director-general as stated below and notwithstanding what is written anywhere else in this arrangement, ACUM shall have the right to apply to the competent court in a request for an immediate temporary injunction against a pirate, all in accordance with the following:
- 5.13.1 ACUM shall approach the director-general and request his permission to file a motion for a temporary injunction against a pirate;
- 5.13.2 The director-general shall notify ACUM within 7 business days of receipt of ACUM's request whether he approves its request to file a motion for a temporary injunction or opposes it;
- 5.13.3 Should the director-general not notify within 7 business days of receipt of ACUM's request regarding his opposition, he shall be deemed as

having agreed to the filing of a temporary injunction against said pirate;

With regard to this clause a “**pirate**” – is someone who produces and/or distributes on a large scale, media (including audio, video and files distributed on the Internet) that protected works were imprinted and/or copied on to them without the consent of the copyright owner and without contacting him. For the avoidance of doubt it is thus clarified that someone who broadcasts works over the Internet shall not be deemed a pirate. In this regard “**Internet broadcasting**” includes: broadcasting over the Internet simultaneously to its being transmitted via a different technological medium (simulcasting); broadcasting transmitted only via the Internet (webcasting); as well as broadcasting of a certain program or part thereof (to exclude broadcasting of specific works) according to the demands of the listener (on demand).

- 5.14 The content of clause 5.13 shall apply also to ACUM’s requests for a temporary injunction against a producer and/or a commercial advertisement broadcaster as well as against the producer of a one time show. Yet should the director-general not notify ACUM of his opposition in such a case, within 3 business days of receipt of ACUM’s request, he shall be deemed as having agreed to filing a motion for a temporary injunction against such producer and/or broadcaster;
- 5.15 ACUM shall transfer its requests to the director-general as stated in clauses 5.13 and 5.14 above, in accordance with the place and manner as the director-general shall notify ACUM from time to time.
- 5.16 For the avoidance of doubt it shall be clarified that the conditions above apply to an initial engagement between ACUM and a user, as well as to the renewal of an expired license as well as to an engagement between ACUM and a user after the end of a legal proceeding between them;
- 5.17 The wording of the first communication, the wording of the second communication and the wording of the arbitration agreement shall be transferred for the approval of the director-general.
- 5.18 If the proceeding between the user and ACUM ends in an agreement, or with a ruling of the court or the arbitrator concerning the user license fee that the user must pay to ACUM and the terms for the payment thereof (hereinafter: “**terms of use**”), and as long as the user has not breached these terms, ACUM shall not initiate any other proceedings against the user that concern the terms of use determined by the court or the arbitrator and for such period only.

In the event that the user violates the decision of the court or the arbitrator, as the case may be, with respect to the terms of use, ACUM shall have the right to request of the court or the arbitrator, to impose a temporary injunction, prohibiting the user from using any of the works in ACUM’s repertoire, all or part, and/or to file a claim for statutory damages that will refer to the period commencing on the day on which the user began to violate the decision of the court or the arbitrator and to such period only;

- 5.19 ACUM shall transfer to the director-general an annual report with regard to legal proceedings, including arbitration proceedings that took place between it

and users in accordance with this clause, and in accordance with his demand, it shall transfer to him any information relating thereto.

## **6. Establishment and management of a database**

ACUM shall establish and manage a database as detailed below:

- 6.1 The database shall be publicized in full at ACUM's Internet site. ACUM shall make sure to update the database at least once a week;
- 6.2 A person who is interested in doing so may inspect the database via ACUM's Internet site. Without derogating from the generality of the aforesaid, ACUM's Internet site shall allow one to check whether a certain work included in the database is part of ACUM's repertoire or not. For the avoidance of doubt, the access to this service also, shall be open to everyone and at no additional cost on their part;
- 6.3 ACUM shall publicize on its Internet site an up-to-date list of the sister societies which signed agreements with ACUM;
- 6.4 ACUM shall publicize a clear notice on its Internet site according to which a member or representee in ACUM announced his desire to withdraw from ACUM according to clause 2.3 above, which shall include the following details:
  - 6.4.1 The identity of the member or representee that is withdrawing.
  - 6.4.2 The date that the notice of withdrawal goes into effect.
- 6.5 ACUM shall publicize a clear notice on ACUM's Internet site according to which a member or representee in ACUM announced his desire to exclude a single work from ACUM's management according to clause 2.2 above, which shall include the following details:
  - 6.5.1 The identity of the work that was excluded.
  - 6.5.2 The type of rights that were excluded.
  - 6.5.3 The date that the notice of exclusion goes into effect.
- 6.6 ACUM shall indemnify a license holding user for any expense said user may incur from unauthorized use that occurred as a result of the user's reliance on the database publicized on ACUM's Internet site. However, if ACUM publicizes a notice on its Internet site as stated in clauses 6.4 and 6.5 above, it will have no obligation to indemnify as stated in this clause, for use that was not in accordance with these terms.

## **7. Absence of discrimination and publication of a price list and license terms**

- 7.1 Similar users shall be entitled to similar license terms.
- 7.2 ACUM's price rates and sample license terms for all of the users, with details of the criteria for calculating license fees, shall be publicized on ACUM's Internet site. Next to every publication of ACUM's price rates and license terms it shall be written in a clear form that these rates and license terms were determined by ACUM and at its responsibility only.

- 7.3 Nothing in clauses 7.1 and 7.2 can prevent ACUM from granting discounts or benefits in license terms, so long as in such discount or its amount, there is no granting of an unfair advantage to that same user over his competitors;
- 7.4 Acum's Internet site shall publicize all of the judicial decisions and arbitrator decisions (hereinafter: "**decisions**") pertaining to ACUM's price rates and license terms for users, as well as all the reasoned decisions pertaining to the matters of users and members of ACUM, including claims of breach of copyrights and criteria for distributing royalties to members and all as of April 1, 2004.

## **8. Withdrawal and exclusion**

- 8.1 A notice of withdrawal or exclusion according to clauses 2.2 and 2.3 above shall not derogate from the scope of a user license given to a user prior to the date of said withdrawal or exclusion, and the user license shall continue to encompass all of the works that were included in it *ab initio*, as though no notice of withdrawal or exclusion had been given, until the 31<sup>st</sup> of December, or until the date of the end of the effective valid license, according to the earlier date, as long as a notice was given by the 30<sup>th</sup> of November of that year; if no notice was given until the 30<sup>th</sup> of November of that year, the license shall continue to encompass all of the works that were in it *ab initio* as though no notice of withdrawal or exclusion had been given, until the 31<sup>st</sup> of December of the following year, or until the date of the end of the effective valid license, according to the earlier date.
- 8.2 ACUM shall include, as one of the licensing conditions between it and its members and representees, a provision in favor of the user, whereby the withdrawer or excluder waives any right to sue a user as long as he acts by virtue of a valid license held by him from ACUM, even after having giving the notice of withdrawal or exclusion, pursuant to what is stated in clause 8.1 above.
- 8.3 Without derogating from what is stated in clauses 2.2, 2.3 and 8.1 above, if a work is integrated into an audiovisual work according to a user license from ACUM, the notice of withdrawal or exclusion shall not prevent the use of said audiovisual work, in which the synchronization was done prior to the notice of withdrawal or exclusion, on condition that the user has a prior user license from ACUM for such use.
- 8.4 ACUM shall include, as one of the licensing conditions between it and its members and representees, a provision in favor of the user, whereby the withdrawer or excluder waives any right to sue a user as long as he acts by virtue of a valid license as specified in clause 8.3 above, for uses to an audiovisual work that a different work was integrated into according to a user license from ACUM.
- 8.5 Without derogating from what is stated in clauses 2.2, 2.3 and 8.1 above, if a work is integrated into another audio work according to a user license from ACUM, the notice of withdrawal or exclusion shall not prevent the uses of said audio work, into which the other work was integrated, prior to the notice of withdrawal or exclusion, on condition that the user has a prior user license from ACUM for such use.

- 8.6 ACUM shall include, as one of the licensing conditions between it and its members and representees, a provision in favor of the user, whereby the withdrawer or excluder waives any right to sue a user as long as he acts by virtue of a valid license as specified in clause 8.5, for uses to an audio work that a different work was integrated into, according to a user license from ACUM.
- 8.7 Without derogating from the above said, the withdrawer or excluder shall be entitled to his relative share of the license fees collected for the use of his works which were done via the use of user licenses from ACUM, even if the date of payment of royalties or the date of their distribution shall occur after the date of withdrawal of exclusion.
- 8.8 As of the date of notice of withdrawal or exclusion and until the end of the date of the withdrawer's or the excluder's entitlement to royalties as stated in clause 8.7, or until the effective date of withdrawal or exclusion, the later of the two, ACUM shall not change the manner in which it calculates the royalties to which the withdrawer or excluder is entitled, and *inter alia*, it shall not change the formula for evaluating works in a manner that might harm the withdrawer or the excluder. Without derogating from the above stated, ACUM shall not change the rights attached to the excluder's share, unless such changes apply to all members of ACUM.

With regard to this clause “**user license**” – includes payment of temporary user fees as defined in clause 5.1 above.

## **9. Distribution of royalties**

- 9.1 ACUM shall distribute royalties to its members in a manner that is consistent with the scope and nature of the actual use of its members' works, including by way of sampling – in a case in which ACUM has no way of obtaining sufficient data on the scope and nature of the use, or in a case in which the processing of data requires an unreasonable allocation of resources. Nothing in this clause may prevent ACUM from distributing general royalties, subject to rules that shall be approved by the director-general;
- 9.2 ACUM shall not discriminate between its members and representees, or in and amongst themselves, in determining the criteria for determining the scope of use and the formula for distribution of royalties;
- 9.3 The criteria for determining the scope of the use and the formula for distribution of the royalties shall be transparent and shall be given to any member, in a language that is clear and equal to everyone;

## **10. The board of directors of ACUM**

At least one third of the members of the board of directors of ACUM shall be external directors as this term is defined in article E of the first chapter of the sixth section of the Companies Law, 5759-1999, and the provisions of this article shall apply, *mutatis mutandis*, to ACUM.

## **11. Internal enforcement program**

- 11.1 ACUM shall operate an internal program for the enforcement of the antitrust laws, according to the format that was published by the Antitrust Authority in

the booklet "Format for Internal Enforcement (Binding Version - November 1998)".

- 11.2 The external directors shall be responsible for the implementation of the internal enforcement program. Nothing said in this paragraph may derogate from the existing responsibility of others to comply with the provisions of the law and the provisions of this arrangement.

## **12. Notice of this arrangement**

- 12.1 Within 30 days of the date of approval of this arrangement, a copy of it, as approved by the Tribunal, as well as a summary of the main conditions that are relevant to the user, in a wording that shall be approved by the director-general, shall be sent to all of the users holding a valid license, and to every user who held a user license as of 1.1.02 (hereinafter: **"notice to the users"**). A copy of the notice to the users shall be given to anyone who requests it, whether he contacted ACUM in order to receive a license, or whether ACUM contacted him.
- 12.2 Within 30 days of the date of approval of this arrangement, a copy of the arrangement, as shall be approved by the Tribunal, as well as a summary of the main conditions that are relevant to the members of ACUM in a wording that shall be approved by the director-general, shall be sent to all the members of ACUM (hereinafter: **"notice to the members"**). A copy of the notice to the members shall be delivered to any person interested in joining ACUM as a member.
- 12.3 Without derogating from the aforesaid, ACUM shall publish on its Internet site, the notice to the users and the notice to the members.