

GENERAL POLICY FOR THE USE OF
AMOUNTS THAT CANNOT
BE DISTRIBUTED
(2019)

English Version
For Information Only

Spanish Law 2/2019 of 1 March that amends the Spanish Revised Intellectual Property Law Text (hereinafter, the TRLPI), entails considerable changes. The changes include new transparency obligations for collective management organisations (CMOs) to their members.

In this regard, Article 160 of the TRLPI, with the heading “General Meeting”, highlights that, as part of its role, this body is to agree the general policy for the use of amounts that cannot be distributed, under the provisions of Article 177.6 of the TRLPI.

On the other hand, Article 177 of the TRLPI, with the heading “Distribution, payment and lapse of rights”, in sections 4 and 5 sets forth the time restrictions on claiming the royalties received under the following terms:

“4. The right to claim from copyright management organisations the payout for the amounts due to a holder based on the distribution, lapses five years after 1 January of the year following the year when the amounts become payable to the holder.

5. The right to claim from copyright management organisations the payout for the amounts collected that have not yet been allocated when, after the distribution process, the holder or the protected work or service have not been identified, lapses five years after 1 January of the year following the year they were collected. The amounts referred to above will be kept separately in the accounts of the copyright management organisation”.

And section 6 of that same Article provides the following:

6. The amounts collected but not claimed by their holder within the time frame foreseen in Sections 4 and 5 of this Article will be fully used by the copyright management organisations for the following purposes:

- a. To carry out activities to support the members of the organisation and/or activities to train or promote authors and singers and performers.
- b. To promote the legal digital supply of the work and services whose rights are managed under the provisions of Article 178.1.c) 1 and 3.
- c. To proportionally increase the distribution in favour of all other protected work and services that were duly identified in the distribution process that gave rise to such amounts.
- d. To fund the single point of contact system for invoices and payments as described in Article 168.
- e. To fund the legal person foreseen in Article 25.10.

Every year, the General Meeting of each copyright management organisation should agree the minimum percentages of the collected but unclaimed amounts that will be used for each of these purposes and in no case, except for the cases described in paragraphs d) and e), will they be less than fifteen per cent for each of these purposes.

Should the copyright management organisations post a deficit on their annual financial statements or fail to prove that they have paid all their taxes and/or Social Security contributions, or both, they will allocate the amounts referred to in the first paragraph in this section, insofar as required, to offset the deficit in their annual financial statements or to pay their taxes and/or Social Security contributions, or both.

For this reason, pursuant to the Articles transcribed hereinabove, the General Assembly Meeting (GAM) of AGEDI, held on 12 June 2019, agreed the following general policy for the use of amounts that cannot be distributed to be enforced on the CMO thereafter:

1. Firstly, assuming that the CMO will always be up to date on its tax and Social Security payments, the amounts will be allocated to offset any deficits on the annual financial statements insofar as required.

The remaining amount, if any, will be allocated:

2. To activities that support the members of the organisation: 15% of the amount.
3. To promote the legal digital supply of the work and subject matters whose rights are managed by the CMO under the provisions of Article 178.1.c) 1 and 3, i.e. through campaigns to teach, educate or raise awareness about the legal supply and consumption of protected contents, as well as campaigns against the infringement of intellectual property rights and activities that encourage the integration of authors and artists with an impairment in their creative or artistic field, or both, as well as the promotion of the digital supply of their work, creations and services, and provide disabled people with access to these in the digital world: 15% of the amount.
4. To fund the single point of contact system for invoices and payments described in Article 168, where appropriate, and the funding of the legal person foreseen in Article 25.10: a minimum percentage, with a view to covering fixed expenses, and this will be estimated in the budget, as in both cases AGEDI will have to add to its management costs any costs that are charged, if any, by the single point of contact systems for service provision. These management costs will be paid by the members of AGEDI who receive the returns of such management.

5. To proportionally increase the distribution in favour of all other protected work and subject matters that were duly identified in the distribution process that gave rise to such amounts: the remaining amount, subject to the general principle that the main purpose of the royalties collected and their return is their distribution to their holders.

The aforementioned activities or services will be provided based on fair criteria, especially with regard to their access and scope.

Such activities and services may be performed either directly by the Organisation or by other organisations with purposes that are clearly similar to the ones herein and with proven solvency and prestige.

In any case, the CMO will carry out the administration and accountancy of such funds in a clearly identified and transparent manner, as part of the annual budgets of the CMO and ensuring that they may be reviewed at any time, always in compliance with all the obligations set forth in the TRLPI.

END

English Version Only
For Information Only