

FACT SHEET: THE RIGHTS ADMINISTRATION AGREEMENT

In conjunction with the General Terms and Conditions, the Rights Administration Agreement is the most important tie between SUISA and its members. This Fact Sheet explains the key provisions of the Rights Administration Agreement and the GTC.

General

The rights administration agreement is the legal foundation for the management of certain groups of rights by SUISA. The agreement is essentially based on the provisions of the Swiss Code of Obligations regulating orders (Article 394 et seq. OR/CO).

The details and reciprocal rights and obligations are regulated by the General Terms and Conditions, which form an integral part of the rights administration agreement. This has the advantage that the rights administration agreement does not have to be amended when changes are made in administration terms and conditions.

SUISA will inform you in good time about any changes made in the GTC. **If you do not agree with the new terms and conditions**, you may **terminate** the agreement with 90 days' notice for effect on the date the new terms and conditions come into force.

Individual provisions of the General Terms and Conditions

Point 1 Purpose of the rights administration agreement

By signing the rights administration agreement, you are instructing SUISA to manage important copyright assets in Switzerland and abroad (through its sister societies) on a fiduciary basis for your account.

Point 2 Musical works covered by rights administration

The agreement covers, **without exception**, all existing and future works of which you are the author or, if you are a publisher, all the rights in works that you have acquired or will acquire in the future. Any pre-existing assignments to other parties must be notified to SUISA in writing when the rights administration agreement is signed. This provision excludes "à la carte" representation, which is incompatible with col-

lective rights administration. Certain rights may, however, be excluded from the rights administration agreement (Section C of the agreement; Heirs: Section D).

3.1 Non-dramatic musical works

The agreement applies to all non dramatic musical works: it does not apply to dramatic musical works such as operas and musicals, for example. The latter, known as "grand rights", are not managed by SUISA.

Point 3.2 Rights administration for non dramatic musical works

This is one of the key provisions of the rights administration agreement. It is decisive, both for you and for SUISA, to know exactly which rights in your musical works you are assigning to SUISA for collective administration. The definition of the assigned rights is consistent, in form and substance, with the definitions in the Federal Copyright Law.

The Law grants authors various rights as a basis for rights management. Those rights are:

- **exclusive rights** which enable an author to allow or prohibit specific usages (public performance, broadcasting, etc.);
- **exclusive rights** which are subject to mandatory collective administration by a copyright society (public broadcasting, rebroadcasting);
- simple **remuneration entitlements**. In this case, right-holders cannot prohibit the use of their works but are entitled to remuneration (rental fee, royalties for the production of copies for private use).

Even if he has assigned his rights to SUISA, the author may in any event defend himself against a distortion of his work or a breach of his personal rights.

Point 3.5 Rights excluded from administration by SUISA

Specific rights may be excluded from collective administration by SUISA. For technical reasons, exclusions may only be made as a "package", in accordance with Section C (Heirs: Section D) of the rights administra-

tion agreement. **Exclusions apply to all your works;** they cannot be made for specific works only.

Excluding a group of rights means that you have to administer those rights yourself. This also means that you will have to monitor the whole market yourself.

Point 3.7 Transfer back of synchronisation rights

It has proven difficult, in Switzerland as elsewhere, to define the nature and content of the synchronisation right. Certain countries do not recognise the synchronisation right. SUISA defines the synchronisation right as the right to combine a musical work with another work, be it literary, graphical, audiovisual or other. In the German-speaking area, the term “film production rights” (Filmherstellungsrecht) is also used to designate a combination with audiovisual works.

The synchronisation right is an exclusive right of the right-holder. That is why, in the rights administration agreement, the assignment of synchronisation rights is accompanied by the possibility of transferring those rights back individually under certain conditions. In other words, the assignment is the rule and the transfer back to the right-holder the exception. Many of our foreign sister societies have adopted the same solution.

This rule makes it possible to handle synchronisation rights individually.

Point 3.8 No transfer back of synchronisation rights

You may not ask for synchronisation rights to be transferred back to you under certain circumstances with specific regard to:

- the use of Mood Music catalogues (lit. A). This is because such catalogues are specifically created for synchronisation purposes;
- the use of music by a broadcasting company for radio and TV broadcasts. Broadcasting companies, especially television broadcasters, need synchronisation rights for their broadcasting activities;

The right-holder's consent is required, however, for the production of commercials and sponsoring billboards.

Point 4.2 Territorial exceptions

Individual countries (or territories) may be excluded from collective administration by SUISA under Section D of the rights administration agreement (Heirs: Section E). **Exclusions apply to all your works and all your rights**, and cannot be made for specific works or specific rights only.

If you exclude a country, you have to manage your rights in that country yourself; this means that you have to monitor that market directly.

If you exclude a country from the scope of the administration agreement, you may assign your rights to another copyright society for management in that country. It is possible to be a member of several copyright societies.

Point 6.3 Use of information (data protection)

SUISA may communicate particulars about authors, beneficiaries and works to third parties to the extent necessary for the purposes of the agreement. This includes combating piracy and promoting SUISA's musical repertoire. SUISA may not communicate personal data to third parties without your consent unless it is ordered to do so by the administrative or judicial authorities.

Questions?

Our Members' Department and Legal Service are at your disposal for any further information or inquiries.

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