

GENERAL TERMS AND CONDITIONS FOR RIGHTS ADMINISTRATION



AUTHORS

Version of 1 January 2013

1. Purpose of the rights administration agreement

By the rights administration agreement, the Author instructs SUISA to manage the below-described rights in his musical works; this means that SUISA is entrusted with collecting the royalties from the users and distributing them to the right-holders. SUISA undertakes to perform the mandate diligently, in accordance with its Articles of Association, by-laws and regulations.

For this purpose, the Author transfers and assigns to SUISA on a fiduciary basis the rights designated in these General Terms and Conditions for Rights Administration. SUISA administers the rights directly or through domestic or foreign sister societies, organisations or associations (hereafter referred to as "sister society/ies"). For this purpose, SUISA may enter into reciprocal representation agreements, unilateral representation agreements or other forms of cooperation contracts (hereafter referred to as "reciprocal representation agreements") and in that context re-transfer and assign the rights assigned to it. SUISA itself does not exploit the assigned rights commercially.

SUISA is a not-for-profit organisation.

2. Musical works covered by rights administration

The rights administration agreement covers all non-dramatic compositions and their lyrics (hereafter referred to as "musical works") created or co-created (with other right-holders) by the Author during the term of the agreement. The rights administration agreement covers musical works and arrangements of musical works, as well as parts of works.

Musical works created or co-created by the Author before the rights administration agreement was signed are also covered by the agreement unless the Author has already assigned the rights to another party. The Author undertakes to notify SUISA of all grants of rights in his musical works before the rights administration agreement was signed. Any previously assigned rights reverting to the Author will be covered by the rights administration agreement, i.e. they will be assigned to SUISA for management.

During the validity of the rights administration agreement, no musical work may be excepted from the contract.

3. Rights and claims to remuneration assigned for administration

3.1 Dramatic musical works and uses excluded from rights administration

The dramatic musical works excluded from the scope of the rights administration agreement are musical works with a plot portrayed by persons playing set roles and which rely on music to the point where they cannot generally be used without it.

Typical examples are musicals, operas, operettas and ballets.

Musical works contained in films or other audiovisual or multimedia works do not qualify as dramatic musical works except in the case of films of dramatic musical works.

For the purpose of the rights administration agreement, the following are also non dramatic musical works:

- musical works for dance works which are used without dance;
- concert versions of dramatic musical works; and
- excerpts from dramatic musical works which do not comprise a complete act and are not longer than 25 minutes in the case of a radio broadcast, or 15 minutes in the case of a television broadcast.

The author's original intent is not relevant for the purpose of distinguishing between dramatic and non dramatic musical works. A musical work that was not originally created as a dramatic work may be subsequently dramatised (alone or with other works) with the consent of the right-holders (in accordance with paragraph 1), in which case it will be deemed a dramatic musical work, for the purpose of the rights administration agreement, if it is used (performed, broadcast, reproduced, etc.) dramatically (in accordance with paragraph 1).

3.2 Rights administration for non dramatic musical works

The Author assigns to SUISA, during the term of the rights administration agreement, the following exclusive rights and claims to remuneration for the purpose of their administration:

- a. the right to deliver and perform musical works in any way whatsoever and to make them perceptible elsewhere (performance right);
- b. the right to broadcast musical works on radio, television or similar means, including via cable (e.g. cable networks) or satellite (broadcasting right, including simulcasting);
- c. the right to re-broadcast the musical works by means of technical installations (cable networks, transmitter, etc.) (rebroadcasting right);
- d. the right to make musical works available, for example on the internet or other networks, so that they may be accessed by members of the public from a place and at a time individually chosen by them (online right);
- e. the right to make broadcast or re-broadcast musical works perceptible (public reception right);
- f. the right to record musical works on phonograms, videograms or data carriers of any kind and to manufacture and distribute such carriers (mechanical rights), including for the purpose of performing, broadcasting, rebroadcasting or making them available (letters a to d); subject to letter h, this right does not include the reproduction of graphical representations (sheet music, etc.);
- g. the right to combine pre-existing musical works with works of other genres (film, text, pictures, etc.), or to make pre-existing musical works interactively usable with works of other genres (multimedia); these rights are hereafter referred to as synchronisation rights or film production rights and may be revoked by the Author in accordance with point 3.7;
the right to record the thus combined musical works on phonograms, videograms and data carriers, and to reproduce and distribute such carriers;
SUISA does not manage the synchronisation right in commissioned works; such works are specifically commissioned for use in combination with works of other genres or for interactive use with works of other genres; all other musical works are deemed to be pre-existing musical works;
- h. concerning graphic representations (sheet music, etc.) of musical works (with or without text):
 - the right for teachers to make copies or have copies made for teaching purposes in the classroom (school usage);

- the right for companies, public administrations, institutions, commissions and similar organisations to make copies or have copies made for internal information or documentation purposes (internal usage);

- the right for individuals to have copies made by third parties for their own personal use and that of closely-related parties (private usage); copy shops, libraries and other public institutions and businesses which make photocopiers available to their users also qualify as third parties.

The right to reproduce complete or nearly complete publications of sheet music or music study courses is excluded;

- i. the right to rent, lend or otherwise make musical works available, for a fee or free of charge;
- j. the right to manufacture or import blank phonograms, videograms or media carriers which may be used for recording musical works.

3.3 Other rights

The assigned rights also include any new usages and rights which may be created or developed as a result of technological progress or changes in legislation and which are significantly equivalent to the above-mentioned rights.

3.4 Scope of assignment

The assignment is valid regardless whether the relevant rights are deemed exclusive rights or claims to remuneration in Switzerland or any other country.

The assignment also comprises the right to obtain information and to bring action for damages, declaratory judgment, injunctive relief or remedy, condemnation order, as well as the right to initiate criminal proceedings. The Author expressly empowers SUISA to conclude royalty settlements with regard to his musical works.

3.5 Rights excluded from administration by SUISA

The Author may exclude certain groups of rights from administration by SUISA in respect of all his musical works.

The excluded groups of rights must be specified in the rights administration agreement. Exclusions may be subsequently revoked with six months' notice for the 1 January of any calendar year. New exclusions can be filed, with the same notice period, effective at the beginning of any calendar year.

3.6 Arrangement rights and rights in arrangements

The rights assigned to SUISA relate to musical works in the form created by the Author. The right to grant or refuse to grant arrangement rights, in particular for

adding lyrics to a musical work, is managed by the Author himself and not by SUISA. However, SUISA manages the rights in arrangements.

Arrangements are musical works created from existing works and which retain the recognisable originality of the latter. Arrangements include, in particular, translations of lyrics into other languages, setting music to lyrics, and the first-time addition of lyrics, or the addition of new lyrics, to musical works.

3.7 Transfer back of synchronisation rights

Before authorising the use of pre-existing musical works in combination with works of other genres, in particular for the production of (audio and audiovisual) commercials (point 3.2 g), SUISA notifies the Author about the intended use, asking him if he wishes to administer the synchronisation or film production right himself, subject to the below conditions.

The synchronisation or film production right reverts to the Author if the Author notifies SUISA within 30 days of being informed of the intended use (by SUISA or the user) that he intends to manage the synchronisation right himself.

The synchronisation right only reverts to the Author for a specifically designated use and for a specific musical work.

All other rights, particularly those relating to the reproduction and distribution of copies of the work, remain with SUISA.

In the case of published musical works, SUISA's notification pursuant to paragraph 1 of this point shall be addressed to the publisher.

3.8 No transfer back of synchronisation rights

The transfer back of the synchronisation right (point 3.2 g) is excluded and no notification by SUISA is required for:

- a. the use of musical works offered on catalogues for synchronising phonograms, videograms and data carriers (mood music, production music, library music, etc.);
- b. the use of musical works by broadcasting companies for radio and television broadcasts (except commercials, sponsoring billboards, etc); this includes works used in the production by the broadcasting company or on its behalf of phonograms, videograms and data carriers for broadcasting purposes only.

3.9 Limitation of the rights administration obligation

SUISA shall conduct its business in accordance with proper business management principles. SUISA endeavours to manage the assigned rights as comprehensively as possible.

However, in granting licences and collecting royalties, SUISA relies primarily on the notifications and indications received from the users themselves. For cost considerations, SUISA cannot guarantee absolute market coverage and/or enforcement.

4. Territorial scope of the rights administration agreement

4.1 In general

The assignment of the rights referred to in section 3 is valid world-wide, in all countries where SUISA's rights are managed by sister societies based on reciprocal representation agreements.

4.2 Exceptions

The Author may limit the territorial validity of the assignment of rights. The limitation must be specified country by country. Failing such limitation, the assignment shall be considered valid world-wide (in accordance with point 4.1).

The excluded countries must be indicated in the rights administration agreement. Exclusions may be subsequently revoked subject to six months' notice for the 1 January of any calendar year. New exclusions may be filed, with the same notice period, effective at the beginning of any calendar year.

4.3 Rights administration abroad

SUISA endeavours to manage the rights assigned to it in accordance with section 3 as comprehensively as possible abroad, in cooperation with its foreign sister societies. SUISA notifies the uses known to it to the relevant sister society.

Rights' administration by sister societies in foreign countries is regulated by the laws, tariffs, distribution rules and contracts of the relevant country. Each sister society determines its own operating rules and practice. Therefore, SUISA cannot guarantee that there will be no gaps in the administration of the Author's rights abroad, nor can it assume any liability for the activities of its sister societies. SUISA has no obligation to act abroad directly.

If several sister societies operate in one and the same country, SUISA will conclude one or more reciprocal representation agreements with the sister society or societies of its choice.

5. Electronic communication

5.1 In general

SUISA may use electronic means (especially email, online services or other forms of electronic communication) to communicate with the Author and to perform its services; it may also replace the existing forms of communication and data exchange (e.g. postal services) by electronic media and define the corresponding specifications. SUISA is not required to make or preserve printed copies (or other forms) of electronic messages.

The Author is responsible for ensuring that electronic communication with SUISA is possible by installing the necessary technical equipment. The Author bears the cost of his own technical equipment and electronic communications. SUISA reserves the right to change the specifications for the use of electronic communication – in particular by adapting them to new developments – at any time.

5.2 Communication by email

Without prejudice to SUISA's rights under point 5.1, once the Author communicates his email address to SUISA, SUISA and the Author are entitled to communicate with each other by email. SUISA is then entitled to email all messages and documents which it had previously sent to the Author by post (or any other means).

Email messages shall be deemed received as soon as the addressee can view them under normal circumstances. If a notice expressly requires the written form, it shall be sent in writing by post. Communications sent by email with a coded electronic signature qualify as being in the written form.

The Author is aware that email communications are basically not encrypted and that, therefore, their security and confidentiality cannot be guaranteed. SUISA declines any liability for damages incurred by the Author or by any third party as a result of email communications.

5.3 Online services

SUISA shall make available to its members and principals a restricted area (hereafter referred to as the "Members Area") on its website from which they may access various online services; for the communication of confidential data this area is encrypted in accordance with customary standards. The online services will be progressively developed.

The Members Area may be accessed with a user name and password. The Author may at any time apply for a user name and password to log in to the Members Area. Access is exclusively restricted to the Author designated as a contractual party in the rights

administration agreement. If the Author grants access to third-parties on his behalf, he is liable for their acts and omissions as for his own; he shall instruct and oversee the third parties accordingly.

Communications through the Members Area or via the online services shall be deemed received as soon as they can be viewed by the addressee under normal circumstances.

The Author acknowledges that communications through the website and the Members Area are only partially encrypted and that their security and confidentiality cannot be guaranteed absolutely. SUISA declines any liability for damages incurred by the Author or any third party in connection with communications through the SUISA website or the Members Area.

The Author undertakes to store his user name and password in a secure place, not to disclose them to unauthorised third parties and to abstain from otherwise granting or facilitating access to the Members Area by unauthorised third parties. SUISA declines all liability for any damages arising from the Author's disregard for this confidentiality obligation. The Author shall hold SUISA harmless from all third-party claims (including court and legal fees) against SUISA or its sister societies arising from his failure to observe the confidentiality obligations.

If the Author has any knowledge or reason to believe that his user name and password have fallen into unauthorised hands, he shall notify SUISA promptly. Relying on such notification, SUISA shall immediately block the user name in question and issue a new one to the Author at his request. SUISA declines all liability for any data lost as a result of the blocking of the user name.

Access to the Members Area of the website is primarily designed to enable the Author to view, record and download data and information about himself and his works. If, in the process, the Author acquires any data or knowledge about other participants in his works or about third parties and their works, he shall handle such information confidentially and shall not divulge it to third parties. The Author further undertakes not to use the information for transacting business with third parties but only for his own internal purposes and in compliance with statutory prescriptions and data protection rules in particular. SUISA's website, online services and the data contained therein may not be used for commercial purposes without SUISA's prior written consent. SUISA may make such consent conditional to the payment of an appropriate fee.

Specific online services may be regulated by special terms and conditions of use which the Author can call up and save or print, and which he must accept by ticking the relevant box or button. When he first logs in to an online service, at the latest, the Author undertakes to observe the applicable terms and conditions of use for that service. In case of discrepancy with these General Terms and Conditions, the special terms and conditions of use take priority.

SUISA is entitled to monitor, record and evaluate users' access to its website and their data transmissions; in particular, it may log and save any searches undertaken by the Author and the corresponding results, together with his user name and time of search. SUISA may also temporarily or permanently block the Author's access to the Members Area if it has knowledge or reason to believe that the Author has violated the terms and conditions of use (especially these General Terms and Conditions and/or the terms and conditions of use for the relevant online service). SUISA declines all liability for any data lost following the blocking of access.

The Members Area (including the online services offered there) is monitored during normal business hours. SUISA strives to ensure round-the-clock availability of the Members Area. It cannot, however, guarantee permanent availability and reserves the right to interrupt access at any time without giving reasons. SUISA may, in particular, interrupt access for maintenance purposes and during works on the system.

SUISA cannot guarantee the accuracy and unrestricted availability of the data made available through its website and the Members Area (and the online services offered there); SUISA is not liable for any direct or indirect damages suffered by the Author or any third party in connection with the use of information obtained by the Author through its website or the Members Area.

If the Author no longer intends to use the Members Area, he shall inform SUISA promptly. SUISA will then immediately block his access to the Members Area.

6. Information about right-holders, musical works and data protection

6.1 In general

The Author undertakes to provide SUISA, in good time, with all necessary information and notices for the administration of his rights, and to respond to its inquiries.

The Author undertakes to promptly notify SUISA of any changes in his personal particulars such as

address, telephone number, email address, payment instructions, VAT number, etc. Royalty statements and other correspondence shall be considered validly delivered if they are sent to the last address (postal or email) notified by the Author. If SUISA does not have a valid delivery or payment address for the Author, SUISA's obligation to send royalty statements and other correspondence and to transfer distribution payments is suspended. SUISA is not obligated to make investigations for the postal or payment address.

SUISA assumes that the Author is the economic beneficiary of the distribution proceeds paid to him and that he declares such amounts to the tax authorities. If the Author is not the economic beneficiary, or is not the only economic beneficiary, or if the tax authorities request information in this regard, he undertakes to communicate all necessary particulars to SUISA.

At the Author's death, his legal successors shall designate a joint representative authorised to deal with SUISA. As long as the heirs are unknown, no joint representative has been designated or the estate has not been definitively settled, SUISA's obligation to send royalty statements and other correspondence and to pay the distribution proceeds is suspended.

6.2 Declaration of musical works

The Author undertakes to declare, completely, truly and accurately, all the musical works authored or co-authored by him. The Author is bound by the declaration that he is the author or co-author of the musical work.

Musical works shall be declared in writing on the forms supplied by SUISA or via the online service – if available – in the Members Area of SUISA's website. Section 5 remains reserved.

The following shall be attached to the declaration of works:

- for arrangements of unprotected works ("domaine public"): a copy (as a score or in the audio format decided by SUISA) of the original work and the arrangement;
- for all other musical works: at SUISA's request, a copy in the format decided by SUISA;
- for arrangements of protected musical works: the consent of the right-holder(s).

Declarations of works shall be filed within the following time limits:

- for musical works created before the rights administration agreement was signed: within three months of the date of the rights administration agreement;

- for musical works created during the term of the rights administration agreement: within one month of the creation of the work.

As long as a musical work is not completely and accurately declared, the Author is not entitled to any distribution proceeds.

6.3 Use of information (data protection)

SUISA is entitled to collect and process personal data about the Author for all purposes in connection with the implementation of the rights administration agreement and a possible membership, and in particular for the purpose of managing the Author's rights, combating piracy and for statistical and scientific purposes and, in the same context, to disclose the data to third parties in Switzerland or abroad. Personal data includes indications and documents about the Author, his relationship with SUISA as a principal or member, the rights administration agreement, his musical works and usage thereof, royalty statements and payments.

The Author agrees that, in the framework of the above-described data processing, SUISA may, in particular:

- a. keep records on the Author (in printed and/or electronic form);
- b. enter personal data in databases;
- c. disclose personal data to sister societies in Switzerland and abroad for processing in the same scope as SUISA;
- d. disclose personal data to sister societies in countries which do not offer the assurance of adequate data protection comparable with Switzerland's.

The Author expressly agrees that information concerning his musical works and the right-holders (but not about the shares in the proceeds of the works) may be made publicly available in Switzerland and abroad (via internet in particular).

SUISA shall not otherwise disclose personal data about the Author to third parties without the Author's consent, unless it is obliged to do so by law or by administrative or judicial order.

SUISA shall ensure the security of personal data. For this purpose, SUISA implements appropriate security measures which are consistent with modern-day technology and are designed to protect personal data against unauthorised access, unauthorised use and unauthorised disclosure. The Author is responsible for data security on the computers used by him.

If he has access to SUISA's website Members Area and can call up, enter or change data and information about himself and his works, the Author is responsible for checking and correcting his personal data. Otherwise, the Author can ask SUISA to provide information about his personal data and to correct the latter where necessary. Before giving information or correcting personal data, SUISA reserves the right to ask the applicant for a written request and identification.

The Privacy Policy Statement published by SUISA (on its website and on forms) applies in all other respects.

7. Distribution, royalty statements and advances

7.1 Distribution of revenues

SUISA is obligated to distribute the collected royalties in accordance with its final, legally valid Distribution Regulations. The Distribution Regulations in effect when the statement is prepared are authoritative.

The Author acknowledges that the Distribution Regulations may be amended at any time. The amendments to the Distribution Regulations approved by the regulatory authority, the IGE (Swiss Federal Institute of Intellectual Property), are published in SUISA's official journal for principals and members, on SUISA's websites and in the SHAB (Swiss Official Gazette of Commerce); they may be appealed before the courts within 30 days.

Unless another key for the distribution of royalties between the beneficiaries of a work is indicated in the declaration of works, the Author consents to the use of the distribution key specified in the Distribution Regulations. Distribution keys which are not in compliance with mandatory provisions of the Distribution Regulations are invalid.

7.2 Royalty statements

SUISA shall distribute the revenues from his musical works to the Author at least once a year in accordance with its Distribution Regulations and/or those of its sister societies.

The royalty statements will be sent to the last address communicated by the Author (postal or electronic). If SUISA does not have a valid address for the Author, the second paragraph of point 6.1 will apply.

7.3 Advances

SUISA can pay to the Author advances commensurate with the past and/or anticipated use of his works. SUISA is entitled to offset such advances.

If the Author's account shows a negative balance two years after an advance has been made, SUIISA may demand that the negative balance be repaid within three months.

7.4 State charges (taxes, social security and other)

SUIISA is entitled to deduct from the distributable amounts any taxes and other charges payable pursuant to Swiss law, foreign laws or international treaties.

If, during the term of the rights administration agreement, the Author is required to pay value-added tax by law or because he exercises the option to do so, he shall notify SUIISA promptly, indicating his VAT registration number; SUIISA will calculate the distribution amount plus VAT at the relevant rate. The Author shall settle the value-added tax directly with the tax authorities. If he fails to do so, or if he wrongfully claims VAT from SUIISA, he will be comprehensively liable towards SUIISA (for taxes, fines, penalty charges, interest, costs, etc.). Moreover, the Author shall promptly notify SUIISA if he decides to revoke the option. Until it is notified of the Author's decision to exercise or revoke the VAT option, SUIISA prepares its royalty statements without or with VAT, as the case may be. SUIISA is entitled to obtain from the Author all supporting documents concerning VAT.

The Author is directly responsible for declaring the royalty payments to the tax authorities and social insurance offices (AHV/AVS, IV/AI, EO/APG, etc.).

8. Pseudonyms

The Author shall specify his pseudonyms in the rights administration agreement.

During the term of the rights administration agreement, the Author may notify new pseudonyms to SUIISA; to avoid possible confusion with other names or pseudonyms, new pseudonyms shall, however, be chosen in consultation with SUIISA.

9. Membership in SUIISA

The Author becomes a full member of SUIISA, with the right to vote and be elected, as soon as he satisfies the membership conditions set forth in the applicable Articles of Association.

10. Entry into force and termination of rights administration agreement

10.1 Entry into force

The rights administration agreement comes into effect as soon as it is signed by both parties. It is valid for an indefinite period.

The rights administration agreement supersedes and replaces any prior rights administration agreements signed between the Author and SUIISA. Any other existing agreements and exceptions with regard to rights or countries, as well as any pseudonyms, remain in full force and effect provided they are not inconsistent with the applicable rights administration agreement.

10.2 Termination

The rights administration agreement may be terminated by either party for the end of any calendar year, subject to six months' notice.

If SUIISA has no valid address for the Author for five years, or if no joint representative has been designated by his legal successors in the ten years following the Author's death, the rights administration agreement shall automatically expire at the end of the year. If no valid payment address is known to SUIISA thereafter, any distribution proceeds which cannot be paid shall be set aside for another five years after which time they vest with SUIISA.

If there is a negative balance on the Author's account, all of the following rights are suspended: the right to terminate the agreement, to except certain groups of rights from assignment to SUIISA (rights administration agreement, C), to automatic termination failing a valid address (in accordance with paragraph 2) and the right to subsequently except certain countries (point 4.2) and/or to transfer membership to a sister society (point 10.3).

Upon termination of the rights administration agreement, all the assigned rights revert to the Author and his access to the Members Area of the SUIISA website will be blocked.

Any previously licensed uses which take place after the termination of the rights administration agreement are reserved.

10.3 Transfer to a sister society

The transfer of all rights to a sister society, or transfers limited to individual rights or countries are permitted subject to the termination rules under point 10.2.

10.4 Financial consequences of the termination of the rights administration agreement

The Author is entitled to a subsequent royalty statement for uses during the term of the agreement and to the payment of the corresponding amounts. The Author has no further financial claims against SUISA.

(The English-language version of these General Terms and Conditions for Rights Administration has been translated for your convenience from the German-language original. In case of discrepancies, the German-language original shall prevail.)