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## **Distribution rules applicable**

ADAGP's role is to manage artists' property rights in their works on their or their beneficiaries' behalf.

Due to the many different ways in which graphic, plastic and photographic works of art can be used and the resulting diversity in economic models, ADAGP has different processes for collecting and distributing royalties.

The main distinction to be made is between rights that are managed on an individual basis, in other words work by work, and rights that are not managed individually but collectively, in accordance with either "blanket" agreements or specific legislation.

### **I. Distribution of royalties managed individually**

According to this mode of management, a potential user requests permission to use one or more given works in one or more different ways and such permission is granted.

Royalties are collected strictly in accordance with the ADAGP schedule according to parameters such as number of works, number of reproduction media, territories and period of use.

The following rights are managed in this way:

- right of reproduction in books and similar
- right of production in the media
- right of reproduction on merchandise (posters, stationery, textiles, packaging, etc.)
- right of reproduction on video media,
- right of reproduction on interactive media,
- reproduction and public communication rights for advertising

- right to broadcast on television channels not covered by a blanket agreement (the majority of foreign countries and for France: Canal +)
- right of distribution on the internet (subject to some sites that have signed blanket agreements)
- right of exhibition
- right of public screening

The resale right is also included in the category of rights managed individually but, unlike the rights described above, the way in which the royalty is calculated and the amount are determined not by the ADAGP schedule, but by legal and regulatory provisions.

For all rights managed individually, the amount distributed to a given work corresponds to the royalties collected for this work after the deduction to cover ADAGP's costs.

It should be noted that all these rights are "exclusive" rights (as opposed to "collective" rights, see below) and therefore only concern members who have appointed ADAGP to manage all their copyrights.

## **II. Distribution of royalties not managed individually**

For certain modes of use, the individual management of royalties is not possible due to the large number of works distributed.

In some of these cases, legislation has reflected this situation by creating exceptional systems separate from exclusive copyrights, either in the form of remunerated exceptions or in the form of compulsory collective management. These royalties are called "collective royalties" (point B).

In other cases, ADAGP signs blanket agreements, either on its own or with other collecting societies, by which blanket permission is granted in respect of exclusive rights in return for an overall payment (point A).

In both cases, distribution rules are required to allocate to each work the appropriate portion of the overall amount of royalties collected for the whole repertoire.

### **A. Exclusive rights**

Exclusive rights and blanket agreements apply to the following modes of use:

- television broadcasting (joint blanket agreements with other collecting societies such as Sacem, SACD, Scam),
- video on demand (joint blanket agreements with other collecting societies Sacem, SACD, Scam),
- photolibraries (blanket agreements signed by ADAGP on its own),

- some websites (jointly or not with other collecting societies according to the repertoire used),
- educational uses (jointly with the beneficiaries for Books and the Media).

### 1. Television broadcasting

Collecting societies sign a blanket agreement with each broadcaster, regardless of the mode of broadcasting (terrestrial, TNT, satellite, cable, ADSL), authorising the broadcasting of the works in their catalogues. The sum paid to the collecting societies is a percentage of total receipts (TV licence fee, advertising, subsidies, etc) and is first of all broken down between the different collecting societies.

Having received the sum due to it, ADAGP applies the distribution rules in order to determine the amount due to each work shown.

To detect and identify the works in its repertoire for distribution purposes, ADAGP uses the following sources of information:

- declarations from television channels,
- declarations from producers,
- programmes viewed by the audiovisual department,
- declarations from rightholders.

The following coefficients are applied cumulatively to each work, giving a weighting to each image in relation to the others:

#### ***a – Time image is visible (timing)***

To take account of the time during which the visual artwork appears in the audiovisual programme, a **time coefficient** is used. It is calculated according to the type of use: caption, setting or credits.

#### ***b- Regional distribution***

To take account of the fact that certain channels have regional coverage, a **regional distribution coefficient** is used. It is 1 for national channels and 1/5 for regional channels.

#### ***c – Number of works in the same audiovisual programme***

In order to balance out the amount of royalties between artists whose works are shown in several programmes and those benefiting from a large number of works in a single programme, a reducing coefficient based on the number of images is applied. The royalties are calculated in proportion with the square root of the number of works by an artist shown in the same audiovisual programme. This has the advantage of smoothing out significant differences while retaining the proportionality of the amount to the number of works.

#### ***d – Repeat of a programme***

Due to the programming of cable and satellite channels in particular, which broadcast programmes in a loop, the time it takes for a repeat to be accounted for is one month after the last showing.

Thus, when a programme is shown several times, the first showing is calculated at 100%,

showings within 31 days after a showing that is calculated are not calculated (0 %) and showings that take place, over a sliding year, more than 31 days after a valued showing are calculated at 50%.

### ***e – Time slot criterion***

To take account of viewers' ability to see works, showings are weighted according to the time they are shown:

- day time (7 a.m. to 7 p.m.): coefficient 2
- evening (7 p.m. to 1 a.m.): coefficient 3
- night time (1 a.m. to 7 a.m.): coefficient 1

However, the coefficient for works shown in televised news or sports programmes is 1.

N.B.: For pictograms of service broadcasts shown multiple times (e.g.: weather), the distribution will be based on a maximum of 3 captions per day, all the other distribution rules (cumulative time coefficient, area of broadcasting, number of works, repeats and time slot criterion) continuing to apply.

## **2. Television channels' websites**

This distribution covers only works specifically posted online on the television channels' websites. This is because payment for the rights in posted content that has been broadcast on television is made in the TV royalties distribution.

In order to take account of the length of time for which works are posted online, the following factors are applied:

### **a – Length of availability online**

A time coefficient allocated to each work based on the duration of its presence on the website (month posted):

- 1 for the month of December of year N
- 2 for the month of November of year N...

### **b – Reduction coefficient**

A gradient is applied based of the following principle:

- Posted online in year N = 1 (no reduction)
- Posted online in year N -1 = 2 (50% reduction)
- Posted online in year N -2 = 3 (66% reduction)

## **3. INA agreement**

The agreement signed on 31 December 2008 between ADAGP and the Institut National de l'Audiovisuel (INA) authorises it to reproduce, fully or partially, the works of ADAGP's repertoire inserted into the audiovisual works in its collection of

archives which it sells to its different customers (producers, broadcasters, etc).

The annual amount of royalties is divided by the number of ADAGP works identified in the audiovisual archives used in the same year.

As with the distribution of audiovisual rights under blanket agreements with broadcasters, the “square root” coefficient of the number of works will be applied in order to give a progressive and proportional effect.

#### 4. Video on demand

According to blanket agreements signed between collecting societies and video on demand platforms, the latter pay a percentage of the receipts generated by each video downloaded. The royalties thus paid per video are broken down between the different repertoires on the basis of an agreement signed between the various societies. The amount due to ADAGP for the works in its repertoire is then divided between the AGP works without a weighting criterion.

#### 5. Subscription Video on Demand (SVOD)

The revenue collected from operators is distributed by dividing the total amount collected for a year or six months by the number of ADAGP works contained in the audiovisual works made available by the platform. This result will be weighted, based on the documentation supplied, either by the number of views that the audiovisual work has had or by the length of time the work has been made available, expressed in the number of days.

#### 6. Photolibraries

Photolibraries pay ADAGP a percentage of the proceeds from the sale of images reproducing the works of the ADAGP repertoire or a flat fee per work, on a six-monthly or annual basis.

The royalties are paid with an indication of the images concerned. The amounts collected are therefore directly allocated to the artists concerned after the deduction from royalties has been applied.

#### 7. Websites

For most websites and most uses, the royalties are managed individually; in other words, the user requests permission to use one or more given works and a royalty amount calculated according to the schedule will be collected for such works.

However, four types of websites show such a large number of works that it was necessary to sign blanket agreements:

- websites of certain museums with a large contemporary art collection
- photolibrary sites

- information portals on art (Art Aujourd'hui, Gazette Drouot, Artprice)
- video sharing sites (Dailymotion, Youtube, ...)

Royalties are collected either on the basis of a percentage of the receipts generated by the website or on the basis of the ADAGP schedule when the website does not generate receipts. Whatever the case, the maximum share payable to photographs of works of art is 15% of the total royalties collected.

For museum, photolibrary and Artprice websites, the amount collected over a given year is then divided into equal shares between the works put on line, the list being provided by the site and controlled randomly by ADAGP.

For certain art information portals, specific distribution rules are applied:

- the Gazette Drouot website: a third of the amount of the royalties received for the year is allocated to works in proportion with the media reproduction royalties received during the year concerned and two thirds of the amount in proportion with the amount of the resale royalty received for this same period.
- the Art Aujourd'hui website: the amount of the royalties collected is allocated to the works in proportion with the media reproduction royalties received during the year concerned.

For video sharing websites, the difficulty comes from the very large volumes of videos on the site. 4 criteria have been determined to distribute the sums as effectively as possible, taking account of:

- declared videos put on-line by the members of ADAGP
- declared videos put on-line and containing works from the ADAGP repertoire by other users of the sharing platform, museum type, etc...
- works of the ADAGP repertoire probably inserted into videos put on-line by all the users of Dailymotion.

### **Description of criteria used**

#### **A – Filter via Google Video search**

We do a search of names of artists on the Google video site, restricting the results to the site for which the royalties are to be distributed. The number of hits is given a value as follows using the "Pige Google" coefficient:

Number of hits	0	1 to 3	4 to 10	11 to 20	Over 20
Pige Google Coefficient	0	1	2	3	4

#### **B – Duration of videos declared/Number of captions**

On the basis of artist declarations, we calculate the total duration of videos put on-line on the website or the number of fixed images (actual duration for videos of creations converted into number of captions according to a time coefficient of fixed images) for each artist. The number of captions is converted into a Number of captions coefficient declared according to the following table:

Number of captions	0	1 to 10	11 to 100	Over 100
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Declaration Coefficient	0	1	2	3
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### **C – Internet royalties**

The amount of internet royalties invoiced in France per artist during the year concerned is used to report on the visibility of artists on the internet. The amount of internet royalties is converted into an internet coefficient according to the table below:

Amount of internet royalties(€)	0	1 to 100	101 to 1000	Over 1000
Internet coefficient	0	1	2	3

### **D – Audiovisual rights**

The amount of audiovisual royalties invoiced in France per artist during the year concerned is used to report on the visibility of artists in televised programmes. In order to simplify the extraction of data, we take as a base the Canal Satellite distribution of the previous year (this is the distribution that covers the most television channels). The amount of TV royalties is converted into a TV coefficient according to the following table:

Amount of CanalSat royalties (€)	0	1 to 1000	1000 to 10000	Over 10000
TV coefficient	0	1	2	3

### **E – Management of copyright royalties**

We only include in the distribution the artists who are managed for primary rights (Broadcasting or Reproduction right) on the date of the distribution.

#### **Use of criteria**

- 25% of the sums collected are distributed in proportion with the Pige google coefficient between the artists managed for primary rights.
- 25% of the sums collected are distributed in proportion with the Declaration coefficient between the artists managed for primary rights.
- 25% of the sums collected are distributed in proportion with the Internet coefficient between the artists managed for primary rights.
- 25% of the sums collected are distributed in proportion with the TV coefficient between the artists managed for primary rights.

## **8. Educational uses**

In February 2006, the *Education Nationale* [French education ministry] signed 5 agreements covering the years 2007 and 2008 with the beneficiaries of the book, music, audiovisual, media and visual arts sectors in order to be able to use works for educational purposes. In June 2009, the agreements were extended for the year 2009.

The uses covered are:

- showing works in class and at symposiums and conferences
- incorporating works into examination or competition subjects,
- adaptation of works by pupils in class
- reproductions with a view to archiving educational works and research
- putting works on-line on the educational establishment's intranet strictly for the purposes of illustrating educational and research work, up to a maximum

of 30 works (limited definition and resolution)

No documentation on works used and their usage has been provided by the *Education Nationale*, although the agreements clearly stipulate this and a specific website has been developed for beneficiaries of the book, media and image sectors.

Therefore, royalties have to be distributed by analogy, in proportion with the royalties already collected according to the modes of use.

Thus, for royalties coming under the Book agreement which concerns images from books, the sums are distributed to artists whose works had been reproduced in books, in proportion with the 2007 royalties.

As for royalties relating to images from sources other than books, they were paid to works that received royalties in 2007 for posters, cards, catalogues, leaflets, separate sheets, multimedia and various reproduction royalties other than books.

Finally, for the agreement covering uses of images published in the media, the royalties are paid in proportion with the media reproduction rights for the year concerned.

## **B. Collective rights**

According to the legislation applicable, copyrights enshrined under compulsory collective management or subject to a legal licence are:

- audiovisual private copying (art L. 311-1 paragraph 1 of the intellectual property code)
- full, simultaneous and unaltered transmission of audiovisual programmes by cable (art L. 132-20-1 of CPI)
- photocopying (art. L. 122-10 du CPI)
- digital private copying (art. L. 311-1 paragraph 2 of CPI)
- public lending rights (art. L. 133-1 of CPI)

Subject to fulfilling the specific conditions of the distribution rules of each of these royalties, all members (members who have entrusted the management of all their rights and members only entrusting the management of collective rights) are likely to benefit from these royalties.

### 1. Audiovisual private copying

Created in 1985, the audiovisual private copying levy (RCP) is paid by manufacturers and importers of blank copying media (CDs, DVDs, USBs, hard disk drives, smart phones, etc) to beneficiaries (artists, producers, performers) for recordings of audiovisual works that private individuals make for their own private use.

The amount of the levy per blank medium is determined by an administrative commission. Of the share allocated by law to artists (a third of the audiovisual private copying levy), visual arts accounted for 2.5%.

This amount is distributed annually on the basis of data provided by the Médiamétrie institute which indicates every six months for terrestrial channels the rate of copying by private individuals of different types of programmes for each channel.

All visual art works shown are therefore taken into account whether the rights holders are members for primary distribution rights or only for collective rights, according to the weighting criteria of broadcasting rights (c.f. above point II.A.1.: visibility – area of distribution – number of images within the same programme – repeats) and the rates of copying indicated by Médiamétrie.

## 2. Full, simultaneous and unaltered transmission by cable

Since the act of 27 March 1997, the right to authorise simultaneous (with primary television broadcasting), full and unaltered transmission by cable can only be exercised and therefore remunerated by a collecting society. ADAGP has been approved by the Ministry of Culture to manage such rights.

For each network, the amounts are distributed to the works shown on the television channels accessible on the network concerned, according to the same criteria as those taken into account for primary broadcasting rights (see above point II.A.1.: visibility – area of broadcasting – number of images with the same programme – repeats).

## 3. Reprography

In 1995, legislation established the right for artists to be paid for the photocopying of their published works. The sums due are collected from users (schools, companies, copying services...) by the *Centre Français d'exploitation du droit de Copie* (CFC) of which ADAGP is a founding member. The distribution of the sums between the various authors' societies and organisations concerned is then carried out by the Société des Arts Visuels Associés (AVA). Each society then distributes the royalties to its members.

### **a – *Reprography - Books***

As for visual arts published in books, the rules of distribution are as follows:

- On the basis of the documentation provided by CFC, publishers whose total amount for books is 200 Euros or more are selected. For the 2007 sums, the 186 publishers thus selected represent 93.05% of the total sums documented. For each of these publishers, a list of categories of books (CFC categories) with sums to be distributed will be detailed with their respective amounts.

- For the books published by the publishers selected, a mathematical division (P1) is calculated on the basis of the number of works present in the books published during the year of the rights and the 4 previous years, in each of the categories of books of the publishers selected.

- A initial P1 limit is established: within a “category per publisher” item, the “value” for an author for a book is limited to the maximum amount allocated by CFC to a book of this “category per publisher” item; sums over this limited amount will be divided on the basis of the final division formula (P2 see below).
- In addition, a control limit is also established: when the limited amount allocated to an author for a book exceeds €100, the presence of the book in question in the CFC documentation is systematically checked. If the book is not in the CFC documentation, the amount allocated to this book is then zero.
- An overall division formula is finally calculated (P2). It is this division formula that is applied to determine the amount due to each beneficiary from the documented sums.
- P2 is also applied to the sums paid by CFC but not documented.

For the sums coming from photocopying done abroad, and in the absence of documentation sent by sister companies, half of the royalties are distributed on the basis of reproduction royalties distributed over the last five years by the sister company concerned and the other half on the basis of all reproductions of works in French books.

If there is documentation (photocopying royalties from the UK for example), the royalties are paid in accordance with this documentation.

### ***b – Reprography - Press***

The CFC distributes reprographic reproduction royalties for the press in three categories:

- The “share for images that are reproductions of pre-existing protected works” (PICROPP category): These are “images reproducing paintings, sculptures, architectural works, etc., as well as book and record covers, film posters, etc.”
- The “share for images whose authors have a contract or account with the publisher” (PIACE category): these are images created by “all permanent or occasional professional journalists” and by “any other authors with whom the publisher has a regular contractual relationship that is sufficient to identify them and pay them the monies due to them”.
- The “share for other images” (PAI category): these are all the “images that do not fall into either of the preceding categories”.

On this basis, the following distribution rules are applied:

- Authors who clearly have a contract or account with a press publisher (regular illustrators, employed press photographers, etc.) are attached to the PIACE category.
- Those authors who do not fall into the PIACE category are then split between the PICROPP and PAI categories based on their main activity.
- Monitoring is carried out to ensure that authors who should come within the PIACE category are not placed in the PAI or PICROPP categories. A systematic check is made in the following cases:
  - when an author has more than 10 images in a title and they represent over 10% of the reported reproductions in that title, or
  - when an author has more than 50 images in a title.
- For each of the three categories, the distribution formula is calculated based on a selection of titles for which the total distributable royalties exceed a certain amount. In the period from 1998 to 2011, the amount taken into account was €200 for those in the PICROPP category (representing 184 titles and 75.5% of the documented sums), €100 for those in the PIACE category (35 titles and 93.18% of the documented sums) and €200 for those in the PAI category (505 titles and 94.41% of the documented sums).
- Then an arithmetical division based on the distribution formula is made for all the titles (including the ones that were not selected). The royalties are capped so that no single author receives over 0.5% of the total distributable revenue.

#### 4. Digital private copying

In 2001, the law extended the benefit of the private copying levy to visual art works and written works, in their graphic form. This was essential because individuals were copying huge amounts of images onto digital media from the internet. Negotiated with media manufacturers and consumers on the administrative commission that determines the amount of the private copying levy for each copying medium, the royalty for visual arts was determined for the 1<sup>st</sup> time in 2003 (CD). Now, it is levied on DVDs, USB sticks, memory cards, smart phones etc.). It is paid to Sorimage, a society presided over by ADAGP and representing the beneficiaries of this royalty (artists, books publishers, etc).

Obviously, no one can know exactly what image has been copied or how many times.

The first stages take place upstream of ADAGP, within Sorimage:

1. First of all, the sums are divided into two equal shares, one going to the authors and the other to publishers. This division is expressly stipulated by the law.
2. On the basis of studies carried out annually by the Médiamétrie institute with 9,000 respondents, it is possible to calculate the rate of private copying of 23 types of image. For example, in 2008, out of the 100% of copies of images, mangas represent 19%, general illustrative photography 8.8%, art

photography 5.2%, painting 4.9% as well as architecture, design 2.7% as well as film posters, children's illustrations 2.4%, sculptures 1.8%, ... The sums collected are therefore allocated to these types in proportion with the rates of copying determined by these studies.

3. Within each category of images, representatives of the artists establish the division of the sums between them.

At this stage, ADAGP receives the royalties due to it, broken down by category of images. The sums then need to be distributed to the artists:

1. Artists are broken down into the different categories of images according to their fields of artistic activity indicated in the computer databases. The same artist can be assigned to several categories (e.g.: painting + sculpture + art drawings). Studies by the CSA survey institute carried out by the administrative commission that determines the amount due to visual arts indicate that 95 to 100% of digital private copies come from the internet, artists not having images found on the Web via Google Images do not benefit from the royalty.
2. Within each category, the royalty for digital private copying due to each artist was quantified by allocating part (variable according to categories of images) of this royalty to each artist, the other part being allocated, except for mangas, cartoons and film posters, in proportion with the royalties collected or the number of works used (Internet – photocopying – lending royalty – images shown on TV) for the last 5 years available. According to the categories of images, the royalties collected that are taken into account may be different or in variable proportions. For example, the lending royalty is pertinent to quantify the appetite of the public for children's illustrations and therefore is taken into account in breaking down the sums between children's authors. On the other hand, it does not provide any information representative of the rate of copying of paintings and sculptures and will therefore not be taken into account for the distribution of these categories of works.

For mangas and cartoons, the additional criterion taken into account is the number of albums published in France.

For film posters, it is the number of posters created by each artist.

For DVD jackets and CD covers, due to the absence of pertinent documentation in relation to primary reproductions of the works concerned, it is proposed to distribute the sums per head.

Royalty for digital private copying of texts: distribution per head.

## 5. Library lending royalty

Implemented by an act of June 2003, the library book lending royalty comes from two sources:

- Bookshops, which must limit their discounts to libraries to 9 percent maximum, and pay 6 percent of the retail price excluding tax of books bought by lending libraries;
- The Government pays a fixed sum of €150 per registration at a public library

and €1 per registration for university libraries (users of school libraries are not included in the calculation). The government contribution is approximately 11 million Euros per year.

The sums are paid to a society of book publishers and authors that has been approved for this purpose.

In accordance with the law, of the sums thus paid, one part is distributed in equal shares between the authors and their publishers on the basis of the number of copies of books bought each year by libraries and a second part, which cannot exceed half of the total, is allocated to the payment of a fraction of the contributions due under the writers' supplementary pension plan.

Sofia pays ADAGP the royalties due for the books of its members, indicating the relevant amount for each book.