

Terms of Exemption – ACUM (Jan 2023)

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;

“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;

“Director General” - the Director General of the Antitrust Authority;

“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 ACUM's Articles of Association;

“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 stage performance of dramatic works and dramatic-musical works which were written especially for this purpose (e.g. plays and operas performed on stage);

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

“Music publisher” – a person who is engaged in the publication and/or distribution of music and words accompanied by music of authors;

“Representee” – an author or publisher, who is not a member of ACUM, who entered, either directly or via a sister society, 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 author or several works which he specified by their name or by the name of their authors, 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;

“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 author 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 author 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 including by means of a sister society's termination notice of representation agreement (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 6.5 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 including by means of a notice from a sister society about changing the representation agreement, provided that permission was obtained from all the authors 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 6.6 below. The provisions of clause 8 below shall apply to the distribution of royalties after the notice of exclusion.

For the purposes of this clause, a "work" is deemed to include the accompanying lyrics and melody.

- 2.4 Without derogating from the aforesaid, ACUM shall grant all of its members represented by it, a license 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. To new members that will join ACUM, from the date of issuance of the Terms of Exemption, ACUM will grant 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 in accordance to this clause shall be performed prior to the use of the work and shall enter into effect upon providing a written notice to ACUM.
- 2.5 A member of ACUM will be entitled to vote at the meeting in person or by proxy, in accordance with the Articles of Association and the provisions of this section. ACUM may specify instructions regarding such voting, such as how many votes will be given to an individual proxy, and may also require that the proxy sign a confidentiality agreement and/or a declaration declaring he or she has no conflict of interest.

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 Tribunal or the Director-General;
- 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 Without derogating from the aforesaid in clause 29a of the Law, ACUM shall be deemed to be abusing its status in each of the following instances:
 - 4.5.1 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;
 - 4.5.2 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 broadcasting bodies;
 - 4.5.3 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;

- 4.5.4 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;

The provisions of clauses 4.5.1 to 4.5.4. are intended to add to the provisions of Article 29A of the Law.

- 4.6 ACUM shall not unreasonably refuse 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;
- 4.7 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;
- 4.8 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 authors position not be obtained within 30 days from ACUM's request to the author, the author will be deemed as having consented to ACUM granting individual licenses to his works.** The author'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 clauses 4.3.2 and 8.3 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) Payment according to the terms of engagement 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 4.7 above;
- (3) Payment according to the terms of engagement according to 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, payment according to the terms of engagement which were 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 according to the terms of engagement determined in a license between ACUM and a similar user that was granted 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 according to the terms of engagement 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 payment according to the terms of the engagement according to which 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.

- 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 approach the user 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 such license fees and their rate in accordance with these criteria (hereinafter: “**the first communication**”). ACUM shall attach to the form of the first communication a copy of this version of these Terms of Exemption. After 30 days elapse from the date of the first communication, ACUM will send the user an additional notice (hereinafter: “**the second communication**”), ACUM will send and the user an additional notice ((hereinafter: “**the third communication**”); the first, second and third communications shall hereinafter together be: “**the three communications**”).
- 5.4 The three communications shall be send to the user in writing, and in them ACUM shall inform the user about the period of time remaining for the purpose of agreeing on a the license fees or payment of the temporary user fees (90 days, 60 days, 30 days, correspondingly). ACUM will clarify to the user that in the event that he does not pay the temporary user fees within the period of time, for the period starting on the date of receipt of the first communication, and in the absence of an agreement about the license fee or any other agreement - ACUM shall have the right to demand any relief according to law, including a temporary injunction and statutory damages, all in accordance with the provisions of this arrangement.

- 5.5 ACUM shall attach an arbitration deed to the first communication. Additionally, ACUM will inform the user, in each one of the three communications that if the user will sign the arbitration deed attached to the first communication, and will pay the temporary user fees, ACUM shall submit its claim solely through the arbitration process. ACUM shall propose a list of five or more independent arbitrators (hereinafter: “**list of arbitrators**”), from which the user will be able to choose which arbitrator to contact, at his discretion. Should the user not choose an arbitrator from the list, it will be considered as if the user did not sign the arbitration deed.
- 5.6 Should the user pay the temporary user within 90 days of receipt of the first communication, for the period commencing at the receipt of the first communication, ACUM shall have the right to act only in accordance with the provisions of this 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 receipt 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 receipt 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 shall 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 receipt of the first communication only. However, if ACUM was made aware of a continuous use of works from ACUM’s repertoire which is being carried out without a license as required by law, and ACUM contacted that user according to the outline of this clause 5 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;

In the matter of this clause, a letter shall be considered as having been received if seven days have elapsed from the date of its sending via registered mail.

- 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 requirement to pay license fees or regarding their amount before an arbitrator who will be chosen by him from the list of arbitrators should the user sign the deed of arbitration. Should a user sign the arbitration deed as stated above, ACUM shall have the right to bring before the arbitrator the dispute regarding the claim for difference as aforesaid in clause 5.6.1 above.
- 5.8 If within 90 days of the receipt of the first communication the user did not pay the temporary user fees, and did not reach any other understanding 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 consent and while 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;
- 5.9 Without derogating from the aforesaid, a user shall have the right to bring a dispute regarding the license terms before an arbitrator who will be chosen by him from among the list of arbitrators, provided that, if there is no dispute regarding the obligation itself to pay user license fees or their amounts, the user will pay permanent user fees.
- 5.10 ACUM shall notify the user and the court or the arbitrator, according to the matter and issue at hand, that in claims regarding the matter of determining the appropriate 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.
- 5.11. In the case of a user who does not publicly perform ACUM works, the following provisions will apply: If the user pays ACUM temporary use fees, as defined in clause 5.1, for the period commencing from the date of receipt of the first communication from ACUM, ACUM will be entitled to take enforcement measures accordingly against the user, according to the provisions of sub-section 5.6 only, *mutatis mutandis*.
- 5.12. The provisions of clause 5.11 shall not apply to a user who is defined as a pirate. For the purpose of this section: "**pirate**" is a person who produces or distributes media on a large-scale (including audio, video and files distributed on the Internet) on which protected works have been imprinted or copied without the permission of the copyright owner and without discourse with him. For the avoidance of doubt, it is hereby clarified that no person who transmits works via the Internet shall be considered a pirate. For this purpose, "**Internet broadcasting**" - including: transmission via the Internet concurrently with its transfer via other technological media (simulcasting); broadcast transmitted only via the Internet (Webcasting); as well as broadcast of a particular program or segment of the program (except for the broadcast of specific works) at the demand of the viewer (on-demand).

- 5.13 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 license or temporary user fees for the present or the past;
- 5.14 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 matter and issue at hand, if the user so requested;
- 5.15 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, the 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 4.7 above.
- 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 If the proceeding between the user and ACUM ends in an understanding, or with a ruling of the court or the arbitrator concerning the 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;
- 5.18 ACUM shall prepare a report regarding legal proceedings, including arbitration proceedings conducted between it and users according to this clause, and including proceedings that users initiated against ACUM, and proceedings that ACUM conducted against pirates, and shall place the report at the disposal of the Director General at her demand.

6. Establishment and management of a database

- 6.1 ACUM shall establish and manage a database as according to the instructions in following clause 6.2. The database shall include the following details for each work in the ACUM repertoire, as provided to ACUM by the owners of the copyrights:
 - 6.1.1 The full title of the work;
 - 6.1.2 Specification of the names of the copyright owners of the work, including specification of the rights that expired and were transferred to the public domain, indicating them as such;
 - 6.1.3 Name of performer;
 - 6.1.4 Date of first publication of the work;
 - 6.1.5 Any notification of exception received with respect to the said work under clause 6.6 following.
- 6.2 The database shall be publicized in full and open to review by the public on ACUM's Internet site. ACUM shall make sure to update the database within one week of the date that it learns of a change in any one of the published details. In the case of agreements between ACUM and its members, representees and sister societies, ACUM shall demand of the counter party to update it within a week of the date it learns of a change in the said details.
- 6.3 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, and will also allow searches based on the work's title, name of performer, album title and name of the copyright owner. For the avoidance of doubt, the access to this service also, shall be open to everyone and at no additional cost on their part;
- 6.4 ACUM shall publicize on its Internet site an up-to-date list of members, representees and sister societies that have signed agreements with ACUM. These lists will be updated at least once a week.
- 6.5 ACUM shall publish 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 2.2 above, which shall include the following details:
 - 6.5.1 The identity of the member or representee that is withdrawing.
 - 6.5.2 The date that the notice of withdrawal goes into effect.
- 6.6 ACUM shall publish 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 2.3 above, which shall include the following details:
 - 6.6.1 The identity of the work that was excluded, with the addition of the work details as specified in clauses 6.1.1-6.1.4 above.
 - 6.6.2 The type of excluded rights.
 - 6.6.3 The date that the notice of exclusion goes into effect.
- 6.7 ACUM shall indemnify a license holding user for any liability the user may carry due to 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 6.5 and 6.6 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 tariffs and license terms

- 7.1 Similar users shall be entitled to similar license terms.
- 7.2 ACUM's tariffs and sample license terms shall be publicized for all users on ACUM's Internet site, with details of the criteria for calculating license fees. Next to every publication of ACUM's tariffs and license terms it shall be written in a clear form that these tariffs and license terms were determined by ACUM and at its sole discretion and responsibility.
- 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 tariffs 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 granted 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 31st 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 30th of November of that year; if no notice was given until the 30th 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 31st 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 terms of authorization 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 given notice of withdrawal or exclusion, pursuant to what is stated in clause 8.1 above.
- 8.3 Despite that which is stated in clauses 2.2, 2.3 and 8.1 above, if a work is integrated into an audio different work or into an audiovisual work according to a license from ACUM, the notice of withdrawal or exclusion shall not prevent the use of said different audio work or audiovisual work, as the case may be, in which the synchronization was done prior to the notice of withdrawal or exclusion, on the condition that the user has a prior user license from ACUM for such use.
- 8.4 ACUM shall include, as one of the terms of authorization between it and its members and representees, a provision in favor of the user, whereby the withdrawer or excluder waives all rights 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 or an audio work into which a different work was integrated according to a user license from ACUM.
- 8.5 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.

- 8.6 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 8.5, 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, which includes that ACUM shall not change the works repartition key 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 and arbitration of internal disputes

- 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 it is impossible for ACUM to obtain 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 distribution of royalties' key;
- 9.3 The criteria for determining the scope of use, the key for distribution of royalties, and ACUM's policy regarding the use of amounts that have not yet been distributed or that have been distributed and cannot be paid - shall be transparent and available to anyone who requests it, in a language that is clear and equal to everyone;
- 9.4. Once a year, ACUM shall provide to each member and representee the following information regarding his rights in the work:
- 9.4.1. The amount of royalties paid by ACUM to that member or representee over the previous year, according to each type of use, for each period;
 - 9.4.2. The amount of monies deducted due to the member's or the representee's share in the expenses of ACUM;
 - 9.4.3. The total amount attributed to that member but not yet distributed to him, if any.
- 9.5. ACUM will act in accordance with the mechanism set forth in clause 51.1.1 of its articles of association as of the date of this decision, which will serve as arbitrator in disputes between ACUM and those who applied to be a member or representee in connection with ACUM's decisions regarding the rejection of an application, termination of membership or representation or its suspension, or the conditions for continued membership or representation.
- 9.6. In the event of a dispute as detailed above and as requested by the other party to the dispute, ACUM shall present an arbitration deed and notify the other party that if it signs the arbitration deed, the dispute shall be heard in the framework of an arbitration proceeding. The provisions of this section shall not negate members the right to apply to a competent court or to derogate from any right conferred upon them by law.

10. The board of directors of ACUM and transparency of its operations

- 10.1 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.
- 10.2 Once a year, ACUM will publish on its Internet site an annual public report which will include the following information:
 - 10.2.1. A description of ACUM's legal and organizational structure;
 - 10.2.2. Reporting on the main activities in the relevant year;
 - 10.2.3. ACUM's revenues, divided by the four types of uses specified in section 2.3 above;
 - 10.2.4. Total ACUM costs;
 - 10.2.5. Total sums collected from members, including by way of deduction from income.
- 10.3. Once a year, ACUM will prepare an annual internal report, which will be made available to each member and representee and any person entitled to be a member and representee and their proxy. ACUM may require signing a confidentiality agreement prior to the delivery of the report. The annual internal report will include the following information, as it appears in ACUM's financial reports:
 - 10.3.1 Financial reports;
 - 10.3.2. The criteria for eligibility for the replacement of the share type in ACUM, including details of the amount of royalties enabling the replacement of a share type in ACUM to a more senior share type;
 - 10.3.3. The total remuneration paid to officers' of the company, including any other benefit granted to them;
 - 10.3.4. Total income of ACUM, broken down by type of user;
 - 10.3.5. ACUM's total revenues from investments and description of the use of such revenues;
 - 10.3.6. Total costs of ACUM, including a description of all operating costs and financial costs;
 - 10.3.7. Information regarding the royalties' distribution to members and representees as detailed below:
 - 10.3.7.1 The total amounts collected by ACUM that has not yet been distributed to members and representees accounts, according to the type of user and the year of collection.
 - 10.3.7.2 The total amount that was distributed to the member or representee at the year that is relevant to the report, broken down by type of user, type of member or representee.
 - 10.3.7.3 Out of the amount of royalties distributed to members and representees, the amount of unpaid royalties to members, and the main reasons for the unpaid royalties.
 - 10.3.7.4 For the avoidance of doubt, it shall be clarified that the information in this provision is not an accounting information and is not a part of the audited report (as it will be clarified below).
 - 10.3.8. Frequency of distribution of royalties by ACUM, broken down by type of user; The accounting information to be included in the public and internal report shall be audited by an auditor ("the audited report"), in accordance with the provisions of Chapter 5 of the Companies Law .It will be clarified that the information regarding to revenue segmentation as well as the provision 10.3.7 are not a part of the audited report.

11. Notification of this arrangement

- 11.1. Within 30 days of the date of this exemption, all users with a valid license will be sent a copy of these terms and a summary of the main terms relevant to them (hereinafter: "**Notice to Users**"). A copy of the notice to users will be given to any person requesting it, whether or not he applied to ACUM seeking for a license, or ACUM contacted him.
- 11.2. Within 30 days from the date of the granting of this exemption, a copy of these terms and a summary of the main terms relevant to them (hereinafter: "**notice to the members**") will be sent to all members of ACUM and its representees. A copy of the notice to the members will be given to anyone interested in joining ACUM as a member.
- 11.3. Without derogating from the aforesaid, ACUM will publish on its Internet site the notice to users and the notice to members.