



# **OPERATING PROCEDURE**

# **"PRIVATE COPY"**



Rome, September 15, 2022

## 1. SCOPE OF APPLICATION

This procedure is applied by ANICA Servizi S.r.l. on behalf of ANICA, by which it is wholly owned and subject to management and coordination (hereinafter "**the Company**").

## 2. PURPOSE.

The purpose of this document is to define the process for the accreditation and distribution - to the entitled original producers of audiovisual cinematographic works, whether or not associated with ANICA - of the private copying compensation ("**CCP**") to the extent of ANICA's responsibility pursuant to and in accordance with Article 71-octies, paragraph 3, Law No. 633 of April 22, 1941 (hereinafter referred to as the "**LdA**").

## 3. REFERENCES TO THE ORGANIZATION, MANAGEMENT AND CONTROL MODEL ADOPTED BY THE COMPANY

This procedure is an integral part of the Organization, Management and Control Model (hereinafter "**the Model**") adopted by the Company to prevent the commission of the infringements pursued under Legislative Decree 231/2001 and subsequent amendments and additions.

In particular, this procedure is aimed at regulating the risk activities reported in the Model. Therefore, deviations and/or violations of this procedure are not allowed and, if they occur, are susceptible to the adoption of measures, based on the disciplinary system adopted by the bodies of the Company when approving the Model. Any requests made by anyone, the implementation of which would result in the violation of the provisions of this procedure, must be promptly reported to the heads of the functions concerned and for information, to the Supervisory Board, established by the Company.

All recipients of this procedure and the appointed attorneys/subjects, each for the processes/activities for which he/she is responsible, must ensure the preservation of all documentation attesting to the execution of the activity for which he/she is responsible in accordance with the requirements of this procedure, making it available to the Supervisory Board during the audits carried out by the same. In addition, all company activities must be conducted in compliance with the provisions of the Code of Ethics adopted by the Company.

## 4. APPLICATION AND EFFECTIVE DATE

This procedure applies from the settlement of the 2020 CCP revenues.

With regard to the settlement of CCP 2022 and later revenues, the Company reserves the right to modify this procedure as a result of changes in the law, regulations, and/or the evolution of the market in which it operates.



The amendments will be published on ANICA's website and will be subject to public consultation, in the terms and manner that will be made known by the Company on ANICA's website.

## **PART TWO.**

### **STEPS OF THE "PRIVATE COPY" PROCEDURE**

The procedure consists of several management steps and has different responsibilities and costs for each step. The steps involved are given below.

#### **PHASE 1: ACCREDITATION**

This stage of the procedure is aimed at accounting for funds from SIAE related to private copying and collected by it from those obligated by law under Art. 71-septies LdA, 3rd paragraph.

##### **1.1 Notification of payment**

The SIAE sends a notice to the Company in which the amount and accrual of the flows due to the successors in title are quantified, net of the fees charged by the SIAE.

##### **1.2 Invoice issue**

The Company, having taken note of the accounting made by the SIAE in the notice referred to in the preceding paragraph, shall issue the relevant invoice.

##### **1.3 Invoice settlement**

The SIAE, upon receipt of the invoice, will subsequently settle it by means of a transfer made to the bank account specifically indicated dedicated to the management of revenues arising from private copying.

#### **STEP 1a: DEPOSITS**

Following the Company's collection of the CCP amounts for the 2020 and 2021 accrual year that SIAE will pay, the Company will, within the next 10 working days,



publish the list of beneficiary works related to the years of liquidated accrual.

Within 10 working days following the aforementioned publication, the Company will send to the beneficiaries and Intermediaries (by which is meant the *collecting* and independent management entities referred to in Legislative Decree 35/2017) already known - or resulting from the internal database as beneficiaries of the CCP in previous years - a PEC indicating the beneficiary works and the amount of the CCP recognized as an advance for the years 2020 and 2021, determined pursuant to Article 1 bis.1 below, together with the model of self-declaration on the ownership of the rights and an appropriate indemnity - in the text prepared by the Company and made available in the private copy section of ANICA's website - which the beneficiary must provide completed and signed under its own responsibility, as a condition for payment.

With reference to Intermediaries, the advance payment will be made upon verification of the existence and validity of the mandates given to them, which must be proven by the Intermediary together with the submission of the self-declaration and indemnity.

With regard to unknown claimants, payment of the advance will be made upon the claimant's request and verification of documentation proving entitlement to compensation, which must be sent directly by the claimant together with the self-declaration and indemnity according to the forms provided by the Company.

#### **1a.1 Determination of the amount of the down payment to be settled**

The Company will settle to each beneficiary, according to the terms and conditions provided in this procedure, as an advance and subject to adjustment, 60% of the 2020 and 2021 fees received from SIAE, based on the projection and interaction of the available information related to the ownership data of the beneficiary works (updated at the time of the 2019 fee settlement) with the television airings and ratings of the beneficiary works related to the 2020 and 2021 revenues calculated in the manner provided in this procedure.

Thereafter, within a period of 20 working days starting from the receipt of the invoice for the down payment + self-declaration + indemnity signed by the claimant, and unless clarification is requested, the Company will pay the down payment.

### **PHASE 2: IDENTIFICATION OF CLAIMANTS**

**2.1** The CCP is liquidated, in accordance with current regulations, in favor of the original producers of audiovisual works or in favor of their successors.

In this regard, the following steps are taken to identify the right holders:

#### a. Italian works: Original producers and successors in title

For audiovisual cinematographic works of Italian nationality, the CCP is liquidated in favor of the original producer or her successors in title as resulting from appropriate contractual agreements. The successors in title are in any case identified as the outright assignees of the right to the CCP, based on specific contractual agreement, or the outright assignees of all the dominant and economic exploitation rights to the audiovisual work.

#### b. Foreign works: Original producers and successors in title

CCP liquidation also takes place in favor of foreign original producers, both EU and non-EU, subject to reciprocity and provided that they have not disposed of it by suitable contractual title in favor of the Italian distributor/transferee or other successor in title.

Even in this case, the successors in title are still identified as the outright assignees of the right to the CCP under specific contractual agreement, or the outright assignees of all dominical and economic exploitation rights to the audiovisual work.

In the case of foreign cinematographic works from countries with which there is no reciprocity, the remuneration is due to the holder of the distribution rights (licensee/assignee) of the work in the Italian territory, for the duration of the rights resulting from the contract.

## 2.2 Calculation of CCPs

The distribution of CCPs among the entitled, until the 2007 accrual, was carried out on the basis of the so-called "film broadcast" by the first seven national "Free TV" broadcasters, attributing - on the basis of the total net amount to be apportioned and the total number of minutes of television broadcast devoted to the programming of films - a unit value for each minute of television broadcast, which constitutes the benchmark for calculating the amount due to each entitled person in relation to the total number of minutes in which his or her films were programmed by the television channels taken as reference: RAI 1, RAI 2, RAI 3, Retequattro, Channel 5, Italia 1, and La 7.

From the 2008 accrual, the Company acquires, at its own care and expense, from specialized companies the actual "**audience**" data for each title with reference to the entire calendar year of the accrual, adopting as the perimeter of users not only the above-listed "Free TVs," but also the thematic channels of the major "PAY TVs" dedicated to film programming.

In fact, the evolution of the market for the distribution of cine-audiovisual content has forced and requires an update in the allocation criteria.

In light of developments in the television market, the following elements were identified for the calculation of skills:

- the multiplication of television stations using film audiovisual product, on digital platforms, both terrestrial and satellite;
- The coexistence of free and paid platforms, regardless of the distribution networks used;

- the different utilization, both as chronology of exploitation and frequency of programming, of the audiovisual film product on the different networks mentioned.

On the basis of these elements, the criterion of "**ratings**" per individual work, quantified as the number of individuals tuned in to a given broadcaster during the time in question, is the most objectively fair and transparent criterion possible, certified by a specially appointed third party.

This criterion makes it possible to ascertain, on the basis of constant monitoring by an external surveying body, which broadcasters have transmitted which audiovisual cinematographic works, how many times and with what result in terms of absolute ratings and, consequently, to distribute the fees in proportion to the abstract possibility of making a private copy of that content, as provided for by the current law.

Specifically, channels with exclusive film programming are monitored, as well as those channels that recorded an average audience of at least 60,000 individuals in the reference year and, at the same time, broadcast at least 100 passages of film works, also selected according to the relevance of data on recorded film programming. Audience data are collected by the third party agency according to three different methodologies:

- Channels with a schedule certified by Auditel. Passages of film works are certified by Auditel and directly verified by issuing survey companies. The start and end time points are the actual broadcast time points. The ratings provided are the timely ratings of the individual passage.
- Channels without an Auditel-certified schedule but with schedules available through Auditel data processing software. Passages detected are those declared in advance and provided by the publisher to the software houses depositing the Auditel data, which associate the schedule with the Auditel ratings.
- Channels without an Auditel-certified schedule and with schedule not available through Auditel data processing software. In this case, the steps are those declared in advance and provided by the publisher directly to the specially appointed third party, which has a license to process Auditel data, and which associates the declared schedule with the Auditel ratings.

The list of the monitored channels by year of jurisdiction, is published in the private copy "*distribution detail*" section of ANICA's website, while the audience data of individual works are communicated at the CCP settlement stage directly to the claimant along with the amount of CCP accrued.

Furthermore, taking into account that Legislative Decree No. 208 of Nov. 8, 2021 (which replaced d.lgs 177/2005) reaffirms the obligation, already in force for all television broadcasters, to broadcast European works for at least half of the total time, the total of the revenues paid by SIAE to the Company, for each year of competence, will have to be divided into two subsets, the first referring to European works and the second to non-European works, with conventionally different weights: the total of the CCPs due to non-European works can never be more than 49% of the overall total

The value of the two subsets will then be broken down in turn by the total number of contacts (individuals) that European and non-European audiovisual cinematographic works broadcast got on all TV stations monitored on the different platforms, thus obtaining a **unit value per contact** for the two different categories of audiovisual cinematographic works.

The value of the contact will then be multiplied by the number of specific contacts obtained by the individual work, allowing for an objective valuation of the compensation to be allocated to the claimants on each specific title within the two categories of works.

The Company reserves the right to change the above calculation criteria, including in the event of changes in the audiovisual market, technology, and/or legislative interventions.

### 2.3 Receiving applications for CCP settlement

The original producers of audiovisual works and/or their successors in title who wish to receive the CCP to which they are entitled, should send, by PEC to [copiaprivata@pec-anicaservizi.it](mailto:copiaprivata@pec-anicaservizi.it) relevant application accompanied by the following items and documentation:

- a) Chamber of Commerce certificate, if the applicant is a company, showing the company's status, issued not more than three months previously;
- b) Detailed list of audiovisual works for which recognition is sought for the purpose of CCP payment;
- c) contracts of purchase by the successors in title of the rights from the original authors of the audiovisual work, with specific mention of the assignment of the right to the CCP;
- d) the self-declaration + indemnity according to the templates prepared by the Company and made available on ANICA's website in the private copy section.

If the application refers to audiovisual works for which - in previous years - the above-mentioned documentation has already been sent (in the case, for example, of replicas of the same work), it will not be necessary to send the required documentation again, but simply a self-declaration attesting to the validity of the data already transmitted. In case of change of the holder to the right, in the identity or percentage of the right, it will be necessary to produce the appropriate contractual titles supporting the right to the CCP.

### 2.4 Analysis of contracts for assignment of rights to works

The Company shall provide for the review of the documentation sent by the claimants and shall have the right, when deemed necessary, to request additional information and/or documentation pertaining to the claim from the requesting party.

If, at the outcome of the examination of the documentation produced by the requesting party, the request meets the requirements of this procedure, the Company will assess the amount that will be due based on the calculation criteria described in this procedure.

In the event that two or more parties submit a request for the attribution of CCPs with respect to the same audiovisual work, the Company shall be a third party with respect to such parties, being able to disburse the aforementioned revenues only upon submission by the requesting parties of formal documentation attesting to the resolution of the dispute, whether in or out of court, and the clear and unambiguous indication of the identity of the entitled party. Until such disputes are resolved, the Company shall withhold the amounts due to the rightful claimant on the audiovisual work for which a dispute has arisen, subject to paying them to whomever is found to be entitled to receive them in accordance with the provisions of this procedure. Pending the resolution of the dispute, no interest shall accrue on such amounts.

## **2.5 Database updates also with "rightful claimants" other than original producers**

The Company updates its database regarding holders of the right to the CCP on a derivative basis, based on the appropriate contractual titles received from them.

## **2.6 Publicity for communication to any unidentifiable claimants**

At the conclusion of the allocation procedure and at least once a year, the Company shall make known the list of titles that have not benefited from the CCP. Said list, together with the list relating to all the titles considered in the allocation procedure, shall be published on ANICA's website and news of said publication may also be given through advertising in one or more newspapers with national circulation.

## **2.7 Prescription of right**

The right to receive CCP is prescribed in the ordinary ten-year limitation period. The limitation period runs from the time when the following conditions are met:

- a) the SIAE shall make available in favor of the Company, according to its own procedure, the share of private copying revenues allocated to it for subsequent distribution to the rightful claimants in the audiovisual film industry;
- b) of such availability, the Company shall give formal notice, including by simple publication on ANICA's website or in the press, with an invitation to eligible companies to initiate the liquidation request.





## **STEP 3: SETTLEMENT OF CCP**

### **3.1 Settlement of the balance of 2020 and 2021 revenues**

The initiation of the balance settlement procedure will take place within the period of 3 months from the date of receipt of the documentation referred to in Article 2.3 of the ANICA private copy procedure. The Company will, after carrying out all the checks on the internal database, send to the claimants via PEC the amount of the CCP to be invoiced as the balance of the 2020 and 2021 fees, with a request to receive the self-declaration + indemnity + invoice according to the templates prepared by the Company and made available on the website of ANICA in the private copy section.

Within 20 working days after receipt of the self-declaration complete with the list of beneficiary works with their shares of ownership + indemnity, both signed by the entitled person, and unless clarifications and/or documentary additions are requested, the Company will pay the 2020 and 2021 balance.

Payment claims submitted by claimants who are the recipients of requests for clarifications and/or documentary additions will be taken over and processed subsequent to those found to be complete.

### **3.2 Charging procedure costs to claimants**

From the total amount collected by the SIAE and subsequently paid by the Company as the balance of the 2020 and 2021 fees, for the purpose of apportionment, the Company is entitled to charge the claimants an amount equal to the costs incurred in carrying out the activity of apportioning the CCP to the claimants.

The data necessary for the valuation of the costs incurred will be extrapolated from the Company's analytical accounts for the financial year preceding the year in which the fees are paid by SIAE. The cost items that will make up the total annual cost to be charged to the rightful claimants-independent of the number of annuities of the fees to be distributed and their amount-will be only those strictly necessary and inherent to the management and distribution of the CCP together with a share of indirect costs, in each case with the application of all the reductions in charges applicable to cases in which the Intermediaries directly bear some cost items. In identifying the cost items to be charged, account will also be taken of any indications in the meantime provided by SIAE pursuant to art. 71 octies L. 633/41. Evidence of these costs will be provided in the special private copy section of ANICA's website by September 30, 2022.

On the above findings, in accordance with a procedure similar to that adopted by SIAE, a consultation procedure will be initiated in which all entitled parties and Intermediaries will be eligible to participate and which, within a period of 30 days from the aforementioned publication, may submit



any comments regarding the cost items and their relevance and which the Company may take into account when settling the balance.

### **3.3 Charging procedure costs to Intermediaries**

In particular, in the case of Intermediaries, the above comments may also concern the reduction of cost items, as regulated in art. 3.2 above, to be reversed for the Intermediary if they refer to activities directly and effectively carried out by the same, without making use of the support and services of ANICA/Anica Servizi S.r.l. that, therefore, the Intermediary undertakes to carry out directly and at its care, expense and under its responsibility, including: verification activities on the catalogs represented by the Intermediaries with respect to the list of titles published by ANICA on the website and identification, among the principals of the Intermediary, of the beneficiaries; verification of the chain of rights of its principals; management of claims and conflicts, on the same titles, among several principals of the Intermediary as well as with respect to third parties entitled to them; preparation of the statement of the resulting amounts due to its principals for verification by the Company.

This provision refers to activities, other than those in STEP 1, 1a and those related to Art.

2.2. which remain the exclusive responsibility of ANICA - as the entity identified by the SIAE, in execution of the law (art. 71-octies, 3 paragraph, LdA), to exercise the apportionment function - since they are preparatory activities to formulate an apportionment plan that includes the entire category of entitled parties operating in the represented sector.

The portion of the cost not allocated to the Intermediary will remain the responsibility of ANICA and will be a cost of ANICA.

For the purpose of the above, the Intermediary concerned may send appropriate written notice to the Company by PEC containing the proposed activities that it intends to carry out directly and under its sole responsibility. Subsequent to said communication, the Intermediary and the Company will initiate a discussion in good faith to define the exact scope of the activities to be borne by the Intermediary and the relative valuation, which, in the event that the Intermediary actually performs the activities, will determine the possible reduction of the cost items.

If, within thirty business days after written notice from the Intermediary, the parties fail to reach an agreement or, at any time after the agreement is reached, disputes arise regarding the Intermediary's performance of the activities, either party may take the matter to ordinary court.

## **PHASE 4: PRIVATE SHARE FUND MANAGEMENT**

### **4.1 Accounting for the undistributed private share**

Any sums not distributed due to the inability to identify claimants or otherwise, due to the occurrence of the statute of limitations referred to in paragraph 2.7 above - net of any precautionary fund



to guard against any situations of uncertainty that are still being ascertained and prudentially quantified by the Company - constitute contingent assets of the Company and charged to the income statement and distributed to ANICA, if the conditions are met and subject to the required tax treatment, so that they may be allocated to purposes or entities for the support and promotion of the film industry in general.

A similar procedure shall be applied to any sums set aside in the precautionary fund referred to in the preceding paragraph, following a resolution of the Company to be adopted when at least two years have elapsed since the provision.

#### **4.2 Investment selection**

The Company, may make financial investments with respect to the undistributed portion of private copy, provided that the financial profile of the investments is inspired by the objective of protecting asset preservation, with the exclusion of equity or other venture capital investments.

#### **4.3 Administrative management**

Administrative management of investments is entrusted to the Company.