

4 October 2017

# Code of Good Practices for the Publication of Musical Works

## Preamble

On several matters relating to the content of publishing contracts in the field of music, the Intellectual Property Code refers explicitly to industry practices, notably in its articles L.132-11, L.132-12 and L.132-13.

The professional organisations of authors, composers and publishers thus considered that it would be helpful to specify these practices and give them, through this document, a comprehensive, balanced and shared frame of reference.

This Code of Good Practices has been drawn up and signed by CSDEM, CEMF, ULM, SNAC, UNAC and UCMF<sup>1</sup>, as professional organisations representing music publishers and music authors, which term includes lyricists, composers, translators, arrangers, adapters and librettists.

It aims:

- to provide a balanced legal framework for the publishing profession, enabling the peaceful and economically viable exercise of the assigned rights and offering the conditions for the optimal exploitation of musical works,
- to guarantee authors a balanced legal framework for the assignment of the economic rights that the law grants to them in their musical works, transparency in the management of works by publishers and their balanced participation in the financial results of the exploitation of musical works.

This Code of Good Practices concerns the whole music publishing sector, regardless of the repertoire genre (popular, classical, film music, library music). Nevertheless, some of its provisions are explicitly mentioned as relating specifically to certain genres.

The implementation of this Code is without prejudice to the contracts and agreements existing between publishers and authors of musical works and their collective management organisations.

The signatory organisations will call on their members to observe the good practices set out herein for the entire duration of future publishing contracts as well as current contracts, with regard to those provisions of the latter contracts the application of which is impacted by this Code.

This Code is intended to be extended to all professionals in the sector by way of normal collective bargaining procedures from the moment that the Intellectual Property Code contains provisions

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<sup>1</sup> Present list of signatories

providing for such an extension. It is also intended to serve as a reference for possible future changes to the Intellectual Property Code concerning music publishing.

## 1- Definition of the profession of publisher

The publisher of a musical work is the natural or legal person who, in accordance with the good practices set out herein, manufactures or has manufactured multiple copies of the work, ensures the publication, dissemination and exploitation thereof and monitors and pays to the author the remuneration generated by the work's exploitation. These components form an indivisible whole and may not be exercised in part, without entailing the risk of causing harm to authors and to publishers.

Through the preferential contract and the publishing contract, the publisher determines with the author the possible ways of supporting the creation of the musical work, for example by means of the payment of a guaranteed minimum or a recoverable advance under the conditions described below. The publisher may also ensure financing for the work's creation through any other form of material or logistical support.

The publisher shall respect the author's moral right in all the forms of exploitation that it may negotiate and shall assess under its responsibility whether a proposed exploitation requires the author's agreement in this respect. However, the publisher shall always consult the author if the work's exploitation requires its arrangement or adaptation, particularly its audiovisual adaptation. The publisher shall intervene by any means to terminate any exploitation of the work, of which the publisher is aware, carried out in breach of the rights assigned to it, except in those cases where a collective management organisation has sole authority to put an end to such exploitation and to take legal action. The publisher shall also intervene by any means to correct anomalies noted by it or reported to it in the payment of royalties.

## 2- Preferential contract

Granting a preferential right to a publisher is a practice that is more or less widespread depending on the music genre. As a derogation from the principle of the prohibition of blanket assignments of future works provided for in article L.131-1 of the Intellectual Property Code, it must be regulated.

The publisher has a duty to inform the author of the consequences of the signature of such a contract and to encourage him/her to seek the assistance of a legal adviser before making a commitment. *The contract shall mention that this information duty has been respected.*<sup>2</sup>

The preferential contract formalises the preferential right provided for in the Intellectual Property Code. It is negotiated on a one-to-one basis notably with regard to its duration and the number of works and their genre, within the framework laid down in article L.132-4 of the Intellectual Property Code.

It sets out any ways of supporting the work's creation made available to the author by the publisher.

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<sup>2</sup> The sentences and paragraphs in italics indicate the provisions that apply only to contracts concluded after 1 July 2018 (cf. annex)

*If that support takes the form of an advance recoverable from the revenues from the work's exploitation, the conditions relating to the recovery of the advance are specified in the contract (spread over a period of time, recouped from the royalties paid to the author by the publisher, from the royalties collected by collective management societies, accruing to the work in question or to the whole catalogue, etc.).*

The author proposes to the publisher all the works created during the term of the preferential contract in the genre(s) set out in the contract.

In the event that the author fails to fulfil his/her obligations under the preferential contract, the publisher may request repayment of the advances granted to the author.

In accordance with article L.132-4 of the Intellectual Property Code, the publisher's successive refusal of two new works in the genre provided for in the contract enables the author to regain his/her freedom concerning the future works created by the author in the same genre as those refused. However, the author is required to repay the publisher the advances granted for the creation of future works in that genre.

### 3- Publishing contract

The music publishing contract sets out the author's and the publisher's reciprocal obligations.

The publishing contract applies work by work, even where a single contractual arrangement is signed for several works.

Under article L.132-12 of the Intellectual Property Code, the publisher is required to ensure the work's permanent and sustained exploitation and its commercial dissemination in accordance with industry practices. Accordingly, the publisher is required, on an ongoing basis throughout the term of the contract, including in a way that may be modulated over time, to take the necessary steps to ensure that the work enjoys the best possible exploitation.

Where the author is a member of a collective management organisation, he/she shall inform the publisher accordingly, before assigning rights in the work.

#### 3.1- Support for the work's creation and recoverable advances

*The publishing contract sets out, where applicable, the ways of supporting the work's creation afforded to the author by the publisher, independently of those mentioned in a preferential contract if one exists.*

*With regard to recoverable advances, it fixes their amount, the manner in which they will be recovered from the exploitation revenues (notably from all or part of the royalties collected by collective management organisations and the royalties managed directly by the publisher, accruing to all or some of the author's works) and the repayment terms in the event of the contract's termination.*

The publisher may not charge interest on recoverable advances paid to authors.

The author shall inform the publisher of the existence of any levy of execution measure encumbering his/her account in a collective management organisation (garnishment, distraint – including protective attachment – secured bank loan, guarantee, etc.) before any advance is paid by the publisher.

### 3.2- Delivery of the work by the author

The publishing contract sets the conditions and the forms in which the author delivers the work to the publisher so that its publication, permanent and sustained exploitation and commercial dissemination may be ensured consistently with the assigned rights.

Where the author has delivered the work in the form of a (computer or audio) file, if it is established that it is also necessary to produce a written score, the copyist's costs are borne by the publisher.

*If the author transfers the work's original medium to the publisher, that transfer must be expressly mentioned in the publishing contract.*

Transfer of an original medium is granted without prejudice to the rights of any holders of related rights. It may be granted free of charge or in return for payment of specific remuneration shared between all the rightholders, in particular when the transferred physical medium enables the musical work to be exploited without any other investment on the publisher's part to use the provided master (or, in the case of classical music, the matrix or cutting).

The author shall inform the publisher of the use of a pre-existing work in the work delivered to the publisher.

The author shall inform the publisher of any notification of the work to a collective management organisation that the author may have made prior to the assignment of the rights in the same work to the publisher.

### 3.3- Publication of the work

Publication of a musical work can be envisaged when the author has considered that his/her work may be disclosed and has delivered it to the publisher with which the author has signed a publishing contract. The delivery of the work to the publisher and the signature of the publishing contract reflect the exercise of the right of disclosure.

*The publishing contract sets the time limits and forms of publication of the work by the publisher, determined having regard to the public for whom it is intended.*

Based on the scope of the assignment of the rights and the intended purpose of the work, the publication of a work may take various forms: graphic, sound recording, public performance, etc. The work's first communication to its intended public shall be deemed publication by the publisher. For example, the original soundtrack's incorporation in a film is deemed publication of that original soundtrack.

*The publishing contract sets:*

- *the manner in which the author's final approval for printing will be given to the publisher,*
- *the format(s) or the form(s) in which the publisher must ensure publication,*
- *the minimum number of copies forming the first print run or the minimum royalties guaranteed by the publisher,*
- *the time limit agreed for the work's publication, which may not be longer than one year after the appropriate material has been delivered by the author.*

*The abovementioned time limit does not apply to works of classical music and the field of library music for which the time limit for publication is two years.*

*The publisher's failure to respect the minimum number of copies to be made, payment of the guaranteed minimum royalties or the time limits for publication set in the contract, following a formal demand by the author sent by registered letter with an acknowledgement of receipt request, entitles the author to terminate the contract under the conditions set out in 5.1.*

In the absence of specific stipulations in the contract, the production of orchestral materials and, in the popular field, the size, weight (grammage) and colour of the score are left to the publisher's discretion.

The marketed score includes the following:

- the surnames, first names or the pseudonyms of the authors, according to their choice and in compliance with their moral rights;
- their respective capacities (lyricist, composer, arranger, adapter, translator, librettist);
- the publisher's registered office, contact details and, where applicable, logo;
- the year of publication;
- the publisher's number.

The score is marketed after the author's delivery of a proof that he/she has validated by marking "approved for printing". In the absence of any response on the author's part within the time limit set by the contract, the publisher may proceed with the marketing of the last proof sent by the author.

### **3.4- The work's permanent and sustained exploitation and commercial dissemination**

Once the musical work's publication has been undertaken or obtained by the publisher, the latter is required, under article L.132-12 of the Intellectual Property Code, to ensure the work's permanent and sustained exploitation and commercial dissemination in accordance with industry practices. The aim of this obligation is to ensure the work's public exposure, foster its promotion, contribute to its recognition and generate copyright royalties. It implies that the publisher retains a copy of the work or any other material constituting the musical work (sound recording, sheet music/scores, orchestral material, etc.) throughout the term of the contract and can make them accessible to the author at his/her request.

Permanent and sustained exploitation and commercial dissemination imply, whatever the music genre:

- that the work is made and then kept available to the public and professionals, and thus disseminated, for the entire duration of the assignment of rights in a quality that is respectful of the work whatever the dissemination channel;
- that, at the same time, various methods of exploitation, which may vary depending on the nature of the work in order to optimise them, are implemented by the publisher itself or through the intermediary of a third party authorised to do so.

Permanent and sustained exploitation and commercial dissemination are not considered to be ensured if the only exploitation undertaken is the dissemination of the audiovisual work for which the musical work was specially created.

Whatever the work's genre, the author may ask the publisher, at the end of five years after the contract's signature and every five years thereafter, for a review of the means employed by the publisher to ensure the exploitation and commercial dissemination of his/her work, as well as the ways of improving them or redirecting them towards other methods of exploitation and dissemination or other partners of the publisher. The publisher cannot refuse to carry out such a review.

### **3.4.1. The permanent and sustained exploitation and commercial dissemination of works that do not come within the categories of library music or classical music**

1°) The following means are used to ensure that the work is made available to the public and professionals and commercially disseminated:

- its presentation in printed or digital catalogues available on request or on websites,
- the possibility of accessing the work in graphic and/or audio form, on the internet or in compilations or collections,
- the marketing of the printed or digital score or a mechanical copy (vinyl, CD, Karaoke, DVD) and the text at the publisher's head office, in its subsidiaries or in shops,
- its presentation in at least one database listing commercially available works and on its website if the publisher has such a tool,
- the fulfilment of any order for the work as soon as possible.

2°) Permanent and sustained exploitation is also ensured *inter alia* through the following:

- proposing the work to performers or orchestras or choirs,
- creating and disseminating by any means physical or digital playlists or promotional compilations which include the work,
- seeking and encouraging the work's performance in concerts or on radio stations or television channels,
- seeking and obtaining the work's inclusion in audiovisual works, advertising works or multimedia works,
- encouraging the creation of adaptations or arrangements or use as a sample,
- exporting the work abroad or arranging for sub-publishing,
- using the work in merchandising,
- contributing to the financing of video clips, documentaries, biopics, tours or websites dedicated to the author of the work or its performers.

The requirement of the work's permanent and sustained exploitation is satisfied if the publisher proves that it implemented itself or through the intermediary of a third party authorised to do so at least three actions the most suited to the nature of the work among those listed in 2) above, if the corresponding exploitation rights have been assigned to it.

### **3.4.2. The permanent and sustained exploitation and commercial dissemination of library music works**

The library music work is made and kept available to the public and its commercial dissemination is ensured if a sound recording of the work is:

- present on the publisher's website or on any other website presenting updated thematic catalogues based on music genres which make the works available to the public and notably professionals in the audiovisual sector,

- present on physical media (CDs, vinyl records, hard disks, USB keys, etc.) intended for potential users, distributors and sub-publishers.

The requirement of the work's permanent and sustained exploitation is satisfied if, at the same time, all the following actions are carried out:

- producing or acquiring the sound recording of the work,
- fixing the work on a physical or digital medium,
- seeking and obtaining the work's inclusion in audiovisual works, advertising works or multimedia works,
- creating and updating playlists that include the work, intended for professionals in the audiovisual sector,
- exporting the work abroad or arranging for sub-publishing.

### 3.4.3. The permanent and sustained exploitation and commercial dissemination of classical music works

The work of classical music is made and kept available to the public and its commercial dissemination is ensured through:

- its presentation in printed or digital catalogues available on request or on websites,
- the marketing of the score at the publisher's head office, in its subsidiaries or in shops,
- the rental of the work's orchestral material by the publisher or its representatives.

Permanent and sustained exploitation of the work of classical music is ensured *inter alia* through the following:

- proposing the work, based on its nature and the personality of the authors, to professionals in sectors involved in the performance and dissemination of music, including in particular:
  - conductors, music directors, choir masters or soloists,
  - programmers, radio broadcasters or television broadcasters,
  - festival directors or phonogram producers,
  - music education institutions and academies or their teachers,
  - organisers of competitions.
- proposing the work, based on its nature and the personality of the authors, in audiovisual works, advertising works or multimedia works,
- exporting the work abroad by any means or arranging for sub-publishing.

### 3.5- Terms of remuneration

*The publishing contract sets the author's terms of remuneration for the various forms of exploitation of the work. These provisions are an essential part of the publishing contract.*

*The publishing contract's provisions on the author's remuneration for the exploitation carried out or authorised by the publisher must enable the author to know explicitly and transparently:*

- *the division of the revenues from the various modes of exploitation between the author and the publisher,*
- *how and on what basis the royalties are calculated,*

- *where applicable, the existence of costs or commissions chargeable against the exploitation revenues and the justification for them.*

With the exception of the manufacture and sale of scores by the publisher, for which the basis for calculating the remuneration is the retail price exclusive of tax, the author's remuneration is calculated on all the monies collected by the publisher. Only mandatory tax and social security payments are deducted from the author's remuneration.

In the absence of any specific stipulation, the monies owed are paid, whatever their total amount, after each rendering of accounts. The remuneration is paid no later than 45 days from the date on which the accounts are rendered in the case of authors resident for tax purposes in France.

*Nevertheless, the publishing contract may provide that the royalties owed to the author may be retained by the publisher for payment in a single lump sum when their aggregate amount comes to less than €50 or any other sum set in the contract.*

However, even if a practice or contractual clause exists to this effect, the author may request at any time that, in future, the publisher pay his/her royalties before the aggregate amount reaches the foregoing threshold.

The author shall refrain from accepting any arrangement or contract which provides for repayment from the publisher's share or the assignment of all or part of that share in favour of a third party (a phonogram or audiovisual producer, for example).

### 3.6- Rendering of accounts

The conditions governing the rendering of accounts are intended to guarantee explicit and transparent reporting to the author on the calculation of his/her remuneration.

To this end, the statement of accounts mentions all the information needed by the author to check that the remuneration paid to him/her is based on all the revenues generated by the direct or indirect exploitation of his/her work.

Accounts are rendered twice a year, no later than 3 months after each half-year (first half-year, the end of September; second half-year, the end of March), except in the case of the publication of classical music where accounts are rendered annually.

The duty to render accounts is fulfilled when the publisher makes available to the author, barring the latter's express opposition, a secure space where his/her account statements can be accessed online in a downloadable and printable format for a period of at least one year.

Accounts rendered by publishers domiciled in France are drawn up in French or include at least a full summary in French. They are itemised by work, type of right and, if the remuneration rules vary, by territory.

The statement of accounts indicates:

- the first and last day of the collection period covered by them,
- the title of the work,
- the name of the author,
- the source of the remuneration and the type of exploitation that generated it,

- where applicable, the number of sold copies, free copies, destroyed copies or copies made unusable by accident or *force majeure*,
- the total amount,
- the amount payable to the author or the author's successors in title.

Where an exploitation generates an exceptional amount (for example, in the event of the use of a pre-existing work in an advertisement), as soon as the corresponding remuneration has been collected by the publisher, the author may request payment of his/her royalties without waiting for the half-yearly rendering of accounts.

*The publishing contract may set the exceptional remuneration threshold above which the publisher must notify the author without delay as soon as the corresponding remuneration has been collected.*

The fact that a work does not appear on a statement of account means that it has generated no revenue over the period as regards the rights managed directly by the music publisher.

To enable the author to know the position of the exploitation of all of his/her works, he/she may request that, in future, the publisher communicate once a year the list of his/her works of which the publisher is the assignee and, if no work has generated any revenue, the overall zero account.

*The publishing contract provides that, if the publisher fails to render accounts, the author may request by registered letter with an acknowledgement of receipt request the production of the accounts in the manner described above within a period of three months and that if the situation is not rectified within that period, the author may notify the publisher of the contract's automatic termination under the conditions set out in 5.1.*

*The publishing contract also provides that termination is automatic, under the conditions set out in section 5.2 of this Code, in the event of a repeated failure to render accounts spontaneously by the due date on three occasions over a period of less than three years.*

*The publishing contract includes an audit clause in respect of the publisher's accounts.*

### **3.7- Term of the publishing contract**

The term of the publishing contract is negotiated on a one-to-one basis between the author and the publisher.

Throughout the term of the publishing contract, the author shall inform the publisher without delay:

- of any change of contact details, including bank details;
- of any pseudonym adopted by him/her and the name of any band to which he/she belongs.

Throughout the term of the publishing contract, the publisher shall inform the author of any changes of address, contact details and corporate name.

## **4- Disputes concerning the work's permanent and sustained exploitation and commercial dissemination and resolution of conflicts**

At the end of a period of five years following the work's publication and thereafter at most once every three years (five years for works of classical music), the author may call the contract into question based on the procedure set out below:

- if the author considers that the publisher has not respected its obligations over that period to ensure the work's permanent and sustained exploitation and commercial dissemination, in terms of the means employed;
- if the author considers that the royalties that he/she has received for the work forming the subject of the contract are insufficient over that period, whether for the rights managed directly by the publisher or the rights under collective management.

#### 4.1. The procedure

This procedure is intended mainly in the event of disagreement concerning the means employed to ensure the work's permanent and sustained exploitation and commercial dissemination, but it can be used for the resolution of any other dispute arising during the term of the contract.

It applies to contracts running on 1 July 2018. *To ensure that the parties are fully informed, it must be mentioned in future contracts.*

The procedure is as follows:

1°) the author sends the publisher a registered letter with an acknowledgement of receipt request containing the title(s) of the work(s) forming the subject of the claim, with an acknowledgement of receipt request, giving the publisher two months to indicate the means that it will employ within six months of its reply to put in place the conditions for improving the work's permanent and sustained exploitation and commercial dissemination;

2°) the publisher, by registered letter with an acknowledgement of receipt request, informs the author of the means that it will employ to that end or informs the author that it is referring the matter to the conciliation committee, in which case the publisher must do so within 30 days;

3°) if the publisher fails to reply within the two-month period, the author sends the publisher a reminder letter by registered post with an acknowledgement of receipt request giving the publisher a further period of 30 days;

*4°) if the publisher fails to reply within that period, or does not refer the matter to the conciliation committee, the contract automatically terminates in accordance with the procedure set out in 5.2;*

5°) if, on being informed of the means employed by the publisher, the author is satisfied with them, the procedure ends;

6°) if, on being informed of the means employed by the publisher, the author is still not satisfied with them, he/she may refer the matter to the conciliation committee, in which case the author informs the publisher accordingly by registered letter with an acknowledgement of receipt request.

If the author does not refer the matter to the conciliation committee within three months, he/she is deemed to have decided not to refer the matter and the publisher is not required to reply to other claims on the author's part having the same object in the course of the same period of three years.

If, on being duly notified that he/she must appear before it, the author does not appear before the conciliation committee without a valid excuse, he/she is deemed to have abandoned the request for termination. *If, on being duly notified that it must appear before the committee, the publisher does not appear before the conciliation committee without a valid excuse, the publishing contract will automatically terminate at the author's request in accordance with the procedure set out in 5.2.*

If the work forming the subject of the dispute is co-published, the author raises the matter with all the co-publishers who co-signed the publishing contract.

If the work forming the subject of the claim is jointly written, the foregoing steps must be taken jointly, in accordance with the provisions of article L.113-3 of the Intellectual Property Code.

#### 4.2. The conciliation committee

The conciliation committee consists of 6 members, 3 of whom are appointed, depending on the work at issue, from among the members of the boards of directors of this Code's signatory organisations representing publishers and 3 of whom are appointed by this Code's signatory organisations representing authors.

The committee appoints the session chairperson.

The conciliation committee may examine any dispute concerning the application of publishing contracts, notably before referral to the courts, pursuant to articles 56 and 58 of the Code of Civil Procedure.

Its secretariat is provided jointly by permanent employees of the signatory organisations who:

- register the referral and verify its validity,
- convene the committee,
- draw up the agenda,
- present, if necessary, the disputes to the committee,
- propose for joint signature by the parties the minutes summarising the terms of their agreement or recording the failure of the conciliation, and deliver a copy of them to each party.

The presence of the parties before the committee is mandatory.

With regard to the possibility for the parties to be accompanied or represented before the committee:

- a) The rule is that the author, on the one hand, and the legal representative of the publishing company signatory to the contract at issue, on the other, appear alone before the conciliation committee.
- b) Nevertheless, the author may be accompanied by a trusted person and the publisher may be represented by a corporate officer, subject in both cases to the express agreement of the other party on the proposed name.
- c) If one of the parties twice refuses a name proposed by the other party, the principle of a) above applies.

*The existence of the conciliation committee and the possibility for the author and for the publisher to refer the matter to it in the event of a dispute are mentioned in the publishing contract.*

## 5- Termination of the publishing contract

The publishing contract sets the conditions under which the contract may be terminated in the event that one party or the other fails to meet their obligations.

In all events, termination of the signed publishing contract leads to the cancellation of all the documents and agreements attached to the publication of the work in question.

If the publisher and the author are members of a collective management organisation, the latter is sent copies of the letters exchanged pursuant to this Code. The management organisation is notified of the contract's termination at the end of the termination procedure to enable its documentation concerning the musical work forming the subject of the publishing contract to be amended.

### 5.1- Automatic termination failing rectification after a formal demand

**5.1.1-** Pursuant to the Intellectual Property Code, the author may send the publisher, by registered letter with an acknowledgement of receipt request, a formal demand to rectify the situation within three months in the event of:

- failure to publish the work,
- failure to reprint it if it is out of print.

If this formal demand is not acted upon within the prescribed time limit, the contract automatically terminates upon notification by registered letter with an acknowledgement of receipt request from the author to the publisher, or, if several publishers are signatories to the contract, to all the publishers, with an acknowledgement of receipt request.

**5.1.2-** *The publishing contract provides that the author may send the publisher, by registered letter with an acknowledgement of receipt request, a formal demand to rectify the situation within three months:*

- *in the event, referred to in section 3.3 of this Code, of the publisher's failure to respect the minimum number of copies to be made or the payment of the guaranteed minimum royalties or the time limits for publication set in the contract;*
- *in the event, referred to in section 3.6 of this Code, of failure to render accounts by the due date.*

*If this formal demand is not acted upon within the prescribed time limit, the contract automatically terminates upon notification by registered letter with an acknowledgement of receipt request from the author to the publisher, or, if several publishers are signatories to the contract, to all the publishers, with an acknowledgement of receipt request.*

### 5.2- Automatic termination following non-rectifiable breaches

**5.2.1-** Pursuant to the Intellectual Property Code, the author may request the contract's automatic termination:

- in the event of the complete destruction of the copies of the work,
- if the publisher is in court-ordered liquidation or has ceased trading for over three months.

The contract then terminates upon simple notification by registered letter with an acknowledgement of receipt request from the author to the publisher, or, if several publishers are signatories to the contract, to all the publishers, with an acknowledgement of receipt request.

**5.2.2-** *The publishing contract provides that the author may request the contract's automatic termination under the procedure set out in section 4.1 of this Code:*

- *if the publisher has not replied within the prescribed time limit to the registered letter with an acknowledgement of receipt request from the author requesting details of the means that it intends to employ to remedy the work's insufficient permanent and sustained exploitation and commercial dissemination,*
- *if the publisher has not referred the matter to the conciliation committee within the prescribed time limit,*
- *if the publisher has not appeared before the conciliation committee.*

*The contract then terminates upon notification by registered letter with an acknowledgement of receipt request from the author to the publisher, or, if several publishers are signatories to the contract, to all the publishers, with an acknowledgement of receipt request.*

**5.2.3-** *The publishing contract provides that termination may be requested by the author if, three times over a period of less than three years, accounts have been rendered only after a formal demand has been sent by the author under the conditions set out in section 3.6 of this Code.*

*The contract then terminates upon notification by registered letter with an acknowledgement of receipt request from the author to the publisher, or, if several publishers are signatories to the contract, to all the publishers, with an acknowledgement of receipt request.*

## **6. Co-publishing contract**

Co-publishing may not be undertaken without the author's agreement. Pursuant to article L.132-6 of the Intellectual Property Code, the publisher may not assign part of the rights that it has acquired in the work to third parties without the author's agreement.

If a collective management organisation must distribute royalties directly to co-publishers, a joint notification form informs the author of the situation.

## **7- Sub-publishing contract**

The publisher informs the author of the sub-publishing contracts it has which may be used for the exploitation of his/her work.

*Where the publisher has established sub-publishing contracts for all its catalogue, the publishing contract expressly mentions them and their possible impact on the remuneration paid to the author.*

Throughout the term of the publishing contract, the author may consult the sub-publishing contract(s) concerning his/her work, provided that the request is made at least one month in advance. This right of access is exercised:

- personally; the author may not be represented or assisted in this connection;
- in the publisher's offices, during office hours, in the presence of a member of staff of the publisher, without it being possible to take or obtain copies.

## 8- Final and transitional provisions concerning the implementation of the provisions of this Code of Good Practices

Without prejudice to their early application through the free will of the parties, the good practices set out in this Code apply:

- to contracts concluded after 1 July 2018,
- with effect from 1 July 2018 to contracts running at that date, except for some of the provisions of this Code listed in the annex which must be explicitly mentioned in contracts prior to their signature or which concern cases of automatic termination not provided for in the Intellectual Property Code.

## 9. Undertaking of the parties concerning the effective implementation of this Code of Good Practices

The parties undertake:

- to ensure that the conciliation committee can meet with effect from 1 July 2018 at the latest,
- where they have drawn up model contracts or standard clauses, to bring them into line with all the good practices set out in this Code by 1 July 2018 at the latest.

## 10. Revision of this Code of Good Practices

The signatories agree that this Code of Good Practices will apply for an indefinite period and agree to hold joint discussions every five years to ensure the joint revision of those provisions that prove to be unsuitable or obsolete as a result of changes in the music creation and music publishing sectors.

### Signatories

#### Authors' professional organisations

SNAC

UCMF

UNAC

#### Publishers' professional organisations

CSDEM

CEMF

ULM

## **Annex: Provisions of the Code of Good Practices applicable only to contracts concluded after 1 July 2018**

1- Those provisions of this Code of Good Practices which have to be explicitly mentioned in the contracts between publishers and authors prior to their signature can apply only to contracts concluded after 1 July 2018. This is the case of the following:

- The requirement that preferential contracts mention the prior information given to the author by the publisher concerning the consequences of signing a preferential contract (section 2, para. 2);
- The requirement that preferential contracts fix the conditions relating to the recovery of recoupable advances (section 2, para. 5);
- The requirement that publishing contracts set out the ways of supporting the work's creation and the manner in which advances will be recouped or repaid (section 3.1, paras. 1 and 2);
- The requirement that publishing contracts expressly mention the transfer of the work's original medium (section 3.2, para. 3);
- The prior information to be given by the author concerning the use of a pre-existing work in the work and the work's notification to or the author's membership of a collective management organisation (section 3.2, paras. 5 and 6);
- The requirement that publishing contracts set the time limits and forms of publication of the work (section 3.3, paras. 2, 4 and 5);
- The requirement that publishing contracts set the author's terms of remuneration, the information to be communicated to the author on the subject (section 3.5, paras. 1 and 2) and the possibility of combining small amounts of royalties to make a single payment (section 3.5, para. 5);
- The requirement that publishing contracts set the threshold amount of remuneration above which the publisher must notify the author that it has collected the amount (section 3.6, para. 8);
- The audit clause to be provided for in publishing contracts (section 3.6, last paragraph);
- The explicit reminder in publishing contracts, to ensure that the parties are properly informed, of the existence of the dispute resolution procedure (section 4.1, para. 2) and, in particular, the existence of the conciliation committee (section 4.2, last paragraph);
- The requirement that publishing contracts set the conditions relating to the contract's termination in the event of breaches by either party (section 5, para. 1);
- The requirement that publishing contracts mention the sub-publishing contracts concluded by the publisher for the publisher's entire catalogue (section 7, para. 2).

2- Similarly, only contracts concluded after 1 July 2018 can be subject to the application of the provisions concerning the cases of automatic termination not provided for in the Intellectual Property Code, such as those in sections:

- 3.3 (paragraph 6),
- 3.6 (paragraphs 11 and 12),
- 4.1 (sub-paragraph 4) of paragraph 3),
- 4.1 (paragraph 5),
- 5.1.2, 5.2.2, 5.2.3